

REACH Beyond Borders

Ondřej Filipec

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Europeanization Towards Global Regulation

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Ondřej Filipec
Faculty of Social Sciences
University of Ss. Cyril and Methodius
Trnava, Slovakia

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*Dedicated to All Victims of Hazardous
Chemicals*

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Abbreviations

BPR	Biocidal Product Regulation
CCA	Chemicals Control Act (Korea)
CEPA	Canadian Environmental Protection Act
ChemO	Chemicals Ordinance on Protection Against Dangerous Substances and Preparations (Switzerland)
CICR	Regulation on the Inventory and Control of chemicals (Turkey)
CLP	Classification, Labelling and Packaging
CSIA	Chemical Safety Improvement Act (USA)
EHSNR	Environmentally Hazardous Substances Notification and Registration (Malaysia)
EINECS	European Inventory of Existing Commercial Chemical Substances
EPA	Environmental Protection Agency (USA)
GOSTs	Product-Related-specific Mandatory Standards (Russia)
HSNO	Hazardous Substances and New Organisms Act (New Zealand)
NICNAS	National Industrial Chemicals Notification and Assessment Scheme (Australia)
PBT	Persistent, Bioaccumulative and Toxic substances
PIC	Prior Informed Consent
POPs	Persistent Organic Pollutants
REACH	Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals
SCA	Safe Chemicals Act (USA)
TCCA	Korean Toxic Chemicals Control Act.
TCSCA	Toxic Chemicals Substances Control Act (Taiwan)
TSCA	Toxic Substances Control Act (USA)
TSHNWC	Toxic Substances and Hazardous and Nuclear Waste Control Act (Philippines)
vPvB	Very Persistent and Very Bioaccumulative

Introduction

The story of REACH¹ was very dramatic from the early beginning. After the European Union finished formally the single market by adopting the Maastricht Treaty in 1993, it was self-evident that the common market requires also stronger common rules. This was also the case of chemicals where national policies were only partly harmonized through a series of directives which were considered insufficient already at the time they were enacted. There was a significant lack of information about substances placed on the market. Old systems of chemical management were limited in data gathering, and there was only little information about known effects of substances on human health and environment. The burden of proof has been placed on consumers who, in the case of harm, only hardly defend their rights during trials with giant corporations and chemical producers. At the same time, the volume of trade between EU member states was increasing, and new products were placed on the EU market without sufficient knowledge about their possible long-term effects. Rigid, obsolete and insufficient directives resulted in insufficient regulation of chemicals which was strongly criticised by NGOs, politicians and sometimes even by the chemical industry itself. The need for substantial reform was recognised by all actors including the chemical industry

The negotiations about new regulation took almost a decade. It was really a very long way leading through opposing and sometimes acrimonious interests of thousands of actors. The lobbying of chemical industry and environmental NGOs to affect institutions and national interest was permanent. The intensity and cruel practices used resulted in REACH being referred to as the most lobbied regulation

¹In full reference Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) establishing European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No. 793/93 and Commission Regulation (EC) No. 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (further abbreviated simply as REACH).

in EU history.² The war between actors over new chemical legislation lasted almost a decade and in some aspects is still ongoing. REACH entered into the force in June 2007. Since then EU became an entity with the most comprehensive and ambitious chemical regulation in the world, establishing a new paradigm within environmental policy.

However, even after REACH entered into force in 2007, its implementation did not stop to cause concern among chemical companies, especially small and medium size enterprises. Moreover, REACH was only beginning. The EU regulatory landscape has been enriched by Classification, Labelling and Packaging (CLP) legislation in 2009 and by Biocidal Product Regulation (BPR) and the Prior Informed Consent Regulation (PIC) by 2012. REACH regulation is still being developed as the review process left some space for regulation of substances produced in low volumes, endocrine disruptors or nanomaterials. The EU regulatory landscape regarding chemicals changed in a revolutionary way and became the source of inspiration for other countries in the world.

Research Aims

The main aim of this book is to explore the EU influence in the area of chemical regulation on the other parts of the world and assess how much other countries are inspired or influenced by it. This will be analysed through the concept of Europeanization which is suitable for such analysis with great potential for application and deriving new interesting implications. The book will not only explore the extent of how much national policies are Europeanized but will also search for possible political and economic causes, such as the size of chemical industry, the trade between EU and the country, export orientation or other influences. This is very important in order to reveal the nature of EU influence beyond its borders and verify the extent in which REACH influenced global perception on chemical management.

For this reason, the main hypothesis of the book is that: “The level of economic interdependence between the EU and selected non-EU states in the field of chemicals positively correlates with the Europeanization level of national chemical regulation”. In other words, the more non-EU country is exporting to the EU, the more Europeanized (REACH-like) regulation there will be. As pointed by Steven Levitsky and Lucan Way (2006), the density of ties and cross-border flows between a particular country and the EU may play an important role in determining the level of influence of the EU (Levitsky and Way 2006: 383).

In the context of Europeanization, chemical regulation is seen as a dependent variable and the level of economic interdependence as independent variable. Nevertheless, other variables may intervene in this relationship (e.g. similarity of

²For further details see for example Contiero M (2006) Toxic lobby: how the chemicals industry is trying to kill REACH. Greenpeace International) or Selin H (2007) Coalition politics and chemical management in a regulatory ambitious Europe. *Glob Environ Polit* 7(3):63–93.

domestic structures, geography, structure of chemical industry etc.). For this reason, different explanatory alternatives are also discussed. In order to reveal the level of Europeanization, chemical regulations of selected states will be explored and compared in the context of REACH. For this purpose, the structure of the book was adapted.

Structure of the Book and Methodological Aspects

The publication is divided into three parts. The first part is of theoretical nature and consists of three chapters. Chapter 1 explores the concept of Europeanization and its core elements which are further focused on in this book. Chapter 2 explores REACH as the source of Europeanization. If we want to know the answer of “how much” is something Europeanized, we have to explore the source of Europeanization in order to identify how possible Europeanization looks like. At the centre of this book is REACH; however CLP, BPR and PIC regulations are introduced as well. Aside from EU chemical regulation, there might be other sources of inspiration for countries outside EU which are presented in Chap. 3. These sources are present at an international level in the form of international treaties, conventions or other instruments and initiatives. For the sake of completeness, it is desirable to identify other sources of influence on the international level which may affect domestic chemical regulations outside Europe. This is partially important as it is necessary to distinguish the process of Europeanization and globalization.³

The second part of the book is more empiric in nature. It explores the chemical regulation in different countries of the world with significant chemical industry. Chapter 4 focuses on the EU candidate states (Turkey, Serbia, Montenegro, Albania and Macedonia) and potential candidates (Bosnia and Herzegovina, Moldova and Ukraine); Chap. 5 is dedicated solely to the USA where complex chemical reform has been considered for several years. Chapter 6 is dedicated to BRIC countries (Brazil, Russia, India and China). Chapter 7 deals with Japan, South Korea, Taiwan and Singapore and Chap. 8 with Malaysia, Indonesia, Thailand and the Philippines. Chapter 9 discusses other countries important for global chemical production, including Switzerland, Canada, Australia and New Zealand.

All chapters have similar structure. First, the status of chemical industry is explored in order to provide the reader a general context and deeper understanding of country's economic orientation in the field of chemicals. Second, the former chemical regulation is briefly described in its key aspects, and third, the new chemical legislation is explored. Because the legal landscape regarding chemicals is very heterogeneous and sometimes chaotic, the main focus is on the regulation of haz-

³Europeanization is often parallel with the process of globalization or modernization. Especially South-European states or Balkan states saw Europeanization as synonymum for modernization which legitimized domestic reforms or led to antagonistic reaction (see, e.g., Featherstone and Kazamias 2000, Anastakis 2005).

ardous chemicals and if possible the registration and evaluation of all industrial chemicals despite this approach among countries being still rare. The shift in the new chemical regulation is put into the context of EU REACH, and possible EU normative influences are identified.

The third part of the book consists only of one chapter (Chap. 10) which explores the practical and theoretical impacts of EU regulation on selected countries. In the first section, the impact of economic interdependence is considered as a key variable in the process of Europeanization. Other variables and models in context with chemical regulation are discussed in the second section.

The book focuses on the theoretical concept of Europeanization, which is presented in the first chapter. From the methodological point of view, it may be considered as an exploratory case study dealing with the regulation of hazardous chemicals. However, due to its complexity and territorial approach, one may suggest that it is not a single-case study dealing with chemical regulation but rather a set of smaller case studies (Part 2 of the book) exploring chemical regulation around the world and comparing it with the EU regulation. For this reason, each individual chapter dealing with national regulation has the same structure, enabling comparison with other legislations.

The State of Research

This book is mainly based on national chemical laws and treaties. However, in some aspects this rather specific topic has already been dealt with academically. Some publications were indispensable for the purpose of this book. Except “classical” theorists of Europeanization such as Robert Ladrech, Claudio Radaelli, Tanja Börzel and Thomas Risse, a very valuable contribution was made by Frank Schimmelfennig (2012) who examines Europeanization beyond the EU member states. This approach is crucial for this book, and because many authors focus on Europeanization vis-à-vis EU member states or the EU candidate states, the current book offers a unique opportunity to explore how Europeanization works beyond the borders of the EU. Europeanization is not a well-defined and clearly demarcated theoretical concept. For this reason, a very valuable contribution was presented by Timm Beichelt (2008) who presented three complex models for assessing Europeanization which were considered for the application, and Chap. 10 of this book builds on its aspects.

There are several pieces of literature regarding the empirical part of the book. In the case of the US regulation, the book focuses on the article written by John S. Applegate (1998) which compares TSCA and REACH. This article makes understanding of the US regulatory problems easier. Regulatory problems are well summarised also in another article written by Richard A. Denison (2009) who presented ten essential elements in TSCA reform. The reform process is well documented by Jerry H. Yen who wrote in 2013 a special report for the Congress in which reform proposal S. 1009 and S. 696 are compared and the reader may read provisions of all three acts (TSCA, CSIA and CSA) next to each other. The latest reform proposal –

The Frank R. Lautenberg Chemical Safety for the 21st Century Act – which entered into force in 2016 is not yet assessed at the academic level.

Despite the subject of chemical regulation being rare and resources scarce in the academic literature, there are several valuable contributions related to EU REACH influence. Very valuable contribution is presented by Yoshiko Naiki (2010) who analysed the reluctance of Japan and conditions unfavourable towards comprehensive REACH-like reform. Similarly important paper was presented by Tachwa Lee (2015) who analysed positive attitude of South Korea towards REACH-like regulation. Despite both articles having different approach towards analysis, various aspects of the articles are used and put into the context of Europeanization in this book.

An important source of information is the website of the UK Chemical Watch news server which is a rich resource for regulatory specialists dealing with chemicals. Another important source is ChemSafetyPro server, which was created by regulatory experts to meet important and detailed information about regulatory regimes regarding chemicals. Despite the fact that the author focused on primary sources of information (legal acts or treaties) in some countries, acts were written only in a native language. For this reason ChemSafetyPro server is a valuable source of unique information, as well as Chemical Inspection and Regulation Service (CIRS) website where regulatory experts publish overviews of chemical regulations.

Recommendation

Jacques Delors once reportedly said that “nobody can fall in love with the single market”. The same can be said about chemical regulation and REACH which raises scepticism among companies rather than positive feelings. However, chemical regulation has many positive aspects and impacts on everyday lives of millions, and for this reason, it is worthy to explore its empirical and normative value. Publication is a valuable source of information for all scholars conducting their research in environmental policy, chemical regulation or chemical management as well as for regulatory experts in public and private institutions including NGOs, emerging chemical exporters, company lawyers or civil servants within the field of chemical management.

Comparing chemical regulations all over the world is a very demanding process requiring high level of multidisciplinary expertise. Moreover, chemical regulation is usually based on several pieces of law and implementing measures which may develop over time. For this reason, it is necessary to check validity of relevant regulatory parts within national regulatory regimes. In its relevant parts, this book refers to individual legal acts in order to avoid misinterpretation. Despite the many people helping me with this book, all mistakes are my own.