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Markus Haverland & Duncan Liefferink

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Member State interest articulation in the Commission phase. Institutional pre-conditions for influencing ‘Brussels’

Markus Haverland and Duncan Liefferink

ABSTRACT There is a large literature on Member State influence in the European Union, typically focusing on a combination of preferences of the Member States and their strategies with an emphasis on Council negotiations. However, prior to Council negotiations Member States also seek to influence the Commission’s development of legislative proposals. This paper argues that Member States need scientific expertise, experiential knowledge and target group support to make this strategy work and that the availability of these resources is partly shaped by domestic institutions, such as the territorial organization of the state, the recruitment principles of governmental departments, and the structure of government’s relationship with business groups and societal interests. As a plausibility probe for our argument we have conducted a case study of the Dutch government’s strategy regarding the REACH Regulation.

KEY WORDS Chemicals policy; European Commission; expertise; lobbying; Member States; the Netherlands.

INTRODUCTION

Member States are important actors in European Union (EU) policy-making and seek to influence legislation at various stages and by various means. They may have various reasons to do so. In regulatory policy, for instance, they may try to protect or improve the competitive position of their own domestic industry. They may strive to minimize future implementation costs. Or they may simply be convinced that they have the optimal solution available for the problem at hand (e.g. Héritier *et al.* 1996; Knill and Lenschow 2000; Knill and Liefferink 2007). Member States’ preferred policy options are usually based on or even copying pre-existing domestic policies in the field. If more than one Member State tries to influence the Commission while it is drafting new EU legislation, a political process of ‘regulatory competition’ ensues: Member States compete for having their particular regulatory models accepted by the EU (Héritier *et al.* 1996; Naurin and Wallace 2010).

Most of the literature on Member State influence focuses on the negotiations in the Council. There is however a small body of literature that focuses on Member State influence in the Commission phase. This literature has identified a particularly promising strategy to influence policy-making at this early stage. This strategy has been labelled 'first mover strategy' (Heritier 1996), 'pace-setting' (Börzel 2002) or 'constructive pusher' (Lieberink and Andersen 1998). The literature is, however, less concerned with the resources that are used in pursuing this strategy. In this paper we focus on the kind of resources necessary for this strategy and argue that the availability of these resources is partly conditioned by Member States' domestic institutions, the formal and informal rules that structure the relationship between domestic actors.

This paper was sparked off by the case of the Dutch attempts to influence the drafting of the Regulation for the Registration, Evaluation, Authorization and Restriction of Chemical Substances (REACH) by using a 'constructive pusher' strategy (see Selin 2007; Van Keulen *et al.* 2008). The main priorities of the Dutch government included a so-called 'duty of care' rule concerning the responsibility for industry, a 'chain responsibility' for the various parts of the substance chain, a system of prioritization for potentially very hazardous substances by way of a quick scan, and the workability of the policy. These are relatively clear and focused priorities which were, moreover, very actively pursued in Brussels. Some but not all of those points made it into the final Commission proposal. A closer analysis suggests that the differential effect of the Dutch strategy was shaped not only by the dynamics of the political process in Brussels as such but also by the character of the resources available to the Dutch government during the process. These were in turn determined by the nature of domestic institutions.

In the following sections we will more precisely define our research aim and key concepts, review the relevant literature and develop our theoretical framework. We will then illustrate our argument by results from the case study on the Dutch input into the REACH process. We do not aim at generalizing beyond this case, but rather use it as a plausibility probe for our arguments (Eckstein 1975). The final section will wrap up the argument.

LITERATURE REVIEW

The objective of this paper is to assess how domestic institutions shape the availability of resources necessary to influence the Commission phase of the EU policy-making process. This section serves to clarify our position in relation to the available literature which in fact mainly focuses on the subsequent Council stage and on preferences and strategies.

Preferences

Interests and preferences of domestic actors are the starting point of almost every mainstream study of EU decision-making. Integration studies tried to explain

the formation and development of the EU with the help of ideas, geo-political interests and/or economic interests of the Member States (e.g. Haas 1958; Moravcsik 1998). In studies at the level of individual policies, economic interests of the Member States, for instance in protecting or improving the competitive position of domestic industry or safeguarding employment, invariably play a central role. Take EU environmental policy, a particularly well-researched area of policy-making. Its development is linked to environmental interests which often originate from individual Member States, but can hardly be explained without referring also to their paramount interest in avoiding trade barriers, while at the same time maintaining or strengthening competitiveness *vis-à-vis* other Member States – a process commonly known as regulatory competition taking place in internationalized markets (Holzinger 2002; Vogel 1997). As soon as the option of EU regulation emerges, moreover, Member States are likely to have an interest in minimizing the cost of future implementation. This may lead them to push their own tried-and-tested policy solutions in Brussels. In most cases they will find other Member States on their way, who are eager to push their domestic policies as a model for EU regulation. This is the second, more political type of regulatory competition between states taking place in the EU (Héritier *et al.* 1996; Knill and Liefferink 2007). Putnam's now classical notion of the two-level game assumes that the outcome of international negotiations (level I) is determined by the overlap between the aggregate interests and preferences – or domestic 'win-sets' – of individual states (level II) (Putnam 1988). By implication, the negotiation success of an individual state depends on the extent to which the constellation of domestic interests and preferences turns out to be acceptable at the international negotiation table.

Strategies

Several theoretical approaches attempt to link national preferences to strategies in Brussels and vice versa. Börzel (2002) distinguishes three basic ways for Member States to position themselves in Brussels: 'pace-setting', i.e. actively pushing national policies in Brussels; 'foot-dragging', i.e. blocking or delaying common policies in order to prevent them from being adopted or to wrest concessions or compensation; and 'fence-sitting', i.e. basically a wait-and-see approach. Liefferink and Andersen (1998) distinguish four basic strategies of environmental 'pioneers' and relate them to domestic preferences in the environmental field as well as to the country's more general attitude to EU integration. Thus, a 'green' Member State may decide either to push in Brussels directly as a 'constructive pusher' or a more activist 'pusher-by-example', or rather to defend or protect its pre-existing or planned domestic policies against interference by the EU ('defensive forerunner' or 'opt-outer'). From this point, the literature mentioned goes on to analyse the way these strategic positions are being articulated within the political and institutional setting in Brussels (administrative structure of the Brussels bureaucracy, formal and

informal rules of the game, inter-institutional relations between Commission, Council and European Parliament, etc.).

ANALYTICAL FRAMEWORK

The above section has demonstrated that the 'default' approach to interest articulation by the Member States in the EU follows the line of preferences, leading to strategies, leading to a policy game in Brussels and, eventually, to policy outcome. We complement this line of research. A Member State's strategy, in our view, is likely to be dependent not only on the underlying interests and preferences being articulated within political and institutional opportunity structures in Brussels, but also on the resources available in the Member State at stake, such as money, personnel, and expertise (Benson 1975; Pfeffer and Salancik 2003). We argue that domestic institutions shape the availability of resources utilized to 'sell' a Member State's position in the policy-process in Brussels. The remainder of this section will be devoted to the question which resources may be regarded as particularly important for a Member State to influence policy-making in the Commission phase and which institutions are conducive to their production.

Resources and domestic conditions, but which?

A direct link between domestic capacity and strategies in Brussels was established by Börzel (2002). In the paper referred to above, she argues that 'pace-setting' is more likely in Member States with a high level of economic development. Given the fact that economic strength relates positively to many other potentially relevant variables (expertise, administrative capacity, etc.) her argument probably hits the mark, but it makes sense to add more depth to the analysis by analysing more precisely the necessary resources and the domestic institutions producing them.

To identify the resources that are most important for influencing EU policy-making we follow here the resource dependency approach which argues that organizations demand resources (or goods) from other organizations to further their goals. These other organizations are prepared to supply these goods if they get something in return (Benson 1975; Beyers 2004; Bouwen 2004; Pfeffer and Salancik 2003; Poppelaars 2009; Van Schendelen 2010). In our case, the exchange takes place between Member States, seeking access and influence, and the Commission. As will be elaborated below, we assume that the Commission is particularly interested in three resources when developing its policy proposals: (a) scientific expertise, (b) experiential expertise, and (c) legitimacy, particularly in the form of (claimed) target group support. In the Commission phase, sheer power thus plays a less outspoken role than in the subsequent Council phase. In the Council phase, size, economic strength, and formal voting weight are crucial resources for Member States (for an overview, see, Naurin and Wallace 2010). A more co-operative problem-solving mode is

generally reported to prevail in the Commission phase (Pellegrom 1997; Schout *et al.* 2001).

The provision of these resources, we argue, is facilitated by specific domestic institutions. Drawing on Hall, we define institutions as formal and informal rules that structure the relationship between actors in a political system (Hall 1986: 19).

In the following we will elaborate upon the character of the resources demanded by the Commission, the reasons why the Commission demands these resources and the specific domestic institutions that are likely to facilitate their production. This will lead to a number of expectations which will be formulated throughout the text, summarized in a table at the end of the section and serve as a starting point for the empirical analysis in the next section.

Scientific expertise

EU actors, in particular the Commission, demand scientific expertise. It is well known that the Commission has a rather small staff. For the development and monitoring of (often very technical) policies, it heavily depends on external experts. For this purpose, the Commission is supported by an elaborate system of committees in which experts from a variety of backgrounds participate. Many of them are in fact experts from national governments or public research institutions (Gornitzka and Sverdrup 2008). Apart from that, experts are consulted more informally. The need for scientific expertise is enhanced by the emphasis on output legitimacy in the EU, notably the quality of policies in terms of 'rationality' and 'effectiveness' (see Radaelli 1999; Scharpf 1999).

Considering the 'supply' of scientific expertise by the Member States, the most obvious requirement is of course the availability of high-quality, policy-relevant expertise at the domestic level. Expertise-based interest articulation, in other words, presupposes a well-developed knowledge infrastructure that is able to provide tailor-made scientific information to policy-makers. Public research institutes are likely to form the basis of an infrastructure of this kind, but also private, business-related research centres may be involved. At this point, the policy style of the country at stake, as informal institution, enters the analysis. A policy style that seeks to depoliticize political issues and takes an active problem-solving approach is particularly dependent on the availability of policy-relevant scientific expertise and may therefore be expected to correspond with a broadly supported, high-quality knowledge infrastructure (Richardson *et al.* 1982).

In addition, the relationship between scientists and policy-makers is important. In terms of Wittrock's analysis of the science-policy interface (Hoppe 2005; Wittrock 1991), 'unitary' or 'convergent' logistics between science and politics may be expected to be most conducive to expertise-based interest articulation. This refers to a situation where scientists and policy-makers basically understand each other and closely work together – as opposed to 'diverse' or 'divergent' logistics, where both groups are separated by different terminologies and institutional boundaries.

An institution that supports such a 'unitary' or 'convergent' logistics is a horizontally specialized form of government, that is, a system that stresses ministerial autonomy and accordingly features a departmental, rather than a centralized, system of recruitment (Beyers and Trondal 2004; Hague and Harrop 2007). In a departmental system, candidates apply for specific vacancies at specific departments. This has two implications for the topic of this paper. First, there is a strong chance that candidates are recruited on the basis of their task-specific content expertise. Second, the subject specialization, characteristic for horizontal specialization, leads to relatively little 'horizontal' mobility, i.e. mobility of personnel *between* departments. Instead, 'sectoral' or 'vertical' mobility should be more widespread, that is, mobility between ministries and specialized agencies such as research agencies and between national and European institutions within the sphere of expertise in question. As sectoral specialization and vertical mobility are connected to an emphasis on professional concerns, these institutions should contribute to a mutual understanding and interaction between governments and research agencies and hence to a 'unitary' logistics (see Egeberg 1999; Gulick 1937).

Experiential knowledge

While scientific expertise refers to relatively abstract knowledge, produced for instance through modelling, simulation or scientific experiments, experiential knowledge denotes information about how policies actually work at the street level or company level, and how implementation problems can be solved effectively. The EU has an interest in the workability of policies as the implementation deficit has become a salient issue. Weak compliance undermines the legitimacy of the EU and may result in unequal competition as lax implementers have a competitive advantage (Haverland and Romeijn 2007). Crucially, the European Commission has to rely on the Member States for the implementation of almost all EU policies. Experiential knowledge on the implementation of policies – on possible pitfalls and ways to avoid them – may thus turn into a powerful weapon in a Member State's strategy in Brussels.

Governments can gain experiential knowledge in at least two ways. First, they can seek to accumulate their own expertise regarding the working of policies. Second, they can seek to retrieve this expertise through contacts with the target group of policies. Regarding the first channel, horizontal specialization (i.e. large degree of ministerial autonomy and a departmental system of recruitment) may again be expected to be conducive: the longer the civil servants remain in place, or at least in the same policy sector, the more likely they are to accumulate experiential knowledge. In addition, the territorial organization of the state is relevant here. In a unitary state, both policy preparation and policy implementation are situated at the central government level. Consequently implementation problems can find their way onto the political agenda relatively quickly, and expertise on implementation problems can enter the policy formation process relatively easily. This is in contrast with

federal states where implementation powers are typically held by autonomous regional tiers of government.

As regards the second channel, that is the collection of experiential knowledge from the target groups themselves, relevant contacts may exist with individual companies or rather proceed via branch organizations. In either case, the notion of trust is crucial. In the absence of trust between government and business, companies may have an incentive to exaggerate the practical problems of implementation or to withhold information altogether. A consensus-oriented policy style (Richardson *et al.* 1982) should therefore be expected to be beneficial to generating and maintaining the necessary degree of trust between the parties involved. In addition, horizontal specialization, a departmental system of recruitment and limited horizontal mobility may be expected to facilitate the development of trust as it increases the chance that civil servants with high content expertise engage into long-term relationships with their counterparts on the business side.

Target group support

As a functional equivalent to full-fledged democratic control, the Commission seeks legitimacy for its policies with policy addressees and other actors directly involved in the policy. Moreover, as stated above, the implementation deficit is a salient issue in the EU. Lacking target group support is seen as an important reason for implementation failure (CEC 1992). If a Member State can make it plausible that its 'national' position is supported by a large share of the relevant private interests, this is likely to be helpful in Brussels.

At the domestic level, this would require that the government, business, and societal organizations at least broadly agree on the line to be followed in Brussels – both by the government itself and by private actors in their own lobby efforts. Generally speaking, close contacts and a consensual rather than an adversarial style of interaction between public and private actors (Richardson *et al.* 1982) should be expected to be conducive to such an agreement. This kind of an interaction tends to be found in countries that have a neo-corporatist system of government–industry relations, i.e. a system in which interest groups have an active role in policy-making in exchange for committing themselves to assisting in the implementation of policies (Lehmbruch and Schmitter 1982). Such systems typically flourish in the presence of a strong state that is capable of credibly threatening with unilateral (legislative) action. To make target group support credible, however, society needs to be 'strong' too. This means that relevant economic sectors are relatively highly organized. Thus, we expect that conditions for the organization of target group support are most favourable if: first, the relationship is structured by corporatistic institutions; second, membership in peak (trade) associations is high; and third, these associations effectively monopolize the representation of the sectoral interests (Schmitter 1979). Only in that case, associations can speak with legitimacy for the whole sector and ensure that agreements with the government can actually be implemented.

It should be noted that, of course, the Commission does not only depend on resources from governments but also on those from private actors. However, governments are in a privileged position to provide experiential knowledge regarding the enforceability of EU obligations. They are closer to the work floor than the Commission and therefore typically better able to judge whether business' complaints about the workability of obligations are valid or informed by strategic reasons. In addition, they may be able to aggregate demands from various sections of the private sector within the country. In these ways governments do not only provide resources based on their own role in the policy-process but also indirectly provide input from private actors.

Table 1 brings together the argument so far. The first column lists the three categories of resources discussed in this section. The second column explicates why these resources are 'in demand' in Brussels. The final column summarizes our expectations as regards the domestic institutional conditions that are favourable to the availability of these resources. Firmly established in theories of resource dependency, European public policy and science-policy relations, among others, the analytical framework presented in a condensed form in the table may be claimed to be generally applicable to situations of Member State interest articulation in the Commission phase. It will be subjected to an empirical plausibility probe in the next section.

THE REACH CASE

The 'Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemical Substances' (REACH, EC/1907/2006) replaces dozens of earlier directives and regulations in the area of chemical substances. REACH imposes a number of obligations on businesses that produce, import, or use chemical substances. Businesses have to collect information on the properties of substances, assess the risks associated with their use, and take the necessary measures to reduce any risks. Businesses have to *register* this information with the authorities. The EU Member States are responsible for the *evaluation* of the registration records. They also have the right to propose *restrictions* on the use of substances on the basis of risk assessments, although the final decision rests with the European Commission. Potentially very hazardous substances are subject to more stringent controls. They are covered by *authorization*, which is a permit system. Decisions are taken on the basis of a risk assessment and take socio-economic conditions into account.

A number of 'green' Member States forced the issue of revising the chemicals policy onto the agenda of the Commission in 1999. A white paper on chemicals was published in 2001, a Commission proposal saw the light in 2003 and the regulation was adopted in 2006 (for an overview of the overall political dynamics, see Selin 2007).

At first sight, the Netherlands fulfils the institutional conditions listed in Table 1. The Netherlands is a unitary state characterized by horizontal specialization and a high degree of ministerial or sectoral autonomy (see Harmsen

Table 1 Overview of the theoretical argument

<i>Resource</i>	<i>Reason for demand by EU</i>	<i>Expectation regarding domestic institutional conditions for high quality supply</i>
Scientific expertise	Small Commission staff Importance of output legitimacy	Well-developed knowledge infrastructure Problem-solving policy style Horizontal and sectoral specialization and departmental system of recruitment facilitating 'unitary' logistics of science and policy
Experiential knowledge	Small Commission staff, no direct involvement with implementation Negative effect of implementation deficit on legitimacy and on the functioning of the internal market	Horizontal specialization, departmental system of recruitment and unitary state (if knowledge produced by government itself) Horizontal specialization, departmental system of recruitment and consensus-oriented policy style (if knowledge to be gained from target group)
Target group support	Functional equivalent to democratic legitimization and citizen support Negative effects of implementation deficit on legitimacy and on the functioning of the internal market	Consensus-oriented policy style Corporatism: - Strong society: highly organized sector and peak (trade) associations' monopoly over sectoral interest representation - Strong state: credible threat of unilateral policy

1999: 93). Also, the Netherlands has a highly consensual political culture (Jones 2005). In the Dutch 'polder' model, business is well-organized and interaction with the state is intensive and, generally speaking, constructive. In this sense, the Netherlands appears to be well equipped for providing the resources necessary for influencing the early phases of the policy-process in Brussels. Similar characteristics can be found in other countries too, to be sure, notably in the Nordic Member States. Finally, it should be mentioned that Dutch stakes in the chemical sector are high. The country has a well-developed chemical industry, particularly in the Rotterdam-Rijnmond region, and therefore has an obvious interest in closely following European regulation and being active in shaping EU policies in the field. It is therefore likely that the Dutch government activates its resources. This makes the Netherlands a very suitable test case for

analysing the relationship between domestic institutional conditions and resource mobilization.

The case study focuses on the period 2000–2003 which can be regarded as the Commission stage of the REACH policy-making process. It investigates the quality of the resources the Dutch government could bring to bear in this phase of the policy-process and the extent to which this quality corresponds to the institutional conditions as hypothesized. It also addresses the question why only part of the Dutch priorities made it into the Commission proposal for REACH.

Information on the case was collected in the context of a research project contracted by the Dutch Department of the Environment and aimed at evaluating the strategy of the Dutch government regarding REACH. Data sources include about 20 in-depth interviews with key players in the Department, in the most relevant public research institution, representatives of trade associations and companies, and a few other actors. It has also been possible to inspect internal documents at the Department of the Environment.

Scientific expertise

In a comparative perspective, the Netherlands has a rationality-based policy style that emphasizes depoliticization (Van Putten 1982). Depoliticization and rationality are achieved through a large amount of technical expertise, provided through a well-developed infrastructure for policy-relevant scientific expertise. With regard to chemicals policy, the National Institute for Public Health and the Environment (RIVM) is of particular importance. The assessment of risks associated with substances involves biologists, chemists, but often also ecologists or chemical technologists. The RIVM has much of this diverse expertise available in-house. Its interdisciplinary risk research is of high quality and comparable to that in large countries such as France, Germany, and the UK (Interviews, Bavarian Environment Ministry 2008; RIVM 2008; TNO 2008; see also Haverland 2009).

In contrast to, for instance, France or the UK, the Netherlands has a departmental system of recruitment (Harmsen 1999; Hague and Harrop 2007). This should facilitate the recruitment of specialists rather than generalists. It is therefore not surprising that significant content expertise regarding chemicals is available at the Dutch Department of the Environment (Ministry of Housing, Spatial Planning and the Environment). A large proportion of the relevant staff had and has a science education background, and expertise in toxicology was also present. This means that there are civil servants who can communicate on an equal basis with experts from research institutes, which is an important condition for mutual understanding and interaction between governments and research institutes and hence for a 'unitary' logistics.

The departmental system of recruitment and the resulting emphasis on policy-relevant expertise indeed leads to little horizontal, government-wide job rotation. One of the civil servants, having a science background, stayed in

more or less the same position for more than 20 years, which allowed him to accumulate considerable policy-specific expertise. He became a very authoritative expert in the substances sphere, as was confirmed by respondents ranging from the Ministry to industry and the European Commission's Directorate-General for Enterprise and Industry (various interviews, 2008).

As expected, vertical mobility has been more widespread. A whole unit of the Department for the Environment was transferred to the RIVM in the late 1990s. From this unit, three civil servants were appointed to key posts within the Commission: one at the Directorate-General for the Environment, one at the Institute for Health and Consumer Protection of the Joint Research Centre, and one at the European Chemicals Bureau of the Joint Research Centre.

A side effect of this vertical mobility was that the experts who remained in the national institutes had natural allies in the Commission, with whom they continued to have intensive contact, as evidenced for instance by many joint academic publications (e.g. Bodar *et al.* 2002, 2003). Accordingly, Dutch experts from the Department and the RIVM played an active role in the advisory committees preparing REACH.

Experiential knowledge

Experiential knowledge produced in house

Governments gain experiential knowledge about the feasibility and workability of policies through their own involvement with policy implementation or by accessing information from the target group. The Netherlands is a unitary state and that means that the responsibility for implementation lies at the central level. In the Netherlands, as a matter of fact, the same unit that is responsible for policy formulation also holds the competent authority for the implementation and enforcement of EU policy on existing and new substances that preceded REACH (Interview, Department of the Environment 2008). This was a huge advantage in Europe. In Germany, for instance, the competencies for policy formulation are assigned to the federal government and those for policy implementation to the state governments (Interview, Bavarian Environment Ministry 2008). Over the years, the Dutch staff members in question have had the opportunity to gather very considerable expertise on the implementation of chemical policy.

The civil servant who served in the same position for more than 20 years acted as the competent authority for the old EU chemical legislation for a long period. His scientific expertise and experiential knowledge was in high demand in Brussels and provided him with access to Commission officials. He was part of the network of competent authorities of the old chemical policy that pushed chemical policy back on the political agenda in 1997/1998. On the basis of his expertise, he became a part-time secondee to the Commission, which meant that he could contribute to both the Commission proposal on REACH and the Dutch response to a draft of that proposal (see below).

Experiential knowledge obtained from target group

Experiential knowledge about the workability of policies can also be gained through interaction with the target group of policies. Generally speaking, a consensus-oriented relationship between government and industry is a key feature of the Dutch political system (Van Putten 1982; Van Waarden 1992). We therefore expect that the Dutch government should be able to disclose experiential knowledge from industry. In line with this expectation, the Dutch government launched a Strategy on Management of Substances (SOMS) in 1999, based on close co-operation between the government and relevant target groups. Initially intended as a programme for generating ideas and concepts for national policy, the programme increasingly became a think tank for the preparation of Dutch interest representation in Brussels. The SOMS Decision Document (August 2000) states that 'experience has taught that effective adjustments, improvements and good practices that fit within given frameworks can inspire innovation in European legislation' (Ministry of Housing, Spatial Planning and the Environment 2000a: 1–2). Accordingly, the SOMS time path was chosen 'in part to allow an optimal input of Dutch ideas in policy renewal in the EU' (Ministry of Housing, Spatial Planning and the Environment 2000b: 1).

Industry but also NGO's were given a major role in the SOMS process. The whole process was designed by a 'troika', composed of a representative of the Netherlands Chemical Industry Association (VNCI), a representative of the Nature and Environment Foundation (SNM), and a representative of the Department of the Environment. Various discussion groups and working parties, consisting of members from government, industry, and NGO's, were formed to address specific issues (Ministry of Housing, Spatial Planning and the Environment 2000b: 1–2).

The SOMS project indeed helped to disclose and produce experiential knowledge concerning the classification of hazardous substances; a workable division of labour between government and industry; a clarification, on the basis of practical cases, where the desired public accessibility of knowledge and information on substances had to be subordinated to the demand of confidentiality for commercially sensitive information; and more efficient and effective policy-instruments.

The government was very active in spreading this experiential knowledge to the European Commission and other European actors. The Department of the Environment organized two workshops, one aimed at the European Commission and EU Member States and one aimed at representatives of the EU chemical industry (in particular, the European Chemical Industry Council, CEFIC). Moreover, the four major documents written in the course of the programme were translated immediately and sent to the Commission and the governments of the other Member States.

The investment in SOMS paid off also in the sense that the Dutch government was able to present an elaborated and detailed response to the Commission in an early stage of the process and to offer policy alternatives that took into account the feasibility on the work floor. Major examples are a document

entitled *The Dutch view on the White Paper (May 2001)* and the reaction to the Commission's draft proposal on REACH, posted on the internet for consultation. In the latter case, The Netherlands responded with a very detailed and specific contribution. The response consisted of 81 general comments and 88 specific comments. The good preparation made it possible to argue very concretely, up to the level of specific proposals for amendments. One aspect that received considerable attention was the improvement in the workability and enforceability of substances policy by a further specification of the rights and duties for the competent authorities on the one hand and industry on the other.

Target group support

A consensual policy style should not only be conducive for gaining experiential knowledge from the target group, but should also help to achieve target group support for the policy at stake.

In line with this expectation, SOMS was not only meant to access experiential knowledge from the target group but also to achieve consensus on policies to be proposed to the EU. With a view to presenting policy solutions to Brussels, the SOMS Decision Document (August 2000) states that 'the agreements to be effected on policy innovation between the Netherlands government and (sections) of the Dutch industry in the final stages of the SOMS programme are considered to be of crucial importance' (Ministry of Housing, Spatial Planning and the Environment 2000a: 1–2).

The most important element of SOMS in that respect was the system of prioritization for the assessment of chemicals via a quick scan. The government aimed to find a solution that was supported by industry. It did so by following a two-spronged strategy typical for corporatist bargaining. The government developed legislation with binding obligations for industry to carry out the quick scan. It even notified that legislation to the European Commission (Haverland 2008). This legislation, however, was solely meant as a bargaining chip to force industry into an agreement (Ministry of Housing, Spatial Planning and the Environment 2002). As it turned out, the government almost succeeded. Government and industry were very close to concluding an agreement in which Dutch industry committed itself to carry out a quick scan concerning hundreds of previously non-assessed chemicals with a view to prioritization for further measures. Both the Dutch civil servant at the Department and the Dutch trade association of the chemical industry (VNCI) hoped that this system would be included into REACH given the consensus achieved in The Hague. However, very close to the final step of the agreement and directly after a meeting between the Dutch trade association and its European peak association (CEFIC), the Dutch chemical industry withdrew its support. According to interviewees, the European peak association was against any individual Member State initiative in chemical policy in the wake of EU legislation, and it distrusted the intentions of the Dutch government to use the proposed and notified legislation only as a threat, not least because of several other instances

in which the Dutch Minister of the Environment had pursued an adversarial legalistic approach that, in fact, did not resonate well with the consensus approach of his own civil servants. It should be noted that CEFIC was very well aware of the legislation on the quick scan. In the course of the notification process, CEFIC had provided very critical comments about this piece of legislation to the Commission (various interviews, 2008; Haverland 2008).

Hence, against our expectations the corporatist system of interest intermediation did not result into target group support. The corporatist agreement was undermined by economic pressures from industry outside the Netherlands. There is probably a second reason, however. As has been argued in the theoretical section, corporatist solutions depend on a strong state, that is, a state that is able to threaten credibly with unilateral legislation as a default option. Yet, the power of the Dutch government to force the Dutch chemical industry into an agreement was limited in this case, because the threat of binding legislation with regard to the quick scan was in fact not that credible at all. Even if the government had enacted legislation it was likely to be withdrawn as soon as EU legislation would come into force (Haverland 2008: 20)

DISCUSSION AND CONCLUSION

The study has demonstrated that in the case of the Dutch input into the REACH process institutional conditions corresponded to the production of high-quality resources as far as scientific knowledge and experiential knowledge are concerned. Facilitated by the unitary character of the Dutch government and the departmental recruitment system, a Dutch civil servant was able to gather a high level of experiential knowledge concerning the workability of policy solutions. Much of this knowledge stemmed from his trustful and long-term relationship with sections of Dutch industry (various interviews, 2008) as well as, more specifically, the SOMS programme. Both correspond to the institutionalized pattern of consensus seeking in the Netherlands.

Our plausibility probe also demonstrates limitations, however. As said above the Dutch consensus style and corporatist structure was not robust enough to produce a policy proposal on a quick scan that was supported by Dutch industry. Neither the general 'duty of care' nor the 'product chain responsibility', moreover, fully made it into the official Commission proposal. Several Member States with a different legal cultures objected against such generically formulated but still enforceable obligations (see Van Keulen *et al.* 2008: 17).

The fate of the general principles of 'duty of care' and 'product chain responsibility' suggests that the overlapping preferences of the Dutch government and Dutch industry can lead to well-developed ideas and concepts for policies. These do not necessarily travel well to the European level, however. In most other EU Member States the situation is rather different, and more precise obligations are needed to make the regulation work. In the terms of Putnam (1988), the domestic 'win-set', formed along the lines of the Dutch consensus model, turned out

to be too far away from that of most of the other Member States to be acceptable at the EU negotiation table.

Regarding the prioritization for registration of substances, i.e. the quick scan, the lack of industry support had weakened its attractiveness for the Commission (Interviews, Dutch Department of the Environment and Dutch Chemical Industry Association). But even if this support had existed, it is doubtful whether the Commission would have adopted it. The proposal for prioritization only appeared on the European agenda after the publication of the White Paper, and hence relatively late in the process (Interview, European Commission 2008). This points to a certain risk for Member States to engage in a time-consuming and partly unpredictable attempt to find consensual solutions to be presented in Brussels. In addition to that, other research suggests that if a domestic consensus is eventually achieved, governments tend to become inflexible (Liefferink and Van der Zouwen 2004: 148–50).

More generally speaking, the case of the Dutch input into the making of REACH does not refute that promoting a national policy solution involves certain constellations of domestic interests, for instance in creating or maintaining a level-playing field for industry (Holzinger 2002; Vogel 1997) and in minimizing implementation costs (Knill and Lenschow 2000), as well as certain strategies played out in the policy game in Brussels (Börzel 2002; Liefferink and Andersen 1998). What our analysis adds to the existing literature, however, is evidence that such strategies have to be backed up by the availability of three categories of resources that are in particular demand in Brussels, i.e. scientific expertise, experiential knowledge regarding the issue at stake, and target group support. The supply of these resources, in turn, is shaped by domestic institutional conditions. Thus, it may be argued, also domestic institutions become relevant for understanding the competition between different regulatory approaches in Brussels (cf. Héritier *et al.* 1996).

To be more precise, the findings point to the conclusion that a well-developed knowledge infrastructure, close ties between science and policy, and consensual state–business relations are very helpful as long as the production of knowledge is at stake. They allow for the generation of the kind of specific expertise that is in high demand during the early phases of policy-making in Brussels. Also for instance, Sweden has been reported to actively use this capacity (Kronsell 1997). When ‘selling’ more complex policy solutions in Brussels, however, the advantages of broad domestic consensus may turn into their opposite because of a lack of both swiftness (in reacting to often short-lived windows of opportunity in Brussels) and flexibility. Again Sweden, with a policy style roughly comparable to that of the Netherlands, has been quoted for its inflexibility in negotiations in Brussels (Liefferink and Andersen 1998: 261). With that in mind, the findings of this study may hold well particularly for the consensual, strongly expert-based democracies in the Northwestern part of Europe.

In order to further try and test these insights, future work should in any case include Member States that approximate the counterfactual situation, i.e. the absence of potentially favourable institutional conditions. Obvious candidates

are countries with a less-developed knowledge infrastructure and/or a more adversarial policy culture, which can be found mainly in the Southern and Eastern parts of the EU. This would allow for more conclusive evidence that institutional conditions make a difference in relation to the quality of resources in demand by the Commission during the early phases of policy preparation in Brussels and hence potentially relevant for influencing policy outcomes.

Biographical notes: Markus Haverland is Associate Professor in Political Science, Erasmus University Rotterdam, the Netherlands. Duncan Liefferink is Senior Researcher in the Department of Environmental Policy Sciences, Radboud University Nijmegen, the Netherlands

Address for correspondence: Markus Haverland, Faculty of Social Sciences, Department of Public Administration, Erasmus Universiteit Rotterdam, Room M 8-32, P.O. Box 1738, 3000 DR Rotterdam, The Netherlands. haverland@fsw.eur.nl/Duncan Liefferink, Nijmegen School of Management, Department of Environmental Policy Sciences, Radboud University Nijmegen, Thomas van Aquinostraat 3.1.62, P.O.Box 9108, 6500 HC Nijmegen, The Netherlands. email: d.liefferink@fm.ru.nl

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LIST OF INTERVIEWS

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