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## How leader states influence EU policy-making: Analysing the expert strategy\*

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**Abstract:** Research focusing on the leader-laggard dynamic in EU policy-making has significantly contributed to our understanding of why EU policies often go beyond the least common denominator and why policies look the way they do. The literature has also provided plausible arguments about the incentives for leader states to do so, but it has given less attention to the question of how leader states achieve this outcome. This article aims to shed some light on this question by focusing on the expert strategy: the mobilisation of government officials and related experts who possess a high level of content expertise to advance leader states' interest in EU policy-making. The expert strategy is analysed with reference to the Dutch government's involvement in EU chemical policy (REACH).

**Keywords:** national interest; regulatory politics; risk regulation; environmental policy; knowledge; expert committees; policy learning; agenda-setting; implementation; Netherlands; political science

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### 1. Introduction

Why and under what conditions does the EU achieve outcomes that are above the least common denominator, and how can we explain the content of these policies, the types of standards chosen, the selection of instruments, and the distribution of responsibilities? These questions can be effectively addressed by research that focuses on the interaction between national and EU policy-making. This interaction has featured a dynamic in which

“leaders” (“pace setters”, “pioneers”) seek to upload their policies on the EU level, fighting against the inclinations of the “laggards” or “footdraggers” (Boerzel 2002; Haverland 1998; Heritier 1994; 1996; Sbragia 1996; Selin 2007; Skou-Anderson and Liefferink 1997a). This stream of research has given a plausible explanation for why leaders have an incentive to “upload” their policies. For instance, such incentives might include the reduction of adaptation costs at the stage of downloading policies, the need to tackle cross-boundary problems through international (EU) cooperation rather than through unilateral action, and pressure by domestic producers on governments in these highly regulated countries to provide them with a level playing field in the European market (Boerzel 2002; Heritier 1994). This stream of research has also successfully demonstrated that leaders are able to significantly shape EU policy outcomes. Examples include Germany, with regard to emission-oriented clean air policy, the United Kingdom, with regard to integrated pollution control, and the Netherlands, with regard to the Fifth Environmental Action Program (Heritier 1994; 1996; Kronsell 1997). There is, however, comparatively little systematic research about how leader states impact policies. In other words, the strategies employed by leader states have received less attention. Heritier shed some light on this question by employing the notion of a first mover strategy (1996). Subsequently, Liefferink and Skou-Anderson (1998) developed a typology of strategies of leader (or “green”) member states in EU environmental policy and delineated four strategies: “pusher-by-example”, “defensive forerunner”, “constructive pusher” and “opt-outer”. They have provided illustrations of each of the strategies based on the behaviour of Austria, Denmark, Finland, Germany, the Netherlands, and Sweden in 1995, the first year after Northern enlargement. These states have been labelled “leaders”, not necessarily because they have achieved particularly sustainable economies or societies, but rather because they “have pushed for higher environmental standards on the basis of their domestic policies (Skou Andersen and Liefferink 1997b, p. ix).

This article aims to shed more light on this topic by focusing on what I call the “expert strategy”: how government officials who possess a high level of “content expertise” are able to advance leader states’ interest in EU policy-making<sup>(1)</sup>. Underlying the focus on the expert strategy is the assumption that all strategies mentioned in the context of leader-laggard research are based on the core aspects of policy-making: “powering” and “puzzling” (Heclo 1974). Powering denotes, among other things, the building of coalitions and bargaining, whereas puzzling concerns the mobilisation of experts and deliberation. I also assume that powering has never played the dominant role in this dynamic because leader states have never commanded a (qualitative) majority in the Council. In their heyday, between the Nordic Enlargement and the Eastern Enlargement (1995-2003), the six states mentioned above were able to form a blocking minority, but they did not amount to more than this. With the Eastern Enlargement, the situation became much less favourable in terms of power because none of the new member states qualified as a leader. In spite of this, recent evidence suggests that leaders are still able to push environmental regulations to relatively high levels (see Selin 2007). Moreover, even if the influence of this group of leader states is small in terms of powering (e.g. council votes), I expect that in terms of puzzling, leader states are superior to other states because of their content expertise, which they had to develop in order to formulate, implement, and defend ambitious domestic policies and standards. It is likely that leader states will seek to mobilise this expertise to increase their leverage in EU policy-making. For these reasons, the effective use of an expert strategy by leader states might help to explain high-level EU policy outcomes, and this makes research into the precise way the expert strategy is employed a fruitful exercise.

This study will focus on a single leader state. Such a specific focus allows for a detailed account of the “anatomy” of the expert strategy, although it does not allow for an analysis of the interactions among national experts of different member states. The Netherlands has been chosen because this country is known as one of the leader states in EU environmental policy. Moreover, because it is one of the smaller member states, the effect of the expert strategy is less confounded by the power element than would have been the case with a large leader like Germany. Another reason for this selection was to the accessibility of a wealth of primary data concerning the EU chemical policy (REACH), including internal documentation from the Dutch government and from a former Dutch Commission employee, such as drafts of documents with revisions indicated by “tracked changes”. As a result, I was able to conduct

lengthy interviews with key players involved in the expert strategy and outside observers.

EU chemical policy has been chosen because, as previously mentioned, a wealth of data is available on this subject. It has also been chosen because it is a much-discussed area of legislation. In general terms, it is important to note that the EU chemical policy is characterised by technical complexity and by a high degree of political salience. The former makes EU chemical policy a most-likely case of the effective mobilisation of expertise; therefore, it is less interesting in terms of the potential for generalisation from it (Eckstein 1975; Gerring 2007). However, the high level of salience of the issue works against the expert strategy. Therefore, the case is neither a most-likely nor a least-likely case for the effectiveness of an expert strategy.

Regarding “measuring” the effectiveness of the expert strategy, it is important to note that although I will suggest specific results of the Dutch expert strategy, it is not possible to determine the “net” effect of the Dutch government’s expert strategy on the REACH regulations, given the comprehensiveness, complexity, and length of the decision-making process. However, the fact that the Dutch government in concert with other actors has been effective was shown in a study by Selin, who studied the decision-making process of REACH from a macro perspective, providing a stylised account of the leader-laggard dynamic (2007). He showed that a pro-REACH group, largely consisting of DG Environment, the Environmental Committee of the EP, environmental NGOs, and the environmental ministers (and their national experts) of Denmark, Finland, Sweden, The Netherlands, Germany and the United Kingdom have effectively strengthened EU chemical policy. In a nutshell, the environmental ministers of these states took the lead in putting the issue on the agenda, and the DG Environment developed draft regulations that were relatively ambitious in terms of the level of protection against human and environmental risks. In the course of the decision-making process, the high level of protection has been watered down to reduce the costs for industry. This was due to pressure applied by actors such as DG Enterprise, industry (in particular the chemical industry), and representatives of important member states, including the head of governments of Germany and the UK, as well as the French president. In comparison with the status quo, however, REACH has “significantly reshape(d) and strengthen(ed) EU chemicals policy” (Selin 2007: 87) .

In explaining this, Selin argued that

“the pro-REACH coalition was successful in large part because it included key supporters from all the major EU policy making-centers; the winning coalition was small, but it consisted of the right actors in the necessary places for policy expansions” (2007: 87).

While Selin’s study convincingly demonstrates the impact of the pro-REACH coalition, which included the Netherlands, he avoids the question of how the members of this small group have achieved this outcome. I argue that the expert strategy is part of the answer to this question.

The article unfolds as follows. I will first theorise why and under what conditions expertise may make a difference in (EU) policy-making. This section will draw from the literature on knowledge in the policy-making process, on epistemic communities, on committee governance, and on deliberation. In the empirical section, the article closely traces how the Netherlands employed the expert strategy in the revision of EU chemical policy (REACH), beginning in the early phase of agenda-setting (1997) and continuing up until the final decision (2006). I will first establish to what extent the Dutch government posit content expertise with regard to chemical regulation. Then, the process of mobilising expertise with regard to chemicals regulation will be analysed; I will investigate the access, activities, and results of Dutch experts at the various stages of the decision-making process, including the generally under-researched stages of agenda-setting and (preparation for) implementation. I will conclude by identifying lessons learned from this case study and topics for future research.

## 2. Theoretical framework: expertise in (EU) policy-making

This section introduces the conditions under which expertise and experts can make a difference in policy-making. This section will also address the question of whether the nature of the EU political system provides conditions that are more favourable for the effectiveness of an expert strategy than is the case with national political systems. In this theoretical chapter, the focus is on experts in general and not on national experts in particular. However, because this article is embedded within the discussion of the leader-laggard dynamic, the empirical chapter concentrates on national experts. I will come back to this qualification at the end of this section.

In theorising about the impact of experts and expertise, it is helpful to make an ideal type distinction between “politicians” (or political actors) and “experts”. As ideal types, these mark two extremes of a spectrum that will rarely occur in the real world in their “pure” forms.

The potential influence of experts is based on their content expertise (or technical knowledge). It is because of this knowledge that experts gain authority; that is, they execute legitimate influence (Haas 1992). From this follows that the potential influence of experts on political outcome is conditioned by their degree of content expertise and/or their reputation for having that expertise in the eyes of other experts and political actors.

A second condition for the influence of experts is the dependency of policymakers on expertise. This dependency is high when the preferences of policymakers are difficult to define because of imperfect, complex, or ambiguous information about the nature of the problem, costs and benefits of policy options or their implications for other goals. Under these conditions, political actors look for information that enables them to make choices, and experts can provide information that excludes certain policy options and reinforces others (Haas 1992, see also Haas 2004). In the effort to translate expertise into policy-making, the distance between experts and the political decision-makers is also a critical issue. The shorter this distance, the easier it is for experts to access political actors or the political decision-making level, and the greater the potential influence of experts (Haas 1992, see also Haas 2004).

Experts differ from political actors based on more than their level of technical knowledge. The assumption is that experts and politicians have different motives. Experts primarily have a policy motivation (“policy-seeking”). They aim for policies that are based on the most up-to-date technical facilities and scientific knowledge, that is, knowledge based on scientific principles and scientific methods of data generation and data analysis. They are guided by their professional identity (Trondal and Veggeled 2003). Politicians have an interest not only in tackling social problems through policy measures (“policy-seeking”), but also in gaining as many votes as possible in the next election (“vote-seeking”) and remaining in power (“office-seeking”). For them, policy is therefore also a means of pleasing voters and/or existing or potential coalition partners (Mueller and Strom 1999). These partly different motivations of politicians and experts have implications for the mode of interaction in the course of decision-making. Bargaining, a form of interaction in which a compromise is sought on the basis of fixed preferences, can clear the way for deliberation, a form of interaction in which substantive scientific arguments play a more prominent role and the preferences of experts can change through learning processes over the course of meetings (Egeberg 1999; Elster 1998; Haas 1992; Joerges and Neyer 1997; Neyer 2006). Deliberation is a necessary condition for the influence of experts on decision-making.

In contrast with national political systems, the European Union as a political system has a number of characteristics that make the conditions for the influence of expertise more likely to be present. The EU puts a strong emphasis on regulatory policy instead of redistributive policy (Majone 1994). Regulatory policies typically demand a high degree of technical expertise because problems, solutions, and the implications of solutions are often not clearly defined (Jachtenfuchs 2006: 167; Majone 1994). To fill in the gaps, as it were, political actors rely on

experts. What is more, the source of the EU's legitimacy lies not so much in the participation of citizens and parties ("input legitimacy", Scharpf 1999), but more in the quality of policy ("output legitimacy", Scharpf 1999). Criteria such as "rationality" and "effectiveness" play a key role in assuring the quality of policy. Expertise is required if the necessary rationality and effectiveness in handling complex issues is to be achieved (Radaelli 1999).

Because the European Commission itself has relatively few resources, it is heavily dependent on external experts. At the stage of strategy determination and policy preparation, numerous expert committees support the Commission. In the preparation and contextualisation of policy implementation, the Commission also works together with experts in the so-called "Comitology" (Eichener 1997; Joerges and Vos 1999; Quaglia, De Francesco and Radaelli 2008). The Commission draws on experts from industry, from NGOs, and particularly from national governments (Gornitzka and Sverdrup 2008). The Council also relies heavily on subsidiary groups in its decision-making. The great majority of decisions are actually made on the level of working parties and Council committees, of which more than 250 exist (Häge 2007; 2008; Schendelen 1996). At this level, content expertise "is a crucial pre-condition of effective participation" (Eichener 1997: 601). Because actors at the "political" decision-making level do not have the same range of expertise, they will be reluctant to go against the opinion of an expert at the lower level (Gehring 1999).

In summary, based on the literature on knowledge in the (EU) policy-making process and related themes, a number of issues or conditions can be identified that are critical for the effectiveness of an expert strategy. These include:

- the degree of the (reputation for) expertise of the expert;
- the degree of dependency of policy-makers on expertise, which in turn depends on the characteristics of the policy issues at hand;
- the distance between experts and policy-makers;
- and whether or not the mode of interaction is characterised by deliberation rather than bargaining.

The abovementioned conditions are hypothesised to hold for experts in general. With regard to the analysis of the role of national experts in the context of the leader-laggard debate, which is the focus of my study, it is important to reiterate this article's argument that (national experts in) leader states are superior to those of other states in terms of their content expertise because they had to develop this expertise in order to formulate, implement, and defend ambitious domestic policies and standards. This means that to the extent that expertise trumps politics, national experts from leader states can be expected to be more active and to have more compelling arguments than their counterparts from laggard states.

### **3. REACH**

The role of national experts in the leader-laggard dynamic will be analysed in relation to the major legislation of current EU chemical policy: the "Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemical Substances..." (REACH, EC/1907/2006). REACH replaces dozens of earlier directives and regulations in the area of chemical substances. It imposes a number of obligations on businesses that produce, import, or use chemical substances. Businesses have to collect information regarding the properties of substances, assess the risks associated with their use, and take whatever measures are necessary 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 assessment, although the final decision rests with the European Commission. Potentially very hazardous substances are subject to more stringent controls. These include substances that can cause cancer (carcinogenic) or that endanger fertility (reprotoxic). These are covered by authorisation, which is a permit system. Decisions are made on the basis of risk assessment and take socio-economic conditions into account.

Almost everything about REACH is enormous. The regulation is characterised by its comprehensiveness, great technical complexity and high degree of politicisation. The Regulation includes 141 articles and 17 technical (but important) annexes, which add up to a total of 849 pages. Around 30,000 chemical substances are covered by the scheme, and it imposes obligations on a very large number of businesses. The scheme covers not only the chemicals industry but also those firms that use their products further down the chain, such as the paint industry, the soap and detergent industry, and the engineering industry, to name but a few.

The technical complexity of the REACH dossier, a necessary condition for the influence of experts, is reflected above all in the intricacy of the assessments of the risks associated with chemical substances. In addition to weighing risk protection and economic costs, REACH involves balancing various risks, such as the risks to public health versus the risks to the environment and short-term risks versus long-term risks (for instance, the accumulation of substances in the environment and in the human body). Other key issues are the extent to which a risk assessment can be restricted to information on substance properties (hazard approach) without considering exposure to that substance; and what test methods are appropriate for use in estimating the risks, which in turn depends partly on the quantities in which a substance is produced (examples of test methods include model-based approaches on the basis of the chemical structure of substances, in vitro tests, animal tests with invertebrates or animal tests with vertebrates) (Bodar et al. 2002; Brickman et al. 1985, Interviews RIVM 2008). Another important issue is the extent to which the precautionary principle should be applied. This principle states that policies should be adopted to minimise a hazard that is uncertain and contested (Silva and Jenkins-Smith 2007, p. 641). The outcomes of these technical trade-off processes have potentially serious implications for the environment, citizens, consumers, employees, and businesses. For example, obligations to perform certain tests can cost the industry millions of euros (Interviews RIVM 2008).

While the fact that REACH is a case of (complex) regulatory policy favours expert influence, the politically salient tension within REACH between a high level of protection for human beings and the environment versus the protection of economic interests works against expert influence. That the decision-making process was highly politicised is evidenced, for instance, by the unprecedented number of amendments tabled during the first and second readings in the European Parliament(2).

#### **4. Content expertise in the Netherlands**

Well-developed, policy-relevant expertise is a necessary condition for the effectiveness of the expert strategy. The case study reveals that the Netherlands indeed has a high level of content expertise, both in general and with regard to chemical substances in particular. Historically, the Netherlands has always faced serious collective challenges, above all the “struggle against the sea”. At the same time, the Netherlands is a country of minorities (Andeweg and Irwin 2005). For this reason, policy-making is founded on compromises between different groups. To achieve these compromises, policy-making is depoliticised as much as possible. In comparison with other countries, the Netherlands is characterised by a consensus-based and rationality-based policy style (Lijphart 1976; Putten 1982). Depoliticisation and rationality are achieved through a large amount of technical expertise. Consequently, the Netherlands has a well developed knowledge infrastructure with respect to content expertise. Institutions that spring to mind are the Netherlands Bureau for Economic Policy Analysis (CPB), the Social and Cultural Planning Office (SCP), the Netherlands Organisation of Applied Science (TNO), and the countless advisory bodies.

With regard to chemical policy, the National Institute for Public Health and the Environment (RIVM) is of particular importance. As mentioned, the assessment of risks associated with substances takes centre stage in chemical substances legislation. In the first instance, risk assessment involves biologists and chemists with specialised knowledge of environmental and/or human toxicology. In part depending on the nature of the substance and the nature of its

use, other experts of other disciplines such as chemists, ecologists, and chemical technologists will also become involved. The RIVM has much of this diverse expertise available in-house, which means that its interdisciplinary risk research is high-quality and comparable to that in large countries such as France, Germany, and the United Kingdom (Interviews Bavarian Environment Ministry 2008, RIVM 2008, TNO 2008). It is true that large countries have more researchers in relevant research institutes, but the knowledge is more fragmented. If we wish to make a comparison with the largest and richest EU member state, Germany, then we can note that in the latter nation, knowledge on environmental toxicology is located mainly at the Federal Environment Agency (UBA), based in Dessau in the east, whereas knowledge on human toxicology is located mainly at the Federal Institute for Occupational Safety and Health (BAuA), based in Dortmund in the west. Thus the environmental and human toxicology knowledge is spread across two institutes, which are also at some distance from each other, while in the Netherlands, this knowledge is available from a single institution(3).

Further evidence of the (reputation of) considerable Dutch expertise on chemical substances is provided by the fact that three staff members of the RIVM 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 (ECB) of the Joint Research Centre.

A side effect of this vertical mobility has been that the experts that had remain in the national institutes had natural allies at 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) .

Significant content expertise regarding chemicals is also available at the Ministry of Housing, Spatial Planning, and the Environment (hereafter Ministry of the Environment/VROM). A large proportion of the relevant staff had/has a science education background, and expertise in toxicology was and is prevalent. 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 strong links between policy and expertise. Moreover, the Ministry not only is involved in policy formulation but also acted as competent authority in the implementation and enforcement of EU policy on existing substances and new substances that preceded REACH (Interview VROM 2008). This was a huge advantage in Europe; for instance, in Germany, the competencies for policy formulation are assigned to the federal government and those for policy implementation are assigned to the state government (Interview Bavarian Environment Ministry 2008). Over the years, the staff members in question had the opportunity to gather very considerable expertise on the implementation of chemical policy. One Ministry official in particular who had been involved with chemical policy since the mid-1980s was regarded as 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 (Interviews 2008). As will be described in greater detail below, this expert was actively involved in the agenda-setting for the new European chemical policy. Also, he was a part-time second to the Commission, which meant that he could contribute to both the Commission proposal on REACH and the Dutch response to that proposal. Moreover, he acted as a deputy for the permanent representative in the negotiations in the Council's Ad Hoc Working Group during the Dutch presidency(4).

## **5. The REACH policy making process**

To what extent did the presence of policy-relevant expertise at the RIVM and VROM translate into concrete access to relevant fora in the various stages of the policy-making process and into influence on the (intermediate) results?

In answering this question, I will distinguish between five phases of the policy process: agenda-setting regarding the chemical policy (1997-1998); strategy formation regarding the chemical policy (1998-2001); policy formation regarding REACH (2001-2003); the

negotiations regarding REACH (2003-2006), with an emphasis on the Dutch presidency in 2004; and preparation for the implementation of REACH (2003-6).

Table 1 about here

However, first, I will consider the Dutch role in the development of implementation instruments for chemical policy prior to REACH. As will become apparent below, REACH to a large extent builds on these implementation instruments. That is why REACH to some extent carries an echo of the expert strategy in the pre-REACH period.

### **5.1. Dutch impact on substance policy in the pre-REACH period**

The European Union has had legislation on chemicals since the introduction of the Dangerous Substances Directive in 1967 (67/548/EEC). Under the sixth amendment to the Directive (79/831/EEC), adopted in 1979 and in force from 1981, new substances that came on the market from 1981 onwards had to be reported, and producers and importers also had to make a number of kinds of data available. The seventh amendment (92/93/EEC) introduced the obligation of risk assessment for all of these (new) substances.

The Existing Substances Regulation (793/93/EC), which came into force in 1993, was aimed at existing substances, that is to say, substances that were launched on the market before 1981. These substances had to be subjected to a detailed evaluation, starting with substances that were produced or imported in quantities of more than 1,000 tons per year. Four steps were distinguished: data collection, priority-setting, risk assessment, and risk reduction. The principles of risk assessment were laid down in another regulation (1488/94/EC).

As expected, the European Commission did not have the necessary resources in terms of expertise and capacity in-house; therefore, it depended on others. It subcontracted the development of the implementation instruments for risk assessment to member states. It was in particular the UK government and the Dutch government that mobilised their experts to help the Commission.

The Ministry of the Environment and RIVM were very closely involved in three projects. First, on behalf of the European Commission, they developed a system for the identification of existing substances whose risk assessments deserved priority(5). Second, also on behalf of the European Commission, they developed, in cooperation with their British counterparts, the technical guidance documents for the implementation of risk assessment for both new and existing substances(6). These documents were detailed “cookbooks”, as it were, for the national authorities to use in conducting risk assessments, as well as for the businesses whose products were being evaluated (see also Bodar et al. 2002). The Ministry and RIVM developed the environmental toxicology side, while the British experts developed the human toxicology side. The Dutch and British experts then reviewed each other’s reports (Interview VROM 2008). Third, to support risk assessment, the Ministry and RIVM developed a software tool in 1994 for the integrated risk assessment of new and existing substances. Known as the Uniform Assessment System for Substances (UBS), this tool was intended to provide a rapid and effective assessment of the general risks of substances. At the request of the European Commission, this software was upgraded to a European system, the European Union System for the Evaluation of Substances (EUSES)(7). Interviews revealed that due to the involvement of Dutch experts, there was greater emphasis on the potential carcinogenic and bio-accumulative characteristics of substances than otherwise would have been the case (Interviews TNO 2008; VROM 2008).

### **5.2. Agenda setting for chemical policy (1997-1998)**

Chemical policy is a typical example of “inside-out” agenda-setting. The reappearance of



chemical policy on the European agenda in the late 1990s was not due to scandals or lobbying by industry or interest groups. It was the result of lobbying activity by an international network of competent national authorities for the implementation of a policy for existing and new substances. The competent authorities are exemplified by national experts, work-floor civil servants with a high level of content expertise, most of whom have a technical academic background.

The competent authority consultations organised by the European Commission brought these authorities and other stakeholders together twice per year for two-day meetings to discuss the implementation of a chemical policy. The aim of these consultations was to ensure a degree of uniformity in implementation, despite the member states' relative autonomy, especially in respect to new substances (Interview VROM Expert 2008).

Within the network, a growing number of officials became convinced that the current chemicals legislation was highly deficient. In particular, the assessment of existing substances through the implementation of Regulation 793/93 was proceeding very slowly because governments were dependent on business information and industry had no incentive to provide this information in a timely and complete manner. One of the most critical countries was Germany; however, because in the days of the 15-member EU, Germany was regarded as somewhat of a behemoth, the German government wanted to move cautiously, and it asked the Netherlands to draw attention to the problem (Interview VROM Expert 2008). In 1997, the Ministry organised two workshops to discuss the implementation problems in greater detail. One of the key conclusions was that the problem of slow progress in the assessment of substances had to be put on the political agenda. The Commission promised to develop a proposal for an amendment to the Existing Substances Regulation. However, no such proposal has ever been put forward (Interview VROM Expert 2008)(8).

Nevertheless, the network of national competent authorities working for implementation continued its efforts to lift the issue to the political level. At the time, the VROM expert was responsible for new and existing substances. After consultations within his department, he organised a joint action with officials from other member states to ensure that the issue was put on the agenda of the Environment Council in 1997 under "any other business". Thanks to this concerted effort, it was not only the Dutch minister for the environment but also her colleagues from the large countries, France, Germany and the United Kingdom, who demonstrated their commitment at the Council meeting, and this left the Commission with no alternative but to promise a review of chemical policy. At the informal Environment Council in Chester in March 1998, the theme of chemical substances was explicitly put on the agenda regarding the EU's institutions.

Important conditions that helped bring about this concerted action were the Ministry expert's considerable content expertise, including expertise about practical implementation problems, and his strong connection with national experts in other countries. According to two respondents who were involved in the process as Ministry officials and who both later worked for the European Commission, without the commitment and approach of the Netherlands, the issue would have reached the political agenda much later. In other words, the Netherlands acted as a catalyst (Interviews European Commission 2008).

### **5.3. Strategy formation: White Paper on Chemicals (1998-2001)**

The Commission published the White Paper on Chemical Substances in February 2001(9). Nearly all relevant respondents regarded the development of the White Paper as a closed process. It is important to note that the competent authority consultations were organised by the Directorate-General for the Environment but that the preparation of the White Paper also involved the Directorate-General for Enterprise and Industry. While DG Environment put a strong emphasis on a high protection level, DG Enterprise was more concerned with the associated costs for industry. It is an "open secret" (Interview Former Commission Official 2008) that this clash of interests led to a tense relationship between the two DGs, which

persisted during the whole REACH process. In this context, the national departmental experts had only limited access to the Commission. The VROM Expert stated in the interview that “DG Environment’s efforts to consult its national experts were torpedoed by DG Enterprise”. According to the expert, DG Enterprise did not want to have non-seconded national experts witnessing this conflict (Interview VROM Expert 2008). This meant that only those national experts who were seconded to the Commission during this period could exert any influence. The secondment of the Ministry expert, however, did not occur until after the publication of the White Paper. In his interview, the Ministry expert expressed regret that he had not been involved with the dossier earlier, given that the White Paper had set the parameters for the rest of debate (Interview VROM Expert 2008). This supports the view that experts’ access to relevant decision-making fora is a necessary condition for expert influence.

#### 5.4. Commission proposal on REACH (2001-2003)

The White Paper set the parameters for the new substance policy. However, these parameters had to be fleshed out before the Commission could put forward a workable proposal. Dutch government experts exerted influence during this process in two ways in particular. First, the Commission built upon instruments that had been developed in the context of the implementation of the existing substance policy. The Ministry and RIVM had played a major role in the development of these instruments (see above).

Secondly, the Ministry had the opportunity to second the above-mentioned expert to the Commission, where he was added to the drafting team for the Commission proposal. This means that this expert had immediate access to a relevant policy-making forum. He dealt in particular with the annexes concerning registration obligations, which focussed, for example, on such controversial issues as the scope of information required, which depended on the volume of the substance marketed in the EU: the higher the volume, the stricter the requirements, and based on criteria for substances exempted from the obligation to register (10). These annexes were based to a large extent on the old chemical policy, about which the Ministry expert, having had responsibility for both existing and new substances, had accumulated considerable expertise.

It was striking that the Commission allowed a part-time secondment in the case of the Ministry expert. Part-time secondments were generally avoided to prevent conflicts of interest (Interview VROM 2008, see also Trondal, Berg & Suveiol 2008). That the Commission agreed to a part-time secondment was partially a result of the seconded official’s excellent reputation. Because of his part-time secondment, the Ministry expert could contribute to both the Commission proposal and the Dutch response to the draft of the proposal. Thus, the Dutch government had an opportunity to promote its ideas—as developed within the framework of the national Strategy on Management of Substances (SOMS) programme, for instance - on the European stage(11). Internal documents and an interview with the Ministry expert revealed a number of efforts to shape the Commission’s draft proposal, some successful. I will focus on three priorities of the Dutch government. Please note that I do not argue that the Netherlands was the only member state that had these priorities; rather, I am merely suggesting that the Netherlands was one of the countries with those priorities and that the Netherlands had a national expert that pursued these priorities within DG Environment.

- *Workability of REACH*: The Ministry expert tried on the basis of his extensive knowledge of chemicals to increase the internal consistency of the regulation (and thus to improve its workability). The work of the drafting team, which can be identified through “discussions” via “tracked changes” in the interim documents, showed that the Ministry expert did this by suggesting formulations, definitions, and references to other paragraphs in the regulation. While other member states, in particular laggard countries, may have secretly welcomed the infeasibility of EU environmental policies as an excuse for weak implementation, workability was an important issue for the Dutch government. After all, the poor quality of the old chemical policy had been a major reason why the Netherlands helped to put the chemical policy back on the agenda. The Ministry

expert's charts and flow charts explaining the whole REACH system to the diverse stakeholders also made a contribution to the development of a workable regulation.

- *Duty of care as a general principle*: For the Dutch government, the imposition on businesses of a general duty of care for all substances was a major pillar in the interest representation in Brussels(12). This general duty of care was intended to illustrate the central concept of the responsibility of industry, and also to serve as a “catch-all” obligation for substances that were not covered by REACH or that were permanently or temporarily exempt from REACH elements. The Ministry expert was able to help secure the inclusion of duty of care as a general obligation of industry in the draft Commission proposal on REACH posted on the internet for consultation. However, the internet consultation showed that owing to their legal cultures, certain member states had serious difficulties with such an explicitly formulated obligation (Interview VROM Expert 2008). For that reason, duty of care as a general principle was not included in the final Commission proposal.
- *Product chain responsibility as a general principle*: Another pillar of Dutch policy concerned the general concept that the various links in the product chain, producers, importers, formulators, and professional users of substances, should be responsible for the safety of chemical substances and preparations. With the help of the national expert, this concept of product chain responsibility also found its way into the internet proposal, but it was not included as a general principle in the final Commission proposal. However, it was elaborated on in the context of the specific obligations of different links in the product chain. Specific obligations for different links in the product chain also appear in the final version of REACH.

Because the Ministry expert was seconded part-time, he could also contribute to the formulation of the national response to the Commission's draft proposal. The national position, worked out in a lengthy interdepartmental process, was largely based on the national substances strategy, SOMS(13). The Ministry expert's contribution lay above all in “translating” this strategy into the requirements contained in the Commission proposal. Internal documents show that the Ministry expert inserted into the Dutch response to the internet proposal a series of suggestions for textual changes and for additional articles or amendments to existing articles. As in the case of the Commission draft, the expert proposed provisions for a general duty of care and for general product chain responsibility. He also advocated that minimum information be required from all links in the product chain, made suggestions regarding how national competent authorities should deal with poor disclosure by businesses, and contributed a very detailed article aimed at harmonising national enforcement. The Dutch response also included many suggestions for smaller amendments, substantive additions, and textual refinements.

Through the Ministry expert's part-time secondment to Brussels, the Dutch government on the one hand had direct access to the drafting process in Brussels, so that it could effectively promote its own ideas, and on the other hand was able to formulate a very detailed response to the internet proposal on REACH. It should be pointed out, however, that the influence of the national expert in Brussels depended in no small part on his reputation as an impartial expert, which meant that he had to restrain himself from emphasising Dutch preoccupations too insistently. If, in the course of deliberation, the national expert had too obviously pushed forward positions that benefited only the Netherlands or a few countries or economic sectors, then his reputation for non-partisan expertise would have been reduced and therewith his influence.

## **5.5. Council negotiations on REACH (2003-2006)**

The publication of the Commission proposal marked the start of the negotiation phase for REACH, which would last roughly three years. Here I focus on the period during which the Netherlands held the Council presidency, in the first half of 2004.

The Council had decided to form an Ad Hoc Working Group to determine its position on

REACH because REACH cut across various issues, including competitiveness and environmental protection. The Council Ad Hoc Working Group brought together the permanent representatives of the member states. The instructions for the Dutch permanent representative had been formulated through an interdepartmental coordination process (see van Keulen et al. 2008). The Ministry expert previously seconded to the European Commission played a major role here as well because he acted as deputy for the permanent representative at meetings of the working group. This means that the expert had almost immediate access to this decision-making forum. The Dutch government wanted to use its agenda-setting role during the presidency to add momentum to the REACH process. The Dutch government, and the Ministry of Housing, Spatial Planning and the Environment in particular, saw a window of opportunity for chemical policy and did not want to waste that opportunity (Interviews VROM).

During the previous presidency, a general reading of the Commission proposal had been held on a chapter-by-chapter basis. During the Dutch presidency, most of the more than one hundred articles of the Commission proposal were scrutinised on an article-by-article basis. The Netherlands prepared “footnotes” that kept a record of which countries had submitted as amendments to the various articles. The Dutch presidency applied an initial filtering mechanism, though, by excluding from the “footnotes” any amendments that were supported by only a very small number of member states (Interview VROM Expert). To safeguard the internal consistency of REACH, the Dutch presidency also regularly proposed reformulations of amendments or a different way of dealing with their underlying objectives. Here, the Ministry expert played a key role. Combining good access and a high level of content expertise, including expertise concerning practical problems in implementing European chemical policy and detailed knowledge of the Commission proposal (to which he had, after all, contributed), he was able to accommodate many national priorities, hence contributing to bargaining efficiency (Interviews with RIVM, VROM 2008, see also Tallberg 2004). The very large REACH dossier thus remained manageable, and the negotiation process was able to proceed apace. In other words, without the mobilisation of this content expertise, the REACH process would have taken longer, and less bargaining space would have been exploited.

It is worth mentioning in this context that the Ministry expert was “loaned” to the next Council presidency, Luxembourg. Thus, he was also able to contribute to the completion of the article-by-article discussion of the Commission proposal.

In addition to the Ad Hoc Working Group, a technical working group was established that dealt with the various annexes. This group brought together policy officials and experts from government institutions (such as the RIVM). These experts represented their countries at the working group meetings and had to work according to their governments’ instructions. In the case of the Netherlands, however, these instructions were very general. There was a great deal of trust between the Ministry and RIVM.

This working group was characterised much more by deliberation than by bargaining, an important condition for expert influence (Interviews RIVM 2008). The member states that were more inclined towards protection, including the Netherlands, were the most active. Respondents claimed that without the efforts of the pro-protection member states in the technical working groups, the REACH Regulation would have featured a lower protection level (Interviews Commission 2008 and RIVM 2008).

A respondent from the RIVM gave two examples of how the Dutch experts in the technical working group contributed to REACH. It should be noted that the following examples sound quite technical, but that the devil is in the detail, and the details can make quite a difference in terms of costs for industry or environmental and human protection levels.

The first example concerns the information requirements for substances produced in quantities of 10-100 tons per year. The draft regulation obliged firms to provide information on the reprotoxicity (i.e., danger to fertility) of substances produced in quantities of more than 100 tons per year. The Dutch experts succeeded in lowering the threshold for this obligation to

substances produced in quantities above 10 tons. Also, the conditions under which this requirement could be relaxed (set out in Annex VI) were further specified, thus ensuring that industry could be better held to account in this respect.

The second example deals with Annex VII, which focuses on the information requirements for substances produced in very small quantities (1-10 tons per year). Here, Dutch experts were able to secure a provision that the information on effects on the environment, even for such small volumes of substances, had to be based on tests with animals, although these were to be invertebrate animals only (daphnia's and algae).

With regard to the latter example, the respondent stressed the relevance of the Ministry expert's earlier secondment to the European Commission. Because of the good contacts between the RIVM and the Ministry expert previously seconded to the Commission, the RIVM officials knew, for instance, how to get results in Brussels. They knew that animal testing, especially on vertebrates, was a very sensitive issue for the Commission, and they realised that their chances of success were greater if information based on testing with invertebrate animals would suffice (Interview RIVM 2008).

## **5.6. Preparation for the implementation of REACH (2003-2006)**

The new European chemical policy took the form of a regulation. Whereas directives have a transposition phase of around two years on average, during which European policy can be adapted within the set objectives to national statutory and administrative contexts, regulations (in principle) take effect immediately. This means that the details of implementation have to be discussed during the decision-making process. To facilitate the implementation of REACH, the REACH Implementation Projects (RIPs) were set up. Experts from the Commission, the national governments, industry, and social groups and organisations participated in these projects. The intention was to formulate technical guidance documents for businesses and competent authorities in the member states.

Dutch expertise and experts influenced these documents in three ways. Firstly, a number of documents were based on guidelines that had already been developed during the implementation of the old European chemical policy. The experts from the Ministry and RIVM had had a major influence on these documents (see the start of this chapter). Secondly, experts from the RIVM were actively involved with the RIPs (Interviews RIVM 2008). Thirdly, "Dutch" expertise had an indirect influence. Experts who had formerly worked at the Ministry and/or the RIVM were closely involved in the development of RIPs through their new positions in European institutions such as the Directorate-General for the Environment and the Joint Research Centre. This was evident, for instance, in the strong presence of these experts in the workshops on the RIPs. For instance, at a workshop on guidance documents for industry in Brussels in September 2006, three of the eight speakers representing EU institutions were former RIVM officials, and two had also worked at the Dutch Ministry (VROM)(14).

## **6. Conclusion**

The aim of this article is to shed some light on the question of how leader states are able to contribute to EU policies that go beyond the least common denominator. This has been done by analysing the Dutch expert strategy regarding REACH. The study has shown that the Netherlands has considerable expertise on chemical policy: expertise that equals that of big member states, even those with advanced environmental policies, such as Germany. This applies to both expertise at the Ministry of Housing, Spatial Planning and the Environment and expertise at the National Institute for Public Health and the Environment (RIVM). What is more, this expertise is acknowledged by other actors (reputation). The analysis of the various phases in the development of European chemical policy showed that Dutch experts at various points exerted influence on the content of the interim and final products.

In concert with a few other member states, experts from the Ministry made a major contribution to the reappearance of chemical policy on the EU agenda in the late 1990s. An expert seconded part-time from the Ministry to the European Commission helped to include Dutch priorities in the Commission proposal on REACH.

Experts from the Ministry and the RIVM had an indirect influence on the Commission proposal because the annexes to the proposal were to a large extent based on documents prepared by the Ministry and the RIVM in the context of the old European chemical policy. It should be noted that the annexes are very important because they specify in practical terms the obligations under the REACH Regulation.

During the Dutch Council presidency in 2004, the above-mentioned Ministry expert made a major contribution to securing progress on the European dossier and to ensuring that the whole remained internally consistent. Also, in the Council's technical working group, experts from the RIVM helped to ensure that the balance between protection for people and the environment and economic costs shifted in the direction of protection.

In preparation for the implementation of the policy, in the REACH Implementation Projects (RIPs), experts from the RIVM made a contribution to the guidelines for businesses and national competent authorities regarding means of compliance with the REACH obligations. These guidance documents are relevant because they determine to a large extent how REACH is actually given shape in practice.

Overall, the case study shows the importance of the theoretically derived conditions for the effectiveness of the expert strategy. REACH is a complex dossier and has made political actors dependent on experts. A high level of expertise (or better, the reputation for expertise) is important, as is access to relevant decision-making fora. However, the case study also illustrates the limits of the expert strategy. The Dutch expert who was seconded to the Commission did not succeed in anchoring major pillars of Dutch policy, such as the general principles of duty of care and product chain responsibility, in the final Commission proposal. This indicates that even an extremely high level of content expertise and very good access to decision-making fora are necessary conditions for an effective expert strategy, but are not always sufficient conditions, and especially not in the case of a dossier such as REACH, which is also characterised by political salience.

The case study also provides lessons that go beyond the theoretical framework.

Two additional conditions for leader state influence seem of particular importance assuming that the member state in question enjoys a high level of content expertise. First is the early involvement of national experts in European dossiers. The greatest impact that The Netherlands had on the REACH process can be seen in the fact that the REACH Regulation was created at all. Together with a few other member states, the Netherlands played a major role at a very early stage in pushing the development of a new chemical policy onto the agenda of the European Commission. In contrast, Dutch experts were hardly involved in the formulation of the strategy for the new chemical policy, as set out in the White Paper on Chemical Substances. In his interview, the Ministry expert subsequently seconded to the Commission expressed regret that he had not been involved in the drafting of the White Paper because this had set the parameters of the chemical policy.

Secondly, "coalition building" is important. In the European Union, a large number of actors seek to exert influence on policy. What is more, the EU is a hyper-consensus polity (Hix 2006). European policy requires the approval of the majority of the European commissioners, a qualified majority or unanimity in the Council, and often also a simple majority or absolute majority in the European Parliament. When one is trying to jump these hurdles, it is advisable to look for coalition partners. The greatest success the Netherlands could boast (in getting the issue of a new chemical policy onto the agenda) was facilitated by the concerted action of a number of member states. Moreover, the secondment of the Ministry expert to Brussels and the effectiveness of the Dutch input into REACH's technical annexes benefited from good

contacts with experts from European Union institutions. Hence, in terms of finding like-minded other actors, a strategy based on “puzzling” is not too different from a strategy based on “powering”.

Yet, this study could not address how precisely national experts interact with each other and with experts from other quarters, such as the Commission. This should be a topic for future research.

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## Endnotes

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(1) The term "content expertise" denotes technical knowledge about the policy issues at hand. It should be distinguished from "process expertise" that concerns knowledge about the institutional framework of the policy process, its legal provisions and procedures, and "preference information", which is knowledge about other parties' interests (Tallberg 2008: 701).

(2) Some 1,039 amendments were proposed at the first reading (of which 430 were adopted), and 350 amendments were proposed at the second reading (137 were adopted).

(3) For the sake of completeness, it should be said that the Quality of Life division of the Netherlands Organisation for Applied Scientific Research (TNO) also has extensive toxicological knowledge. The two relevant sites of TNO are in Utrecht and Zeist, only a few kilometres from the RIVM. These institutes cooperate on many aspects, which further strengthens the international position of substances research conducted in the Netherlands.

(4) This civil servant will be referred to as "VROM expert" in the remainder of the text

(5) "A Proposal for Priority Setting of Existing Chemical Substances (IPS)". VROM report 92408/b/9-92

1501/033, Van der Zandt, Peter T.J. and Cees J. van Leeuwen. Ministry of Housing, Spatial Planning and the Environment. The Hague, The Netherlands, 2002.

(6) “Technical Guidance Document in Support of Commission Directive 93/67/EEC on risk assessment for new notified substances and Commission Regulation EC No. 1488/94 on risk assessment for existing substances”. European Commission, Luxembourg, Office for Official Publications of the European Communities.

(7) “EUSES, the European Union System for the Evaluation of Substances”. National Institute of Public Health and Environment (RIVM). Bilthoven, The Netherlands. Available through the European Chemicals Bureau (ECB), Ispra, Italy.

(8) The respondents could not give a clear reason for this reluctance. One of the former Ministry officials who later worked at the Commission speculated that this issue did not have a high priority for the Commission because it concerned implementation problems.

(9) “Strategy for a future chemicals policy,” 27 February 2001, COM (2001) 88 def.

(10) Note that the information required for registration can often only be gathered by expansive testing methods.

(11) “Memorandum on the Strategy on Management of Substances”, approved by the Cabinet on 16 March 2001, published by the Ministry of Housing, Spatial Planning and the Environment, April 2001.

(12) Letter from the State Secretary of Foreign Affairs, with 13 files, to the Working Group on the Assessment of New Commission Proposals, 23 June 2004, Second Chamber, Session 2003-2004, 22112, no. 302.

(13) “Memorandum on the Strategy on Management of Substances”, approved by the Cabinet on 16 March 2001, published by the Ministry of Housing, Spatial Planning and the Environment, April 2001. For the position formulation process, see Keulen van et al. (2008).

(14) “Workshop REACH Implementation Project 3: Development of REACH Guidance for Industry”, 25 September 2006. European Commission. Brussels.

**Table 1****Process tracing EU chemical policy**

<b>Stage policy process</b>	<b>Political forum</b>	<b>Expert forum</b>	<b>Period</b>	<b>Output</b>
Agenda-setting regarding chemical policy	Commission and Council	Competent authority consultations on existing EU chemicals policy	1997-1998	Chester Council conclusions
Strategy formation regarding chemical policy	Commission	Technical working groups	1998-2001	White Paper on Chemicals
Policy formation regarding REACH	Commission	Drafting team with national experts	2001-2003	Commission proposal
Negotiations regarding REACH	Council	Technical working groups on annexes	2003-2006	<b>REACH Regulation</b>
Preparation for the implementation of REACH	Commission (Council and Parliament)	REACH Implementation Projects	2003-2006	Technical guidance documents

**Appendix****List of respondents**

<i>Organisation</i>	<i>Number of respondents</i>
Association of Paint and Printing Ink Manufacturers (VVFV)	1
Association of Traders in Chemical Products (VHCP)	1
BASF Netherlands	1
Bavarian Environment Ministry	1
Employers' Organisation for the Technological-Industrial Sector (FME-CWM)	1
European Commission, DG Enterprise and Industry	1
European Commission Joint Research Centre	1
Fuji Film Manufacturing Europe	1
Ministry of Economic Affairs	1
Ministry of Housing, Spatial Planning and the Environment (VROM)	4
National Institute for Public Health and the Environment (RIVM)	4
Netherlands Association of Soap Manufacturers (NVZ)	1
Netherlands Chemical Industry Association (VNCI)	1
Netherlands Confederation of Industry and Employers (VNO-NCW)	1
Netherlands Organisation for Applied Scientific Research (TNO), Quality of Life	1