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Taking Advantage of Institutional Possibilities and Network Opportunities

Analyzing Swedish Strategic Action in EU Negotiations.

Taking Advantage of Institutional Possibilities and Network Opportunities

Analyzing Swedish Strategic Action in EU Negotiations.

Matilda Broman

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To Daniel, Rasmus, Fanny and Little X

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List of Abbreviations

ACC	American Chemistry Council
ADL	Arthur D. Little
AHWG	ad hoc working group in the Council
ALDE	Alliance of Liberals and Democrats for Europe
BDI	Bundesverband der Deutschen Industrie, German Industry Federation
BEUC	European Consumers Organisation
BITS	Berlin Information-Center for Transatlantic Security
CC	Competitiveness Council
Cefic	European Chemistry Industry Council
CFSP	Common Foreign and Security Policy
Chemsec	International Chemical's Secretariat
CIA	Chemicals Industry Association
CMR	Chemicals: Chemicals classified as carcinogenic, mutagenic, or toxic to reproduction under Council Directive 67/548/EEC relating to the classification, packaging, and labeling of dangerous substances
COREPER	Committee of Brussels-based permanent representatives of the member states
CSR	Chemical Safety Reports
DEFRA	Department for Environment, Food and Rural Affairs, United Kingdom
DG	Directorate General of the European Union
EC	European Commission
EC	European Community
ECAS	European Citizens Action Service
ECB	European Chemicals Bureau

ECHA	European Chemicals Agency
ECJ	European Court of Justice
EEA	European Environment Agency
EEB	European Environment Bureau
EEC	European Economic Community
ESDP	European Security and Defense Policy
EP	European Parliament
EPP-ED	European People's Party and European Democrats
EU	European Union
FEA	Federal Environmental Agency of Germany
GDP	Gross Domestic Product
Green/EFA	Greens – European Free Alliance in the Parliament
HPV	High Production Volume
ICCA	International Council of Chemicals Associations
JCIA	Japan Chemical Industry Association
KemI	National Chemicals Inspectorate
LIBE	Committee on Civil Liberties, Justice and Home Affairs
LRI	Long-Range Research Initiative
NATO	North Atlantic Treaty Organization
NGO	Non Governmental Organization
Nutek	Swedish Agency for Economic and Regional Growth
OECD	Organization for Economic Co-operation and Economic Development
OSOR	One Substance One Registration
PBT	Persistent, Bioaccumulative, and Toxic
POPs	Persistent Organic Pollutants
PSE	Socialist Group in the European Parliament
REACH	Registration, Evaluation, and Authorisation of Chemicals
SEA	Single European Act
SIE	Stockholm Institute of Environment
SMEs	Small and medium sized enterprises
TEC	Treaty establishing the European Community
UIC	Union des Industries Chimiques
UK	United Kingdom

UN	United Nations
vPvB	very Persistent and very Bio-accumulative
WWF	World Wildlife Foundation

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Lund, March 2008

Matilda Broman

INTRODUCTION

Negotiations are central to the functioning and dynamic development of the European Union. Negotiation is seen as the predominant policy mode and the main source of the EU's successful functioning.

Frank R. Pfetsch (1998: 293)

The European Union can and should, as the first quote above indicates, be understood as an arena with a multitude of actors and an established culture including norms of just behaviour, attitudes and values – often referred to as *a negotiated order* (Torres 2003: 318, Elgström & Jönsson 2005, Smith 1996, Kohler-Koch 1996: 367). This study sets out to create a deeper understanding of member state strategies to influence EU decision-making in these negotiations. Garrett and Tsebelis wrote, already in 1996, that ‘[one] can understand the legislative process in Europe only through detailed institutional analysis of the interactions among the Council of Ministers, the Commission [...], and the European Parliament, and in particular the sequencing of decision’ (1996a: 270). The European Council of Ministers and the Parliament are today the two decision-making organs. Since the Maastricht Treaty, the European Parliament (EP) has become stronger in the decision-making process within the so-called first pillar issues (*cf.* Pollack 2005: 32, Wallace 2005: 66). With the introduction of the Treaty of Amsterdam, most areas of legislation are covered by co-decision procedures unless specifically exempted (art. 251 TEC, art. 189b EEC, Wallace 2005: 66f). Still, research attention has been turned towards negotiations and coalitions in the Council of Ministers and towards member state contacts with the Commission in

the process leading to those negotiations (*cf.* Mattila 2004, Kaeding & Selck 2005, Hayes-Renshaw *et al.* 2005). Helen Wallace writes:

successes [of interactions] depend crucially on how far governments, or part of governments, exploit their points of access to formative phases of policy development. These include channels to particular parts of the Commission – an individual Commissioner and her/his *cabinet*, a particular directorate-general, or a specialized service (2005: 30).

Interestingly, only channels to the Commission are stressed in the quote and I would like to focus on what role the European Parliament, the Council Secretariat, and other potential partners (including committees, specialized units under the Commission etc) have for member state strategic influence attempts in first pillar issues. Although it has been said that the European Parliament as a co-legislator with veto power in the co-decision procedure has been a crucial organizational actor (Torres 2003: 322), surprisingly little has been done on EP – member state contacts. In a volume about European decision-making, Garrett and Tsebelis have claimed that the EP has lost some of its legislative powers when a co-decision procedure has replaced cooperation procedures (1996a, 1996b, see also Pollack 2005: 32). Other scholars have instead argued that these changes have given the EP a much more prominent position (*cf.* Hix 2002). There are different ideas about how member states should approach the new role of the European Parliament which has developed since the introduction of the co-decision procedures, and it will probably take some time before member state relations with the EP become settled (Neuhold 2001). Drawing on data extracted from elite interviews, Kaeding and Selck argue for the presence of a norm for member states to *collaborate not only with large states but also with major institutions*, when they form coalitions (2005: 272). The quote and the enhanced role EP role in first pillar decision-making procedures illustrate the importance of focusing on the EP and not only on the Commission (or on negotiations in the Council).

Since the early 1990s we have witnessed a proliferation of studies on the relative power of institutional actors, examinations of complexities

of bargaining between actors from different levels, and evaluations of the role that norms and socialization play in the process of European integration. Despite these impressive achievements almost no convergence towards a common understanding of European institutions has occurred (Aspinwall & Schneider 2000: 2). Although many studies have been made, the theoretical and empirical challenge to understand the EU decision-making process is still there because of the complexity of the European Union *per se* and the resulting theoretical puzzle. States have a prominent role in the European institutional setting, and I argue that national governments retain important powers in the EU institutional system and hence, qualify as important analytical units. Attention will be turned towards national governments and the strategic action and tactics of representatives to promote national interests within the EU political arena.

The two main analytical concepts that will be used are institutional possibilities and network opportunities. Empirically, two cases of strategies in decision-making processes are in focus. The first case is Sweden's strategic action within the transparency area during the country's Council Presidency in spring 2001, which serves as an in-depth study of the institutional setting as well as of negotiations in and between main EU bodies.¹ The second case is the new EU Chemicals policy REACH (Registration, Evaluation, and Authorisation of Chemicals) where Sweden, as in the transparency issue area, has strong interests. Comparisons with and illustrations of other countries' strategic actions are included in the analysis of these two issue-areas. These cases focus on contacts between member states and different EU bodies, such as the European Parliament, and negotiations in the Council and in the Trialogue – a forum for inter-institutional negotiations between the Commission, the Council, and the EP. The analysis will show that member state strategic contacts with

1 When 'institutions' are referred to and discussed as 'EU bodies', this represents the Commission, the European Parliament or the Council. The terms institutionalism and institutions are used when the theoretical tradition is discussed. Institutions are in the analysis interpreted as rules and procedures about agenda-setting and decision-making.

the European Parliament can be very useful when trying to influence EU decision-making in line with core national interests. The empirical analysis also shows that different negotiation techniques are used in the two cases and that institutional contacts and the use of different techniques are contingent on the institutional possibilities and on stages of decision-making.

Research Questions and Aim of the Study

The purpose of this study is to contribute to the understanding of how member states are promoting their interests and are trying to influence decision-making within the European Union. The main research question is: *How do state actors use institutional possibilities and network opportunities strategically to their advantage?* The following sub-questions will be explored:

- What strategies and negotiation tactics do member states use to influence EU decision-making?
- How do member state strategies vary across different issue areas and during different stages of decision-making?
- How did Sweden act to reach an agreement on transparency during its Council Presidency in 2001?
- How has Sweden tried to influence the chemicals policy of the European Union?

The first two sub-questions are related to the theoretical framework and also to more general empirical patterns. The last two sub-questions are empirically oriented, but their answers will be related to the concepts of the theoretical framework. Swedish strategies within Transparency and REACH are compared with other states' attempts within the same fields although Sweden and the Swedish government is the main focus. Focus is on developing a theoretical framework and on contributing empirical stipulations about member state strategies. A relevant question is whether the Swedish strategies are representative of other countries' strategic action. To some extent, I think they are, although the possibility of cross-country variation must and will be discussed in a chapter that follows

the two case studies. This is also why I have chosen to compare Swedish actions, with amongst others, French, Italian, British and Finnish tactics. In the analysis of two issue-areas, the whole decision-making process from initiative to decision-making is covered. I have chosen to divide the decision-making process from an initiative by the Commission to a final decision between the Council and the European Parliament into three stages, *i.e.* I, II, and III.

Institutions are in the analysis defined as rules and procedures concerning agenda-setting and decision-making. 'Taking advantage of institutional possibilities' implies that member states can use these rules and procedures to their advantage – a rational institutionalist interpretation of institutions. I argue that member states can use formal rules but that they can also utilize the collaborative networks and *informal* contacts generated by the institutional set-up to gain influence – taking advantage of network opportunities. When and how is an empirical question. When I started gathering material, I began to follow a rather strict rationalist theoretical approach for analyzing member state's strategic action. When interviewing politicians and high rank civil servants, it became obvious that they did not always act as strategically as stipulated in these theoretical approaches. Many of their choices can be explained by the fact that it is difficult always to have access to the 'right' information. On the other hand, government officials and other actors involved try to get this kind of information through networks of collaborations, and then form their negotiation positions based on the knowledge that they have. In this thesis it is argued that it is fruitful to combine an analysis by simultaneously looking at institutional possibilities and network opportunities. Network opportunities refer to contacts upheld in order to get access to information about what is going on in different EU bodies and about potential openings or obstacles in the decision-making process within a particular issue area. By following these two perspectives, a better understanding of the actions and the negotiation techniques used can be gained than if only a rational approach had been chosen. Hence, this analysis proceeds from a theoretical approach based on both formal rules and procedures – institutional possibilities – and informal contacts – network opportunities.

A Soft Rational Institutional Approach

To achieve my purpose and to determine how strategies and techniques vary across issue areas and stages of decision-making, I construct a theoretical framework for analyzing how and when different strategies and negotiation techniques are used. Rational institutionalism combined with literature on international negotiations has inspired the theoretical framework. These approaches have similar ontological and epistemological grounds. Both agency and structure are important in the analysis, and states are perceived to have a considerable room for maneuver. A combination of negotiation theory and rational institutionalism is often found in IR research. In *Leadership and Negotiation in the European Union*, Jonas Tallberg has summarized an international relations' interpretation of rational institutionalist theory:

a view of politics as a series of contracting dilemmas that may prevent or inhibit mutually advantageous exchange; a functionalist approach to institutional choice and development; a conception of states as rational actors that behave instrumentally in the pursuit of their preferences; [...] and a perspective on formal rules as enabling and constraining actors (2006: 17).

Influence strategies and the use of different tactics will from a rational institutionalist perspective be seen as a matter of taking advantage of formal rules thus using institutional possibilities.² The negotiation literature has been used to identify different types of tactics/techniques (used synonymously). I have limited the study to first pillar issues since the decision-making process in the second and the third pillars is very different. In an in-depth analysis based on influence strategies within a specific institutional framework, it would be too complex if other rules and proce-

2 Within a rational institutionalist perspective, institutions are seen as formal rules and procedures that can have an enabling or constraining effect on actors. Informality in this approach, and also within other institutionalist approaches, is connected to *informal norms* rather than to *informal contacts*, but I argue that *informal contacts* are of great importance when member state action is analyzed. Thus, these contacts are included in the analysis and will be analyzed as a specific category, *i.e.* network opportunities.

dures, for example in second and third pillar issues, were included (for more arguments why these limitations have been chosen, see the section 'Methodology – Two Explorative Case Studies'). In addition to rational institutionalism and negotiation theory, network theory has inspired the theoretical frame of the thesis, as elaborated in order to analyze member states' strategic action within EU decision-making procedures. This combination of theoretical ideas can be traced to discussions between intergovernmentalists and their critics.

Intergovernmentalism and related theories form an important background to the understanding of member states in the European Union. Alan Milward and Andrew Moravcsik have explored, both theoretically and empirically, the relationship between the Union and its member states (Milward 1992, Moravcsik 1993, 1998). These ideas are known as *intergovernmentalism* and began to be discussed already in the 1960s with Stanley Hoffmann as the main representative (1995). They saw the state as a gatekeeper, the unit for aggregated interests, and the representative at the European level. The EU is for intergovernmentalists a venture in cooperation amongst states, which are rational actors, and interpreted as a profound international regime allowing states to manage specific interests more efficiently. The resulting 'pooled sovereignty' does not mean a decline of power; on the contrary, it is assumed that by adapting to this environment, the role of states is strengthened (Bulmer & Lequesne 2005: 5-7, Hoffmann 1982). Alan Milward argued that the interdependence of markets within coal, agriculture, and trade after 1945 forced states to cooperate and thus refuted the idea of pooled sovereignty and more realist interpretations of states as self-interested actors reluctant to give up power (1992).³ A revival of intergovernmentalist approaches came about through the theory of rational choice, which became important in American political science during the 1980s. Scholars within this field argued that states came together to cut transaction costs and thus saw the EU as a collective action project where each

3 For an overview of the debate between neo-functionalists and researchers in favour of an intergovernmental approach to the understanding of EU affairs, see Mark A. Pollack (2005).

state tried to optimize its gains. Mark Pollack has analyzed the question of delegation of authority from a rationalist perspective. He considers supranational institutions to be agents created by principals (the member states) to reduce the transaction costs in the functioning of the EU (1997). This is also where the well-known work of Andrew Moravcsik (1993, 1998) comes in. His approach, liberal intergovernmentalism, starts from three assumptions: that the state is a rational actor in Europe; that power in the EU is the result of bargaining amongst states; and that liberal theory is needed to explain the formation of national preferences within the state (Bulmer & Lequesne 2005: 6). Since the main interest in this thesis is issue-areas where member states have strong national interests and thus can be assumed to have more fixed and already on a national basis formed ideas, this approach is useful when analyzing how these ideas are promoted on the different EU arenas.

When Moravcsik developed his model, he was inspired by Robert Putnam's two-level game approach (1988). States negotiate on the European level (with Putnam's terminology level I) with mandate from the domestic level (level II). State negotiators need to be aware of their domestic win-sets in order to negotiate on other levels, otherwise the decision-making process will collapse, either when formal decisions are to be taken or when the negotiators are simply voted out in up-coming elections (Putnam 1988). In sum, the contribution of his work is the illustration of the interplay between domestic politics and negotiations on higher levels. Moravcsik and liberal intergovernmentalism have, however, been criticized, firstly, for focusing too much on the central government; secondly, for the assumption that only large states exercise power is questioned. Thirdly, critics claim that intergovernmentalists are treating EU institutions (here labeled EU bodies) as tools of member states rather than as organizations with their own interest formation (Bulmer & Lequesne 2005: 6). For intergovernmentalists, the relationship between institutions and member states is that states – with Pollack's terminology principals – delegate power only for pragmatic reasons and the EU bodies – agents – are given orders.

Even though central governments are the analytical focus in this thesis as well, EU bodies and other actors are assumed to have interests and collaborative channels of their own. In dealing with influence strategies, many arguments that will be put forward later come from theories that have criticized intergovernmentalism. In this thesis, and in relation to the critique of intergovernmentalism, all states regardless of size are assumed to be able to influence EU policy through strategic action. Regarding preference formation, interests can be advanced on several levels in the EU and both on the national arena and on European areas. However, it is the central government's strategic attempts rather than, for example, lobbying organization's influence attempts that are analyzed. When dealing with states in this way, the analysis is opened up for interaction with other actors in different networks and on different levels, although focus is on negotiations and strong (but not rigid) national interests. In agreement with the belief that decision-making has become more complex and multi-layered (see vignette quote), this analysis takes into consideration a change of decision-making procedures and increased complexity, often referred to as 'from government to governance' (Marks & Hooghe 2000, 2004). Within international relations and comparative political science, there has been a trend towards moving away from the idea of nation states as powerful both in the national and in the international/transnational arena. James Rosenau uses the term governance to describe state activities and informal, non-governmental mechanisms where these actors (and others) interact (Rosenau & Czempiel 1992). EU governance research counter-balances state-centric thinking and interprets interest formation and decision-making differently. The argument is that EU politics and policies are the results of interaction between the Commission, the member states, regions and interest groups. Thus no actors, for example member states or institutions, are seen *prima facie* as more influential than others. Important to notice is the interaction of private and public actors (*cf.* Kohler-Koch 1996). The result is a complex web of actors and multi-layered decision-making.

Understanding the EU in terms of governance raises questions about the conditions for the emergence of the political agenda. On the one

hand, in an ever-increasing number of fields the process of problem-definition has been transferred away from national governments to the European level. On the other hand, at the member state level, policy-making has become more technocratic giving that specialized experts (civil servants of national ministries, interest group representatives) are more powerful than in the 'traditional' European state (*cf.* Haas 1992a, 1992b). National governments obviously have a strong role here, not least considering the mix of intergovernmental and federal structures of the Union. Unfortunately this is not always stressed in the governance literature, but these theories should be understood as a critique of, and a response to, perspectives that have focused only on member states (*cf.* Bulmer & Lequesne 2005: 10). Still, the EU can be described as a shared governance system between the main institutions and the member states. There are no clear rules for these relationships, and simple generalizations tend to be misleading. Helen Wallace concludes: 'the underlying trend is for policies to be developed by a sharing of responsibilities between the EU and national levels of governance' (2005: 26).⁴ However, I argue that the main contribution of governance approaches lies in pointing to the presence of a multitude of actors and to the EU as a negotiated arena. As mentioned earlier, I believe that both these aspects – the understanding of the EU as a multi-actors arena and a negotiation machinery – are important.

Alex Warleigh argues that the concepts of *multi-level governance* (MLG) (Hooghe & Marks 2001, Marks & Hooghe 2000, 2004) and *policy networks* (Rhodes 1997) work well together in EU studies and studies of the negotiating state. Some authors claim that multi-level governance is just a concept used to describe the multitude of actors but not a clear-cut theory (Adeshhead 2002). Marks and Hooghe instead use their theory to elaborate on different types of governance. These hierarchies of power imply divisions of power and in some instances – like the case of EU – indicate fewer levels of power sharing and decision-making (Warleigh 2000: 81). Governance theory and network analysis have in common

4 Wallace also points out the important fact that the way member states approach their membership and participate on the European arena differs considerably.

that state power is re-defined and combined into models of complexity and multi-level, multi-actors procedures. I agree with Warleigh when he claims that in order to advance the understanding of the modus operandi of member states 'state power can and should still be analyzed and re-thought (but not removed!)' (2006: 78). Member states are acting in the Council, but in the decision-making process these multi-level governance activities are performed in tandem with other EU bodies and with other actors, an indication of the necessity to include networks in the analysis.

Negotiation theory and rational institutionalism combined with network theory have inspired my theoretical framework (presented in chapter three and four). I label this elaborated version of rational institutionalism, which takes into consideration the criticism raised against intergovernmentalism and rational models, 'soft' rational institutionalism.

Important Analytical Concepts

The two issue areas and Sweden's strategies are analyzed by means of the following key concepts: institutional possibilities, network opportunities, and strategic action. **Institutional possibilities** are defined as *rules and procedures* that give member states openings to influence in the EU. Institutional possibilities are therefore *formal structural arrangements that can enable state agents*. Obviously if there are enabling arrangements, *constraining* elements can also be found, representing institutional limitations instead of possibilities. Next to taking advantage of institutional possibilities and formal arrangements, the importance of taking advantage also of **network opportunities** – contacts between government representatives and other actors – will be analyzed. This term refers to strategic contacts, both formal and more informal, with key individuals within a specific issue area. The differentiation between policy networks and issue networks will be used in the analysis to identify contacts both with key persons working for the EU bodies and with other persons, for example representing interest organizations within a specific issue-area.

In order to act strategically, actors need a) to be informed about what is going on in other EU bodies and b) to have contacts with repre-

sentatives of these units. In addition, larger informal issue networks can be beneficial for the ability to persuade other EU bodies or individuals in different bodies. The key issue is that participation in negotiations has strategic connotations and is consistent with what we can define as rational and 'reasonable' behaviour.⁵ This will be referred to as **strategic action**; an actor can (in theory) *use* the Committees, the Commission, and the Presidency – EU bodies – strategically. State actors can also take advantage of the decision-making procedures. All these actions are examples of *strategies* to influence the European agenda and the policy-making in ongoing negotiations. Thomas Schelling once wrote that '[t]o study the strategy of conflict is to take the view that most situations are essentially bargaining situations' (1963: 4). Although a successful *strategy* in these negotiations is context bound in the sense that the combination of strategies in each case is unique, general (contingent) remarks can to some extent be made about states' strategies and actions (*cf.* Rogowski 1999, Stein 1999). In later chapters, different techniques – framing, the use of expertise, manipulation, procedural tactics, leadership, mediation, and coalition building – will be discussed both theoretically and empirically.

5 Rationality does not simply imply calculation, but also includes experience of negotiations, and intuition about strategic moves. According to Dreyfus and Dreyfus (2005) the person who uses calculation in order to make a move is the least skilled, whereas a true expert also uses his or hers intuition. Routine and experience, which can be found between the two extremes of calculation and intuition, are also important elements for elaborating a strategy and have the knowledge and skill to know when and how different techniques should be used and combined. This line of argumentation highlights both the complexity of behaving rationally and the need for not only information, but also personal skill in order to optimize action. Obviously, if the information is wrong or if a strategy fails, this can be explained as a tactical mistake or as a miscalculation of other actor's intentions. The latter category may also include unforeseen events that may cause a change of strategy by others as well.

Methodology – Two Explorative Case Studies

There are many reasons to focus on strategic behaviour in an analysis with both theoretical and empirical ambitions. Thomas Schelling has in his classical work, *The Strategy of Conflict*, written the following:

The advantage of cultivating the area of “strategy” for theory development is not that, of all possible approaches, it is the one that evidently stays closest to the truth, but that the assumption of rational behaviour is a productive one [...]. The premise of rational behaviour is a potent one for the production of theory. Whether the resulting theory provides good or poor insight into actual behaviour is, I repeat, a matter of subsequent judgement (1963: 4).

The method used here to analyze a member state’s strategic action in EU negotiations is a *process-tracing* approach. By using this method, focus is shifted from causal effects to causal mechanisms (George & Bennett 1997: 1-2). Causal mechanisms are defined as ‘independent stable factors that under certain conditions link causes to effects’ (George & Bennett 2005: 8).⁶ The resulting theory and the analytical outcome based on what Schelling in the quote above describes as ‘cultivating the area of strategy’, can and should be further tested and criticized in future studies. The method of process tracing, in the words of Alexander George and Andrew Bennett, ‘offers the possibility of mapping out one or more potential causal paths that are consistent with the outcome and the process tracing evidence in a single case’ (1997: 5-6). By building on previous research and performing an empirical analysis – using the method of process tracing – stipulations for further empirical analysis and a refined theoretical framework are generated. Two explorative case studies are the cornerstones of this analysis. The first case, Transparency and citizens’

6 In their book *Case Studies and Theory Development in the Social Sciences* published in 2005, Alexander L. George and Andrew Bennett have a discussion about how to advance case study methods and bring them back into studies where these more process oriented approaches are combined with statistical analysis and formal modelling (p. 4). In this thesis, no such ambition exists. Instead focus is on developing a theoretical framework and on contributing with empirical stipulations about member state’s strategies.

access to EU documentation, is distinctive in the sense that Sweden at this time held the Presidency of the Council. It is obvious that the actions of a member state are intense when holding a Council Presidency, a rather unique situation since Council Presidencies after the enlargement from 15 to 27 member states are held every 12th year. The small state literature (*cf.* Ingebritsen 2006, Thorhallsson 2000, Katzenstein 1985) as well as research about Council Presidencies (Elgström 2003, Tallberg 2006), argue that the holder of the chair has a unique chance to influence the agenda. With the terminology used in this thesis, this is because the Presidency creates distinctive institutional possibilities. Therefore a case where Sweden holds the Presidency chair and thus had a chance to be at the centre of the negotiations is included in the analysis. In order to see in what ways this position affects strategic action and the use of different tactics in EU negotiations, another case, without the same position to negotiate from, is analyzed. In addition, a second explorative case study strengthens the ability to make some general assumptions about Swedish strategic action and discuss these results in relation to other member states' strategic action.

The second case, REACH and the EU's chemicals legislation, represents a complicated case, as the act on chemicals is the most extensive legal text that has been produced in the EU (for an introduction to the EU chemicals legislation, see www.kemi.se). Lobbying has been very intense in the chemicals area, and expert groups have produced different reports about the effects of the legal proposal both on the environment and on the economy. The decision-making process has taken more than six years and this case opens up for comparisons between member states within the same issue area and 'many cases within a case'. George and Bennett write that 'with more cases, the investigator can begin to chart out the repertoire of causal paths that lead to a given outcome and the conditions under which they obtain' (1997: 5-6). Although this study is not set up to find causal paths, it is designed to identify the mechanisms of strategic behaviour and adjustment to formal rules, and to generate a more advanced theory that can be used in future studies.

There are many similarities between these cases, as Sweden had strong values, and thus held a firm position, within both issue-areas. In both cases, arguments about the pros and cons of having a strong legislation were dichotomized. In the transparency issue area openness and citizen's access to documentation stood against efficient decision-making. Arguments for or against a new chemicals legislation were also divided, and proponents argued that environmental concerns and positive health effects would be the result of a strong legislation. Opponents claimed that the very same legislation had negative effects on the European economy and would cause economic difficulties on the global market for European small and medium sized enterprises. In both cases, Sweden was in favour of a strong legislation, preferably in line with present national legislation. A comparison of these two cases makes it possible to advance the understanding of variation in the use of tactics related to the Council Presidency, across two issue-areas and during different stages of decision-making. The Council Presidency in 2001 came at a time when Sweden had, for a long period of time and together with other actors, been working for new rule about citizen's access to information and documentation from the Council, the Commission and the EP. These activities made it possible to go on the offensive and use negotiation techniques. The Swedish position within REACH was favourable in the beginning of the process, but after the Commission had presented its initial proposal in 2003, other member states changed side and these events complicated the negotiation game as well as the room for tactical maneuvers.

The explorative nature of both case studies allows us to analyze these cases in relation to each other and discuss implications for theory development. An analysis of Swedish actions within these two issue areas can contribute to a better understanding of how member states act in order to (try to) influence EU legislation. In addition, material about other member states' strategic behaviour in these two issue-areas is included in the empirical analysis and discussed as an illustration and in relation to Swedish negotiation activities. These cases of how member states are acting when national interests are strong are with Yin's terminology 'revelatory'

(Yin 1994: 40-1) as they shed light upon institutional behaviour in co-decision procedures and provide an empirical investigation of member state action.

By focusing on Swedish strategies and negotiation tactics in two issue-areas within the first pillar (co-decision procedures), the formal decision-making process is held constant and there is no variation in the country variable. George and Bennett write that ‘the method of *structured, focused comparison and process-tracing* [my emphasis] are employed not only in studies that attempt to provide explanations for specific cases but also to test and refine available theories and hypotheses, to develop new theories and produce generic knowledge of a given phenomenon’ (1997: 8). King, Keohane, and Verba speak in favour of having comparisons and many cases within a case and argue that:

By providing more observations relevant to the implications of a theory, such a method can help overcome the dilemmas of small-*n* research and enable investigators and their readers to increase their confidence in the findings of social science (1994: 227).

These quotes illustrate a) the advantage of making a *comparison* between cases and of allowing for comparisons between countries acting strategically within the same issue-area, and b) how an analysis based both on previous research and new empirical findings can create a better understanding. There is a need for *structuring* in the analysis, which will be done by sorting out theoretical stipulations about strategic behaviour and carefully comparing the cases (although not performing a traditional hypothesis testing and statistical analysis). The two cases are chosen to see which tactics are used when countries are holding the Council Presidency and how strategic behaviour is affected by and adjusted to different stages of decision-making. Within the highly institutionalized international setting that the EU represents, formal rules and procedures create an institutional pattern, *i.e.* a structural setting. In this dissertation, the two factors that are accentuated are a) structural variation in terms of variance in one supposedly vital institutional factor, *i.e.*, holding the Presidency or not, and b) variance related to stages of the decision-making process.

Structural settings can work to the benefit of actors or constrain their behaviour and thus room for manoeuvre. On these premises it seems reasonable to assume that general patterns of behaviour and strategic thinking/action can be found – it is these patterns that, by focusing on Sweden's activities, are analyzed in this dissertation.

Axel Hadenius describes the type of methodology that I have used as *reconstructive* and *interpretative*, relying on empirical material that can be seen as relics or 'parts of the phenomenon under study' (1983: 137). Obviously, all aspects of the decision-making process and all calculations of different actors are not covered. Instead this analysis is guided by the initial theoretical choices and the impact the gathered material has had on these assumptions. The outcome is a description and an analysis based on a) the theoretical assumptions made initially and b) the meeting between, in this case, the interview material and these theoretical assumptions, and c) the author's interpretation of these 'meetings'. Intersubjectivity means, for me, that these choices and the interpretation must be as clear as possible also to the reader so that the results can be evaluated and reevaluated in other scientific studies. Still, there is a lot of power in the written (and spoken) language. Thus, by formulating the problem and suggesting interpretations, the author's role in the process is clearly important (*cf.* Bäckstrand 2001: 82-83 about the power of language, and see Lundquist 2007 for an overview of the research process).

Systematic inquiry and comparison between a few cases does not necessarily indicate a positivist view of knowledge, but it does indicate a belief in cumulative science and in the importance of intersubjectivity and clear conceptualizations in order to evaluate and re-evaluate the analytical output. Theories are, as I see it, tools to interpret social tendencies and the result of an analysis is always more or less depending on the theoretical choices made initially. Therefore it is important to describe and explain how and why these theoretical choices are made. Of importance is my firm belief that if you cannot find what you are looking for by means of your theories, there must be something wrong with the theories rather than with 'reality'. Alternating between theory and empirical findings, using qualitative methods, creates a deeper under-

standing of a phenomenon and is a typical approach for process tracing as a method. This method can also be described as ‘running up and down the stairs’ (*cf.* Alvesson & Sköldberg 1994: 42, about the ‘abductive’ approach). This alternation of theoretical stipulations and empirical findings is typical for almost all social science related research and the output from these studies is co-variation rather than causal explanations. Clear-cut inductive or deductive approaches are hard to find (Esaïasson *et al.* 2003: 122, Bryman 1997: 24). Instead case studies or comparison of cases help us to understand complex processes like the constant negotiations between member states and the EU bodies (Flyvberg 1991, 2001, 2003/04: 185, 193).

Even if law-like generalizations cannot be provided in such theoretically combined approaches, tentative generalizations can be made and the conceptual framework and analytical design can be further evaluated in other studies and/or later used in quantitative studies. In addition, I believe, just like Bent Flyvberg (2003/04: 185) that there is a value in case studies *per se* as these studies can increase our understanding for complex process that are hard to capture unless there is room for analyzing contingencies as well. A problem, not only when strategies are studied but for all social science related research, is many variables, few cases – typical of small n-analysis – and sometimes it is better to focus on only a few cases, holding constant as many variables as possible (*cf.* George & Bennett 1997, George 1979). At the same time there are several cases of state efforts at influencing EU polices, although contingent factors limit the ability to make an all encompassing comparison. The value of this type of analysis lies in the ability to identify tendencies and potential patterns of member state behaviours, without claiming that these actions are like natural laws. Instead there is a value in finding differences and similarities in the actions of individuals representing member states and following the logic of social science related phenomenon, which is often the case when using the method of process-tracing. According to Lennart Lundquist, analytical models and schemes distinguish the factors (variables, my remark) that should be identified in order to understand a specific process (2007: 88). In this dissertation attention is turned towards member states’ strategic action in EU negotiations.

The comparison of two cases of national strategic action in EU negotiations – Swedish strategies in transparency and in REACH – is, as already mentioned, chosen to balance the need for (simultaneous) in-depth analysis and comparison of cases. The intention is to produce new insights and new theories about member state action in the EU while holding a few variables constant (same country, strong interests, co-decision procedures, and polarized positions). Explorative case studies can generate new insights when previous research is missing or is scarce (*cf.* Esaiasson *et al.* 2003: 35). Jasjeet Sekhon writes that case studies ‘permit discovery of causal mechanism and new phenomena, and can help us draw attention to unexpected results’ (2004: 281). The two case study approach contributes to better theory development than a single case analysis would do (Mahoney 2007: 124-26, Yin 1994, King, Keohane & Verba 1994: 209). By comparing member state strategies and activities in two issue-areas and in various stages of the decision-making process, the explorative nature of the research is strengthened. Detailed case studies within particular issue-areas can reveal the impact of strategic attempts and national governments trying to set the agenda. Some generalizations about member states behaviour, strategies, and working methods in the EU will be made. These assumptions will have the form of working hypotheses for further research, and the theoretical framework that is elaborated in this thesis can serve as a generic model.

Material: Interviews and Written Sources

The empirical material is a combination of primary and secondary sources; of interviews, EU documentation, and previous research. Combining different types of material to get a fuller picture of a process is a classic method called triangulation, a term firstly used by the case study specialist Yin (1994). Using multiple sources makes it possible to verify that the outcome of the analysis is not the result of misinterpretation. In addition, such an approach is consistent with George and Bennett’s description of the use of material when applying the method of process tracing (2005: 6).

I conducted semi-structured interviews for two main reasons. The first ambition was to gather more material and knowledge about the two issue-areas transparency and REACH. The other ambition was to learn more about differences in tactics used. As Council meetings are often held in secret, it is difficult to follow these processes without interviews with participants. Finding background information, getting answer to questions, and learning more about intentions behind different actions – these combined are reasons to use interviews as a source (Bradburn 1979). Within both issue-areas it has been important to interview people at relevant levels and also balance this material with written sources. Interviewees have been chosen from the Swedish government, the EU Parliament, the Commission, and the Permanent representation (see list of interviewees). Representatives of the Swedish Chemicals Inspection (KemI) have also given their view on the process. Additional interviewees come from the Environment Ministry, the Justice Ministry, the Foreign Ministry and the Prime Minister's Office. To balance the obvious Swedish bias in the material, representatives from other countries have also been interviewed, primarily in Brussels. In the European Parliament, Rapporteurs have been interviewed. In the interviews with representatives for the different EU bodies, respondents have been asked to give their view on the Swedish strategies and contacts.

A tape recorder has been used during most interviews. Most of the persons I have interviewed did not want to be quoted and a few asked me not to use a tape recorder. During the initial interviews in 2005, I did not use a tape recorder for these reasons, but later I have chosen to record the material and instead quote only if interviewees have given their permission. Semi-structured formulas have guided the discussions and examples from both issue-areas can be found in appendix A and B. The interviews have taken approximately one hour (the shortest interview lasted 25 minutes and the longest took three hours). Twice, the interviews were held over the phone. On two occasions, once at the Chemicals Inspection and once at the Swedish Permanent representation in Brussels, two persons have been interviewed at the same time. The rest of the interviews have taken place between me and the interviewee.

The form of the interviews has been a dialogue where the researcher has set the frames. It has been more of a conversation which has advantages and disadvantages. On the one hand, the 'raw data' that have been gathered are the participants' subjective perspectives (Holme & Solvang 1991: 110). On the other hand, when focusing on strategic choices interviews must be seen as exactly that – providing raw data. Strategic actions and thinking make it necessary to interview key players and negotiators in order to capture why certain contacts have been important and where the pivotal events (key negotiations) have taken place. There is always a risk that it has been in the interest of the interviewees to portray their own actions and strategies in a favourable light (*cf.* Torstendahl 1966). Since strategies are the main focus of the analysis, this unique interview material is important and the actors' own ideas about the course of event and their action, which is based on how an issue-area is perceived, is of particular relevance for the analysis, although it is my interpretation of these answers that is given to the reader.

Written material and primary sources have been found on the Internet. The other sources consist of printed official documents; EU websites with official documents, and newspaper material. All the main EU bodies publish material on the web. Newspaper articles and press releases have also been used to inform the analysis. In addition, some interview persons have let me go through their material, which has been especially valuable in the transparency issue area since these documents were published before the EU regulation on citizens' access to documentation, 1049/2001, came into force. Ironically, the first case studied has paved the way and made it easier (also for me) to get access to documentation related to the chemicals area. Previous research has been useful and valuable when searching for answers. In the next chapter an overview of these insights is presented, but first, a brief overview of the structure of this book.

Outline of the Study

In the introductory chapter, key questions and the theoretical and empirical cornerstones have been presented. Chapter two, offers an

empirical and theoretical orientation and a background to the study in an attempt to set the scene of member state interaction with other states as well as with the EU bodies. In the first part of chapter two, theories about the role of member states are presented and ways of analyzing member states are discussed. Sections about the functions and the roles of the main EU bodies are found in the second half of chapter two. Attention is paid to the decision-making process within first-pillar issues and different stages of decision-making. In chapter three, the rational institutionalist framework and network theory are discussed. Institutional possibilities and network opportunities are two analytical tools that are presented to find out where enabling effects can be found. In chapter four member states are presented as negotiators and rational actors trying to increase their influence capacity by acting strategically. The important concept of power is also discussed and defined. This part is elaborated to answer theoretically how member states use institutional possibilities and network opportunities, *i.e.* what negotiation techniques they use. In chapter five, Sweden's actions in the transparency area during the 2001 Council Presidency are analyzed. In chapter six, Sweden's strategies in the chemical field with focus on the legislative act REACH are in focus. The findings in the two cases of member states' strategic institutional action and network activities are compared and analyzed in chapter seven. Finally in chapter eight, under the heading 'concluding remarks', the analysis is summarized and its implications, both for future research and from a policy-oriented perspective, are highlighted.

MEMBER STATES AND INSTITUTIONS IN THE EU

[T]he EU system is in a kind of constant flux, in that practice, experience, and experiments over time alter the ways in which the member states are involved in the EU system. [...] Typically the newer modes of governance that are emerging involve complex sharing of policy responsibilities between the EU and the member state levels of governance.

Helen Wallace (2005: 26)

This chapter should be read as an introduction to EU bodies and first pillar decision-making procedures provided in order to facilitate the understanding of the analyses in chapter five and six. The fact that decision-making procedures change over time and new cooperative arrangements between member states and EU bodies emerge, makes it important to analyze these changes and reevaluate ‘established truths’ in the academic literature. The main EU bodies are the European Council, the Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice.⁷ The Council of the EU is the main intergovernmental arena. Existing research has also pointed towards the importance for member states of also cooperating with the Commission (Thorhallsson 2000, Bunse *et al.* 2005, Nugent 2001). In this dissertation it is suggested that, for member states with strong interests and values in a

7 Formally, there are five institutions: The Council of Ministers, the European Parliament, the European Commission, the European Court of Justice and the Court of Auditors. However, in the legislation process under co-decision procedures, the Commission presents the initial proposal and the Council and the Parliament together have formal decision-making competence.

specific field, the EP can become an equally or even more important ally (or opponent), particularly in issue-areas where the co-decision procedure is used. A large part of the decision-making and the contacts between these units are *informal* (cf. Westlake 1994b, Peterson & Bomberg 1999). Decision-making rules – majority vote, unanimity rule, veto, the number of votes in the Council Ministry – vary depending on the institutional setting and policy-area. As outlined in the vignette quote by Helen Wallace, these rules and procedures are changing over time, thus affecting a) the relation between member states and EU bodies b) the role of member states and of institutions in the EU. Although member states continue to play an important role in EU decision-making, in first pillar issues they have to cooperate with other EU bodies and also use institutional possibilities, strategically and consciously, in order to be as influential as possible. Peterson and Bomberg have written the following about these rules: ‘in EU-decision-making the rules are often vague, contentious or “shiftable”. The rules, like nearly everything else, may even be negotiable’ (1999: 254). As a result of the complexity of the policy-making process it is important and necessary to avoid rigid dichotomies between intergovernmentalism and supranationalism. In other words, these contacts (both the formal and the more informal arrangements) should be analyzed as neither simply interaction between states nor as a process only driven by central EU bodies (cf. Wallace *et al.* 2005: 7).

The Main EU Bodies

In this section the Council, the Commission, and the EP and existing research related to these institutions and their member state contacts, are presented. Garrett and Tsebelis argue that ‘procedures or formal institutions are the key factors influencing actors’ behaviour’ (2001: 356). Others focus on more informal contacts (Knight 1992). I argue that it needs to be analyzed how these EU bodies are ‘partners’ or opponents of member states and therefore included in or excluded from coalition formations within both the inter-institutional negotiations and in larger decision-making processes. As mentioned earlier, these units can also be actors in their own right, striving for increased institutional power or

defending institutional interests. In analyzing the strategies of members states and their contacts with different organs, it seems foolish to rule out either formal rules or informal contacts.

The Council

The Council of the European Union is the main intergovernmental arena where member states are present and represented (Wallace 2005: 26).⁸ Rational choice studies about how member states exercise power in the Council turn our attention to voting-weights, voting, and the use of vetoes – the problem is that these rules are rarely used explicitly. The use of threats of defection rather than cooperation may occur in more distributive negotiations, but there is rarely any non-cooperation – the Gaullist ‘empty chair’ policy in 1965 and the British non-cooperation policy in 1996 are two infamous exceptions. Instead attempts of cooperation are made through issue-linkage, a common negotiating strategy in the Council, *i.e.* a government will not agree to X unless Y is also agreed. Collegial behaviour can be found and a strong procedural norm of consensus building prevails. Thus, cooperative games are more typical and voting procedures are seldom used. Still, as pointed out in a report about bargaining power in the European Council by Jonas Tallberg, the formal equality of states and representation of heads of governments and states in the European Council does not mean equal influence on the outcome (2007: 8). Structural arrangements (rules and procedures) can work to the advantage or the disadvantage of member states. Power resources are important in negotiations and these attributes are often claimed to work in beneficial directions for more powerful states such as France and Germany. At the same time, other types of power resources

8 There is only one Council of the European Union, but in reality the Council formation varies depending on the Ministers attending the meeting. When Environment Ministers meet for example, this is the Environment Council. The most famous formation is where the Heads of Government meet – the European Council. The most important forums next, to the European Council, are the General Affairs and External Relations Council and the Ecofin Council (where Sweden and other members outside EMU don't participate).

related to knowledge, information and experience within certain fields are of perhaps greater importance in the daily negotiations and the work that is taking place in the Council of Ministers and the different organs and working groups.

The phase of decision-making where policy negotiations are taking place is of vital importance for the exercise of power and influence by member governments within the EU (*cf.* Hayes-Renshaw & Wallace 1997). Ministerial sessions (Council meetings) attract a lot of media attention, and obvious ‘muscle flexing’ to demonstrate power can be observed. These meetings/conferences sometimes turn into zero-sum games and distributive negotiations. This is, however, a bit misleading as an indicator of the rest of the decision-making process, where more consensus-oriented behaviour often dominates although it cannot be ruled out that a number of government representatives are still guided by a strictly national agenda. In an analysis of the relative powers of the Council, the Commission, and the Parliament, Thomson and Holsti conclude that a bargaining model placing the Council at the center of the process produces the ‘best’ results when different scenarios are compared with the negotiated outcome (2006: 391). Although Thomson and Holsti are correct in their general comment about the centrality of the Council in EU negotiations, I argue that co-decision procedures in first pillar issues make it necessary to analyze also contacts with a) the Commission and with b) the European Parliament.

The Committee of Permanent Representatives (Coreper) is an organ under the Council of Ministers, where legislative proposals are prepared before council meetings, and member states have a last chance to reach consensus before they vote (if they vote) in the Council. The Permanent representatives meet in Coreper II and their deputies in Coreper I, an arrangement to ease the burden of all assignments to this committee (Larsson 2003, Tallberg 2001a:127). Coreper sets the agenda for Council meetings although a special committee often has done the preparatory work.⁹ According to Lewis, 90 per cent of all issues on the European

9 Next to these special committees, there are also groups like the Antici Group, the Mertens Group and the group called Friends of the Presidency. Below this level all

agenda are finalized here and in the different working groups supporting these units (1998). The Swedish EU ambassador and the national chief negotiators who participate in the working groups are, together with the Prime Minister's office, the national strategic base in EU negotiations. The Permanent Representation in Brussels coordinates contacts with the Commission, the European Parliament and expert organs. These key individuals and their perceptions of what can and cannot be done are in focus in this thesis.¹⁰

In addition to the Council of the European Union (with preparations in Coreper I and II, and in the working groups) *the administration* – the Council Secretariat – has an important role in preparing all meetings and represent continuity and knowledge/expertise in issue-areas handled by the Council. Derek Beach has described it as the ‘unseen hand’ in Council negotiations. According to Beach, the secretariat has played an important role in treaty reform negotiations: ‘by playing the role of a trusted assistant in IGCs, the secretariat gained many opportunities to provide instrumental leadership to the parties, gaining the ability to influence outcomes in even the most sensitive issue’ (2004: 428-29). Others, for example Lawrence Hamlet, have characterized the Secretariat as a partner for member states (2005). Some authors have also described how member states deliberately have chosen not to cooperate with the secretariat when holding the Chair in the Council. For example Beach writes that ‘[s]ecretariat influence is always contingent upon the role that

the working groups are allocated. These in turn, may have sub-committees or their own expert groups. Coreper, together with the Presidency, decides how committees or working parties are to be created (Larsson 2003).

10 An issue is normally handled in a working group or during an attaché meeting; otherwise the issue is handed over to COREPER. During attaché meetings, no representatives from national ministries are present and there is no interpretation. Sensitive issues are often treated during these more restricted sessions. On other occasions, there are so-called working parties’ meetings with a least one civil servant from the ministry responsible on national level in all member states. Ministerial civil servants are claimed to stand closer to the national positions than those working in Brussels at the Permanent Representations. Larsson discusses these matters as ‘cutting the link with the capitals’ (2003).

the Presidency allows it to play' (2004: 429). All these aspects make it necessary to discuss when and why member states deliberately choose to co-operate with the Council Secretariat or not and also to take a closer look at Council Presidencies where member states get a chance to play an important role on formative arenas in the negotiation process. It is an empirical question to what extent member states cooperate with the secretariat and how helpful these contacts are for member states trying to promote national ideas.

Research on voting preferences has focused on either Intergovernmental Conferences (IGCs) or European Council meetings. In a modelling of the relative voting under QMV, researchers found that members voted for the voting formulae, which they believed, would maximize their legislative influence. According to Pollack, some governments are 'preference outliners [...] and therefore more likely to be isolated in EU decision-making, again independent of their formal voting weights' (Pollack 2005: 31, Garrett & Tsebelis 1996b, interviews, negotiators, Brussels). Others have pointed to the fact that smaller informal meetings before these sessions tend to increase, indicating a declining importance of Council meetings (Lewis 2005). The Transparency issue was handled in the European Council and the REACH legislative act was handled in the Environment Council in cooperation with the Competitiveness Council. In both issue-areas most of the work was done in the working groups and in Coreper, something that strengthens the idea that the most important power fields can be found on lower levels rather than during Council meetings. Later, the empirical analysis will show a more complex pattern, but the general trend is that national positions can be found at working group level and that these positions in turn pave the way for negotiations on higher levels.

Council Presidencies – Becoming a Major Player

The EU Council Presidency opens a window of opportunity to play a larger role both on the European and on the international scene (*cf.* Broman & Rosén 2001, Elgström 2003). The member state holding the Presidency plans and sets up all Council meetings, from working groups

level to Ministerial level, and also participates in meetings with other EU bodies' representatives. Researchers (*cf.* Nuallain 1985, Kirchner 1992, de Bassompierre 1988) tend to portray the Presidency *either* as an administrative task – the legal base only covers an administrative role – claiming that the agenda is already set when a new country enters the chair *or* as a chance to exercise leadership and make a political difference (Broman & Rosén 2001). One frequently used phrase is 'responsabilité sans pouvoir' (Dewost 1984: 31). However, as the analysis of transparency and Sweden will show, the Presidential position opens up for strategic action. By using three concepts to discuss the agenda-shaping powers of the EU Council Presidency, Tallberg stresses the influence potential and describes the Presidency as a chance to 'shape the agenda' (2003). Firstly, a Presidency can introduce new issues on the agenda (agenda-setting). Secondly, a country can emphasize different questions already on the agenda, in other words give them higher or lower priority (agenda-structuring). Thirdly, it is possible to choose not to place an issue on the agenda or even exclude it (agenda-exclusion). Certain questions are already in the 'pipeline' or placed on the European political agenda, and by providing information and solutions to these problems it is possible to influence questions even on a high level. From this perspective, it is possible to talk of *the power of the chair* (Tallberg 2004, Bunse 2006). With a knowledge advantage in the sense of having the right information about a question before it turns up on the main agenda or by providing information to place a question on the agenda, Presidencies can influence not only the agenda-setting *per se* but also the outcome. The information advantage that comes with holding the Chair – in the preparatory phase, during the Presidency, and also afterwards – creates more influence capacity than most researchers studying integration in the European Union claim (Nuallain 1985, Kirchner 1992, de Bassompierre 1988). In brief, Council Presidencies form an important institutional possibility that member states can take advantage of. In this thesis, especially in the Transparency issue area, I will analyze how this is/can be done.

I have argued that the Council is an important negotiation arena (more correctly, it consists of several arenas). Secondly, I have claimed

that Council Presidencies are important institutional possibilities. The last part of my argument is that the Commission and also the EP can be partners or allies of member states trying to influence decision-making and agenda setting. Before these stipulations are elaborated further, the Commission and the European Parliament will be commented upon, both as organizations and possible partners for member states.

The Commission

Article 169 in the EC Treaty describes the Commission as ‘Guardian of the Treaties’ and grants this unit ability to challenge member states for non-compliance with EC law before the ECJ. Intergovernmentalists have explained increased powers of the Commission and of the European Court of Justice (ECJ) by focusing on governments as principals delegating executive and judicial powers to EU units to ‘reduce transaction costs’ (Hix 2002: 259). An alternative explanation is given by neo-functionalists and historical institutionalists, who argue that ‘strategic behaviour by the Commission and the ECJ coupled with incomplete information on the part of governments allows these agents a high degree of discretion to shape policy-outcomes’ (Hix 2002: 260, Moravcsik 1993).

On a number of first pillar issues, the Commission has formal agenda-setting rights and decisions are taken with qualified majority (QMV) in the Council. The only way for the Council to turn down the Commission’s proposal is by unanimous vote. The sole right to initiate legislative proposals gives the Commission a considerable amount of power, according to for example Thomson and Holsti (2006: 392). Thorhallsson writes, however, that the greatest influence of the Commission is not located in its formal agenda-setting powers but rather in its ability to become a leader and set the agenda informally by tabling new and innovative proposals (2000). His argument, shared by other researchers (Goetschel 1998, Griffiths & Pharo 1995, Hanf & Soetendorp 1998), forms the basis for many discussions about the Commission as an important ‘ally’ for small states. In an article about the Commission’s role and influence under co-decision procedures, Charlotte Burns argues that the Commission ‘exercises both agenda-setting and gate-keeping power’ (2004: 1). These arguments add

up to the assumption that the Commission is an important ally for small states, and also to the idea that member states who can be influential by presenting ideas early in the decision-making process. 'The Community method' means that the Commission has the formal policy initiative in the preparatory phase and operates a system of advisory committees and expert groups, through which it gathers opinions about policy initiatives, often based on ideas put forward by national governments. In addition, the Commission services include officials who are seconded experts from the member states, to ensure that expertise and 'proper' knowledge is fed into the deliberations.

National experts in the Commission can become important for member states with policy ideas, and national legislation can, through these persons, serve as a role model in the preparation of new EU legislative proposals. The Commission's proposals are pre-negotiated in expert committees, Wallace writes that 'this channel of expertise provides opportunities for members governments to feed their preferences into the process in an activist way, if they so choose. After all one of the skills of successful negotiators is the ability to shape the foundations of the proposal on the table' (2005: 29, see also Kassim *et al.* 2000, Larsson 2003). During the draft period the Commission consults member states and different interest groups. In the working committees, national experts are present. A number of studies show that socialization on EU level plays a much smaller role for the formation of interests than the national social arena. This has been demonstrated by Liesbet Hooghe, who has analyzed the attitudes of Commission officials in an extensive qualitative study (1999, 2005) and by Beyers and Dierickx (1998), who have used quantitative methods to study the attitudes and interest formations of national officials participating in EU Committees. National representatives and experts and/or lobby groups with similar interests cooperate in the expert groups and can influence the initial Commission proposals. This explains why good contacts with the Commission are claimed to be important for member states.

As legislation is drafted by the responsible Directorate General (DG), the Commission officials working with a specific issue are obviously

important targets for member states and lobby-groups trying to influence the initial proposal. The responsible Director-General and the Head of Unit for a special technical field, such as openness and access to information or the use of chemicals, is also an important person to have contacts with. These are obviously important targets both for member states and for lobbying groups (Koepl 2000: 75). According to Jeffrey Stacey, who has written about the Commission's informal contacts with the European Parliament and with the Council, 'the primary inter-organizational battle is fought between the Parliament and the Council', but 'the Commission has faired its own game of inter-organizational dynamics' (2003: 936), thus indicating that the Commission is far from a united player in EU negotiations. Stacey's argumentation suggests that the Commission can be an *ally or an opponent* depending on whether interests of the Commission are at stake or not (which should not come as a surprise to anyone familiar with EU affairs).

In theory the Commission should behave independently of the member states, but in practice the Commission is depending on the member states for information and expertise. Consistent with governance and network perspectives, there is a continuous dialogue between these actors. Member states also try to influence their national Commissioners and intervene in the internal dialogue of this body. Having a (national) Commissioner is seen by many member states as a source of information and also as insurance for national interests to be taken into consideration. As the empirical analysis will illustrate, there are many contacts between civil servants, politicians and key individuals within an issue-area (*i.e.* the group of people working with a particular issue, such as new chemicals legislation). Of relevance for the questions in this dissertation is a) how important contacts with the Commission are compared to contacts with other EU bodies, and b) if these contacts are important only during the initial stages of the decision-making process or also during later stages of co-decision procedures?

After the Amsterdam Treaty and the introduction of co-decision procedures, the Commission has been 'put in a situation of structural disadvantage in comparison to previous legislative procedures' because

of less formal power in the later stages of decision-making, claims Rasmussen (2003: 1). Garrett has written: 'The result of this institutional innovation (the conciliation committee) is that the Commission's preferences need not to be taken into account because it is structurally unable to affect the decisions of the Parliament and the Council' (1995: 303). Garrett concludes his line of argument by saying that 'under co-decision, the Commission is effectively taken out of the game before the real bargaining over policy begins' (1995: 305). Rasmussen argues that although the Commission in relative terms has lost formal powers, the Commission in absolute terms still is an important actor in EU decision-making (2003: 1). Malpractice and distrust led to the resignation of the Santer Commission in 1998 and later to accusations of maladministration. It is interesting that the European Parliament has gained power at the same time as the Commission has been questioned and criticized. Common wisdom says that countries wanting to influence the agenda and EU decision-making should work closely with the Commission. This aspect is something that needs to be verified in the empirical analysis, but as initiator of legislative proposals, the Commission obviously has a very powerful position. According to some scholars, the inter-institutional power balance between the Commission and the European Parliament has shifted to the advantage of the later unit due to changes in the treaties and to intra-institutional events (Scully 1997, Crombez 2000). Pollack even argues that these new EP powers have made it possible for the Parliament to control the Commission (1999: 10). These changes add to the picture of a less central role for the Commission in co-decision procedures at the same time as the European Parliament has increased its powers. From a strategic perspective, member states ought to adjust to these changes and, next to the Commission, turn towards another potential 'partner' – the EP.

The European Parliament

There are few empirical studies on the relationship between member states and the EP, although general knowledge about the role of the Parliament can be found in Steunenberg and Thomassen's *The European Parliament*.

Moving towards democracy in the EU (2002), or in *The European Parliament* by Corbett *et al.* (2000). Initially the EP was a consultative body, but fifty years after the creation of the European Coal and Steel Community, the Parliament has legislative powers. Hix *et al.* even claim, 'that the EP is one of the world's more powerful elected chambers' (2003: 192). EP power increased already in the late 1980s with the Single European Act (SEA) and during the 1990s with the Maastricht Treaty (*cf.* Peterson & Bomberg 1999, Katz & Wessel 1999, Corbett *et al.* 2000). The 1987 SEA marked the beginning of a new partnership between the Council, the Commission and the EP, giving the EP both legislative and agenda-setting powers (*cf.* Neuhold 2001). Hix concludes that 'agenda-setting through discretion in rule interpretation' (2002: 259) is common for the EP's actions to increase its powers in the legislative process. These activities are taking place in the Standing Committees, the 'legislative backbone' of the EP (Westlake 1994a: 191). EP Committee meetings are open to representatives from other EU units and also to the general public, although committees can decide to divide an agenda and have partially closed sessions, which are not open for the general public. Council Presidencies as well as representatives from the Commission are invited to these meetings. Officials from the Council Secretariat are also present taking notes and monitoring the voting. Afterwards, this information is reported in the Council. According to Neuhold, this tactic contributes to shaping the Council's negotiating position with the EP (2001: 9). However, the EP is neither admitted to Council deliberations nor present when the Commission is preparing an initiative. Rules and procedures of the EP Committees make it possible for lobbying groups, representatives of the Commission and of the Council to participate and have insight into the EP decision-making procedures. Thus Members of the European Parliament (MEPs) in leading positions are important collaborators for member states trying to influence EU decision-making.

There are 785 MEPs (as of 2007) who vote in plenum after preparations in one or several of the 20 permanent committees. These committees reduce complexity – an important task in multilateral negotiations – and the interaction between party groups (proportionately represented, 60-

100 members and deputies) is a characteristic of these committee sessions. An elected MEP – the Rapporteur – is responsible for presenting a report on, and a comment to, the Commissions initiative (the committee has a right to suggest amendments). In the committees majorities are created and the party group representatives – shadow Rapporteurs – report back to each party group. The Rapporteurs act as chairmen in the negotiations and suggest amendments in the text proposed by the Commission. The key players in these committees are, next to the Rapporteur(s), the committee chairman, vice-chair, shadow Rapporteurs and Committee co-ordinators (for an analysis of these committees, see Neuhold 2001, Shackleton 2000). Leading positions in these committees are distributed according to the d'Hondt procedures, a system giving political groups a chance to choose which Committees they prefer to be chair holders in. These positions are distributed based on the size of the group. Political groups can save points derived from this system in order to get/improve its chance for a dossier of particular importance (Neuhold 2001, interviews with MEP Schörling and civil servant at the Swedish PR in Brussels).

There is an EP Committee Secretariat supporting the Rapporteurs with scientific and technical information and advice. National party affiliation scores high for MEP's loyalties. In second place comes the party group in the European Parliament (interview with MEP, January 2006). MEPs are not organized according to nationality; instead they are organized in party groups with the Christian democrats/Conservative and the Socialist groupings dominating, with the liberal group as a middle category. The domination of two blocks spills over into the work in the committees and to the disposition of chairmen and rapporteurs (Pollack 2005: 32). The impact of national interest in EP deliberations has been difficult to generalize about. However, when the budget is discussed, negotiations tend to be more dominated by national interests according to MEPs (interviews, Brussels). The features of the EP very much resemble the US Congress with strong committees and heterogeneous party grouping (Mamadouh & Raunio 2003: 334).¹¹

11 For more information about standing Committees, working parties and, Committees of inquiry and temporary committees, see Larsson 2003.

Interest groups are working closely with the MEPs. In an evaluation of these contacts, Wessels found that each MEP has 109 contacts with different lobbying groups on average each year (1999: 109). These contacts are beneficial for both parts, as lobbying groups are trying to influence the MEP's position on a key issue by providing the Parliamentarian with an analysis of the Commission's initiative. Thus, these contacts are of importance for both parts, and many MEPs have their own networks within the issue-areas they are working within, thereby having access to information and debates regarding controversial issues.

As a collective actor, the EP wants to participate in the decision-process *vis-a-vis* the Council, which can potentially be an institutional possibility for member states if they invite the Parliament as partner. On an individual level the Chairperson in the Standing Committees, the party group coordinators, and the Rapporteurs are, according to Larsson, important when forming an EP opinion (2003). The agenda-setting role and the importance of these key individuals for the formation of an EP opinion have, according to Pollack 'a tangible impact on what policies the EU can adopt' (2005: 32). These studies indirectly support one of the main arguments put forward in this thesis, namely the importance for member states to establish good contacts and cooperate with the European Parliament.

EP influence increased already under Maastricht (article 189b) and 'the specific characteristics of the distributive and regulatory policies covered by codecision' (Shackleton 2000: 325-26) made it easier for the Council and the EP to work together.¹² According to Burns, this has 'led to a broad consensus across the literature that the Commission's formal legislative role has been diminished by the introduction of codecision' (2004: 4). Shackleton writes:

Both in quantative and in qualitative terms there is strong evidence that the Parliament has made a significant difference to the shape of Community legislation, a difference that goes well beyond what could have been achieved

12 In the Amsterdam Treaty (1 May, 1999) co-decision is extended from 15 to 38 areas and spread in 31 articles.

under either the consultation or co-operation procedures. Codecision has created a new dynamic within the legislative area of the European Union (2000: 327).

When analyzing the relationship between Council and EP in the final stages of decision-making, he found that the Commission has little input in later stages of negotiating an agreement (2000: 334-6). Article 189b of TEU reduces the agenda-setting powers of the Commission, and EP amendments no longer go back to the Commission before handed over to the Council. The EP can even initiate a proposal if a conciliation committee is convened (Garrett & Tsebelis 1996, Shackleton 2000: 35). In sum, these are good reasons to focus on the relationship between the EP and member states, including channels through and with the Council. Constitutional reforms authorized by governments have increased the Parliament's legislative and executive appointments *de jure* powers (Pollack 1999: 261).¹³ This is true even if this has been done by conscious delegation of powers from the member states or is the result of an EP offensive for increased power over EU decision-making. *If* these changes represent a deliberate change initiated by member states, they should be aware of the fact that the EP has become (more) important in the decision-making process. The empirical analysis will illustrate Sweden's perception and awareness of these changes, something that is reflected in the strategies of government representatives and in the contacts these key individuals have with the different EU bodies.

In the section(s) above, it has been indicated that the EU bodies play different roles in the decision-making process. In the section below, formal rules and procedures surrounding these units will be discussed. The last part of this chapter contains an overview of these procedures, which is included to illustrate where and how member states interact in the Council but also how member states as individual actors may cooperate with the Commission *and* with the European Parliament.

13 1958, the Treaty of Rome = consultation procedure. 1987, the Single European Act = co-operation-procedure (article 252 [ex 189c]). 1993, the Treaty of Maastricht = co-decision-procedure article 252 [ex 189b]) - introducing the conciliation committee.

Stages of Decision-Making

The 1986 SEA and the 1992 Maastricht Treaty mark the beginning of a power shift to the advantage of the EP, a trend that was reinforced by the Amsterdam Treaty. When analyzing European decision-making, many attempts have been made to identify different stages or phases of these processes. Often three different phases are distinguished: the policy development phase, the policy decision phase, and the implementation phase (*cf.* Richardson 1996, Larsson 2003, Sannerstedt 2005, Wallace & Wallace 2005). During the first phase, the Commission is claimed to have a crucial role, as it often starts by its setting up an expert group (committee) when drafting the text. This, however, is no formal requirement and it is up to the Commission and its General Directorates (DGs) to decide how to proceed (Larsson 2003). In reality these expert committees and national experts have become an important input when drafting a text. In the next phase – actual decision-making – key roles are played by the Council and by the EP. If the Council and the EP cannot agree, a conciliation committee with an equal number of participants from both parties is formed. These procedures are shaping the negotiated order and are also decisive from a member state's perspective when acting strategically in order to be influential. In the implementing phase of a decision, the Commission once again has an important role when setting up a committee (so-called comitology committees). Each member state is also represented in these committees.

In this dissertation I have chosen not to include the implementation phase. Focus will instead be on (I) an initial phase of agenda setting and a first Commission initiative; (II) an intermediate phase where the relevant issue is handled simultaneously in the Council and in the EP, under guidance of the Commission, *and* in the member states on government level; and finally (III) the phase of reaching an agreement between the Council and the EP. These phases or stages of decision-making are simply labelled stage I, stage II, and stage III.

First Pillar Issues – the Decision-Making Process

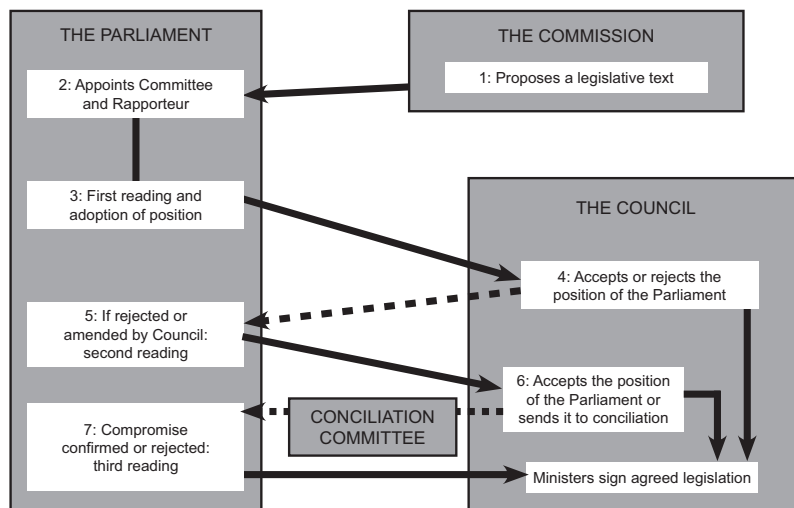
With the Maastricht Treaty (implemented in November 1993), *co-decision* procedures (Art. 251 TEC, ex Art.189b EEC) were introduced, thus making the Council and the EP joint legislators. Later these procedures were revised in the Amsterdam Treaty of 1997, where the EP got a third reading and a conciliation procedure to facilitate negotiations between the Council of Ministers and the EP (*cf.* Rasmussen 2003, Burns 2004, Torres 2003, Wallace 2005: 66).¹⁴ The (at the time) new co-decision procedures were analyzed in an article in *Business Europe*, and the changes found in article 251 of the Amsterdam Treaty were summarized as follows (1999: 6-7):

- The possibility to end the legislative process after the first reading in the Parliament and Council, provided the latter accepts all the amendments put forward by the former;
- introduction of stricter deadlines for conciliation, which must start no later than eight weeks after completion of the Council's second reading;
- elimination of the so-called third reading by the Council, which enabled it to impose its common position when conciliation failed;
- if MEPs at their second reading do not modify the Council's common position, this is considered adopted without further action by the Council;
- the EP's 'intention to reject' opinion at second reading, which was rarely used, has been eliminated.

14 The SEA, the Treaty of Maastricht and the Treaty of Amsterdam introduced environmental policy into the Treaty on the European Union (TEU) and the Treaty Establishing the European Community (TEC). In article 175 of the TEC, three legislative methods are specified: the cooperation procedures, unanimity in the European Council and the co-decision procedure for general action programmes. Most legal instruments take the form of European directives. 'through a multitude of different channels such as the European Convention, the IGCs, treaty changes and referenda pr the European co-decision process, new common rules are increasingly the subject of multi-level political negotiation, allowing for increased participation of many different actors' (Torres 2003: 313).

This has arguably changed the balance between these units, as emphasized when these bodies were discussed earlier in this chapter. The figure below illustrates the decision-making process and the interaction amongst the co-legislators.¹⁵

Figure 1: The Political Process



Source: Schörling 2004: 138.

Within first pillar issues, according to article 251 of the Amsterdam Treaty (formerly article 189b), the Commission proposes a legislative text (1.). Next, the EP and the Council in the co-decision procedure together adopt or change the legislative document. The EP chooses a committee

15 Many different rules of policy-making are applied and for an excellent overview of these different processes, see Helen Wallace's chapter 'An Institutional Anatomy and Five Policy Modes' in the volume *Policy-Making in the European Union* by Helen Wallace, William Wallace, and Mark A. Pollack (2005).

(or several committees) and a Rapporteur (2.). In a first reading, the EP standing committee suggests amendments to the Commission and adopts a position (3.). Then the Council of Ministers either approves (the so-called fast track procedure) or rejects the Parliament's opinion. The Council can also propose changes in the EP amendments and of the legal text. This can be done with qualified majority (4.). The EP can reject a proposal, and thus has potential power to force the Council and Commission to agree to its amendments in order to prevent legislative failure (*cf.* Burns 2004: 4).

If the text is not approved after the first reading, the Council adopts a position and the EP delivers a (new) position (5.), based on an absolute majority of its members, or suggests changes based on its standing committee and the work of the Rapporteur. The Council can either adopt the text with a qualified majority or unanimously modify the EP's suggested changes. Unanimity is rare at this stage. A compromise agreement is often reached. The formal decision is taken on Ministerial level, but in reality most of the negotiations have taken place in the working groups and in Coreper. If the Council rejects the text, it is sent to the Conciliation committee (6.), where representatives from the Council and the EP (the Commission is supposed to act as mediator), for a period of maximum six weeks, try to find a compromise in the form of a new legislative text (7.). After conciliation, the Parliament is invited to confirm this agreement (the third reading), after which the Ministers sign the agreed legislation. In case of complete negotiation failure, the Commission must present a new proposal and the decision-making process starts from the beginning.

The rules and procedures within first pillar issues stimulate compromises during the second reading, since all actors want an agreement rather than going into conciliation, as the product often becomes a poor negotiation outcome for most actors involved, resulting in an unclear and unbalanced legislative text in need of further modifications (a common opinion of civil servants and politicians during interviews in spring 2007, both in Brussels and in Stockholm). Michael Shackleton writes that '[i]nside the conciliation procedure, a process of exchange

has developed: both sides are ready to make concessions, but at a price that only becomes clear in the course of each set of negotiations' (2000: 331). Instead of a Conciliation Committee, Trialogue meetings often take place between the Commission, the EP, and the Council. During these informal meetings the different positions are negotiated. In the empirical analysis, this forum will receive special attention. During the Spanish Presidency in 1995, the Council and the EP agreed on the new form of pre-negotiations – preparatory Trialogues with a small number of participants. The Parliament is represented by the Committee responsible for the dossier as well as the Rapporteur, the Council is represented by the Deputy Permanent Representative of Coreper I from the member state holding the Council Presidency, and the Commission is represented by the Commissioner in charge of the dossier or the Director-General responsible for the draft legislation (Garman & Hilditch 1998, Shackleton 2000: 334).

Council Presidencies have contacts with responsible EP committees, often through the Minister in charge of a specific dossier. The Amsterdam Treaty gave no specific mandate for EP representatives to negotiate with the Council and with the Commission; now these contacts are taken on a more informal basis during the first reading. Once the Council has adopted a position, the issue is returned to the EP for a second reading. At best, the EP amendments are accepted by the Council, otherwise the process turns into conciliation procedures. In a conciliation committee, the Council and the EP delegate an equal number of participants, and the Commission is represented by the Commissioner in charge of the dossier. 'Given the fact that one or two civil servants normally accompany each Council representative and several advisors support each member on the EP's side, more than 100 people can be present when the committee meets' (Neuhold 2001: 12). Both sides have to make concessions. Considering the problems of the very large conciliation group, Trialogue meetings are important arenas for dispute settlement. 'These sessions, which are part of neither the Treaty nor the EP Rules of Procedure, have been created to an extent under the motto "necessity is the mother of invention". They were a response to the gap left in the Treaty between the

Council's second reading and convention of the conciliation committee' (Neuhold 2001: 13).¹⁶

Do these changes mean that the EP controls the legislative process? Depending on whom you ask, different answers will be given. Intergovernmentalists argue that member states' governments control the process of integration and continue to focus on the nation states. Neofunctionalists claim that it is the European elite, as expressed mainly by the Commission, that promotes integration (Tsebelis *et al.* 2001: 574). As a consequence, the European Parliament can be defined either as a new elite in the European integration process or as a less important actor in comparison to the Commission. Finally, Tsebelis *et al.* also discuss the EP engagement in the debate about integration and connect this to the 'democratic deficit' (*ibid.*). This indicates that the main role of the EP is to increase legitimacy. Most authors would argue that the EP has agenda-setting powers as well as a key role in co-decision procedures (Scully 1997).¹⁷ However, when other decision-making procedures are used, the Council is much more central, reducing the role of the EP.

It is the Commission that makes a proposal to the Council. This proposal aims at the support of the most favourable (for the agenda setter) coalition inside the Council. Even in the co-decision procedure – where agenda-setting powers are vested in the Commission and indirectly in the Council – coalition formation in the Council is constrained. The Council has to adopt a text that will not be rejected by the Parliament, which increases the power of members of the Council whose preferences are close to those of the Parliament, and weakens the hand of the members that are further away (Garrett & Tsebelis 1996a: 294). Hence, a reasonable

16 "The first formal Trialogue dates back to the negotiations on SOCRATES and 'Youth for Europe' under the German Presidency. They did not become the usual practice, however, until the Spanish Presidency, in the second half of 1995. 'Triologue meetings have now become a standard feature of the conciliation process, with each side being able to negotiate more freely and openly than is possible in conciliation' (Neuhold 2001: 14).

17 To get a grip on the 'real' influence, actual amendments and the incorporation of these changes in the final proposals would have to be analyzed, something which goes beyond the scope of this analysis.

stipulation based on these increased EP powers, is that member states have reasons to become more interested in interacting with the EP. When cooperating, the EP and the Commission share agenda-setting powers. If they have similar preferences and make a proposal that a QMV of the Council of Ministers approves of, a decision can be taken during the first reading. In addition, a sceptical Commission does not work for the benefit of a stakeholder unless another partner is found. Therefore, the most important partner in this case, given the decision-making procedures, seems to be the EP. Hence, it will be interesting to analyze, based on Swedish activities, if member states act accordingly or still focus on the Commission and/or on negotiating in the Council.

Summary

In this chapter previous research about the Council, Council Presidencies, the Commission, and the EP has been presented. It has been argued that member states' contacts with the EP are equally or perhaps more important than having contacts with the Commission. When member states have strong national interests and are trying to influence European decision-making, cooperation with different bodies on different arenas are features of ongoing negotiations. In co-decision procedures, these contacts and meetings are taking place on several occasions and in several different places. This process is complex and therefore focus has been narrowed to three stages: (I) the initial stage, (II) an intermediate stage where the issue is handled simultaneously in the Council and in the EP under guidance of the Commission *and* in the member states on government level, and finally (III) the stage of reaching an agreement between the Council and the EP. The rules and procedures of co-decision generate institutional possibilities. The very same structure also provides network opportunities, *i.e.* chances to cooperate on a more informal basis with relevant actors. These two concepts will be discussed in the next chapter.

INSTITUTIONAL POSSIBILITIES AND NETWORK OPPORTUNITIES

‘Institutionalism’ denotes a general approach to the study of political organization and governance, a set of theoretical ideas and hypotheses concerning the relations between institutional characteristics and political agency, performance and development.

Johan P. Olsen (2007: 3)

I will in this chapter sort out the theoretical foundations, explain why a rationalist version of institutionalism has been chosen, and show how the theoretical framework is intended to be used in the empirical analysis. This chapter starts with an overview of institutionalism and different versions of institutionalist approaches. It continues with an overview of network theory. In both parts, I will discuss firstly, what institutional possibilities consist of and, secondly, why and how network analysis (and the concept network opportunities) can contribute to the ‘soft’ rational institutionalist approach that is used.

Institutions provide a framework within which actors interact and share knowledge, and where their expectations are shaped (Aspinwall & Schneider 2000). These institutional arrangements structure relationships amongst actors. In this dissertation, the main focus is on member states’ strategic action. I choose to define institutions as ‘a set of formal rules and procedures [...] that structure relationships’ (Aspinwall & Schneider 2000:11). Aspinwall and Schneider have included informal practices in their definition (but that part is not quoted). Although these practices are important, this study is focusing mainly on formal rules and procedures – institutional possibilities. There are numerous definitions of

the concept of institutions (Lundquist 2007, Crawford & Ostrom 1995, North 1990: 3). One of the two main categories of institutional definitions includes those, like the definition in this dissertation, that focus on formal rules. The other category includes informal rules like norms, taboos, sanctions (non-legal) and habits (Mantzavinos *et al.* 2004: 77, Lundquist 2007: 199). In definition of public institutions, formal rules are often chosen (*cf.* North 2005: 48). These structures can enable and constrain actors. They are seen as *possibilities rather than constraints*, for example, if an agent has a prepared (framed) agenda, presents powerful ideas, and can provide expertise to support its cause. Informal *norms* are in many institutional accounts included in the definition, but I will, instead highlight the importance of informal *contacts*.¹⁸

In order to analyze strategic choices made by states and/or state agents, an approach is needed, which also explains why the focus is narrowed to formal rules and procedures when defining institutions. However, if a very strict rational analysis is chosen (*cf.* Lake & Powell 1999), network analysis and some elements of negotiation theory are difficult to include in the analysis. The solution is to elaborate on a 'softer' version of institutionalism. In order to illustrate how formal institutional patterns and formal/informal contacts are combined, the two key concepts will be used. Structural arrangements are necessary for organizing contacts/networks and these networks, in turn, are needed in order to create the very same patterns (Lundquist 2007). Institutional possibilities are treated as an overarching concept since these arrangements are a prerequisite for network opportunities and thus for informal contacts. I agree with Thomas Schelling's argument that actors can behave rationally, with the intention to have an effect on the outcome, although this might not always be the case. It is therefore interesting to analyze these strategies as the main phenomenon. As a result, a rational institutionalist approach has been combined with network analysis.

18 Informal norms will be dealt with when discussing mediation in chapter four.

Institutionalism

During the 1980s the earliest developments of institutionalism emerged. March and Olsen describe the two underlying assumptions: institutions are a) more than the reflections of underlying social forces, and b) do more than produce a neutral arena for political action (1995). This has led to the development of several different versions of institutionalism where the most well-known versions are: historical institutionalism, sociological institutionalism, and rational institutionalism (Hall & Taylor 1996, Aspinwall & Schneider 2000: 9, Hay & Wincott 1998). Institutions evolve gradually out of a process of institutionalization which

involves the development of practices and rules in the context of using them and has earned a variety of labels, including structuration and routinization, which refer to the development of codes of meaning, ways of reasoning, and accounts in the context of acting on them (March & Olsen 1998: 948).

A recent example of an institutionalist approach with sociological connotations can be found in a volume called *Europe in Search of Political Order*, by Johan P. Olsen (2007). He argues that ‘institutions have a partly autonomous role’ and explores the explanatory power of institutions *per se* without denying the importance of human agency (*ibid.* 3-4). This very much resembles an analysis based on a structure-agency approach, proposed already by the sociologist Piotr Szotompka in his work *The Sociology of Change* (1993). From a social constructivist perspective, agents and structures are mutually constitutive, and established norms for cooperation would be central in an analysis of member state influence in the EU (Szotompka 1993, Risse *et al.* 1999, Risse 2000, Finnemore & Sikkink 2001). Sociological institutionalism, the ‘logic of appropriateness’ and more constructivist theories have been used to explain the negotiation behaviour of members, for example of the Coreper (Lewis 2005). As mentioned, this organ under the Council is composed of senior servants and career diplomats, who meet weekly. According to Lewis (2002), this gives us reason to believe that norms about cooperation and a consensus-oriented climate have evolved – something that has been verified by interview sources from the Swedish Permanent representation

in Brussels. On the other hand, the level of conflict, according to the same interview sources, is much higher on working group level and also during Council meetings. This, in turn, indicates that national interests are of importance and that those ideas, despite norms about cooperation and consensus, are promoted by member states.

Constructivist and sociological institutionalist approaches stipulate that interests are socially constructed in addition to (or even instead of) being products of material interests. However, these constructivist insights do come at some cost. Identifying cause and effect becomes more complex. To some extent, I believe that we can find co-variation and analyze rather fixed interests when, as in the Swedish case, strong national concerns are at stake. This also means, however, that we have to argue that agency *can* be superior to structure – and that actors have negotiation power – even if it cannot be ruled out that these two in reality sometimes are interdependent. Historical institutionalists put norms of conduct and traditions of interaction – ways to cooperate developed during years of negotiations and joint problem-solving – at the centre of the analysis (Aspinwall & Schneider 2000: 9, Hall & Taylor 1996, Hay & Wincott 1998). A central concept for historical institutionalist is path dependence,¹⁹ often used to describe and analyze evolving and rarely changing systems and patterns of behaviour. Obviously, since I am more interested in informal networks and contacts than in norms and path dependency, such an approach is of less use. In addition, I want to analyze member states' strategic behaviour in response to changes of the EP role in first pillar issues. The main contribution of historical institutionalism in this analysis is that it can explain why some states have not (yet) started to work with the European Parliament and also why these changes of behaviour take time. In addition, historical institutionalism

19 More about historical institutionalism and path dependence can for example be found in Bulmer & Lequesne (2005). On page eight, they write: 'Politics at the EU level is no longer seen as a series of strategic decisions made by national governments but as a "path-dependent" process with a series of critical situations and unforeseen consequences. [...] Institutions at supranational and national levels should no longer be regarded only as instruments in the service of outside pressures but as structures capable of integrating experiences and norms over the course of time.'

can be used to analyze how formal and informal institutional patterns have evolved, which is an important background factor to what I intend to analyze.

Rational strategic action in a complex web of interaction with other agents makes it necessary to discuss negotiations and also how power resources affect the use of strategies. From my perspective, focusing on new institutional rules within first pillar issues and actors' response and adjustment (or lack thereof), both a sociological and a historical institutional approach would simply mean that I would miss the 'target', which is to increase knowledge about member state representatives' strategies to promote national self interest.

For 'true' rationalists identities and interests are fixed (instrumental rationality), and state agents are motivated by 'logic of anticipated consequences and prior preferences' (March & Olsen 1998: 949). In extreme, this would mean that these patterns of norms and sense of belonging represent calculated behaviour amongst rational individuals. From an actor-centered perspective 'it is frequently the political agency of actors which determines outcomes as much or more than the rules or structures that constrain them' (Peterson & Bomberg 1999: 255). This means that formal rules are of interest by setting the scene for the politics of influence, but at the same time *it is the behaviour, planning and interaction between agents that decide the outcome of an agenda-setting activity*. This fits nicely into a rational institutionalist approach where:

Actors behave in a strategic manner, adapting their strategies to the assumed actions of other players. States desiring gains from cooperation, therefore, create and maintain institutions to lower transaction costs associated with inter-state activity, such as incomplete contracting, imperfect information, and the inability to monitor and enforce agreements. Cooperation, therefore, is instrumental, and not necessarily a socially-integrated and habitual practice (Aspinwall & Schneider 2000: 11).

My choice to focus on rational institutionalism does not mean that I have followed a typical methodology of such an approach. Rational choice new institutionalist theory is often associated with quantitative material

and positivist methods. The dominant mode of research is to see how formal rules of decision-making shape strategic interactions between EU bodies and member state representatives. These agents are 'assumed to be strategic utility maximizers seeking to resolve collective action problems' (Burns 2004: 2). Often negotiations are seen as non-cooperative games and win-lose type of scenarios (Garrett & Tsebelis 1996b, 2001). At the same time, more qualitative case studies by, for example, Shackleton (2000) have illustrated the importance of focusing more on informal contacts and on behavioural norms in decision-making (*cf.* Elgström & Jönsson 2005). In my theoretical framework, the 'bounded rational choices', to borrow Herbert Simon's expression, that member state agents make are based on formal possibilities, found in EU rules and procedures, and in the sharing of information and the informal contacts amongst members of various networks.

Softer institutional rationalists 'pay attention to how [...] rules are applied, interpreted and moderated through the actual behaviour of actors with different capabilities in the decision-making process' (Rasmussen 2003:2, see also North 1990). Knight elaborates in an illustrative manner the difference between softer institutional approaches and the use of formal models, to analyze strategic action. He argues that contrary to the formal models of co-decision, softer, rational institutionalists do not merely examine the actors as a product of their formal institutional powers, such as their voting power, but also take their possession of strategic resources into account (Knight 1992, chapter 5). Thus, the institutions will not determine the behaviour of an actor but rather give it a certain room for manoeuvre within which it can use its resources strategically (*cf.* Knight 1992: 58-59). In addition, strategies contribute to member states' relative power which, in combination with power derived from more formal arrangements that are being used strategically, can alter the power balance between different actors. To conclude, this softer approach allows for an analysis of both formal arrangements and strategic action on behalf of member states.

Taking Advantage of Institutional Possibilities

With a rational institutionalist understanding of the relationship between member states and EU bodies, *Institutional possibilities* are *rules and procedures* that give member states openings to promote national interests. Institutional possibilities are thus *formal structural arrangements that can enable state agents*. Needless to say, the complexity of the process and the multitude of actors are making it difficult to act strategically. Yet, I argue that, when core national interests are at stake, *member states try to do as much as they can* to influence agenda-setting and EU decision-making. The next section provides ideas about where these arrangements (rules and procedures) can be found. Rules and procedures within first pillar issues are opening up for cooperation, firstly, with the Commission and, secondly, with the European Parliament. Other member states as well as civil servants in the Council can be approached in the Council setup with working groups, ambassador meetings and in the Council of Ministers. Thus, allocating strategic action towards the Council is a third important part of the institutional setting.

Before the Commission writes an initial proposal, during high level meetings, the most important being European Council meetings, member states have often jointly decided that actions need to be taken within a specific issue-area. In relation to transparency, it was written into the Amsterdam Treaty that a new legislation representing more public access to documentation was needed. A deadline, May 1st, 2001, was also agreed upon. The EU chemicals legislation had been outdated due to a number of unintended consequences that made it difficult for new chemicals products to enter the market. The same system caused unintended market advantages for products that had been used before 1981. In addition, no systemized evaluation or supervision of chemicals existed. I will not go into more details here, but instead discuss how member states can take advantage of institutional possibilities during stage I.

Firstly, member states can, together with other member states, discuss these issues in the Council and ensure that the Commission starts preparing a proposal. In the expert groups appointed by the Commission, where these preparations are taking place, expertise and national knowledge

– for example national legislation that can serve as a role model for EU legislation – are essential. The Commission also gathers material about legislation in the different member states and maps out potential differences of these legal systems. By taking on a leading role in these discussions, member states have a good chance to influence agenda-setting. National experts can be placed in the Commission's administration and in the DG responsible for a specific area. Obviously, *member states allocate their resources and activities towards the Commission if they believe that this is a good way to influence EU legislation.*

Secondly, after the Commission has presented a first proposal, negotiations take place in the Council. Participating in the Council working groups, presenting strong arguments in Coreper, and ensuring that national interests are demonstrated on higher political levels (for example during Ministerial sessions and IGCs) are examples of strategic action. The Council is the main intergovernmental arena. Member states have many chances to use the formal arenas and, in different ways, convince other member states that national ideas are beneficial also for the EU. In this body, the very special institutional possibility is found in the Council Presidency. In the chapter about transparency, Swedish strategies during the country's first Presidency will be analyzed in detail, as this position grants the country holding the chair a unique chance to steer the agenda and monitor contacts between the Commission, the European Parliament, and the Council. An important assumption is that *member states have to take advantage of these formal arrangements in order to influence other actors*, or, more correct, act strategically and *try* to influence others. Without, at this stage, saying more about how this is done, member states' strategic action is understood as *taking on a leading role and being proactive.*

Thirdly, co-decision procedures in first pillar issues open up for a number of arenas where the Council and the EP meet and jointly agree about EU legislation. Cooperating with the EP during first and second reading stages of the decision-making process should also be an important member state activity. In order to play the '3D chess game', as MEP Lena Ek in an interview called the negotiation game (Brussels, March

5, 2007), member states with strong national interest must *know* what is going on in the different EU bodies that are involved in the decision-making process. As Council President, a member state has contacts with key negotiators from all three EU bodies in Conciliation Committees and in the Trialogue. The later conflict-solving and consensus-building arenas have, I argue, become more important from the mid 1990s for two reasons. The most important reason is the greater role that the EP has in first pillar issues due to treaty changes during the 1990s. The other reason is that the multitude of actors, not only member states and the Commission, but also NGOs, are making the EP as co-legislator an important ally (or strong opponent). Thus, the Trialogue ends up at the centre of the negotiations between the two co-legislators. If member states have not adjusted to these changes and instead are acting according to 'common wisdom' (*i.e.* cooperating with the Commission or negotiating in the Council), contacts and cooperation with the EP will not be found in the empirical analysis. However, based on changes in the power balance between the three EU institutions, member states behaving rationally should be cooperating with the European Parliament, trying to optimize connections on all potential formal arenas. In other words, in analogy with the Commission, *member states should allocate their resources and activities towards the European Parliament if they believe that this is a fruitful way to influence EU legislation.*

Common wisdom is that some activities are more important during certain stages of the decision-making process. These rather general ideas about proper activities include: being active early in the decision-making process, trying to set the agenda and influencing the initial proposal in expert committees, and making your national voice heard in *working groups*. To get access to that information and to be able to adjust strategies according to changes in different negotiation fora and within the different EU bodies, *interinstitutional contacts* become important. In reality the Commission, the European Parliament and the Council are seldom unitary actors; instead coalitions are formed and contacts are taken between what can be called issue-leaders or stakeholders in a particular area. These contacts can be important in several ways. Of

particular importance are the cooperative networks between different actors working within the different EU bodies. *From a strategic perspective it seems reasonable to say that it is necessary to simultaneously be aware of institutional possibilities and network opportunities in order to influence the policy outcome.* Participation in formal arenas is based on strategic use of institutional possibilities, and in the next chapter techniques to take advantage of institutional possibilities are presented. First, however, I will next discuss network theory which constitutes an important part of the softer rational institutional perspective used in this thesis. In addition network theory is associated with governance approaches that were presented in the introduction.

Network Theory

While intergovernmentalism has put the main focus on state actors, network analysis has opened up for more actors and a multi-dimensional view on policy making. A network or a policy-network often consists of a more permanent cooperation between public and private organizations and/or agents within a specific policy-area. Keywords to describe the work and structure of these cooperative patterns are partnership; informality; problem-solving; and interdependence (compare Jönsson *et al.* 1998: 32, Warleigh 2006, Rhodes 1997). These features also characterize EU decision-making processes in general, and networks and informal decision-making in the EU have become an important analytical field (*cf.* Peterson & Bomberg 1999, Richardson 1996, Kickert, Klijn, Koppenjan 1997). In response to intergovernmentalism, many scholars, for example Beate Kohler-Koch, have opened up the black box and offered a more multi-layered approach to the understanding of interest formation and EU decision-making (1996, Marks *et al.* 1996). When analyzing the transformation of governance and exploring the impact of integration upon the member states, the focus is often top down rather than bottom up (Kohler-Koch 1996: 360). Another research trend is to focus on Europeanization defined as national adaptation and response to the European arena (*cf.* Ekengren 2001, Johansson 1999).

In theories about policy networks, ‘public policy is the result of interaction between various actors trying to influence the policy process in a direction favourable to them’ (Klijn 1997: 16). The complexity of these processes is central in the analysis. Uncertainty is present to a larger extent here than in more rational choice oriented approaches, where a discussion about ‘bounded rationality’ deals with the criticism about agents not having full information. Network analysis directs attention to data concerning *relations rather than actor attributes*: to contacts, ties and connections, rather than attitudes, opinion, and behaviour of individual actors (however, both are needed to analyze member states and strategic institutional action). These partnerships redirect our attention towards those actors that have common values and interests in a given issue (Rhodes *et al.* 1996). The most common distinction is between policy communities and issue networks – the typology is found in the table below.

Table 1: Rhode’s Typology of Policy Networks

Policy Community	Issue Network
Small membership	Large membership
All members have useful resources	Useful resources concentrated in the hands of subsection of membership
Based on iterated exchange – can lead to further shared interests and values	Based on varying levels of contact
Win-win outcomes	Win-lose outcomes

Source: Rhodes *et al.* 1996

Policy communities are smaller and, according to Rhodes, produce win-win outcomes. Issue networks involve a large number of actors, irregular contacts and more of win-lose outcome scenarios. Warleigh has analyzed

EU alliances as ‘policy coalitions’ (2000) and Sabatier has instead used the term ‘advocacy coalitions’. A common critique of these approaches is that they ‘are helpful metaphors but no more’ (Adshead 2002, referred to in Warleigh 2006: 89). Proponents instead argue that ‘as a device to analyze the processes whereby EU public policy is made, and as long as the concept is applied to non-institutional as well as institutional actors, policy networks analysis is, *a priori*, applicable in EU studies’ (Warleigh 2006: 90). If multilevel governance approaches can help us understand the nature of the EU political system, policy network analysis can help us to understand how EU decision-making works (*ibid.* 91). Christer Jönsson and Maria Strömvik end a network analysis by pointing out ‘[t]hat the role of “process manager” is assumed not only by the Commission, as conventional wisdom has it, but also by the European Parliament and the Council Secretariat’ (2005: 26). I would like to add that also member states and/or coalitions of member states can act as process managers. The linking-pin role of major EU bodies (in a system of nodes and links) is also stressed by Jönsson and Strömvik. This indicates that member state interaction with EU bodies and interaction within these institutional arrangements are important analytical components.

In sum, a fuller understanding of negotiations in the EU requires that informal structures be investigated alongside formal ones. Ward and Williams claim:

Multi-level governance suggests that European integration has led to an increasingly complex, multi-layered polity. On different issues and in different issue areas, changing combinations of supranational, national and subnational actors collaborate and network. Although nation-state executives remain important actors, they no longer monopolize European level policy-making (1997: 446).

No one can (or should) argue that there is not a multitude of actors on various levels in the EU, but the main point here is that contacts with EU bodies and other actors are of importance for the ability for member states to act strategically. Informal contacts are needed in order to use institutional possibilities and this leads to the notion of taking advantage of network opportunities.

Taking Advantage of Network Opportunities

Next to taking advantage of institutional possibilities and formal arrangements, the importance of taking advantage also of *network opportunities* – informal and formal contacts – will be analyzed. I argue that *informal contacts* are of importance when member state action is analyzed. In order to act strategically, these actors need a) to be informed of what is going on in other EU bodies and b) to have contacts with representatives of all three units. I will use the commonly used differentiation between policy communities and issue networks, as defined by Rhodes *et al.* (1996). Policy communities, however, are relabelled policy networks in this dissertation, referring to contacts with EU bodies that are derived from the institutional arrangements – institutional possibilities – within first pillar issues. Issue networks are more loosely defined and may include non-EU actors, for example NGOs, government authorities, and different constellations of expertise. These larger informal issue networks are, as I see it, needed and thus helpful in order to have the means to persuade other EU actors.

Firstly, member states' network opportunities can be found in relation to the Council and may include a) informal contacts with the Council secretariat, b) activities outside the working groups and other formalized areas which can be described as networking in the corridors, c) informal contacts with other member states representatives in the Council, and d) informal contacts in order to form coalitions with other states to create a qualified majority or a blocking minority. The latter category includes visits to European capitals and the presentation of national positions in contexts not formally linked to the Council. All these different approaches are examples of networking and of attempts to get a good position/platform to negotiate from in the Council. Arguably, this depends on the information you can get about what is happening on other levels. This information must come from a large and stable network of collaborators. *Secondly*, networking activities can be directed towards the Commission. Contacts should, from a strategic perspective, be taken with a) the responsible civil servant in the DG; b) the Director General; c) the national Commissioner; d) the responsible Commissioner; and

e) national experts working in the Commission. *Thirdly*, these activities can also be directed towards the EP. Contacts should, from a strategic perspective, be taken with a) the Rapporteur; b) shadow Rapporteurs from the political groups; c) national MEPS; and d) engaged MEPs in general. All these networking activities are examples of contacts with representatives from different EU bodies and should be understood as attempts to create a position in the policy network. An issue network, on the other hand, is larger and includes non-governmental representatives and stakeholders within a specific issue-area. In the empirical analysis, the main focus will be on what I define as policy networks, as it is assumed that these types of contacts are of greater importance for member states trying to influence decision-making procedures.

Summary

In this chapter theories that form the basis of the analysis, namely a soft version of rational institutionalism combined with network approaches, have been presented. The concepts institutional possibilities and network opportunities have also been placed in context and in relation to their theoretical origin. Institutional possibilities are treated as an overarching concept, since these arrangements are a prerequisite for network opportunities and thus for informal contacts to take place. Contacts during Council meetings and in the working groups do not count as informal contacts but can, of course, generate further informal contacts. In the next chapter, member states' strategic action to take advantage of institutional possibilities and of network opportunities will be presented with the help of negotiation theory.

STRATEGIC INSTITUTIONAL ACTION

When Sun Tzu wrote, war had become a dangerous business; the recourse when other means had failed. The best policy, he says, is 'to attack the enemy's plans'; the next best to disrupt his alliances, for 'to subdue the enemy's army without fighting is the acme of skill'.

Samuel B. Griffith (1963: 8)

In the quote tactics, preparations and strategies are in focus. The strategies and tactical doctrines described in the famous book *The Art of War* are based on 'deception [...], ready adaptability to the enemy situation, flexible and coordinated manoeuvre of separate combat elements, and speedy concentration against points of weakness [...], such tactics requires highly mobile and well trained shock and elite troops' (Griffith 1963: 9). Tactics, preparations and strategies are important also in cooperative settings, although persuasive means and negotiations, rather than war and coercion, dominate the rules of the game. 'Well trained shock and elite troops' are substituted by experienced negotiators/diplomats and, as will be shown in the empirical chapters, well informed civil servants. In this chapter, which starts with a section about EU negotiations, I will discuss government officials as rational agents acting strategically within institutions that can either enable or constrain them. Of particular importance is what *techniques* member states can use to take advantage of institutional possibilities and of network opportunities. The contested concept of power, at least amongst political scientists, will also be discussed in this chapter, and a definition is presented. These ideas will be summarized in the last section and combined with the theoretical perspectives chosen in

the previous chapter, before the analysis moves on to the two case studies – *Sweden and Transparency* and *Sweden and REACH* – in chapter five and six.

Negotiating in the EU

In negotiations, the participating parties have a common goal and that is to combine conflicting interests into a decision (Zartman 1977: 621). Iklé clarifies: ‘Without common interests there is nothing to negotiate for, without conflict nothing to negotiate about’ (1964: 2). He uses the following definition (of negotiations): ‘the realization of a common interest where conflicting interests are present’ (1964: 3). Another useful definition is presented by Lax and Sebenius, ‘a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise’ (1986: 11). Two main paradigms, represented by the well-known distinction between distributive and integrative negotiations, have dominated research about negotiations. Other concepts often used are bargaining versus problem solving or win-lose versus win-win situations. From a realist world view many books about negotiations that were published during the 1960s, focused on competition, misperceptions, and mistrust, ‘how to divide the pie’, zero-sum games, and distributive negotiations (*cf.* Hopmann 1995: 25).²⁰ Distributive negotiations, which are characterized by caution and competition rather than joint problem solving, dominated the understanding of negotiations during the cold war era. In distributive negotiations each party tries to get as much as it can. According to the literature, the characteristics of these negotiation scenarios are uncertainty and one-shot negotiations. Both parties are seen to enter negotiations expecting to win as much as possible believing that the other part cannot be trusted.

From a more liberal world view, research about integrative negotiations and a focus on cooperation has evolved. These ideas are a response to

20 The classics of the negotiation literature include Thomas Schelling’s work *Strategy and Conflict* (1963), Anatol Rapoport’s *Fights, Games and Debates* (1960), and Fred Iklé’s *How Nations Negotiate* (1964).

bargaining theories and perceptions of negotiations as mainly distributive. Instead of being a question of 'dividing the pie' negotiations are understood as problem solving and about 'enlarging the pie'. Interdependence approaches (and regime analysis) are, according to Zartman and Rubin, 'more interested in emphasizing the importance of non-military resources and relations in an understanding of international politics' (2002: 5). Zartman and Rubin also say that power needs to be conceptualized in order to understand the negotiations and interactive processes.

EU negotiations are about credibility and joint problem-solving in a cooperative climate (*cf.* Kelman 1996, Meerts 1997, Elgström & Jönsson 2005, Meerts & Cede 2004). Power can thus to some extent be what Risse describes as a 'logic of arguing' – a way to increase the influence of materially less powerful states. These strategies are obviously also available to other actors and materially more powerful states. EU negotiations are characterized by co-operation and a common understanding of striving for consensus as well as complexity in terms of their multilateral character. When decisions are taken, it is actors with less intensive preferences (less national interests and therefore less effort when trying to influence a decision), that give in to the advantage of the more offensive actors. Thus, the presence of member states' attempts to try to take advantage of the system and get as much out of these negotiations as possible are present despite the fact that these negotiations resemble integrative negotiations, something that supports the idea of the presence of both integrative and distributive negotiations in EU negotiations (*cf.* Elgström & Jönsson 2000). Habeeb has concentrated his analysis on how weaker states are more dedicated and committed in important national issues. In his work *Power and Tactics in International Negotiation* (1988) he writes that '[b]ecause a weak actor generally has more at stake in negotiation with a strong actor; it will devote more attention and energy to achieving its desired outcome' (1988: 132). The result is asymmetry of attention and more dedication and commitment from the weaker actors. As a result, when Habeeb is analyzing power asymmetries, he is in fact analyzing how actors *compensate* their relative weakness, based on differences in size and capabilities, by using different *negotiation techniques*, especially in relation

to a specific issue-area. As I see it, asymmetries are therefore no longer a question of geographical size and traditional power sources but of participating in negotiations and using tactics to upgrade your power position. The focus of this dissertation is on asymmetry in the commitment of a member state to a particular issue-area, in this dissertation transparency and chemicals legislation, rather than on asymmetries in power bases prior to negotiating. In other words, negotiation techniques are used to alter material power asymmetries.

Obviously, these discussions are related to power. Before discussing and defining this concept, ideas about *techniques* that can be used in EU negotiations will be presented. These techniques are related to a) taking advantage of institutional possibilities as defined in the previous chapter and b) taking advantage of network opportunities within the issue area that a member state wishes to affect. I see the idea of influence techniques as related to the concept persuasion. Rodger Payne uses the concept 'communicative environment' when he discusses the structural setting where persuasion takes place. In this environment, agents are engaged in what is called 'communicative action' (2001, see also Habermas 1991). These structural arrangements can both obstruct influence and be of advantage for member countries. The negotiation climate that characterizes the EU – and has led several researchers to talk about the EU's *sui generis* character (Olsen 2007: x) – forces negotiators to adjust their techniques to these characteristics. Therefore negotiating resembles persuading actors and convincing them to believe in your ideas more than using more coercive means. Persuasion should be seen as a key element in bargaining and negotiations. Checkel elaborates on the process of persuasion a bit further:

Persuasion is...a social process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion. More formally, it is an activity or process in which a communicator attempts to *induce a change* (my emphasis) in the belief, attitude or behaviour of another person...through the transmission of a message in a context in which the persuadee has some degree of free choice...persuasion is a process of convincing someone through argument and principled debate (2002:2).

The rational or agency-driven element of intentionality is obvious in both definitions. Checkel ends by placing argumentation and debate in the process of persuasion. He argues that rational persuasion must be separated from argumentative ('real') persuasion, and uses the concept thin persuasion to refer to the process of persuading other countries to accept new ideas without necessarily internalizing these ideas (2002, 2003: 212). In reality, it is difficult to separate genuine persuasion from rhetoric/thin persuasion. Yet, this distinction is not of importance if the focus of the analysis is tactics and persuasive means, rather than the psychology behind these methods. I also want to emphasize that, when analyzing strategies and negotiation techniques, I will not in this thesis evaluate or discuss if these attempts are successful or not in terms of genuine or thin persuasion. Following Checkel, persuasion is defined as *an activity or process in which a communicator attempts to induce a change in the belief, attitude or behaviour of another person. Strategic action*, which is defined as *member state's attempts to promote national interests by affecting EU decision-making in a direction favourable to and in line with national interests*, forms the basis of the use of different negotiation techniques.

From the negotiation literature, a number of available techniques can be extracted. In reality, different techniques are often combined, but it is useful to be able to a) theoretically distinguish these activities and also to b) be aware of the fact that these negotiation techniques might be used more intensively in certain stages of the decision-making process, and c) in different combinations. Without claiming to cover all available negotiation techniques, the following persuasive techniques will be the main analytical categories: framing, the use of expertise, manipulation, procedural tactics, leadership, mediation, and coalition-building. These techniques, chosen because of their relevance for the empirical material, should not be understood as exclusive tactics but rather as different alternatives that are/can be combined into a cohesive strategy. Institutional arrangements can enable and/or constrain an actor's use of these techniques. When, where, and how are empirical questions. How techniques are combined, and which techniques are used during different stages of the decision-making process, will be analyzed in chapters 5-7.

Framing

The purpose of framing is to appeal to the human need of categorizing knowledge and to consciously propose new ideas or solutions to a problem. Framing can be defined as a 'package tool' in a process of persuasion to propose solutions to ongoing problems. Frames are thus key means by which advocates attempt to alter others preferences (Payne 2001). Key actors with specific interests or a mandate to act on behalf of a nation must take this into consideration. Actors presenting ideas and arguments why transparency is important in the EU or why a new chemicals legislation is beneficial, can be seen as 'norm entrepreneurs', a term used by Katzenstein *et al*:

the construction of cognitive frames is an essential component of norm entrepreneurs' political strategies, since, when they are successful, the new frames resonate with broader public understandings and are adopted as new ways of talking about and understanding issues (1998: 897).

Thus, framing implies a well-planned strategy to influence and alter existing conceptions and norms. Martha Finnemore and Kathryn Sikkink see framing as the first step of the lifecycle of a norm, and norm entrepreneurs take great effort to construct a suitable cognitive frame to convince other states and their agents (1998). The goal is to make decision-makers speak in terms of, for example, environmental gains rather than economic costs with the REACH proposal, and eventually change the behaviour and opinions of others. The aim of framing is to *convince other agents that a certain idea or solution is good and to make the same agents alter his or her position on a specific issue*.²¹ An example of framing would be if a member state internally argues in line with national interests, but presents these aspects as being in the interests of other member states. No automatic contradiction between national and European interests exists, but there is a norm within the Union not to pursue simply national interests but to consider the interest of the Union in a larger perspective. Another

21 Thus persuasion and framing are related concepts but I have chosen to interpret framing as a specific form of persuasion.

example would be if arguments about the benefits of the Swedish *offentlighetsprincipen* are discussed in terms of how this could contribute to increased legitimacy in the Spanish or the Italian context.

Benford and Snow have elaborated on framing activities and identified three 'core framing tasks' (2000: 615). The first is 'diagnostic framing,' that is, referring to problem identification and attributions. The second is prognostic framing, which they define as 'the articulation of a proposed solution to the problem, or at least a plan of attack, and the strategies for carrying out the plan' (2000: 616). In Benford and Snow's understanding of the concept prognostic framing, 'refutation of the logic or efficiency of solutions advocated by opponents' is included (2000: 617). These activities can be understood as counter-framing. The last category, 'motivational framing,' includes a construction of a vocabulary on which collective action and framing activities can be based upon (2000: 617). I have chosen to discuss framing as a coherent concept in the empirical chapters, but when the two case studies are compared in chapter seven, these three concepts will be discussed again with an emphasis on a forth concept: counter-framing.

In the end frames are used between individuals or groups of individuals, and the mechanisms of cognition (*i.e.* understanding and processing information) are central. An actor's understanding of the world and the formulation of alternative actions are shaped by belief systems and cognitive maps (Haas 1992a: 28). Psychological theories about *cognitive consistency* deal with the human tendency to accept new ideas and facts only if they are compatible with already existing knowledge. The term *cognitive dissonance* is associated with the fact that we strive not to have divergence in our image of the world. Within the IR negotiation literature, examples are given of how argumentation preferably can be based on, or apply to, existing images/conceptions of other agents in order to accomplish what authors like Finnemore and Sikkink (1998:908) discuss as 'normative fit' (*cf.* Jervis 1976). Images that the sender of the message wishes to convey can also be labeled information sorting *maps*. If the information clashes with existing knowledge and perceptions, the message is often ignored or reinterpreted in line with already existing ways of looking at things

(cf. Jönsson 1990, White 1968, Herrmann 1985, M. Cottam, 1994, R. Cottam 1977).

From a strategic perspective – to be able to alter other countries' standpoints on different issues – it seems rational to frame interests in a way that makes other states positive towards your ideas, as in the example of Swedish actors discussing transparency from a Spanish or an Italian perspective. Other countries' agents must be prepared to re-evaluate and alter their perceptions, which is not an easy task. Faced with new situations, 'we identify and interpret problems within existing frameworks and according to past protocols and then try to manage the problems according to operating procedures that we have applied in analogous cases' (Haas 1992a: 28). Information sorting maps help us to sort incoming information. Therefore frames must be well prepared and well argued in order to achieve successful influence. In addition, expectations by the receiver of a message/frame and perceptions of the transmitter have an effect on the ability to pursue persuasive strategies and in this case use the frames (Reardon 1981). Thus we have returned to framing as a persuasive and strategic act, but hopefully with an awareness of cognitive elements of these complex processes.

The Use of Expertise

In the EU, the French tradition of expert knowledge and democracy as a domain for representatives rather than an arena for direct influence has inspired practice. The view of the scientific community as suppliers of objective knowledge and truth, dominates (cf. Peterson & Bomberg 1999, Litfin 1994: 29-33). Scientists have a socially accepted competence as interpreters of reality (Litfin 1994: 29). Bäckstrand writes: 'Scientific disciplines shape or reinforce dominant cultural ideas of what is permissible and acceptable, what can be said, and ultimately who we are' (2001: 80). Thus experts, expert knowledge and consultation are part of the decision-making process and cannot be separated from the political domain. There is in the EU a presence of what Haas has labeled *epistemic communities* – groups of experts in a specific discipline with similar academic background and often with a common attitude towards politics and he explains:

Epistemic communities are channels through which new ideas circulate from societies to governments as well as from country to country. However, an epistemic community cannot be reduced to the ideas it embodies or purveys, since these ideas are transmitted in tandem with a set of causal and principled beliefs and reflect a particular political vision. The ideas would be sterile without *carriers* (my emphasis), who function more or less as cognitive baggage handlers as well as gatekeepers governing the entry of new ideas into institutions (1992b: 27).

Many experts who are working as civil servants are included in these communities, something that exemplifies the difficulty to separate the sphere of experts from the sphere of politics. Haas identifies the process of policy change, where member state representatives are primary actors next to groups of experts, and identifies factors of policy changes as changes in causal and principled beliefs. The mechanisms behind change are identified as diffusion of information and learning. This in turn generates shifts in patterns of decision-making (1992b: 6). Thus, the use of expertise is important in two ways. Firstly, the use of expertise provides a state with information and creates a knowledge advantage in an upcoming agenda setting. Secondly, experts participate in defining and hence framing issues together with other national representatives (Payne 2001, Finnemore & Sikkink 1998: 897). In addition to national representatives and experts, a middle category of agents located between civil servants and scientist can be identified. Knowledge brokers is a term used by Litfin to describe these agents or groups of experts and advisers, not necessarily researchers but individuals with knowledge and ability to understand academic work and research in general. These individuals have the capacity to translate this information to a language that appeals to decision-makers (1994: 37, see also Jasanoff 1997: 589, Bäckstrand 2001: 93). Hence knowledge brokers function as key persons in the networks between groups of experts and decision-makers, and are important for the ability to form winning-coalitions. Tactics related to, on one hand, persuasion and framing, and, on the other hand, the use of expertise and/or ideas have many things in common. In reality they are often combined and used as ‘just’ means to cooperate with other actors. Examples of the use of expertise would be an

explicit placement of a national expert in the Commission or the participation of experts in Council working groups. In the academic literature there is a huge debate about experts and expertise (Collins & Evans 2002, Hedlund 2007) which I have no intention to go into. Yet a definition of expertise is needed in order to be able to separate the analytical category of the use of expertise from other persuasive techniques. Collins and Evans distinguish between *interactional expertise* and *contributory expertise* in an article about the study of the role of experts in political decision-making. They define interactional expertise as individuals with ‘enough expertise to interact interestingly with participants and carry out a sociological analysis’ (Collins & Evans 2002: 254). Hence, knowledge brokers could fit into this definition. Contributory expertise has ‘enough expertise to contribute to the science of the field being analyzed’ (*ibid.*). This means that generally skilled government representatives are not included in the definition of the use of expertise, as these individuals must have received their mandate based primarily on their academic knowledge within a certain issue. In reality, however, many scientists are working as civil servants representing member states in the Commission’s working groups or participate during Council working group meetings. Since these individuals both have gotten their mandate based on their scientific expertise *and* are government representatives, they are the persons that can be or are being *used* by member states trying to influence EU decision-making. Without going further into this discussion, the following definition covers the negotiation technique of using expertise: *experts are those who both have the capacity to interact with other participants and enough expertise to contribute to the scientific field.*²²

Manipulation

Manipulation indicates misleading others, for example by using false information, and is often considered an ‘unjust’ means to influence decision-making and interfere in negotiations. Yet the judgment of manipulation

22 For further references, see Collingridge, David and Colin Reeve (1986). *Science Speaks to Power: The Role of Experts in Policy Making*. London: Frances Pinter (Publishers) Ltd.

lies in the eyes of the observer (the actor that feels that he/she has been manipulated). Rebecca Hoar writes that persuasion is '*close to Machiavellian manipulation* [my emphasis]' (2005: 56), and proposes a very simple dividing line between persuasion and manipulation. She suggests that when engaging in the use of persuasive techniques, you should 'stop to consider whether you are simply imposing your own interests on to someone else, possibly to their detriment. If this is the case, you have stopped persuading and started manipulating' (2005: 58). This quote refers to self-reflective evaluation rather than to a norm that can be used to evaluate these actions or to judge whether the behaviour is fair or not. In addition, manipulation in accordance with Hoar's definition resembles coercive behaviour. Therefore, Hoar's classification is difficult to use. From a negotiation perspective, one could say that as long as you are only holding back information in order not to reveal, for example, your position in Council negotiations, these moves are not manipulative in a questionable manner. *Manipulation in negotiations* is, as I see it, *a deliberate misuse of information or even presenting false material in negotiations with other actors*. In attempts to create a favourable national position, selective use of information is rather another strategic attempt to take advantage of institutional possibilities, even if in the eyes of the persuaded it is manipulative, and these activities are categorized as a use of procedural tactics.

When interviewed, actors in the transparency and in the REACH issue-areas have been asked to describe their tactics and their contacts with the Commission, the EP, and within the Council. Of course, none of the interviewees wanted to describe their own actions as manipulative, but rather as a way to play the game or as a negotiation technique as legitimate as any other means. One important restriction, often referred to by diplomats or high rank civil servants, is that those who are participating in EU negotiations meet on a regular basis. If you use methods that are seen as unfair or unjust by others, you may lose credibility. Hence, what may temporarily be an asset in one negotiation situation can later become a liability (Jönsson 1981: 249). Therefore, one would expect to find very little unjust use of information, cheating and misleading of other actors,

at least if there is a risk that these action will be revealed. However, in the empirical material presented in the following chapters, there are examples of manipulative techniques both when taking advantage of the institutional possibility of a Council Presidency and when presenting expert reports in ongoing negotiations based on exaggerated measures of costs related to a presented proposal. During the Swedish Council Presidency a deadline written into the Amsterdam Treaty was used as an argument for the need to reach an agreement before the deadline. In reality, it would have been possible to wait and handle the transparency issue during the following Presidencies.

Procedural Tactics

Agenda steering and presidential tactics are discussed by George Tsebelis and Sven-Oliver Proksch in an article about the European Convention (2007). They illustrate very well some of the capabilities that come with a Presidency, controlling the decision-making procedures as well as information flows (*cf.* Tallberg 2006).²³ Based on the structural setting of the EU and of the decision-making process within first pillar issues, some of these procedural tactics are directly derived from rules and procedures in co-decision and therefore should be discussed as institutional possibilities. By planning the agenda and meetings in a way leading negotiations forward, member states engage in procedural tactics. These activities are important in multilateral negotiations (Walton & McKersie 1965). Another example of the use of procedural tactics is when member states present written proposals and launch new initiatives, mainly in the Council (*cf.* Tallberg 2006: 21, 84-7). By having the formal right to present these documents, a member state can alter the agenda and include a specific issue. The more control an actor has over the process, the greater the possibility to take advantage of the situation. The Council

23 Tsebelis and Proksch are talking about 'the art of manipulation' when discussing some of the agenda-setting techniques and the set up of the Convention, but as I see it, manipulative and procedural techniques are different alternatives that can be used by member states in order to take advantage of institutional possibilities or of network opportunities.

Presidency is an excellent example. Agenda setting powers and the ability to steer working group and Coreper meetings, and chair Ministerial sessions make it possible to put a deadline for further amendments. An alternative is to only brief allies in advance about the deadline. A third option is to use information selectively and only share information with others if it is to your advantage. Based on the fact that these activities are not illegal and that other member states therefore cannot take legal action against a member state that is simply using procedures to full extent, the activities discussed above are defined as *procedural tactics*. Hence, *the sequencing of presenting proposals, the organization of meetings, and the timing of activities are examples of procedural tactics*. This technique is closest related to the concept institutional possibilities. The information load and knowledge that are often associated with Council Presidencies create an additional advantage. This information can be used in different ways, either to procedural tactics when writing proposals to be presented in the Council or to create coalitions.

Leadership

Leadership is important in multilateral negotiations (*cf.* Underdal 1994, Malnes 1995, Sjöstedt 1999). Raino Malnes submits that ‘leadership is what enables an individual to shape the collective behaviour patterns of a group in a direction determined by his or her values’ (1995: 93). Metcalfe claims that leadership is decisive for a successful negotiation outcome (1998). Leadership analysis focuses on the negotiating actor and his/her strategies. Good leaders have to use cognitive resources such as authority and personal skills, argues William Zartman (1994: 9). In the same line of argument, although not necessarily on an individual level, Malnes differentiates between *problem-solving leadership* – creating consensus and identifying positions, and *directional leadership* – having authority and the ability to lead others (1995: 100). For Malnes problem-solving leadership involves ‘[a]ttempts to alter institutions and texture of negotiations’, and directional leadership involves ‘[a]ttempts to influence national objectives and beliefs’ (1995: 105). Both leadership styles call for entrepreneurial qualities/skills such as improvisation, creativity and originality (*cf.* Young

1991). In a way, to provide leadership and still follow norms seems more rational than to threaten or pursue own interests without eliciting support from other agents and countries. Showing leadership, *i.e.* taking on a leading role and thus being at centre of the negotiations, is understood as a technique to enhance one's own interests in the negotiations and thus in line with strategic action. Underdal presents the following useful definition of leadership: '*an asymmetrical relationship of influence in which one actor guides or directs the behaviour of others towards a certain goal over a certain period of time* [my emphasis]' (1994: 178). If we combine Underdal's understanding of leadership with Malnes's discussion about problem-solving leadership and directional leadership, it becomes obvious that there are interconnections between, on one hand, problem-solving leadership and the use of procedural tactics as well as framing tactics, and, on the other hand, between directional leadership and mediation. The main difference between directional leadership and mediation is that mediators are supposed to be impartial and act in accordance with the common interests. Leaders are seldom expected to place the interest of others first. Directional leadership is provided by an actor with authority, which can be based on a specific position or on an actor's knowledge of a subject. It seems reasonable to assume that directional leadership is used in combination with the use of expertise and framing activities. Problem-solving activities imply that leadership can be combined with procedural *and* framing tactics when engaging in negotiations with others. Oran Young distinguishes between structural, intellectual, and entrepreneurial leadership (1991) and this categorization reflects the connotations between the concepts. Thus, empirically, some of these techniques are difficult to separate although this will be done in the empirical sections, based on the definitions in this chapter, and discussed in the chapter were the two case studies are compared.

Mediation

Bilateral negotiations are less complex than multilateral negotiations (three or more parties); as Zartman wrote: 'the more the messier' (1994: 3, see also Hopmann 1996: 244). A need for mediation often arises when

there are more than two parties in a negotiation. In some cases decision-making procedures assign this role to specific actors. One example is the Commission as mediator during Trialogue meetings; another example is the honest broker/mediator expectations associated with Council Presidents. Both are examples of what Lars-Göran Stenelo calls rule-dependent mediation (1972: 36). Unauthorized mediation – with Stenelo's terminology rule-independent mediation – is also an important strategy for member state agents. On working group level, different position and coalition patterns often become clear, and the multitude of actors creates a need for compromises. By taking on this role, an actor places itself in the middle of the negotiation process.

A holder of the Council Presidency is supposed to play the role of an *honest broker* and mediate impartially between conflicting interests, both European and national (Elgström 2003). The norm of honest brokerage and mediation makes scholars argue that the Presidential position was/is powerless. Consensus-oriented styles of decision-making are often counterproductive, because they produce sub-optimal outcomes (the lowest common denominator). Based on the potential to steer the agenda and act strategically as in the transparency area, it does make sense to turn the argumentation around and see the power potential of the chair (Tallberg 2001, 2003, and 2006). Yet these strategies must be used tactically with great skill, since a Presidency has to have the trust of all member states, especially in contacts with other EU bodies. Therefore Presidencies cannot act too openly in favour of the national interest. 'Acting like a buffalo is counterproductive', says one diplomat. By playing out the Presidency position as such and acting in accordance with established norms, political space is created. Some states may very well have anticipated the power potential of a Council presidency and realized that good performance 'accumulate[s] goodwill and credit for the future' (Handel 1990: 135). In this sense mediation is a sort of negotiation strategy for member states trying to influence in a certain direction given the decision-making process, when it becomes difficult to act too much as a leader without taking others' interests into consideration. Therefore impartiality is important in order to avoid being accused of

placing national interests on top of the agenda and of acting without the group rather than within. Mediation as a technique is *an attempt to solve collective problems and, regardless of self-interests, find the best possible solution*. In the process, actors may gain prestige and create a national image of honest brokerage.

Coalition-building

Zartman argues that entering into a coalition means a reduction of complexity and a gain in negotiation power (but also reduced flexibility) in multilateral negotiations (1994). The general rule is that EU coalition-patterns are fluid and governments come together in various combinations on different issues. Formations or coalition patterns that are mentioned in the literature are the Franco-German axis or formations based on the well-known dividing lines in EU policy: north-south; federalists-inter-governmentalists; and net contributors versus net receivers.

Some of the EU research on coalition building has been concentrated on the Council (*cf.* Hayes-Renshaw *et al.* 2005, Tallberg 2007, Mattila 2004). Other studies have focused more on general coalition patterns (Beyers & Kerremans 2004; Kaeding & Selck 2005, Lindahl & Naurin 2005). Elgström *et al.* analyze coalitions in EU negotiations. Based on a survey amongst Swedish participants in EU committees, they show that coalitions are often formed 'based on policy interests and/or on cultural affinity' (2001: 111). Garrett and Tsebelis have argued that coalition formations are depending on the issue: 'the assumption that anything goes, which is fundamental to the power index approach, flies in the face of all existing evidence' (1996: 278). Member state agents' *perceptions* of coalition patterns and strategies to form winning coalitions (or blocking minorities) to optimize national interests will be analyzed in the next chapters. The following definition of coalition-building as a technique will be used: *Member states' attempts to form alliances with other member states to pursue national interests*. These activities take place mainly within the Council structure or on a bilateral basis.

In sum, all the different techniques (framing, manipulations, procedural tactics, leadership, mediation, and coalition-building) can be used.

I have chosen to analyze these actions while at the same time taking structural arrangements and networks into account. These aspects are clearly associated with power relationships. Therefore, I will briefly discuss power.

Tactics and Power

Bertrand Russell has defined power as ‘the production of intended effects’ and Max Weber contextualized power as: ‘[t]he probability that an actor in a social relationship will be in a position to carry out his own will, regardless of the basis on which this probability rests’ (in Becker & Becker 1992: 995). Power is perhaps, next to democracy, one of most widely used concepts within political science, and numerous attempts have been made to pinpoint its multi-dimensional nature. Discussing asymmetric negotiations and power disparity, William M. Habeeb defines power as ‘the way in which actor A uses its resources in a process with actor B so as to bring about changes that cause preferred outcomes in its relationship with B’ (1988: 15, see also Zartman & Rubin 2002, Handel 1990). Habeeb discusses *aggregate structural power*, *issue-specific power* and *behavioural power*. These distinctions are useful, when analyzing asymmetric international negotiations and member states’ negotiation advantages and disadvantages (1988). Aggregate structural power is about asymmetries in national resources and capabilities, and issue-specific power is related to asymmetries in alternatives, commitment and control (for example, over the decision-making process). The latter aspect is of relevance for Council Presidencies, which give member states a chance to occasionally play a large/central role in negotiations on the European arena. Concepts like bargaining power and bargaining strength, suggest that advantages go to the powerful and strong (Schelling 1963: 22). However, behavioural power is more a question of persuasive competence than of traditional bargaining zero-sum tactics based on material resources (*cf.* Hagström 2005, Sundelius 1995: 75, Jönsson 1981, Barnett & Duvall 2005, Nye 2004).

Michael Barnett and Raymond Duvall (2005) have criticized IR scholars for their either/or use of power definitions (*i.e.* structural power

or behavioural power). Accordingly, they argue that 'multiple forms of power are simultaneously present in international politics' (2005: 44).²⁴ Power is defined as 'the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate' (2005: 39). Without subscribing fully to their power definitions, I agree that multiple forms of power are always present, and would also like to add that these different dimensions of power matter more or less depending on the situation. Thus, *within a specific issue area, the institutional setting in combination with the activities of actors (i.e. behavioural power) in networks with others (relational power) determines the outcome of negotiations.*

When Peter Carnevale discusses mediating strength as 'a reflection of *social power* [my emphasis], which is defined as one party's ability and willingness to influence another party to achieve a goal' (2002: 27-29), his ideas are closely related to how national influence attempts/strategies should be understood. Carnevale presents seven different categories of power: legitimate, informational, expert, referent, coercive, reward, and relational. *Legitimate power*, the first category, comes from a perceived right to prescribe behaviour and is based on mutual understanding of norms of conduct. For example, the mediation role of a Council Presidency seems easier to assume for a country behaving in accordance with norms about being an honest broker (Elgström 2001, 2003, Bjurulf & Elgström 2004). The next category, *informational power*, is about

24 Four categories: compulsory, institutional, structural, and productive (Barnett & Duvall 2005: 39). After having discussed different notions of power, Linus Hagström offers an analysis focusing on relations and he interprets power as capabilities. By capabilities, he means immaterial resources. In a discussion about 'enigmatic power' in the Japanese relationship to China, Hagström analyses how actors in relation to other actors become powerful, not because of their material resources but because of their skills to use context and assets to full extent. Hagström concludes 'it becomes theoretically difficult for realists and neorealists to apply their concept of power to Japan because the connection between capability and outcome cannot be consistently sustained' (2005: 396). This shows how important it is to focus on other power attributes than geographical size and military capacity, although these aspects are present in negotiations and thus are influencing the negotiation climate.

the ability to find innovative solutions to joint problems and provide information that seems reasonable and rational (Carnevale 2002: 28, Sundelius 1995). A Council President can use the information advantage of knowing more than other actors about other member states' position and about what is going on in the Parliament and in the Commission. Hence, information power, as was discussed under procedural tactics, is created by using information in order to plan procedural tactics, engage in problem-solving or directional leadership, form coalitions, or engage in mediation tactics. For member state representatives the next category, *expert power*, is achieved by the ability to provide knowledge based on scientific expertise in a specific area. The use of experts includes participation of scientific experts – with the ability to engage in exchange of information also with practitioners – in the decision-making process. Hence experts can also be used as knowledge brokers.

Referent power, the fourth category, is about gaining 'status and prestige, as well as charisma, all which may enhance their ability to persuade' (Carnevale 2002: 29). For a member state referent power comes from having the reputation of having provided knowledge and solutions in a specific issue-area, for example regarding environmental issues or equality/gender. Hence referent power is connected to the use of experts and leadership. The difference, however, is that referent power does not necessarily imply having expertise, but rather that previous experience may increase the chance that an actor will be followed by others. *Coercive power* is, as I see it, of less importance in the European context, since the EU should mainly be understood as a persuasive negotiation arena. The negotiation techniques that have the closest connections to more coercive means and coercive power are manipulation and coalition building. Both these strategies are means to create a comparative advantage in relation to other actors without engaging in genuine persuasion. Besides presenting false material or holding back information, actors can together with others form a blocking or a winning majority. The sixth category, *reward power*, is about compensating other agents for their willingness to compromise. As an example, promising to support another country's proposal in one area is a way to get a potential coalition partner in the future. Relations

are seen as a prerequisite for the use of different influence techniques and the seventh and last category in Carnevale's analysis, *relational power*, becomes interesting in the process of networking. *The different techniques discussed as strategic action relate to behavioural power within an issue-area* in which formal rules and informal contacts effects the ability to be influential.

Summary

The overall question in this dissertation is: *How do state actors use institutional possibilities and network opportunities strategically to their advantage?* States are goal-seeking units aiming to maximize the fulfillment of their interests. Therefore member states seek institutional possibilities and if they behave rationally, they should engage in negotiations with others, and form alliances with the Commission or with EP representatives. Based on the bounded rationality (*i.e.* choosing strategies based on limited information) that comes out of these contacts that are called network opportunities, member states adjust their strategies. Hence, the ability to act strategically is dependent on information gathered through networks. In this and the previous chapter, an analytical framework focusing on taking advantage of institutional possibilities and of network opportunities has been elaborated. Ideas about techniques that can be used strategically and persuasively have also been presented. Next to negotiating in the Council, institutional possibilities can include formal contacts with a) the Commission and b) the European Parliament.

The empirical 'mess' does of course not always fit perfectly into the analytical framework, designed to answer also the following sub-questions: *What strategies and negotiation tactics do member states use to influence EU decision-making and how do member state strategies vary across different issue areas and during different stages of decision-making?* To understand the three-dimensional chess game of EU negotiations, purely strategic manoeuvres in combination with coordination on various levels, we need a large theoretical toolbox. Conflicts of interests always involve concessions, which in Thomas Schelling's words, result in 'imperfect correlation games' (1963: 88). Strategic action is a matter of having 'solutions' to a

‘coordination game’ (1963: 91), and the need for such attempts never ends in the EU. An analysis of this coordination game of member states will follow in the two empirical chapters, where the following questions will be explored: *How did Sweden act to reach an agreement on transparency during its Council Presidency in 2001* (chapter five) and *how has Sweden tried to influence the chemicals policy of the European Union* (chapter six).

CASE I: SWEDEN AND TRANSPARENCY

That a deal has been reached at all owes much to the determination of Sweden, the country currently in the EU chair, to scrap the secrecy inherent in an excessively bureaucratic system.

Financial Times, 7 May, (2001)

Transparency is a very interesting case since a minority in the Council blocked the majority, formed coalitions with other actors, and six months later – with other member states and the European Parliament – reached an agreement representing more openness and access to EU documentation for citizens. For Sweden, national law was at stake and the new openness legislation could have intervened with the Swedish principle of public access to official documents (*offentlighetsprincipen*).²⁵ Sweden's first Presidency since becoming a member in 1995 had high priority with transparency on top of the agenda, especially since a solution in this issue area seemed to be within reach for Swedish negotiators. Still, one interviewee said that when the Presidential period started in January, 'no one dared to believe in results and an agreement during the Swedish Presidency' (interview with negotiator, Stockholm). The decision-making process started with a first Commission proposal that was presented in January 2000 and ended with Regulation Number 1049/2001 of May 30 2001. This chapter will start with an introduction to the issue area

25 Principle of public access to official documents (*offentlighetsprincipen*): Principle underlying the legislative provisions entitling all citizens to acquaint themselves with the contents of official documents.

and an overview of what happened before the Commission presented its proposal – stage I of the decision-making process. Thereafter follows a section about negotiations between the EP and the Council including Swedish Presidency preparations during stage II. Stage III covers Sweden's Council Presidency and the final negotiations regarding EU openness legislation. Most of the attention in this chapter will be on Sweden's strategies during the Council Presidency.

Introduction – Openness within the European Union

The notions of *transparency* and *openness* are linked to issues about the rights of citizens in a democracy (a) to be informed about *and* (b) to be able to access proposals (and other documents) that have been decisive in decision-making processes. These two words, transparency and openness, can mean transforming legislative texts into a consumer-friendly language or the right of citizens to know how their elected representatives vote on certain issues. It may also include a right for citizens to participate in decision-making. In the EU, transparency came to be seen as a solution to the so-called 'democratic deficit', a phrase coined by David Marquand (1979) which functions as a 'catch-word' for anyone wanting to criticize the Unions democratic institutions. This democratic deficit had been identified as one of the problems in the Union, and made it easier for entrepreneurs to influence – within this frame – the process of greater openness and access to documentation. Since the early 1990s discussion had been held about openness and the European Council did on several occasions express the need for increased transparency and the right of public access to information (in Birmingham and Edinburgh 1992, Copenhagen 1993, and in Essen 1994). In 1994 the European Court of Justice (ECJ) (Case C-58/94, the Netherlands versus the Council) decided that the Council had to adjust to the developing trend of public access to EU documentation and thus increased transparency.

The dividing line is that a British-Continental secrecy culture is competing with a Nordic openness culture. In the former tradition documents are kept secret unless the sender of the text has given permission for their release. Proponents of a continental model argued

(*i.e.* engaged in framing tactics) that openness ideas are linked to inertia, inefficiency, lack of responsibility and inaction. The Nordic tradition is to keep documentation available to the general public, unless there is a legal base for protecting individual or public rights/interests. 'With the accession of Sweden and Finland in 1995 – and their traditions of transparent government at home – the debate on opening up the European decision-making process gained momentum,' writes the French political scientist Héritier (2003: 822). Thus, when Sweden became a member, the country found itself amongst a group of northern countries with long experience in public access to certain documentation regarding political decision-making and could use its expertise in order to promote openness ideas.

The Amsterdam Treaty explicitly introduced the concept of openness into the EU treaties, by stating that the EU must be 'an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen' (Article 155, ex Article 191a). This 'codified' openness and access to information as normatively and politically correct. In the same treaty, a deadline for taking a decision (have a legal document) was set to 1 May, 2001 (article 191a). The Amsterdam Treaty to a large extent reflected Swedish interests, and Sweden had asked for directives and clarification regarding new rules. According to the Swedish Government's statements it was vital that all legal or physical persons can ask for documentation (Government Declaration 1995/96:30). When the direction of the decision-making, in this case towards greater openness, is codified in the treaties, proponents find themselves on the 'offensive' and those who are arguing for a more secretive process must 'defend' their position. The ECJ customary law (and the Court of First Instance) also contributed to this trend as several cases were taken to court (for example, case T-105/95 *WW UK* versus the Commission, case T-174/95 *The Federation of Swedish Journalists* versus the Council, and case T-14/98 *Heidi Hautala* versus the Council). In the *Hautala* case, the Court of First Instance made it clear that a decision to classify a document as secret did not mean that other less sensitive parts could not be handed to the general public. In case T-124/96 *Interporc*

versus the Commission, the same court decided that if a citizen's request was refused a written explanation as to why documentation could not be released had to be provided to the individual asking for the text (see further Peers 2006).

Article 255 of the Treaty establishing the European Community gives citizens and residents of the member states a right of access to European Parliament, Council and Commission documents and made it an obligation of these three institutions to set up rules for a public register. This article was inserted to the treaty after Amsterdam to clarify the concept of transparency and is often referred to as article 255(2). In application of this provision, on 30 May 2001, the Council and the European Parliament adopted a regulation concerning public access to the documents of the EU bodies and laid down the general principles and limits on such access. The decisions about this regulation were agreed under co-decision between the Council and Parliament. The controversies between the main actors (the member states, the Commission, and the EP) concerned:

- If access to documentation would lead to more or less administrative work than in the, at the time, present system. Would the process become more or less efficient?
- The classification and handling of so called 'sensitive' documents.
- Which documents could be excluded from a general openness rule.
- The degree of secrecy during preparatory phases of the decision-making processes.
- The right of third parties to veto access to documentation.
- How to set up a register and hand out documentation to citizens.

Somewhat simplified, one can say that the Commission and a number of member states argued that more direct access to negotiations in the Council and to working documents for all institutions would make it more difficult to openly present the different national and institutional positions. Another argument used in order to *frame* these new rules as too 'liberal' was that this would make the process more time consuming and

inefficient. Proponents like the European Ombudsman Jacob Söderman argued that, from the citizen's point of view, it is important that all Community institutions and bodies apply the same principles in their rules on public access to documents (speech by Söderman, 18 September 2000). Countries against some aspects of increased transparency had difficulties arguing against ideas about openness as a necessary step for a more legitimate community, and the opponents found themselves in a disadvantageous position. The advocates, a minority of member states, the European Ombudsman, and the EP, could instead refer to an almost 'unobjectable' norm of striving for closer relations to the public and the need for better legitimacy for EU policy (*cf.* Naômé 2002, Elgström 2003: 31). After the Amsterdam Treaty it was clear for all actors involved that it was time to start working. Finland, also an ardent proponent of increased transparency, in 1999 waited for a proposal from the Commission. Heidi Hautala, Finnish MEP, says that the Finnish government had hoped that this issue would have been dealt with already during the Finnish Presidency (phone interview, July 2005). However, the Commission's proposal did not come until January 2000. An overview of the process is presented in table 2, starting with the Commission's proposal that came in January 2000 and ending with the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30 2001 regarding public access to European Parliament, Council and Commission documents. This table is intended to help the reader to get a chronological overview of when different EU bodies are active.

Table 2: The Transparency Decision-Making Process

Date	Institutional events
STAGE I	
26 January 2000	Initial Commission proposal: 2000/0032 (COD).
Spring 2000	EP response: The Constitutional Affairs Committee and the Civil Liberties Committee argue over responsibility. The outcome: dual responsibility of both committees. Rapporteur: Michael Cashman
STAGE II	
Summer 2000	Commission/Solana proposal
August 2000	Council response: The Council decided to exclude the public release of certain documents relating to external affairs. Unilateral decision, taken under written procedures, to classify certain categories of documents as secret, which meant that the Solana amendments were adopted (2000/527/EC). The Netherlands decided to take the Council to court (BITS, 2000).
September-November 2000	EP response: The Cashman report, a first draft response to the initial proposal was published (A5-0318/2000). The EP legal Affairs Committee decided (15 Sept 2000) to take the Council to court for breaking article 255 in the Amsterdam Treaty.
December 2000	EP: Interrupted first reading, but the EP formed a common position and an agreement to wait for the Swedish Presidency.
December 2000	Council: A blocking minority turned down a French Council proposal regarding openness (Council, 18 December 2000).

STAGE III	
January-June 2001	The Swedish Council Presidency
January-April 2001	Interinstitutional negotiations (Trialogue meetings) and intrainstitutional negotiations (in the Commission, in the Council, and in the EP).
April-May 2001	A Council decision, an EP vote, and the Commission's position on the final draft.
30 May 2001	Regulation (EC) No 1049/2001 of the European Parliament and of the Council of May 30 2001 regarding public access to European Parliament, Council and Commission documents.

STAGE I: The Initial Commission Proposal

The aim of the initial Commission proposal (2000/0032(COD)), presented during the Portuguese Council Presidency and delayed due to the resignation of the Santer Commission, was clearly to increase legitimacy and transparency in the decision-making process. Commissioner Romano Prodi presented this first proposal during a special session and announced that letters and e-mail correspondence could, according to the proposal, be published on the Internet. He also said that it was important that third parties (the sender, a member country or an organization) could veto the publication (Statewatch 2000²⁶, interview with a British MEP). In the initial proposal some limitations of public documents were suggested, for example concerning working documents for internal use and secrecy/classification if requested by the sender of a document, which was met with criticism and/or calls for reservations by most actors, including the European Parliament and several member states. Mary Preston from the

26 Statewatch news online offers an excellent source of information. On their homepage, material in relation to openness and transparency is made public, www.statewatch.org.news.

Commission's General Secretariat, one of the draft-persons behind the proposal, in a public debate explained that the Commission wanted to implement article 255 of the Amsterdam Treaty, by including incoming documentation, the setting up of a public register, having exceptions mainly for parts of documents that contains sensitive information. The criticized examples that the Commission mentioned in the proposal, argued Preston, had resulted in misunderstandings in the public debate. In addition, the Commission's proposal was never intended to interfere with national legislation, she added in the debate (Lönn, www.europarl.se, 2001). Sweden and a number of other countries had, according to interview sources, contributed to the original proposal by answering an enquiry sent out by the Commission in July 1999 regarding national laws of public documentation. According to the Swedish government's own account of the preparations, the Commission had been contacted by the Swedish government and by Swedish civil servants in order to influence and present national positions in relation to the proposal. The purpose of these framing tactics was to 'show the advantages of the Swedish *offentlighetsprincipen* and to present arguments to make the Commission to suggest rules similar to the Swedish' (Government Communication 2001/02:11). The argumentation for Swedish interests was made with reference to the fact that the general public's access to information had been codified in Sweden since 1766 (The Freedom of Press Act, *tryckfrihetsförordningen*) and that these rule should be both far-reaching and that exceptions had to be discussed on a case-by-case basis regarding parts of a document (Committee on the Constitution, 2000/01:KU3y, p. 7).²⁷ These rules had been used for a number of years and thus Sweden had experience in relation to transparency. In order to please opponents to these ideas it was argued that there were exceptions also in the Swedish

27 The Swedish freedom of information act from 1766 has constitutional status and is thus integrated in national law. In the beginning of the process (before the Swedish Presidency), Sweden tried to get a 'decision' as the legal form instead of a 'resolution'. The former is relevant for EU bodies but not directly applicable in the member states. These formulations, *i.e.* decision or regulations, only interested Swedish representatives and relatively soon the activities were abandoned as the Council's Legal Service stipulated that the correct legal status was 'regulation' (interview, Brussels).

system and that these rules functioned rather well both in Sweden and in Finland. It was also argued that the Netherlands and Denmark recently had applied a similar system (*ibid.*).

For years, the Council had had an ambivalent attitude towards transparency, but there was a majority in the Council for the Commission's proposal when France took over the Council Presidency in July 2000. In Sweden, an official standpoint to the proposal was published, stating that Sweden wanted firstly, a general openness rule and secondly, far-reaching rules concerning citizen's access to EU documentation (Government communication 2001/02: 110, Sweden's position EUJu 2000/823, Andersson, *EP-Nytt*, 2000). In February 2000, the Swedish Government Offices (*regeringskansliet*) organized a seminar about the Commission's initial proposal with participants from the Commission, the EP, and the Government Offices. Between 1995 and 2000, round-table discussions were held with journalists, newspaper publishers, interest organizations, and other actors with an interest in EU and transparency (see further Government communication 2001/02: 110). These discussions, which included non-governmental organizations and their representatives, according to the Swedish Government's own account of the process, paved the way for Sweden's official standpoint to the proposal. Thus the government engaged in issue networks about openness and transparency and Swedish interests were transferred to the European arena by responding to the initial proposal. Sweden criticized the Commission's exclusion of documents from a third part if being handed in under a request for classification (the so called originator's control). The definition of documentation, separating documents for internal and administrative use, was criticized for paving the way for arbitrary internal decisions regarding the release of documents. Sweden wanted that article 255(2) of the Amsterdam Treaty should include, Commission, EP, and Council documentation, but also documents used by other EU bodies (Government Communication 2001/02:11, p. 15). Another critical voice in the Swedish debate came from Ulf Öberg, head of division for Judge Hans Ragnemalm's cabinet at the ECJ in Luxemburg, who argued that although the legal road had began to change regarding secrecy rules, the

main EU bodies were guarding their rights to decide which documents to release to the general public (Öberg 2000).

The European Ombudsman Jacob Söderman commented upon the Commission's proposal for access to information by arguing that the 'harm test' as declared in article 4 was not in line with the Amsterdam Treaty, where greater openness was called upon. Documents must be released unless they would harm specific interests: public security, defence and international relations, monetary stability, stability of legal order, court proceedings, inspections and audits, infringement proceedings, the effective functioning of the institutions, personal files, recruitment information, individual data, business and commercial secrets, intellectual and industrial property, and financial insider information (Söderman, *Wall Street Journal*, 24 February, 2000). Söderman concluded that the list of exceptions was too large and vague. According to the Ombudsman, a law on access to documents should cover all documents and have a central public register of all its documents – a system similar to national rules in the Netherlands and the Nordic countries. Prodi argued on the other hand that the exemptions were straightforward and simple, including the public interest, respect for privacy, commercial and industrial secrecy and request for confidentiality by those who submit information (European Parliament, conference, April 2000). The Maastricht Treaty in 1993 established the Ombudsman's office to investigate citizen's complaints. Since then, the Ombudsman and Statewatch have been two strong voices in the openness debate and particularly the activities of the Ombudsman have been in line with Swedish interests.

Also at the Court of First Instance and at the European Court of Justice, Sweden had established a strong pro-openness position, by using framing tactics and expertise arguing for a broad inclusion of documents and interpretation of the rules from 1993 (Government Communication 2001). Sweden had intervened for the applicant in three cases at the Court of First Instance (T-105/95 World Wildlife Fund versus the Commission, T-188/97 Rothmans versus the Commission; and Hautala versus the Council T-14/98). In the first case, Sweden argued that the institutional rules on access were binding and that exceptions from these

rules had to be applied restrictively as was the case under Swedish law (Peers 2006). Hence these cases established a) that the institutional rules on access were binding and that exceptions had to be interpreted and applied strictly (the WWF case); b) that committees established to advise the Commission must be regarded as part of the Commission and thus the same rules can be applied (the Rothman case), and c) that the rules should be applied also to second pillar documents and that there can be no general exceptions (the Hautala case). These court rules showed that Swedish interests were in line with an established interpretation of present rules. For Sweden, an important achievement had been to get openness ideas into the Amsterdam Treaty and Sweden was successful during the institutional possibility of the IGC in Amsterdam. In sum, Swedish engagement in framing activities and the use of Swedish expertise related to Swedish laws had some initial impact although the Commission's initial proposal did not reflect the Swedish position as later defined by the Committee on the Constitution (2000, *konstitutionsutskottet*) in a comment handed over in November 2000 to the Advisory Committee on European Affairs (EU-nämnden).

In the European Parliament

The EP Institutional Affairs Committee had previously decided to draw up a preliminary report on transparency and freedom of information, on which Maj-Lis Lööw (Swedish MEP) was appointed Rapporteur. Her initiative (EP 1998, A4-0476/98), adopted in plenary on 12 January 1999, was an important contribution to the openness discussion. In this report, the Commission was asked to set criteria for a precise definition of documents and tightly defined exceptions to openness. All requests for documents not replied to within a certain period should be approved rather than rejected, and public registers of documents were to be included in all EU institutions. When comparing this document with the Swedish and Nordic standpoint, it becomes clear that the main actors operating in the Parliament and pro-openness states had common interests. After a long jurisdictional dispute during the spring of 2000 between the Constitutional Affairs Committee and the Committee on Citizens' Freedoms

and Rights, Justice and Home Affairs (LIBE), dual responsibility of both committees was the outcome. Michael Cashman was together with Hanja Maj-Weggen from the Netherlands chosen as Rapporteurs. They began to write an EP report in response to the Commission's Proposal.²⁸ Being a new MEP, Cashman first turned down the request for becoming Rapporteur and said 'no, no that sounds terribly boring...' He also says that he later changed his mind with the comment, 'okay, I'll do it...it sounds easy' (interview, Brussels). In retrospect, he considers the transparency dossier as one of his greatest experiences as an MEP.

The 'battle' between the committees of the Parliament led to a rather late response, although it was clear that the EP wanted more openness and also a shorter list of secrecy exceptions than the Commission and the majority in the Council wanted. Deirdre Curtin, Professor of Law of International Organizations at University of Utrecht and adviser to the Dutch Parliament, was invited to a LIBE meeting to discuss the draft and argued that it was important that this regulation did not in any way reduce the rights of citizens already provided by national law in the member states. She quoted article 3 of the draft arguing that this was one of the most problematic restrictions: 'documents concerning a matter relating to the policy, activities and decisions falling within the institutions sphere of responsibility excluding texts for internal use, such as discussion documents, opinions of departments and excluding informal messages'. The main reason was that documents for internal use were excluded and that this, according to Professor Curtin, represented 'a step backwards in terms of the existing status quo' (Curtin, presentation, 12 July, 2000). She concluded by arguing that the Commission had been focusing on its own activities and operational procedures when drafting the regulation without taking into consideration that these rules would

28 Main Rapporteur: Michael Cashman. Additional draftsman to the initial report: Hanja Maj-Weggen (NL) from the Constitutional Affairs Committee. MEP Heidi Hautala and MEP Astrid Thors, both with Finnish origin, were critical towards the first draft of the EP report and thought that it reflected the opinion of the secrecy oriented majority of the Council rather than the discussions that were taking place amongst particularly Nordic stakeholders in the EP (phone interview with MEP).

apply also to the other two EU bodies and different organs operating in the European Union.

The EP suggested a new code, to apply not only to the Commission, Council and European Parliament, but to all other parts of their organizations. Improved access to Council documents, when acting in its legislative capacity, was another proposal. The suggestions also included improvements in the European Parliament's own system of access to documents and privileged access to documents for Members of Parliament and their staff, subject to the introduction or adaptation of rules on the handling of confidential texts. The second part of the regulation and proposed amendments pointed out that openness also meant making fuller use of the Internet and developing a more open and responsible administrative culture within the EU institutions (EP, 2000, A5-0318/2000). After the publication of the draft report, a meeting with the French Presidency revealed that there was, according to Rapporteur Michael Cashman 'a real cultural divide between what the Parliament wanted to achieve and what the French Presidency had planned' (interview, Brussels). The main difference of opinions was over exceptions. The EP wanted exceptions to be handled on a case by case basis and always subject to appeal, first when a request for documentation was handled internally, and then also at the ECJ.

In November 2000, the European Parliament, with the support of the main political groups and after a public hearing, adopted amendments to the initial Commission's proposal. The Parliament's text was, according to the European Ombudsman Jacob Söderman 'effectively a new start, more systematic and comprehensive than the Commission proposal' (Keynote speech, Lund University, Sweden, 5 April 2001). The EP formed an early position around compromise amendments that were adopted unanimously in both committees. When taken to plenary, there was no vote on the draft. Instead the EP referred the issue back to the Committee in order to enable further discussions to take place with the Commission and the Council in the Trialogue. This gives the Rapporteur a mandate to seek an agreement with the Council and the Commission (interview, MEP, Brussels). The plan was to secure a compromise on the

amendments during the Swedish Presidency, and at this stage both parts knew that they had common interests.

Tactics: Expertise and Framing

The use of expertise and framing activities dominated stage I of the decision-making process. Sweden, next to getting involved in the legal process, directed activities towards the Commission. Thus, the two main tactics of importance in relation to the initial proposal was a) using Swedish expertise to influence the Commission and b) engaging in framing activities in the Commission's expert committees. These activities were carried out by experts from the Ministry of Justice and by experts located at the Swedish Permanent Representation in Brussels. In the Commission's working groups, the Swedish legal system was presented as an old tradition, a system that fostered public debate and citizen's participation in the public debate, and a system which had rules for the classification of documents that could not be handed out. Experts could explain the national rather complex system of rules which had been set up in order to ensure that secrecy was based on a coherent and non-arbitrary evaluation of which documents to exclude from a general openness principle (interviews, Stockholm and Brussels). Only few other member states (Finland, the Netherlands, and Denmark) had similar rules, and it was in the framing process difficult to argue that the Swedish interests were in line with the interests of other states. In order to appeal to the European interest, reference was made to a general European trend of greater transparency, and to the fact that citizen's rights access public documentation had been codified in the Amsterdam treaty. This legal base had made it possible to go on the offensive at the ECJ. An additional feature of the framing activities that took place in the Commission's expert groups, and in the general debate, was that greater transparency was framed as a solution to a European joint problem – often discussed as the democratic deficit – and it was argued that citizen's access to information would increase legitimacy.

Despite these efforts, the Commission's initial proposal was from a Swedish perspective a bit of a disappointment since for example

documents from third parties were excluded. This indicates that the institutional possibility of being active in the Commission during stage I and agenda-setting, did not pay off to the full extent. The definition of documentation, separating documents for internal- and administrative use, was also criticized. On the national arena, Sweden invited journalists and representatives from different organizations with an interest in the transparency dossier. These round table discussions, with people from the issue-network, gave input to the Swedish government's response to the initial proposal. In sum, preparatory activities involved contacts with the Swedish transparency issue-network as well cooperation with the Commission. Swedish representatives decided to engage in bilateral contacts and to attempt to create coalitions in order to strengthen the national position. These activities were intensified during the French Council Presidency.

STAGE II: The French Council Presidency

The Council should formally wait for a response from the European Parliament, but preparatory negotiations started amongst civil servants at working group level, in the Council's Working Party on Information²⁹ – the forum the Portuguese Presidency had chosen for openness. The discussions of the Council Committee produced insights about national positions, but no real consensus was, at this stage, achieved. In relation to more public access to EU documentation, the EU's High Representative for the Common Foreign and Security Policy (CFSP), Javier Solana, was worried about sensitive documents concerning the EU-NATO relationship, and presented a revised proposal (High Representative 2000b). The Council's Working Party on Information received the proposal on its table when France had taken over as Council President. Coreper had also received a letter from Solana (2000a). In a report by Solana entitled *Plan for the Security of the Council*, it was stated: 'specific rules to completely restrict access to document on police and judicial cooperation are being considered' (2000b). At a Coreper meeting on Wednesday 26

29 The Council's Working Party on Information: Council working group with press officers from the member states' permanent representations in Brussels.

July 2000, the new Solana proposal was adopted. Statewatch editor Tony Bunyan commented the plans and the decision taken at the Coreper meeting: ‘This heralds the imposition of security state in the EU with all the paranoia that goes with it. The future of democratic accountability in the EU now has to be confronted’ (*ibid.*, Black, *Guardian*, 27 July 2000). Solana had support from a few actors, for example from the organization The Voice of Business in Europe (UNICE). They expressed concern regarding the protection of intellectual property, the need for exclusion of documents, and the need for firms to have an ability to informally discuss with, for example, DG Competitiveness (Hudig, letter, 28 September, 2000). The main support, however, came from EU officials and national representatives arguing for the need to exclude documents related to foreign affairs. The main reason behind the Solana proposal was that the EU common security and foreign policy involved documents from third parties. Especially NATO had expressed concern about the risk of sensitive NATO documents being made public in EU member states. In order to protect EU documents on security, defense, military and non-military crisis management, another report redefined the Council’s classification code from 1995 (*Agence Europe* 2000, Statewatch 2000).³⁰ On 16 August it was at a European Council meeting decided that documentation classified as top secret, secret or confidential would not be covered by the new rules (Council Decision 2000/527/EC).³¹ The EU 15 had twelve countries voting in favour of the Solana proposal in the Council (see table 3). Member states arguing for a more restrictive legalization are found on the left side in table 3 and countries arguing for a general openness rule are found in the right column. Those found on the left side of the column argued that publication of negotiation material during

30 Statewatch has an archive of its observatory on regulation 1049/2001 EC, which can be accessed at <http://www.statewatch.org/foi/EUFOIleft.html>.

31 At a Council meeting 31 July, 2000, legislative changes were further discussed (Council document 2000, 10782/00). The journalist Norton-Taylor commented in *The Guardian*: ‘Under the Solana plan, all classified documents relating to “security and defense of the union or one or more of its member states”, or to “military or non-military crisis management”, will be permanently excluded from public scrutiny’ (31 August, 2000).

Council session would make it more difficult to find agreements. There is need for ‘loyalty’ among member states and EU bodies as well as in relation to other organizations such as NATO, argued the Spanish and the German delegations (Croft, *Reuters news service* 2000).

Table 3. National Positions³² – Openness in the European Union, August 2000

Opponents to increased transparency, voted yes	Advocates, voted no (not a blocking minority)
France	Finland
Germany	The Netherlands
Spain	Sweden
Portugal	(Denmark, a reservation to the decision)
Italy	
Austria	
Ireland	
The United Kingdom	
Luxembourg	
Greece	
Belgium	

Sweden wanted a very far-reaching access to documentation believing that all documentation within an EU-institution should be public as long as they are not classified. France, Spain, and Germany have a different legal tradition. Their position was that all documents should be kept classified until they are made public. Countries on the right side, did not agree

32 National positions when a Council decision is taken on the Solana proposal (Council document 2000 (10782/00), Statewatch 2000, Bjurulf & Elgström 2004: 254). These positions, however, also reflect a more sceptical attitude towards increased transparency (left side) versus proponents for a new openness legislation that goes further than suggested in the Commission’s initial proposal.

with the Council. In a statement by the Danish, Netherlands, Finnish and Swedish delegations it was argued that:

Denmark, the Netherlands, Finland and Sweden consider that the confidentiality of Council documents on the common European security and defence policy (ESDP) can be guaranteed without the a priori exclusion of documents from the scope of the Council Decisions on public access to Council documents and on the public register of Council documents. Denmark, the Netherlands, Finland and Sweden maintain that the amendments now adapted to the Council Decisions on public access to Council documents and on the public register of Council documents are without prejudice to the future instruments implementing Article 255 of the EC Treaty (Council document, 31 July 2000, 10782/00).

Statewatch reported that Swedish and Finnish representatives, in addition to the statement above, left the Council meeting in protest of the unfair use of *procedural tactics* (Statewatch, *Secrecy and Openness*). For Sweden, this strong reaction could have affected the ability to use *mediation strategies* during its Presidency, but it was obvious that national interests were on top of the Swedish agenda. The Swedish Parliamentary Yvonne Ruwaida from the Environmental Party asked Minister Britta Leijon how she was going to act in order to protect already existing rules (Ruwaida, 2000, question 1999/2000:1262). Leijon answered that Sweden voted no in Coreper and in the Council, and that Sweden in a special statement clarified its position. In her written answer, she referred to a travel schedule for June-November including meetings with most member states and with the EP Rapporteur, the Council Secretariat, and the Commission (Lejon 2000, answer 1999/2000:1262). This is an indication of Sweden's engagement in networking activities.

Only three countries voted against the proposal: The Netherlands, Finland, and Sweden, but also Denmark (despite voting yes) preferred the existing procedures for the release of European Security and Defense Policy (ESDP) documents. Christina Gallach, spokeswoman for the EU foreign and security policy Chief Javier Solana, commented that '[t]he decision needed to be taken because some information that the EU will

now be having access to is from other organizations and third countries' (quoted by Croft 2000, *Reuters News Service*), and this also included NATO documents. An infected debate took place during the French Council Presidency and the Council/Solana decision was highly criticized also by the European Ombudsman Jacob Söderman and the EP (*Agence Europe*, 25 August and 30 September 2000).³³

The new rules – replacing the 1993 decision³⁴ – were adopted by 'written procedure' which means that these documents were circulated to the member states and then adopted with little (if any) discussion. These tactics, under the leadership of Javier Solana and with support of the French Council Presidency, are examples of taking advantage of institutional possibilities although not in line with Swedish interests. Those in favour of a more restricted/limited openness-legislation used procedural tactics when the proposal was accepted in the Council under written procedures. The European Parliament was on holiday, and by timing the decision-making procedures to this period, procedural tactics were used in order to get an even more restricted access to information than suggested in the Commission's initial proposal. The use of written procedures and publication of the new proposal with the EP on holiday was – in a short time perspective – a smart way to avoid being publicly questioned. This incidence illustrates that procedural tactics were connected to manipulative behaviour, since these tactics were used in a way that wasn't in accordance with EU law. As a result, critical voices were heard both in the Council and from MEPs who started to take actions when they were back from their holidays. In a longer perspective, these activities triggered cooperation amongst actors who had not been able to adequately participate when these decisions were taken. Procedural rules were, however,

33 Jacob Söderman was very upset when he in an interview commented the decision. He even said that the appointment of Mr Solana as Secretary General of the Council had been a 'serious mistake'. The next day he apologized and said: 'It would have been wiser for me not to have made such a comment at all in this debate'. Source: *Agence Europe*, 30 September 2000.

34 93/730/EC: Code of conduct concerning public access to Council and Commission documents.

used also by the pro-openness side, when they took the Council to court stipulating that the used procedures arguably were against the law.

EP and Council Negotiations

The European Parliament's and the Netherlands' decisions to take the Council to the European Court of Justice, arguing that the new decision was against the Amsterdam Treaty, are excellent examples of taking advantage of institutional possibilities. In this case, it was possible to take legal action since a decision had been taken without consulting the EP. The EP claimed that the Council proposal violated article 255 in the Amsterdam Treaty, which gives the EP rights as co-legislator (Case C-369/00 the Netherlands vs. the Council, and case C-387/00 the European Parliament vs. the Council). Heidi Hautala was Rapporteur in the EP Legal Affairs Committee and there were a lot of upset feelings amongst committee members. She was quoted in the *Guardian*: 'Solana is trying to introduce Nato's secretive methods into the EU through the backdoor' (Black 2000). The EP position had been rather firm amongst Rapporteurs and Shadow Rapporteurs after the Solana decision. Michael Cashman claim that he at a meeting during the French Presidency had said to Solana: 'Congratulations, you have achieved the unachievable; you have united the Parliament behind my dossier' (interview, Brussels). The Solana decision fueled a debate where advocates of transparency continued to frame openness laws a) as a solution to the democratic deficit and b) as a system needed in order for the general public to be able to follow how decisions are taken in the European system.

EP's position was that documents regarding EU CFSP would be dealt with one by one, but in the Council's proposal it was suggested that everything regarding EU common foreign and security policy would be excluded. The first EP report in response to the Commission's initial proposal by Cashman and Maij-Weggen, who also were representatives of the two largest parties in the Parliament (PSE and PPE-ED), came at the same time as the debated Council/Coreper decision (which was based on Solana's proposal). According to some critics in the EP, the draft report was 'a big mistake' (*Nerikes Allehanda*, 15 November 2000,

interview, MEP). They claimed that some of the Solana suggestions had been incorporated into the proposal before formally agreed upon, which was done on 14 August (*i.e.* after the release of the report). This was firmly denied by draftsman Michael Cashman, who argued that the first report should be read as an attempt to find a compromise between different member states' positions since these differences of opinions also could be found between the different EP party groups (interview, Brussels). Numerous amendments were suggested by the different EP committees. Jan-Kees Wiebenga, MEP and ELDR group spokesman, were together with MEPs from other committees (Ole Andreasen, Lone Dybkjaer, Cecilia Malmström, and Astrid Thors) able to include amendments. These changes included public registration of all documents, automatic disclosure after 30 years, disclosure or refusal within two weeks, appointment of an Information Officer in each institution, and finally the possibility of confirmatory applications and appeal to the Ombudsman (interviews, MEPs).

According to interview sources, Sweden could not take legal actions because of the incoming Swedish Council Presidency, as it would 'harm' the chair holder's credibility (interview with MEPs, with Swedish civil servants and with one of the negotiators), which can be seen as an institutional constraint. The European Parliament group led by Rapporteur Michael Cashman, however, required much more public access to EU documentation than a majority in the Council wanted and Sweden could take advantage of the institutional possibility of cooperating with the EP (and vice versa). In addition, since Sweden had been active at the ECJ during several cases related to transparency it was widely known that they supported the Dutch case (Statewatch news 2000b, interview, Brussels). Related to tactics of framing and the use of expertise, the Swedish *offentlighetsprincipen*, was once again discussed as a solution and an alternative to the Commission's proposal, something that placed Swedish experts and Swedish ideas in the middle of discussions. The fact that Sweden already had a long-standing legal arrangement, which could serve as a model, constituted a considerable advantage for the coming Presidency.

Negotiations continued on working group level. During these meetings, two member states, Ireland and Great Britain, declared that they had changed their opinion after having listened to the discussions during previous meetings (thus, framing activities had had an effect). These countries began to argue in the same way as Sweden, Denmark, Finland, and the Netherlands in issues concerning citizens' access to information. Germany, Spain, Italy and Portugal continued to argue that access should be restricted. A German representative stated that since the ESDP was a new area, it was important to maintain credibility in relation to collaborators and partners (Ministry of Justice, working group meeting, memo, October 9, 2000). Before a Council meeting a questionnaire dealing with five issue-areas had been sent out by the French Presidency. These areas were: the member states' attitudes towards classification of documents related to the EP proposals; the handling of ESDP documentation; administration; interinstitutional coordination; and the application of the regulation in the member states (*ibid.*). No delegation was ready to have an official standpoint but the discussions amongst the delegates revealed differences of opinion. The most difficult issues to agree on were what consequences this legal act would have on national law, what should be classified as secret, and how to handle sensitive documents. The French Presidency decided, in relation to these discussions, to focus on: classification, the handling of applications to get so called sensitive documents, the application of the regulation, and the publication of documents from third parties (interviews with civil servants and negotiators, Brussels and Stockholm). France tried to reach an agreement in the Council and presented new proposals. The Presidency goal was to reach a common Council position or adopt the regulation by the end of December. By mid-November 2000, there were several different proposals on the Council's table, the initial proposal from the Commission and the response to this from the EP. A draft by the French Presidency included more extensive secrecy rules than those suggested in the Commission's initial proposal. According to Stateswatch: 'none [of these proposals] maintained existing rights and all sought to impose new limits on access' (2000).

When the rather dramatic Council meetings were held, lobbying groups started to take action in order to encourage public debate. One example of NGO activities was the publication of *Essays for an Open Europe* by the European Federation of Journalists (EFJ 2000a) in December. They distributed more than 3000 copies and published the material on the Internet.³⁵ In the introduction, one can read: 'Access to documents in the EU is not a "gift" from on high to be packed, sanitized and manipulated, it is a "right" which is fundamental in a democracy'. Gustl Glattfelder, chairman of EFJ, was in a press release quoted saying: 'Members of the Parliament have a chance to speak for all citizens and not for narrow political interests...The Council of Ministers must respect the citizen's right to know in order to strengthen peoples' confidence in the European Union' (EFJ, November 13, 2000b). On the Internet, those supporting greater openness could sign what was called a 'Call for an Open Europe' (Statewatch, secrecy and openness in the EU). These activities show how issue-networks of actors, including NGOs like EFJ can contribute to the framing of issues. In doing so, the EFJ framed the issue as a question of citizen's right to information. These activities were helpful for the Swedish government, as this public debate contributed to the framing of an openness law based on the Nordic rather than the British-continental tradition, as the best solution.

In the Council, a majority was in favour of the French first proposal (a draft dated 17 November and revised on 1 December 2000) (Council of the European Union, 2000, Presidency compromise, 14730/00 DG F III). The French Presidency had written a document suggesting:

- 'Special procedures' for all documents concerning defence, foreign policy, non-military crisis management, and justice and home affairs. Any document(s) referring to documents in these categories should also be excluded.

35 The contributors: Professor Deirdre Curtin (Utrecht University), Tony Bunyan (Statewatch editor), and Aidan White (General Secretary of the EFJ).

- ‘Space to think’ for officials; all preparatory documents should be excluded from access.³⁶
- Suggested giving ‘third parties’ (*i.e.* US, Nato, and member states) the right to veto access. This would mean that publishing documents from member governments to the EU could be vetoed.

Due to decision-making rules and relative voting strength, the more openness-friendly countries could form a blocking minority, something that became possible after the use of coalition-building tactics, cooperation with the EP and continuous engagement in framing activities promoting openness/transparency. The arguments used consisted of the same elements that had been used during stage I. Great Britain and Ireland joined the transparency coalition camp although they adopted openness laws only during the last years of the 20th century. Ireland got its legislation in 1998 and Great Britain in January 2005. According to interview sources, these countries’ new positions were a result of the informal contacts and meetings that were held with these countries during the French Presidency. Bjurulf and Elgström state: ‘members decided to fight for their positions and clarify their standpoints while probing for possible compromise solutions during the approaching Presidency’ (2004: 257). The Northern European countries found a strong ally in the European Parliament’s Openness Rapporteur(s), who believed that legislation similar to the Swedish legal tradition would be best also for the Union. Members of the committee were aware of the Commission’s different agenda and tendency to support more strict openness rules. The EP however argued, in opposition to the Commission, that all institutions should have an obligation to actively make documentation public and also have very few exceptions to the general openness principle – exactly the same position as Sweden. The Commission rejected most of the EP’s proposals, but they did accept the EP amendment that the

36 Space to think = the possibility of an informal exchange of ideas and criticism. Critics to the idea of space to think argued that a system of prior classification must guarantee the citizen’s rights of access to documents, must be a public register, and citizen’s must have the right to seek an independent view, by the courts or the Ombudsman.

rules for access to documentation should apply also for non EU-citizens (EP, A5-0318/2000). For Sweden and other collaborating countries, it was important that the Commission accepted the EP amendments. If the Commission rejects the EP amendments, the Council must be unanimous in order to be able to accept these changes.³⁷ This proves the importance of EU rules and procedures. In addition, the need for coordination between the EP and the Council is also demonstrated. Both actors took advantage of this relationship to full extent, and engaged in policy networks with collaborators as well as in bigger issue networks including non-governmental organizations. Sweden, with an incoming Presidency, became a node in these networks.

In preparation for the Council Presidency, Swedish Ministers and civil servants held meetings in the capitals of Europe, presenting what Sweden thought was the best openness system (interviews, Stockholm and Brussels). It is common for Presidencies to visit capitals and discuss national positions on various issues. For Sweden this was a chance to use framing tactics and thus to argue for Swedish ideas at the same time as coalition-patterns could be identified. Framing and coalition building tactics were used in tandem. A high ranking civil servant with long negotiation experiences, said during an interview: 'In the end game one can easily be left out of the game. Therefore it is important to focus [...] on coalition-building' (interview, Stockholm). The information thus received from bilateral contacts became useful during the Presidency, when Sweden itself was partly constrained by norms of proper conduct. Personnel from the Foreign Ministry were involved in these coalition-building activities because of their diplomatic experience in 'gently persuasive attempts' (interview, Sweden).

Working with larger countries – especially involving Great Britain, France, or Germany – was by a handful of interviewees mentioned as

37 However, an experienced MEP says that the Parliament has to 'fight', also regarding first pillar issues, if it wants to really participate in decision-making: 'Nobody ever gives the Parliament rights', he says (interview). In addition 'most of the work of a MEP goes on outside the chamber. Frequently it involves laborious discussion and long voting sessions in committee' (Watson, 2003: 7).

being of importance when coalitions are formed. According to a highly ranked civil servant, Sweden does not, because of cultural differences, normally co-operate with Italy and Spain (interview, Stockholm). Both Great Britain and the EP had joined the transparency coalition, which thereby included both a large country and the co-legislator. Sweden's position was to some extent also backed up by Ireland. These contacts had been built up before the Swedish Presidency, and a number of countries had changed their positions by the end of 2000. The new positions of Great Britain and Ireland were not only a result of successful Swedish coalition-building tactics. Rather, the EP activities described above and the debate that followed after the Solana decision, led to discussions on a national level. The British Parliament openly criticized the Council's decision to implement new restrictive rules and replace previous legislation (for more details, see Bunyan 2002). Attempts by the Swedish Government to map out coalitions possibilities and patterns of alliances most likely had an additional impact. A national observer claims that 'the important work and alliance formation takes place in the corridors' (interview) and coalition as a strategy is per definition closely related to networking, something which Swedish strategists obviously were well aware of. Hence a policy network of actors promoting transparency had been created and made it possible for promoters of openness to go on the offensive in the Council.

Tactics: Coalition-building and EP Cooperation

As the Solana process during the French Council Presidency illustrated, many NATO countries were concerned. The Solana decision is directly linked to these discussions and diplomatic links. The activities of Swedish representatives are examples of coalition-building, but also of building up, with Carnevale's concept (2002), referent power, which is important for the ability to use mediation tactics during the Presidential period. A chair holder has a right and an ability to map out national positions and plan the handling of the issue in the Council. The choice to stay outside the legal process and not join the EP or the Netherlands in their cases before the ECJ, illustrates how Sweden, just like in the Council, kept

a low profile although it did choose to vote no to the Solana proposal. As earlier mentioned and according to many interview sources, this was done in order not to do anything that could ‘harm’ the position of the incoming Presidency. The relative success of the handling of the transparency issue illustrates that it is important to uphold credibility; make sure that you have trust and a negotiation mandate from the Council. Together with the strong legal position that Sweden and other countries had created by having an openness rule written into the Amsterdam Treaty and by engaging in framing (*i.e.* presenting the Swedish legal system as a solution to Europe’s so called democratic deficit) at the Court of First Instance and at the European Court of Justice, offensive strategic action became possible for the pro-openness players.

Secret meetings had been held in London at the Foreign and Commonwealth office. Next to EP representatives, Council representatives from countries in favour of general openness rules (the Nordic States, the Netherlands, Ireland, and UK) participated, thus taking advantage of network opportunities (interview, MEP). These arrangements illustrate how Sweden took advantage of the institutional possibility of the incoming Presidency. The EP became Sweden’s ally and vice versa during the Swedish Council Presidency. ‘The years before had paved the way for transparency and the Swedish Presidency came at exactly the right time’ (Negotiator, High ranking civil servant). Another MEP elaborated: ‘The Parliament had high expectations on the Swedish Presidency and an openness agreement’ (interview). Therefore, ‘the EP contacted the Commission when they suspected that there was an opening during the Swedish Presidency’ (interview, MEP). Graham Watson, chairman of the EP Committee, had contacted Commissioner Barnier after initial Trialogue meetings during the French Presidency, and made it clear that the new legislation should at least reflect the status-quo and could never be a step backwards because of the ECJ interpretations during the 1990s. He also argued that from the EP’s point of view, the idea of ‘space to think’ had to be used with restriction. Finally, he indicated that the ‘authorship rule’, giving third parties a right to give consent to disclosure, should not be dealt with by EU regulation. Instead Watson concluded that

most member states already had rules that could be applied (interviews). The Parliamentarians' perceptions of Presidential power were high, who thought that it would be possible for Sweden to influence the agenda and reach an openness deal. Northern Europeans dominated the two active EP committees, and the Swedish MEP (conservative party) Charlotte Cederschiöld was in the Foreign Affairs Committee, which illustrates a strong Nordic predominance. This was not a coincidence, as Parliamentarians involved in this issue claim that they were not given openness 'by chance'. Rather, because of having experience from national systems with public access to documentation and freedom of information, Nordic MEPs were perceived by other Parliamentarians as 'experts' (interviews). In addition, many Dutch and British MEPs were active in the process. Since these MEPs represent countries in favour of strong openness legislation, it was possible, based on the policy network, to coordinate activities in the Council and in the EP. In the policy network of key actors, an agreement had been reached that this issue was going to be settled during the Swedish Council Presidency.

When Sweden began to keep a low profile in the Council to ensure that this country would not lose credibility, voices about these concerns instead came from Swedish MEPs. Cecilia Malmström was quoted in several Swedish newspapers: 'can one trust that it will be rule under Swedish law?' (Wallberg, 2 May, TT). Although sometimes criticized in the press, this low profile by no means meant that nothing happened. In fact, it was the opposite as this was a tactical move made in order to be able to take on a leading role concerning transparency. As the country was preparing for the incoming Presidency, coalition-building tactics dominated Swedish activities during stage II. In addition, Sweden together with the blocking minority coalition in the Council engaged in framing activities at working group level, where it is often said that fields of power can be identified (interviews with Swedish negotiators, Stockholm and Brussels). Thus, it is important to be active and take advantage of the institutional possibility at working group level. Cooperation with the Parliament was a key feature of Sweden's strategic action.

STAGE III: The Swedish Council Presidency

Sweden was, according to one interviewee, 'on a mission to redeem EU with transparency' (interview, Stockholm). The same source continued to elaborate on how Sweden, already when the principle was written into the Amsterdam Treaty, 'became religious'. Sweden wanted results and what was perceived as 'an attempted coup' [*i.e.* the European Council's decision to adopt the Solana proposal] by the French Presidency, made the Swedish government 'eager to take actions' although few dared to believe in results because of the 'monumental resistance from certain countries' (interview quotes). The *Financial Times* wrote: 'The EU chairmanship will bring Sweden opportunities to make a diplomatic contribution on the international stage but there are also potential risks' (December 4, 2000). Comments about Swedish engagement for transparency raised the expectations on Sweden to provide results and thus running the risk of being judged as an inefficient Council President if not being able to deliver. During these six months, national political quarrels stood back and even the political opposition focused on the European arena and on EU politics. This consensus on the national arena made it easier for the Swedish government to act as an honest broker without having to be questioned at home.

According to a member of the French Permanent Representation in Brussels, 'being influential is not about imposing one's views, it is about putting forward a real plan and leading others' (Costa *et al.* 2003: 120). Sweden managed to live up to high expectations about a well prepared and balanced performance from ministers involved although Swedish consensus oriented strategies led to complaints that Swedish officials went too far in their conciliatory ambitions, that these efforts were time-consuming and led to ineffective decision-making (Broman & Rosén 2001, Tallberg 2001b). The backside of such a strategy is that it produces sub-optimal outcomes, often the lowest common denominator, argued one of the interviewees. Judgments like '[s]afe but dull' were also heard in the press (*Financial Times*, March 21, 2001). Somewhere halfway into the Swedish Presidency, the country changed strategy (interview with government official, interview with representatives at the PR in Brussels,

and also confirmed by key negotiators). In the words of a one Swedish representative: 'From April and forward, Sweden changed tactics and became more offensive' (interview). Sweden put much more effort into the transparency area and the upcoming European Council meeting in Gothenburg. These new more offensive tactics paid off, not least in the transparency area. By sending political signals about what the country wanted to accomplish, Sweden from the beginning became a central actor and 'given' promoter within the transparency issue-area.

Despite comments in the Swedish press about conducting transparency negotiations behind closed doors, the Swedish handling of the transparency file by the European press in general was seen as a great success during the final month of the Swedish Presidency (Broman & Rosén 2001). Interesting in this case is that it seems as if almost everything regarding transparency was done right. Greater openness and easier access to documents would, it was argued, help EU citizens and the media to monitor and evaluate decision-making processes, thereby increasing public participation and strengthening understanding of EU policy-making and loyalty to the Union. Sweden framed transparency as an efficiency-producing instrument, trying to please both politicians looking for legitimacy and bureaucrats looking for efficiency. Before the Presidency, an order went out to all the Swedish chairpersons that this was going to be the most transparent Presidency ever. 'Transparency above all' became a mantra for all Swedes. If an issue has high priority, a member state sends the most suitable negotiator and if, in this case, transparency is not a national priority, a country may choose to send a person replacing the civil servant or the Minister normally in charge of these issues. By sending its most skilled negotiators and experts, Sweden tried to optimize negotiations in the Council. Signals were sent to other countries about national intentions by having Ministers visiting the Parliament, whenever possible, declaring that transparency is an important issue for Sweden. Heidi Hautala (MEP and Rapporteur) explained that the Swedish Prime Minister Göran Persson and Swedish representatives symbolically placed transparency on the agenda by holding Council Minister meetings open to other actors and by giving out more information than previous chair

holders (interview, June 2005). These actions illustrated how a Presidency could be run with more openness regarding meetings and activities. In addition, countries more reluctant towards opening up the negotiations could see that everything was not published on the Internet. National ideas could be framed as possible also for countries with a different tradition, by discussing restrictions in the Swedish system. These activities were important for the ability to persuade sceptics in the Council. It was necessary to demonstrate that Sweden was not an 'openness fanatic' (interviews, Brussels). The dividing lines between the countries had been mapped out before the Presidency and Swedish representatives knew very well which cards to play. The coalition of allies was important during the negotiation phases in April and in May. 'There was constant contact with the member states about how to write a document. The exceptions came first in these discussions and citizens' rights came second', claimed one Swedish representative (interview). These activities are examples of using mediation tactics, thus placing common interests first and self-interest second, in order to find a compromise that can form the basis for a common position in the Council. This is necessary for all Council Presidents.

National Coordination

Civil servants and negotiators argue that contacts between Stockholm and the Permanent Representation in Brussels functioned rather well due to early planning (interviews). Sweden has a small body of Government Offices (*regeringskansliet*); the Prime Minister's office is comparatively small. According to interviewees, approximately 15 people in total were involved in the transparency area, which made it easy to coordinate and set priorities (interview, Stockholm). There was total agreement in the Swedish Parliament (Riksdagen), which meant that the Swedish national position was very clear. Swedish agents used the information gathered through networking with other actors, and national experts from the Ministry of Justice (which already had participated in the Commission's expert groups) coordinated the legal act with the Council's legal service. The Permanent Representation in Brussels provided knowledge about EU

affairs and exchanged ideas with the national arena in Stockholm. The Swedish chief negotiator was its permanent representative, Ambassador Gunnar Lund, a Swedish Social Democrat with long experience in politics. His knowledge and personal experience have by all Swedish interview persons been mentioned as an important factor for the outcome. Graham Watson, EP representative in the Trialogue, verified that 'Gunnar Lund did a really good job and Helena Jäderblom did a huge job,' (interview, Brussels) thus arguing that Sweden had skilled negotiators with expertise from the Ministry of Justice backing up their arguments.

During the Presidency, video conferences were held every day to ensure that important information was shared amongst key actors (interview, Stockholm). According to interview sources, this is standard procedure for member states having an important issue on the agenda during a Council Presidency.³⁸ A high ranking civil servant claimed that in order 'to increase influence it is important to ensure freedom and some room to maneuver but also responsibility [*frihet under ansvar*]...We have meetings very often and also many channels of informal contacts' (interview, Stockholm). Close contacts between the capital and the permanent representation in Brussels is a landmark for Sweden, as well as for other small and middle-sized countries. Sharing knowledge and information between Ministries and coordinating the national position is done by the Government office, although with the 'help' of the Advisory Committee of European Union Affairs (EU-nämnden), with representatives from parties in the Swedish Parliament. Hence, the relatively small number of people involved, a clear strategy, and skilled negotiators that could promote these ideas, paved the way for the final negotiations.

An additional explanation of the relatively good performance during the Swedish Presidency is, according to interviewees, cooperation with the Council Secretariat. These institutional contacts, which are important to build up the informational advantage of a Council President, are examples of institutional possibilities related to the Presidential position. According

38 The Finnish Presidency had a similar approach in the REACH area and did, just like Sweden, manage to reach an agreement on legislation about the use of chemicals.

to a national observer, the Secretariat became Sweden's 'best friend'. He elaborated further by explaining that during the Presidency 'they served us with documentation and also shared their knowledge about Council negotiation with us [...]'. The most lasting effect of the Council Presidency has been the good contacts with the Council secretariat... There was a huge difference after the Swedish Council Presidency' (interview, Stockholm). Another experienced negotiator stated: 'the Council Secretariat is a part of Brussels that works like an ordinary secretariat... The personnel have detailed knowledge of the process' and seem to 'get a hold of relevant texts'. Even though the competence of the Council Secretariat is mainly procedural, these contacts – because of the knowledge the secretariat had about national positions – contributed to Sweden's ability to engage in problem-solving leadership tactics. During the Swedish Council Presidency, a basic instruction from the Swedish Government, according to a negotiator, was to give preference to European interests. In the transparency issue area, however, there was no question that national rather than European interests were on top of the agenda. Sweden, with reference to the authority of the Presidency, could uphold an image of partiality and the information supplied by the secretariat made it easier to engage in mediation activities between different interests, and at the same time act as a leader in order to move the negotiations forward. When not holding the chair, member states with strong interests in a particular issue area can still maintain contacts with the secretariat's civil servants.

Negotiating in the Council

In the Council working group, national representatives and experts from the capitals discussed openness legislation. Sweden, using procedural techniques, held as many meetings as was necessary, even full day sessions, in order to reach an agreement. One experienced negotiator stated: 'if you are the chair holder you can force the other countries to discuss an issue and basically wear them out' (interview). In order to steer through a proposal, any member state and particularly a Council Presidency must act strategically: 'you have to know what you want' (interview) in order to get results. According to several persons who have been interviewed, the

1 May deadline was often used as a landmark and a reason to push for an agreement. A common perception, also at working group level, was that this deadline was 'final'. The Presidency was highly criticized for these, in the words of a policy adviser and negotiator, 'pushing strategies', *i.e.* holding as many meetings as possible, engaging in procedural tactics, and arguing that a deal had to be realized before May (interviews, MEPs). A non Swedish negotiator confirmed in an interview: 'In the end everybody wanted an agreement and although there was a secured blocking minority in the Council, there was a risk of a "worse" deal if the issue was handled by the less openness friendly incoming Presidencies'.

For Sweden, the most important goal became to reach an agreement rather than pushing for the national position. A Swedish national observer claimed that, 'at working group level, we had an instruction with the Swedish position and the most important thing was the goal of actually getting an agreement...this is a strange dynamic'. Having the signing of an agreement as the main goal raises question about how far the Swedish negotiators were willing to go in order to have to ability to present results and describe the process as a success. Still, researchers and the media have portrayed the Swedish handling of this dossier as both a negotiation success and as activities where Swedish interests have been linked to the European agenda. Framing interests as European rather than national interests is, as was discussed in the theoretical chapters, an important element of successful framing.

There were many strong voices in the Council, in Coreper and on working group level (illustrated in table 4). Finland, the Netherlands, Ireland, Great Britain, and Denmark stood together with Sweden on one side. The other member states to various extent disagreed with the EP and the openness minority. Spain and Belgium, for example, did not have the same interests as Sweden when it came to public access to documentation and transparency (von Sydow, *Aftonbladet*, 24 April, 2001, Brancaglioni, *Göteborgs-Posten*, 4 March, 2001, Gelotte, *Göteborgs-Posten*, March 4, 2001, interviews).

Table 4: National Positions – Openness in the European Union, April-May 2001

Skeptics to greater access	Advocates of transparency
France	Finland
Germany	The Netherlands
Spain	Sweden
Portugal	Denmark
Italy	Ireland
Austria	Great Britain
Luxembourg	
Greece	
Belgium	

The EP negotiator Cashman explained that ‘the breakthrough came when we [the Presidency and the EP negotiators] found a mechanism to deal with sensitive documents...this was extremely important’ (interview, Brussels). The handling of the so-called sensitive documents regarding foreign affairs was a big issue for France, Germany and Spain. These countries had to be convinced that the new proposal included limitations to what was going to be public, and rules about how these documents should be classified. According to the same person, ‘Gunnar Lund did almost the impossible by selling it to the French, the German, and the Spanish...but I think that they were pleased with the final agreement’. Another breakthrough concerned infringement procedures, which was an issue that worried the Commission. Rules concerning the handling of documents on a case-by-case basis and to what extent EU law would infringe with national law, are found in article 4 and article 9 in regulation 1049/2001.

Framing activities continued on different levels. The Swedish Foreign Minister Anna Lindh, had a mandate to continuously push for openness and to discuss this issue with other Foreign Ministers. She also engaged in discussions with the EP’s Foreign Affairs Committee, arguing for the

importance of the regulation and framing transparency as a structure that can be both efficient and increase legitimacy. The reference to efficiency should be understood as counter framing, to meet the opponents' argument, that the new regulation would increase bureaucracy and make EU decision-making less efficient. Sweden's Prime Minister Göran Persson spoke about openness in his opening speech to the EP in January 2001. The Swedish Minister of Democracy and Public Administration, Britta Leijon, contacted MEPs and key individuals to push for an agreement. She seems, however, to have focused mainly on Swedish MEPs (interviews with MEPs, Brussels). The main work was, however, done at working group level and in Coreper. Helena Jäderblom, from the Ministry of Justice, led the working group negotiations. She used mediation tactics and leadership tactics in order to uphold the image of impartiality, while pushing for Swedish interests.³⁹ Jäderblom promoted a neutral image and tried to balance between national positions. An anonymous interviewee (not listed) argued that 'it was important to create an illusion of Helena Jäderblom as being totally impartial.' The text that was handled in the Council came from the Council's Legal Service, but Sweden held on to the text and drafted changes, although some of these were presented by other member states. Johan Wilhelmsson from the Ministry of Justice, explained that the Irish delegates had handed out a proposal, but that the text actually had been written 'in this house [the Swedish Government Offices]' (interview, Stockholm). An experienced negotiator claimed that during a Presidency, 'the most important proposals should be handed out by alliance partners' (interview, Brussels). Many interviewees argued that handing out your proposals or your position in a written version makes a difference. In the words of a Swedish negotiator: 'rule number one, is always to hand out written proposals' (interview, Brussels).

The key player in the Coreper negotiations was Gunnar Lund. In addition to organizing how and when compromise texts should be handed out, Gunnar Lund selectively shared information between the arenas of Coreper and the Trialogue, which is a good example of the

39 In Stockholm and sometimes in Brussels, personnel from the Ministry of Justice backed her up: Johan Wilhelmsson, Anders J Ericson, and Kristina Holmgren.

use of information as a procedural tactic. According to participants and interviewees, the level of conflict was often high. For Lund, the norms and rules in terms of cooperative methods in Coreper, made it easier to discuss these rather difficult issues (one interviewee refer to this climate as a 'fraternity mentality'). Even if the discussion climate is sometimes hard also in Coreper, a chair holder can send out all delegates except the ambassadors (and the Commission representative when he/she is present). This is called going over to 'Coreper restricted sessions'. By doing this, *i.e.* making use of procedural tactics, there is a greater chance that the participants discuss with less prestige and instead try to solve the dispute (interview). As Coreper is a conflict resolution organ, and thus an arena for integrative bargaining, group conformity calls for consensus building rather than zero-sum bargaining. There is even an unwritten rule saying that by behaving in a non-cooperative way, a country can be ignored in later negotiations. These arrangements indicate that a chair holder can achieve a lot by using procedural tactics, for example planning meetings in a way that has an impact on the outcome.

An Agreement in Coreper

After having presented a complete draft of the regulation, Lund in April received support from the other ambassadors to seek an agreement with the EP. The parliament in the negotiations with the Council had to accept that some documents were given special treatment and, according to Lund, no compromise from the more reluctant member states was possible (quoted by Gelotte, *Göteborgs-Posten*, April 4, 2001). At this stage, Sweden had to use mediation tactics in order to unite the member states. As an example of a mediation technique, Sweden declared itself willing to compromise hoping that by showing an example, other would follow. One 'tool' in these discussions was to continue to frame Swedish exceptions to the principle of public access to documentation, as a solution. In Sweden, all documents coming in or out from public authorities shall be made public unless classified; these exceptions, regulated by law, were discussed in Coreper. During extra Coreper meetings, a new Swedish draft was discussed in mid-April. The EP LIBE Committee

discussed the same proposal. These meetings resulted in close contacts between Gunnar Lund and the LIBE chair holder Graham Watson. These discussions led to a new draft that was presented by Cashman and Weggen in the EP committee. On 23 April, a new Coreper meeting was held and the member states reached an agreement. Germany, France, and Spain would have preferred a wider definition in relation to when national laws should apply; Sweden would have preferred clearer rules, but settled for the compromise (Barkman, *Dagens Nyheter*, 23 April, 2001). The compromise text included a formulation regarding when national law precede EU law, which was important for Sweden and the other countries with far-reaching openness rules. Spain, however, argued that these national 'openings' could cause information leaks (Lindgren, *Göteborgsposten*, 24 April, 2001). Sweden had an information advantage in the sense of knowing more about what was going on than other member countries. In the next section, interinstitutional negotiations will be discussed in some detail.

Triologue Meetings – Interinstitutional Negotiations

The differences between the EU bodies were substantial and Triologue-meetings had been needed in order to solve disagreements. These meetings were initially intended to start after the second reading, in order to avoid conciliation procedures. More recently, however, Trialogues have sometimes started earlier. During the French and the Swedish Presidencies, these meetings took place in the first reading. As Council President you are working together with all three EU bodies simultaneously in the Triologue, which creates an institutional possibility derived from co-decision procedures in first pillar issues. When Sweden held the Council Presidency, Trialogues began in January and were held continuously until May (Council of the European Union (2001a) working document for Triologue, 24 January).⁴⁰ Since these meetings were not

40 The first meeting in January was based on discussions concerning the definition of sensitive documents, the handling of sensitive documents, and the ability of a third part to demand classification. These meetings were held in order to compare the positions of the three bodies and then find a compromise, something which is evident

open to the general public and only included a small number of people, many critical voices were heard in the media. In the national news these activities were defended, and it was reported that Swedish civil servants continuously evaluated the Presidency proposals that were presented in the Council and in the Trialogue. According to the Director General for Legal Affairs (Ministry of Justice), Olle Abrahamsson, rules interfering with national law may be against EC law. Sweden's Minister Britta Leijon signaled that Sweden was willing to compromise, but not regarding Swedish law, and therefore would consider taking legal action in order to defend the principle of public access to official documents (Wolters, *Journalisten*, 23 March, 2001).

From the beginning, a large number of MEPs from the different committees involved wanted to participate. These MEPs were pro-openness and dominated discussions in the EP. After a fifth Trialogue meeting (2 April), a small negotiation team evolved, led by Cashman.⁴¹ Gunnar Lund represented the Council, with help from Helena Jäderblom. The Commission's main representative was Michael Barnier. During the initial Trialogue discussions three main lines of disagreement were identified (Council of the European Union, 2001, SN 1296/01, interviews):

- How to define 'sensitive documents'.
- Should sensitive documents be entered in a diary?
- The possibility for a third party to claim secrecy.

As Council representative, Gunnar Lund had to speak for the Council rather than for Swedish interests. Instead, participating MEPs got the role of defending Swedish interests. For MEPs, representing the openness friendly Parliament, it was easier to have a firm position in relation to

when analyzing Trialogue documentation that consists of three rows comparing each position and each suggested amendments from the Council and the EP.

41 The EP negotiation team in the Trialogue during the first meetings included Cashman, Maij-Weggen and Hautala and four shadow rapporteurs/MEPs from other committees (Andreasen, Thors, Malmström, and Theato). Later mainly Weggen, Cashman, and Hautala represented the EP.

restrictions of public access to documentation. Some MEPs, particularly those who were negotiating for the EP, received phone calls from Swedish government officials trying to get information on EP positions, but probably also to promote Swedish ideas. National representatives cannot tell MEPs how to vote, but they can contact them and discuss their national position. A common way of emphasizing the importance of an issue is simply to stipulate that 'this regulation is *very* important for Sweden' (interview, Brussels).

Shackleton has remarked that in the Trialogue, 'ideas can be exchanged without formal decision being taken, each side accepting to refer back possible solutions to their delegation' (2001: 9). From a Swedish strategic perspective, it was useful to have the more openness friendly EP as 'opponent' to the Council. One participant explained: 'When reporting back about what happened in the Trialogue, you can always claim that the EP has a much more firm position than it actually had' (interview). Michael Cashman, the EP Rapporteur, said 'the Swedish Presidency got it absolutely right...they played what we call a blinder and became the honest broker' (interview, Brussels).

In the EP, Cashman and Majj-Weggen tried to find a compromise that could be signed by the party groups in the Parliament. For example, stakeholders in the EP, many of which came from the Nordic countries, argued that the Swedish constitution and *offentlighetsprincipen* would be undermined if member states could, as initiator of a document, classify the content. It was argued that less transparency in the EU would in turn produce classification and secrecy (for the public) also in Sweden (cf. Gelotte, *Göteborgs-Posten*, 4 March 2001). Jonas Sjöstedt, a Swedish MEP for the left party was quoted in *Göteborgs-Posten*: 'it is not true that the Swedish *offentlighetsprincipen* is guaranteed by this proposal' (Brancaglioni, 4 March, 2001.). Tony Bunyan, Statewatch editor, commented: 'on this issue the majority in the European Parliament is closer to the governments in the Council than they are to the people who elected them' (statewatch 2001a). Additional critique came from the Swedish MEP Charlotte Cederschiöld (Conservative party), who argued that Sweden had been lacking a vision during the Presidency, and that

a more straightforward position was needed (quoted by Lönn 2001).⁴² MEP Cecilia Malmström commented the classification of documents in the local Swedish newspaper *Göteborgs-Posten*: ‘This is something I am very concerned about and I also think that is the case with the Swedish government, although they cannot comment on this issue too loudly’ (quoted by Gelotte, 4 March, 2001).⁴³ The comment by Malmström shows how important it is for a Council Presidency to balance between providing leadership and being a mediator. ‘The Presidents should be and are often perceived as impartial...this upholds credibility’ (interview, National observer). Perceptions amongst member state representatives of Council Presidents as impartial were beneficial for the Swedish agenda and made it possible to get a mandate from the Council to negotiate with the EP and the Commission in the Trialogue. Admittedly, Sweden did get quite a lot of sarcasm from the Council. Mistrust from some of the member states was expressed in the Council, wondering if the Swedish Council Presidency would represent the Council or Sweden and national interests in the Trialogue. One negotiator claimed that Sweden could ‘defend itself’ (interview quote) from some of the criticism by referring to the authority of the Presidency *per se* and that the power of the position – with Carnevale’s terminology (2002) legitimate power – made it possible to handle problems.

Personal Contacts and Trialogue Negotiations

Commission representative Michael Barnier did not, according to well-informed EP members, have the same personal relationship with the other two key negotiators as they had with each other (interviews, Brussels). Swedish Permanent Representatives have, on the other hand, said that personal contacts between Gunnar Lund and Michael Barnier were as good as the contacts with Graham Watson (interviews). During

42 Cederschiöld (in Swedish): ‘det behövs lite djävlar anamma. Detta är en fråga där vi skulle kunna visa upp en vision’.

43 Original quote: ‘Det ser jag med stor oro på och det tror jag också att den svenska regeringen gör. Fast det kan den inte säga högt förstås, kommenterar EU-parlamentarikern Cecilia Malmström’.

the Amsterdam negotiations, when Sweden was amongst those countries arguing for new rules about public access to information, the Swedish negotiators, including Lund, were sitting next to the French negotiators, and Barnier was one of the main French representatives. Other participants say that they became 'friends' and kept contact afterwards. Regardless of whether or not there were contacts on a more friendly/personal level also between the Commissioner and the Swedish negotiator, the close cooperation based on common interests between Gunnar Lund and Graham Watson made it possible for these two actors and their collaborators to act strategically in unison. The Commission, however, always has a right to be present at Coreper and Ministerial meetings and therefore must have known what was said there. Hence, it seems reasonable to conclude that there were contacts both on a professional/formal level and on a personal/informal level although contacts in the pro transparency network were much more intense. In addition, according to MEP sources, the Trialogue was used deliberately to put the Commission aside. 'The Commission is the most conservative actor and by using the Trialogue and an agreement in the first reading you could side step the Commission' (interview quote by Bjurulf & Elgström 2004: 261). The Commission's low profile can also be a consequence of a silent acceptance by Michael Barnier of the discussion between the main EP and Council representatives.⁴⁴ All interview sources chose to discuss contacts between the EP and the Council. One interviewee claimed when specifically asked why the Commission was absent, 'the Commission was very active in the working groups, especially their legal service...I don't think that they were passive [in the transparency issue area] at all' (interview), but this comment is an exception and an answer to a direct question about the Commission's passive role. Many interview sources confirm

44 Already during the French Council Presidency, The Commission's representative Mary Preston had made clear that the Commission (at least those who were working with this dossier) did not have a problem with the EP idea that everything is accessible unless some of the exceptions apply. The strongest resistance came from within the Council and obviously Sweden did not support more strict ideas (Source: internal EP documentation, interview with MEP, Brussels).

that the Presidency had less informal contacts with the Commission than with the European Parliament. When confronted with descriptions of a process not including the Commission, both MEPs and representatives from the Swedish Permanent Representation underline, however, that they had good contacts also with Michael Barnier and that he was, from a pro-openness perspective, a good negotiator in the Commission.

There was a vote in the Commission and ‘the Swedish representatives and negotiators didn’t know what would come out of these discussions’ (interview quote, also discussed by MEPs). This person continued: ‘There was unanimity in the Council and all ambassadors sat in Coreper and waited for the Commission’s decision... The working group’s chair holder and the Council’s Legal Service were also present’. Watson was by the press quoted commenting the ‘secret’ negotiations, ‘the dialogue with the Council is starting to bear fruit... it is still necessary to have the Commission’s assent’ (*Bulletin Quotidien Europe*, March 23, 2001). In the same press article it was reported that Watson wanted Nicole Fontaine (the EP President) to persuade the Commission to assume a more positive position towards the positions of the EP and the Council and include these positions in a modified proposal (*ibid.*). Those from the EP and the Council who were involved in the process seemed to have been uncertain about the Commission’s position to the very last minute. One important conclusion is that this uncertainty could have been avoided if there during stage III of the negotiation process had been more contacts with the Commission.

Despite the fact that a ‘no’ from the Commission would not automatically have made an agreement impossible, a hypothetical situation with a negative response from the Commission would probably also have made member states in the Council reluctant to vote yes to the final Swedish proposal. One might suspect that the Commission could have acted more strongly if Commission representatives had felt that this was necessary. In an interview, a Swedish national observer elaborated on the subject: ‘the Commission had interests of its own and it is a large institution, but they backed up the Presidency when necessary’ (interview, Stockholm). ‘The Spanish and the French delegates were the most difficult ones to convince

[in the Council]...The rumour says that they were also upset during the Commission's internal negotiations', according to a national observer (interview, Brussels). These internal disputes are seldom reported upon in public, but when the Commission is in session, many Commissioners present their national position although this body in public is acting as if there is always a common standpoint. In this case, the Commission accepted the final draft proposal.

An Agreement between the Council and the EP

On 3 May, which was the World Press Freedom Day, the Parliament voted in favour of adopting the 'deal' reached with the Council. On 2 April, an open letter from The European Citizens Action Service (ECAS, 2001) had been sent to all MEPs. The 'Open Letter' handed out by ECAS was supported by the following organizations: European Environmental Bureau (EEB), European Federation of Journalists (EFJ); the Standing Committee of Experts on International Immigration; Refugee and Criminal Law; and Statewatch. This massive lobbying during the final negotiations and the EP plenary vote shows the importance of the larger issue network of openness promoters. In the EP, the final vote on the legislative resolution where 400 in favour, 85 against, and 12 abstentions. The EPP-ED (conservative), PSE (Socialist) and ELDR (Liberal) groups were in favour. Green and Left representatives voted against. The text adopted by the European Parliament at first reading corresponded to the compromise package previously agreed in the Trialogue. The final 'deal' was adopted two weeks later, at the General Affairs Council meeting (14-15 May). The Council confirmed its acceptance of all amendments from the European Parliament. In the *Results of the Swedish Presidency* one can read:

A decision was taken on a regulation that signifies a major step forwards as regards openness in EU institutions and citizens' access to EU documents. Both documents drawn up and documents received are covered by the regulation, including the sensitive documents (cf. the Solana decision), albeit with certain special rules. Public records must be established. These records will be available through the Internet. Swedish regulations on public access

will not be affected negatively. The Council also adopted a decision to make Council documents available on the Internet (Prime Minister's Office, 2001: 30-31).

The country was, however, in retrospect criticized for not acting as an honest broker and of placing national interests in front. 'Sweden was afraid of being accused of having good rules at home and at the same time imposing bad rules on Europe', said an MEP (interview, Brussels). Tony Bunyan from Statewatch commented the final deal on openness regulation in the following way:

Citizens and civil society were promised that the commitment in the Amsterdam Treaty would 'enshrine' their rights of access to EU documents. Instead all three Brussels institutions have colluded, through secret negotiations rather than open procedures, to reach a deal that suits them (Evans-Pritchard, *EU Observer*, 4 May 2001).

From a Swedish perspective, however, this resolution was 'very satisfying' (Government Communication 2001/02:110, p.6). The Swedish goal of having no limits to the principle of public access to official documents (*offentlighetsprincipen*) was written into article 5. This was something that the Commission's legal service had been worried about. From that perspective, it was an asset to have the Commission's expertise and the Council's legal service to rely on. Thus, for Sweden these limits will be dealt with under chapter two of the Freedom of Press Act (*tryckfrihetsförfordningen*) and under the Secrecy law (1980:100). The results included, firstly, that all the documentation in an institution are covered by the new rules, both documents written in the institution and documents received from others. Secondly, that all institutions must keep a public register over all documents. Thirdly, the list of secrecy exceptions had been completed. Fourthly, an obligation to hand out part of documentation that is in other parts classified as secret was written into the regulation. Finally, so-called sensitive documents (particularly military and defense documentation) are classified in a certain way and covered by special rules. This means that when these types of documents have been handed

over to an institution, the sender (originator's control) has to approve to public access and or registration. Also member states can request secrecy of documents and that these documents should not be handed out without consent (2001/02:110, p.6-7). Obviously, the inclusion of originator's control was something that France, Germany and Spain had been demanding in the Council.

Those in favour of a strong legislation felt that the final compromises had resulted in an unclear regulation. EP critics and the Greens, represented by Heidi Hautala, believed that there were too many 'loopholes' in the regulation and that these unclear parts of the legislation make it easy for those who want to keep documents secret. The notion of 'sensitive documents' was perceived as vague (article 9 and 5, regulation 1049/2001) (*Hufvudstadsbladet*, 4 April, 2001, interviews, MEPs). This formulation was a concession to Council members skeptical towards some of the first proposals that had been presented during the spring.

Tactics: Leadership, Mediation, Procedural Tactics and Manipulation

The institutional arrangements surrounding the Presidency and first pillar issues provided a possibility to act strategically and to cooperate in the policy network of actors involved in the process. I want to stress the institutional possibilities including a) the Presidency and strategic action, and b) the cooperation with the EP. Co-decision procedures giving the President a right to participate in dialogue with other representatives and making use of the institutional possibility of the Trialogue, led to results.

A number of factors which can explain the outcome can be identified. The first category of explanations is related to the strong values Sweden holds regarding openness, something that became obvious when Sweden got involved in legal processes related to openness and transparency (interviews, the Swedish Permanent Representation, Brussels). The line of argument presented by Swedish experts in these cases shows how framing activities often occur in combination with the use of expertise. Experiences and knowledge are of importance. A handful of persons have said that it was decisive that the Swedish Presidency decided to dedicate itself

to this issue, while at the same time having the ability to use expertise (interviews, Stockholm and Brussels). As has been argued earlier, Sweden had been an important actor and thus a 'node' in policy networks and in issue networks for several years and the institutional possibility of the Council Presidency came at exactly the right time – the climate was favourable for greater openness.

A second category of explanations is related to the relationship between the main EU bodies. The analysis has shown that the Commission was weakened and one participant confirmed: 'You could understand, by reading their proposals, that this was not a strong party' (interview). At the same time, the EP had grown stronger. The coalition of member states that genuinely wanted greater public access to EU documentation also had an effect on the negotiations in the Council. Sweden had, by using network opportunities, gained knowledge about potential alliances and these coalition building tactics started before the Presidential period and paved way for the ability to present new texts in the Council.

The last explanation is related to Sweden's strategic behaviour. Leadership tactics were often balanced with mediation tactics; procedural tactics were used in combination with almost manipulative tactics. During stage III, Sweden played both the role of a directional and of a problem-solving leader. Although Sweden acted like a directional leader, progress in the transparency area was slow during the first months of the Swedish Presidency. When the EP and the Swedish Presidency began to cooperate, and both parties made concessions, the process began to move forward. In the Council, Sweden combined an offensive strategy with a more problem-solving oriented leadership role and attempted to act a mediator, in order to unite the member states. In addition, procedural tactics were used. One example was the decision to hold as many meetings as necessary in order get results. Sweden received support from the Council by creating an image of being impartial – a manipulative move – and could in April begin to take further advantage of the institutional possibility provided by the Trialogue, which provided Sweden with a powerful negotiating position.

Experience of openness legislation gave Sweden a chance to become a key player in both policy networks and issue networks of openness proponents, thus providing directional leadership. Despite the Swedish efforts, the end product must be read as a negotiated compromise, not perfectly matched with Swedish interests. Lobby groups from the openness side were not always happy and Tony Buchanan, a representative of State-watch, believed that that it had been an undemocratic process where the European Parliament has given in to a 'less open-friendly Council' (*The International Herald Tribune*, June 27, 2001). On one hand, this must be a good comment if you are a Swedish chair holder with strong national interests for greater openness which must be balanced when representing a less openness-friendly organ – the Council. On the other hand, without close cooperation with the European Parliament, Sweden would not have been able to write this success story.

Summary

Negotiation tactics resulted in a new legislation making it easier for EU citizens to get access to documents. This demonstrates that when the time is right, a well-informed and prepared country can influence the political outcomes. The institutional possibility of cooperating with the EP within the Trialogue was used extensively. I argue that the institutional possibilities of the Presidency made it possible for Sweden to be proactive in the transparency issue-area. This position, during stage II and III, opened up for a number of negotiating tactics and cooperation with other member states in the Council.⁴⁵ During stage I of the decision-making process, Sweden had an important role which was based on previous experience of openness legislation, the ability to provide expertise in relation to citizens' access to information. The fact that Sweden engaged in framing tactics on several different arenas, strengthened the national position.

More questionable is the, both theoretically and empirically, 'established' truth about the importance of having good contacts with the Commission. In the transparency issue area, these contacts were, during

45 The relationship between the Council Presidency and the use of different tactics will be discussed in the comparative chapter.

later stages, of less importance than contacts with the EP and with the Council secretariat. In addition, the initial proposal presented by the Commission was, from a Swedish perspective, oriented towards a 'secrecy culture'. Despite this, when asked about the importance of cooperating with Commission, respondents automatically confirm this truth. When asked to discuss national influence, a policy adviser explained that 'from a tactical point of view, it is very important to have good personal contacts in the Commission' (interview, Stockholm). Another Swedish representative said: 'even though the Permanent Representation in Brussels is the most important instrument, Sweden has good experience of working with the Commission. Therefore, it is very important to have good national "personnel" in the Commission' (interview, Stockholm). Yet, interviewees have also said that the Commission as a unit has lost some of its former powers, which is explained with reference to internal problems.⁴⁶

The deadline in the Amsterdam Treaty was used manipulatively in order to legitimize the closure of this dossier. One participant describes the use of the deadline as 'just a trick to justify a speedy tempo in the negotiations' (interview, Stockholm). Manipulation is related to strategic behaviour and obviously of importance when planning negotiation tactics during the final stages. In the transparency area manipulation can be said to have taken place in two ways. The first slightly manipulative move was the heavy reliance on the official position and the deliberate use of both the Council Secretariat and of allies in the Council in order to create an image of impartiality, when Sweden in fact was doing everything in its power to reach an agreement in accordance with national interests. The second manipulative move is related to another strategy, forming an alliance with the EP. In this second example Sweden played out the EP position as being much more firm than was actually the case. Swedish representatives in general perceive themselves as consensus oriented.

46 A high rank civil servant believed that 'the Santer Commission had a good formation of individuals, but things went wrong and Mr Santer lost authority... Under Prodi, there were not so many individually skillful Commissioners and the Commission as a unit, has lost power. This has had a lasting effect and the Commission hasn't recovered yet' (interview).

During the Presidency, however, a coherent and offensive strategy was chosen in order to be able to deliver.

A potential explanation to the opening for Sweden was of course 'luck' with developments within the three main EU units – a weak Commission, the late positioning of the EP, and the presence of a blocking minority in the Council. Still, the common work of a strong coalition of genuinely pro-transparency countries and strategic networking between key negotiators from the Presidency and the EP contributed to the end result. The analysis has demonstrated that Sweden was a key actor in openness coalitions and a 'node' in the transparency policy network. In a stricter rational institutional analysis, these informal contacts would not have been included in the analysis. Thus, based on the analysis of Sweden's action in the transparency area, I argue that taking formal and informal aspects into consideration is important for the understanding of when and how member states promote national interests. Sweden assumed a leading role in the transparency issue-area, and an agreement was reached by the end of the Swedish Presidency. Hence, it is the strategic action and dedication to an issue that make a difference. In order to test if these findings are valid also in other issue areas, the same analytical framework will be applied to the second case, the REACH regulation.

CASE II: SWEDEN AND REACH⁴⁷

When raindrops, breast milk and human blood as a rule contain hazardous chemicals, something has gone wrong.

Inger Schörling, MEP 1995-2004, (2004: I)

For the Swedish Government, which sees its national legislation as a model regarding environmental concerns, the EU's common environmental policy is a prioritized area (Ministry of the Environment 2005). Sweden had transition rules for chemicals when becoming an EU member in 1995 and the question was if Sweden would be able to export these rules and its national chemicals legislation into the EC system of laws. The Swedish Chemicals Inspection (KemI) was created in 1972 and national laws called for a non-toxic environment, which was a very clear position in comparison to most EU member states (*cf.* Johansson 2002: 189).⁴⁸ KemI got the role of monitoring activities in the chemicals area and promoting Swedish interests. Sweden had a lot of influence in the Nordic group of member states and, in comparison to other member states, no difficulties with a sceptical national industry of downstream users. Instead national enterprises, including companies like IKEA, H&M, and Electrolux, were positive towards promoting the Swedish legislation in the European context (Chemsec 2005). In 1998, a paper about EC chemicals legislation was presented at a meeting of EU Environment Ministers in Chester. Sweden and four other member states (Denmark, the Netherlands, Germany, and the UK) stood behind

47 REACH stands for Registration, Evaluation, and Authorization of Chemicals.

48 National goals for a non-toxic environment. See the latest legislative government proposal, Government Bill 2004/05:150. For more information, see www.kemi.se.

the paper, and experts from these countries were working with the Commission in the preparations of an overview of the present legislative situation (interviews, Stockholm and Brussels, Schörling 2004, Ministry of the Environment 1998:09). The Commission presented a green paper and a white paper⁴⁹ that reflected the Swedish legislation. Sweden was thus successful in transferring laws and ideas about a new chemicals legislation during stage I of the decision-making process. This in turn, paved the way for the Commission's initial proposal.

It will be argued that Sweden had a leading role during stage I. Later, during stage II, several countries began to form coalitions against some aspects of the Commission's white paper. Those in favour of a, from an environmental perspective, 'strong' legislation found themselves in defensive positions, something which had an effect on the ability to act strategically. From a Swedish perspective, the REACH system should be based on sustainable development and a toxic free environment. Therefore, Sweden and its collaborators wanted a regulation that demanded information about all chemicals that were used in and/or imported to the European market. From an environmental perspective, the discussions about production volumes and exceptions to general rules about registration, evaluation, and authorization of chemicals were seen as different ways of weakening the regulation. Sweden, from the beginning, supported the idea of having a 'strong' REACH with few exceptions and very strict rules in relation to hazardous chemicals such as vPvB, PBT, POPs and CMR (see list of abbreviations). During the decision-making process,

49 Green papers and white papers: *Green papers* are discussion papers published by the Commission on a specific policy area. Primarily they are documents addressed to interested parties - organisations and individuals - who are invited to participate in a process of consultation and debate. In some cases they provide an impetus for subsequent legislation.

White papers are documents containing proposals for Community action in a specific area. They sometimes follow a green paper published to launch a consultation process at European level. While green papers set out a range of ideas presented for public discussion and debate, white papers contain an official set of proposals in specific policy areas and are used as vehicles for their development (http://europa.eu/documents/comm/index_en.htm, accessed November 26, 2007).

the chemicals industry and countries with a large chemicals sector argued that REACH would be extremely costly for small and medium sized companies (SMEs), and that the white paper and the initial proposal that came from the Commission would damage the European economy and make European companies less competitive on the international market. The REACH proposal, according to these actors, had to take the economic situation of European enterprises into consideration before implementing the new system. Therefore they wanted what I somewhat simplified refer to as a 'weaker' REACH.

I have chosen to include the actual presentation of a formal proposal from the Commission (2003a) in stage II of the decision-making process due to the fact that previous documents that the Commission released during stage I resulted in intense Swedish activities and massive lobbying from both environmental activists and the European industry. The extended agenda-setting phase is therefore treated separately. During stage III, Sweden had lost its leading position and had to focus on trying to get as much as possible of the initial ideas, not least from the white paper, into the final agreement. These processes will be analyzed with the help of the framework that has been presented in the theoretical chapters. I start with a background to REACH, which is followed by an analysis of the three stages of decision-making. The final part of this chapter is a summary of Sweden's strategies to influence the EU's legislation on chemicals.

Introduction – the EU Chemicals Legislation

Over 100,000 chemicals exist on the European market today. Of these substances only around 3,000 are registered.⁵⁰ According to the Commission, the industry has insufficient knowledge about over 99 per cent of all chemicals on the market in relation to risk assessments and environmental and health effects (*EP news* 2006a, 2006b). REACH is

50 Substances of very high concern – such as ddt and pcb – are 'blacklisted', and will be supervised and authorized by the new EU Chemicals unit in Helsinki. Approximately 140 new chemicals are produced every year (*cf.* Schörling 2004 and www.kemi.se for more info about persistent organic pollutants (POPs).

the most lobbied proposal ever in the history of EU decision-making and the formal process has taken over five years after the Commission presented its white paper in 2001. A final agreement was reached between the Council and the EP in December 2006 and the new legislation, (EC) 1907/2006 and Directive 2006/121/2006, replaces former rules.⁵¹ When the REACH regulation came into force in June 2007, a new EU unit dealing with research and development of the new chemicals system opened in Helsinki.⁵² Registration and restrictions of the use of chemicals are seen as a safety net both for consumers and downstream users. Next to registration of all chemicals in production between 1-10 tonnes per year, risk assessments and research are required for all chemicals that are produced above 10 tonnes per year. The burden of evidence of safe use is on the producers instead of on the governments (reversed burden of evidence). As a rule, chemicals that are judged as hazardous should, according to the REACH proposal, be substituted if there is a new and safer chemical on the market. This principle of substitution has been highly debated and SMEs have been worried about the higher costs related to the new system.

The EU legislative framework before REACH had different rules for existing and new chemicals and the cut was after 1981, which meant that chemicals introduced to the market after 1981 were called 'new' chemicals and these include approximately 3800 substances. Those that were on the market between 1971 and 1980 were called 'existing' chemicals and covered by other rules. From both proponents of and opponents to REACH it was argued these old rules did not stimulate the introduction of new and safer chemicals on the market. In the former system public authorities were responsible for risk assessments of substances. One of

51 (EC) 1907/2006 includes changes of Directive 1999/45/EC, Resolution 793/93(EG) 1488/94, Directive 76/769/EEG, Commission directive 91/155/EC, 93/67/EC, 93/105/EC and 2000/21/EC. Directive 2006/121/2006 changes directive 67/548/EEG in order to adjust to the new legislation EC 1907/2006. More information can be found on http://www.kemi.se/templates/Page____3064.aspx, accessed 5 March, 2007. For an overview of previous legislation, see Schörling 2004.

52 The European Chemicals Agency (ECHA), www.echa.europa.eu.

the main ideas behind REACH is, as previously mentioned, to alter this burden to enterprises manufacturing chemicals and instead having authorities monitoring that rules are followed and focusing on ‘high-risk’ chemicals. Another important element is to remove the dual system of new and old/existing chemicals and instead have a coherent system for all chemicals. In the table below an overview of the decision-making process is presented.

Table 5: The REACH Decision-Making Process

Date	Institutional events
STAGE I	
1998	Environment Council meeting in Chester. Sweden together with other member states presented a paper suggesting a new EU chemicals policy. The Commission started to evaluate the existing policy.
January-June 2001	The Swedish Council Presidency
February 2001	The Commission’s white paper, “A Strategy for a Future Chemicals Policy” (COM (2001) 88).
June 2001	The Council position wanted a ‘stronger’ REACH legislation and went further than what the Commission’s white paper suggested in relation to substitution.
November 2001	The EP wanted higher demands in relation to registration than what was suggested in the Commission’s white paper. Rapporteur: Inger Schörling.

STAGE II

May 2003	The Commission issued a draft proposal and held a stakeholders consultation on the Internet (June-October).
July-December 2003	The Italian Council Presidency
October 2003	The Initial Commission proposal (COM (2003)644) (2003a). The Council began to focus on competitiveness and job growth.
2004	EP elections. The Environment Committee, the Committee on Industry, Research and Energy, and the Committee on the Internal Market and Consumer Protection, argued over responsibility. Rapporteur: Guido Sacconi.
July-December 2005	The British Council Presidency
17 November 2005	EP: first reading. From a Swedish perspective, the proposal from the Environment Committee and the EP position in the first reading was positive.
13 December 2005	Council reached a political agreement that paved the way for a common position (supported also by the Commission) in the Council in June 2006

STAGE III	
July-December 2006	The Finnish Council Presidency
December 2006	EP: second reading (13 December) on a compromise supported by the Commission and the Council (18 December).
18 December 2006	Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning REACH.

STAGE 1: Agenda-setting

Sweden and the countries behind the paper presented at the Environment Council meeting in Chester in 1998, argued that ‘[t]here is no elaborated overall policy for chemicals with short and long term goals’ (Schörling 2004: 51). In 1997, Sweden had adopted a Communication (Government Bill 1997/98:118) for sustainable development and the next year the Swedish Riksdag adopted a new environmental policy based on 15 environmental quality objectives (EQOs) – the goal is to reduce pressure on the environment by 2020 (Ministry of the Environment 2004: 6). Amongst the quality objectives a non-toxic environment is closely linked to the use of chemicals. After the Chester meeting, the Commission started to prepare an overview of present legislation. Experts were called in to prepare a new EU chemicals legislation. The KemI and other national experts from Sweden were active in the Commission’s working groups (interview, representative DG Environment, Swedish representatives, Stockholm and Brussels). Danish, British, and German representatives had contacts with KemI when the decision-making process began (*ibid.*). The Environment Commissioner Margot Wallström was Swedish, and her ideas had been formed on the national arena where she had been an active Social Democrat for a long time before she became Commissioner.

Several persons (also from Sweden) in her cabinet played active roles in the agenda-setting phase. Eva Hellsten, also of Swedish nationality, was head of the chemicals unit in the DG Environment that was preparing the initial documentation and these contacts provided excellent network opportunities of working with the Commission. In the policy network, these connections became an important source of information and a way to promote Swedish environmental interests.

Sweden could use *expertise* (in the working groups) and engage in *framing* activities during Council meetings, and indirectly via the Swedish key individuals in the Commission. Bilateral contacts that KemI had with other member states contributed (interviews with civil servants and experts, Lund, Stockholm, and Brussels). The main framing devices were based on the general understanding of the necessity to modernize the present chemicals legislation, and to promote ideas about a non-toxic environment, and on the need to substitute chemicals hazardous for the environment or for the human health. It was also suggested that chemicals had to be tested and evaluated in order to protect downstream users and consumers. With reference to international agreements and the Stockholm convention, POPs should be used with extra precaution. Another leading argument was that producers, in a new system, should have greater responsibility and that the main role of authorities would be to monitor these activities. Swedish experts were consulted and arguments and ideas came from the national arena (Environmental Code 1998:808).⁵³ *Framing* activities and the use of expertise resulted in a critical review of present legislation from the Commission where four directives and regulations were evaluated (Council Directive 67/548/EEC, Directive 88/379/ECC, Council Regulation (EEC) 793/93, and

53 Miljöbalken (Environmental Code) English translation available, Ministry of the Environment (Ds 2000:61). See also Chemical products Ordinance 1990:239=Lagen om (1990:239) om ändring lagen om kemiska produkter, The Chemicals Charges etc. Ordinance 1998:942=Förordning (1998:942) om kemikalieavgifter m.m, Chemical products and biotechnical organisms 1998:941=Förordning (1998:941) om kemiska produkter och biotekniska organismer: Government Bill 1984/85:118, Government Bill 1997/98:45, Government Bill 2000/01:130, and Government Bill 2002/03:117.

Directive 76/769/EEC. Source: Schöring 2004: 57). The Swedish position was strong in terms of network opportunities, and since Sweden had taken advantage of the institutional possibility of having national experts in the Commission's working groups, these activities contributed to the ability of Swedish representatives to take on a *directional leadership* role (*i.e.* having authority and the ability to lead others). This role was closely linked to the use of expertise and framing.

The same year that the initial Council meeting in Chester was held (1998), the chemicals industry presented two important initiatives: the High Production Volume (HPV) Chemicals Initiative and the Long-range Research Initiative (LRI). The HPV initiative was a voluntary international programme under which data and initial hazard assessments for 1000 HPV-chemicals were made available. ICCA and OECD-members in co-operation launched this programme stating that: 'The chemical industry recognises the need for a sufficient knowledge base to assess the health, safety and environmental effects of chemicals and to assist users and governments to manage the risks they may pose' (ICCAa, n.d.). The research initiative (LRI) supported by the European Chemical Industry Council (Cefic), the American Chemistry Council (ACC) and the Japan Chemical Industry Association (JCIA), provided approximately \$34 million a year to sponsor 'research into the potential impacts of chemicals on human and wildlife populations and the environment' (ICCAb, n.d.). It was stipulated that scientific understanding about the health and environmental impacts of chemicals was needed (*ibid.*). For Sweden and the other proponents of new chemicals legislation these reports were useful in the process of arguing for a 'strong' regulation and the Council adopted the following statement to the green paper:

The Council welcomed the Commission document which revealed shortcomings in the application and efficiency of the Community instruments dealing with risk assessment and risk management for chemicals. It underlined the necessity to adopt a more coherent approach to legislation on chemical products, notably on control procedures, in order to ensure a higher

level of protection for public health and the environment and welcomed the Commission's intention to work on such an approach, in consultation with the member states (Schörling 2004: 58).

During the Luxembourg Council Presidency in 1999, the Environment Council discussed a proposal on substitution, precaution, and reverse burden of evidence (*cf.* Corporate Europe Observatory, March 2005). Hence, the climate for environmental and health concerns was positive and the Council wanted more risk assessments. Representatives from Environmental NGOs and from the Chemicals Industry in 1999 met during brain-storm meetings initiated by the Commission, with specific attention to the HPV initiative and the LRI programme. It was agreed that the process was too slow and that 'considerable measures had to be taken in order to protect human life and the environment for future generations' (interview, Stockholm). In June 2000, Margot Wallström announced that the new proposal should be based on 'the principle of sustainable development, the fundamental objective being to ensure a high level of protection of human health and the environment. At the same time, the efficient functioning of the internal market and the competitiveness of the industry will have to be preserved' (quoted by Schörling 2004: 60). Environmental and health concern were on top of the agenda although economic consequences of the proposal began to be debated. By the end of the year, however, the Commissioner of Enterprise Erkki Liikanen and the Director General of DG Enterprise, together with stakeholders from the industry, began to question the proposal. In the discussion surrounding a new chemicals legislation, the new ideas were framed as either environmental and health friendly or problematic in terms of competitiveness and trade.

In February 2001, the Commission's white paper, *A Strategy for a Future Chemicals Policy* (European Commission, 2001, COM (2001)88) was published. The content resembled the Swedish legislation and was in line with the Rio declaration on sustainable development. The precautionary principle and the need to make scientific tests and evidence available for consumers and producers could be found in the white paper. It was argued that previous legislation hindered progress and research

innovations (interviews, Stockholm). Thus substitution, precaution, and reverse burden of evidence (Corporate Europe Observatory, March 2005) were incorporated into a single system for old and new substances. The new system was now called REACH.

The Council and the Parliament

During Sweden's Council Presidency and the final summit in Gothenburg in June 2001, the Environment Council, thanks to discussions in the working group, adopted a position on chemical's legislation that went further than what was proposed in the Commission's white paper. The Council asked for further amendments related to the protection of consumers, animals, and the environment (interviews, Stockholm and Brussels). In the Council working group, Environment Counsellor Per Bergman was chairman during the Swedish Presidency. Under his guidance the proposal was discussed amongst national representatives. Having a background as a lawyer and a long experience in working with chemicals at the Swedish Chemicals Inspection, he had experience that was valuable from a Swedish perspective (interviews, Stockholm). No legislative text was discussed at the time; it was the Commission's White Paper that formed the basis for these discussions, but a joint agreement to work hard for a proposal was signed by the member states. 'We had disarmed the Industrial Ministers', says one negotiator (interview) and the next step was expected to be a proposal from the Commission, which would be based on these, in the words of the same interviewee, 'strong Council conclusions' (interview). The Presidency conclusions of the Council on a strategy for a future chemical policy adopted by the Environment Council in June 2001 were oriented towards sustainable development. The protection of health and the environment dominated the agenda, although innovation and competitiveness were discussed (Council of the European Union, 2001b, 9857/01, 13 June). In brief, *Sweden could take clear advantage of the institutional possibility of holding the Council Presidency.*

In the European Parliament, Inger Schörling – also from Sweden – representing the Greens was elected as Rapporteur and wrote the first EP

report when the Commission's white paper was presented in 2001. The EP Environment Committee argued that substances of very high concern should be phased out as soon as possible and that authorization should include 'persistent and bio-accumulative substances, endocrine disrupters and substances that are carcinogenic, mutagenic and toxic to reproduction' (Schörling 2004: 74, interview, Stockholm). The Dutch wanted to promote their legislation and their national counterpart to the Swedish Chemicals Inspection, and also made presentations to the EP. These activities took place after the publication of the EP report (interview). The Parliament adopted the motion by Schörling on 15 November 2001 (PPE-ED voted against, 242 in favour, a total of 169 against, and 35 abstentions) (European Parliament 2001, A5-0318/2000). This shows that Swedish ideas not only had been incorporated in the Commission's proposals but also that the EP supported these ideas. Sweden had, at this stage, managed to take advantage of the institutional possibility of being active in the expert group and of network opportunities of cooperating with the Commission and with the EP. In the Council, strong support had been created with the use of the institutional possibility of the Council Presidency and key individuals in the Commission. Moreover, Swedish representatives from the PR had contacts with MEP Inger Schörling – these network opportunities resulted in a strong policy network.

The reactions to the white paper, both from the Council and from the EP, however, worried the chemicals industry and cost estimates related to these proposals began to be discussed. Opposition also came from DG Enterprise that had been involved in the process of preparing the proposal for a new regulation (interviews, Stockholm and Brussels). According to interview sources, Germany had many contacts in DG Enterprise. The strongest opponent to the white paper was Cefic, an organization representing the Germany chemical's industry (2002b). These contacts were, because of the dividing lines between the DGs, of great importance when the Commission's proposal was written. Networking with DG Environment⁵⁴ and Eva Hellsten, head of the Commission's chemicals

54 Several persons with Swedish nationality in DG Environment have been mentioned by the interviewees: Eva Hellsten, Eva Sandberg, Thomas Grönberg,

unit, became important for Swedish permanent representatives. DG Enterprise was, according to interview sources, also contacted on several occasions (interviews, Stockholm and Brussels). In a first reaction to the white paper, the chemicals industry estimated the costs at 20-30 billion euro. In May 2002, these estimates were reduced when the chemicals industry 'accepted' the Commission's first business impact study of 7 billion euro (RPA 2002, Cefic 2002a).

Several environmental NGOs were active in the larger issue network, for example the European Environment Bureau (EEB), Greenpeace, and WWF. The International Chemical's Secretariat (Chemsec), which is located in Gothenburg, was also an active producer of reports and research material (*cf.* Nordbeck & Faust 2002). These reports, argue MEPs and Swedish representatives (interviews, Stockholm), had an impact on the discussions in the EP and in the Council. Sweden took advantage of the material published by participants in the larger issue network of environmental actors. In addition, the EP Environmental Committee, with interests similar to the Swedish agenda, was a strong actor in the policy network. Having so many contacts and individuals in key positions in several EU bodies contributed to Sweden's position as a central player in the policy networks. In addition, contacts with the larger issue network, including NGOs, were upheld on a national level and especially on the European arena through the European Parliament, with the help of contacts that the personnel from KemI had with many organizations. These contacts also made it possible for Swedish representatives to be updated on what was going on in the DG Environment and in the Parliament. The 'problem' however, was that the opposition grew stronger and engaged in the same type of networking. In addition, expert reports based on an understanding of REACH as a threat to the competitiveness of the European chemicals industry began to be published. An example is the Cefic report entitled *Thought Starter on REACH – an Initial Proposal for Translating the REACH system into Practice* (2001).

Pernilla Bengtsson, Rolf Annerberg. Other central actors: Mark Blainey and Christina de Avila.

Reactions to the potential costs emanated not only from the EU-arena. The US Secretary of State Colin Powell wrote a letter that was sent to all US embassies in Europe in which he expressed great concern over the economic effects of this legal act (Powell 2002). In the Commission's risk analysis and in a report by a British consultant, it was said that the costs would be around 5 billion euro but that the health effects would mean a 50 billion euro saving for society. It was difficult to measure the indirect cost and effects of the legislation and the risk assessments pointed in different directions. Estimates started around 5 billion euro and some reports approximated the costs to 600 billion euro (for example the Arthur D. Little study, 2002). Working groups started to prepare a formal Commission proposal, but in the process a split within the Commission was created. Some member states that had previously been pro-REACH for example Germany and Britain, started to argue against their previous positions.

When comparing expert reports, the main dividing lines between proponents and opponents of REACH were over: a) the resulting costs for manufacturers, especially the indirect costs; b) the price impacts of REACH; c) costs to downstream users; d) losses due to delays in bringing new products to market; and e) the macroeconomic consequences and effects for international trade conditions (*i.e.* competition from new markets and chemical producers, especially in Asia). The German chemicals industry had risk assessments showing that GDP would decrease with up to three per cent (2.4 per cent of GNP only in Germany) if the initial Commission proposal on REACH was implemented. These figures were widely spread and some of the more conservative parties in the EP were very concerned over the potentially disastrous economic consequences. From an environment perspective, a WWF study indicated that over a 20-year period, the cumulative positive effects range between 12 billion euro and 93 billion euro (Pearce & Koundouri 2003). A balanced view of the different cost estimations can be found in the Extended Impact Assessment of REACH (European Commission 2003b). The Commission, using World Bank figures, shows that 1 per cent of all diseases are attributable to chemical exposure. It estimates

further that 10 per cent of these impacts could be addressed by REACH, thus implying that 4,500 lives could be saved each year by REACH. Effects of hazardous chemicals are often seen after several years, and it is in the Commission's impact assessment indicated that some of the long-term effects are likely to be even bigger (European Commission 2003b: 51).

Tactics: Framing, the Use of Expertise, and Directional Leadership

Firstly, having a Swedish Environment Commissioner, Margot Wallström, was an asset. Secondly, the use of expertise in the Commissions working group contributed to the green paper and to the Commission's white paper on the use of chemicals. According to one interview source at the Swedish permanent representation, this white paper 'scared' opponents to the proposal and it was perceived as both extreme and costly (interview, Brussels). The Swedish position was later perceived as at bit 'extreme' when the intense debates started before and after the Commission's initial proposal was published in 2003.

During initial stages of decision-making, REACH was framed by Sweden, Denmark, Germany and others as beneficial for sustainable development and as a system resulting in health gains and reduced medical costs. In Sweden, the Chemicals Inspection, the Environment Ministry, and Chemsec, produced material that were used in discussions – framing activities – on working group level in the Council. Having the Swedish Chemicals Inspection and its experts explaining the proposal was an asset for Sweden. These experts also participated in the expert groups preparing the Commission's White paper on new legislation for the use of chemicals. KemI provided expertise and had an important role when the Commission was working on a first draft proposal. Sweden engaged in tactics based on the use of expertise. *A prominent role, in combination with framing activities and network opportunities, gave Sweden an ability to take on the role as directional leader during the first stage of agenda setting.*

An additional asset was the common interests of Sweden and the Parliament's Environmental Committee, where Inger Schörling was Rapporteur. In sum, Sweden was very successful in promoting national

ideas to the European arena. During the Council Presidency in 2001, Sweden had the possibility to promote its frames and to prioritize the issue. During stage I, there was still an argumentative climate both in the Commission, in the EP, and in the Council that was favourable to Swedish interests. Inger Schörling, MEP before the EP elections in 2004, explained in an interview that the Swedish Permanent Representation was almost always present during committee meetings in order to get information to be used to influence in Coreper. During stage I, Sweden was successful in attempts to take advantage of the institutional possibility of cooperating with the EP. Swedish contacts with the Commission were remarkably good during the initial stages of the decision-making process. Towards the end of stage I of the decision-making process, however, the balance between commercial concerns and environmental and health interests shifted in favour of the industry. *Sweden began to lose its central position.* The initial proposal from the Commission in 2003 was, from a Swedish perspective and according to environmental organizations, not as far-reaching and comprehensive as the white paper.

STAGE II: A New Order

In March 2003, the European Council expressed that competitiveness must once again be the focal point, and the Competitiveness Council was asked to get involved in the legislative process (Schörling 2004). The new key words in the framing process were competitiveness, economic growth, and European job opportunities. The political climate in the EU bodies changed dramatically. According to interviews with MEPs and with Swedish representatives, it became difficult for Swedish nationals in the Parliament and in the Commission, even to engage in strategic action because of lack of trust (MEP, civil servant, Stockholm). Those who have been interviewed argue that when engaging in framing activities for a 'green' REACH, they were accused of promoting Swedish interests rather than European interests, something that made it problematic to continue to use the arguments that had been used before and after the release of the white paper. It is of importance that other actors trust the sender of

a message, and when the negotiation climate changed some of this trust was lost. Sweden could no longer exert directional leadership.

Most negotiators and civil servants commented upon member states' influence strategies saying that it is always important to be active and to participate *as early as possible* in the decision-making process (interviews Brussels and Stockholm). Evidently, Sweden had exactly that favourable position in the REACH area. Nevertheless, the proposal was changed on several occasions and, along the way, many arguments were put forward against the white paper that, to a large extent, was similar to Swedish legislation on chemicals.

The Commission in May 2003 arranged an eight weeks Internet consultation and released a preliminary version of the new proposal in order to get reactions from stakeholders (European Commission, press Release, 7 May, 2003c). More than 6,000 responses were received during the consultation period from July to October (Cefic 2003a). The Commission made substantial changes in response to the consultation. According to its own reports and an Extended Impact Assessment, these changes reduced the costs from 12.6 billion euro to 2.3 billion euro over an 11-year period (European Commission 2003a). Polymers were excluded and, in comparison to the draft, less data were required for substances produced below 10 tonnes per year as chemicals safety reports were no longer required. A general 'Duty of Care' had been excluded and the much-criticized precautionary principle was no longer a guiding theme. The draft regulation presented in May 2003 included less transparency; the final proposal presented in October went even further. In relation to scope and duty of care, the draft in May was similar to the EP's amendments to the white paper, but the final proposal presented later that year had limited the scope and excluded general rules related to 'duty of care'. Substitution of hazardous substances and safe use of chemicals in consumer products were two areas that had been substantially modified already in the draft from May 2003. These formulations were kept in the final proposal from October 2003, which did not please the chemicals industry (*cf.* Cefic 2003b). When comparing the position of the Council and the EP, it is clear that the EP position on substitution was closer to

Swedish ideas than the common position in the Council (*cf.* Schörling 2004: 134, interviews).

These major changes were the result of intense lobbying from industrial actors and their allies. 'Most of these changes were based on demands and suggestions from the European Chemicals industry rather than from example environmental or consumer organisations' (Nordic Council of Ministers 2004: 13, Corporate Europe Observatory 2005). The same line of argument can be found in the Commission's own account of the process on the Internet.⁵⁵

The most important explanation to the changing climate for arguing about environmental benefits, next to framing activities and the use of expertise from both proponents and opponents to the initial REACH proposal, was the worsening economic situation in Europe. The REACH proposal was tabled when France and Germany had economic problems and people representing the industry became aware of the importance of this legislative act for European enterprises. Representatives of these two countries with large chemicals sectors argued, firstly, that in the short run, the economic cost for the industry was high and might cause unemployment. Secondly they argued that national economic growth rates may decrease and that the costs for society may therefore become high. The administrative burden of implementing and monitoring REACH, was the topic of a huge discussion. The solution discussed in 2003-2004 required less data for substances below 10 tonnes, and excluded polymers as well as intermediates. According to the Commission's proposal, 'downstream users will normally not have to complete Chemical Safety Assessments or Chemicals Safety Reports' (Nordic Council of Ministers 2004: 26-27). Framing activities against the REACH proposal were based on the idea that the economic situation had to be solved before a legislation that would increase the cost burden for European companies and thus cause stagnation and/or lowered growth rates, could become a reality. Sustainable development, argued for example Commissioner Barroso, cannot stand in the way of economic growth and development (quoted by *svt.se*, 15 November, 2005).

55 http://ec.europa.eu/enterprise/reach/consultation_en.htm.

The chemical sector is the largest industrial sector in Europe and the third largest in the world, providing 1.2 million jobs and providing a favourable trade balance of over 60 billion euro a year (Nordic Council of Ministers 2004: 14). Some estimates even spoke of up to 6.4 per cent loss of gross added value in the German economy. Mercer Management Consulting conducted a French impact study with similar scenarios with a 1.7-3.2 per cent GDP loss per year over a ten year period and job losses between 360,000 and 670,000 in Europe (Mercer 2003). Based on unrealistic assumptions and methodological errors, these estimates were later rejected by the German Government and by the French Government. The Federal Environment Agency of Germany wrote:

The data contained in the ADL study for losses in gross added value and for job-losses resulting from the implementation of REACH cannot be validated and cannot therefore constitute a sound basis for the macroeconomic evaluation of the EU chemicals policy (press release, February, 2003)

The more extreme figures were proven wrong. Once this was settled, it became easier to discuss again on Council level. Participants argue that these exaggerated cost estimates were not an asset for those who were working for including more exceptions in the REACH proposal. Instead, this way of using expertise was evaluated as manipulative and unfair, being based on unsound scientific methods. A more unexpected criticism towards REACH came from environmental organizations arguing that REACH would result in increasing use of animal testing (Friends of the Earth 2002, WWF & EEB 2003). The fact that this campaign came from within what had been the pro-REACH issue network 'caused problems' (interviews MEPs, civil servants, negotiators, Stockholm and Brussels). The proposal *will* result in more animal testing, something that also proponents of a rather strong regulation have verified (interview with a civil servant and an MEP, Brussels). According to an expert on REACH, however, experiments no longer have to be duplicated once the test results of a substance are listed and thus available for all enterprises (interview, Stockholm). The alternative, argued an MEP, 'is to continue to test chemicals on humans which is what is done today' (interview,

Brussels). The fact that these arguments came from the 'wrong' side (environmental NGOs) made it even more difficult to argue offensively for a strong REACH and this divided the pro-REACH side. Instead, at the time when REACH began to be questioned, efforts had to be re-directed towards meeting these reports, *i.e.* towards defensive tactics and 'damage repair'.

The Italian Council Presidency

During the Italian Council Presidency (July-December 2003), the Competitiveness Council (CC) took over the REACH issue. Nobody opposed the proposal to begin discussing REACH in the Competitiveness Council instead of the Environment Council (interviews). Thomas Östros and Göran Persson were present at the Council meeting, but in accordance with Council rules, the Council President can treat an issue the way it prefers. The Italians decided that the CC committee was more suitable for discussing the new legislation, and used procedural tactics in order to alter the discussions to a market oriented forum. Environmental organizations were upset (European Environmental Bureau 2003b). The Environment Ministry thought that this was, in the word of an experienced negotiator, an 'unfortunate' development (interview). Yet, no strong opposition came from, for example, Sweden. When the Italian Presidency decided to alter the REACH dossier to the Competitiveness Council, all countries did not have competitiveness ministers. Some countries, for example Denmark, chose to send their Environment Ministers also to these Council meetings. From a Danish perspective, this was a political statement about what Denmark thought about these changes (interviews, Stockholm). An ad hoc working group (AHWG) of representatives from Competitiveness Ministries and Environment Ministries was created under the Competitiveness Council. This group continuously reported to both the Environment Council and the CC. Sweden continued to have representatives from the Environment Ministry and KemI present during these negotiations, which illustrates both Swedish priorities and that the use of expertise continued to be a strategy.

When Prime Minister Berlusconi in his opening speech to the EP called one German MEP a nazi, he made it difficult for Italian representatives to cooperate with the EP (Broman 2005: 17, Quaglia & Moxon-Browne 2006). Perceptions amongst European actors were that Italy placed national interests before European values. Thus, Italy chose not to act as a mediator, especially not on a political level. Afterwards, Berlusconi has been criticized (*cf.* Quaglia & Moxon-Browne 2006). When Berlusconi met with the Russian President Vladimir Putin, he failed to stress the European critique of the war in Chechnya, which had been a project prepared by the Commission for months (*Financial Times*, 7 November 2003). From an Italian point of view, this was perhaps not seen a mistake, rather a choice to follow the Italian position which differs from the rest of Europe. National priorities have dominated the Italian agenda during Berlusconi's political period, and Italy is found amongst countries that often vote no in the Council (Sjögren 2007). Yet, the choice to alter REACH to the CC was supported by, amongst others, the UK, Germany, and France. Thus, several countries supported Italian activities in the REACH issue area. The European economy was an Italian Presidency priority, and competitiveness and European jobs were on top of the agenda (Italian Presidency Program 2003).

In September 2003, while the Commission was re-drafting the proposal in response to the Internet consultation, British Prime Minister Tony Blair, French President Jacques Chirac, and German Chancellor Gerhard Schröder sent a letter to President Romano Prodi (Blair *et al.* 2003). Referring to discussions that had been held in the European Council about re-launching the Lisbon Strategy, they argued: 'the proposal for a new chemicals regulation would endanger this work and thus threaten the aims of the Lisbon Strategy' (Schörling 2004: 125). Concerns were raised about a complicated and costly registration procedure, lack of priorities, and the risk of 'unacceptable effects on the competitiveness of EU business' (*ibid.*). They also asked the Commission to work with the Council Presidency and the Competitiveness Council to ensure that these issues were taken into consideration. Silvio Berlusconi, the Italian President, decided that the effects of the REACH proposal

for small and medium size enterprises would be evaluated during the Presidency. During the first European Council meeting in Brussels, growth and employment were at the top of the agenda. Also after the second meeting in December, it was clear that new issues and concerns related to the REACH proposal were now prioritized. In the Italian Presidency conclusions, nothing was said about environmental effects and health concerns, the word sustainable development was not mentioned (Council of the European Union 2004). In comparison to the strong Presidency conclusions after the Swedish Presidency (Council of the European Union 2001b), and to the positive report that came from the European Parliament (EP 2001) as a response to the Commission's white paper, this was a new scenario. As a consequence, critical voices could be heard in the Parliament. As the EP negotiations had reached a sensitive stage, these changes made it even more difficult to unite. The EP Industrial Committee got a more important role after discussions between the chairperson of the Committee on Industry, External Trade, Research and Energy, and Pat Cox, President of the EP. Letters also came from the Legal Affairs Committee and from Caroline Jackson, chairperson of the Committee on Environment, Public Health and Consumer Policy. All committees wanted responsibility. Although the issue was formally given to the Environment Committee, the Industrial Committee and the Legal Committee were given rights to participate. These procedural conflicts delayed the response from the EP (interviews, MEPs).

During the summer of 2004 and after the EP elections, the Italian Guido Sacconi was appointed Rapporteur for the Environmental Committee in 2004. MEP Lena Ek who became the Rapporteur for the Industrial Committee, 'had lines of people outside her office', including both environmental organizations and business representatives that wanted to present their positions (interview, Brussels). When she had been appointed, Ek was quoted in the Swedish newspaper *Dagens Nyheter* verifying that she was going to promote Swedish interests. 'I would like to try the position of Environment Minister Lena Sommestad to lower the volume limits for when a chemical should be tested' (*Dagens Nyheter*,

11 November, 2004).⁵⁶ From the industrial side Cefic was very active and from the environmental side, WWF launched the 'detoX campaign' (2005).⁵⁷ Between 2003 and 2005, 200 people including MEPS and Environmental Ministers from member states were tested, looking for chemicals in their blood. Amongst those were many Swedes, for example, MEP Inger Schörling, MEP Anders Wijkman, the Swedish Minister of Environment Lena Sommerstad, and Environment Commissioner Margot Wallström. Hopes were high that this campaign would contribute to re-framing REACH as something necessary for human health and the environment rather than as a proposal considered too costly for European enterprises.

Lobbying

In the EP, national differences were complex when it came to a new chemicals policy. German MEPs were contacted both by lobby groups and national representatives from different countries. One German MEP, Michael Müller, used to work for the chemicals industry and later became an important spokesperson in the ALDE group. Swedish representatives, not only from the Swedish Permanent Representation, but also civil servants and experts from KemI, came to the EP in order to attempt to influence parliamentarians (interviews, MEPs and assistants, Brussels). One MEP and an assistant, who were interviewed during the British Council Presidency, argue, however, that the Swedish Department of Environment was late in its efforts to counter their opponents' attempts to influence the EP (interviews, Brussels). Similar comments have been made by assistants, civil servants and other politicians in opposition

56 Original quote (Swedish): 'Helst skulle jag vilja skärpa miljöaspekterna i Reach samtidigt som jag vill förenkla för företagen att använda systemet. Jag vill testa miljöminister Lena Sommetads linje att sänka volymgränserna för när en kemikalie ska testas. Men det blir inte lätt'.

57 WWF's 'chemical check ups' were carried out on 39 MEPs, 14 Ministers from 13 EU countries, and they were looking for over 100 chemicals. Christina Narbona from Spain had 43 chemicals in her blood and Lena Sommerstad had 33. More information can be found on <http://www.panda.org/detox>.

to the Social Democratic government. The assistant claimed that ‘the Swedish government has not understood that the EP has a saying in the decision-making process’ (interview). Instead, this person believed that ‘French lobbying against the rapporteurs has been stronger’.

The European Environmental Bureau (EEB) criticized the REACH regulation proposed by the Commission calling it a ‘a shadow of the original plans’ and urged parliamentarians and member states not to accept what the EEB described as a ‘toothless and flawed “adequate control” obligation’ regarding chemicals of very high concern (EEB, 10 December, 2003a). Still, economic concerns were the ‘foremost’ subject for discussion in the Council, in the EP, and in the Commission. Needless to say, this kind of argumentation, especially from the German chemicals industry and from Cefic, did not correspond to the debate in Sweden and in the other Nordic countries. Frank Ackerman and Rachel Massey presented in 2004 a study entitled *The True Costs of REACH*, funded by the Nordic Council of Ministers.⁵⁸ In this study, they criticize Arthur D. Little’s (2002) model and his research for Bundesverband der Deutschen Industrie (BDI) (*i.e.* the ‘storm’ scenarios of implementing the initial Commission’s proposal). Ackerman and his co-worker estimated the direct costs of the 2003 version of REACH to 3.5 billion euros (11 year total direct costs). On an annual basis, this is 0.06 per cent of the chemical industry’s sales revenue. Using standard economic models, they estimated the total costs (direct and indirect) at around 1.5-2.3 times the direct costs and concluded that ‘cost of this magnitude are unlikely to harm European industry, while several studies have suggested that the health and environmental benefits of REACH will be substantial’ (2004: 9). At the same time as reports like the analysis by Ackerman and Massey provided strong arguments against exaggerated cost estimates, Swedish representatives argued that the argumentative climate had shifted and that it became more difficult to promote REACH. In a book

58 Both authors are from the Global Development and Environment Institute, Tufts University, State of Massachusetts. Project leader: Urban Boije af Gennäs (Swedish Ministry of Environment), project managers: Lars Gustavsson and Torbjörn Lindh, Swedish Chemicals Inspectorate (KemI).

by Schörling, as an example of the need for Swedes to defend themselves, it is claimed that the US in 2004 discussed ‘who will take on Wallström’. E-mail correspondence included discussions about how to ‘get to the Swedes and Finns and neutralize their arguments’ (Schörling 2004: 129). Sources in the Parliament claim that Wallström was criticized by the German industry and – after numerous seminars and discussions with stakeholders – had to make concessions (interviews, Brussels).

The Swedish Profile

Already in 2004, Per Bergman and Charlotte Unger, from the Swedish Permanent Representation and the Environment Ministry, together with Environment Minister Sommestad, began to travel to other member states in order to *frame* the Swedish position and start to *build coalitions*. Other countries were also invited to Sweden and to the Ministry of the Environment (interviews, Stockholm), but it seems as if these activities were dwarfed by massive lobbying and activities from other actors and that coalition building strategies did not work. According to Swedish representatives and negotiators, the resistance from many large member states to the REACH regulation made the Swedish position less solid (interviews). Instead of being on the offensive and attempting to improve the new regulation, Sweden had to defend its position and meet the criticism both in the press and on Council level. In Sweden, the Ministry of Enterprise, Energy and Communications and the Ministry for the Environment represented a dividing line in Sweden, which had occurred after the Commission presented its initial proposal. The main arguments presented on the national arena against the proposed regulation were that ‘it will cost too much, it is hard to understand, and SMEs will have problems following the rules’ (interview, Stockholm). An additional discussion concerned workability, *i.e.* if the proposed system of registering, evaluating, and authorizing chemicals would actually be possible to administrate.⁵⁹ ‘Absolute’ strict rules regarding substitution have also

59 Workability was the concept that was used to discuss these issues, *i.e.* administration and how these new laws would be supervised and maintained. Organisations behind these discussions were: Swedish Plastics and Chemicals Federation; Swedish

been debated between Ministries in Sweden (interviews). In a report published by Nutek, it was argued that SMEs would be most affected by the proposal and 'run the risk of being driven out of the market' (2004: 12). The complexity of the regulation was also commented upon as well as unclear rules about substitution and what goods should be included. However, based on the strong resistance from several member states, absolute rules never became an option in Council negotiations. One could speculate that this saved Sweden from internal conflicts, since a stronger REACH might have been met with resistance from some ministries.

Complaints about the Swedish lower profile from late 2003 and onward could be heard in December 2005 at a seminar organized by the 'EU 2004 committee' (EU 2004-kommittén 2005c). Lasse Gustavsson representing WWF commented: 'Sweden has, without any reason, placed itself in the backseat; where are Prime Minister Göran Persson and the Swedish companies?' Greenpeace representative Jan Sondergard urged the Government to take actions: 'Go down to the Enterprise Committee!' He continued arguing that 'the Commission is making a mistake and the member states are making a mistake'. At the same seminar, a representative from the Confederation of Swedish Enterprise (Svenskt Näringsliv) expressed concerns about the administrative costs for handling the new legislation – *i.e.* its workability. From a Swedish economic perspective the national chemicals industry (the third largest industrial sector) has a 15.5 billion Euro annual turnover and export 75-90 per cent of its production, which is equivalent to 11 per cent of the Swedish export (Nutek 2004).⁶⁰ Hence, concerns about the economic consequences of the proposal were discussed on the national arena although, as previously mentioned, most large Swedish multinational companies were positive towards Swedish ideas. For example, IKEA, argued that Swedish values and health concerns incorporated in the companies environmental

Association of Electronics Industries; Swedish Plastic Industries Association; Swedish Construction Federation; The Industrial Worker's Union, The Chemical Workers Union; and The Confederation of Swedish Enterprise.

60 Nutek: The Swedish Agency for Economic and Regional Growth.

policy rather was an advantage on the international market (interview, Stockholm). If REACH is implemented in a weaker form, this might be a step backwards for Swedish environmental policy, argued NGOs promoting environmental concerns.

The Nordic Arena and Sweden

In order to come up with ideas about how to find a good balance between on the one hand, environmental/health concerns and, on the other hand, consequences for small and medium sized enterprises, Sweden collaborated with other member states in the Nordic Council. The main policy ideas that were discussed amongst the Nordic countries and representatives from the industry were: re-introduction of duty of care; substitution, especially of hazardous chemicals; consumer protection; upholding strong rules for authorization, labelling, and classification; and the division of tasks between agencies and member states in order to uphold democratic procedures (Nordic Council of Ministers 2004: 36).⁶¹ Sweden and its Nordic neighbours wanted to maintain as much as possible of the original REACH proposal and attempted to form a *coalition*. They, however, made use of arguments that a) were relatively technical/detailed arguments and b) were not very coherent and c) would be hard to remember for anyone (including politicians on both national and European levels). These arguments were also 'reactive', indicating that NGOs on the environmental side and member states like Sweden had, in comparison to the chemicals industry, more difficulties (but also fewer resources despite an ability to provide expertise) when campaigning and presenting their expert material. Thus counter-framing activities were not successful. The lobbying from the chemicals industry was more elaborated and marketing oriented in comparison to activities from the environmental side. They managed to use network opportunities and build up contacts with the new policy network of actors in the EU bodies, less positive towards REACH. A good example

61 For more information about different NGO positions, see: www.chemicalreaction.org, www.beuc.org, www.chemical-cocktail.org, www.panda.org, or www.chemsec.org.

of strategic framing was the campaign promoting the so-called seven C's: Costs/Administrative burdens; Confusion; Call for further Prioritisation; Competitiveness; Confidentiality; Chemicals lost from market; and (the) Central Chemicals Agency (Nordic Council of Ministers 2004). These seven C's are easier to remember than the list of policy ideas developed for example in the Nordic Council.

According to those who have been working with REACH, Sweden's engagement in the Nordic Council has perhaps not contributed to its ability to influence other member states (interviews). An expert on REACH thought that Sweden should have discussed strategies in relation to what could be achieved during Council sessions and that a more coherent approach would have made it possible to get further (interview, Stockholm). With the terminology that has been elaborated in this dissertation, Sweden could have had a chance to promote a more problem-solving leadership (creating consensus and identifying positions) during stage II. *In terms of framing tactics, a rather reactive approach was chosen by Sweden during stage II.* When evaluating the national influence strategies, it seems as if Sweden had played all its cards during stage I and now acted as if the same position still existed. During this period, there is a lack of political incentives and signals to other countries about Sweden's intentions. Other countries continued to place Sweden in a rather extreme position and were reluctant towards cooperating with Sweden. From a strategic perspective, one might expect that Sweden instead would have placed REACH higher on the political agenda; that the Prime Minister would have signalled the importance of this dossier; and that Sweden would have been engaged in coalition-building tactics with opponents to REACH in order to lay the ground for a problem solving leadership. *Coalition building tactics could have been combined with mediation tactics* in order to try to establish a position where Sweden could provide a problem-solving leadership instead of the directional leadership that it had exerted during stage I.

Interviewees from the EP argued that representatives from Kemi who were working with REACH continued to have contacts with key individuals. Similarly, representatives argued that they continued to have

contacts with those who were working with REACH although it seems as if these contacts no longer reached key individuals in the different EU bodies (interviews, Brussels). Thus, Sweden continued to take advantage of network opportunities, but by focusing too much on previous contacts and not signalling the importance of REACH on a political level, Sweden lost contacts with the enlarged policy network, which during stage II included many actors that were sceptical towards the new regulation. National representatives continued to have a central role amongst actors in the larger pro REACH issue network.

Amongst member states it is obviously positive if the Ministers contact each other and also talk before the meetings takes place. For Sweden, attempts at forming alliances and engaging in coalition building did not work to full extent since other actors did more and had more resources. At this stage, Sweden saw that it would not be possible to form a blocking minority. The alternative was to engage in framing tactics and present good arguments for the national position. Once again, Sweden continued to use the expertise from KemI and also had experienced personnel from the Environment Ministry working with this issue. Sweden's core understanding of the use of chemicals is that precaution is needed in order to protect human health and the environment. These ideas are expressed under the expression sustainable development, covered by the Environmental Code (Miljöbalken 1998:808). In a report published in 2004, KemI discussed the need for information about substances included in different products. According to Annika Nilsson, associate professor in Environmental law, a consequence of Swedish chemicals law is that dangerous chemicals should be replaced with less harmful substances (2007: 310). This also illustrates why the principle of substitution as a core feature of national law became a Swedish priority during the negotiations in the working groups, on Coreper level and in the Competitiveness Council.

In the Council, EU governments agreed to 'test all new EU legislation on its impact on business' (Corporate Europe Observatory, 2005). The new European Commission from November 2004, placed competitiveness on top of the Lisbon agenda. After a period of not getting

anywhere, negotiations continued in the EP, in the Commission, and in the Council. The Competitiveness Council and the Working Party on International Environment (WPIE) handled the technical issues in parallel, without getting very far. In Sweden, KemI kept producing material about the different proposals that were discussed in the Council. The Swedish Environment Minister Lena Sommerstad 'pushed for this issue' so that it would not become left out of the agenda, argued one Swedish representative (interview). Yet, no real negotiations seem to have taken place. This Council 'deadlock' was instead solved during the British Council Presidency in 2005 thanks to the use of procedural tactics and a well planned British agenda for REACH.⁶²

The British Council Presidency

Just as Sweden in the transparency issue area, the British government started to prepare the handling of the REACH proposal at an early stage and declared that the goal was a common Council position before the end of 2005 (interviews, Brussels). By presenting a compromise that was based on years of preparatory work with stakeholders, the British Council Presidency was actively taking advantage of the institutional possibility of the Council Presidency and also took advantage of cooperating with British REACH issue networks, both environmental- and industrial organizations (interview, Brussels). Alun Michael, lead Minister for REACH at the UK Department for Environment, Food and Rural Affairs commented the preparations in the following way:

Representatives from the broad spectrum of our stakeholder community have worked closely with us over the past two years. This is something I very much welcome and has been a crucial factor in the developing consensus, which is emerging. We hope the UK MEPs will want to join and support this (DEFRA, 2005)

62 Interview sources have added that the Netherlands and Luxembourg, during their Presidencies, engaged in activities that 'prepared the Council' for a British success.

At an informal Competitiveness Council in July, the importance of the REACH dossier was stressed and the Secretary of State for Trade and Industry, Alan Johnson, announced that Britain would do everything in its power to come to an agreement during the first reading (*ibid.*). Alain Perroy, Director General of Cefic who participated in the meeting, argued for the importance of focusing on risk assessments and workability in relation to REACH (Perroy, presentation, 2005).⁶³ In September, the UK Presidency tabled a compromise text aimed 'to design a workable system, which can fulfill the overall objectives of REACH and get the broadest possible support. It is based closely on discussions of Council preparatory bodies and among Ministers at the Council' (CC, background note, 11 October 2005: 4). This text formed the basis for policy debates with EP representatives and was discussed both in the Competitiveness Council and in the Environmental Council, despite the fact that Italy had chosen to move the dossier to CC (background notes, Environment Council, 17 October, 2005, Competitiveness Council, 11 October and 28-29 November 2005). Representatives of the British Environment Ministry were very active in Council negotiations. The main procedural tactics used by the British to solve the deadlocks was to create several working groups where experts discussed the details (interviews, Stockholm). In these working groups national experts presented different positions. Britain provided a problem-solving leadership (creating consensus and identifying positions) and used risk assessments in order to maintain the discussions on a scientific level. Denmark and Germany became identified as strong actors pro and against an overarching regulation (interviews, Brussels).

Seemingly, several participants had difficulties understanding both the national and the European effects of REACH. Hence, framing tactics and several other negotiation techniques became difficult to use because only experts could grasp the complex proposal. Yet experts also differed as regards the consequences of various proposals. The negotiation mandates were unclear; many countries had difficulties reaching a national stand-

63 Alain, Perroy participated as representative for the 'alliance for a competitive European industry'.

point. Instead expert reports came from the chemicals industry or from NGOs. National reports were 'ordered' by larger member states like Germany, France, and Britain, but these reports pointed towards more costs than the reports that were published by member states with strong ideas about environmental concerns in the chemicals area. Sweden, together with Finland, the Netherlands, and Denmark, belonged to this later category.

During the Environment Council in October, Sweden and other countries emphasized the importance of maintaining balance between environmental concerns, health matters, and competitiveness (EU 2004-kommittén, news letter, 2005a: 9), which shows that Sweden had become active again. Afterwards, Environment Minister Lena Sommestad was quoted saying that 'difficult negotiations are to be expected during the next weeks and the victory is not yet won. I still feel optimistic after today's discussions' (EU 2004-kommittén, 2005b: 2). The German representative, at this stage, with reference to the new Government and Chancellor Angela Merkel and with support from the French Government, asked for more time in order to allow the new government time to prepare itself for this 'complicated and sensitive' issue (EU-kommittén 2005b: 3, svt.se, 15 November 2005). This shows that the opponents to REACH in the Council now tried delaying tactics. Britain, however, engaged in *mediation* and managed to get the opposing sides to start negotiating in a more problem-solving manner. These activities, according to both Swedish representatives and MEPs, contributed to a better negotiation climate in the Council. States arguing for more general principles and states wanting a more limited regulation could begin to compromise.

An open debate between the Commissioners Margot Wallström and Günter Verheugen revealed that the General Directorates at the time were divided. In October 2005, Wallström wrote a letter to the President of the Commission, José Manuel Barroso, criticizing an unofficial proposal that Verheugen had presented during the Parliament's first reading. According to Wallström, the proposal reflected the interest of the industry and had not been handled correctly in the Commission. Quoted in an article, she explained that it was important to follow the collegial procedures

and discuss proposal in the Commission before they are released (source: svt.se, 15 November, 2005).⁶⁴ Verheugen responded in the following way: 'the REACH proposal does not work and has to be adapted in order to take the interests of the industry into consideration' (quoted by Brysselkontoret, 3 February 2005).⁶⁵

When the British Council Presidency presented its slightly revised compromise proposals in November 2005, the Swedish Government reacted positively although with some reluctance. The Swedish main goal in the Council was to increase substitution by including as many categories of chemicals as possible. In addition, the Social Democratic government believed that a strong environmental position was compatible with the Lisbon targets (interview, Brussels). Framing activities towards promoting sustainable development and consumer friendly products from a European market did not impress those who were arguing that competitiveness overshadowed environmental concerns. In a statement by the German, Danish and Swedish delegations (Statement 2005), it was, however, argued that in cases where national law went further than EC Directives, member states should have a right to introduce protective measures. 'Sweden concludes therefore that the REACH Regulation shall apply without prejudice to more stringent national provisions which are compatible with the Treaty and which are within the scope of and implements the legislation referred to in Article 2(2)' (Council of the European Union 2005b, first reading, 15921/05).

In the new compromise proposal, more substances were included and, in comparison to the Commission's proposal, the demands on hazardous chemicals were higher (EU 2004-kommittén, newsletter, 2005a: 9). The British Presidency, argued interview sources, maintained a mediator role and engaged in problem-solving based on the program that had been elaborated upon before the Presidency. When national strategic activities are discussed on a more general level with civil servants, MEPs,

64 Original quote: 'Det är viktigt att inte stiga över linjen för det kollegiala sättet att jobba' (svt.se, 15 November, 2005).

65 Original quote: "-REACH-förslaget flyger inte, sa han [Verheugen]. Det måste omarbetas för att bättre tillgodose industrins intressen.

and national representatives, all claim that British representatives are skilled negotiators and know how to take advantage of network opportunities with different actors and of institutional possibilities related to the Commission and to the EP. By using knowledge about member state positions, cooperating in policy networks and in issue networks, and using the institutional possibility of the Council Presidency, Britain managed to reach a political agreement. The main issues of the debate were authorization and substitution (Council of the European Union, press release, 13 December 2005a). The member states unanimously agreed on a draft text that formally was adopted during the Austrian Presidency (Council common position, 27 June, 2006).⁶⁶ The Secretary of State for Trade and Industry, Alan Johnson commented upon the British achievements:

As many as 50 impact assessments were made and extensive consultations with the chemicals industry were carried out. So I was delighted when, after all this effort, we finally achieved an agreement on REACH in the middle of December. This deal makes REACH more workable and reduces the burden on industry and on SMEs in particular. At the same time, it gives us tools necessary to gather detailed information on some 30,000 substances used in the EU, while strengthening the controls covering the most harmful chemicals (Johnson, *CBI Business Voice Magazine*, 2005).

The Commission was reluctant to accept the British compromise, and the intra-institutional divide was reflected also in the work of the Parliament. In the next section the discussions in the European Parliament and the first reading that took place *during* the British Council Presidency are analyzed.

EP and Council Negotiations

On October 4 2005, the EP Environment Committee voted yes to a chemicals legislation that was almost equivalent to the Commission's

66 From the Council a statement on common position came in June 2006 (Council of the European Union 2006a, 2003/0256 (COD)).

proposal from 2003.⁶⁷ The European Parliament was divided, the largest group in the Parliament, EPP-ED, opposed to the new compromise of the Environment Committee. The Swedish MEP Anders Wijkman and a number of other MEPs in EPP, decided to support the compromise and thus the position of the Environment Committee. He gathered several colleagues who were willing to vote yes in the first reading, something that contributed to having a majority of MEPs voting in favour of the regulation (interviews, MEPs, Brussels, EU 2004-kommittén 2005b: 2). Different proposals were discussed amongst parliamentarians, and national interests influenced the positions of several MEPs. Unemployment and the economic situation were on the agenda. It was difficult to frame REACH as a sustainable development issue in this climate (interview, Brussels). In the framing of REACH in the EP two arguments dominated. The first idea was related to the costs of REACH and it was argued that REACH would damage the competitiveness of the European economy. The second main argument was that European jobs would be threatened if the regulation was implemented (svt.se, 15 November 2005). Counter-framing was based on arguments related to exaggeration of costs. For example, the cost for the new system of registration would (only) be 0.05 per cent of the chemicals annual turnover divided over eleven years, something that did not convince sceptics (Hansson & Rūden 2004). Arguments related to sustainable development however, vanished in the debate, although Swedish representatives, together with a minority of state representatives and environmental organizations continued to work for a 'strong' REACH.

The Industrial Committee suggested major changes in relation to the Commission's initial proposal, while the Environment Committee, to a larger degree, backed up the initial ideas. One obstacle was the principle of substitution. According to interview persons in the EP, there was a strong German agenda in the EP. National representatives from this country were united over party lines (interview, Brussels). Several German

67 EP: decision of the committee responsible, first reading, 4 October 2005. The EP tabled Sacconi's legislative report 24 October 2005 (European Parliament, 2005, A6-0315/2005).

Social Democrats were sceptical towards the regulation, and it was the chairman of the EP's socialist group, Martin Schultz, who managed to find a compromise between the Conservatives and the Liberals. This in turn, paved the way for an agreement in the first reading. The Parliament in November voted yes to a compromise that was supported by most party groups (398 yes, 148 against, 36 abstentions, European Parliament, 2005b, A6-0315/2005). In the compromise, it was agreed that chemicals produced and handled in volumes below 10 tonnes would not be covered by rules about providing security reports. In the initial proposal from the Commission, the line was drawn at one tonne per year (svt.se, 15 November, 2005). An additional consequence of the proposal supported by most party groups in the EP was that some of the burden of evidence would no longer rest on the industry but on the future chemicals agency in Helsinki. In the Swedish newspaper *Sydsvenska Dagbladet*, Lena Ek, Rapporteur in the Industry Committee, commented that this was 'a compromise in the right direction' (Lönnæus, 15 November, 2005). MEP Åsa Westlund, supported by Danish and Finnish MEPs, instead argued that this was a disappointment and that there was now a risk that two-thirds of all chemicals that are used will still be used without any control. In Sweden, KemI and environmental organizations criticized the EP agreement (svt.se, 15 November, 2005).

A comparison of these discussions with what had been included in the British compromise text makes it clear that the Council Presidency and representatives from the EP had set the agenda in a constructive way that contributed to an agreement one year later (*cf.* Jahnke 2007). The main issues that were discussed in the Council and in the EP concerned:

- Information requirements for substances between 1-10 tonnes per year in order to reduce the impact on SMEs
- The principle of one substance one registration (OSOR) and the need to take commercial confidentiality into consideration
- Authorization and substitution of substances of very high concern

The Permanent Representation can uphold contacts and supply information, but participation/presence by national representatives from

Stockholm – for example the responsible Minister – is expected to send signals to other actors about the importance of a specific issue for a member state. The Coreper ambassadors can also have meetings with stakeholders. In order to act, however, a clear mandate from Stockholm is needed. This mandate was not strong enough during stage II. Those who have been interviewed in the REACH area seem to believe that Sweden did not have a very clear position in this issue area, and could have had more ‘high-level contacts’ in Brussels with different representatives from the Commission and the EP (interviews, Stockholm and Brussels). When having discussed these issues with Swedish representatives in Brussels, it has become clear that Sweden has begun to develop its contacts with the EP although these contacts do not seem to have been optimized. One possible explanation is that Sweden would have needed more resources in order to be able to uphold contacts with the policy network, and thus be able to take greater advantage of institutional possibilities of cooperating with the Commission and the EP. According to the same sources, the Netherlands, Finland, and Denmark have also expanded their contacts with the EP (interviews, Stockholm). Civil servants and national representatives in Brussels in unison argue that the ‘role model’ when it comes to taking advantage of EP institutional possibilities and network opportunities is Great Britain. For example, British representatives are always present also during sessions in Strasbourg, which explains why Britain managed to take advantage both of its Council Presidency and of the institutional possibility of cooperating with the EP in order to get results in the REACH arena (interview sources, Brussels and Stockholm).

Tactics: Networking without Political Signals and the Use of Expertise

Having lost its ability to provide directional leadership, Sweden no longer had a central position in the policy network. Instead, Sweden kept a lower profile, while continuously participating in different European negotiation arenas. The main difference was that as it was no longer considered a key player, Sweden could not engage in problem-solving activities and redirect its leadership. It seems as if Swedish experts

continued to have important roles as providers of information and as evaluators of different expert reports. Sweden discussed REACH in the Nordic Council and, together with other Nordic countries, evaluated the effects of the proposal for national industry but it is questionable to what extent this contributed to Sweden's ability to act strategically in Council negotiations or in networking with other EU actors. Swedish representatives and negotiators argue that they felt that they ended up outside the negotiation and that it was difficult to form *coalitions*. Sweden was not very successful in its attempts to get back into the negotiation team and take place in the policy network of key stakeholders.

The Italian Council Presidency used procedural tactics when the REACH issue moved from the Environment Council to the Competitiveness Council. Mediation became important because of the difficulties to even begin discussions in the Council. Also in Coreper amongst ambassadors, the discussions became more difficult. Nobody managed to take on mediation- or a leadership role until Britain took over as chair holder. The negotiations then moved forward due to the use of procedural tactics by the British representatives. In addition, they took advantage of the institutional possibility of the Council Presidency, managing to balance mediation activities with a problem-solving leadership. The chemicals industry had engaged in framing tactics, presented numerous reports (the use of expertise), and managed to re-frame REACH as being a proposal *against* the Lisbon targets about economic competitiveness, too costly for small and large enterprise.⁶⁸ The Lisbon Strategy includes market growth, competitiveness, sustainable development and knowledge based economic growth, which indicates that there was a potential also to frame an environmental-friendly REACH as compatible with the Lisbon strategy, but this track was never tested.

Those who have been working with REACH claim that resources needed in order to pursue coalition building as a strategy were lacking. The main negotiators and civil servants working with REACH had to choose which countries to contact. For example, voices were raised about the need

68 The Lisbon Strategy, also known as the Lisbon Agenda or Lisbon Process, is an action and development plan for the European Union.

for contact with new member states, but due to lacking resources, ‘the ordinary countries’ (interview, Stockholm) were approached first, with no time or resources to continue with other member states. According to interviewees, there seems to be a difference as regard contact patterns between the original member states and states that joined the union later. An experienced Swedish negotiator believes that, ‘it is easy to score with the new member states and find allies’ (interview). Yet, these activities never took place after the enlargement in 2004.

Sweden was not nationally united in the Parliament and had problems using the institutional possibility of EP cooperation, which in turn can be explained by not taking advantage of (all) network opportunities. At one time, the Government thought that Lena Ek had ‘sold out the Parliament’ (interview) by negotiating with the Council during the British Presidency, and afterwards never chose to create new contacts with her despite the fact that she was Rapporteur in the Industrial Committee. Swedish representatives and national MEPs had common interests but there was disagreement amongst these actors about how to use the differences of opinion in the different committees. Hence, some networking opportunities were lost. As a result, Sweden had insufficient contacts with different stakeholders in the Parliament and, during stage II of the decision-making process, did not to full extent cooperate with the EP.

STAGE III: The Finnish Presidency

In this section, the Finnish tactics will be analyzed and related to how Sweden chose to act during the final negotiations. For Finland, an agreement had the highest priority according to participants and MEPs that were contacted by the Finnish Presidency (interviews, Brussels). In a letter to national representatives in the Competitiveness Council, the Finnish Minister of Trade and Industry, Mauri Pekkarinen wrote:

In view of the second reading, we intend to start the examination of the REACH proposal early July in the Council Ad-hoc Working Party on Chemicals. The Presidency intends to engage in informal discussions with the European Parliament at an early stage [...]. I believe that the similarities of the first reading results of the Parliament and the Council speak in favour of

a speedy process. My understanding is that the Parliament's biggest political groups along with the Council have a strong will to achieve a 2nd reading agreement (Pekkarinen, June 2006).

Just as Sweden and Britain, the Finns started to plan their Presidency at an early stage. Preparatory meetings began in July and Finnish representatives had decided that their role was to 'defend the common position' of the Council (interview). On the national arena, the Council's common position was supported. A 'reinvigorated Lisbon strategy was one of the central priorities' (Howarth 2007: 89) for Finland, having a strong position on the international market, these activities were carried out together with the Austrian Presidency, held the same year (*ibid.*). Thus, Finland could concentrate on providing problem-solving leadership and mediation without being questioned on the national arena.

Counsellor Anna-Liisa Sundquist chaired the ad hoc working group dealing with REACH. She held bilateral meetings with the member states to find out national positions and 'red lines' (interview). Thus, Sundquist engaged in problem-solving leadership. In Coreper, Finland argued for the need for concessions from member states, and for the need to collaborate with the EP (interview, Brussels). Compromise drafts were presented at the very last minute – a procedural tactic. Three formal Council meetings were held, which were rigorously prepared both in the ad hoc working group and on Coreper level.

From a bargaining perspective, you do not want the others to know your 'bottom line' since that is a disadvantage when negotiating. A national representative discussed the REACH dossier and Council negotiations in the following way: 'Sometimes the cards must be carefully guarded, for example, the British ambassador expressed himself carefully also during Coreper sessions' (interview). This comment implies the difficulty for other member states, at this stage, to evaluate the position of other members. Finland included the Environment Council in order to develop support for the compromises that were elaborated upon in the Trialogue, an additional example of the use of procedural tactics. Substitution and authorization were the main areas where member states disagreed. The Finnish representatives argued that there would be a

conciliation process unless the REACH issue was solved during its Presidency (interviews with Swedish representatives and MEPs, Brussels and Stockholm). In the second reading, there is a specific deadline. After the Council has formed a common position and handed over their decision to the EP, a second reading must take place within four months. Most actors, including Sweden, did not want conciliation procedures and were therefore willing to make concessions. However, it seems as if some of the last minute amendments in the Council were related to activities of states like Germany and France who wanted to ensure that the proposal would not be too costly. 'Everybody wanted to avoid conciliation procedures,' argued one negotiator (interview). Not only Swedes and Danes, but also other member states, had bad experience of conciliation procedures, which made it possible for Finland to use its Council Presidency, use procedural tactics, and also take advantage of the institutional possibility of cooperating with the EP and with the Commission.

Most countries had a middle position in the final negotiations, but a few countries held on to strong claims (see table below, which is based on MEP interview sources and news material). Finland had to uphold credibility in order not to lose the negotiation mandate (*i.e.* not being trusted as Council representative in the dialogue with other EU bodies) that was needed in the Trilogue negotiations and therefore took the position of more reluctant member states into consideration although it seems as if the main strategy was to play out the interests of the member states against the diverging interests in the EP.

Table 6: National Positions – REACH⁶⁹

‘Strong’ REACH, few exceptions	‘Weak’ REACH, exceptions necessary
Denmark Sweden	UK Germany France Malta Ireland Poland

Finland did not show its hand – a *manipulative* move – and used its Presidential position to engage in a *problem-solving leadership*. The Presidency was pushing hard for a compromise and almost all member state representatives were, at some stage, upset. In the end, however, the Finnish chief negotiator had gained respect amongst her colleagues for this firm position (interviews, Brussels and Stockholm). Participants say that Finland repeatedly asked for the Council’s ‘bottom line’ (interviews). On several occasions procedural tactics such as expanding the meetings and handing out new proposals were used in order to ‘push’ for an agreement. The Finns also used Coreper ‘restricted sessions’ in order to find out how far the representatives were willing to go in terms of concessions concerning details (interview, Brussels). In December, many member states were still unwilling to change their positions. These states were Ireland, Malta, Poland, Denmark, Finland, the Netherlands, and sometimes France. For Germany it was difficult to take a clear standpoint because of the *Länder* system that results in complex pre-negotiations on the national arena. According to interview sources, Finland engaged in classical negotiations tactics and played out different interests against each other (interview, Brussels). An interviewee explained: ‘Finland handled

69 Those countries that have presented strong national positions in relation to the REACH regulation are France, Germany, the Netherlands, and the UK (interview, Brussels).

their Presidency excellently...especially the chair holder in Coreper' (interview, Stockholm). An additional explanation is the reliance on the interinstitutional negotiations in the Trialogue.

Swedish Activities

Sweden's arguments in the Council debate were based on a) the working environment and safety for downstream users; b) the principle of substitution; and c) minimum rules for REACH (interview, Stockholm). During the final stages, Sweden focused on the principle of substitution, which was also a Finnish priority (interviews with representatives at the Swedish permanent representation and civil servants in Stockholm). In this issue area, Sweden was able indirectly to take advantage of the Finnish Presidency and ensure that these claims were included in the final proposal. The Swedish chief negotiator decided to use expertise and covered the expenses with the money that each member state has to cover costs in relation to Council meetings on different levels. During the final stages, Swedish experts always participated because of the technical nature of the negotiations. Each expert could work intensively on a specific part of the regulation. Some of the texts discussed in the Council working groups were written by KemI— particularly concerning substitution, later to be presented as Council Presidency proposals (interviews, Stockholm and Brussels).

The Government Office and the Swedish Permanent Representation decided that they did not want to be interpreted as extreme in these complex interactions, as this would only result in being left outside the negotiations (interviews, civil servants and negotiators, Stockholm and Brussels). One participant explained: 'In the REACH area it was not possible to form a blocking minority, but in the negotiations the goal is to reach an agreement and involve all member states...you want to show flexibility and willingness to compromise' (interview). The only reliable partner that Sweden had, according to representatives working in the Council, was Denmark. 'We realized that we were very isolated and that we would lose no matter what', says the same representative (interview). These comments illustrate that Sweden had not been successful in its

coalition-building attempts during stage II, which can be explained by the fact that the chemicals industry, and several larger member states, directed vast resources to this issue area. Participants argue that a lower profile was needed in order to uphold credibility. In reality, this low profile did not result in any concrete effects in the REACH issue-area although it cannot be ruled out that this – in terms of increased trust – might be an asset in future negotiations not least in the consensus oriented climate of the Council.

Negotiations in the European Parliament

During the UK Presidency, the meetings of EP Environment Committee showed that the principle of substitution would be of great importance in the final negotiations between the Council and the Parliament. Since Sweden's main priority was to maintain the principle of substitution, although many larger member states opposed this position, the Environment Committee represented an ally for Sweden. Many actors were interested in the activities of this committee. National delegations, not only Sweden, monitored the activities of the Environment Committee. When meetings were held, almost all nationalities were present in order to get information, try to affect the agenda, and possibly the outcome.⁷⁰ The chemicals industry had over 200 lobbyists in Brussels only who, argued an MEP, 'were everywhere and managed to direct the whole agenda' (interview, Brussels). As an example, Cefic argued that 'mandatory substitution may do unintentional harm', urging parliamentarians in a directed campaign to 'vote for safety – support the Council position on authorization and substitution: no mandatory substitution; time- limited authorization should only be considered on

70 Environment Counsellor Charlotte Unger believed that contacting the EP was important. When I have interviewed MEPs, they all (with one exception), say that she has been in contact with MEP assistants, especially Swedish, on several occasions during the final EP negotiations. At the Swedish Permanent Representation, civil servants portrayed her as a skilled 'networker' and argued that Unger often checked that these informal contacts had been taken.

a case-by-case basis' (www.cefic.eu/substitution).⁷¹ In a campaign labeled 'OBJECT!ON' (2005), a German action group of enterprises argued that SMEs and downstream users would take a heavy burden if REACH would be implemented. Next to increasing bureaucracy and avalanching costs, jobs would be lost, as REACH would 'encourage the shift of jobs to non-EU countries. Conversely, EU location will become less attractive for foreign investors' (OBJECT!ON 2005: 3). Greenpeace was also engaged in the debate and presented 'good' examples of sectors that have taken measures to ban chemicals with potential harmful effect:

Forward looking companies play it safe and ban PVC [...] from their toys. But other companies still prefer to play with toxics, a dangerous game. The EU has taken steps to ban some of the phthalates in toys – but continues to allow other phthalates to be used in any toy as long as it is not intended to be sucked or chewed. Toys shouldn't be toxic for kids. A substitution requirement in REACH would replace harmful chemicals in all toys with safer alternatives (Greenpeace International 2005, www.greenpeace.org/chemicals, Greenpeace campaign 'Substitute with style' 2005).

The Industry Committee and the Internal Market Committee were sceptical of the ideas discussed in the Environment Committee. MEPs representing member states less positive towards REACH tried to gather the conservative party group behind further amendments (interview, Brussels). These differences of opinion in the Parliament made it more difficult to optimise the institutional possibility of cooperating with the European Parliament. The EP Environment Committee met on three occasions during the final stages of negotiations, (dates: July 12, October 3, October 10) and finally voted, almost unanimously, in favour of a compromise proposal regarding the REACH regulation during the last

71 Quotes from a Cefic EP campaign called 'The Art of substitution'. Cefic AISBL advocacy team, Brussels. An additional campaign was led by US, Brazil, and India arguing that '[m]oves to require mandatory substitution or across board uniform time limits would cause unnecessary market disruptions without clear environmental benefits'. The statement by these states was also supported by, amongst others, Japan, Mexico, Singapore, and Korea (*EUobserver*, 9 June, 2006).

meeting (European Parliament 2006a, A6-0345/2006).⁷² The Swedish Environment Minister Andreas Carlgren made the following statement: 'The vote in the EP Committee has given support for the position of Sweden concerning REACH [...]. I welcome the message from the Environment Committee' (11 October, 2006). The chemicals industry reacted negatively and claimed the EP proposal to be a 'bureaucratic nightmare' (CIA, 6 October 2005). In the Internal Market Committee, a compromise about partnership between the public and the private sector was found in order to take commercial interests into account, but participants in the Committee were sceptical of substitution (interview, Brussels).⁷³ Sacconi focused on the principle of substitution but chose to include limitations in order to create a majority in the Parliament (interview with MEP, Brussels). The time limit for authorization, five years, was no longer included as a general rule. This would instead be handled on a case-by-case basis. Dangerous chemicals will be allowed if it can be guaranteed that these chemicals do not harm the environment or have health effects, something that makes it possible to disregard the principle

72 In the first reading, the EP committee is voting on the Commission's proposal and suggests amendments. The same activities are taking place in the Council's working group, sometimes with support from Coreper. Informal tripartite meetings are taking place during these negotiations in order to link the activities of the EP and the Council's working group. In plenary, the EP vote on the proposal and the amendments suggested by the responsible committee. If the Commission supports the EP amendments (if there are amendments) and the Council also supports these amendments, a proposal can be accepted in the first reading. If this is not the case, the Council has to form a common position in relation to the EP proposal. Then, a second reading takes place. As illustrated in the analysis, these informal meetings between the Commission, the Council, and the EP should in the ideal situation result in a compromise agreement between the EP and the Council, thus avoiding conciliation procedures. When REACH was handled in the EP, the Environment Committee was responsible but two other committees had special rights to propose amendments.

73 The Environment Committee was responsible for the dossier and for preparing the EP position before the plenary vote. The Internal Market Committee and the Industrial Committee had special rights to comment on the proposal and their position were taken into consideration and discussed before and during the plenary debate and the vote in the Parliament.

of substitution (*Miljöaktuellt*, December 2006). The EP tabled the legislative report from the Environment Committee on the 13 of October 2006 (European Parliament 2006b, procedure file COD/2003/0256).

Before the final vote Rapporteur Sacconi urged parliamentarians to support a deal that had been worked out between committees and in the Trialogue: 'I call on all the Parliament's political groups to support me at the plenary' (*EP news* 2006a, 1 December). The three main groups in the European Parliament – EPP-ED, PSE and ALDE – united to support a package that was voted through in the Parliament's December session (European Parliament T6-0552/2006, 13 December 2006).⁷⁴ Chris Davies (UK), ALDE environment spokesman and chief negotiator on REACH commented:

We have struck a balance between the commercial interests of the chemicals industry and the need to provide better protection for human health and the environment from chemicals with unknown long term effects. More than 17,000 chemicals produced in very small quantities will not have to undergo rigorous examination, but hazardous products will be subjected to greater control than ever before. [...] Under the agreement to be finalised tonight between the European institutions, persistent, bio-accumulative and toxic chemicals, plus hormone disrupters, will now have to be taken off the market if suitable alternatives are available (ALDE's homepage, November 30, 2006).

The final vote divided the Parliament, although a broad majority (529) voted in favour of the final compromise (98 no votes and 24 abstentions) that had been agreed upon in the Trialogue. Before discussing this vote, I will comment on the preparatory negotiations that resulted in an agreement between the EP and the Council.

74 The European Commission formed an opinion on the EP position at second reading (European Commission, 2006b, COM(2006)0842, 15 December).

Triologue Meetings – Interinstitutional Negotiations

The differences of opinion had to be solved in inter-institutional negotiations. Despite the fact that the representatives from the three EU bodies had narrow negotiation mandates, all were trying to take on a leading role – thus, the room for compromises was rather narrow.⁷⁵ Six Trialogues were held. In the final negotiations in the Triologue, the EP negotiators, Rapporteur Sacconi and the Chairman of the Environment Committee Karl-Heinz Florenz, were asking for substitution of the most dangerous substances, the precautionary principle for enterprises, and minimizing the number of animal tests (*EP news* 2006a, interviews). Compromise amendments were discussed and reported back to the Council and to the EP. In relation to registration, it had already in the first reading been agreed that no data meant no market for chemicals produced in volumes of one tonne or above and for substances between one and ten tonnes there would no longer be a mandatory security report. In addition, it was agreed that one substance would only have to be registered once (OSOR) and that only sensitive commercial information was excluded from a general rule about sharing information, thus minimizing the number of tests on animals. New in these discussions were the time limits for registration and authorization. The Left and the Greens in the Parliament criticized these compromises. They had presented, in advance of the EP vote on the REACH regulation, their own proposal that was close to the position of the Environment Committee but, according to a presentation by Carl Schlyter, included some concessions to the Council (Greens/EFA Press Conference on Reach, 12 December 2006).

During the last Triologue meeting, the negotiations were at the brink of failure. The EP Rapporteur Sacconi even left the negotiation table and walked out of the room (Kommittén för EU-debatt, 28 November, 2006). The Swedish negotiators, because of the difficulties to come to an agreement in the Triologue, even thought that there was not going

75 The negotiations between the Council and the EP have focused on: duty of care, communication on information, animal welfare, comitology, registration/data-sharing, the Agency and the authorization including substitution (Council of the European Union 2006b, press release).

to be an agreement in the second reading (interviews). Finland, with Deputy Permanent Representative Nina Vaskunlahti in charge, had asked the Council for a special negotiation mandate. Coreper supported the Finnish tactics. From the Commission Dimas and Verheugen were present. Sacconi and Florenz represented the EP. The day after, at a Coreper meeting which was scheduled to give feedback from the Trialogue meeting, Finland presented new amendments and solutions: 'this is what we want to do!' A new 100 pages long proposal was sent per fax. Since the proposal included a) the principle of substitution and b) the same registration rules as in earlier compromise packages, Sweden supported the proposal and believed that the best negotiation tactics was 'to give the Swedish position directly to the Finnish Presidency' (interview). Several of the Swedish representatives have asked themselves afterwards if the EP knew that there would be a new proposal from the Finnish Presidency, and that the interrupted negotiation the day before was a strategic move from the EP representative. Participating MEPs claimed that Sacconi knew exactly what was going to happen (interviews, Brussels). Thus, when he left the last Trialogue, he was probably aware of the Finnish plan to present a final document in order to get an agreement in the Council on the REACH regulation.

EP representatives can never participate during Council meetings. Instead they have to rely on the information given by the Council Presidency negotiating for the Council in the Trialogue. Therefore, the member state holding the Council Presidency has a very powerful position. Finland persuaded, amongst others, Poland to agree with reference to the discussion that had taken place in the Trialogue. This illustrates the centrality of the Presidency. Sacconi had, for his part, made a deal with EPP-ED that altered the position that had been agreed upon in the Environmental Committee and that the Parliament finally on 13 December adopted (interview, MEP, Brussels). When the Parliament voted it was the compromise package that had been agreed upon between the different EP Committees and after contacts with the three main party groups (and in the Trialogue) that became accepted. The Finnish Council Presidency in a press release described the process:

This decision has been under preparation during the Finnish Presidency in several tripartite negotiations between representatives of the Presidency, the European Parliament and the European Commission on the basis of the Council's Common Position. Today, the European Parliament approved changes to the Common Position agreed on in informal negotiations, and Minister Pekkarinen, representing the EU Council of Ministers, gave his support to them in the plenary session (Prime Ministers Office, Finland, 13 December, 2006).

The final regulation (EC No 1907/2006) was agreed upon in the Environment Council 18 December 2006 (Council, press release, 18 December 2006).⁷⁶ Important goals in the new system included: a) a coherent system for registration of substances manufactured or imported in quantities above 1 ton; b) a reversed burden of evidence; c) mandatory risk analysis and handling instructions for chemical substances; d) maintenance of the existing system for limiting the use of chemicals and the introduction of a system for authorization for the use of the most dangerous substances; and e) the creation of a central authority (a new chemicals agency) for administrating REACH and implementing the new regulation (*EP news* 2006b, 8 December, *EP News* 2006c, 13 December). Minister Pekkarinen was quoted by the press: 'in my opinion, this solution takes into account in a balanced and realistic way the concerns on the substitution of the most hazardous substances raised during the negotiation' (Prime Ministers Office, Finland, press release, 13 December 2006). In the press release after the EP vote, the following description of substitution can be found: 'In accordance with the proposal by the EU Presidency, the applicant or the holder of the authorization shall deliver a substitution plan when the analysis of the alternatives indicates that suitable alternatives do exist' (Prime Minister's Office, Finland, 13 December 2006). In relation to authorization and substitution, the following modifications of the Council's common position were made:

76 The compromise package was agreed upon in the informal Trialogue on 30 November 2006 and was adopted by the Plenary of the EP on 13 December (Council of the European Union 2006b, press release 18 December).

- Persistent, bioaccumulative and toxic properties (PBT) or very persistent and very bioaccumulative properties (vPvB) substances identified under Article 56(f) have been excluded from the *adequate control route*. Six years after the entry into force of REACH, the Commission will review whether or not to extend this to substances with endocrine disrupting properties;
- When suitable alternatives are available taking into account the risk posed by the uses of the substance, a substitution plan shall be mandatory part of an application for both the adequate control route and for the ‘socio-economic route’ (Council of the European Union 2006b, press release 18 December).

The Finnish Prime Minister, the EP Rapporteur Sacconi, the Commissioners Verheugen and Dimas, were all very pleased and celebrated already after the second reading in the Parliament. Verheugen for his part stated: ‘This compromise is good for health and environment, while keeping European business competitive and encouraging innovation’. Commissioner Dimas elaborated: ‘It [REACH] will increase our knowledge about chemicals, enhance safety, and spur innovation while encouraging substitution of highly dangerous substances by safer ones’ (European Commission 2006, press release, 13 December). Green Party MEP Carl Schlyter, however, at a press conference afterwards called the agreement a ‘rotten apple’ (Greens/EFA (2006) Press Conference on Reach, 12 December 2006, svt.se, 13 December 2006). He criticized the Parliament for having agreed to exceptions to rules about the substitution of substances in consumer products, for not requiring security reports and reports about the handling of a substance for all low volume chemicals, and for giving the new authority an ability to hold secret meetings (interview with Carl Schlyter, Bryssels). Lena Ek (ALDE) would also have preferred stronger substitution rules in relation to CMR substances⁷⁷ and to duty of care (the principle of responsibility) which, according to Ek, should have been included in the final legal text (*EP news* 2006a, 1 December).

⁷⁷ CMR: Chemicals classified as carcinogenic, mutagenic, or toxic to the reproduction.

Åsa Westlund (PSE) reminded of the huge resistance the initial proposal had met from the right wing in the Parliament and also from the chemicals industry, claiming that the compromise should be understood as a success despite the fact that rules related to substitution and to information might have been better. According to Westlund, nothing indicated that there would have been a better REACH under conciliation procedures. Furthermore, Germany, the next Council President, would have been under great pressure from the chemicals industry (interview, Brussels, *EP news* 2006c). The former Environment Minister Sommestad believed that this compromise was worth celebrating (*Miljöaktuell*, 10 January, 2007). In the Swedish newspaper *Dagens Nyheter*, the Swedish negotiator Charlotte Unger commented: 'the biggest gain is that we will now have more information about chemicals and that the responsibility for presenting this information falls on the industry' (1 December, 2006). The Swedish Environment Minister Andreas Carlgren, confirmed the image of the agreement as the best solution possible, although he, just like the Social Democrat in the EP, Westlund, would have preferred that the Council had accepted the stricter demands from the EP (*ibid.*).

For Sweden there will be chances to refer to the new EU chemicals regulation and take legal action, based on regulation (EC) 1907/2006, against producers using hazardous chemicals when better alternatives can be found. Even if the final agreement does not fully represent Swedish interests, there is a strong likelihood that national experts from KemI in tandem with the Permanent Representation will contribute information in cases taken to the Court of First Instance or to the ECJ, and thus continue to promote ideas related to a non-toxic environment and sustainable development.

Tactics: the Use of Expertise

During stage III of the decision making process, Sweden continued to focus on the use of *expertise* and took advantage of cooperating with the Finnish Presidency in relation to substitution. Thus, Sweden using previously established contacts with its neighbour. As Swedish negotiators in the Council chose to have experts as bystanders, Sweden could provide

expertise but did perhaps not always manage to persuade its opponents with technical arguments. The presence of Swedish experts strengthened, however, ideas related to substitution. There was an awareness of the importance of cooperating with the European Parliament amongst Swedish negotiators. According to one participant, these contacts with the EP, after a slow start, were intensified during the last six months (interview). MEPs claimed that Sweden could have had a more offensive and cohesive strategy and been clearer in its approach, as this would have made Sweden a more reliable partner for example for those in the EP who wanted an environmentally stronger REACH. News material indicates that there was a lack of cooperation between Environment Minister Lena Sommerstad, a Social Democrat, and MEP Lena Ek (The Centre Party, ALDE in the EP) as well as with Anders Wijkman (The Christian Democrats, EPP-ED in the EP). Independent government authorities, however, had continuity in their work; the Chemicals Inspection, never altered its position or 'adjusted' to election periods. As a result, other actors continued to contact this agency to gather information, but since a coherent national strategy was lacking during stage II, the technique to use expertise to promote national interests could never be optimized. Swedish representatives were working hard with REACH but they did not manage to create a national pro-REACH network in the EP. One critical MEP elaborated:

I do not think that Sweden has been very pro-active, Lena Sommerstad is no politician and I do not think that Göran Persson understood the importance of being engaged...As long as Margot Wallström was the Environment Commissioner, she had to handle everything...Did I have contacts with Swedish experts? Yes, but experts are not very good at explaining things. Accessible and comprehensive information was not provided until the last week of negotiations...With knowledge of the final result, I believe that a lot of mistakes were made...not only by Sweden, but by all member states, and the Commission should have done more (interview).

Sweden maintained its position in the larger issue network, trying to take advantage of network opportunities in order to get back into the policy

network. Yet it seems as if Sweden's lower profile during stage II of the decision-making process made it difficult to get back into the central negotiations amongst key players also during stage III. As I see it, three categories of individuals can be identified. The first category consists of the negotiators, the second category of the experts and the third category would include interpreters of information as well as experts on public relations (with Litfin's (1994) terminology, knowledge brokers). If something was missing, it was the third category of personnel. Participants that have been involved in working group discussion during all stages of decision-making claim, like some MEPs, that there has been a lack of strategic discussions and that Sweden could have achieved more with a coherent and offensive strategy. This complicated multi-dimensional chess game could perhaps have been played a bit differently if clear political signalling had taken place, and if the negotiating team had had more resources. For many years Sweden has been perceived as a friend of the environment. Within environmental policy, 'greener' member states have been active 'leaders' in exporting their ideas and preferences for stronger environmental control. Sweden, however, lost its leading position in the policy network and ended up partly outside the final negotiations. Competence and knowledge played a huge role in the chemicals area, but Sweden had difficulties in translating this knowledge into a negotiable language. It proved to be insufficient to focus on the use of expertise during later stages of decision-making. In Council and inter-institutional negotiations, the Swedish position was perceived as far away from the middle position around which a compromise could be established. Swedish negotiators chose to focus on the principle of substitution avoiding conciliation as they thought that these procedures would generate a worse outcome. Yet, Sweden's best 'card' was their expertise and there is a strong likelihood that national representatives will continue to promote environmental interests. The Chemicals Inspection together with the Finnish Presidency formulated some of last proposal that were negotiated in the Council. Contacts with voluntary organizations were good, and Sweden never lost its leading role in the larger pro-REACH issue network.

Summary

Sweden managed to take advantage of the institutional possibility of cooperating with the Commission during stage I. By using framing tactics and *expertise* based on Swedish chemicals legislation, Sweden got a leading role in the REACH policy network where directional leadership could be provided. Sweden had good contacts in the European Parliament and played an active role during its Council Presidency. National ideas were transferred to the European level, Swedish chemicals legislation was framed as a good example of legislation consistent with sustainable development. During the Swedish Council Presidency, which from a Swedish perspective unfortunately came before the first Commission proposal, Swedish experts and negotiators used procedural tactics to get an agreement in the Council.

During stage II, the DGs were divided (DG Environment, DG Enterprise, and DG Trade). These internal differences of opinions amongst actors went all the way up to the Commissioners. After the Internet consultation and the changes in framing that was the result of intense lobbying against the Council, Sweden no longer had the same good contacts and influence in the Commission. Representatives never managed to get back into the 'club' of leading negotiators and, during stage II, no longer had a leading role in the policy network. NGOs and Government authorities, however, continued to be active in the pro-REACH issue network. Hence the directional leadership role during stage I was never transformed into a more problem-solving leadership. In the words of a Swedish MEP: 'Sweden perhaps thought that they had done their work since they had been so active during the preparatory phase' (interview, Brussels). Some interviewees even argue that it became a problem to be a Swede because the country was considered to have an extreme national position on this issue. The complexity and technical nature of REACH made it difficult for politicians to act without support from their national experts. Swedish experts continued to play an important role in the larger pro-REACH issue network during stage II of the decision-making process.

In the Council, Italy took advantage of the Council Presidency and, by using procedural tactics, handed over REACH from the Environment Council to the Competitiveness Council. Many countries reacted upon the exaggerated cost estimates produced by industrial lobbyists. In addition, it took a while for the Commission to make its own risk impact analyses. The massive lobbying from both opponents to and proponents of REACH, led to differences of opinion both on a European level and between different ministries on national arenas. When the British Council Presidency was held in 2005, the Council started to get closer to a compromise agreement; these negotiations paved the way for a final agreement between the EP and in the Council during Finland's Presidency. During the decision-making process, Italy, Britain, and Finland took advantage of their Council Presidencies and used this institutional possibility. The main tactics during their Presidencies were based on *procedural* tactics. Italy engaged in coalition building with other member states with large chemicals sectors. A relevant though hypothetical question is if there would have been more environmental concerns incorporated into REACH if the Competitiveness Council had not handled these issues. These procedural tactics resulted in a chance for Italy to affect the decision-making process, not least since the EP also rearranged its handling of the REACH proposal. In the Commission, DG Enterprise assumed a more important role. Britain chose to engage in mediation tactics and managed to provide a problem-solving leadership during its Council Presidency, which shows that there is a connection between these two tactics. Many actors involved identify Britain as the most skilled member state when it comes to taking advantage of network opportunities – these contacts contributed to the positive results and the solving of the deadlock during the British Council Presidency.

Opponents to REACH were more successful than the proponents in their use of institutional possibilities and network opportunities. Critics of the Swedish handling of the REACH issue area claim that Sweden could have done much more. Many of these arguments come from representatives of national parties in opposition to the Social Democratic government, which can explain the more critical attitude. The Ministry

of Environment and Social Democratic MEPs, on the other hand, claim that they are pleased with the compromise (interviews, Brussels). From a Swedish tactical perspective, there ought to have been more cooperation across party lines with parliamentarians. All Swedish party groups wanted a strong/clear REACH and Swedish MEPs supported the government, but the Swedish national elections interfered with these potential network arrangements. As an example of how elections and national politics interfere with strategic action, Åsa Westlund from the socialist group in an article in the news paper *Sydsvenska Dagbladet* questioned how the new Prime Minister Fredrik Reinfeldt and party colleagues would relate to REACH since the conservatives in the Parliament had responded negatively to substitution (Westlund, 8 November, 2006). National elections and party campaigning influenced the ability to form alliances with national MEPs. Since there were some differences of opinion also between the Environment Ministry and the Ministry of Enterprise, it became difficult for the Swedish negotiators to maintain a strong position. The debate between Lena Ek and Lena Sommerstad is an example of the interference of national politics; this has a constraining effect on the ability to act strategically and optimize national interest on the European arena.

Should Sweden's activities in the chemicals area then be understood as a success or as a failure? The answer depends on whom you are asking. National representatives argue that the outcome was a success for Swedish politics but the critics believe that much more could have been done in order to defend the initial proposal and avoid last minute amendments during the final negotiations. A more modified explanation to the negotiated outcome is that, on the one hand, Swedish experts and the ideas that had been presented – in framing activities – during stage I contributed to agenda-setting and the maintenance of keeping environmental and health concerns on the agenda. On the other hand, Sweden never managed to engage in effective counter-framing during stage II and thus lost its leading position. During stage II it became clear that the network opportunities that Sweden had established during stage I were not connected to those aiming at a 'weaker' REACH. The 'other' side was

during stage II and stage III much stronger. From a tactical perspective the analysis demonstrates that Sweden would have needed a more elaborated agenda and more resources, in order facilitate cooperation also with opponents. Admittedly, this was not an easy task.

In this chapter the utility of my theoretical framework has been illustrated. Next to analyzing Sweden's activities in the chemicals area, other member states' use of the institutional possibility provided by Council Presidencies, and different ways of cooperating with the Commission and with the EP, have been analyzed. In addition, the techniques used by actors both pro and con the REACH regulation have been analyzed with the help of the theoretical concepts framing, the use of expertise, manipulation, procedural tactics, leadership, and mediation. These results contribute to a discussion that goes beyond Swedish experiences. I believe that the analytical framework that I have developed can be used when analyzing other member states' strategic action when having strong convictions and wanting to promote national interests. In the next chapter, strategic action during the three stages of decision-making in both cases will be compared and analyzed.

ANALYZING MEMBER STATES INFLUENCE STRATEGIES

In chess, understanding one's opponent in a strategic sense is [...] important. Each side has a wide variety of tools and options available to it, and the range of correct choices is determined by the choices of one's adversary. Knowledge of an opponent's history is an important strategic asset, as is an understanding of classic strategies of the game.

Bridgid Starkey, Mark A. Boyer, and Jonathan Wilkenfeld (1999: 6-7)

In this chapter, the results of the two case studies are compared and the utility of the theoretical framework is scrutinized. First, implications of the two cases regarding the two key concepts, institutional possibilities and network opportunities, will be discussed. After that, the use of different techniques and how these tactics are combined will be analyzed. The aim of this chapter is to point out theoretical and empirical implications of this study that from the beginning has had an ambition to increase knowledge about member states' influence strategies and about the role of the European Parliament in co-decision procedures. The chapter ends with a summary and a comment on the empirical and theoretical outcome of the analysis. All these issues are related to the research questions that were presented in the introduction. The main question has been: *How do state actors use institutional possibilities and network opportunities strategically to their advantage?* The analysis has been constructed around four sub-questions: What strategies and negotiation tactics do member states use to influence EU decision-making? How do member state strategies vary across different issue areas and during different stages of decision-making? How did Sweden act to reach an agreement on Transparency

during its Council Presidency in 2001? How has Sweden tried to influence the chemicals policy of the European Union?

As the empirical chapters have illustrated, the Swedish position shifted from being at the centre of the decision-making process in the transparency issue-area during the Council Presidency, to a more defensive and reactive position in the field of the use of chemicals (REACH). The Swedish policy has not been as clear-cut in the chemical field as in the transparency field. This is due to the fact that the argumentative environment changed regarding REACH, which had an effect on national policy. When Sweden held its Council Presidency, transparency had been on the European agenda for several years, and during the negotiations that resulted in the Amsterdam Treaty – an institutional possibility to promote national interests – Sweden had been successful in promoting ideas about openness and transparency. The legal basis of the treaty and also legislation that existed before 1049/2001 (regulating citizen's access to EU documentation) had been used when Swedish lawyers played an active role at the Court of First Instance and the ECJ. When the Commission presented its initial proposal, Sweden did everything in its power to get an openness legislation that represented Swedish interests, and successfully used institutional possibilities and network opportunities to reach these results. In the transparency issue area, Swedish national representatives to the full extent cooperated with the EP – extremely helpful for the ability to frame national interests as European interests, in this case EP interests. These contacts paved the way for the final negotiations in the Trialogue, but were also used in the intrainstitutional negotiations within the EP and the Council. On the national level, these contacts, according to interview sources, were coordinated and evaluated, which illustrates a strategic awareness.

In the chemicals area, Sweden had an important role from the beginning, and took advantage of the institutional possibility of cooperation with the Commission. In tandem with these activities, Sweden used the institutional possibility of the Council Presidency in 2001, and contributed to Council conclusions asking for a cohesive chemicals legislation aiming at reducing the use of hazardous chemicals and promoting

sustainable development. In addition, during the agenda-setting phase of the chemicals regulation, Sweden also took advantage of co-operating with the EP and, more specifically, with the Rapporteur who wrote the response to the Commission's white paper. During stage II of the decision-making process, however, the argumentative climate surrounding the REACH proposal changed. This never happened in the transparency area and in contrast to the developments in the REACH area, Sweden could continue to rely on the techniques it had initially chosen.

Comparing Institutional Possibilities and Network Opportunities

In both issue-areas, the importance of *Council Presidencies* has been demonstrated and I have shown, with examples from the French, the Italian, the British, the Finnish, and the Swedish periods, that Presidencies can influence the European agenda. Thus, a Council Presidency represents an extraordinary institutional possibility. For Sweden the *Council Secretariat* was an important ally in the negotiations during the Swedish Presidency. Although the main contribution from the Secretariat is procedural, member states' strategies and their use of tactics are depending on information that this secretariat can provide. For Sweden, the Council Secretariat could provide information about other member states' position in the transparency area, assist the Presidency in formulating texts and provide detailed knowledge about EU law. These findings are supported by Hamlet, who mainly analyzes the central role of the Secretariat in EU decision-making, but also argues that member states can benefit from cooperating with this unit (Hamlet 2005, Beach 2004). Representatives from the Council's Legal service assisted Sweden when transparency was negotiated in the Council. Participants argue that these contacts proved to be of much greater importance than anticipated before Sweden held its Presidency (interviews, Stockholm and Brussels).

Within the Council structure, three main arenas linked to institutional possibilities can be found: *The Coreper*, *the working group(s)*, and *the Trialogue*. In *the first* arena, amongst the ambassadors in Coreper, common values can be found between Nordic representatives. These results are in line with Keading and Selck's study of communicative

patterns in the Council Ministry working groups, which have found a north-south dimension in these coalitions (2005). Many interviewees argue that some ambassadors carry more weight. As an example, the German ambassador has political weight, often with Austria as a loyal supporter. The same can be said about Britain and Ireland. For Sweden (and most likely for many other countries), the Permanent Representatives have 'freedom under responsibility' (interview, Brussels) which means that they are given directives about national positions but room for political maneuvers and strategic action when necessary. On *the second* arena, in the working groups, there is a club-like atmosphere that encourages problem-solving negotiations: 'it is a lot of hard work to produce texts and proposals and therefore you cannot afford to argue too much about details' (interview civil servant and former negotiator, Stockholm, Beyers & Dierickx 1998). The character of cooperation has been claimed to be very different inside the EU in comparison to other international negotiations. 'On almost all meetings you are on a first name basis' and 'with good arguments and well prepared argumentation based on expertise and substantial knowledge, you can reach very far in the negotiations' (interview, negotiator). As in national public administrations, most of the work is done amongst civil servants. In both case studies it has been demonstrated that many difficult issues have been solved on working group level.

In the daily negotiations in Coreper and in the working groups, national representatives, mainly career diplomats and senior civil servants, are socialized into following certain rules and procedures. Lewis in his constructivist analysis argues that these norms rule out instrumental behaviour, such as pushing for a vote under QMV (2005: 939). In this dissertation, it has been demonstrated that member states do not follow these norms if the national interests are at stake. According to one career diplomat, there is an understanding amongst diplomats of the difficulty to balance between various interests when the negotiation mandate from the domestic level is narrow (interview, Brussels, see also Putnam 1988). Hence, countries with particular interests do have an ability to promote these ideas despite the consensus oriented climate.

As co-legislator, the EP is an important ally or a powerful opponent. It has been demonstrated how the main actors now are the Council and the Parliament during stages II and III of the decision-making process. The interests of the member states affect the negotiations in each body while the Commission's main source of power is its ability to veto any compromise that is elaborated either in the Parliament or in the Council, in which case the Council have to act unanimously instead of with a qualified majority. The interests of these three bodies are elaborated in the more or less formal Trialogue meetings – *the third* arena – where the Commission is supposed to have a mediator role. In the empirical analysis of the transparency case, however, it was demonstrated that the Commission did not have this role in the Trialogue. Instead, the Swedish Council Presidency and the EP in tandem steered the negotiations forward. The threat of conciliation procedures was used by Council Presidencies in both cases, in order to make the member states more willing to compromise. Finland used these tactics to the full extent when representing the Council in the Trialogue. Even if the Commission played a larger role in the REACH case than in the transparency case, the EP stood out as the strongest actor.

Although it should not come as a surprise to anyone familiar with EU affairs, the centrality of the Council structure for member states promoting national interests has been substantiated in this study. In addition, I argue, however, that it is of great importance for member states to cooperate with a) the Commission and b) the European Parliament. Due to changes in the treaties and to intra-institutional events, the inter-institutional power balance between the Commission and the European Parliament has shifted to the advantage of the latter. The possibilities and opportunities connected with relations to the EP will be treated in a separate section. First I will discuss member states' relations with the Commission.

For member states, the institutional possibility of cooperating with the *Commission* exists mainly during stage I of the decision-making process. Formal rules and procedures are making it possible for member states to have national experts working with the preparation of a new regulation

which is the most important institutional possibility in relation to the Commission. For Sweden, the initial proposal from the Commission in the transparency area was a disappointment. The list of documents that were going to be excluded from the new openness rules was long and in parts unclear which, opponents argued, paved the way for an ability of the EU bodies to interpret these rules in a way that suited themselves rather than placing the interests of the citizen's ability to get access to documentation firstly. During stage II and III, the Council and the EP played the main roles in the transparency issue-area. On the contrary, the white paper that the Commission published in 2001 suited Swedish interests of having a 'strong' chemicals legislation. During stage I of the decision-making process in the chemicals area Sweden was much more successful in its attempts to transfer national legislation to the European arena. Even if the proposal that eventually came from the Commission in October 2003 was less coherent and clear about establishing a non-toxic environment, Sweden definitely managed to take full advantage of the institutional possibility of cooperating with the Commission during stage I.

Working with the European Parliament

To various extents member states have started to become aware of the importance of cooperating with the European Parliament. Since 2002, Sweden has had a civil servant working with EP contacts at the Swedish Permanent Representation in Brussels. This demonstrates awareness of the necessity to take advantage of the institutional possibility of cooperating with the EP. Furthermore, each official who is responsible for an issue-area is also responsible for contacts with the EP, with Swedish MEPs, and with the Chairman of the Committee in charge of specific dossier. There is an EU coordinator located in Brussels, and several of the Swedish Ministries are planning to have a representative from the Ministry located in Brussels, coordinating with the EP (interview with civil servant at the Swedish Permanent Representation in Brussels). According to interview sources in Brussels, it is important to create a network, *i.e.* to use network opportunities, and gather information. An

additional way to get information and contacts is to travel to Strasbourg and to have personal contacts with the EP Rapporteur and his or her staff. When MEPs were asked how member states cooperate with the European Parliament, they claim that informal contacts have been established and that these networks have grown during the last 5-6 years. They also emphasized how Council Presidencies have chosen to cooperate with the EP. MEPs mentioned that Prime Minister Göran Persson visited the EP during the Swedish Presidency, as did Tony Blair during the British. Portugal invited EP to informal Council meetings, and during Luxembourg's Presidency, passes to get into the summits were handed out to MEPs. In comparison to Sweden's activities during the Presidency, MEPs argue that the French did not invite the EP in the same way. Parliamentarians did not meet President Chirac or Prime Minister Jospin. One MEP indicated that 'Anna Lindh was very open and informative with the Parliament. She made clear that this [the transparency dossier] was a very important resolution' (interview, Brussels). The same person even thought that 'the Anna Lindh factor' contributed to the positive relationship between the Swedish Council Presidency and the EP.

Another answer to questions related to national cooperation with Parliament was: 'Some countries are very good at mobilizing MEPs' (interview, well informed Swedish civil servant, Stockholm). When asked to specify which countries, this person answered that the Germans and the British pay most attention to the EP as a partner. In the REACH area, MEPs stated that all British parliamentarians received a written statement explicating the British position that indicated how to vote for British interests. Lobbying towards MEPs was in general intense before the final EP vote, and also the German MEPs received a lot of national information. Several experienced negotiators argued that national governments often use NGOs to push for their arguments. This illustrates the importance of issue network in relation to the Parliament. Member states have contacts with the Parliament in two ways. One form of contact can be identified during Council Presidencies when member states to various extent choose to cooperate with the EP before, during, and afterwards. When having these contacts as a Council representative, this becomes

a formal activity – thus an institutional possibility that can be used. Another form of contact identified is directly towards Rapporteurs and/or individual MEPs. These less formal contacts should be understood as taking advantage of network opportunities.

For Sweden, the Parliament was an important ally when transparency was negotiated. There were many contacts with the Rapporteur and the shadow Rapporteurs, many with a Nordic, Dutch, or British origin. Both the Social Democratic group PSE and the Liberal ALDE, backed up the Presidency. The strongest voices about transparency in the Parliament came from the Greens and the Left, asking for fewer exceptions to a general openness rules than some influential Council members wanted. For Sweden and the main EP negotiators, these vocal reactions strengthened proponents of openness ideas during the final negotiations. In REACH, the Environment Committee, the Industrial Committee, and the Internal Market Committee influenced the proposal. EPP-ED, the Conservative party group in the Parliament, was skeptical of the compromises discussed in the EP and in the Council. In order to secure an EP majority, some of its requests were incorporated in the final proposal. PSE, Rapporteur Sacconi's political arena, supported the compromise during the final stages.

For member states, there are three potential targets and/or partners in the EP. The first is cooperating with all, in Sweden's case 19, MEPs in order to get access to information about what is going on in the Party groups. The second factor is related to having contacts with the Rapporteurs and the shadow Rapporteurs in order to get access to information about possibilities for agreements between, for example, the two largest groups EPP-ED and PSE, which have a majority or to identify differences of opinion between Committees (at least until the upcoming EP elections in 2009). As a third factor, the REACH case has demonstrated the importance of cooperating also with the opposition – this kind of information is available in policy networks and in issue networks.

It has been shown in the analysis that *informal contacts* with other actors are a prerequisite for strategic activities. Yet, the information actors obtain is not always correct. The process changes constantly because of

the complexity of decision-making procedures *per se*, and because of the multitude of actors. The idea that domestic preferences have an impact upon networking on the European arena has been demonstrated, not least in the REACH case, where a strong cleavage between actors focusing on competitiveness and actors prioritizing sustainable development could be found. Thus, institutional strategies and negotiation techniques are derived from subjective rationality/biased rationality. The analysis has shown that members optimise their strategies in order to become influential when national interests are strong. These results are supported by an analysis of Beyers and Kerremans, arguing that 'institutional organization of governments facilitates the emergence of advocacy coalitions mobilizing these political cleavages' (2004: 1119). Furthermore, the importance of political signaling and national coordination of activities in order to optimize influence potential on various arenas has been highlighted. In brief, the empirical analysis has demonstrated that network opportunities are of greater importance than is presumed when rational institutionalist perspectives are used.

In my analysis of institutional possibilities and network opportunities, focus has been on policy networks rather than on issue networks. The analysis by Ward and Williams of the networks between NGOs and sub-central governments, illustrates the importance of initial stages of decision-making as well as the role of larger issue networks (1997). My analysis has demonstrated that these contacts continue to be of importance across all stages of decision-making.

Sweden was not very pleased with the Commission's initial proposal for the new openness legislation. The final agreement reflected Swedish interests better than the initial proposal. In the case of REACH, however, the initial proposal from the Commission was more in line with Swedish pro-environmental interests than the final regulation. In fact, Sweden's policy became less clear when a re-framing debate between proponents and opponents of the Commission's proposal took place. This, in turn, had an effect on Sweden's role in the negotiations and in the networks. During stage I, Sweden was a node within the issue network of promoters of transparency. During stage II, Sweden had managed to form a strong

alliance with the Parliament, and thus gained a stronger position within the policy network. REACH was handled differently during stage II and III. Sweden continued to have a central role in the larger issue network, but was not able to create a strong position within the policy network of actors with different ideas and solutions to the new chemicals regulation. The main explanation was that the policy network had grown stronger and included several actors aiming at a less costly REACH. A conclusion is that it is important to cooperate with political opponents.

In sum, a strong policy network in combination with a Council Presidency creates a chance to influence EU decision-making. Research about the importance for member states, particularly for small states, of cooperating with the Commission (Wallace 2005: 30, Thorhallsson 2000, Bunse *et al.* 2005) should take the greater role of the EP in co-decision procedures into consideration. In disagreement with, for example, Geurts (1998, see also Bunse *et al.* 2005), who argues that it is easier to influence the Commission, this analysis has demonstrated that cooperating with the EP can create major advantages during the final negotiations and thus increase the ability for all states, regardless of size, to affect the negotiated outcome.

Comparing the Use of Different Techniques

Strategic activities have been in focus in the two case studies. I will elaborate on how, when, and where these different techniques are combined when using institutional possibilities and network opportunities. Different techniques will be discussed in pairs, with a separate section about coalition-building. My main findings as regards patterns in the use of techniques are:

- Framing activities are often combined with the use of expertise. If framing activities fail, member states will have difficulties when attempting to build coalitions with other member states. If framing activities have been successful during earlier stages, member states can promote national interests by engaging in procedural tactics, manipulative moves, and the use of expertise. Experts have a prominent role in networks.

- Manipulation and procedural tactics are linked during Council Presidencies. Procedural tactics are clearly associated with taking advantage of institutional possibilities. Manipulation and an awareness of how and when different techniques should be used is an important element of forming a cohesive strategy.
- Leadership can be combined with mediation tactics in order to uphold credibility. The goal of mediation tactics is to create an appearance of unselfish behaviour. Strong leadership during initial stages does not automatically generate a leading position during later stages.
- Coalition-building is one of the most important activities when lack of support from other actors makes it difficult to use leadership, mediation, and procedural tactics. At least one large member state should be included in the coalition. Cooperation with the Council Secretariat, the Commission, and the EP adds to the picture of cooperative patterns.

Framing and the Use of Expertise

Framing is a technique used to convince other agents that a certain idea or solution is good and to make the same agents alter their position on a specific issue. During stage I of the decision-making, Sweden and cooperating participants managed to frame openness ideas and access to documentation as a solution to the so called 'democratic deficit' of the European Union. With Benford and Snow's terminology this is called 'diagnostic framing' as distinguished from 'prognostic framing' (counter-framing) and 'motivational framing' (2000: 616-617). In order to undermine the logic of solutions proposed by opponents, proponents, including Sweden, engaged in counter-framing during stage II of the decision-making process. The arguments against greater access to EU documentation for citizens were that this would result in inefficiency, greater bureaucracy, and inertia of the decision-making procedures. An additional problem with a more open system was related to sensitive information and the classification of secret documents, especially from third parties (originator's control). Counter-framing activities in order to

meet these arguments involved promoting the Nordic system in which there was a general openness rule and a public register of all documents. For Sweden, these activities involved promoting *offentlighetsprincipen*, arguing that the national rules concerning the classification of sensitive information formed a sound basis also for the handling of documentation in the EU bodies. Thus, the list of exceptions (Article 4 in the Commission's initial proposal) to a general openness rules was claimed to be vague and too broad. With help of the European ombudsman, proponents could meet the opponents' counter-arguments with reference to the legal interpretation of existing rules and successfully promote more generous openness rules than those suggested in the Commission's proposal.

Motivational framing – constructing a vocabulary upon which collective action and framing activities can be based (Benford & Snow 2000: 615-17) – was somewhat complicated. These activities took place on negotiation arenas in the Council during stage III of the decision-making process. Instead of trying to create a new terminology, Sweden continued to discuss the new openness legislation based on the terminology that had been established between the three EU bodies. During its Presidency, Sweden framed transparency (openness/accountability) as an efficiency producing instrument in order to please politicians looking for legitimacy and bureaucrats looking for efficiency. In addition, the Swedish Government's Office decided to set an example by publishing information on the Internet and ensure that all national representatives engaged in activities aiming at strengthening openness ideas without jeopardizing the trust of more reluctant member states in the Council.

When Sweden became an EU member in 1995, national laws for a non-toxic environment were established and hopes were high that these ideas could be promoted on the European arena. With sustainable development as a guiding theme, Sweden and a few other member states engaged in 'diagnostic framing', arguing that the existing rules for the use and handling of chemicals (separating old and new substances) did not promote research and development of new and safer chemicals. The existing system, it was argued, did not stimulate the exchange of hazardous substances with safer alternatives. It was argued that chemicals needed to

be tested and evaluated in order to protect consumers and downstream users which is an example of 'prognostic framing', *i.e.* 'refutation of the logic or efficiency of solutions advocated by opponents' (Benford & Snow 2000: 617). During stage I, it was claimed that a new chemical's regulation, would result in health gains and a better environment for future generations. It is interesting that Sweden and actors in favour of an environmental friendly regulation began to use 'prognostic framing' already in the agenda-setting phase, as this made it possible for those in favour of a less costly regulation to dominate later stages. In turn, this demonstrates that it may not always be an advantage to dominate initial stages of decision-making. When framing in various ways have been used to identify the problem, present solution, and create a vocabulary, opponents may, like in the REACH case, be able to dominate during later stages. This can be compared to showing your cards in advance.

In environmental negotiations, the distribution of burden is a common focal point (SIE 1999: 5). For proponents of a 'strong' regulation, one basic idea was to reverse the burden of proof and place the costs on the enterprises, particularly for the safe use of chemicals. The industry, however, responded by presenting risk assessments that illustrated large costs for the chemicals industry, particularly for SMEs in relation to the proposed system of authorisation and substitution of chemicals. During stage II of the decision-making process, these risk assessments dominated the debate. These activities took place when the European economy, at least in several of the larger member states, was in recession. On a European level, the Commission, the Council, and the EP began to focus on issues related to competitiveness rather than on ideas in relation to sustainable development. The 'prognostic framing' was that the system would be too expensive, threaten European jobs and create a disadvantage for European enterprises on the global market. Thus, the climate for presenting counter-arguments was unfavourable for Sweden and environmental organizations arguing for a 'strong' REACH. When the Commission presented its final proposal in October 2003, many of the countries that had supported the original ideas had – due to

intensive lobbying and framing activities both on national and European arenas – altered their positions towards the REACH regulation.

Benford and Snow's category 'motivational framing' includes constructing a vocabulary on which collective action and framing can be based (2000). The vocabulary used by the chemicals industry included words like: SMEs; duty of care; costs for manufacturers and downstream users; and workability. As a strong counterargument, REACH, during later stages of decision-making, was re-framed as not being in accordance with the Lisbon-strategies. Arguments from the environmental side were of a more technical nature. Although substitution and consumers protection were kept on the agenda, proponents for a strong REACH during stage III found themselves in a defensive position and had to focus on trying to maintain as much as possible of what was included in the Commission's proposal.

In the transparency issue area, national interests were successfully linked to European interests, but that proved to be difficult when trying to influence the EU's new chemicals legislation since the resistance to the initial ideas, that to a large extent reflected the interests of Sweden, was enormous. Regarding transparency, Sweden during the agenda-setting phase engaged in diagnostic framing. Motivational framing is of importance for the ability to engage in coalition-building and Sweden managed, based on such framing, to get other member states as well as the Parliament as allies. Prognostic framing should take place after an initial phase (stage I) of diagnostic framing activities. Sweden continued to engage in prognostic framing during stage II and III of the transparency decision-making process. In the REACH area, all types of framing activities took place before the Commission presented its initial proposal. Even if Sweden tried to engage in prognostic framing, and – with the help of expertise (which will be discussed next) – presented solutions based on national legislation, actors favouring a more limited regulation had already begun to question these arguments. It was for Sweden an advantage not to have a very strong proposal from the Commission in the transparency area, as this made it possible to present new solutions and ideas during stage II. Since the ideas on REACH that initially were

presented by the Commission became interpreted as ‘Swedish’ ideas, all efforts had to be directed towards meeting the massive lobbying and simultaneously trying to ‘defend’ the national position. This became the main task for national experts.

Experts are those who both have the capacity to interact with other participants, and enough expertise to contribute to expert groups in the scientific field (Collins & Evans 2002). National representatives and experts cooperate in the working groups and can influence initial Commission proposals. In the transparency issue-area, however, those in favour of a continental model had better contacts with the Commission, and their participation in the process, to a larger extent than the Nordic and Dutch expertise, contributed to the initial proposal. Sweden found itself amongst a group of northern countries with long experience in public access to certain documentation regarding political decision-making, and could use its legal expertise in order to promote openness ideas. The analysis of Sweden’s strategic action in the transparency area has shown that the use of expertise during stage I was combined with framing activities. During stage II, these activities continued in the Council. Sweden had experts from the Ministry of Justice working with the preparation for the incoming Presidency, while simultaneously forming coalitions with other member states in order to strengthen Sweden’s position. During the French Presidency, Sweden stressed the fact that national law would be affected by the new regulation. National experts argued that the idea of ‘space to think’ should not stand in the way of citizens’ rights of access to documents, and that these rules should be used restrictively. Experts also promoted the idea that parts of a document could be released even if a specific section was classified. These ideas had been supported by European jurisprudence (the WWF case T-105/95, the Rothman case T-188/97, and the Hautala case T-14/98). During stage III, the chairperson in the Council’s working group and national representatives negotiating transparency were cooperating with the Swedish ambassador in Coreper, and had contacts in the Government’s office in order to optimize Swedish activities. Experts involved managed to interact with other participants and promote Swedish interests.

In the REACH area experts from KemI, influenced the first proposal when participating in the Commission's expert groups. In addition, several individuals from the Ministry of Justice and personnel at the Permanent Representation coordinated the attempts to present Swedish environmental ideas and expertise in relation to the national chemicals legislation. Just as in the transparency issue area, expertise was used in combination with initial framing activities and directed towards the Commission. Since the Environment Commissioner and the head of the chemicals units were of Swedish origin, and several of the officials had a Swedish background, it was easier for Swedish representatives to influence the Commission's preparations. In the re-framing of REACH that took place during stage II, these contacts were questioned by opponents to the new regulation. They directed their activities towards DG Enterprise and DG Trade. The industry used its own experts, and began to publish material that demonstrated the costs of the proposed legislation for European enterprises. Even if some of the most influential reports (Little 2002) were questioned and evaluated as exaggerating the costs and thus the impact of the regulation, these discussions worried several member states. In the capitals, Ministries began to discuss the consequences of the Commission's initial proposal. In Sweden, KemI and Nutek were asked to evaluate the proposal. During the second stage of decision-making, Sweden continued to use experts as negotiators. These experts continued to have an important role during the final stages of negotiations in the Council. The technical nature of the proposal, and the complexity of this regulation (more than 1200 pages), made it extremely difficult for anyone but an expert on chemicals to evaluate the amendments that were discussed. Swedish public authorities (*myndigheter*) have an independent position in relation to the Government and the Ministries. This, argued negotiators, increased the ability to be influential. KemI was contacted both by the industry and by other countries – especially the UK, Germany, and Denmark (interviews). According to non-Swedish interview sources, KemI distributed position papers and information in the EP during stage III, which illustrates that the use of expertise was important on the 'second' negotiation arena for member states.

Sweden tried to re-gain some of the trust that had been lost in the intense re-framing of REACH, but these strategies, which were mainly based on a continuous use of expertise and less on political signaling/high level engagement, did not prove to be a successful strategy. This illustrates that it is not enough to use national expertise during stage II and III of the decision-making process. Sweden's difficulties to get back into the club of compromising negotiators demonstrate that once offensive tactics have been chosen, there does not seem to be an alternative to keeping a low profile. On the contrary, this resulted in other member states continuing to perceive Sweden as extreme rather than as a country that was willing to compromise and cooperate. Important to keep in mind before criticizing the Swedish strategies, is that REACH became one of the most complex decision-making process that has occurred in the EU. Yet, this litmus test of negotiations skills is an excellent example of how important it is to focus on how to combine various influence techniques. When using the different techniques, these activities must also include opponents to national ideas and constant evaluation of the strategic activities and of intended as well as unintended consequences of the choices that are made. For a relatively small country, institutional possibilities must be used to the full extent and, as Habeeb discussed in his analysis of negotiations between strong and weak states, behavioural power is the weaker actors' strength (1988). In this dissertation, it has been demonstrated that the institutional setting of the European Union creates several advantages for all member states if they are able to use institutional possibilities and network opportunities, thus increasing their power position.

When comparing the use of expertise in the two issue-areas, it is clear that experts played a larger role in the REACH area. This has been Sweden's 'best card' when promoting national ideas. Transparency ideas were discussed mainly between Sweden's legal expertise and the Council's legal service. In the general debate, framing activities dominated and Sweden kept a central role across all stages of decision-making. This was not the case with REACH, where complex knowledge about chemicals, environmental effects, and economic consequences became the domain for experts rather than for those who could translate these ideas into a

political language. Lacking resources to keep up with the argumentation on different arenas and meet arguments from the industry, Sweden and its collaborators lost influence capacity.

Manipulation and Procedural Tactics

Manipulation in negotiations is a deliberate misuse of information or even presenting false material in negotiations with other actors. During the French Council Presidency, Javier Solana and the Presidency were accused of manipulative behaviour when they in Coreper presented a proposal that was accepted under written procedures. This was done without consulting the Parliament, and the decision was taken when the parliamentarians were on holiday. From a strategic perspective, these activities were perhaps not manipulative but rather an example of the use of procedural tactics. Opponents to the decision of not including material classified as top secret, secret or confidential under the new rules that were being discussed, believed that the information that representatives from the Commission and the Council had shared between themselves had been deliberately used in order to sidestep the EP and avoid a public debate. The thin line between manipulation and the use of procedural tactics was also demonstrated by the Swedish handling of transparency. Lund, when reporting back from the Trialogue, presented the EP as more engaged than it actually was; only certain information was reported back to the Council and the Coreper. This is an example of how information can be used tactically, in a manipulative manner. Sweden could selectively share information between the negotiation arenas and there is a strong likelihood that all member states when having this position, at least in the eyes of some observers, engage in manipulative behaviour. As I see it, tactical considerations are used by all actors when negotiating in and between the EU bodies.

The clearest examples of manipulative behaviour can be found in the lobbying campaigns surrounding REACH. Arthur D. Little's report (2002) was based on methods resulting in an overestimation of the costs, and an exaggeration of the consequences for European chemicals producers (Ackerman & Massey 2004). Additional reports that received

criticism came from Cefic (*cf.* 2002a). Representatives from the German industry claimed that the new rules would 'cost' 1.7 Million jobs (Dow Jones Newswire, 16 September 2003). In the Commission, the code of conduct was not followed when individual Commissioners presented revised proposal without having consulted other Directorates. The campaigns that were directed towards the parliamentarians could often, according to MEPs, be questioned from an ethical perspective. Parliamentarians had to take into consideration that the sender of a message (*i.e.* the person claimed to be responsible for a specific material) sometimes was an organization that did not want to reveal its campaign contribution (interviews, MEPs, Brussels).

Additional examples of slightly manipulative behaviour have been discussed by those who have been interviewed. Coreper ambassadors sometimes hide their real preferences in order to allow room for concessions later during the negotiations. Manipulation should be understood as a relevant part of strategic action, although the analysis of activities between stakeholders in the REACH area illustrates that presenting false information might be counter-productive.

The sequencing of presenting proposals, the organization of meetings, and the timing of activities are examples of procedural tactics. When France presented a new proposal in Coreper, and a decision was taken under written procedures during the Parliament's holiday season, the French representatives engaged in procedural tactics (even though opponents to these ideas argued that this resembled manipulation). Sweden decided to hold as many meetings as was necessary in order to accomplish an agreement on an openness regulation in the Council. The idea behind these activities was to 'wear out' the negotiators and basically force participants to compromise. The EP Rapporteurs and the shadow Rapporteurs were not appointed by chance. In the transparency area, Nordic representatives were considered to be experts on these issues. Representatives of the Netherlands and the UK, together with the issue-leaders of the EP, had a particularly strong interest in this dossier due to their national legislation. Hence, national interests matter in the EP. Party groups and individual representatives 'save points' in order to have an ability to be

appointed Rapporteur for a particular issue. These are examples of the use of procedural tactics in the EP. An excellent example is the strategy of the Greens to save their mandate, and thus be able to have Inger Schörling as author of the Parliament's response to the Commission's white paper.

When the Council began to discuss the EU's chemicals regulation, this was handled by the Environment Council. Italy used procedural tactics by deciding to alter this issue to the Competitiveness Council. One experienced negotiator said that 'the Italians knew exactly what they were doing'. 'In Sweden everyone was angry with Göran Persson for not having protested against these activities' (interview). During the British Council Presidency, the *ad hoc* working group that had been created during the Italian Presidency was extended. Several different working groups were focusing on details of the regulation. The British representatives invited stakeholders, intensified the sequencing of meetings, and presented a compromise proposal that could be used in the discussions with Parliament. Finland behaved in a similar way during its Presidency, and engaged in procedural tactics in order to force the member states to agree to the compromise that was being negotiated in the Trialogues.

The use of procedural tactics is often combined with the institutional possibility of a Council Presidency. In Coreper, member states use what is called 'Coreper restricted sessions,' which means sending out everyone giving notes and advice to the ambassadors. By creating a more collegial atmosphere among the diplomats this makes it easier to strike political deals. Britain and Finland used these tactics during their Presidencies. In the empirical analysis there are few non-Presidency examples of member states using procedural tactics. The alternatives negotiators have mentioned are: handing out written versions of your statements and proposals, sending your most qualified negotiators to meetings on various level of decision-making in order to maximize your influence capacity, and or give your texts to the Council secretariat with the intention of having your position written into the documentation that is handled during a specific session. With the exceptions of these examples, procedural tactics have primarily been used by member states during Presidencies, and often in combination with leadership techniques and/or mediation tactics.

The main difference between the cases is that Sweden in the transparency area had a stronger position. Framing activities were successful, more countries supported Swedish ideas during stage II and III, and Sweden had its Council Presidency during the final transparency negotiations between the Council and the EP. Thus, procedural tactics could be used. Despite the fact that Sweden's position was strong in the chemical area during stage I, and that it used procedural tactics during its Presidency, lack of trust from other actors during later stages made it virtually impossible to use manipulative tactics. In both cases, a link between the use of procedural tactics and leadership was found. These findings are supported by the work of Tallberg (2003, 2006).

Leadership and Mediation

Malnes differentiates between *problem-solving leadership*: creating consensus and identifying positions, and *directional leadership*: having authority and the ability to lead others (1995: 100). Leadership is defined in this thesis as an asymmetrical relationship of influence in which one actor guides or directs the behaviour of others towards a certain goal over a certain period of time. In the transparency issue area, Sweden, together with a few other countries, was able to take on a directional leadership role during stage I. The long tradition of openness legislation and legal activities made Swedish representatives leaders in the exchange of information between different member states and other actors. Directional leadership involves '[a]ttempts to influence national objectives and beliefs' (Malnes 1995: 105). Being perceived as having a leading role within a specific issue-area is almost a prerequisite for the ability to have others listening to your arguments. In relation to the chemical's regulation, Sweden had established a strong position during stage I. When the Presidency was held, Sweden could continue to engage in directional leadership, so the Presidential conclusions reflected strong ideas about substitution and authorization, traditional Swedish concerns. When the industry began to lobby against the EU bodies, Sweden, considered a leader during stage I, became 'responsible' and thus blamed for what was perceived as expensive and complicated rules for registering, authorizing, and evalu-

ating chemicals. As a result of these developments, Sweden was unable to alter its directional leadership into a more problem-solving approach in the Council. Other member states took on the role of creating consensus and identifying positions. Special attention has been paid to the British and the Finnish leadership activities during stage III, when both countries had a leading role based on respect and trust from other member states.

In order not to harm the ability to take on a leading role in the transparency issue area, Sweden kept a low profile before the incoming Presidency. In national media Sweden was criticized for its low profile. The role that Sweden chose to play should be understood as a balancing act between providing a directional and a problem-solving leadership, although the answers that many of the interviewees have given show that they perceived themselves as consensus oriented or as mediators. The analysis has shown that Sweden definitely engaged in strategic action, and some of the procedural tactics that were used often made Sweden a directional rather than a problem-solving leader. Amongst non-Swedish actors, Sweden gained a lot of respect for these activities. Thus, an ability to provide leadership might be an asset as important as having a reputation as a consensus oriented player.

Mediation has been defined as a technique used to solve collective problems and, regardless of self-interests, find the best possible solution. It must be questioned to what extent mediation tactics contributed to the relative success of Sweden's handling of the transparency dossier. Sweden was criticized for not acting as an honest broker and for placing national interests in front. I believe this illustrates the importance of carefully combining different negotiation techniques, and of being aware of the necessity to take hidden motives of other agents into consideration before choosing to compromise. Sweden never had a chance to act as a mediator when REACH was negotiated. The country was considered to be too extreme in its position, and was thus left outside the main negotiations during stage II and III of the decision-making process. From interviews with the negotiators and representatives from the Permanent Representation, it is clear that this position that the negotiators found themselves in caused frustration. Therefore, they tried to be more consensus-oriented.

In the Council, Swedish representatives were hoping that by following 'logic of appropriateness' and acting in accordance with existing rules, Sweden would gain trust. In the REACH issue area, however, both the Commission and the EP were divided and many member states were attempting to get as much as possible into the final agreement. Hence, in a short term perspective, the strongest and largest states gained more in the final negotiation rounds. The most important finding about using mediation techniques seems to be that representatives from the different EU bodies appreciate a 'smooth' behaviour. This might be an asset in future negotiations and package deals. In general, however, leadership seems to be of greater importance.

To summarize, countries with strong national interest and previous experience within an issue area can influence decision-making during stage I by taking on a directional leadership role. During later stages, however, it is of importance that this role is somewhat modified into a more problem-solving approach in order to appeal also to opponents and encourage consensus. This did not happen in the REACH issue area, but when Sweden went on the offensive for a new openness regulation, leadership tactics were combined with a mediation profile, which facilitated the final compromise.

Coalition-building

The technique of *coalition-building* was in chapter four defined as member states' attempts to form alliances with other member states to pursue national interests. It was also argued that these activities take place mainly within the Council structure or on a bilateral basis. Coalition building attempts with institutional representatives are defined as taking advantage of network opportunities. In the transparency area bilateral meetings had been held to learn about the different position before the chair was taken over in January 2001. This information, given the institutional possibility of the Presidency, could be used to push the negotiations in a favourable direction.

In the Council's Working Party of Information, Finland, Denmark, and the Netherlands formed an early coalition with Sweden. Later, Britain

and Ireland also joined this coalition. 'The important work of forming alliances takes place in the corridors...Sometimes representatives meet and talk before sessions and these pre-meetings are well directed', argued one participant (interview, Stockholm). On this formative arena respondents verify that you can 'feel where potential alliances are'. Another way of expressing this is that 'fields of force and strategies often crystallize on working group level' (interview, experienced negotiator). For Sweden, this coalition made it possible to promote national ideas in tandem with others.

When Denmark, Sweden, Germany, Finland and Great Britain at a Council meeting during stage I in the late 1990s suggested that there was a need for a new EU chemicals regulation, this coalition of states included two large countries. This support, according to Swedish representatives, increased other countries' trust in Sweden when solutions in accordance with the national legal system on the use of chemicals were presented. During stage II of the decision-making process, Sweden lost its support from both Germany and the UK. Instead these countries and France engaged in the media debate and argued against the proposal from the Commission. There were general problems to know where the national governments stood in relation to the chemicals regulation. Sweden had difficulties finding a common national position, but these problems were not even close to the problems many other member states had with national coordination. Thus Sweden tried to act as strategically as possible within both issue areas, but did not have the same stable coalition partners in relation to REACH as in the transparency issue area. The only reliable partner that Sweden had left was Denmark. Sweden was not successful in its attempts to create new coalitions and take advantage of bilateral contacts with other member states. There was a lack of trust and leadership, mediation, framing, and procedural tactics proved to be difficult to use without support from other actors.

The ability to form a blocking minority during the French Presidency was beneficial for countries in favour of a more far-reaching openness legislation. Member states differ in their ideas on when, from a bargaining perspective, it is positive to vote no. Eva Sjögren has found that, in 2004

to 2006, Sweden and Denmark, to a larger extent than other member states, have voted no or abstained from voting in relation to legal acts handled under co-decision procedures. Larger member states, with the exception of France, tend to vote no more often than the new member states. New member states tend to support most regulations. The exceptions amongst new member states are Lithuania, Poland, and Malta (2007). In her analysis, Sjögren discusses consequences of repeatedly voting no within a specific issue-area. Several member states believe that such behaviour increases the risk of being left out from upcoming negotiations (2007: 5).

Previous research on Council negotiations and on the effects of enlargement has demonstrated the importance of forming coalitions with other member states (*cf.* Elgström *et al.* 2001, Kaeding & Selck 2005, Hayes-Renshaw & Wallace 2006, Mattila 2006). A new contribution to this literature is that states can advance their positions also by cooperating with the EP, with the Commission, and with the Council Secretariat. This demonstrates that coalition-building goes beyond the Council. This finding was made possible by my use of a broader approach, combining intergovernmentalism and institutional theories and including non-national actors. In a discussion about the relationship between the Commission, the EP, and the Council, Thomson and Holsti argue in favour of a similar theoretical combination albeit without differentiating between different decision-making procedures or empirically analyzing member states (2007). In contrast to my analysis, they do not use negotiation theory or a network approach. The analysis of Sweden's activities, and of other member states' as well as non-state actors' activities using the same terminology, has demonstrated that intergovernmentalist, institutionalist, *and* network approaches can be combined and that the resulting analysis can cast new light on a number of issues that previous research has treated separately.

Voting no may have consequences for strategic activities during the second reading. If a country does not support the Council's common agreement, it becomes difficult to participate in negotiations with the EP. There is also a silent agreement amongst ambassadors to keep a low

profile if you do not support the Council's position (*ibid.*). Hence, norms of conduct may collide with a political will to cooperate with the EP. My analysis has demonstrated that MEPs are much more oriented towards signaling positions. In addition, the EP arena is dominated by lobbying activities to a larger extent than the Council arena. The different negotiation climates are something that member states must consider when acting under co-decision procedures. Loyalty within an EU body might collide with national interests. Thus, before the national route is chosen, consequences for future strategic activities must be analyzed.

Combining Techniques

By comparing framing activities across stages and relating these activities to the use of other techniques, I will elaborate on how techniques are combined and what happens if some strategic attempts do not work because of unintended and unforeseeable activities from other actors. Evidently, framing techniques are used during the entire decision-making process. However, types of framing may change over time. In both cases diagnostic framing was used during the agenda-setting stage. When behaving rationally, stage II should be dominated by the presentation of solutions, engagement in counter-framing and provision of expertise. These activities ought to continue during the final negotiations. If framing activities have been successful during earlier stages, member states can promote national interests by engaging in procedural tactics, manipulative moves, and the use of expertise. Motivational framing, however, is important for coalition-building. In the empirical analysis it has been demonstrated that *if* such framing activities fail, member states will have difficulties when attempting to build coalitions with other states. The main strategies used by Sweden in the two issue-areas are presented in the figure below.

Figure 2: The Use of Techniques and Variation across Stages

	Stage I	Stage II	Stage III
trans- parency	Diagnostic framing	Prognostic framing	Motivational framing
	Expertise	Expertise	Expertise
	(Directional leadership)	Coalition-building	Problem-solving leadership Mediation Procedural tactics
REACH	Diagnostic framing, Prognostic framing	(Framing)	(Framing)
	Expertise	Expertise	Expertise
	Directional leadership	(Coalition-building)	

Comment: Techniques within a parenthesis are tactic attempts that did not fully work. Please note that only the main techniques and not all techniques that have been used are included in the figure.

The figure demonstrates the importance of upholding *framing* across all stages of decision-making. Member states arguing for overarching rules in relation to substitution and authorization in the chemicals area had difficulties when engaging in bilateral contacts with other members. The difficulty to form *coalitions*, as illustrated above, had consequences for the ability to act as leaders and assume an active role during the final negotiations. Successful use of *framing* and an ability to provide *leadership* have an effect on the ability to engage in *coalition-building* with other member states. Without the support of others, it becomes difficult to engage in strategic activities in the Council. The importance of having support from at least some of the larger member states has been demonstrated. An additional way for member states to increase their influence capacity is by cooperating with other EU bodies and get representatives in the Commission, in the EP, or in the Council Secretariat to ‘do the job for

you'. In fact, this is a prerequisite for the ability to promote national interests. In the transparency issue-area, coalitions with other member states made it possible to use several techniques. The figure shows that, during stage III, these tactics were dominated by a problem-solving leadership, mediation attempts, and the use of procedural tactics as Council President. Procedural tactics are clearly associated with taking advantage of institutional possibilities, which has been demonstrated by emphasizing the Council Presidency. In addition, leadership and procedural tactics are often combined and explain Sweden's successful handling of transparency and its success in influencing the white paper before the initial REACH proposal.

One additional explanatory factor for Sweden's position in the REACH area is that prognostic framing (presenting solutions) dominated stage I and when these ideas became debated, no additional arguments could be provided (see figure 1). Swedish national experts managed to keep their position in the issue network, but Sweden's policy towards the new legislation became less coherent during stage II. During the final stages of decision-making, Sweden once again focused on a very specific outcome (*i.e.* substitution of hazardous chemicals) and this focused strategy paid off. It was not possible to alter from a leading position during stage I, to become a mediator during stage II. A leading role during stage I, does not per definition mean that this position can be upheld during later stages. A reasonable conclusion is that once a strategy is chosen, for example to keep a high profile, this strategy should be kept during all stages in order to uphold credibility and trust from other actors. When framing attempts in combination with the use of expertise no longer are alternatives, the ability to provide leadership is constrained while combining these three techniques (framing, expertise, leadership) across stages are closely related to trust from other member states and actors. Thus, trust stands out as an important factor.

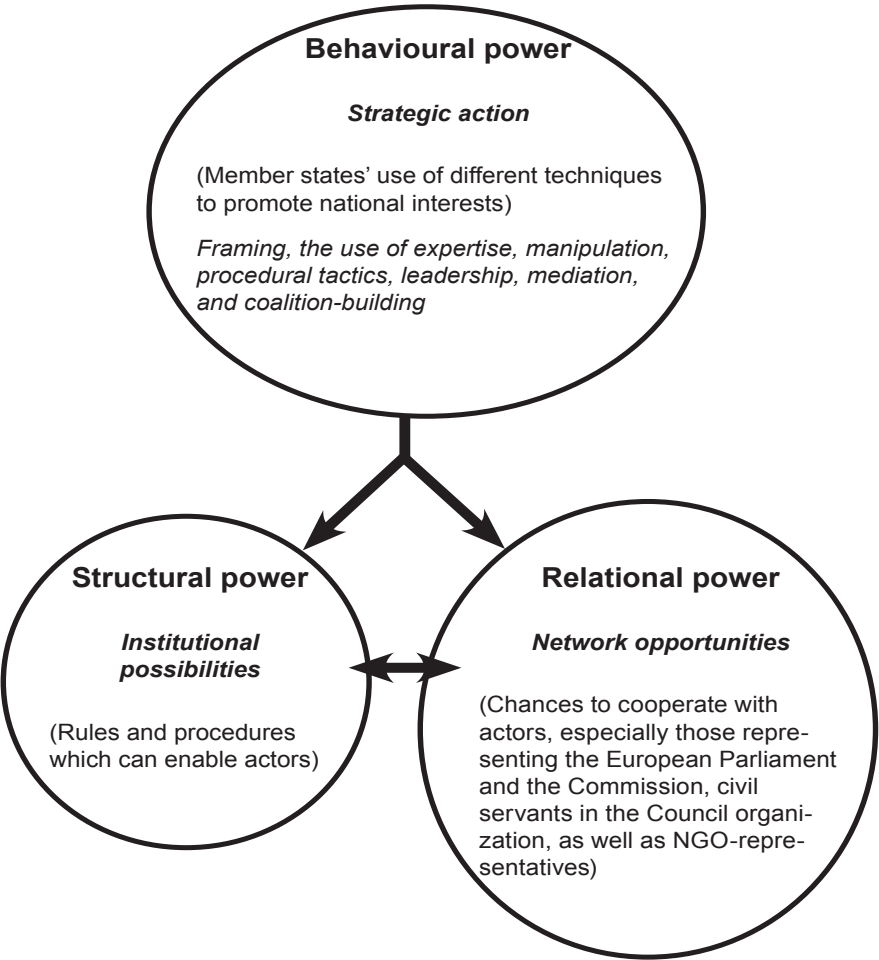
Expertise is needed for the ability to provide directional or problem-solving leadership. Less successful framing attempts have an effect on the ability to provide leadership and to build coalitions. A reasonable stipulation is that the use of expertise must be combined with framing

tactics, and that these techniques must be used in a language that appeals to other actors.

Manipulation and mediation are the two techniques that have been the most difficult to identify. It has been demonstrated that several actors, both other member states and NGOs, in various ways combine manipulation with the use of expertise in order to create comparative advantages during later stages of decision-making. Mediation is used to create an appearance of unselfish behaviour, but is also interpreted as a norm that should be followed. Without claiming that this is the end of the story, this analysis indicates that mediation tactics are overrated when national interests are at stake. Yet, the use of mediation in issue-areas of less national weight contributes to the ability to act more firmly.

Barnett and Duval's definition of power as 'the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate' is an excellent way of defining the multidimensional concept of power (2005: 39). The analysis has demonstrated that, within a specific issue area, behavioural power (*i.e.* member states' activities and use of techniques) in combination with structural arrangements (*i.e.* rules and procedures) and relationships with other actors (networking), are important features for the understanding of negotiations in complex institutional settings. In Figure 3, bargaining power as a multidimensional concept is linked to three theoretical concepts that have been central in the analysis. Behavioural power is seen as superior to structural power and relational power. Within a specific issue area, it is the activities of an actor that determines to what extent structural arrangements and network contributes to a stronger bargaining position.

Figure 3: Bargaining Power



Comment: This figure illustrates the relationship between main analytical concepts and a multi-dimensional understanding of power.

In the transparency area, Sweden had legitimate and referent power during the final negotiation rounds. In the REACH area, Sweden had referent power during stage I and continued to have expert power across all stages. A member states bargaining power is affected by structural arrangements. The analysis has demonstrated that 'trust' in social relations has an additional impact on the capacities of an actor within a specific issue area.

Summary

Strategic action characterizes politics when strong values and interests are at stake. Member states gather information in informal networks and, based on this uncertain information (bounded rationality), choose different techniques. The analysis has demonstrated that the multitude of actors and negotiation arenas have a constraining effect on the ability to act strategically. At the same time, the complexity creates a need for ideas and solutions to joint problems. The main negotiation tactics used by member states in my two cases are framing activities in combination with the use of expertise. These activities can contribute to an ability to provide directional leadership during initial stages of decision-making. During later stages, problem-solving leadership dominates in the daily consensus oriented climate on working group level in the Council and in Coreper. The main findings are that framing and the use of expertise are of importance across all stages of decision-making. These attempts in turn influence the ability to form coalitions and provide leadership. Without support from other actors, it is difficult to provide leadership and use any of the other techniques that have been discussed, *i.e.* procedural tactics, mediation, and manipulation.

The institutional possibility of a Council Presidency makes it possible to engage in procedural tactics. These activities must be combined with mediation and/or a problem-solving leadership. The REACH case has illustrated the complexity and the difficulty to act strategically in the process. During the first reading, there is no formal deadline. Initial negotiations take place both in the Council and in the EP in relation to the Commission's proposal. In the second reading, the Council's

common position and the EP amendments have to be negotiated in informal meetings in order to reach a joint agreement. The Trialogue, which I have chosen to focus on, is 'the top of an ice-berg' of informational contacts between the three EU-bodies. Member states simultaneously negotiate in the Council and in the EP. The Council is the main intergovernmental arena, and 'the other way to influence' is the Parliament. Even though a common Council position had been found in the REACH area, member states with strong national interests continued to negotiate with the EP in order to get additional changes into the final agreement through the 'back door'. The complexity of this chess game, and the difficulty to grasp negotiations in the EP and in the Council, do make it difficult to influence EU decision-making. Hence, the main tools are to form alliances with stakeholders in the EU-bodies and form coalitions with other member states. Thus, coalition-building is one of the most important negotiations tactics that member states can use to influence EU decision-making.

For Sweden *the institutional possibility* of holding the chair opened up for different tactics and created political room for maneuver. The power of the chair, to use Jonas Tallberg's concept (2006), becomes a question of using procedural and manipulative tactics while continuously ensuring that information is gathered through the policy network and thus taking advantage of network opportunities. Finland chose to play a slightly different role during its Presidency. They had no problem with the common position of the Council and no national pressure to alter this agreement. Therefore it became possible for Finland to take on a neutral role during the final negotiations and get the mandate needed in the Trialogue. Finland obviously did not have the same strong national position in relation to REACH as Sweden had in relation to transparency. For Italy, however, the national interest played a larger role. During its Presidency, procedural tactics were utilized when the chemicals issue was altered from the Environment Committee to the Competitiveness Committee. Britain acted as a problem-solving leader and engaged in procedural tactics in order to get a political agreement on a common position of the Council.

In both cases, it has been demonstrated that the EP plays an important role in co-decision procedures. The political climate of the Parliament is different from the daily work in the Council, and several member states have begun to engage in networking with Rapporteurs and chair holders of the Committees in order to gain influence on this second arena, especially during stage II and III of the decision-making process. The transparency case and the Swedish activities during its Presidency stands out as an extreme case because of the 'luck' Sweden had with the timing of events. Sweden's close cooperation with the Parliament, in 2000 and 2001, paved the way for the results.

CONCLUDING REMARKS

The contribution of this dissertation is, *firstly*, new knowledge about contacts between member states and the European Parliament. A development of national contacts with the European Parliament has been identified, especially through more indirect channels. The analysis has shown that these contacts have increased. I believe that this emphasis on member states – EP relations is an important contribution to the literature on EU decision-making. Conventional wisdom is that member states in the initial stage of decision-making cooperate with the Commission and that the Council is the ‘real’ power house of the union. In this dissertation, the importance of working with the European Parliament, especially during later stages, has been demonstrated. *Secondly*, Council Presidencies and their contacts with the EP stand out as major institutional possibilities when co-decision procedures are used. It has been demonstrated that formal rules and procedures go hand in hand with informal arrangements and contacts between member states and EU-bodies. Despite the fact that Council Presidents are constrained by expectations of neutrality, member states during these six months become key players on working group level, in Coreper, during Ministerial sessions and in contacts with the Commission and the EP. Particular emphasis has been on the Trialogue as a semi-formal part of decision-making under co-decision procedures. *Thirdly*, the analysis has demonstrated how and when member states combine different techniques in different variations across stages of decision-making. *Fourthly*, the theoretical framework that was developed in chapter three- four and used in the empirical analysis, presents a structured account of member states’ strategies and tactics on the EU arena. The theoretical framework is a contribution to the negotiation literature and the analysis of activities in international fora.

Often these activities are studied from either a rational or a constructivist perspective. I have chosen the rationalist approach and combined the analysis with network theory, thus including a multitude of actors. In addition, the insights gained in this dissertation about variation across stages of decision-making and about the use of different techniques can be evaluated beyond the European Union.

A strong policy network in combination with a Council Presidency creates a chance to influence EU decision-making. Sweden will hold its second Presidency in 2009, and 17 months in advance, Prime Minister Fredrik Reinfeldt and the Minister for EU affairs, Cecilia Malmström, have visited the Parliament in Strasbourg, met with Swedish Parliamentarians, discussed with representatives from the Party groups, and with the EP Spokesman Hans-Gert Pöttering (The Prime Minister's Office, press release, 18 February, 2008). Keeping in mind that the Swedish Minister for EU Affairs has a background as an MEP, there is a strong likelihood that Sweden will put great efforts into establishing strong policy networks including MEPs in prioritized issue areas. The fact that these types of contacts are also taken with representatives from the Commission adds to the picture of an awareness of the importance of networking.

Returning to the two cases, the EU decisions that were the results of the negotiation processes analyzed in this dissertation have now been in place for some time. EC regulation 1049/2001 has been implemented and a public register over EU documentation can be found on the Internet. Several member states continue to be reluctant towards the new system. The *EUobserver* quoted Cederschiöld, at the time the Parliament's vice-president, when she explained why it took so long before a new system was created: 'Some member states see the public register as a threat rather than a help. We are working hard at the moment to enlarge the register but it will not include all documents' (17 June, 2002). MEP Graham Watson in an EP newsletter reported that 2/3 of the documents that the Council of Ministers discussed in 2004, were made public (3 June 2005). The European Ombudsman Nikiforos continues to be a critical voice when member states are reluctant towards debating and voting live and he is especially critical of the fact that it is mainly issues handled

under co-decision procedures that are dealt with under more open forms (EU 2004-kommittén, 23 January, 2006). On 25 April, 2007, the Court of First Instance decided that the World Wildlife Foundation did *not* have right of access to background information about the aspects of the EU's trade policy which were discussed in a Council committee. Peter Carl, former Director-General of DG Trade explained that 'participants would be reluctant to express themselves freely if they thought there was a possibility of their opinions being disclosed' (WWF, news, 25 April, 2007, subject to appeal). This is only one out of several cases where regulation 1049/2001 has been used and debated. In 2007, the Commission presented a green paper (COM(2007) 185 Final) including a review of the openness regulation. Within the next years, potential changes in the regulation will be up to debate by the Council and the EP. Sweden, according to interview sources, has already begun to plan these activities.

The European Chemicals Agency (ECHA) has now been established in Helsinki and regulation EC 1907/2006 concerning REACH came into force in June 2007. On the ECHA homepage, information material about the new legislation is published continuously (*cf.* ECHA, December 2007). Cefic continues to argue that REACH will have a major impact on European competitiveness in chemicals. In the US magazine *Chemical Week*, it is reported that the US claims that REACH offers protection to European enterprises while keeping non-EU companies off the market (Scott 2007). The Commission is working on a guideline on how to apply the new chemical regulation. The Swedish Minister for the Environment, Andreas Carlgren, has written to Industry Commissioner, Günter Verheugen, and to Environment Commissioner Stavros Dimas arguing for the importance of dealing with chemical substances of very high concern. In his letter Carlgren writes: 'I fear that the interpretation of the Commission services could pose a major obstacle to the protection of human health and the environment' (27 November 2007). Enclosed to this letter is an interpretation of REACH provisions on information on SVHC in articles, developed by KemI and the Ministry of the Environment. This illustrates the continuous use of expertise within this

issue area and it is clear that the Swedish Government wants 'stricter requirements for information about dangerous chemical substances' (Ministry of the Environment, press release, 13 December, 2007). Thus, efforts towards promoting national ideas on the European arena continue.

In 2004, EU went from 15 to 25 member states, and, in 2007, two more countries joined. Several interviewees have commented upon the consequences for coalition-building of an enlarged EU. 'In the working groups, the new member state representatives are trying to figure out potential alliances, and are very quiet ... They haven't organized themselves yet...Latvia's Justice Department has asked Sweden about its organization' (Civil servant, Stockholm). According to another Swedish civil servant, 'Poland flexes its muscles in the Council'. 'In an EU 25, Sweden and the Netherlands, well all the Scandinavian countries, are used to forming coalitions which might be an advantage' (high rank civil servant). An additional comment was that 'the founding member states have been better at forming coalitions with the new member states... This is something Sweden has to do better' (experienced negotiator). Thus, it stands clear that the enlarged Union will have important consequences for the formation of coalitions.

In order to further analyze the role of member states and their activities in relation to the EU-bodies, four future research projects would be helpful. The first project would include a questionnaire to MEPs about their contacts with national representatives. The second project would be a deeper analysis of other countries' perceptions of the Swedish activities. A third project would apply the theoretical framework on other countries and new issue areas in order to advance the understanding of member state influence in the European Union. The fourth project would analyze the effects on national influence strategies of the new Presidency formation of three Council Presidencies acting together. There will be an elected President of the Council and a new High Representative for foreign and security policy. An interesting factor is the troika of Presidencies with, for example, France, the Czech Republic, and Sweden building one formation. Based on the importance of strategic action and

coordinating activities in area with a national priority, this new scenario offers different challenges in comparison to the situation in 2001, when Sweden held its first Presidency. By using contacts with the two other countries, Sweden may negotiate itself into a position from which there is a potential to – with the help of the other two Presidencies – optimize national interests. By coordinating these activities with the Council Secretariat, the relevant DGs, the EP committee(s), Rapporteurs, and ‘issue-leaders’ in the Parliament, Sweden in 2009 has a second chance to influence European decision-making, for example in relation to climate change.

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Interviews

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Present title: State Secretary for Foreign Affairs, Stockholm, 13 November, 2007.
2. Bergman, Per, Environment Counsellor and Senior Legal adviser.
Present title: Chief for the Chemicals unit, KemI, Stockholm, 1 November, 2006.
3. Cashman, Michael, MEP for West Midlands (UK), Rapporteur Transparency, Brussels, 6 March, 2007.
4. Danielsson, Lars, State Swedish Secretary for International and EU Affairs, Rosenbad, 5 April , 2005.
5. Ek, Lena, MEP, Sweden, Rapporteur in the Industrial Committee, Brussels, 6 March , 2007.
6. Ekstrand, Lisa, policy adviser, The Committee for Environment, Health and Consumers, Brussels, 6 March , 2007.
7. Flodström, Sten, Principal scientific adviser, KemI, Stockholm, 1 November, 2006.
8. Gustavsson, Henrik, Assistant/policy adviser for Swedish MEP Åsa Westlund, Brussels, 2 March, 2007.
9. Gustavsson, Lars, Policy adviser, KemI, Stockholm, 1 November, 2006.
10. Hahn-Englund, Annika, Counsellor, European Parliament, Brussels, 27 February, 2007.
11. Hautala, Heidi, former MEP, Phone interview, 1 July, 2005.
12. Jäderblom, Helena, Swedish Ministry of Justice, Stockholm, 26 May, 2005.
13. Hjelt af Trolle, Ingrid, Ambassador, Deputy Permanent Representative, Brussels, 27 February, 2007.
14. Kirsten, Johanna, Desk officer, Swedish Government Office, 2 February, 2007.
15. Kjellén, Bo, former chief negotiator at the Environment Ministry, Stockholm, 31 October, 2006.
16. Lindbom, Thomas, Press Counsellor, Brussels, 26 February, 2007.

17. Lund, Gunnar, Chief Negotiator, Swedish Permanent representation at the time of the Swedish presidency, Stockholm, 5 April, 2005.
18. Malmström, Cecilia, EP, Brussels, 22 June, 2005 and 6 December, 2005.
19. Maaskant, Katarina, Team leader of policy advisers (Lena Ek), Brussels, 7 December, 2005.
20. Paska, Daniel, Senior adviser, Environment Ministry, Stockholm, 2 February, 2007.
21. Petersson, Sven-Olof, Ambassador, Permanent Representative, Brussels, 26 February, 2007.
22. Schlyter, Carl, MEP, Brussels, 5 March, 2007.
23. Schörling, Inger, MEP, Stockholm, 2 January, 2006.
24. Sjöholm, Cecilia, Information Officer, the Cabinet of Margot Wallström, Lund, 24 April, 2006.
25. Svensson, Anna-Carin, Ministry of Justice, Stockholm, 26 May, 2005.
26. Svensson, Lars-Erik, Council Secretariat, Brussels, 6 March, 2007
27. Söder, Annika, Foreign Ministry, Stockholm, 26 May, 2005.
28. Törnlund, Monica, Environment Counsellor, the Swedish Permanent Representation. Brussels, 28 February, 2007.
29. Unger, Charlotte, Chief Negotiator, Environment Ministry, Stockholm, 2 February, 2007.
30. Watson, Graham R, EP, Chairman of the Committee on Citizens' Freedoms and Rights, Brussels, 21 June, 2005.
31. Wijkman, Anders, MEP, Brussels, 1 March, 2007.
32. N.N, Counsellor, Finnish Permanent Representation, Brussels, 29 March, 2008.
33. Wilhelmsson, Johan, Ministry of Justice, Stockholm, 19 January, 2006.

My Interviewing Guidelines: Transparency

Questions were asked concerning:

1. The background:

- The background to the Freedom of Information Act. Key events? Can you tell me about your experiences (reports, activities)? The Position of the EP/the Commission/the Council/NGOs etc?
- EU member representatives and negotiators were asked to discuss their role in relation to Sweden's activities. Other interviewees were asked to comment Sweden's activities as well as the strategies of other member states.

2. The negotiations/EP:

- Which were the most important negotiation arenas? Negotiations in the EP, with the Commission, with the Council, in the Trialogue? Lobby group activities?
- In your opinion were there more or fewer informal contacts between institutional and national representatives than is normally the case in the EP?
- What happened when the final group of EP negotiators met with the Commission and the Council? Why were some Rapporteurs excluded from the 'final' team?
- How did member states contact you as a Rapporteur?

3. The Council Presidencies of France and Sweden:

- Your opinion on the Presidencies of France and Sweden? Differences between small and large countries?
- Key events, important decisions.
- Coalition patterns, negotiations in the Council.

4. The agreement on EC regulation 1049/2001:

- In your opinion, was it a 'suboptimal' agreement based on the lowest common denominator of the three Institutions or was it, from an openness friendly perspective, better than that?
- What happened during the decision making process? Can you identify important events?
- Could you elaborate on the role of other relevant actors?

5. Further resources:

- Whom else should I contact when in Brussels or possibly interview later?
- Can you propose primary sources?
- In your opinion have I overlooked something of importance not covered by the questions above?

My Interviewing Guidelines: REACH

Questions were asked concerning:

1. The background:

- Can you tell me about your work with REACH? What were the main strategies? Negotiation arenas of importance (ad hoc working groups, Coreper, Council meetings...)?
- EU member representatives and negotiators were asked to discuss their role and Sweden's activities. Other actors were asked to discuss their experiences.
- How have you been contacted by the Swedish government, by other countries? According to my Swedish sources, the Swedish priority was related to substitution. In this context, what is your opinion of the Swedish activities?

2. The negotiations/EP:

- Which were in your opinion the most important negotiation arenas? Negotiations in the EP, with the Commission, with the Council, in the Trialogue? Lobby group activities?
- In your opinion were there more or fewer informal contacts between institutional and national representatives than is normally the case in the EP? What happened when the final group of EP negotiators met with the Commission and the Council? Why were some Rapporteurs excluded from the 'final' team?
- Member state activities?

3. The Council Presidencies/negotiations:

- Which Presidencies contributed to the outcome?
- Which countries had the most 'extreme' positions (in relation to authorisation and substitution) and how did you solve these issues?
- Key events, important decisions
- Coalition patterns, negotiations in the Council, conflicting interests?

4. The agreement on EC regulation 1907/2006:

- What happened during the decision making process? Can you identify important events? Would you say that different national influence strategies are used during different stages of the negotiation process?
- Trialogue meetings, could you elaborate on these negotiations? When Sacconi left the final Trialogue meeting, what was the main reason? What chances did the Parliament have to get through their main interests? The Final negotiations during the Finnish Presidency?
- Could you elaborate on the role of other relevant actors? Any comment on the Swedish Chemicals Inspection, other expert groups of importance?
- How important is it for a Council Presidency to have contacts with the Council Secretariat, representatives with the Commission, and with the EP?

5. Further resources:

- Whom else should I contact when in Brussels or possibly interview later?
- Can you propose primary sources?
- In your opinion, have I perhaps overlooked something of importance not covered by the questions above?

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