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REACHing a Compromise

A Study on Inter- and- Intra Institutional Negotiations in the EU on the Chemical Regulation REACH

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Abstract

In the autumn of 2003 newspaper headlines declared that Environment Commissioner Margot Wallström had poison in her blood. After a blood test 28 hazardous chemicals were found, among these DDT that had been abandoned from the market since 1983. In this thesis the reader will find a case study on the EU's chemical Regulation REACH (Regulation, Evaluation, Authorisation of Chemicals). REACH has been one of the most controversial and ambitious proposals that the Commission has ever put forward replacing 40 Directives and Regulations into one. REACH has been surrounded by conflicting interests which are divided into two camps; environmentalists versus industry-friendly. Lobbyism from both camp has been intense, which can be explained by the interests that are at stake, for instance the chemical industry in the EU employs about three million people. Despite these conflicting interests a compromise that was acceptable for most actors involved were reached; this puzzles me. The purpose of this thesis is to explain why they reached an acceptable outcome. In order to conduct my study three perspectives have been used. Two-level game theory helps too recognise that the inter- and intra- institutional negotiations are interdependent and affect one another. However, two-level game is not sufficient since negotiations take place between several actors at all levels, therefore policy network analysis are functioning as a complementary theory. To explain the interactions between the inter- and intra- institutional negotiations I have used the concept of communicative action where I claim that both arguing and bargaining are present, but in order to reach the final compromise arguing function as the problem-solver.

The conclusion of the study is that the outcome can be explained by the institutional structure i.e. the co-decision procedure which gives rise to coalitions and policy networks. Since REACH is a technically and complex Regulation the policy networks together with arguing helped the actors the reach an acceptable outcome.

Key words: REACH, inter- and intra- institutional negotiations, two-level game, policy networks, communicative action

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1 REACH - an act of balance

"Margot Wallström has poison in her blood" (Karlsson in *Dagens Nyheter*, 031106)

In the autumn of 2003, after testing, Environment Commissioner Margot Wallström found the presence of 28 hazardous chemicals in her blood. Among the chemicals were DDT a substance which has been abandoned from the market since 1983 (Saltmarsh, *International Herald Tribune*, 061028). The drive to pursue a new policy on chemicals came after regulatory failures such as the BSE scandal and from rising concerns about exposure of citizens from hazardous chemicals (Petry *et al.*, 2006: 26). A new chemical regulation was voted for in the European Parliament (EP) on the 13th of December 2006 and in the European Council a few days later after about eight years of negotiations. The so called REACH (*Registration, Evaluation, Authorisation of Chemicals*) Regulation will reverse the burden of proof ensuring that companies, importers and manufacturers of chemicals will provide testing for at least 30 000 out of the 100 000 chemicals being on the European market today; substances of high concern will progressively be replaced by less dangerous ones (Council of the European Union, 061218).

REACH has been one of the most controversial and ambitious proposals that the Commission has ever put forward replacing 40 Directives into one Regulation, which in practice means that it will cut red tape i.e. decrease bureaucracy, although adding new obligations on manufacturers and importers in order to control and regain trust in the use of chemicals (*International Herald Tribune*, 061214). All actors participating in the negotiations both in formal and informal ways agreed on one thing: that a new Regulation was necessary in order to manage chemical risks as a consequence of lack of sufficient safety information on widely used chemicals and because of the increased risk aversion among the European citizens (Petry *et al.*, 2006: 31). "The question is not whether REACH should exist at all, but how best to strike a balance between regulation and competitiveness." (*The Economist*, 061209) The mutual understanding that a Regulation was necessary was also due to the enormous amount of money that the industry put into lobbying campaigns in order to slow down the costs of REACH (*ibid.*). The interests on REACH have been split into two camps: industry-friendly versus environmentalists and this polarised relationship is also mirrored at most levels i.e. in most institutions and in the member states. Lobbyism has been harsh from both camps at all levels and can simply be explained by the interests that were put at stake. The chemical industry including plastics and rubber generates about 3.2 million jobs in Europe and approximately 60 000 companies (Saltmarsh, *International Herald Tribune*, 061028).

The Regulation on REACH did not make any of the camps thrilled, but the compromise was more or less acceptable to all actors involved. The negotiations on REACH can be seen as a groundbreaking and successful case of problem-solving, which can be important for future institutional negotiations in the European Union. In this thesis the case of REACH will be the centre of attention; this case can say something about inter- and intra- institutional negotiations, which can be useful in future studies on technical and complex issues in the EU.

1.1   Research Purpose and Question

The purpose of this thesis is to study the inter- and intra- institutional negotiations leading to the final compromise on REACH. Why is this important to study? As mentioned REACH has been one of the most complex and technical issues in the history of the European Union (*The Economist*, 061209), and by studying why the actors involved managed to find a solution that was acceptable to almost all participants taking part of the negotiations can be a useful tool for future complex inter-and intra- institutional negotiations in the EU. The outcome of REACH can be seen as a good example of constructive problem-solving on technically complex issues between institutions and as a consequence give confidence to these institutions and actors involved. The puzzle is why they reached this compromise since there were strong conflicting interests between institutions, member states, parties, stakeholders and lobby organisations. Was it because of the negotiations, the institutional structures, the strategies of the negotiators or because of consensus seeking rather than pursuing self-interest? These are the questions this study will discuss, however the main question is following:

- Why did the EP and the Council reach a compromise on the chemical regulation REACH that was more or less acceptable to all stakeholders involved?

1.2   Previous Research

The bookshelves on the final negotiations on REACH are so far empty and that can simply be explained by time; the REACH negotiations were finalised in December 2006. However at Lund University Matilda Broman is writing a PhD on the topic "Taking Advantage of Institutional Possibilities. Swedish Strategic Institutional Action – Transparency and REACH". The study will be conducted

by using rationalist institutionalism and negotiation theory.[1] It is easier to find information on inter-institutional negotiations foremost on the balance of power between the EP and the Council. For instance Tsebelis and Garrett has made a study on the effects concerning the balance of power between the European institutions of the EU's changing Treaty base in "The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union" (2001). Also Hix has made a study on the increased power the EP gained through the Treaty of Amsterdam in "Constitutional Agenda-Setting Through Discretion in Rule Interpretation: Why the European Parliament Won at Amsterdam" (2002). However these studies foremost concerns the Treaty negotiations and to what extent the balance of power changed between the European institutions, whereas my study deals with inter-institutional negotiations when the EP and the Council function as co-legislators. Tsebelis and Kalandrakis' "The European Parliament and the environmental legislation: The case of chemicals" investigates the impact that the EP has on chemical legislation introduced under the Cooperation procedure. Annica Kronsell has made a study on the Swedish relations to the European environmental policy and the case of chemicals (Kronsell in Johansson (*eds.*), 1999: 190-207). However I have not come across a study that both addresses intra-as well as the inter-institutional negotiations under the co-decision procedure in the EU. My study will address both these types of negotiations and I argue that negotiations cannot be conducted in the setting of the European Union without addressing both levels of negotiations since they are interconnected.

1.3   Theoretical Overview – Three Perspectives

The aim of this thesis is to explain the outcome of the negotiations on REACH. In order to do so I have consulted a broad variety of academic literature and considered different perspectives. My perspectives derive from three different theories: two-level game, policy network and communicative action; all these will be dealt with in chapter two. Three perspectives will be used since no one is sufficient in itself to explain the outcome of the negotiations; therefore they should be regarded as complementary theories. The perspectives used in order to explain the outcome of the negotiations are following:

- The use of two-level game plays a significant role of the outcome of the negotiations i.e. the intra-and- inter institutional negotiations are connected

- Policy networks have an impact on how policy preferences arise and how actors participate in the negotiations on REACH.

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[1] Search for Matilda Broman at the homepage for the Political Science Department at Lund University at www.svet.lu.se. I also own Matilda a thanks for the discussions we have had on REACH.

- Communicative action had an impact on the outcome of the negotiations on REACH.

By using rational choice institutionalism and Putnam's two-level game (Putnam, 1988). I will try to see what impact this has had on the negotiations. Rational choice institutionalists regard actors of acting out of self-interest (Rosamond, 2000: 116), however I claim that two-level game will not be a sufficient theory to answer the question on the outcome of REACH. Therefore my second perspective is that policy networks can be used as a complementary theory. My third perspective relates to Risse's concept of *communicative action*, where I claim that the conduct of arguing rather than bargaining affected the outcome of the negotiations (Risse, 2000).

1.4 Method and Material

To get familiar with a case often involves gathering easily accessible information, this is called "soaking and poking", which often leads to "the construction of a chronological narrative" in order to get an overview of the case (George – Bennett, 2005: 89). This is also the method I have used when conducting my case study.

1.4.1 REACH as a case study

In this study a case study is in the centre of attention. I will use following definition:

> A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident. (Yin, 2003: 13)

By looking at REACH and in what way the negotiations were conducted we can add valuable information to future complex negotiations within the Union. However my aim is not to make a grand generalisation, rather to theoretically explain the outcome of a phenomenon, namely inter- and- intra institutional negotiations. Case studies as well as experiments are both "generalizable to theoretical propositions" (Yin, 2003: 10). Lundquist even question if generalizations on case studies are interesting, where he claims that the power of "the good example" are underestimated (Lundquist, 1993: 105 and Flyvbjerg quoted in Lundquist). One of the most famous single case studies is Graham Allison's study (1971) on the Cuban Missile Crisis, this event not only showed that a single case can be relevant for research on various different theoretical issues (George – Bennett, 2005: 70), but according to Yin it also: "forcefully

demonstrates how a single-case study can be the basis for significant explanations and generalizations." (Yin, 2003: 4) Also Lijphart argues that cases can be selected because they are interesting in themselves, without generating generalizations or building theories, however case studies that are interesting *per se* can add important contributions to propositions that can be used as a ground for theory-building in coming research (Lijphart: 691).

1.4.2 Interviews

In order to conduct this study I have done interviews with civil servants, MEPs and actors representing NGOs, all interviewees have good knowledge of the negotiations on REACH. The interviews will be used in relation to other empirical material. The characters of the interviews are that of informant, i.e. to get a "witness" account of the process (Esaiasson *et al.*, 2004: 253). By doing research I came across persons that were frequently mentioned in the context of the REACH negotiations. These persons were contacted through e-mail with various degrees of response. I have also used the so called "snowball-effect", which means that persons that were recommended to me from other interviewees were contacted. I actively choosed to contact persons representing different institutions and interests in order to get a somewhat clear picture. The questions were structured according to different themes so the interviews can be said to be guided rather than structured (Yin, 2003: 89). In the end of the interview the interviewee were asked if he or she wished to add something to clear things out if necessary (Esaiasson *et al.* 2004: 291). All interviews were conducted by telephone and consisted approximately 30 minutes. Afterwards a fair copy of my notes were made (*ibid.*, 294). A problem with the interviews is that three out of five were done to persons who are Swedish, this was not an active choice from my side, but of all persons that were contacted (approximately 20 persons) representing different institutions and with various nationalities, most responses came from Swedish representatives. In order to deal with this problem I have interpreted my sources critically, they are representing different institutions and interests and not the Swedish nation as such.

1.4.3 Critics of the written sources

When collecting material for the case study it is vital to ask why certain information and situations appear as they do. It is also important to bear in mind that documents are written for certain purposes and for certain people (Yin, 2003: 87). These are facts that I have had in mine when conducting my case study, especially since most of the documents consulted are produced by institutions or newspapers with specific interests in the REACH negotiations. To confront this problem different kinds of material have been used, foremost official documents, newspaper articles, and interviews in order to get a "fair" picture of the process. In some situations like the Council negotiations and the internal negotiations in the

Commission no available sources exist, in these situations I have had to rely on official documentation and secondary sources. Esaiasson *et al.* claim that there are four criteria that need to be addressed when collecting material, these are: *authencity*, *independence*, *contemporaneous* and *tendency* (2004: 304, *my translation*). Authencity simply means that the source must be genuine; consulting several independent sources to confirm its authencity can solve this problem as well as the independence and tendency problem. Using primary material can also solve the independence problem; although to what degree the source is independent needs to be taken into consideration. Contemporaneous can be confronted by using material that are produced close in time of, in this case, the negotiations (*ibid.*, 307-312). When conducting my study I have dealt with these criteria by using various sources to confirm facts, I have also used material that have been produced close in time i.e. produced short after the negotiations and throughout the study I have had a critical attitude towards my sources.

1.5 Disposition

The aim of this thesis was introduced in the first chapter together with the research question as well as the motivation of the importance of REACH as a case. The first chapter also contained a broad theoretical overview; where I presented three perspectives that will be used in order to explain the outcome of the negotiations. Method and material were also addressed together with critics of the sources. In chapter 2 the institutional structure i.e. the co-decision procedure will be presented, that presentation can be regarded as a theoretical springboard where I take a closer look at the three perspectives: two-level game, policy networks and communicative action. In chapter 3 the reader will find a chronologically overview on the REACH negotiations; how it all started until the second reading. In the following chapter the theories presented in chapter 2 are used in order to analyse the process and the negotiations. The thesis ends with a conclusion on why the specific outcome was reached.

2   Theoretical Takeoff

In this chapter the institutional structure i.e. the co-decision procedure will be presented. The institutional structure will function as a springboard to the three theoretical perspectives that will be used in this study.

2.1 Co-decision

The co-decision procedure was established by the Maastricht Treaty and extended by the Amsterdam Treaty. In principle it means that the European Parliament and the Council may not adopt legislation without the other's assent (Commission – Secretariat-General – Codecision –" the Codecision Procedure").

Hix means that there are a general agreement among theorists that the balance of power between the Council and the European Parliament were changed by the Amsterdam Treaty, which means that policies can not be adopted without the support from both the EP and Council (Hix, 2005: 105). This modification was to the Parliament's advantage and made it a "co-legislator" with the Council (Corbett *et al.*, 2003: 354-355; Hix, 2002: 263, Tsebelis – Garrett, 2001: 358), however Burns claims that the European Parliament instead lost power since it lost informal means that it used in order to influence the Council and the Commission in the legislative procedure (Burns, 2006). The co-decision procedure has made both the Council and the EP more important for lobbyists, which was clear in the REACH negotiations (Hix, 2005: 211-212).

In the co-decision procedure on REACH the Commission made a proposal in 2003, which can be said to have set the agenda of the negotiations. The proposal went to the European Parliament and the Council for the first reading; the EP came up with an opinion and the ad hoc working groups of the Council prepared a common position. The Commission took view of the amendments and on the basis of the Commission's view and the preparations by the ad hoc working groups the Council adopted a final common position in June 2006. The EP gave an opinion on the Council common position in the Second Reading and in negotiations with the Council they decide whether to adopt it or not. If no agreement are made the parties will go on to conciliation i.e. every issue is negotiated in order to reach agreements (Petry *et al.*, 2004: 25). If the EP and the Council do not agree they meet in trialogues together with the Commission. The trialogues function as formal negotiation sessions, although without formal decisions taken. At a first glance the trialogues can be regarded as quite informal since no formal decisions are taken, but instead the trialogues are highly restricted; only a few actors are welcome to participate. According to Bjurulf –

Elgström the only actors present are: "the Presidency for the Council, two or three members of the Parliament delegation and a representative from the Commission." (2005: 55) During the REACH negotiations six trialogues were running.

2.2   Two-level Game

Hopmann uses two definitions on negotiations; the first one is taken from Iklé who defined negotiations as:

> "a process in which explicit proposals are put forward ostensibly for the purpose of reaching an agreement on an exchange or on the realization of a common interest where conflicting interests are present." (Iklé quoted in Hopmann: 1996: 25)

As well as Hopmann I will use this definition since it addresses a situation where both common and conflicting interests are present, which can be applicable to the REACH negotiations. Hopmann also defines negotiations as:

> "a situation of interdependent decision-making, where two or more parties must each make decisions and where the outcome for the parties is not exclusively under their own control, but is a result of their joint decisions." (Hopmann, 1996: 26)

These two definitions on negotiations led me to Putnam (1988) that seeks a theory that integrates both the domestic and the international spheres and their entanglements in negotiations. Although Putnam is focusing on states at the domestic and the international level I claim that this theory can be applicable on the negotiations on REACH where the European Parliament and the Council are in the centre of attention.[2] Two-level game theory is dealing with two arenas i.e. the domestic and the international, that are interconnected through negotiations. The actors demand a chief negotiator that are assumed to be independent and whose aim is to seek an agreement between the parties (Putnam, 1988: 436).

Putnam divides the negotiations into two levels: Level 1 where bargaining between the negotiators occur leading to an agreement, and level 2 where negotiations are held within the institutions whether to ratify the agreement or not. The link between these two levels is that Level 2 must ratify a Level 1 agreement. Therefore in order to make amendments at Level 2 also negotiations at Level 1 are

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[2] The Commission is also regarded as one of the main actors in the process of REACH, altough not functioning as a co-legislator

necessary for the final ratification (Putnam, 1988: 436-437). The possibility of an agreement depends on especially three factors (*ibid.*, 442*ff*):[3]

- The preferences, coalitions and distribution of power at Level 2. In the case of the negotiations on REACH these are the preferences coalitions and distribution of power in the Council and the EP.

- The institutional rules at level 2, such as the institutional structure and leadership at level 2.

- The strategies of the negotiators, i.e. the strategies the negotiators have in the negotiations between the EP and the Council.

In order to conduct my study I will use these factors to see to what extent they are present in the negotiations. However the theory of two-level game assumes that actors are rational and try to maximise their own interests. In REACH this is not the case. The actors in the final negotiations on REACH did not have fixed preferences, instead I claim that they were rather consensus seeking. Therefore I will use two further perspectives, policy network and communicative action to complement two-level game in order to explain the outcome of the negotiations.

2.3   Policy Network

The theory of multi-level governance indicates that decision-making is shared between different actors and different levels, where actors and levels are interconnected rather than separate units. Multi-level governance tend to focus on the different levels rather than on governance. Policy network is a way to put the concept of governance back into the multi-level governance (Smith, 1997). Jönsson – Strömvik regard: "*negotiations* as key processes and (...) *networks* as key structures of governance." (in Elgström - Jönsson, 2005: 14) Networks can be defined as that:

> "They all share a common understanding, a minimal or lowest common determinator definition of a policy network, as a set of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that co-operation is the best way to achieve common goals." (Börzel, 1997: 1)

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[3] Putnam talks about "the size of the win-set" which he defines: "...for a given Level II constituency as the set of all possible Level I agreements that would 'win' – that, is gain the necessary majority among the constituents – when simply voted up or down." (1988: 437)

I will use this definition since it emphasizes that the actors share a common understanding in order to find a solution, which will be used as a complementary view to two-level game.

Due to the expansion of the co-decision procedure by the Treaty of Amsterdam, policy networks increased to a large extent (Peterson – Bomberg, 1999: 24-25, 30). The increase of policy networks was due to the complex, sectoral structure of decision-making and of policy growth that allowed governments to disperse political resources between public and private actors; i.e. in order to be more effective and to reach a common solution. Networks include all actors that are involved in the formulation of a policy, their interactions are characterised by informality and by its participants that are both public and private. The participants have interdependent interests and they are striving to reach a solution (Börzel, 1997: 5-6).

The advantages of policy networks are several: First, the presence of public and private actors in policy networks can help identifying policy problems and its solutions at an early stage of the policy formation process. Second, policy networks help gathering information about the policy and positions among stakeholders that otherwise would not have been available. Third, policy networks create an environment of consensus building, which can limit negotiation deadlocks (Besussi, 2006: 9). However, Börzel argues that policy network is not the final solution to the problems of decision-making; they can become "quasi-institutional" with internal problems of co-ordination and there is always the problem that it suffer from lack of legitimacy. What makes it special is that policy network creates an arena for communicative action, which will be addressed in next chapter (Börzel: 1996: 6, 11).

Networks of the European Union are often issue-based and a combination of "know-how" and "know-who", the combination of the technical expertise and organizational actors make the networks an arena where successful outcomes are likely to be negotiated (Jönsson – Strömvik, 2005: 18). Who are the main actors in these networks? The Commission is often regarded as a linking pin organisation i.e. it functions as a communication channel where it has good knowledge of "know-who" and are also reachable and dependent on information from various actors including NGOs. The Parliament also function as a linking-pin organisation and for many NGOs the only possibility to do lobbying (Jönsson – Strömvik, 2005: 18-19).

Policy network will function as a complement to two-level games, where the participants are regarded as actors in an issue-based network. I will investigate who these actors are and foremost focus on lobbyism. However in order to understand the outcome of the negotiations we need to complement policy network with a negotiation theory of communicative action, where the negotiations are characterised by arguing rather than bargaining.

2.4   Communicative Action

Arguing and bargaining are concepts that derive from two different theories; the latter relates to rationalism, whereas the former is part of the theory on communicative action.[4] Bargaining can be said to make promises or threats through communication where the intent is to change behaviour (Müller, 2004: 396, 397; Risse, 2000: 8). In order to understand why actors can make a compromise and reach a common understanding the concept of arguing plays a major role. The actors must share a definition of the rules of the game in order to reach a successful outcome of the negotiations, and to reach consensus actors must be prepared to change their standpoints and preferences (Risse, 2000: 2). Risse adopts the concept "logic of arguing" which means that actors try to seek a common understanding of the situation and are open to be persuaded by the better argument, where power relations and social hierarchies stay in the background. Arguing is goal-oriented exactly as the logic of consequentialism and rational choice behaviour, the difference is that the goal is not to maximise its own interests, but rather to reach consensus (*ibid.*, 7). Here, the question of being persuaded by the better argument comes in; Holzinger means that arguing is part of strategic action by actors. She claims that bargaining is necessary in order to deal with conflicting interests and to set the big framework, whereas arguing solves problem on divergences on detailed issues, she cotinue and claims that: "arguing happens 'almost always' within a strategic context". (Holzinger in Müller, 2004: 272). The logic of arguing requires "ideal speech situations" where power relations are equal, this has been criticised, since it is difficult to find such settings in international politics. However, Risse argues that: "[t]he real issue then is not whether power relations are absent in a discourse, but to what extent they can explain the argumentative outcome." (Risse, 2000: 18) In order to operationalise the concept of arguing in my study I will look at following conditions taken from Niemann:

- The actors must share a common life world, in order to identify the rules of the game, norms and values.

- Lack of knowledge and uncertainties motivates the actors to consider new views and information and to learn, since truth seeking is the goal.

- Technical issues require expert knowledge and the more complex issue the more validity claims about what is the best thing requires.

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[4] The concept "communicative action" comes from Habermas and indicates that actors apart from strategic action also uses communicative action in order to reach a common understanding and consensus without trying to maximise its own utility (Niemann, 2004: 380).

- There is a need for lengthy discussions both formal and informal. With short time, truth seeking can be difficult.

- Persuasive individuals are required, since the force of the better argument plays a significant role of the outcome of the negotiations (Niemann, 2004: 385-386).

In sum, by using two-level game theory, the two different Levels of negotiations and more importantly that they are interconnected, are defined, however two-level game theory requirer that the actors are acting in self-interest and that their preferences are fixed, which is no the case in the REACH negotiations. Policy networks help us to understand that there are various actors at different levels present in the negotiations. Also, the influence of lobbyism is addressed. But in order to combine these two perspectives communicative action will serve as glue, where the goal is to reach a common solution.

3 REACH in Brief

In this chapter the stages of REACH will be addressed chronologically; from the White paper in 2001 until the Second reading, in order to get an overview of the process. The chapter will also be technical when I outline the most important features of *Registration, Evaluation* and *Authorisation*, which I find important since the concepts will be used throughout the thesis.

3.1 The White Paper

Following concerns by the Environmental Council regarding lack of information on hazardous chemicals and concerns about the complex and inconsistent regulations on chemicals within the EU, the Council launched a brainstorming round with different stakeholders in order to call upon the Commission to propose a new chemical strategy by the end of 2000 (Council document 11265/99). The Commission adopts *the White paper on a Strategy for Future Chemical Policy* on the 13th of February 2001 after taking into account *the Communication on the Competitiveness of the Chemical Industry*, *the Communication on the Precautionary Principle*, which is a legal framework for risk management (Petry *et al.*, 2006: 26), submissions made by stakeholders and analyses made by member states. The White paper was produced under co-responsibility by the DG enterprise and DG environment (Commission – enterprise and industry – "REACH – Background"). The White paper acknowledges numerous of weaknesses in the current system; foremost regarding lack of knowledge about the degree of danger of many chemicals, which makes it difficult to assess their risks and to decide what kind of control that is required. Another weakness of the old legislation is that the system of risk assessment is too slow and that resources are put on "new" chemicals that just entered the market but only accounts of one per cent of the total volume, whereas it should be necessary to focus on "existing" chemicals already in use (Commission – enterprise and industry - "REACH – Introduction", Commission – "REACH in Brief", 2007: 3). The goal of the White paper is "sustainable development", i.e. to find the balance between environment, economic and social policies. Thus to protect humanity and environment, but at the same time keep the competitiveness of the chemical industry. The main features of the White Paper are *Registration, Evaluation* and *Authorisation/Restrictions*, which will be addressed in the end of this chapter.

3.2   The Commission Proposal

The Commission adopted the proposal for a new regulatory framework for chemicals on the 29th of October 2003. The proposal was drafted in close cooperation with stakeholders in an Internet consultation[5], which has allowed the Commission to "propose a streamlined and cost-effective system" (Commission, IP/03/1477). The Internet consultation was open to public and 6000 replies were registered. The participants mainly represented industry organisations and environmental NGOs, although companies, member states, states outside the EU, animal rights organisations as well as individuals also contributed with their views (*ibid.*). The aim of the Commission proposal:

> "...are to improve the protection of human health and the environment while maintaining the competitiveness and enhancing the innovative capability of the EU chemical industry." (Commission homepage: "The New EU Chemicals Legislation – REACH)

Another aim of the proposal was to give greater responsibility to industry to provide safety information and to manage the potential risks from chemicals that are in use (Commission IP/03/1477). The proposal was submitted to the European Parliament and the Council for the first reading.

In order to be prepared of the consequences and to assess the costs of the legislation the Commission focused on conducting "impact assessment" studies. The Commission studies were complemented by the "Memorandum of Understanding between the European Commission side (...) and industry" (2004). Several case studies were conducted and they were monitored by a *High Level Group*, which consisted of representatives from the Commission, the Council Presidency and the European Parliament ("Note on the studies undertaken in the framework of the Memorandum", 050427). Here, the industry played a major role in pursuing studies and Commissioner Verheugen acknowledged that: "

> "These studies make an important contribution to better assess the changes needed to achieve a balanced and workable solution for REACH which will be compatible also with our Lisbon goals to improve the competitiveness of European industry, including SME's. The Commission believes that these results should be taken into account in the co-decision process and to that end reaffirms its intention to cooperate closely with the European Parliament and the Council." (Commission, IP/05/495)

In March 2003 the European Council decided that the Competitiveness Council should be more involved in the process, which according to Gerhagty was a consequence of the impact assessments required by industry (Geraghty, 2005: 33).

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[5] The entire consultation can be viewed on the Commission homepage: http://ec.europa.eu/enterprise/reach/consultation_en.htm

3.3 The First Reading

The first reading in the European Parliament was led by the Environment Committee (ENVI). Special regards were taken to the Industry Committee (INDRE) and the Committee on Internal Market and Consumer Protection (IMCO). Seven other committees were also commenting on REACH. In the first reading a broad political majority of the EP agreed on amendments on *registration*: data requirements for 1 – 10 tonnes of chemicals (as opposed to the impact assessments of the Commission), maintaining responsibility on industry to make information available on risks on existing chemicals and continue to make full data on new substances. Also, substances of high concern have to provide full sets of safety data. Substances that are manufactured or imported between 10-100 tonnes will require certain tests, the Parliament also agreed upon "one-substance, one registration". On *authorisation*, also a big majority agreed on considering available substitutes if safer. The first reading in the EP was completed on 17 November 2005 (European Parliament, 051118). The modifications were a result from negotiations between the two largest political blocs in the EP, the centre-left European Socialists (PES) and the centre-right European People's Party (PPE) (*ibid.*).

The Council adopted a common position on the 27th of June 2006; although Germany delayed the process, since a new government was elected (Buck, *Financial Times*, 051111). Among the changes that the Council introduced from the Commission proposal were: reduced information on lower volumes, "one substance, one registration", which means that registrants should share data and cooperate if using the same substances, exemption of low-risk substances, such as pulp and strengthening of the provisions for substituting the most dangerous substances to authorisation by ensuring that all authorisations are reviewed (UK Presidency – Environmental Protection: Chemicals). The industry foremost approved by granting authorisation on a regular basis, rather than having strictly time-limited authorisation. Also, the Council did not adopt a position that substitution should be introduced as a mandatory procedure (CEFIC – "EU Chemicals Policy Review (REACH)). Industry organisations such as CEFIC approved of the Council position since it: "managed to strike the right balance in combining the need to protect human health and environment, and concerns about workability and competitiveness of the European industry[.]" (*ibid.*)

The differences between the EP and Council positions at first reading were not that far apart and they were foremost concerning the authorisation element, where there were disagreements on time limits. The Parliament position was to limit the possibility of high-risk substances being authorised when they are "adequately controlled" (UK Presidency – Environmental Protection: Chemicals). Although the position were no that far apart the Council common position included only 180 of the 430 amendments that were approved by the EP after their first reading, but these included the big questions on *registration* and *evaluation* (Europaparlamentet: "REACH: the second half kicks of, 060713).

The Commission welcomed the Council's version of REACH, although it was a watered-down version of their original proposal. The more satisfied of the two Commissioners were Verheugen claiming that the Council had "succeeded in making Reach more effective and more workable." (Scott, *Chemical Week*, 051221-051228)

3.4   The Second Reading

The positions between the Council and the Parliament were not that far apart after the first reading, but "the devil is in the details". (Scott, *Chemical Week*, 060426) The second reading in the European Parliament begun in the end of June 2006. Chief negotiator in the EP, Guido Sacconi, considered it necessary to: "restate its position on tightening up the procedure for authorizing chemical substances by promoting the replacement of the most dangerous among them." (Sissel, *Chemical Week*, 060705-060712). The statement was clear: the big question in the second reading was that of *substitution*. But Sacconi would also focus on questions regarding: duty of care, the EP's role in the European Chemicals Agency, aid to SMEs, quality marking, animal experiments and compulsory evaluation of substances that are likely to be cancerous, mutagenic or genotoxic (Europaparlamentet: "REACH: the second half kicks of, 060713).

However, compromises come at price, Sacconi highlights that the negotiations must be on give-and-take basis, he claims that: "[f]or the moment, all EU institutions have played their game, saying it is very difficult for them to make a move. Well, for me too it is difficult!" then he continues: "As long as the Commission and the Council's official stance is to hold on to the [Council] common position, I will stick with the Parliament's position in first reading[.]" (EurActiv, 061002) The Finnish Presidency made a clear statement that they wanted a decision reached by the end of the year (2006) (Europaparlamentet – "REACH: the second half kicks of", 060713). In a speech the Finnish Minister for Trade and Industry, Mauri Pekkarinen, said that "...the Finnish Presidency will do its utmost, with the support of the commission, in reaching the best possible outcome in the negotiations with the European Parliament." (Pekkarinen, 061027)

Amendments to the first reading position can only be done in plenary by quality majority voting (QMV); normally only simple majority is required. These compromise amendments are often negotiated in advance between the Parliament and the Council, which also Sacconi confirmed was the case of REACH (EurActiv, 061003). The vote is based on the recommendations from the Environment Committee (Rogers, *Cemistry World*). If the negotiations between the Council and the Parliament went well the vote in the second reading would just be a formality, otherwise the decision can take several months further and be made up in the conciliation process (*ibid.*). The Environment Committee of the Parliament voted on the 10th of October 2006 on the draft REACH regulation and backed stricter environmental rules than the Council position, but quality majority

voting in plenary in the EP must still approve the rules. (White, *theparliament*, 061010).

In the right end the Council did not move their position an inch and negotiations broke down after a long night on the 27th of November 2006. The main question of the negotiations was on *authorisation* and *substitution*. Several member states, "Germany and its allies", are opposing, as well as the EPP-ED in the Parliament. These parties will allow companies to use toxic and cancerogenous chemicals as long as they are "adequately controlled", the opponents question the definition of this concept (White, *theparliament*, 061128). After the break down in the negotiations the Greens, GUE/NGL and ALDE were discussing to push the process towards conciliation. However, "new chemistry was found" and the negotiations between the EP and the Council were finished in the end of November when they agreed on a compromise package put forward by the Finnish Presidency. The three largest party groups in the EP, the Socialists (PES), the Conservatives (EPP-ED) and the liberals (ALDE) made the deal (*Europaportalen*).

The final agreement meant that the question on substitution was not as environmental friendly as recommended by the Environment Committee. Sacconi admitted that he had to: "scale down his level of ambition following concerns by Germany and industry groups that the regulation would be too costly for the chemical sector." (EurActiv, 061204)

In sum, both the EP and the Council position changed and converged during the final negotiations. In the European Parliament the Greens and GUE/NGL were extremely disappointed, however the Parliament made the position much more environmental friendly than the common Council position. But compared to the original Commission proposal the final outcome was watered-down from an environmental point of view. The industry sector was content by the compromise, although not thrilled. In the next chapter I will outline the main features of the "technical REACH" since the concepts will be used throughout the thesis.

3.4.1 Registration, Evaluation, Authoriation/Restrictions

Registration: Manufactures and importers have to gather information on and register the chemicals that they use, produce or import at volumes of one tonne or more. The registration will be managed at the European Chemicals Agency in Helsinki. For volumes of more than ten tonnes a year companies must give information on the hazards of each substance in a Chemical Safety Report. (Commission – "REACH in Brief", 2007: 6). To reduce animal testing, data sharing is required (*ibid.*, 10). To reduce costs for industry all manufactureres and importers can share data on registered substances i.e. "one substance, one registration." (European Parliament, 051118)

Evaluation: Two types of evaluation will be conducted: dossier evaluation and substance evaluation. The former is used to make quality checks of registration dossiers and checking of testing proposals so that not unnecessary

animal testing or repetition tests are done. The latter is used when there is belief that the substance can be a risk for human health and the environment. In the evaluation process the Chemicals Agency play a major role in developing guidance on prioritisation of substances for evaluation. The member states prepare lists of the substances they wish to evaluate. High concern substances will go to a mandatory authorisation process (Commission – "REACH in Brief", 2007: 11-12).

Authorisation: In the authorisation stage the Commission is responsible for granting or refusing substances. Here, the most hazardous chemicals will be under the magnifier. Applicants have to guarantee that the risks associated with the substance are *adequately controlled* if authorisation will be granted. Authorisation can also be granted if the socio-economic benefits outweigh the risks and there are no safer alternatives. If safer alternatives are available the applicant must provide a substitution plan. If no better alternative exists a research and development plan must be provided (Commission – "REACH in Brief", 2007: 12-13). Risk reducing and restrictions are elements that are introduced when the risks are unacceptable, it can be regarded as a safety net of the system. Substances that are restricted cannot be manufactured, used or imported in the EU. The member states prepare proposals for substances that they prefer should be restricted in a structured dossier to the Commission (Petry *et al.*, 25-26).

4   Theoretical Analysis

In this chapter the REACH negotiations will be analysed in order to explain the outcome of the compromise. The analysis is conducted by using the three theoretical perspectives: two-level game, policy network and communicative action.

4.1   REACH as a Two-level game

Two-level game can partly explain the outcome of the REACH negotiations, foremost the structures of the negotiations; as claimed earlier the possibility of an agreement depends on three factors: (1) The preferences and coalitions and distribution of power in the Council and in the EP. (2) The institutional rules such as institutional structure. (3) The strategies of the negotiator, which is the negotiations between the Council and the EP.

4.1.1   Preferences and coalitions

Putnam claims that: "Any testable two-level theory of international negotiation must be rooted in a theory of domestic politics, (...) a theory about power and preferences of the major actors at Level II." (1988: 442) The theories that I will use focus on coalition building in the Parliament and in the Council. Coalitions can be defined as: "a set of actors that coordinate their behaviour in order to reach goals they have agreed upon." (Rasch quoted in Elgström *et al.*, 2001: 113) In the Parliament the two major parties divide questions between them in order to gain power, but also to show that the Parliament can act as a united actor towards the Council and the Commission (Hix, 2005: 99). In the Council we can simply outline an environmental bloc and an industry-friendly bloc i.e. we can draw the conclusion that the coalitions are issue-specific, although the environmental bloc foremost consists of the Nordic countries which can be claimed to be norm-sharing in environmental policies (Elgström *et al.*, 2001: 119-121).

As discussed in chapter 2 the Parliament has gained power with the introduction of the co-decision procedure, because of its extended role as co-legislator together with the Council. However the EP is often regarded and acts as one actor with a single interest. Hix means that this is to promote its own power in relation to the Council and the Commission. In the second reading, amendments from the first reading must be taken by absolute majority of all MEPs. This

system gives rise to coalitions among the parties and encourages cooperation foremost between the two largest groups. When an absolute majority is required it is almost impossible to "win" without the support of one of the largest party groups in the EP, which means that PES and EPP-ED have great power compared to the smaller groups that can be regarded as marginalized (Hix, 2005: 96-97). In the REACH negotiations PES and EPP-ED with support from the liberal group ALDE made a final agreement on REACH, which did not follow the recommendations of the Environment Committee. Shadow rapporteur for ALDE, Chris Davies, said that ALDE changed its position because the environment spokesperson in EPP coordinated the three party positions so that they were acceptable to all three in order to get a final compromise that they could support (Interview with Chris Davies, 070510), but to the annoyance of the more environmental friendly MEPs in ALDE (SVT - "Lena Ek röstar emot kemiuppgörelsen"). This is also confirmed by the shadow rapporteur Jens Holm (GUE/NGL) who claims that EPP-ED and PES conduct log rolling because of self-interest and to gain power to prove that the EP is a voice to count on in relations with the Council and the Commission (Interview with Jens Holm, 070420).

The common position in the Council has to be reached by QMV, the voting-rules gives fuel to coalition-building (Elgström *et al.*, 2001: 114), i.e. in the Council it is possible to discern on the one hand a Nordic bloc who are more environmental friendly and on the other hand a more industry-friendly bloc with Germany as its leader and as Putnam puts it: "[v]arious groups at Level II are likely to have quite different preferences on the several issues involved in a multi-issue negotiation. As a general rule, the group with the greatest interest in a specific issue is also likely to hold the most extreme position on that issue." (Putnam, 1988: 446) I believe that this is clear in the case of REACH, where the Nordic countries with common and environmental norms and a small chemical industry hold the environmental position and Germany, Ireland and Poland held the industry-friendly position, because of a large industry sectors in respective countries. More surprisingly Malta belonged to the latter group and this can partly be explained as a consequence of wanting to belong to the group with strong voting-strength (Kaeding – Selck, 2005: 273-274). However there is a powerful norm in the decision-making of the Council that: "all steps should be taken to preserve at least the *appearance* of consensus." (Peterson – Bomberg, 1999: 58) Swedish REACH negotiator, Per Bergman, claims that from the early hour positions were polarised between the member states, but throughout the process positions started to converge and the common position of the Council was taken unanimously. During the Council negotiations on the common position, the Presidency was held by England. Per Bergman claims that they were "incredible skilful" and that they outlined a compromise that were acceptable since it "gave something to everyone" (Interview with Per Bergman, 070418). The "dark cloud" was Germany, they elected a new government in September and the negotiations on REACH were postponed from November until December in order for Germany to position itself. Environmental groups were upset by the delayed negotiations and claimed that it was the industry that stood behind. However,

Bergman claims that: "the British must have worked hard to appease the German industry." (Interview with Per Bergman, 070418) Germany as well as Poland was not content about the compromise in the Council, but finally after "skilful maneuver" by the British Presidency they accepted and stood by the common position (*ibid.*)

As outlined in the introductory chapter no-agreement was not an option for either of the parties. Putnam argues that: "[n]o-agreement often represents the status quo, although in some cases no-agreement may in fact lead to a worsening situation[.]" (Putnam, 1988: 442) Both the environmental camp as well as the industry camp supported the regulation in itself; the "devil was in the details". I believe that this shared norm of "no-agreement as not an option" was vital for the outcome of the negotiations. All parties shared a common understanding and a common interest that an outcome should be reached. The political costs for a no-agreement would be too high for all parties involved.

In the REACH negotiations the positions were more or less strong on various issues, although the grand coalitions between environmental friendly and industry-friendly were consistent; it was a matter of how far the actors could stretch their positions in order to make an agreement.

4.1.2 The institutional structure

The outcome of negotiations depends on voting-rules and institutional structure (Putnam, 1988: 448). The co-decision procedure obliged the Council and the Parliament to find a common solution. The procedure put pressure on the Presidency to find unanimous agreements in the Council so that it can present a united front in the negotiations with the Parliament (Metcalfe, 1998: 419). The Council on the other hand often treats the European Parliament as a united part, or as "another member state". This often gives rise to broad arrangements between PES and EPP-ED as discussed above and which Jens Holm claims was the case on REACH (Interview Jens Holm 070420). In the REACH negotiations there were fear both from the Commission and the Council to go further to conciliation, since the Council by tradition often loose ground in the conciliation processes on behalf of the Parliament (Interview with Chris Davies, 070510). In the Parliament the GUE/NGL and the Greens tried to pressure the negotiations towards conciliation, but the PES, EPP-ED and ALDE made their deal just in time or as I will claim, they came up with the deal because of the threat for conciliation. Also the Council were eager to avoid conciliation since their position would probably have been weakened and as Jens Holm put it: "the decision could not have worsened our position in a conciliation since it is about give and take" (Interview with Jens Holm, 070420). According to Chris Davies claims that conciliation comes at a cost i.e. "to negotiate REACH for another four months". Chris Davies continues: "the close was very near and it was time to move on"; although he admits that the environmental camp probably would have won a bit more in a conciliation (Interview with Chris Davies, 070510).

The trialogues functioned as negotiation sessions; the result of the trialogues was that both sides were better informed about eachothers' intentions and positions (Corbett *et al.*, 2003: 364). Since the trialogues are part of the institutional structure they played a significant role in the outcome of the REACH negotiations, since it was after a trialogue session that the parties agreed on a compromise. The sequence of the Presidency might also have some impact on the outcome of the negotiations the Finnish Presidency were followed by the industry-friendly Germany, although both Chris Davies and Jens Holm claim that in the conciliation process it does not matter who has the Presidency. Davies even claims that Germany could have made progress in the negotiations since it in terms of Presidency must take on a more objective role and he gives the example of the emission negotiations that are running at the moment (Spring 2007), where Germany in terms of the impartial Presidency actually have made progress in the negotiations (Interview with Chris Davies, 070510).

4.1.3   The strategies of the negotiators

The leadership is also an important part in order to reach an agreement, "the chief negotiator is the only link between Level I and Level II." (Putnam, 1988: 456) Malnes describes a leader as someone "with superior problem-solving ability" (1995: 91), who "acts on behalf of some larger group" and also function as an "agent who makes people do what they would not otherwise have done" (*ibid.*, 92). A leader "wields his or her influence with a view to promoting some collective goal." (*ibid.*, 93) The strategies of the leader is to maximise both the other side's win-set, which at the same time can risk his or her own bargaining position, and on the other hand try to maximize his or her own win-set (Putnam, 1988: 450); for the leader there is a delicate act of balancing between the two Levels in order to reach an acceptable compromise.

In the parliament Guido Sacconi (PES) was the head negotiator i.e. his role was to coordinate the positions in the Parliament that he presented for the Council and the Commission. He foremost negotiated with the rapporteurs and the shadow rapporteurs i.e. representatives for the different party groups in the EP. Chris Davies claimed that one of his roles was to try stopping Sacconi from making a compromise with the EPP-ED. "He had an environmental perspective, but he was too consensus-seeking." (Interview with Chris Davies, 070510) However for Sacconi the main goal was to reach an acceptable compromise with the Council.

In the Council, negotiations was lead by the Presidency. In the end game it was Finland who lead the negotiations. Finland clearly stated in the beginning of their Presidency that they had the intention to reach an agreement before the end of the year (Pekkarinen, 061027). Mauri Pekkarinen claimed that: "the council should consider some adjustments in the authorisation title without changing the essential elements of the concept as agreed in the common position." (*ibid.*) He also stated that in the discussions with Sacconi that: "there is a strong common interest and political will in concluding the negotiations at second reading." (*ibid.*)

The Finnish Presidency made a "take-it-or-leave-it" package on REACH that the Parliament agreed on and as Malnes put is: "a process which permits package solutions has better prospects of succeeding than one in which separate solutions must be found to single issues." (Malnes, 1995: 100) Overall, the Finnish Presidency held an impartial role in terms of Presidency in the negotiations (Interview with Per Bergman, 070418; Interview with Lena Perenius, 070425), although Chris Davies claims that they: "...were keen on adopting a strong REACH; they were sympathetic to the parliament position." (Interview with Chris Davies, 070510)

The role of the Commission in the REACH negotiations has been questioned. The Commission is not as cohesive as it often is described, instead it is diverse and pluralistic with different preferences and cultures at all levels, where both Commissioners and DGs and their staff act independently, this can create dynamism and conflicts between levels and portfolios in the Commission (Nugent, 2001: 8, 206). Conflicting interests are often common between DG enterprise and DG environment, and this was also the case in the REACH negotiations. The role of the Commission is to lay the first proposal and to act as a mediator between the EP and the Council. The Commission also sit on technical expertise and in the beginning the Commission was helping Sacconi with technical interpretations (Interview with Per Bergman 070418). Sacconi's opinion on the Commission was not satisfactory: "the institution which has so far shown the least flexibility is the Commission. 'Institutionally, the Commission's task is to facilitate an agreement between legislators [Parliament and Council]' in case of persisting divergence (...) [h]owever , it has so far failed to do so. 'To fulfill this role, you need to have one position, not two[.]'" (EurActiv, 061002). Also Jens Holm and Chris Davies argue for the same view on the Commission: [t]he role of the Commission was to facilitate agreements between the EP and the Council, but how could they do this when they could not even facilitate it between themselves?" (Interview with Chris Davies, 070510). Jens Holm claims that both Commissioners were negotiating and could say two different things, when they were negotiating with the Commission they had to ask who they should talk to. And as Chris Davies claims: "Dimas and Verheugen were speaking in different languages" (*ibid.*). Lena Perenius claims that it is not strange with conflicting interests: "it's the same as in national governments" (Interview with Lena Perenius 070425). Clearly the different Commissioners had conflicting interests on REACH, however to what extent these disagreements affected the outcome is difficult to say. Even though they tried to speak with one voice in the negotiations this was not the view of the other actors (EP and the Council) and I claim that is enough to weaken and damage the position of the Commission in the negotiations.

The strategy of the negotiators during the REACH negotiations was to reach consensus, since a no-agreement was not an option. Both negotiators had to negotiate at two levels. Sacconi tried to make a broad political majority in the Parliament and since REACH consisted of several issues, coalitions could change from issue to issue. The biggest fear from the environmental camp was that Sacconi should strike a deal with the more industry-friendly EPP-ED whose strategies on the other hand was to wait for the Council position. The strategy in

the EP was to make consensus among a majority of the parties in order to have an adequate bargaining position at Level 1 with the Council. The negotiations with the Council were different from that within the Parliament. In the beginning also Sacconi threatened to go further to conciliation, but it did not have an visible effect, since the Council position seemed to be firm. However, as Putnam put it: "Deals can only be struck if each negotiator must seek to convinced that the proposed deal lies within his opposite number's win-set and thus will be ratified." (1988: 453) The Finnish Presidency wanted to have an agreement in order not to loose head.

In sum, in the REACH negotiations it is a clear division between the environmental and the industry-friendly camp. These coalitions can be viewed at all levels in the negotiations; in the Council, in the Parliament and in the Commission. The question was not to change positions, but rather to stretch their positions in order to agree on a compromise. The co-decision procedure made an impact on the agreement since the Parliament and the Council functioned as co-legislators and had to come up with a compromise; also the fear of conciliation were present. The sequence of the Presidency to not have a significant impact since Germany had to act as an impartial broker in terms of Presidency and the conciliation process is a matter of give and take.

By looking at preferences and coalitions in the EP and the Council, the institutional structure and the strategies of the negotiators we will get a somewhat simplified view of the negotiations. In reality the negotiations also consisted of numerous other actors such as lobby groups, committees in the Parliament and domestic interests in the member states. In order to get the whole picture we need to discuss to what extend these actors were present and affected the outcome of the negotiations. Also in order to understand the outcome it is important to view how the negotiations were conducted, was it arguing rather than hard bargaining, was consensus-seeking the big goal? These questions will be addressed by using policy network theory and the theory of communicative action.

4.2   The impact of Policy Networks

Börzel argues that policy networks "draws attention to the interaction of many but interdependent organisations which co-ordinate their actions through interdependencies of resources and interests." (1997: 4) Who are the interest groups that tried to influence the outcome of REACH? There can be said to be two different kinds of lobby organisations; the first one is representing the interests of companies and function as umbrella organisations; whose aim is to coordinate the overall interests of the companies and organisations it is representing. The other type of lobby organisation takes charge for assignments ordered by specific actors (Hix, 2005: 213; Interview with Lena Perenius, 070425).

The industry: It might be wrong to talk about the industry as one constituent since it consists of different kind of enterprises whose interests in REACH can

differ to a some extent, however one of the most influential lobby organisations was CEFIC, which is an umbrella organisation for the European industry and it is also the largest business group in terms of staff employing around 80 people (Hix, 2005: 214). CEFIC worked for the broad questions in REACH that were interesting for the chemical industry. Lena Perenius, now working for CEFIC, were working for Eurometaux, which in difference to CEFIC were lobbying for specific questions affecting specific interest of that industry; a narrower perspective. The goal for the chemical industry was to get a well-balanced compromise, where the demands for competitiveness were most important. As stated in the introductory chapter all stakeholders wanted a new chemical Regulation, although they did not agree on the details. The industry also lobbied in the member states to a great extend for instance in Germany and in Poland.

Environmental groups: The main environmentalist advocates were NGOs such as WWF, EEB (European Environmental Bureau), Friends of the earth and Greenpeace. They can be said to be representing the public interests of European citizens, whereas the industry foremost represents the private sector (Hix, 2005: 212). As well as the industry the environmental groups made assessment studies and conducted traditional lobbying, although the resources compared to industry was far less. Naturally the environmentalists foremost lobbied on the Commission and the Parliament, although also on the member states.

Other groups: There were many organisations lobbying on REACH among the most important were consumer organisations such as BEUC (European Consumers' Organisation), oganisations representing the social partners such as ETUC (the European Trade Union Confederation) and ECEG (European Chemical Employers Group), which has tide knots with the industry lobby otganisations. Also the Committee of the Regions (CoR) and the European Economic and Social Committee (EESC) gave opinions on the proposal.

Non-European Countries: REACH raised concerns among non-European countries. In 2004 Colin Powell at that time the secretary of the state, send out a cable to all US embassies in EU member states questioning future trade relations (Bilefsky, *International Herald Tribune*, 061012). Unites States also together with 12 other non-European countries called on the Commission to further water down REACH because of worries about the consequences for trade (Young, *Chemical Week*, 060621).

The institutions that was most interesting for lobbyism were the Commission and the EP. Lena Perenius means that you try influencing everyone that have an influential role in the negotiations. For instance the Commission had already done their part and in the final negotiations they were not that attracted to lobbyists. Instead the interests were directed towards the rapporteurs in the EP and towards the Presidency. The industry made "package solutions" to both the EP and the Presidency. The strategy was to contact for instance parliamentarians that have something in common with their interest and they proceed to their networks and parliament groups (Interview with Lena Perenius, 070425). And clearly the industry had more contact with DG enterprise and Commissioner Verheugen rather than with DG environment. She also says that they should not have had any insight in the trialogues, but unofficially they had (*ibid.*) Chris Davies argues that

the industry lobbying were more intense in the beginning of the negotiations also in the Parliament. According to him they were concentrating on people they knew they could win over and after the first reading the positions of the parliamentarians were known and the lobbying from industry decreased. This was also due to that the position between the Parliament and the Council was not that far apart; instead focus became narrower and narrower. The lobbying was also conducted at different levels; both at the national and the EU-arena. In the second reading some concessions were done to the industry: "in a concession to the chemicals industry, some of the substances will be approved if producers show that they can be adequately controlled." (The Parliament – "EU prepares to close chapter on REACH", 061211)

In sum, policy networks contain actors at all different levels in the EU as well as in the member states. I have foremost focused on the lobbyism although it is important to realise that REACH was negotiated at different levels; in the party groups in the Parliament, between civil servants in the different DGs in the Commission, between Permanent representatives in COREPER and between civil servants in the Commission and civil servants in the member states or MEPs. The negotiations should be regarded as an ongoing process of informal and formal negotiations between different actors at different levels.

4.3   The Presence of Communicative action

In the REACH negotiations both arguing and bargaining were present. According to Holzinger bargaining is used to set the framework on the big questions, whereas arguing comes in later to solve detailed questions (in Müller, 2004: 272).

In the early negotiations the question were not so politicised since ad hoc-groups were going through the proposal. After a while the positions of the member states were outlined and occasionally REACH was discussed in the Council of Ministers. During the Luxembourg Presidency when the proposal was outlined foremost experts were participating in the negotiations, according to Per Bergman there were little political discussions (Interview 070418). As mentioned earlier during the Italian Presidency the REACH moved from the environment Council to the Council of competition. The 20th of September in 2003 The British Prime Minister Tony Blair, the French President Jacques Chirac and the German Chancellor Gerhard Schröder published a joint letter on their concern for the industrial competitiveness in Europe: "A future EU chemicals policy must be designed in such a way as to ensure environmental, health and consumer protection without endangering the international competitiveness of the European chemical industry." (Présidence de la Republique, 030920) I regard this joint letter as a threat with high political weight i.e. bargaining to a great extend. According to Per Bergman the positions in the Council were more polarised and political in the early negotiations. In the end the political interest was not that high, but then the political main questions were already solved, for instance that of intellectual property rights (Interview with Per Bergman, 070418).

Also in the Parliament there were from times to times negotiations characterised as bargaining. Early in the negotiations the EPP-ED took a position that were unacceptable for any of the other party groups in the Parliament and the other shadow rapporteurs made sure that Sacconi were not going to go too far towards making a compromise with EPP-ED, according to Chris Davies it was hard bargaining and "a bit of shouting" (Interview with Chris Davies, 070510). In the inter-institutional negotiations bargaining was also part of the negotiations. The Council did not move their common position an inch until just in the end, which I claim was in order to avoid conciliation. However some party groups in the Parliament (the Greens, GUE/NLG) threatened to push the negotiations further to conciliation, but this was avoided because of the agreement between EPP-ED (that wanted to avoid conciliation), PES and ALDE. So are the conditions for arguing present in the negotiations?

Shared life world: A common understanding for the "games of the play" and common values and norms function as basic prerequisites for communicative action. In the REACH negotiations all parties shared a common life world where norms and values can be said are rested in the institutional structures. The central claim for new institutionalists is that institutions matters and that they are key players in their own right (March – Olsen, 1984: 738). New institutionalism includes both formal and informal rules, such as norms, informal conventions and values (Peterson - Bomberg in Nelsen – Stubb, 2003: 324-325). All actors in the REACH negotiations shared a common life world and were aware of the rules of the game.

Lack of knowledge and uncertainties: When there is lack of knowledge or uncertainties actors tend to use communicative action as a way to solve problems. REACH was an extremely technical and complex multi-questioned proposal and this might have given rise to communicative action in order to find new information and to consider different views. I claim that both parties used informal information from lobby groups to gain knowledge and the Commission relied on the impact assessment studies demanded by industries[6]. However lack of knowledge was more present in the beginning of the negotiations when actors tried to outline the texts. In the beginning even Sacconi got expert help from the Commission in order to interpret the texts. Lack of knowledge can also mean that the institutions are unaware of the intentions and positions of one another; in the case of REACH policy networks and the trialogues helped to clarify positions. Niemann claims that expert knowledge can be required in order to outline the other negotiators proposition (Niemann, 2004: 385). Since REACH was a complex issue, policy networks and technical expertise were important in order to outline the positions; however the question became more politicised throughout the process and bargaining occurred when the technical expertise had had their say.

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[6] Altough environmental groups and animal right groups were present (impact assessment study by KPMG, 2005: 1)

The possibility for lengthy discussions: "For an argumentative discussion to take place or a reasoned consensus to emerge, time is required[.]" (Niemann, 2004: 386) The trialogues play a crucial role, when it comes to time. In the REACH negotiations there were six trialogue sessions, which can be described as a forum where the head negotiators of the Council, the Commission and the EP meet to discuss their standpoints in order to reach a compromise. The trialogues are only about one hour long, which does not give a possibility for lengthy discussions, however discussions also take place "in the corridors". Jens Holm means that it is too little face-to-face meetings, so the chance to discuss the questions in detail are very small. Also the informal discussions in the corridors are difficult to get support on from your party group or even less from your party back home (Interview Jens Holm, 070420). Since questions often are technical the negotiations in the trialogues can be difficult, but it is a way to communicate and to conclude (Interview with Lena Perenius, 070425). Chris Davies saw the trialogues as a waste of time since the Council did not change its position until in the last trialogue (Interview with Chris Davies, 070510). However REACH had been negotiated since the Commission proposal in 2003 so the negotiators were familiar with the technicalities, however new questions arose throughout the process and the time was still limited in order to go through all details.

Persuasive individuals: Communicative action means that individuals are open for persuasion and that the better argument will change the mind of other actors. Since they already had come that far in the REACH negotiations and that the positions between the Council and the Parliament were not that far apart a compromise was unavoidable. The preferences of the actors were more or less fixed; instead it was a matter of how far you could stretch them. None of the actors would turn their position completely; it was rather a question on how good the negotiators were to make them stretch their preferences. As mentioned earlier I argue that the threat for conciliation helped the Council to stretch their preferences this is also the case of EPP-ED. The final compromise in the Parliament was because the environment spokesperson in EPP-ED coordinated the positions of the PES; EPP-ED and ALDE. Being the environment spokesperson gave him legitimacy and trust so that a compromise could be reached. The Finnish Presidency also had the political will to make a final compromise (Pekkarinen, 061027), and it all happened in the shadow of conciliation.

In sum the REACH negotiations have involved both hard bargaining and arguing. Hard bargaining were more common in the early negotiations when positions just had been outlined, for instance when the joint letter from Blair, Schröder and Chirac were published, or when the EPP-ED refused to change their position. Most of the conditions for arguing are present in the negotiations, all actors share a common life world and accepted the rules of the game. REACH was a highly technical and complex question where policy networks and technical expertise were vital in order to be able to negotiate, also the negotiations were lengthy since it had been going on for three years and finally pesuasive individuals made the compromise possible. Arguing made the compromise on REACH possible.

5   Conclusion

Why did the negotiations on REACH result in the specific outcome that is on the table now? By using two-level game the importance of studying the two levels as inderdepandant levels rather than as separate units are significant. First preferences and coalitions at both levels were described; in the Council the coalitions can be regarded as an environmental camp versus an industry-camp; where the Northern countries share the same environmental norms, but at the same time do not have a chemical industry to talk of. In the industry-friendly countries the chemical industry employs large parts of the population and the industry itself are one of the largest producers or manufacturers in the country, for instance in Germany.

In the Parliament the same division line between environmentalists and industry friends are present, however the question is also a matter of power, where the larger party groups tend to make coalitions because of self-interest and to be able to act as a counterbalance towards the Council. In order to negotiate at Level 1 intra-institutional compromises between coalitions have to be done at Level 2. The system of intra- and- inter institutional negotiations is due to the institutional structure i.e. the co-decision procedure where the European Parliament and the Council function as co-legislators. I argue that the threat of conciliation had an impact on the outcome of the negotiations; where the Council and the EPP-ED moved their positions towards a compromise to avoid conciliation.

The strategies of the negotiators differed depending on which level they were negotiating. In the Parliament the chief negotiator Sacconi tried to reach consensus and were even accused of being too consensus-minded. However in the negotiations with the Council the strategy was not to change the position, but rather to stretch it in order to agree on a compromise. The Council leadership was held by the Presidency, where England made an impressive role as a mediator and even seemed to have convinced the German industry on the compromise of *Registration*. In the end game Finland held the Presidency and acted as an impartial leader, even though its position from the beginning corresponded to the environmentalists. The Finns made a "take-it-or-leave-it" package that all parties finally agreed on. However, I claim that two-level game is not a sufficient theory in explaining the outcome of the REACH negotiations. The negotiations were not just held at two levels, they were held in policy networks. These policy networks involved all actors that had an interest in REACH i.e. civil servants in the different DGs, industry and environmental lobbyists, MEPs, politicians in the member states, permanent representatives in the COREPER and so on. I argue that all these policy networks helped in order to reach a compromise, most of all because REACH was a highly technical and complex issue consisting of various

degrees of elements. The policy networks were necessary in order to discuss and negotiate the details on REACH somewhat effectively.

Finally, in order to negotiate REACH the concepts of arguing and bargaining are present. Since REACH is a technical issue the first negotiations were held by technical experts in order to outline positions and technical details. During the process the question became more politisised and bargaining started to occur, however bargaining tend to create deadlocks and in order to avoid these the actors started to conduct arguing. Bargaining can be said to have set the framework whereas arguing was needed when negotiating on details. The conditions for arguing i.e. *sharing of a common life world, technical and complex issues, time for lengthy discussions* and *persuasive individuals* were all present in the REACH negotiations.

In sum, the "acceptable" outcome of the REACH negotiations can be explained by the institutional structure i.e. the co-decision procedure which gives rise to coalitions and policy networks. Because of the technicality and complexity of REACH policy networks together with arguing helped the actors to reach a compromise that were acceptable to all stakeholders.

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