

Policy-making for the Common Good of the European Union citizens?

**A study of the REACH initiative as an example of the dilemma of balancing
environmental protection and economic growth**

Abstract

This essay examines European Union policy-making in terms of its aims of promoting the Common Good of its citizens. It uses REACH, the new chemical legislation proposal as a case study, since it is a good example of a piece of legislation which will have both environmental and economic consequences, and hence pose great problems for legislators in deciding which of the aims for the Common Good to prioritize. It also highlights the question of lobbying in terms of democratic legitimacy. The research questions are: *Can both the input and output of the policy process be said to correspond to the aim of the Common Good for EU citizens? What is the rationale guiding a legislation process on a piece of legislation which has implications for industry, the economy and the environment?* In terms of input and output legitimacy, according to pluralist and deliberative democratic theory, and the EUs policy aims, both input and output can be said to be legitimate, even though the moral implications of the output might be questionable. The rationale guiding a piece of legislation such as REACH is according to my results 1) A legitimate democratic process, where all parts of the EU political system, stakeholders and civil society will have the possibility to have their voice heard, 2) Environmental impact assessments, 3) Business impact assessments, 4) Assessment of circumstances; if for instance the economy is in a down-period, it will have implications for the priorities between the economy and the environment.

Key words: REACH, EU policy process, the Common Good, lobbying, pluralism, deliberative democracy

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1 INTRODUCTION

The aim of this essay was originally to investigate a very broad question, namely: Can business lobbying on environmental issues in the EU be democratically justified? The question was based on my interest in environmental protection in EU politics. I personally think that the environment is a policy area which is extremely important to regulate internationally, since environmental degradation is not an isolated national problem, but something that can have enormous impacts on great areas, not at least global warming, which is by definition global. It is also a matter of the heritage we leave to future generations. From this point of view care for the environment could be seen as morally justified to lobby for because it is something that is promoted for the Common Good of all EU citizens. This is primarily what environment NGOs do. In terms of corporate lobbying on environmental issues, the legitimization is in my view more complex. To me, democracy is a system which aims to promote the Common Good of a nation or in this case, the EU. In policymaking on environmental issues one could ask whether companies really lobby for the Common Good. Most people would probably say no. Companies are seen as self-centred with no other aim but to make more money. Regulations are often expensive hence the industry lobby tends to favour less strict regulations. My own view has been that it is completely immoral to lobby for further environmental degradation. But at the same time the EU is dependent on a blooming industry for its existence. Strict ruling, lower effluent quotas for instance, is good for the environment but might have serious consequences for industries. EU as a whole, member states and the labour-market are dependent on a good climate for firms. If not companies might have to fire people or worse move their production sites. Could you then not view the industry lobbying for less strict rules as appealing to the Common Good, but in another policy area, i.e. the economy? Corporate lobbying would then seem legitimate. In fact, are not all policy areas handled by the EU aimed at promoting the common good of EU citizens? The hard part is then to coordinate them, which is an important part of what legislators and civil servants of the EU institutions do every day. It is also what many of the

Brussels lobbyists do everyday, both business interests and NGOs; they are a key provider of input into the policy process.

According to pluralist democratic theory, input by both sides (industry and NGOs), if conducted under fair play circumstances, is both desirable and legitimate. Deliberative theorists' view is similar, that everyone affected by a decision should get a chance to have their say; the difference is that it should take place under specific forms. The input itself, in the form of lobbying, is thus seen as legitimate by both theories. The output however, the report, policy or piece of legislation, is a different story. The difficult task of balancing between industry and environment preferences lies with the legislators in the EU institutions. They are responsible for the outcome of all the different views and arguments, scientific research and economic calculations which they have been introduced to. This outcome should supposedly respond to the general interest of the citizens of the Union, i.e. be a policy or legislation aiming to promote the Common Good. This is the theme of this essay.

I have chosen to use the European Commission's REACH initiative as case study for my essay. REACH - Registration, Evaluation and Authorisation of Chemicals, proposes harder rules for testing and registering of chemicals used or imported into the EU. REACH will have implications for both industry and the environment. It was originally aimed at ensuring EU citizens and living organisms security in terms of exposure to chemicals, chemicals which can be found in products we use or eat everyday. The initiative was foregone by several alarming reports about chemicals being found in breast milk and in distant arctic regions, in the blood of polar bears. But it proved hard to get this sort of legislation through. Concerns for industry in terms of great costs, job losses and competitiveness has lead to significant changes of the proposal, and there is reason to believe that the ambitious environmental protection aims have proved impossible to coordinate with the aim for economic growth.

During the period which the REACH initiative has been in motion, the Commission has seen the greatest lobbying surge in its history, and I believe the same is true for the Parliament. There is reason to believe that this is one of the reasons to the changes of the proposal. Moreover, several important changes have been made in the European Union which have had impacts on REACH. For instance, the Commission has been replaced and the European Council has decided that competitiveness must be prioritized in the EU. These developments make REACH a very interesting case when studying the EU: s aim for the Common Good of its citizens, since the initiative has implications for both the well-being of citizens and living organisms as well as for the economy of the EU. How does the EU balance its decision-making between these two aims for the Common Good?

1.1 Purpose and research questions

The Commission views lobbying as democratically legitimate and argues that “lobbyists can help bring important issues to the attention of the European institutions” (Green Paper on European Transparency Initiative COM2006xx). The input into the policy process is thus seen as legitimate. But what about the output, i.e. the actual legislation, is it legitimate? The REACH example shows that something obviously has made the institutions change their minds. Even though several environmentalists argue that chemical companies have “watered down the law” (Financial Times 060504), we will probably never know to what extent lobbying efforts lie behind these changes. The purpose of this essay is to investigate the rationale that lie behind EU decision-making on REACH which affects both industry i.e. the economy, and the environment, in the context that progress in both policy areas will affect EU citizens positively. Stakeholders’ consultations in shape of lobbying are an important part of the policy process, even a legitimate one, according to the Commission. But does input legitimacy ensure output legitimacy? What output is legitimate in terms of the Common Good of EU citizens? Economic growth or care for the environment? Both? One more than the other? I hope that trying to answer these research questions, will give me, if not an answer, a sense of the tendencies which guide policy-making in the European Union:

Can both the input and output of the policy process be said to correspond to the aim of the Common Good for EU citizens?

What is the rationale guiding a legislation process on a piece of legislation which has implications for industry, the economy and the environment?

1.2 Theoretical approach and methodology

This essay will be conducted by using a new-institutionalist approach. Traditional institutionalism focuses on formal institutions and structures, whereas the newer form of the theory has been influenced by the behavioural school. This has made theorists focus also on informal structures and the behaviour of actors within these structures. In terms of ontology,

institutionalists are traditionally realists, whereas new-institutionalists have a more limited realism, because of their broader study dimension. The influences which have shaped new-institutionalism have had an impact on the epistemology as well; the new behavioural and informal dimension has led to a move towards subjectivism (Marsh-Stoker 1995:91, 97).

I will make use of deliberative and pluralist democratic theory in order to get a theoretic framework when discussing input and output legitimacy and the aim for the Common Good in democratic decision-making. These theories cover to a large extent the debate about interest representation in democracy, and are in my view the most prominent in the field. Both theories focus on important elements of the policy process such as justice and equality and the aim for Common Good, and how, if possible, it can be achieved. I will apply these theories on my case study in the finalizing discussion about the REACH initiative. In this sense, I have a theory-consuming approach (Esaiasson et al, 2003:40).

This study is a case study of legislation which affects both industry and the environment in the EU. My hope is to get a more general view of the aim for Common Good in EU policy-making and legislation. I will give a brief overview of EU decision-making and discuss how its heterogeneity affects the possibility of an aim for a Common Good and then present the deliberative and pluralist views on the matter. I will then give a chronological overview of the REACH initiative proceedings, and in a finalizing discussion put all the pieces together and try to find an answer to the question of the rationale which lies behind decision-making on such an issue.

1.3 Material

In terms of the two theoretical approaches I will primarily make use of original texts. On the pluralist side I find that Robert Dahl and Charles Lindberg have brought most to the discussion. I will also use David Held's presentation of pluralism, since it offers a very good broad view of the theory. When presenting deliberative democratic theory I will use Jon Elster, Iris Marion Young, Jurgen Habermas and a book on the theory and its applications edited by Rune Premfors and Klas Roth.

On lobbying and its democratic legitimacy, literature is quite scarce. The most interesting works on this matter has in my view been conducted by Daniel Naurin in his books *The Democratic Lobbyist* (2001, Swedish) and *Dressed for Politics - Why Increasing Transparency in the European Union will not make lobbyists behave any better than the*

already do (2004). These are very useful since they give an insightful view on lobbying and democracy in terms of legitimacy problems, justice, equality and the aim for Common Good.

On EU policy matters I will use primary material which is available on the Europa website and academic literature on EU policies, primarily from the European Union Series. REACH is a very controversial legislative proposal, which in addition to the lobbying frenzy which has taken place in Brussels, have triggered the writing of several articles and investigations on the subject, from stakeholders, NGOs, academics and journalists. The material on REACH is therefore very diverse and interesting. Finally, having spent two weeks in Brussels, combining a short internship at a European Affairs office with research for this essay, and talking to people working in the EU sphere, has given me a good and nuanced view of what takes place in the EU political carousel. I will use these observations and interviews in Brussels as a complement to the written word.

1.4 Definitions

1.4.1 Lobbying

A very significant part of the input into the policy process is lobbying. Interestingly there are several definitions of the concept. According to the European Commission,

“lobbying” means all activities carried out with the objective of influencing the policy formulation and decision-making processes of the European institutions. Accordingly, “lobbyists” are defined as persons carrying out such activities, working in a variety of organisations such as public affairs consultancies, law firms, NGOs, think-tanks, corporate lobby units (“in-house representatives”) or trade associations’ (Green Paper on European Transparency Initiative COM2006xx).

Hermansson et al defines lobbying as “non-institutionalized direct contacts with politicians and civil servants, aiming to influence public decision-making [author’s translation]” (1997:17). According to Jerneck-Gidlund’s definition there is another important feature of lobbying. What separates this phenomenon from other types of influence, such as moulding of public opinion and public actions is that lobbying is performed discretely (Jerneck-Gidlund 2001). I find that these last two definitions of lobbying and the characteristics they include, informality and discretion, are what make the phenomenon so interesting in terms of political legitimacy.

1.4.2 Input and output legitimacy

Political legitimacy means that ‘a political phenomenon is accepted and is perceived as just [author’s translation]’ (Uhrwing 1998:210). Procedural legitimacy, or input legitimacy demands that when a policy or legislation takes shape, the rules of play shall be perceived as just for all actors (Uhrwing 1998: 210), i.e. that the rights and the possibilities to participate are equal (Reinikeinen-Reitberger 2004: 297). Substantial legitimacy, or output legitimacy means that public policies or legislation are designed in a way that is perceived as just (Uhrwing 1998:210f), which means that the result of a policy process shall have taken all affected interest into account in an equal manner (Reinikeinen-Reitberger 2004: 297). The legitimacy of policy-making and policy-making outcomes are by these definitions highly connected to justice.

1.4.3 The Common Good.

In my view, political legitimacy is also about having the Common Good in mind when forming the policies which the public will have to live by. Jean Jacques Rousseau argued that “public policy belongs to us all and is exercised over us all, and we should exercise it together based on reasons and arguments we can share in spite of our differences” (Macedo 1999:8 in Naurin 2004). He has also said that “the common will is always right and always refers to the common good [author’s translation]” (Rousseau 1978, book 2 p 42 in Dahl 1999). Richard E Flathman has in his book *The Public Interest* investigated the concept and its connotations, as well as the criticism the use of the term has been subject to. In political discourse, he claims,

we speak not of the satisfaction or service of ‘interest’ but of service of the ‘public interest’; not of ‘good’ but of the ‘common good’; not of welfare, but of the ‘general welfare’. A partial explanation for the presence of the adjectives lies in a fact concerning the political order. In political life, one agent, government, acts in the name and on the behalf of all the members of the system, and its actions apply to all (Flathman 1966:5).

I find this passage, as well as the quotation by Rousseau, that public policy belongs to us all; to be at the heart of what democratic politics is all about. Politicians are normally elected because the people believe that they have the most potential of shaping politics in a way that is good for us. Hence politics should aim to promote the public good. Government is “a public

agent; it exists not merely for the sake of single individuals or groups, but for the many. Its actions are directed to all the members of society, and they are enforceable against all. This means that government will not be justified in acting partially” (Flathman 1966:8).

The concepts of public interest or the common good have of course no universal meaning, since what is good or what lies in ones interest is subjective. Flathman concludes his investigation of the concept by saying that we “cannot generalise about what the meaning is, but we can generalize concerning the principles and procedures necessary for determining what it should be” (1966:67). In his view there is in fact a call for procedure legitimacy, or input legitimacy, in order to serve public interest.

“Public interest” is according to Flathman the most commonly used term, but the “common good” and “general welfare” are still in use (1966:5). I will use the term Common Good since I think that it is the most suiting for my study. Environmental protection, employment and economic welfare, lie in peoples’ interests, hence “public interest” would be possible to use. In the case of EU policy-making however, I find it more striking to describe its aim as wanting to promote the Common Good of the citizens of the EU, because the task of the EU is so heterogeneous, that there are inherent conflict in the system about what constitutes the Common Good, which causes problems. I highlight the concept of Common Good by giving it capital letters so as to give the reader a sense of following a read thread.

1.5 Disposition

The following chapter will give an overview on input and output legitimacy and the Common Good according to deliberative theorists and pluralist theorists. Chapter three will look into the policy formulation and decision-making process of the European Union, and its multifaceted aim at promoting the Common Good of its citizens. Chapter four will look at the REACH initiative and the discussion of chapter five will bring together all the components of the essay and try to answer the research questions.

2 INPUT AND OUTPUT LEGITIMACY AND THE COMMON GOOD...

The EU system is a very open one. The policy process which I will describe in the next chapter is designed for extensive stakeholder consultation, in practice - lobbying. There are other forms of consultation, for instance through independent expert committees, with other DGs or Parliamentary committees and with member states. This consultation is what I will call *input*. My interest lies mostly with the lobbying part, because of its informal and discrete character. As the above definitions show, lobbying is not always characterized as being performed informally and discretely. The European Commission's own definition does for instance not include these characteristics. There might be a reason for this lack of negative connotations in the definition of lobbying, since the phenomenon is currently under close scrutiny, following the Commission's European Transparency Initiative. This initiative aims to promote greater transparency in the work of lobbyists, including registration and a common code of conduct. It is in the Green Paper on this Transparency initiative that the above definition of lobbying is taken. One of the main interests of this essay concerns input and output legitimacy. In terms of legitimacy, the Commission states the following about lobbying:

1. Lobbying is a legitimate part of the democratic system, regardless of whether it is carried out by individual citizens or companies, civil society organisations and other interest groups or firms working on behalf of third parties (public affairs professionals, think-tanks and lawyers).
2. Lobbyists can help bring important issues to the attention of the European institutions. In some cases, the Community offers financial support in order to ensure that views of certain interest groups are effectively voiced at European level (e.g. consumer interests, disabled citizens, environmental interests etc.). (Green Paper on European Transparency Initiative COM2006xx)

The least controlled part of the outside input into the EU policy process is hence legitimized by the Commission, and is supposed to be subject to further scrutiny in order to gain further legitimacy to the process. Then what about the output? This chapter will discuss input and

output legitimacy and the connection between them from two different theoretical perspectives, and also connect it to the issue of the Common Good.

In terms of democracy, the most commonly expressed concern about lobbying is about equality and justice - the problem of differences among the lobbyists, which might limit access to the legislators. Does everyone get the same access to legislators? Do everyone affected by a decision/law amendment have the ability to lobby? The question of differences in resources between NGOs and business is a common one in lobbyist literature (Greenwood-Thomas 1998, Aspinwall-Greenwood 1998, Naurin 2001, Hermanson et al 1999). Measures are being taken in the EU to try to balance these differences. For instance, as the Commission quote states above some NGOs get financial aid from the Commission in order to afford to lobby. There are still many questions to be answered on this issue, but there has not been much political science research on how to solve it, neither normative nor empirical. Daniel Naurin argues that this lack of research is regrettable since it would help legislators balance the system of interest groups (Naurin 2001:83). This supposed lack of equality in lobby relations in the European Union, poses a problem to both pluralist and deliberative democratic theorists. It should be noted that these theories deal with interest groups and none of them make a distinction between lobbyism and for instance corporatism, which is a formalized type of group influence.

2.1 ...according to deliberative democratic theory

Deliberative democrats often assume that the drive behind political action should be the Common Good or the general interest (Naurin 2004:23). The deliberative perspective is to a substantial extent influenced by Jurgen Habermas idea about democracy as "the transformation rather than simply the aggregation of preferences" (Elster 1998:1). This transformation takes place in a good conversation or discussion, which is the ideal communicative form. Deliberative democracy may also be called "democracy of discussion" (Premfors-Roth 2004:7). In a good discussion, participants do not only care for giving their own arguments, but listen to each others' arguments and might change their views accordingly. "Practical discourse", which is Habermas name for his deliberative model, helps the participants of the discussion to overcome their own egocentric perspectives (Habermas

1990:135,160). Iris Marion Young, another prominent deliberative theorist, theorizes a democratic discussion and decision-making as “a process in which differentiated social groups should attend to the particular situation of others and be willing to work out just solutions to their conflicts and collective problems from across their situated positions” (Young 2000:7). The rationale for the deliberative discussion as a means for coming to the most democratic decision is according to Young that “participants arrive at a decision not by determining what preferences have greatest numerical support, but by determining which proposals the collective agrees are supported by the best reasons” (2000:23). Hence, *arguments* are central in the deliberative democratic theory.

Young specifically asserts the importance of justice in a democracy. Discussions can be deliberative but still diverge from the deliberative democratic ideal if not all affected parties are represented. Not only should they be represented, but on equal conditions, i.e. having the same rights and possibilities to participate. She claims that under ideal circumstances the deliberative democratic model of decision-making will generate the most just policies (Young 2000: 17, 23, 29f).

Deliberative theorists put great emphasis on transparency in decision-making, in our case, lobbying. The reason for this is that they find that there are arguments which are light sensitive. Public discussion therefore serves as a self-censoring filter which forces participants to argue instead of bargaining. Bad arguments with no public support are automatically sorted out since they cannot be expressed publicly (Elster 1994:152 in Lund 1999:16f). A public and deliberative discussion thus helps to avoid self-interested arguments and is more likely to generate decisions which appeals to the Common Good. *According to this perspective, the deliberative democratic ideal should bring both input and output legitimacy. Input legitimacy through a deliberative and open discussion would ensure output legitimacy through just decisions aimed at the Common Good, not separate interests.*

2.2 ...according to pluralist democratic theory

Pluralists find competing interest groups to be the most important manifestation of democracy, that the people can organise and make themselves heard in the political system. According to early pluralists power is arranged in a non-hierarchic and competitive way (Held

1987:227). The most important prerequisite for a pluralistic democratic system is that there are competing interests. In his famous study *Who governs? Democracy and Power in an American City* (1961), Robert Dahl investigated the political competition in an American city. He found that power was not concentrated to a few hands but dispersed in society, which meant that political decisions were more legitimate than previous theories had claimed (Dahl 1961). Classic pluralism has in later years come to be called naïve pluralism after sharp criticism. Marxists claimed that early pluralists did not consider the effect of economic inequality on competition and thereby democracy. Bachrach & Baratz and Lukes claimed that the pluralist definition of power was too flat, since their definitions of power consisted of two and three dimensions of democracy, respectively (Held 1987:238ff).

In later works, (ex 1982, 1985) Dahl has absorbed much of this criticism and improvements of the theory have given rise to neo-pluralism (Held 1987:223, 242). In these later works Dahl has dwelled on the problems that a free organisational system can give rise to, and called it the “dilemma of pluralist democracy” (1982). This dilemma has dominated the modern pluralism literature (Naurin 2001:44). In *A Preface to Economic Democracy* (1985) Dahl points out inequality and great differences between citizens in terms of money, knowledge, information and possibilities to reach politicians. This inequality stems from the modern system for ownership and control of private enterprises. These differences contribute to making a pronounced inequality among citizens in terms of ability and possibility to participate as political equals in the governing of the state (Dahl 1985:55). Just as in deliberative democratic theory, equality has an important role to play in a pluralist democratic system.

According to Dahl “In practically every analysis of the common good, justice is one of the central values” (1999:332). A good citizen does not only look to his own interests but is one who in his public task strives for the common good of the society (Dahl 1999:24). In his book *Democracy and its Critics*, Dahl leads a discussion about the Common Good, justice and its effect on input and outcome legitimacy in a democratic system. Dahl argues that even a just procedure can have unjust outcomes. Consequently, he argues, there are two different fundamental complaints about the democratic process: The first is that the democratic process can cause harm, those who argue for this scenario often claim that a democratic process has to be limited, so as not to cause harm. The second complaint is that a democratic process might not achieve the common good, that today’s lack of civic spirit makes it more gainful for specific interests than the common good (1999:182).

There is of course truth in that democratic decisions can cause harm to people. It is practically impossible that a political decision is gainful for exactly everyone. What is important is that the decision is made collectively (Dahl 1999:185). *The suggestion that result-oriented politics are more important than the formal process might be understood as a mere paraphrase of guardianship.* According to Dahl, justice is connected to both procedure and substance: “When we motivate the democratic procedure we might say that under certain circumstances the procedure itself is a form of justice: it is a just procedure for collective decisions” (1999:183). The second complaint, that democratic decisions might not achieve the common good, has a more complex answer, if one at all. As stated above the perceptions and preferences when it comes to the common good might be very different. A greater community, like the EU, may consist of smaller communities, whose common interests are not always the same. Dahl refers to Rousseau when he claims that “the best of the smaller community might differ from the best of the greater community. But in the same way as different things demands different principles of justice, so can also different political communities, united in a more extensive political community, make it legitimate with different concretizations of the common best” (Dahl 1999:334). In the light of this view, Dahl finds it misdirected to search for the common best only in collective decisions, since it is almost impossible to ascertain what constitutes the common good. One should instead acknowledge the value of the decision-making arrangements, i.e. the procedure (Dahl 1999:336).

According to Uhrwing, output legitimacy is less important in the pluralist school. It is the rules of the game which decides if a political system is legitimate or not, not the result. The rationale is that as long as the prerequisites are equal to all, everyone has to fall in line with the result of it, i.e. the public policies (Uhrwing 1998:212). We can then conclude that *according to the pluralist perspective, one should not waste time trying to define what constitutes the Common Good, since it is subjective, but make sure that the process for achieving it is legitimate. Legitimate input conditions will create legitimate results which will correspond to the Common Good.*

3 POLICY-FORMULATION AND DECISION-MAKING FOR THE COMMON GOOD IN THE EU

The Treaties are generally seen as key determinants of EU policy (Nugent 1999:319). When one scans the consolidated versions (1997) of the Treaty establishing the European Community and the Maastricht Treaty for the words Common Good, Public Good, General Interest or Public Interest the catch is very small. The only place to find it is when the rules for the civil servants of the Commission, Economic and Social Committee, Committee of the Regions and the European Court of auditors are established. For instance: ‘The members of the Commission shall, in the *general interest* of the Community, be completely independent in the performance of their duties’ (Article 9 of Treaty of the European Union). Otherwise there is no reference to the common good of the peoples of the European Union. However, article two of the Treaty Establishing the European Community states the aims of the Community:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States. (Article 2 of the Treaty Establishing the European Community)

In my view, this task constitutes what the member states agreed upon to be in the common interest of all citizens of the European Union. Their Common Good is to say the least, multifaceted. The task is certainly not a small one, and to coordinate these policy areas is a significant part of what goes on in Brussels every day. The preamble to the Maastricht Treaty contains a very important passage in terms of coordination:

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced

cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

I find it important to stress the last piece of this passage, *to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields*. On the REACH initiative, this proved to be a very difficult task for the officials of the European Union. The problem is how to promote economic and social progress for the people *parallel* to environmental protection.

3.1 The Commission and the Directorates General

The most illustrative view of these parallel aims is to look at the Commission Directorates General (DGs). Each DG is responsible for one policy area and is headed by a Director-General who is answerable to one of the commissioners (Nugent 2001:139). The DGs are separate units, but supposedly with the same aim, to promote the Common Good of EU citizens. However, given their different policy areas, the DGs have different aims. The Environment DG's Mission Statement is "Protecting, preserving and improving the environment for present and future generations, and promoting sustainable development" (www.environment2004.org/files/Env2004_BushRPT.pdf, 060520), whereas "The goal of the Enterprise Directorate-General is to help create an environment in which firms can thrive, thus creating productivity growth and the jobs and wealth necessary to achieve the objectives set by the European Council in Lisbon in March 2000" (europa.eu.int/comm/dgs/enterprise/activit_goals_en.htm 060520).

Nugent argues that "the dispersal of staff into subdivisions inevitably produces a degree of compartmentalisation and fragmentation" (1999:159). The DGs devise and draft legislative proposals. Since all DGs have different aims it seems as if the proposal will look different depending on which DG is responsible for writing it. It will of course be subject to extensive consultations before it is put on the Commission agenda in order to be approved. This consultation involves all stakeholders i.e. all who will be affected by the policy, ministries in the member states and NGOs. The draft proposal will also be discussed in other Commission departments and the Legal Service and the Secretariat-General will check it before it is considered ready for voting about its adoption. If at least 13 of the 25 commissioners give their approval it is considered adopted by the Commission and will be sent to the European

Parliament and Council for consideration on their behalf (Europa webpage, About the Commission 060515). Even though legislative documents need to go through this extensive consultation, the differences in aims make it inevitable that proposals will look different depending on in which DG they are written.

In Brussels, there seem to be an unspoken consensus that there are tensions between the Commission's Enterprise and Environment Directorates. A representative for an Environment NGO in Brussels claimed that DG Environment can make very ambitious propositions but that they are usually torn apart when they reach DG Industry and Enterprise. Stevens has identified three sorts of *inter-service conflict* (Stevens 2000:196-205 in Nugent 2001). One is described as “territorial conflict for influence and control over and within policy areas” (Nugent 2001:159). So called “turf wars” have occurred between DGs when Commission staff have wished to defend their existing responsibilities when new issues come onto the EU agenda. Interestingly, another common struggle has been on environmental policy, where for instance DG Internal Market or DG Taxation and Customs Union, have taken too strong interest in proposals from DG Environment (Nugent 2001:159). A fact that makes relations between these DGs even more complex is that there have to be business and environment impact assessments for every legislative proposal which might have implications on this area (Nugent 2001:249).

The second sort of conflict is ideological. ‘Although virtually all Commission staff support “the European Project”, there is no consensus about just what this means in policy terms. Significantly different views exist in parts of the services about what the Commission should be doing and how it should be doing it (Nugent 2001:159)’. The third type of conflict is over resources, including “prioritizing policy objectives and enhancing institutional standing” (Nugent 2001:160). *These conflicts show that the priorities of the DGs in terms of the Common Good, might be very different.*

3.2 The European Parliament

When the document arrives at the desk of the European Parliament, the speaker will choose a parliamentary committee responsible for handling the proposal. It is possible that other committees are appointed to give their say of the proposal to the committee in charge, as was the case with REACH. Among its members, the committee appoints one Member of the European Parliament (MEP) rapporteur for the proposal. As rapporteur the MEP is

responsible for investigating and writing a report on the issue (EU-upplysningen.se). This MEP will probably be the most targeted by lobbyists during the period before the Parliament is to vote, since his or her report will be influential to all MEPs before voting on the issue. The Members of the European Parliaments are elected by popular vote, as a member of national parties. Most of the MEPs are part of a parliamentary political group, such as Party of European Socialists (PES), European People's Party (EPP), European Liberal, Democratic and Reform Party (ELDR), or the Green Group. Even within the groups there are often inherent inconsistencies (Nugent 1999: 221, 225f). Again, it is important where the proposal ends up, by which MEP and in what committee he or she is in, for how the final report will look like. When the committee has passed the report it is ready for voting in plenary session. Here the Parliament can either sanction the proposal with amendments or without amendments, or reject the proposal. Irrespective of the result, the legislative proposal is forwarded to the Council of Ministers (Nugent 1999:208).

3.3 The European Council

The 25 Member States, ten new, fifteen old, are indeed very heterogeneous. All member states have different priorities, the ministers' perceptions of the Common Good are likely to be very influenced by the national culture or the needs of their nations. For instance, when it comes to environment, the Scandinavian countries have always been in the forefront, whereas industry has high importance in Germany, not at least today, when the German economy is on a down-period. Nugent argues that "The considerable national and political differences that exist in the EU make it difficult to develop coordinated and coherent policies based on shared principles and agreed objectives very difficult" (1999:348).

Peterson and Bomberg argue that 'EU-decision-making almost never produces "winner take all" outcomes, and they become increasingly unlikely each time the EU enlarges' (1999:266). In the light of all Council presidencies compromising national interests in order to have a deal at all, is in their view indicative of the fact that 'the EU is a highly consensual system, to the extent that most policy outcomes "are second choice for all participants (Marks et al 1996a:372)" (Peterson and Bomberg 1999:266) '.

3.4 Conclusions

This brief overview of the policy-making procedure and the European institutions, shows that *not only does the EU and its institutions have a multifaceted perception of the Common Good, but also a very heterogeneous group of decision-makers, with different priorities in terms of the Common Good.* Who gets what assignment can be important, because all have different priorities.

As you will see in the next chapter, important changes took place within the EU during the period in which the REACH initiative has been in motion. The first is the fact that there has been a change of Commission, from Prodi to Barroso, which had important implications. The second is the decision in Council that competitiveness must take centre stage in the EU, which led to the involvement of the Competitiveness Council in the REACH process. *The perception of the Common Good is hence not only a matter of which persons are involved in the process, but also a matter of outer circumstances.* The above example of Germany's down-period in the national economy is illustrative. It will inevitably lead German ministers' priorities towards industry-friendly legislation, because it is the most pressing need at the time being. Even though reports of environmental degradation keep coming, if your country is fighting high unemployment rates and threatening your social security system, being elected by popular vote will limit politicians' scope of action, or at least put them in a moral dilemma. Consequently, as in every person's life, priorities vary with circumstances. So will the case inevitably be in the EUs priorities for the Common Good. I will return to this issue and further develop it in terms of long-term and short term political goals in the finalizing discussion.

4 INPUT AND OUTCOME OF THE REACH INITIATIVE

The REACH initiative - Registration, Evaluation and Authorisation of Chemicals, was adopted by the European Commission on 29 October 2003 (COM (2003) 644). The initiative proposed that enterprises that manufacture or import more than one tonne of a chemical substance per year would be required to register it in a central database. Another important part of the proposal was to reverse the burden of proof for industry to demonstrate the safety of a product. Industry would be required to test chemicals in order to provide crucial safety information on several thousands of chemicals, and to register 30,000 substances with a new agency. The most dangerous chemicals would according to the 'substitution principle' be required be dropped and replaced with safer alternatives when these are available The Commission states that:

'The aims of the proposed new Regulation are to improve the protection of human health and the environment while maintaining the competitiveness and enhancing the innovative capability of the EU chemicals industry. REACH would furthermore give greater responsibility to industry to manage the risks from chemicals and to provide safety information on the substances. This information would be passed down the chain of production' (DG Industry and Enterprise REACH overview http://ec.europa.eu/enterprise/reach/index_en.htm 060515).

The regulations currently in place are based on "risk assessment" which only allows regulators to take action after long periods of evaluation of a substance, since regulation is only possible if there is sufficient information available on the product. On a background of alarming reports about tests showing chemicals in breast milk and in the blood of polar bears in Arctic regions the EU Council of Ministers decided in April 1998 to review the EU chemical policy. The European Commission was asked to draft a proposal which should be aimed at better protect the human health and the environment. An evaluation undertaken by the Commission confirmed that the existing policy was insufficient and hence a failure to protect human health and environment. The evaluation concluded that a new chemical policy should be worked out, that reflects the precautionary and sustainability principles. I will now give a brief overview of the proceedings which have taken place during the time when the

REACH initiative has been in motion. Of importance to note is that the REACH initiative is handled under the co-decision procedure, where the European Parliament and the Council shares the legislative power.

4.1 REACH Chronology

This overview is compiled by using a chronology made by Corporate Europe Observatory (<http://www.corporateeurope.org/lobbycracy/BulldozingREACH.html>), and adding facts from the Europa website and other sources, which are marked in the text

12 February 2001: the Commission adopts the White Paper on a Strategy for a Future Chemicals Policy

7 June 2001: The Council adopts the conclusions of the White Paper, but with request for amendments to make the text stronger

15 November 2001: The European Parliament approves its resolution on the White Paper, including amendments to further improve protection of the environment and human health

March 2003: The European Council decides that competitiveness must take centre stage in the EU and requests that the new Competitiveness Council gets involved in the REACH process

May 2003: The Commission presents the Draft Regulation and its strategy for consulting stakeholders and public

15 May - 10 July 2003: Consultation Period, including internet consultations.

29 October 2003: the European Commission presents the final regulatory proposal. “The proposal has been drafted in close consultation with all interested parties, including an [Internet consultation](#). This has allowed the Commission to propose a streamlined and cost-effective system” (http://ec.europa.eu/enterprise/reach/overview_en.htm 060420). The Proposal is sent to the Parliament and Council for consideration.

October 2003 to April 2005: Impact assessment studies

November 2004: The Barosso Commission takes office

2 February 2005: Commission President Barosso unveils his economic blueprint, where the Lisbon competitiveness strategy was the main priority. Barosso said that he detects a 'new sense of urgency' about the need to deliver economic reforms. (*Financial Times*, February 2005-02-25). He later explained that "it is as if I have three children - the economy, our social agenda and the environment. Like any modern father, if one of my children is sick, I am ready to drop everything and focus on him until he is back to health ... but it does not mean I love the others any less" (*EU-observer* 2005-02-25).

April 2005: A three-year old row over the socio-economic impacts of REACH is ended with the publication of a further [impact assessment study](#). The study broadly confirmed the Commission's initial view that it would not ruin the European chemical industry. However, it did not clear up all doubts concerning Small and Medium Enterprises and downstream users (<http://www.euractiv.com/en/environment/chemicals-policy-review-reach/article-117452> EurActiv, [28 April 2005](#), 060520).

April – November 2005: Consultation period for European Parliament and European Council

17 November 2005: The European Parliament completes its first reading of the regulatory proposal with several amendments. The work in the Parliament was led by the Committee on the Environment, Public Health & Food Safety, with assistance of nine other parliamentary committees (Europa webpage-European Commission-Environment-Chemicals-REACH). The controversial substitution principle was backed by Parliament, as well as the reversal of burden of proof to manufacturing companies. The preliminary amendments ([\(2005\) 0434](#) and [\(2005\) 0435](#)) were a political agreement struck a week before between the three main political groups, the centre-right EPP-ED, the socialists (PES) and the liberals (ALDE) (<http://www.euractiv.com/en/environment/parliament-backs-safety-assessment-chemicals/article-149038> EurActiv, 8 November 2005, 060503). The amendments include exemptions of two-thirds of the chemicals from the strictest testing requirements. Chemicals produced or imported in smaller quantities (1-10 tonnes per year) should be subject to simpler registration, in order to meet a strong demand from industrial producers. Registration for substances which have been in circulation before 1981 and in such small quantities will only be required for high concern chemicals and only basic safety data will be required. The cross-party compromise included an option for companies to make chemicals imported or produced in larger quantities (10-100 tonnes per year) exempted from safety tests. Exemptions, so called waivers, would be granted by the new European chemicals agency, based on satisfactory risk assessment and justification by the companies. The criteria for granting waivers will be defined later. (www.euractiv.com/en/environment/parliament-backs-safety-assessment-chemicals/article-149038 EurActiv 17 November 2005, 060504).

13 December 2005: Political agreement for a common position in the Competitiveness Council, ([REACH, Council text](#) and [Directive 67/548/EEC, Council text](#)). The UK Presidency had convened an extraordinary meeting of the Competitiveness Council to try and find a common position on REACH regulation. The agreement included support for the substitution principle, even though it had been one of the most controversial provisions of the

REACH initiative, and industry lobby efforts aggressive. Small and Medium Enterprises (SMEs) would be able to be excluded from registration tax if on certain conditions, and chemicals could be exempted from registrations if they were used for Research and Development purposes. Ministers also agreed that the length of time limitations to authorizations granted for the most dangerous substances - those which cannot be replaced under the stated conditions - should be decided on a case by case basis.

(<http://www.euractiv.com/en/environment/ministers-soft-substitution-rules-dangerous-chemicals/article-150858>, EurActiv 24 May 2006, 060504)

May 2006: The formal Common Position of the Council should be approved under the Austrian Presidency. This will start a second reading of the proposal by the European Parliament.

Current status: “After a final adoption of the REACH legislation, which is expected by the end of 2006, it can be estimated that the entry into force of the REACH-legislation will be around April 2007. The new European Chemicals Agency has to be fully operational 12 months after entry into force of the legislation”

(http://ec.europa.eu/enterprise/reach/overview_en.htm 060420).

4.2 Conclusion

The above chronology is simplified to a great extent. REACH being a very complex piece of legislation, the formal documents on REACH from the Commission, Parliament and Council are virtually impossible to understand for a European citizen with no expertise in the chemical substances area. What is clear however is that REACH is a very good example of a piece of legislation which has both environmental and economic consequences, and hence pose great problems for legislators in deciding which of the aims for the Common Good to prioritize. In the outset the legislation was aimed at testing, regulating, substituting and banning dangerous chemicals because of the reports of what damage unregulated chemicals can cause. The priority was improving human health and the environment. It should be made clear however, that one of the objectives stated in the first official document on the new chemicals legislation, the White Paper, was to maintain and enhance the competitiveness of the EU chemicals industry. There has in other words never been any neglect of the impact such a piece of legislation would have on industry. Nevertheless, *the reason for setting up the legislation was to protect human health and the environment.* But as the proposal came

further in the policy process, the more important became the impact on industry and competitiveness.

As I concluded in the previous chapter, *the perception of the Common Good is both a matter of which persons are involved in the process, and of outer circumstances*. The most striking evidence of this in the REACH chronology is the change of Commission and the change of priorities to the Lisbon Agenda. Barosso himself said that he had detected a 'new sense of urgency' to deliver economic reforms, and that he had to focus on this and drop the social agenda and the environment until the crisis was over. Perhaps it was this urgency that made the Council change its priorities and got the Competitiveness Council involved. *A change of circumstances led to a change in priorities*.

The most extensive amendments were made by the European Parliament. As described above, the European Parliament is a heterogeneous institution, consisting of different Euro-groups with different priorities and sometimes internal differences. It is obvious that this collection of MEPs will have very different views on the REACH initiative. It is therefore not surprising that the first reading amendments were a deal between the main groups. The extent of the amendments, however, were more surprising, and floods of criticism came the Parliaments way, especially from environment and consumers organisations, who accused industry lobbies of having "watered down the law" (Financial times 2006-05-04). The fact that the REACH initiative caused the greatest lobbying surge in the Commission's history is probably true for the Parliament as well. The fact that the amendments were beneficial to industry does of course bring up the question of equality and justice in terms of resources and possibilities to lobby, between industry and environment and consumer organisations. But according to German MEP Hartmut Nassauer, member of Parliament's internal market committee, it is important to hear both sides:

"As rapporteur on REACH, it's important for me to check and re-check my position constantly. Industry has been particularly interested in meeting me because I have been working in the internal market committee, but everyone who wants to talk to me will get a date, assuming that time allows. For example, this morning (15 September) I have met Greenpeace, who of course do not have the same position as me. I have also heard from WWF who have interesting proposals to make. Hearing from NGOs allows me to weigh up my position alongside what the industry is saying" (European Voice 22-28 September 2005:26).

UK Liberal Democrat MEP Chris Davies, member of Parliament's environment, public health and food safety committee, is of the same opinion: "I want to hear opposing views from non-governmental organizations, industry, or whoever is involved" (European Voice 22-28 September 2005:26). There are no guarantees that all MEPs reason like this, but assuming that they do, the *access* to MEPs was not unequal during the REACH consultation period. According to both deliberative and pluralist democratic theory, the lobbying part of the input

would hence be seen as legitimate. And since the initiative has gone through a supposedly democratic process before being subject to consultations, the input as a whole could be viewed as legitimate. Consequently, the output, the amendments, would also be legitimate. Even though they include exemptions of two-thirds of the chemicals, according to these theories, the amendments should correspond to the Common Good of the citizens of the EU. And by all means, the implications of looser regulations correspond to some of the aims in the Treaty establishing the European Community: “to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection”. *What has happened is that there has been a change in the balance of priorities, from a legislative proposal that had high environmental and public health priorities, to a proposal that balances this priority with the aim for other priorities. It might not seem morally right to down-prioritize human health for higher employment rates, but the EUs multifaceted aim for Common Good, the complexity and heterogeneity of the Parliament, the input which they have been subject to and the current circumstances have led to this result. And according to our theoretical framework, the amendments are legitimate.*

5 FINAL DISCUSSION

In the absence of a centre of power with the authority and internal coherence to take an overall view of EU requirements and impose an ordered pattern, policies have tended to be the outcome of complex and laboured interactions, where different, and often contrasting, requirements, preferences, reservations, and fears have all played a part. As a result, the EU's overall policy picture is inevitably patchy and rather ragged (Nugent 1999:349)”

The “patchy and rather ragged” picture applies well to the policy-process and outcome of the REACH initiative so far, according to me. The heterogeneity of the whole system makes it virtually impossible to do any “home runs” as Peterson and Bomberg puts it (1999: 266). The proposal will come out of the policy process “patched and ragged” because it must be handled by every part of the EU system. In fact, this is part of the democratic procedure, it has to go through checks and balances before it can be adopted.

Can then this rather aggressive type of procedure be said to correspond to the aim for Common Good for EU citizens? I must say yes, because if it was possible for a single member state or Euro-group or even DG for that matter, to score a home run, the democratic system would probably lack security mechanisms and hence credibility. Even the lobby surge which the Commission and the Parliament have been subject to has legitimacy in terms of democracy, according to Commission and our theoretical framework. The rationale is that everyone should be heard in the process, and the EU is supposedly putting efforts in as to make the prerequisites equal. Peterson and Bomberg argue that “the process is important and sometimes even dominant: EU decision-making socialises actors to compromise in order to reach consensus. It is tempting to argue that process matters more than outcome at the systemic level. In other words, the content of policies may be less important than the process by which they are agreed (1999:267)”.

Then what about the output, can the legislative REACH proposal as it looks today be said to correspond to the aim of the Common Good for EU citizens? As I concluded above, the implications of looser chemical regulations, correspond to some of the aims in the Treaty

establishing the European Community, which the Member States have agreed on to be in the common interest of European Citizens. And according to theory, since the procedure has been legitimate, so must the result be. As we concluded above, there has been a change in priorities in terms of the Common Good. This balance of priority is what came out of the legislative machine, so far, and we can only accept it. A recent report written by the independent Institute for European Environmental Policy about the implementation of the objectives of the EU's 6th environment action programme, confirms this change in priorities. It states that "state of implementation of the Programme at mid-term does not indicate that most of these objectives are likely to be effectively fulfilled before 2012". Under the influence of the EU's Lisbon agenda for growth and jobs, the "evolution of the policy debate ... tends to undermine objectives and principles that were agreed upon only four years ago" (EurActiv 060518: Report: environmental policy has been "politically downgraded" 060518).

What is the rationale guiding a legislation process on a piece of legislation which has implications for industry, the economy and the environment?

The EU has a very multifaceted aim for the Common Good. Industry, the economy and the environment are all as Barosso put it, like children, and if one is ill, priorities will lie with that child until it is well again. I use Barosso's metaphor because I think it is illustrative of the importance of circumstances in EU policy-process. If the economy is in a down-period, it will be prioritized. Charles Lindblom, a neo-pluralist contemporary with Dahl, argues that the capitalistic system limits legislators' possibilities to satisfy all needs of interest groups, since the state has to answer the demand of economic growth. Legislators must act in favour of a good climate for companies, in order to stay in power and to keep the economy going (Lindblom 1977). This is probably true for the EU as well. To conclude, the rationale guiding this kind of legislation must be

- * A legitimate democratic process, where all parts of the EU political system, stakeholders and civil society will have the possibility to have their voice heard
- * Environmental impact assessments
- * Business impact assessments
- * Assessment of circumstances. For instance if the economy is in a down-period, it will have implications for the priorities between the economy and the environment.

I argue that the current circumstances which the European Union finds itself in, has created a trend in EU politics which prioritizes economic growth before care for the environment. This is also one of the conclusions from my visit to Brussels, judging from the people I met and the observations I made. As stated above, this trend does not exclude the possibility that the EU is working for the Common Good of the EU citizens, it is trying to save and create job opportunities and through economic means work for the well-being of the EU citizens. But there is a great risk in this, since it in my view is short term Common Good as opposed to long term. Might there be the same problem in the EU as in nation states that officials try to reach quick results to improve their image? In face of the current Euro-scepticism and increasing unemployment rates and staggering economies across Europe, there might actually be some kind of truth in such a statement. I would like to conclude this essay of the European Union's aim for the Common Good of the European Citizens with the words of Dahl and Rousseau.

‘A community big enough for its political life to be of crucial meaning to its members will probably include a number of communities and the members will – as Rousseau feared - have contradictory meanings about what constitutes the Common Good and which roads that lead there [author's translation] (Dahl 1999:330)’.

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