

Knowledge is power

The role of Dutch government experts in REACH

EVA/REACH substudy
“Experts”

Final report

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Summary

Over the past 10 years the European Union has thoroughly reviewed its policy on chemical substances. This process resulted in the extensive Regulation on the Registration, Evaluation and Authorisation of Chemical Substances, the “REACH Regulation”. This regulation came into force on 1 June 2007. The Dutch government played a very active role in the REACH dossier. On the basis of an extensive and comprehensive vision of European substances policy, the Dutch government sought to represent Dutch interests through various strategies. This study offers an evaluation of the knowledge strategy. The aim of the study is to provide an answer to the question as to whether the Netherlands has been able, on the basis of its considerable expertise in the area of chemical substances and chemical substances legislation, to exert a stronger influence on the outcomes of REACH than could be expected on the basis of the country's formal power, as measured its number of votes in the Council. This also raises the issue whether the targeted use of expertise is an effective strategy to help determine outcomes.

To answer this question, we clarify the mechanisms of – and the preconditions for – an effective knowledge strategy. Then we consider a number of general characteristics of the European Union and the political system of the Netherlands, in order to ask whether these characteristics promote or frustrate a knowledge strategy. Specifically with regard to European substances policy, we then investigate on the one hand to what extent the Dutch government actually had expertise at its disposal within the Ministry of Housing, Spatial Planning and the Environment and associated research institutes, and on the other hand to what extent experts from the Ministry and the research institutes had access to relevant forums and what contribution they made in these. To that end we divided the policy process into a number of phases, ranging from setting the agenda on substances policy to preparing the implementation of REACH.

On the basis of the scientific literature, official policy documents, internal documents and a series of interviews, the study comes to the conclusion that, thanks to the Dutch knowledge strategy, the influence of the Netherlands on REACH was greater than could be expected on the basis of the country's formal power (3% of the votes in the Council). More specifically, we came to the following conclusions:

- The Netherlands has considerable expertise with regard to substances policy.
- Experts from the Ministry of Housing, Spatial Planning and the Environment made a major contribution to the reappearance of substances policy on the EU agenda in the late 1990s.
- An expert seconded part-time from the Ministry to the European Commission influenced the Commission proposal on REACH as well as the Dutch response to the interim product of the proposal (internet consultation). Experts from the Ministry and the National Institute for Public Health and the Environment (RIVM) had an indirect influence on the Commission proposal, in that the annexes in the proposal were largely based on documents prepared by the Ministry and the RIVM in the context of the old European substances policy.
- During the Netherlands' Council presidency a Ministry expert made a major contribution to securing progress on the European dossier and to ensuring that the whole remained internally consistent.

- In the REACH Implementation Projects (RIPs) experts from the RIVM made a contribution to the guidelines for businesses and national competent authorities on how to comply with the REACH obligations.
- The effectiveness of the knowledge strategy benefited from the embedding of experts in the Dutch government's strategy, and in particular from the good coordination between political experts at the Ministry, subject experts at the Ministry and experts from the research institutes.

The study concludes with the following lessons:

- Political characteristics of the European Union promote the success of a knowledge strategy.
- The Netherlands had (and has) high-quality policy-relevant expertise.
- Early involvement of national experts in European dossiers is important.
- Coalition building should be part of a knowledge strategy.
- The success of a knowledge strategy depends in part on the nature of the issue and the content of national preferences.

Chapter 1 Introduction

Background

During the past 10 years the European Union has thoroughly reviewed its policy on chemical substances.¹ This process resulted in the extensive Regulation on the Registration, Evaluation and Authorisation of Chemical Substances, the “REACH Regulation”. Replacing around 80 directives and regulations in the substances sphere, REACH imposes a number of obligations on businesses that produce, import or use chemical substances. They have to collect information on the properties of substances, assess the risks associated with their use, and take the necessary measures to reduce any risks. Businesses have to *register* this information with the authorities. The EU member states are responsible for the *evaluation* of the registration records. They also have the right to propose restrictions on the use of substances on the basis of risk assessments, although the final decision rests with the European Commission. Potentially very hazardous substances are subject to more stringent controls. These include substances that can cause cancer (carcinogenic) or that endanger fertility (reprotoxic). These are covered by *authorisation*, a permit system in other words. Decisions are taken on the basis of a risk assessment and take account of socio-economic conditions.²

The REACH dossier is characterised by large size, a high degree of politicisation and great technical complexity. The REACH Regulation includes 141 articles and 17 substantial technical annexes, a total of 849 pages. Around 30,000 chemical substances are covered by the scheme, and it imposes obligations on a very large number of businesses. The scheme covers not only the chemical industry, but also other links in the product chain, such as the paint industry, the soap and detergent industry and the engineering industry, to name but a few. The central tension within REACH is between a high level of protection for people and the environment versus the protection of economic interests. Given the size of the dossier and the intensity of the conflicting interests, the decision-making process was highly politicised. This was evident for instance from the fact that the heads of government of the three largest EU member states – at the time Tony Blair, Jacques Chirac and Gerhard Schröder – felt compelled to write an open letter to the European Commission warning against excessive costs for industry. The unprecedented number of amendments tabled during the first and second readings in the European Parliament also left no doubt that this was a politically highly charged issue.³

The technical aspect of the REACH dossier is reflected above all in the complexity of the assessments of the risks associated with chemical substances. In addition to weighing risk protection and economic costs, REACH involves balancing various risks, such as the risks to public health versus the risks to the environment, and short-term risks versus long-term risks (for instance the accumulation of substances in the environment and in the human body). Other key issues are: the extent to which a risk assessment can be restricted to information on substance properties (hazard

¹ With thanks to Evelien Alblas, Robin van Eechoud, Rianne de Graaf and Marleen Romeijn for their contributions to the completion of this rapport.

² See annex 1, “REACH in a nutshell”, in “Dutch substances policy in an international perspective: Memorandum on implementation of SOMS”, approved by the Cabinet on 23 April 2004, published by the Ministry of Housing, Spatial Planning and the Environment. The Hague, May 2004.

³ Some 1,039 amendments were proposed at the first reading (of which 430 were adopted), and 350 amendments were proposed at the second reading (137 adopted).

approach) without considering exposure to it; what test methods are appropriate to estimate the risks, which in turn depends partly on the quantities in which a substance is produced (for instance, model-based approaches on the basis of the chemical structure of substances, in vitro tests, animal tests with invertebrates or animal tests with vertebrates) (Bodar et al. 2002, Brickman et al. 1985, interviews with RIVM). Another important issue is how to deal with scientific uncertainty, in other words the extent to which the precautionary principle is applied (Silva and Jenkins-Smith 2007). These trade-off processes are ultimately also political choices, with potentially serious implications for the environment, citizens, consumers, employees and businesses.

The Dutch government played a very active role in the REACH dossier. Parallel to the launch of the review of European substances policy in the late 1990s, the Netherlands also committed itself to a renewal of national substances policy within the framework of the Strategy on Management of Substances (SOMS).⁴ As it became apparent that European substances policy would indeed be revised, the emphasis in SOMS began to shift from a programme for ideas, concepts and policy formation for the renewal of national policy towards a think tank for the preparation of Dutch interest representation in Brussels (Haverland 2008). On the basis of a broad and detailed vision on European substances policy, the Dutch government sought to represent Dutch interests through three strategies: the knowledge strategy, a strategy of open coalition building, and a realistic and pragmatic Council presidency during the crucial period in 2004 (Asselt et al. 2008).

In this study the knowledge strategy is the focus of attention. This study formed part of a comprehensive process evaluation of SOMS and REACH commissioned by the Ministry of Housing, Spatial Planning and the Environment. In addition to the role of experts, the author also investigated the role of industry (see Haverland 2008). The Clingendael Institute conducted a basic evaluation and also investigated the Dutch interdepartmental interactions (see van Keulen et al. 2008). Researchers from Maastricht University turned their attention to the relationships between the Dutch government with the Second Chamber, the First Chamber and the European Parliament on the one hand, and that between the government and the European Commission and the European Council on the other (see van Asselt et al. 2008). The interaction between the Dutch government and environmental movement was investigated by van Huut of Leiden University (van Huut 2008). Smulders of Tilburg University looked at the role of business impact studies in the context of the REACH process (Smulders 2008). The evaluation studies were conducted with the assistance of the Bureau KLB consultancy.

Objective and scope

The aim of the study is to provide an answer to the question as to whether the Netherlands was able, on the basis of its considerable expertise in the area of chemical substances and chemical substances legislation, to exert a stronger influence on the outcomes of REACH than could be expected on the basis of the country's formal power, as measured by its number of votes in the Council. This also

⁴ "Memorandum on the Strategy on Management of Substances", approved by the Cabinet on 16 March 2001, published by the Ministry of Housing, Spatial Planning and the Environment, April 2001. For a summary of the implementation of SOMS, see "Dutch substances policy in an international perspective: Memorandum on implementation of SOMS", approved by the Cabinet on 23 April 2004, published by the Ministry of Housing, Spatial Planning and the Environment. The Hague, May 2004.

raises the issue whether the targeted use of expertise is an effective strategy to help determine outcomes.

The central question is: *to what extent and in which way did the relatively extensive expertise within the Dutch government increase the Dutch influence on the outcomes of REACH, and what lessons follow from this?*

The term “knowledge strategy” refers to a coordinated use of expertise. This involves exchanges between expertise, policy and politics. Four categories of actors can be distinguished in this context:

1. politicians (ministers) and policy-making senior officials at the Ministry of Housing, Spatial Planning and the Environment (specifically the various directorates-general, DGs);
2. political experts at the ministries, whose expertise encompasses awareness of political conditions;
3. subject experts at the ministries, with detailed knowledge of the subject matter;
4. experts in research institutes, who provide the technical and scientific policy advice.

Where this study refers to “experts”, these are people in categories 3 and 4. The experts of category 3 fulfil a major bridging function between policy making and technical and scientific advice.

Where the study refers to the strategy of using experts, it should be borne in mind that the choice of which expert is used when, where and with which mandate is a political choice made in the first instance by political experts at the ministries (category 2) and the political leadership at the Ministry of Housing, Spatial Planning and the Environment (category 1).

Structure

The study calls for an evaluation of the effectiveness of the Dutch knowledge strategy in REACH.⁵ The evaluation is structured as follows.

Chapter 2 clarifies, on the basis of a literature study, the mechanisms of – and the preconditions for – an effective knowledge strategy. To this end, firstly, an ideal type distinction is made between “politicians” and “experts” when considering the sources of influence, the direction of influence and the difference between interaction among politicians (negotiation) and interaction among experts (deliberation). Secondly, a number of general characteristics of the European Union are examined in order to ask whether these characteristics promote or frustrate a knowledge strategy. And thirdly, the Dutch political system is examined for characteristics that may promote or frustrate a knowledge strategy.

⁵ A wide range of forces had an impact on the result of REACH: the 25 member states, the European Commission, the European Parliament, various sectors of industry, and various social groups and organisations. Moreover, the dossier was very large and technically complex. Given these factors, it is not possible within the scope of this study to identify the “net” effect of the Dutch knowledge strategy. In other words, it is not possible to demonstrate with sufficient plausibility how REACH would have looked without the Dutch knowledge strategy. For these reasons we have opted for an indirect means of measuring influence, consisting of the steps described here.

Chapter 3 considers the question as to what extent the Dutch government actually has expertise at its disposal within the Ministry of Housing, Spatial Planning and the Environment and associated research institutes in respect of chemical substances policy, and what reputation the experts and institutes in question have with other actors. This because expertise and reputation are after all major preconditions for the success of a knowledge strategy.

Chapter 4 examines to what extent the experts from the Ministry and the research institutes had access to relevant forums and how actively they participated in the discussions. It was also possible to identify a number of products written and revised by Dutch experts. To this end we divided the policy process into a number of phases. In addition to the eye-catching strategy phase (White Paper on Chemical Substances), policy formation phase (Commission proposal) and negotiations, the agenda setting phase is also considered. To explain the policy processes and to evaluate the influence of actors, it is not only important to look at the influencing efforts during these phases. Influence can already be exerted over which topic is put on the political agenda and which is not. In the context of this study, the question is therefore, who put European substances policy back on the agenda in the late 1990s? It is also important to incorporate the preparation for the implementation and the actual implementation of substances policy into the analysis. Precisely with regard to this phase, which in substances policy already unfolded parallel to the negotiations (because an EU regulation was at stake), expertise can play a significant role and a knowledge strategy can be successful.

Chapter 5 sets out the conclusions and the lessons for the future.

Method of data gathering

To answer the questions posed in this study, we have relied on the scientific literature, official policy documents and internal documents. In addition we conducted and taped 19 interviews with representatives of the Dutch government, the European Commission, Dutch research institutes and Dutch industry directly involved in the REACH process.⁶

Chapter 2 Experts and European policy

In this chapter we will, on the basis of a literature study, first further refine the differences between the categories, by making a ideal type distinction between “politicians” (or political actors) and “experts” in respect of the sources of influence, the direction of influence and the difference between interaction among politicians (negotiation) and interaction among experts (deliberation). The ideal types mark two extremes of a spectrum. In the empirical world they rarely occur in a “pure” form. Thus the interactions of politicians can sometimes be typified as deliberations, and negotiations can also take place among experts. The ideal types mark the matrix within which each specific actor operates. However, it is true to say that actors of category 1 are generally closest to the end point “politics”, and actors of category 4

⁶ See annex 1 for a list of organisations to which the respondents belong.

are closest to “expertise”.⁷ Here we will also consider an inherent tension with regard to a national expert strategy.

In this chapter we also formulate a number of expectations with regard to the “political” logic and the “expert” logic, bearing in mind the specific framework conditions for the EU as a political system, and we also consider characteristics of the Dutch political system that may promote or frustrate a expert strategy.

Experts and policy

Source of influence - knowledge as power

The potential influence of experts is based on their technical knowledge. It is because of their technical knowledge that experts gain authority with political actors (Haas 1992). From this it follows that the greater the experts’ technical knowledge and/or the better their reputation with other experts and political actors, the greater their potential influence on policy outcomes.

Influence is also greater the more policymakers are dependent on expertise. This is the case above all when the preferences of policymakers are difficult to define because of imperfect, complex or ambiguous information about the nature of the problem, the costs and benefits of policy options and their implications for other goals. Political policymakers look for information that enables them to make choices, and experts can provide information that excludes certain policy options and reinforces others (Haas 1992).

The distance between experts and the political decision makers also plays a role. The shorter this distance (i.e. the easier the access to political players or the political decision-making level), the greater the potential influence of experts (Haas 1992).

Direction of influence: experts versus political actors

Experts differ from political actors not only by their level of technical knowledge. The assumption is that experts and politicians are spurred by different motives. Experts primarily have a policy motivation (“policy seeking”). They aim for policies that are based on the most up-to-date technical facilities and scientific knowledge, that is, knowledge based on scientific principles and scientific methods of data generation and data analysis. Politicians have an interest not only in tackling social problems through policy measures (“policy seeking”), but also in gaining as many votes as possible at the next election (“vote seeking”) and remaining in power (“office seeking”). For them, policy is therefore also a means of pleasing voters and/or existing or potential coalition partners (Mueller and Strom 1999).

Decision making by experts: deliberation instead of negotiation

The partly different motivations of politicians and experts also have implications for the means of interaction and decision making. Negotiation, a form of interaction in which a compromise is sought on the basis of fixed preferences, can make way for deliberation, a form of interaction in which substantive scientific arguments play a more prominent role and the preferences of experts can change through learning processes in the course of meetings (Haas 1992, Neyer 2006).

National expert strategy?

⁷ For the sake of completeness it should be said that the most “politically” oriented actors are the elected members of parliament, and the most “expertise” oriented actors are academic researchers. Both categories fall outside the scope of this study, however.

The assumption that experts and political actors are spurred by different motivations is very important for this study, given its focus on the use of experts as part of a national strategy. Thus there is a certain inherent tension between a national and a political strategy when experts exert influence. Certainly because the authority and hence the influence of experts is determined to a large extent by their reputation as impartial actors. This tension is felt most acutely by the subject experts at the ministries (category 3), who have relatively extensive technical and scientific expertise but are also bound by the loyalty principle. A similar tension is also evident in research institutes that are exclusively or largely funded by government subsidies (such as the National Institute for Public Health and the Environment, RIVM), which provide technical and scientific advice on behalf of departments and sometimes also represent the Netherlands with a more or less broad mandate in expert working groups (interview by RIVM).

Empirical research shows that as experts have more intensive contacts with actors from other EU member states and European institutions and as they become more isolated from their national governments, they develop a stronger loyalty towards "Europe". This loyalty manifests itself, for instance, in a relatively greater willingness to strike compromises (Egeberg 1999, Lewis 2000).

From this it follows that an effective national expert strategy requires strong links between politics, policy and expertise, in other words, strong links between the four categories of actors. Specifically, this requires careful direction of experts by "political" actors, with mutual trust a very important factor. The broader the experts' mandate in an expert forum, the better they can build up a reputation as experts and the greater their influence is.

Experts and the EU

What general expectations with regard to the "political" logic and the "expert" logic can be formulated while bearing in mind the specific political context of the European Union?

The European Union as a political system has a number of characteristics that probably ensure that the influence of experts is greater than in other (national) political systems. The EU puts strong emphasis of regulatory policy instead of redistributive policy (Majone 1994). Especially with regard to regulation issues, such as in REACH, the problems, solutions and implications of solutions are often not clearly defined. To fill in the gaps, as it were, political actors rely on experts. What is more, the source of the EU's legitimacy lies no so much in the participation of citizens and parties ("input legitimacy", Scharpf 1999), but more in the quality of policy ("output legitimacy", Scharpf 1999). Criteria such as "rationality" and "effectiveness" play a key role in assuring the quality of policy. Expertise is required to achieve the necessary rationality and effectiveness in complex issues (Radaelli 1999).

Because the European Commission itself has relatively few experts, it is heavily dependent on external experts, both for strategy determination and policy preparation – phases that have been called the "expert phase" – as well as for the preparation and contextualisation of policy implementation (comitology). Here the Commission draws not only on experts from national governments, but also on experts from industry, social groups and organisations and other stakeholders. The Council also relies heavily on technical groups in its decision making; these groups take care of the technical annexes to Commission proposals in particular.

Against this background, the plethora of working groups and expert committees at EU level should not come as a surprise. Estimates from the 1990s suggest that there are several hundred to a thousand committees, which regularly bring together around 50,000 experts from the Commission, member states and interest groups (see e.g. Joerges and Vos 1999).

Many “political” choices are actually made in these groups and committees. At this level scientific and other expertise and reputations are more important than formal powers, such as the number of votes in the Council. Because actors at the “political” decision-making level do not have the same range of expertise, they will be reluctant to go against a decision of experts if that decision is based on a consensus among experts (Gehring 1999).

Dutch experts and policy

As a result of a number of general characteristics of the Netherlands, it is probable that Dutch experts – compared to experts from other EU member states – have an above-average influence on national and European policy processes.

Historically, the Netherlands has always faced serious collective challenges, above all the “struggle against the sea”. At the same time the Netherlands is a “country of minorities” (Andeweg and Irwin 2005). For this reason policy making is founded on compromises between different groups. To achieve these compromises, policy making is depoliticised as much as possible. In comparison with other countries, the Netherlands is characterised by a consensus- and rationality-based policy style (Lijphart 1976, Putten 1982). Depoliticisation and rationality are achieved through a large input of technical and scientific expertise. Consequently the Netherlands has a well developed knowledge infrastructure in respect of policy-relevant expertise. Institutions that spring to mind are the Directorate-General for Public Works and Water Management (Rijkswaterstaat), the Netherlands Organisation of Applied Science (TNO), the National Institute for Public Health and the Environment (RIVM) and the Netherlands Environmental Assessment Agency (MNP), but also the Netherlands Bureau for Economic Policy Analysis (CPB), the Social and Cultural Planning Office (SCP) and the countless advisory bodies.

What is more, the political structure of the Netherlands has two characteristics that encourage the development of expertise in ministries. The first characteristic is the departmental system of recruitment, in contrast with the general system of recruitment that exists in the United Kingdom, for instance (Hague and Harrop 2007). In the Netherlands, candidates apply for specific vacancies at specific departments. This has two implications that are relevant for this study. Firstly, there is a strong chance that candidates are indeed recruited at least in part for their expertise. And secondly, the subject specialisation leads to relatively small mobility between departments, and so within the central government. But “sectoral mobility” is more widespread, that is, mobility between ministries and research institutes and between national and European institutions in the sphere of expertise in question.

The Netherlands is also characterised by a unitary form of government, in contrast with the federal Germany, for instance. This means that responsibility for both policy preparation and policy implementation lies at the central government level. Consequently implementation problems can find their way onto the political agenda relatively quickly, and expertise on implementation problems can enter the policy formation process relatively easily. This in contrast with Germany, for instance,

where implementation powers are held in principle by autonomous regional tiers of government, the federal states (Bundesländer).

Chapter 3 Substances expertise in the Netherlands

The previous analysis outlined a number of characteristics of the European and Dutch political systems and of the substantive topic, for the purpose of making an estimation of the possible role of Dutch expertise in the development of European chemical substances policy. But in what way and to what extent did Dutch government expertise actually influence REACH? This chapter considers the question as to whether considerable expertise was indeed available in the Netherlands. At issue are the quality of expertise at the Ministry of Housing, Spatial Planning and the Environment (category 3) on the one hand, and the quality of expertise at the research institutes, in particular the National Institute for Public Health and the Environment (RIVM) (category 4), on the other.

Ministry of Housing, Spatial Planning and the Environment

As is to be expected given the facilitating preconditions for Dutch government expertise (e.g. departmental recruitment principle, unitary state), the sections of the Ministry of Housing, Spatial Planning and the Environment which were involved with hazardous substances over the past two decades are indeed characterised by the presence of considerable subject expertise. A large proportion of the staff had and has a science education background, and expertise in toxicology was and is present. This means that there are civil servants who can communicate on an equal basis with experts from research institutes, which is an important condition for strong links between policy and expertise. It is worth noting in this context that in the late 1990s the Chemical Substances Bureau (BMS) was transferred from the Ministry to the RIVM as a result of a reorganisation. That a ministerial department could be transferred to a research institute shows how much subject expertise was available at the Ministry. But the upshot was that the Ministry was left with less expertise, with only one official of category 3 remaining (hereafter the "Ministry expert"). But for the RIVM the transfer of this department meant that it gained staff with a relatively good feel for the political conditions, which certainly helped to smooth the contacts between these RIVM experts (category 4) and the various layers within the Ministry.

As is to be expected in a unitary state, policy formation and responsibility for policy implementation are closely linked in the Netherlands. The Ministry department in question acted as the competent authority for existing substances and for new substances (interview with the Ministry). The lines with policy preparation were short, in other words. This was a huge advantage in Europe, as acknowledged by a respondent who worked for the Bavarian Environment Ministry (interview with the Bavarian Environment Ministry). Because of the lack of horizontal mobility, the staff members in question could over the years gather very considerable expertise on the implementation of substances policy. One Ministry official in particular, who had been involved with substances policy since the mid 1980s, was regarded as a very authoritative expert in the substances sphere, as was confirmed by respondents ranging from the Ministry to industry and the European Commission's Directorate-General for Enterprise and Industry (interviews). As will be described in greater detail below, this expert was actively involved in the agenda setting for a new European substances policy, was a part-time secondee to the Commission (which meant that he could contribute to both the Commission proposal on REACH and the Dutch response to that proposal), and as deputy for the permanent representative in the negotiations in the Council's Ad Hoc Working Group during the Dutch presidency he

had relatively direct access to the negotiating table, where he could play a catalyst role in smoothing the progress of the Dutch presidency with regard to REACH.

National Institute for Public Health and the Environment (RIVM)

The previous section makes clear that the Ministry of Housing, Spatial Planning and the Environment has a good grasp of substances policy, which is an important precondition for an effective expert strategy. But in addition to this expertise at the Ministry, substances expertise is also required at research institutes. The National Institute for Public Health and the Environment (RIVM) plays a pivotal role here.

As mentioned, the assessment of risks associated with substances takes centre stage in chemical substances legislation. In the first instance this involves biologists and chemists with specialist knowledge of environmental and/or human toxicology. In part depending on the nature of the substance and the nature of its use, other disciplines will also become involved. In addition to the human and environmental toxicologists working in an interdisciplinary way, there are also chemists, ecologists and chemical technologists. The RIVM has much of this diverse expertise available in-house, which means that its interdisciplinary risk research is of high quality and comparable to that in large countries such as France, Germany and the United Kingdom (interviews with Bavarian Environment Ministry, RIVM, TNO). It is true that large countries have more researchers in relevant research institutes, but the knowledge is more fragmented. To draw a comparison with the largest and richest EU member state: in Germany, knowledge on environmental toxicology is located mainly at the Federal Environment Agency (UBA) based in Dessau in the east, and knowledge on human toxicology is located mainly at the Federal Institute for Occupational Safety and Health (BAuA) based in Dortmund in the west. So the environmental and human toxicology knowledge is spread across two institutes, which are also at some distance from each other, while in the Netherlands this knowledge is available in a single institution.⁸

For an estimation of the direction of the potential influence of Dutch expertise, it is important to know whether there is a typically Dutch scientific perspective, in other words, whether the RIVM's involvement can lead to other outcomes than, say, the involvement of a Swedish institute or an industrial research establishment. On the basis of interviews with RIVM and TNO staff members, we can conclude that this is indeed the case, albeit within relatively narrow margins. This is because experts from relevant disciplines are part of global scientific communities, which include scientists based in academic institutions, government or quasi-government institutions (such as the RIVM) and industrial companies. Experts with different affiliations publish joint papers, regularly review each other's work for scientific journals, meet at international conferences, are members of the same international and European professional associations, are involved in the training of newly registered toxicologists, and so on (interviews with RIVM). In this way a best practice emerges on defensible methods of data registration and data analysis, which no expert can ignore without losing his or

⁸ For the sake of completeness it should be said that the Quality of Life division of the Netherlands Organisation for Applied Scientific Research (TNO) also has extensive toxicological knowledge. The two sites of this institute are in Utrecht and Zeist, only a few kilometres from the RIVM. Consequently these institutes cooperate on many aspects, which further strengthens the international position of policy-relevant substances research conducted in the Netherlands.

her reputation. The margins are small, then, but they do exist. Two important points came to the fore in the interviews.

Firstly, regarding the scope of research. In its technical and scientific advice to the government, the RIVM can include a very wide range of aspects because it can draw on such a wide range of knowledge. RIVM research is characterised by a relatively high degree of interdisciplinarity compared to the research of many other institutions.

Secondly, regarding the treatment of scientific uncertainty. Scientific research involves uncertainty. To give an example: in risk assessments of substances the question may arise at what half-life value a substance falls under the bio-accumulative criterion; this cannot be answered with scientific certainty. This then raises the question whether the experts will turn “right” or “left”, as it were (interview with RIVM). Does bio-accumulation occur at a specific half-life value, or does it not? This matters because if a substance is defined as bio-accumulative, it will be subject to a higher protection level and hence will require more expensive risk-reducing measures from industry. Broadly speaking, Nordic research institutes that are closely linked to their respective governments tend to apply the precautionary principle (by setting a lower half-life value as “bio-accumulative”), while Dutch and British institutes tend to be less conservative in this respect. Incidentally, given the strong economic interests at stake, it will not come as a surprise that experts from industry tend to be the least conservative, and experts from the environmental movement the most conservative (interviews with RIVM). However, here too it is the case that experts can agree relatively easily on the facts, because there are shared scientifically accepted methods about the production of facts.

“Dutch” substances expertise at EU level

The considerable Dutch expertise on substances policy did not go unnoticed at the European Commission. Three staff members of the Chemical Substances Bureau (BMS), which was transferred from the Ministry to the RIVM, were appointed to key posts within the Commission structure, specifically at the Directorate-General for the Environment, the Joint Research Centre and the European Chemical Bureau (ECB).

This vertical mobility ensured that experts who had all been with the RIVM at some point played a major role in the European discussions on substances policy. It is likely that the intensive contact and close cooperation (as evidenced by the large number of joint publications) of the members of this “epistemic community” generated socialisation effects. Consequently their views on substances policy were more similar than would have been the case within a randomly formed group of scientists.

Chapter 4 Influence of Dutch experts on REACH

In the previous analysis we considered the availability of expertise with regard to two identified levels of experts, namely departmental experts, in this case at the Ministry of Housing, Spatial Planning and the Environment, and experts from research institutes, in this case at the National Institute for Public Health and the Environment (RIVM). We also described how former Ministry/RIVM experts went on to take up important posts at the European Commission. To what extent did the presence of expertise translate into concrete access to relevant groups and committees in the various phases of the policy process and into influence on the results of the various phases of the policy process?

In answering this question we will distinguish five phase of the policy process: agenda setting on substances policy (1997-1998); strategy formation on substances policy (1998-2001); policy formation on REACH (2001-2003); the negotiations on REACH (2003-2006), with emphasis on the Dutch presidency in 2004; and the preparation for the implementation of REACH (2003-).

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

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

Substances policy in the 1990s was based mainly on two policy measures: the Dangerous Substances Directive (67/548/EEC) and the Existing Substances Regulation (793/93/EC). The European Union has had legislation on dangerous substances since the introduction of the Dangerous Substances Directive in 1967. Under the sixth amendment to the Directive (79/831/EEC), adopted in 1979 and in force from 1981, new substances that came on the market from 1981 onwards had to be notified, and producers and importers also had to make a number of data available. The seventh amendment (92/93/EEC) introduced the obligation of risk assessment for all new substances.

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

Because the European Commission did not have much expertise and capacity in-house, it subcontracted the development of the implementation instruments for risk assessment to member states. The Ministry and RIVM were very closely involved in this, specifically in three projects.

Priority system

On behalf of the Commission the Ministry and RIVM developed a system for the identification of existing substances whose risk assessments deserved priority.⁹ The Ministry and RIVM adopted a broad approach:

“Prioritisation could be done in different ways. After very lengthy consultations and discussions, we decided to make a prioritisation in the area of the environment and a prioritisation in the area of human effects, and then to use basal information, both toxicology and exposure” (interview with the Ministry).

Technical guidance documents

On behalf of the European Commission the Ministry and RIVM developed, in cooperation with British counterparts, the technical guidance documents for the implementation of risk assessments for both new and existing substances.¹⁰ These documents were detailed “cookery books”, as it were, for the national authorities leading on risk assessments and for the businesses whose products were being evaluated (see also Bodar et al. 2002). The Ministry and RIVM developed the environmental toxicology side, while the British experts developed the human toxicology side. The Dutch and British experts then reviewed each other’s reports (interview with the Ministry).

European Union System for the Evaluation of Substances (EUSES)

To support risk assessment, the Ministry and RIVM developed a software tool in 1994 for an integrated risk assessment of new and existing substances. Known as the Uniform Assessment System for Substances (UBS), its aim was to provide a fast and effective assessment of the general risks of substances. At the request of the European Commission this software was upgraded to a European system, the European Union System for the Evaluation of Substances (EUSES).¹¹ One specifically Dutch accent in this system was the relatively heavy weighting of carcinogenic and bio-accumulative substances (interview with the Ministry). This system was updated several times by the RIVM in order to take account of technical developments.

Agenda setting for substances policy (1997-1998)

Substances policy is a typical example of “inside out” agenda setting. The reappearance of substances policy on the European agenda in the late 1990s was not due to scandals or lobbying by industry or interest groups. It was the result of lobbying activities by an international network of national competent authorities for the implementation of the policy for existing and new substances. The competent authority consultations organised by the European Commission brought these authorities and other stakeholders together twice per year for two-day meetings to discuss the implementation of substances policy. The aim of these consultations was to ensure a degree of uniformity, especially in respect of new substances, despite the member states’ relative autonomy in the implementation of the policy (interview with

⁹ “A Proposal for Priority Setting of Existing Chemical Substances (IPS)”. VROM report 92408/b/9-92 1501/033, Van der Zandt, Peter T.J. and Cees J. van Leeuwen. Ministry of Housing, Spatial Planning and the Environment. The Hague, The Netherlands, 2002.

¹⁰ “Technical Guidance Document in Support of Commission Directive 93/67/EEC on risk assessment for new notified substances and Commission Regulation EC No. 1488/94 on risk assessment for existing substances”. European Commission, Luxembourg, Office for Official Publications of the European Communities.

¹¹ “EUSES, the European Union System for the Evaluation of Substances”. National Institute of Public Health and Environment (RIVM). Bilthoven, The Netherlands. Available through the European Chemical Bureau (ECB), Ispra, Italy.

the Ministry). Many national representatives were critical of the Commission's policy and tried to influence it through these consultations (interview with the Ministry).

Within the network, a growing number of officials from Germany, Netherlands and elsewhere, became convinced that the existing substances legislation was very deficient. Especially the assessment of existing substances, the implementation of Regulation 793/93, was proceeding very slowly. In those days of the 15-member EU, Germany was regarded as somewhat of a behemoth; for that reason the German government wanted to move cautiously, and it asked the Netherlands to draw attention to the problem (interview with Ministry expert). In 1997 the Ministry organised two workshops (on 19 March in Amsterdam and on 11 June in The Hague) to discuss the implementation problems in greater detail. The first workshop was attended by 15 officials from 10 member states (the more active ones). The workshop concluded that progress on the assessment of existing substances had been insufficient owing to a lack of political will and resources in the Commission and some member states and a lack of coordination by the Commission. The second workshop was more diverse: it was attended by 20 people, including representatives of nearly all member states, the European Chemical Council (CEFIC) and the Nature and Environment Foundation (SNM) on behalf of the European Environmental Bureau (EEB). One of this workshop's key conclusions was that the problem of the slow progress in the assessment of substances had to be put on the political agenda. The conclusions of the two workshops were supported by all 15 member states, and the Commission promised to develop a proposal for an amendment to the Existing Substances Regulation. However, no such proposal has ever been put forward (interview with the Ministry).¹²

The network of national implementation officials continued its efforts to lift the issue to the political level. At the time the Ministry expert was responsible for new and existing substances. After consultations within his department he organised a joint action with officials from other member states to ensure that the issue was put on the agenda of the Environment Council in 1997 under "any other business". Thanks to this concerted effort, it was not only the Netherlands but also the large countries – France, Germany and the United Kingdom – that were committed, and this left the Commission with no alternative but to promise a review of substances policy. At the informal Environment Council in Chester in March 1998 the theme of chemical substances was a separate agenda item (Council 1998).

This concerted action was made possible by the Ministry expert's considerable expertise, long-standing experience and strong network connections. We asked two respondents who were involved in the process as Ministry officials and later both worked for the European Commission what would have happened without the commitment and approach of the Netherlands. According to these insiders, the issue would have reached the political agenda much later. The Netherlands acted as a "catalyst", in other words (interviews with the Commission).

Strategy formation: White Paper on Chemical Substances (1998-2001)

The chemical substances dossier remained on the Council's agenda after the informal Environment Council in Chester. In November 1998 the Commission

¹² The respondents could not give a clear reason for this reluctance. One of the former Ministry officials who later worked at the Commission speculated that this issue did not have a high priority for the Commission because it concerned implementation problems.

presented a review of the then substances policy, on which the Council gave feedback in December. In February 1999 the Commission organised a brainstorming session with stakeholders, and in June 1999 the Council outlined the framework for a new strategy for substances policy. Within the Commission the contours of a new and comprehensive substances policy were emerging, and in December 1999 and June 2000 the Commission informed the Council on progress. The Commission then published the White Paper on Chemical Substances in February 2001.¹³

Nearly all relevant respondents regarded the development of the White Paper as a closed process, although there were some informal contacts with national (including Dutch) policy officials (interviews with the Ministry). It is important to remember here that the competent authority consultations were organised by the Directorate-General for the Environment, but that the preparation of the White Paper also involved the Directorate-General for Enterprise and Industry. While DG Environment put a strong emphasis on a high protection level, DG Enterprise was more concerned with the costs for industry. It is an “open secret” (interview with former Commission official) that this clash of interests led to a tense relationship between the two DGs, which persisted during the whole REACH process. In this situation the national departmental experts had only limited access to the Commission. “DG Environment’s efforts to consult its national experts were torpedoed by DG Enterprise” (interview with the Ministry). This meant that only those national experts who were seconded to the Commission during this period could exert any influence. As will be described in greater detail below, the Dutch government did have a secondee at the Commission, the “Ministry expert” referred to above, but this secondment did not start until after the publication of the White Paper. In his interview the Ministry expert expressed regret that he had not been involved with the dossier earlier, because the White Paper had set the parameters. “The Commission laid down a course in the White Paper. Like the other member states, the Netherlands had to follow that course” (interview with Ministry employee).

Commission proposal on REACH (2001-2003)

The White Paper set the parameters for the new substances policy. But these parameters had to be fleshed out before the Commission could put forward a workable proposal. Dutch government expertise exerted influence during this process in two ways in particular. Firstly, the Commission built on instruments that had been developed in the context of the implementation of the existing substances policy. The Ministry and RIVM had played a major role in the development of these instruments. Secondly, the Ministry had the opportunity to second the above-mentioned expert to the Commission, where he was added to the drafting team for the Commission proposal. It was striking that the Commission allowed a *part-time* secondment in the case of the Ministry expert. Part-time secondments were generally avoided to prevent conflicts of interests (interview with the Ministry). That the Commission agreed to a part-time secondment had to do with the Ministry expert’s excellent reputation. In his own words, this reputation was based on “expertise, integrity and mutual respect” and on his impartiality: “I have no double agenda” (interview with Ministry expert). Because of his part-time secondment the Ministry expert could contribute to both the Commission proposal and the Dutch response to that proposal. In this way the Dutch government had an opportunity to promote its ideas – as

¹³ “Strategy for a future chemicals policy,” 27 February 2001, COM (2001) 88 def.

developed within the framework of the national Strategy on Management of Substances (SOMS) programme, for instance – on the European stage.¹⁴

Old substances policy as the basis

The existing substances policy provided a firm foundation for the Commission's proposal on REACH. The technical annexes in particular, comprising hundreds of pages, were partly based on documents that had been developed in the context of the old substances policy. For instance, a summary drawn up by the Ministry expert so frequently referred to in this study showed that the annexes in the Commission proposal setting out the provisions for the chemical safety reports to be prepared by chemical producers and downstream users (annexes 1 and 12 of the REACH Regulation respectively) were rooted in the member states' experiences with the risk assessments based on the technical guidance documents, to whose development the Netherlands had made a telling contribution.

Part-time secondment of Ministry expert

In 2001, after the publication of the White Paper, the Netherlands had an opportunity to have the Ministry expert seconded to the Commission. He was added to the drafting team for the Commission proposal on REACH. He dealt in particular with the annexes concerning the registration obligation: criteria for substances exempted from the obligation to register (annex V), information requirements for each registration (annex VI), information requirements depending on the quantity of the substance (annexes VII to X), and general rules and criteria for the adaptation of the standard testing regime (annex XI). These annexes were based to a large extent on the old substances policy, on which the Ministry expert, having had responsibility for both existing and new substances, had accumulated considerable expertise.

Internal documents and an interview with the Ministry expert revealed a number of influencing efforts, some of which were reflected in the Commission proposal and some of which were not.

Workability of REACH: The Ministry expert tried on the basis of his extensive knowledge of substances to make REACH a stable and consistent construct. The work of the drafting team, which can be identified through "discussions" via "track changes" in the interim documents, showed how the Ministry expert contributed – through suggestions for formulations, definitions and references to other articles – to the general clarity and consistency of REACH, and hence to the workability of this very detailed regulation. This was an important issue for the Dutch government. After all, the poor workability of the old substances policy had been a major reason for the Netherlands to help put substances policy back on the agenda. The Ministry expert's charts and flow charts explaining the whole REACH system to the diverse stakeholders also made a contribution to the development of a workable regulation.

Duty of care as a general principle: For the Dutch government the imposition on businesses of a general duty of care for all substances was a major spearhead in the

¹⁴ "Memorandum on the Strategy on Management of Substances", approved by the Cabinet on 16 March 2001, published by the Ministry of Housing, Spatial Planning and the Environment, April 2001. For a detailed analysis of the SOMS process, see the substudy "Industry" (Haverland 2008), which considers, among other aspects, the role of SOMS as a think tank for Dutch interest representation in Europe.

interest representation in Brussels.¹⁵ This general duty of care was intended to illustrate the central concept of the responsibility of industry, and also to serve as a “catch-all” obligation for substances that were not covered by REACH or were permanently or temporarily exempted from REACH elements. The Ministry expert was able to secure the inclusion of duty of care as a general obligation on industry in the draft Commission proposal on REACH posted on the internet for consultation. However, the internet consultation showed that certain member states had, owing to their legal cultures, serious difficulties with such an explicitly formulated obligation (interview with Ministry expert). For that reason, duty of care as a general principle was not included in the final Commission proposal.

Product chain responsibility as a general principle: Another spearhead of Dutch policy concerned the general principle that the various links in the product chain – producers, importers, formulators and professional users of substances – should be responsible for the safety of chemical substances and preparations. This product chain responsibility also found its way into the internet proposal, but in the end it was not included as a general principle in the final Commission proposal. However, it was elaborated in specific obligations for different links in the product chain. Specific obligations for different links in the product chain also appear in the final version of REACH.

Pragmatic use of the obligation to supply information: With regard to the technical annexes, the Ministry expert advocated a “realistic, flexible and pragmatic treatment” of the required supply of standard information, by formulating a number of criteria which would allow businesses to negotiate exemptions to the information requirement. These criteria were included in the Commission proposal (interview with the Ministry). Incidentally, in the technical working groups annex XI was informally referred to as the “happy waving annex”, because many experts felt that it was too easy for businesses to shirk their responsibilities (interview with RIVM). Ironically, not least owing to the influence of other Dutch experts, it was precisely the information requirements that were tightened again in a later phase (see below).

Registration of polymers: The Ministry expert also originated the proposal to impose a registration notification on polymers. A compromise was reached with DG Enterprise, and the proposal was included in the internet proposal. However, despite the consensus in the Commission and despite the fact that the Ministry expert in his own estimation was very well informed about risk assessment of polymers, this proposal was taken off the agenda after protests from the polymer industry (interview with Ministry expert).

Because the Ministry expert was seconded part-time, he could also contribute to the formulation of the national response to the Commission proposal. The national position, worked out in a lengthy interdepartmental process, was largely based on the national substances strategy, SOMS.¹⁶ The Ministry expert’s contribution lay above all in “translating” this strategy into the requirements contained in the Commission proposal. Internal documents show that the Ministry expert inserted into the Dutch response to the internet proposal a series of suggestions for textual changes and for additional articles or amendments to existing articles. This included, for instance,

¹⁵ Letter from the State Secretary of Foreign Affairs, with 13 files, to the Working Group on the Assessment of New Commission Proposals, 23 June 2004, Second Chamber, Session 2003-2004, 22112, no. 302.

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

provisions for a general duty of care, for a general product chain responsibility, on the minimum information required from all links in the product chain, on how national competent authorities should deal with poor disclosure by businesses, and on the registration of polymers, as well as a very detailed article aimed at harmonising national enforcement. The Dutch response also included many suggestions for smaller amendments, substantive additions and textual refinements.

Through the Ministry expert's part-time secondment to Brussels, the Dutch government on the one hand had direct access to the drafting process in Brussels, so that it could effectively promote its own ideas; and on the other hand it was able to formulate a very detailed response to the internet proposal on REACH. It should be pointed out, however, that the influence of the national expert in Brussels depended in no small part on his reputation as an impartial expert, which meant that he had to restrain himself with regard to Dutch preoccupations. We will consider this aspect in greater detail at the end of this chapter.

Negotiations on REACH (2003-2006)

The publication of the Commission proposal marked the start of the negotiating phase on REACH, which would take around three years. Here we focus on the period during which the Netherlands held the Council presidency, in the first half of 2004.

At the start of the Dutch presidency an ad hoc working group was established to organise the Council activities. This group brought together permanent representatives operating under national instructions. There was also a technical working group which dealt with the annexes. This group brought together policy officials and experts from government institutions (such as the RIVM). Below we look at each of these decision-making forums.

Council Ad Hoc Working Group

The Council Ad Hoc Working Group brought together the permanent representatives of the member states. The instructions for the Dutch permanent representative had been formulated through an interdepartmental coordination process (see van Keulen et al. 2008). The Ministry expert previously seconded to the European Commission played a major role here.

The Ministry expert also acted as deputy for the permanent representative at working group meetings. The Netherlands wanted to use the presidency to give added impetus to the REACH process. The Dutch government, and the Ministry of Housing, Spatial Planning and the Environment in particular, saw a window of opportunity for substances policy, and it did not want to waste this opportunity (interview with the Ministry). That is why it put great effort into this work. During the previous presidency a general reading of the Commission proposal had been held on a chapter-by-chapter basis. During the Dutch presidency each article of the Commission proposal was scrutinised. The Netherlands prepared a "footnote document", which kept a record of countries had submitted which amendments to which articles. The Dutch presidency applied an initial filtering by excluding from the footnote document any amendments which were supported by only a very small number of member states (interview with the Ministry). To safeguard the internal consistency of REACH, the Dutch presidency also regularly proposed reformulations of amendments or different way of dealing with the underlying objectives of amendments. In this context the Ministry expert played a key role as the deputy for the Dutch permanent

representative. With his extensive experience on the formation and implementation of European substances policy and his detailed knowledge of the Commission proposal (to which he had after all contributed), he was able to accommodate many national wishes (interviews with RIVM, the Ministry). The very large REACH dossier thus remained manageable, and the negotiating process could proceed apace.

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

Technical working group on Commission proposal annexes

Furthermore, during the Dutch presidency a technical working group dealt with the technical annexes. This group brought together national departmental experts and experts from government institutions (such as the RIVM). These experts represented their countries at the working group meetings, and they of course had to follow their governments’ instructions. In the case of the Netherlands these instructions were very general, however. There was a strong bond of trust between the Ministry and RIVM. This working group was characterised much more by deliberation than by negotiation. Those member states which were more inclined towards protection, including the Netherlands, were the most active. Respondents claimed that without the efforts of the pro-protection member states in the technical working groups, the REACH Regulation would have had a lower protection level (interviews with the Commission, RIVM).

A respondent from the RIVM gave two examples of how the Dutch expert in the technical working group contributed to REACH.

Firstly, with regard to annex VII, which deals with the information requirements for substances produced in very small quantities (1 to 10 tons per year). Here Dutch experts were able to secure a provision that the environmental information should be based on tests on daphnias and algae, two invertebrate animals. The respondent also stressed the relevance of the Ministry expert’s earlier secondment to the European Commission. Because of the good contacts between the RIVM and the Ministry expert previously seconded to the Commission, the RIVM officials knew, for instance, how to get results in Brussels. They knew that animal testing, certainly on vertebrates, was a very sensitive issue for the Commission, and they realised that the chances of success were greater if information based on testing with invertebrate animals would suffice (interview with RIVM).

Secondly, with regard to the information requirements for substances produced in quantities of 10-100 tons per year. Here Dutch experts were able to secure a provision that information on reprotoxicity (i.e. danger to fertility) had to be supplied for this production level as well. And the conditions under which this requirement could be relaxed (set out in annex VI) were further specified, thus ensuring that industry could be better held to account in this respect.

Preparation for the implementation of REACH (2003-2006)

The new European substances policy is effected by means of a regulation. Whereas directives have a conversion phase of around two years on average, during which European policy can be adapted within the set objectives to national statutory and

administrative situations, regulations in principle take effect immediately. This means that implementation aspects have to be discussed already during the decision-making process. To facilitate the implementation of REACH, the REACH Implementation Projects (RIPs) were set up. Experts from the Commission, the national governments, industry and social groups and organisations participated in these projects. The intention was to formulate technical guidance documents for businesses and competent authorities in the member states.

Dutch expertise and experts influenced these guidance documents in three ways. Firstly, a number of guidance documents were based on guidelines which had already been developed in the context of the implementation of the old European substances policy. And the experts from the Ministry and RIVM had had a major influence on these (see the start of this chapter). Secondly, experts from the RIVM were actively involved with the RIPs (interviews with RIVM). And thirdly, “Dutch” expertise had an indirect influence. Experts who had formerly worked at the Ministry and/or the RIVM were closely involved in the development of RIPs through their new positions in European institutions such as the Directorate-General for the Environment and the Joint Research Centre. This was evident, for instance, from the strong presence of these experts in the workshops on the RIPs. For instance, at a workshop on guidance documents for industry in Brussels in September 2006, three of the eight government speakers were former RIVM officials, and two had also worked at the Ministry.¹⁷

¹⁷ “Workshop REACH Implementation Project 3: Development of REACH Guidance for Industry”, 25 September 2006. European Commission. Brussels.

Digression: National expert strategy?

The previous analysis showed how Dutch experts exerted influence in the various phases of the development of the new European substances policy on the content of the interim and final products. As indicated in chapter 2, there is a certain inherent tension in a national expert strategy. After all, the aim of such a strategy is to convert national preferences into European policy, while the main source of influence of experts lies in their reputation for impartial knowledge. Moreover, empirical research shows that as experts have more intensive contacts with actors from other EU member states and European institutions and as they become more isolated from their national governments, they develop a stronger loyalty towards “Europe”. This loyalty manifests itself, for instance, in a relatively greater willingness to strike compromises in European groups and committees. In terms of this study we can conclude that in any case the frequently mentioned Ministry expert underwent a certain European socialisation over the years. With regard to the network of national competent authorities, he commented: “We know each other well, we call each other often. I have colleagues here, but I also have colleagues in the member states. We’re all in the same field” (interview with the Ministry).

It should be said that this study revealed no indications that the Ministry expert or the RIVM experts unfolded activities or defended positions which were at odds with Dutch government strategy. The main reason for this, in our view, is that the experts were not isolated from the national government, but through intensive contacts with the policy officials at the Ministry were embedded in the national strategy.

Even so, it is striking that the Ministry expert who was seconded to the Commission was able to include key national positions in the Commission proposal, at least in the draft proposal posted on the internet for consultation. In our view this could be because the Commission was very dependent on his expertise, and because although these positions were national, they were not really intended to oblige certain national sectors or social groups. The positions had more to do with generic aspects, such as internal consistency and practicability of the policy, and with the style of regulation, based on general principles of duty of care and product chain responsibility rather than or as a supplement to specific statutory obligations.

Chapter 5 Conclusion

The aim of the study is to provide an answer to the question as to whether the Netherlands has been able, on the basis of its considerable expertise in the area of chemical substances and chemical substances legislation, to exert a stronger influence on the outcomes of REACH than could be expected on the basis of the country’s formal power, as measured by its number of votes in the Council. This also raises the issue whether the targeted use of expertise – the knowledge strategy – is an effective strategy to help determine outcomes.

In the conclusion we will first consider the results of the study. Then we will consider what lessons the Dutch government can draw for similar European dossiers.

Extent of influence

The study has shown that, by international standards, the Netherlands has very considerable expertise on chemical substances policy. This applies to both the expertise at the Ministry of Housing, Spatial Planning and the Environment and the expertise at the National Institute for Public Health and the Environment (RIVM). What is more, this expertise is acknowledged by other actors (reputation). The analysis of the various phases in the development of European substances policy showed that Dutch experts at various points exerted influence on the content of the interim and final products.

Experts from the Ministry made a major contribution to the reappearance of substances policy on the EU agenda in the late 1990s. An expert seconded part-time from the Ministry to the European Commission influenced the Commission proposal on REACH as well as the Dutch response to the interim product of the proposal (internet consultation). It should be noted, however, that this expert did not succeed in anchoring major spearheads of Dutch policy – such as the general principles of duty of care and product chain responsibility – in the final Commission proposal. However, experts from the Ministry and the RIVM had indirect influence on the Commission proposal, because the annexes to the proposal were to a large extent based on documents prepared by the Ministry and the RIVM in the context of the old European substances policy. It should be noted that the annexes are very important, because they specify in practical terms the obligations under the REACH Regulation.

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

In the preparation for the implementation of the policy, in the REACH Implementation Projects (RIPs), experts from the RIVM made a contribution to the guidelines for businesses and national competent authorities on how to comply with the REACH obligations. These guidance documents are relevant because they determine to a large extent how REACH is actually given shape in practice. This contribution was both direct, through participation in the RIPs, and indirect, because a number of the guidance documents were largely based on guidelines developed by the Ministry and the RIVM in the context of the old substances policy. What is more, experts who had formerly worked at the Ministry and/or the RIVM were closely involved in the development of RIPs through their new positions in European institutions.

The effectiveness of the knowledge strategy benefited from the embedding of experts in the Dutch government's strategy, and in particular from the good coordination between political experts at the Ministry, subject experts at the Ministry and experts from the research institutes.

In our view, the results of the analysis justify the conclusion that, thanks to the Dutch knowledge strategy, the influence of the Netherlands on REACH was greater than could be expected on the basis of the country's formal power. Certainly since the formal power of a small country like the Netherlands is rather limited. At the time when the decisions on REACH were being taken, the Netherlands held around 3% of the votes in the Council.

Lessons for the future

What conclusions can be drawn from the study with regard to the effectiveness of a Dutch knowledge strategy for other European dossiers? The following lessons can be distinguished.

Political characteristics of the European Union promote the success of a knowledge strategy

The European Union has a number of characteristics which promote the success of a knowledge strategy. Many policies are technically complex, so that the European Commission is dependent on expertise, from the member states in particular. What is more, the EU relies mainly on its “output legitimacy”, on the quality of its policies in other words. Rationality and effectiveness play a key role here, and these aspects require expertise. There are no obvious reasons why these characteristics of the EU will change in the short or medium term.

The Netherlands had (and has) high-quality policy-relevant expertise

There is no doubt that traditionally the rationality- and consensus-based Dutch policy style has been conducive to the development of a high-quality and policy-relevant knowledge infrastructure. The departmental rather than general system of recruitment means that ministries have many officials with a good grasp of the subject matter. These officials’ policy-specific expertise also prevents mobility, which further promotes the continuity and accumulation of expertise. Thanks to the Netherlands being a unitary state, the lines between policy preparation and political implementation are short, so that ministries have access to considerable expertise with regard to the implementation of policy.

It seems that these favourable conditions are coming under pressure. The drive for core ministries and generalist officials is loosening the link between policy and expertise. This may frustrate European interest representation on the basis of a knowledge strategy. But this is not to say that these developments will inevitably reduce the effectiveness of the Dutch input in Brussels. After all, this study did not analyse whether the trend towards core ministries undermines the effectiveness of other Dutch interest representation strategies.

Early involvement of national experts in European dossiers is important

The greatest influence the Netherlands exerted on the REACH process is probably the fact that the REACH Regulation came about at all. The Netherlands played a major role in putting the development of a new substances policy on the political agenda. However, Dutch experts were barely involved in the formulation of the strategy for the new substances policy, as set out in the White Paper on Chemical Substances. In his interview the Ministry expert subsequently seconded to the Commission expressed regret that he had not been involved in the drafting of the White Paper, because this had set the parameters of substances policy. These results demonstrate the importance of an early involvement with European dossiers.

Coalition building should be part of a knowledge strategy

In the European Union a large number of actors seek to exert influence on policy. What is more, new European policy requires the approval of a majority of the European commissioners, a qualified majority or unanimity in the Council, and often

also a majority or absolute majority in the European Parliament. When trying to jump these hurdles, it is advisable to look for coalition partners. The greatest success the Netherlands can boast, getting the issue of a new substances policy on the agenda, became possible because of concerted action by a number of member states. The secondment of the Ministry expert to Brussels and the effectiveness of the Dutch input into REACH's technical annexes benefited from good contacts with European institutions.

The success of a knowledge strategy depends in part on the nature of the issue

A favourable condition for the Dutch knowledge strategy was the extreme technical complexity of the dossier. This made for a heavy dependence on experts. The knowledge strategy might have been even more effective with a politically less sensitive dossier. According to a former Commission official, even the annexes of REACH were studied in great detail by various stakeholders. Hence there was no question of experts "smuggling" changes into the final version of REACH (interview with the Commission). From this it follows that a knowledge strategy becomes more effective the greater the technical complexity of the European dossier and the lower the political sensitivity of the issue.

The success of a knowledge strategy depends in part on the content of national preferences

The success of a knowledge strategy depends in part on the nature of the Dutch government's preferences. In the case of REACH these preferences were primarily concerned with generic aspects, such as the adoption of a new substances policy per se and the workability of the policy, for instance through safeguarding its internal consistency. Other spearheads concerned the style of regulation: based on, for instance, general principles of duty of care and product chain responsibility rather than merely specific obligations. These ambitions can be pursued relatively easily by experts without other actors questioning their impartiality, which would have significantly reduced their influence. For instance, if the Netherlands had argued for the exemption of certain substances from the REACH obligations in order to protect sections of its national industry, then an expert strategy would probably have been less effective.

Strategy versus contingency

When drawing lessons from the REACH process, it should be borne in mind that the success relied less on a strategy devised in advance and more on taking advantage of opportunities as they arose and exploiting contingencies. It is true that conditions for the accumulation of expertise in ministries are favourable in the Netherlands; but, for instance, the level of expertise of the frequently mentioned Ministry expert, his excellent reputation among other actors and his dedication were exceptional. There is no guarantee whatever that in the context of different dossiers it will be possible to have experts seconded to the Commission, certainly not on a part-time basis, since part-time secondment to the Commission is most unusual. And the fact that the Dutch presidency fell in a crucial phase of the REACH process was also a coincidence. However, a good strategy should also include the capacity to deal effectively with any opportunities that arise: as has been said in the context of the natural sciences, "a discovery is an accident meeting a prepared mind".

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Annex

List of respondents

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

* Some 18 interviews were conducted in the context of the subprojects “Industry” and “Experts”. Because the study covered a period of 20 years, a number of respondents worked for various organisations relevant to the study. For instance, one respondent was interviewed in his capacity as a former employee of the RIVM and his capacity as a former official of the European Commission. The summary shows the number of respondents per organisation. Because some respondents were counted more than once, the number of respondents is greater than the number of interviews.