

# Coalition Politics and Chemicals Management in a Regulatory Ambitious Europe

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*Henrik Selin*

## Introduction

Transnational policy-making is expanding in many parts of the world, and there is a continuing interest among researchers and practitioners in understanding the ways in which regional cooperation grows and produces new and more ambitious initiatives.<sup>1</sup> The European Union (EU) is by far the world's most developed regional legal and political structure, and it contains a large body of common policy across a host of major issue areas. A first wave of European political and economic integration began in the 1950s with the founding of the European Coal and Steel Community in 1952.<sup>2</sup> The signing of the Treaties of Rome in 1957, entering into force in 1958, created the European Economic Community and the European Atomic Energy Community. Following a period of slower policy developments in the 1960s and 1970s, a second wave of intensified European integration started in the mid-1980s and is still continuing under EU auspices.

Against this background of deepening European political and economic integration, the EU has greatly expanded its legal competence on environmental issues over the past two decades.<sup>3</sup> This has resulted in much environmental policy-making at the EU level, and EU environmental law currently covers over 500 legal instruments, compared with only 200 in 1987.<sup>4</sup> Environmental politics can moreover be seen as an important indicator and promoter of EU policy-making and integration more generally: many environmental issues are transboundary, environmental issues intersect with the functioning of the common

1. The author thanks Stacy VanDeveer, Vivien Schmidt, Noelle Eckley Selin, and three anonymous reviewers for helpful comments on earlier versions of this article.
2. The European Coal and Steel Community was established by the signing of the Treaty of Paris in 1951, which entered into force in 1952.
3. Hildebrand 1993; Koppen 1993; Weale 1996; Weale et al. 2003; Jordan and Liefferink 2004a; and Jordan 2005.
4. Jordan 2005, 6. This is also a noteworthy change from the Treaty of Rome, adopted in 1957, which contained no direct mention of environmental issues or environmental responsibility for the new European Economic Community.

market and the fulfillment of economic and social goals, and much environmental policy-making competence has been transferred from national governments to the EU level.<sup>5</sup> The environment is also one of the issue areas where national policy has been harmonized the furthest among the 27 EU member states to date.

The development of the REACH (Registration, Evaluation and Authorization of Chemicals) regulation is a recent example of a major expansion of the EU's environmental policy influence into issues that have traditionally been dealt with by national governments and regulatory agencies. Discussions about a new EU-wide system for chemicals management that resulted in the creation of REACH began in the late 1990s. The European Commission presented the idea of a REACH-like regulation in 2001 followed by a revised proposal in late 2003. Under the co-decision procedure, the Council of Ministers and the European Parliament reached a common position after lengthy debates and tough negotiations in December 2006. The REACH regulation, one of the largest pieces of EU environmental legislation ever to be passed, entered into force in June 2007 and replaced many smaller sets of older chemicals legislation.

Yet, REACH is highly controversial, and its adoption may appear surprising given the level of controversy that continues to surround it. REACH was created despite intense resistance from influential and well-organized industry interests, and outspoken suspicion from leading European politicians and national industry and trade ministers. In contrast, REACH was supported mainly by a relatively small group of national environmental ministers, officials within the Commission, Members of the European Parliament (MEPs), and representatives of nongovernmental organizations (NGOs).<sup>6</sup> How could a small alliance of green policy advocates secure the adoption of REACH against such strong opposition? How can we understand this policy-making process and drivers of recent environmental policy expansion at the EU level? And how does the REACH case fit into the existing literature on European integration and environmental politics?

This article explores these questions in some detail. In doing so, the article draws extensively on insights and arguments from the literatures on European integration and coalition politics to analyze the development of the REACH regulation. The analysis is informed by scholarly work on European environmental politics and chemicals policy; reviews of policy documents and background reports on European chemicals legislation, management, and REACH; and written material produced by European policy-makers, the chemical industry, and the environmental NGO community. In addition, personal interviews were conducted with multiple European policy-makers, European civil servants, repre-

5. Weale 1996.

6. The chemicals industry is Europe's third largest manufacturing industry and directly employs 1.7 million people (European Commission 2001).

sentatives of the European and American chemical industries, and European NGO staff members.

The next section discusses literatures on European integration, Europeanization, and advocacy coalitions with relevance for EU environmental politics and policy-making. This is followed by a discussion of two sets of issues that are critical to understanding coalition politics around REACH: first, institutional reforms that have enhanced the influence of the Commission, the Council, and the Parliament in EU environmental policy-making; second, an intensified focus on chemicals issues by leader states and NGOs as well as increased public pressure on European policy-makers to improve standards for environmental and human health protection. Next, a process-tracing technique is used to analyze the REACH policy process, during which coalitions of actors competed to shape policy outcomes. The article ends with a summary of the main findings and a brief discussion of why REACH is also important for international chemicals politics and policy-making.

### Analyzing EU Environmental Politics and Policy-making

The two theories of intergovernmentalism and institutionalism are pervasive in the literature on European politics and integration. Intergovernmentalists regard EU integration as the result of successful bargaining among nation-states designed to manage issues of interdependence that stem from transnational flows of goods and services.<sup>7</sup> Policy is seen to be developed in a process where governments first define their individual interests and then seek a negotiated collective solution. In contrast, institutionalists argue that EU organizations and NGOs as well as states can be of great influence in processes of European policy-making. Applying a functionalist logic, institutionalists often argue that policy developments in one area will affect developments in other areas through processes of issue linkages and spillover resulting in deepening integration over time, including in various areas of environmental policy.<sup>8</sup>

The EU as a comprehensive regional governance system has matured significantly over the past two decades. The EU surely continues to be “less” than a nation-state in the traditional sense, but it is also much “more” than any other intergovernmental organization past or present. In this respect, Schmidt argues that the EU most appropriately can be seen as a developing “regional state,” or a “regional union of nation-states.”<sup>9</sup> From this perspective, both physical and ideational factors are important in the ongoing dynamic development of the EU regional state as sovereignty is shared with member states, geographical confines are not fixed, policy boundaries are constantly changing, national

7. Moravcsik 1993, 1998.

8. Haas 1958; and Schmitter 1970, 1996.

9. Schmidt 2004, 976.

identities remain strong with only limited progress in creating a shared European identity, and governance occurs simultaneously at many levels, centers, and forms across the EU.<sup>10</sup>

Scholars interested in EU politics have recently turned to the study of Europeanization processes.<sup>11</sup> Yet, this study area is diverse and one literature survey identified at least five definitions of Europeanization with critical differences for choices of analytical perspective and empirical research foci.<sup>12</sup> For example, some analysts equate the process of Europeanization with the gradual accumulation of policy competence at the regional European level.<sup>13</sup> Others instead conceptualize Europeanization as a strict top-down process of European goals and policies transferred down to member states shaping national regulations, standards, and practices.<sup>14</sup> In this article, Europeanization describes processes of policy convergence defined as an increase in the similarity between one or more characteristics of a certain policy (e.g. policy objectives, policy instruments and policy settings) across member states over time.<sup>15</sup>

Of high relevance to the study of the Europeanization of environmental policy, Jordan suggests a recent, significant change in European environmental politics and policy-making.<sup>16</sup> The dominating line of environmental policy conflicts in the EU in the 1980s and much of the 1990s tended to be between different levels of governance, where European, national and local governance levels struggled to gain or maintain competence and influence over environmental issues. In contrast, recent EU environmental policy-making has been shaped more by interactions between groups of actors across EU organizations, national governments, and NGOs that are cooperating and competing for influence as they seek to influence policy-making processes and outcomes. This observation is supported by Börzel, who argues that it resonates “with many empirical accounts of how EU environmental policy is actually made.”<sup>17</sup>

In other words, many recent EU environmental policy developments are more consistent with an institutionalist perspective than an intergovernmentalist approach to the study of European integration and policy-making. National governments are undeniably influential in European environmental politics, but EU organizations can exert significant influence on policy-making processes and outcomes. In addition, NGOs are frequently effective lobbyists and supporters of policy developments. As such, European environmental policy expansions are not always easily predictable as merely reflecting interests of the most powerful member states, and students of EU environmental politics need to pay

10. Schmidt 2004, 977.

11. Schimmelfennig and Sedelmeier 2005; Jordan and Liefferink 2004a; Featherstone and Radaelli 2003; Schmidt 2002; Cowles et al. 2001; and Héritier et al. 2001.

12. Jordan and Liefferink 2004b.

13. Cowles et al. 2001.

14. Schmidt 2002; and Héritier et al. 2001.

15. Knill 2005.

16. Jordan 2005, 12.

17. Börzel 2002.

attention to the ways in which different kinds of actors are involved and interact in policy-making. As will be demonstrated below, the case of REACH is largely consistent with these institutionalist suppositions.

To study characteristics of developing EU environmental policy-making, the literature on advocacy coalitions can offer important insights into the behavior and strategies of groups of policy actors. Sabatier and Jenkins-Smith developed the advocacy coalition framework to analyze how coalitions of public and private sector actors are formed based on shared normative and causal beliefs, and how competing coalitions interact to develop policy within an issue-area.<sup>18</sup> Similarly, the network literature studies complex relations between actors across public, private, and civil society sectors.<sup>19</sup> Networks are commonly defined as groups of actors motivated by shared values who seek to change policy through their advocacy work.<sup>20</sup> As such, the coalition and network literature can inform studies of how participants in policy-making process build coalitions in attempts to shape outcomes.

Coalitions of green European policy actors that are formed based on shared interests increasingly come together to develop and expand EU environmental policy (e.g. to Europeanize environmental policy at a higher regulatory level). Such coalitions are active for example in the area of European chemicals management. Sometimes coalitions of green actors face strong competition from opposing coalitions in their efforts to influence European policy outcomes. These competing coalitions of actors engaged in EU environmental politics and policy-making are often not formalized; rather, groups of like-minded actors informally coalesce around common positions and interests. It is nevertheless common for coalition members to communicate extensively with each other, exchange opinions and policy ideas, and publicly and privately express support for each others' work and policy proposals.

In studying EU coalition politics and environmental policy-making, it is important to recognize that EU organizations and member states frequently do not behave as unitary actors. Rather, groups and individuals across different organizations and national governments engage in coalition building. For example, the pro-REACH coalition included environmental ministers from northern member states, DG Environment officials within the Commission, Green MEPs, and representatives of environmental and public health NGOs. Similarly, an opposing coalition of REACH skeptics emerged as these policy efforts were developed and included representatives of major chemical companies, high-level politicians from countries with large chemical industries, and many conservative and socialist MEPs who were sometimes supported by DG Enterprise officials within the Commission. These two coalitions and their roles in the REACH policy process are examined in more detail below.

18. Sabatier 1988 and 1998; and Sabatier and Jenkins-Smith 1993.

19. Peterson 2003; Börzel 1998; and Dowding 1995.

20. Keck and Sikkink 1998; and Selin and VanDeveer 2007.

When a coalition can be formed that includes influential members from all major EU policy-making centers (e.g. the Commission, the Council, and the Parliament) a particularly strong force for environmental policy expansion is created. As such, the ability of the small pro-REACH coalition to build necessary support in all major policy-making centers was critical for its success in ensuring the development and adoption of a REACH regulation that achieves many of its stated policy goals despite strong opposition from the chemical industry and hesitance from many leading European politicians and policy-makers. In other words, the pro-REACH coalition may have been small and made up of mainly green actors, but it consisted of the “right” actors in all the “right” places, which created a strong force for expanding and strengthening EU chemicals legislation and management.

### **EU Coalition Politics and Environmental Policy Expansions**

This section examines two sets of issues of high significance to EU coalition politics. First, it discusses the significance of EU institutional reforms strengthening the influence of the Commission, the Council, and the Parliament in environmental politics. These reforms increased the policy-making competence of EU organizations on environmental issues, which facilitated the development of more stringent chemicals policy in the form of REACH. Second, it addresses the importance of an intensified focus on chemicals management issues by leader states and NGOs, as well as the importance of public pressure on European policy-makers to strengthen protection standards. These actions by individual member states and civil society actors were a strong impetus for the development of REACH when coupled with support by EU organizations.

#### *Institutional Developments and EU Organizations*

The 1993 entry into force of the Maastricht Treaty created the EU and divided EU policy areas into three groups, or “pillars.” The first pillar, the European Communities, covers a wide range of economic, social, and environmental issues and is the most supranational in character. Decisions on all issues except taxation and monetary integration are taken by member states in the Council through weighted majority voting in full collaboration with the Parliament. The other two EU pillars cover areas of more recent European cooperation and integration: common foreign and security policy, and police and judicial cooperation in criminal matters. These two pillars are still primarily inter-governmental in character; that is, decisions in the Council are taken on the basis of consensus with limited influence by the Parliament.

As a first pillar issue, most EU environmental policy is negotiated among and within the Commission, the Council, and the Parliament, and the Council and the Parliament share policy-making authority on all chemicals policy issues. During agenda setting and decision making processes on first pillar issues,

EU organizations frequently operate as independent actors with their own agendas and strategies. As such, EU organizations can exert important influence on the development and implementation of EU policy, and representatives of these organizations can be highly influential members of coalitions for regional policy expansion and harmonization. In addition, the Commission and the Parliament frequently support efforts to increase the authority of EU level organizations, policy-makers, and civil servants.

The transfer of regulatory authority on environmental issues from national governments to the EU level has expanded the policy-making competence of the Council. With the introduction of qualified majority voting, one member state can no longer veto any new environmental policy proposal in the Council. This has resulted in a much more active and progressive Council on environmental policy-making, including chemicals. The Commission, because of its growing role in setting European environmental political agendas, developing policy proposals, and supervising implementation has also been instrumental in strengthening European authority on environmental policy and risk management. This expansion of the Commission's competence on environmental issues has allowed DG Environment to assume a much more proactive role in policy development and implementation in the chemicals management area.

In the Commission, DG Environment, under the leadership of Ritt Bjerregaard (Denmark, 1995–1999) and Margot Wallström (Sweden, 1999–2004), focused much attention on chemicals safety and was an early strong supporter of REACH. In fact, it was DG Environment, together with the environmental ministers from a small group of northern European states (including Denmark, Finland, Germany, the Netherlands, Sweden, and the United Kingdom), that dominated the initial discussions on revising EU chemicals management in the late 1990s. Later in the policy process there were difficult negotiations between DG Environment and DG Enterprise. Yet, DG Environment remained influential and largely continues to stay the course under the current Commissioner, Stavros Dimas (Greece, 2004-present).

Changes to the role of the Parliament have both increased the Parliament's importance and accelerated EU environmental policy-making. Before the Maastricht Treaty, the Parliament had only limited powers. The Maastricht Treaty and the Amsterdam Treaty of 1997, however, established the current co-decision procedure with formal decision making equality between the Council and the Parliament on most environmental issues.<sup>21</sup> In the Parliament, the Environment Committee, one of the most active committees, "has been in the vanguard of efforts to strengthen EU's environmental standards."<sup>22</sup> The Environ-

21. Exemptions to co-decision include environmental measures with fiscal implications, environmental measures with energy supply implications, land use, town and country planning, and quantitative management of water resources (Burns 1995, 100).

22. Burns 2005, 98. The formal name of the Parliament's Environment Committee is the Committee on the Environment, Public Health and Consumer Policy.

ment Committee has generated much support for REACH, and many MEPs have aligned themselves with other pro-REACH actors and pressed for a strong REACH in the Parliament's reviews of the Commission's proposal and during the co-decision procedure.

In addition, the establishment of the new European Chemicals Agency is a key part of the operationalization of REACH. The Chemicals Agency will act as an organizational node at the EU level for chemicals management issues and will be critical to the successful implementation of REACH. In particular, the Chemicals Agency will work closely with the Commission, member states' regulatory agencies, and private firms on the registration and evaluation of chemicals. The Chemicals Agency is expected to act as an EU-level guardian of REACH and will further strengthen the influence of the EU on European chemicals management (but at the same time, the Chemicals Agency will depend on member states and private firms for assessment data and other resources). As such, the Chemicals Agency may become an important force in the continuing Europeanization of chemicals policy.

#### *Leader States, NGOs and Public Opinion*

In addition to the expanding influence of EU level organizations, individual member states, NGOs, and the general public can exert significant influence on European policy-makers and shape regional policy outcomes as members and supporters of coalitions for policy change.

What resulted in REACH began as a joint initiative between a few northern member states in the late 1990s, sharing an interest in strengthening EU chemicals legislation and harmonizing chemicals assessment and regulation across all member states. This initiative is consistent with the literature on the roles of environmental leader states in EU environmental politics. Liefferink and Andersen argue that EU environmental policy is often pioneered by "green" states acting to upload their higher domestic standards.<sup>23</sup> Likewise, Börzel analyzes the activity of "pace-setting" and Jänicke the role of "pioneers" as member states seek to shape developing EU policy according to domestic preferences.<sup>24</sup> Similarly, studies on the "trading-up" of standards show that a strengthening of domestic regulations in Germany in the 1980s exerted a strong upward pressure on European standards through the internal market.<sup>25</sup>

In general, EU member states strive to minimize domestic costs of implementing EU norms and rules.<sup>26</sup> For that purpose, the institutional and substantive fit between new EU and domestic policy is important; as a rule, the better fit between European and domestic policies, the lower the national implementation costs for public authorities and private companies. Because member states

23. Liefferink and Andersen 1998.

24. Börzel 2002; and Jänicke 2005.

25. Vogel 1995; and Wurzel 2004.

26. Börzel 2002.



often have distinct institutions, they often compete at the European level for policies that conform to their own interests and approaches. There can also be tough competition among leader states as they seek comparative political and economic advantages in having their specific domestic policy contents and structures uploaded to the common level to ensure an improved fit between national and EU policy contents and structures.<sup>27</sup>

The literature on leader states argues that much early European environmental policy was spearheaded by Denmark, Germany, and the Netherlands. When Austria, Finland, and Sweden joined the EU in 1995, the group of green member states increased. In the Commission, DG Environment, led by consecutive Commissioners from two dominating environmental leader states from 1995–2004, often works closely with leader states. Leader states, moreover, often strategically place experts in the Commission to work on policy issues that are prioritized domestically.<sup>28</sup> In the Council, the shift to majority voting on most environmental issues created an opportunity for the passing of more progressive environmental law that has been seized by coalitions of leader states. In the Parliament, pro-environmental MEPs and the Environment Committee acted to increase their influence at the same time.<sup>29</sup>

Chemicals management is an area where the influence of green member states is particularly visible.<sup>30</sup> Northern member states including Sweden, Denmark, the Netherlands, Germany, Austria, and the United Kingdom were early initiators of revisions to EU chemicals policy and regulation. The environmental ministers of these states have also been consistent supporters of REACH. This support is based in part on a desire to export their stricter domestic chemicals standards and policies to the European level. Thus, we are now witnessing a race to the top, rather than the bottom, as chemicals regulation is strengthened across Europe. That is, European leader states are engaged with other like-minded stakeholders in a process of “trading-up” chemicals standards across member states and at the EU level.<sup>31</sup>

NGOs are also an ever-present feature of modern European environmental politics.<sup>32</sup> In fact, many NGOs receive financial support from the Commission and/or member states’ governments in order to be able to participate in EU environmental politics and policy-making. Main NGOs that are active on chemicals include the European Environmental Bureau, a federation of over 140 national environmental NGOs, the European Consumers’ Organisation, a federation of 40 national consumer NGOs, as well as a large number of individual NGOs such as the World Wide Fund for Nature (WWF), Friends of the Earth, and Greenpeace. In October 2000, major environmental and consumer

27. Liefferink and Andersen 1998; and Börzel 2002.

28. Börzel 2002.

29. Burns 2005.

30. ENDS 1998; Börzel 2002; Kronsell 2004; Eckley and Selin 2004; and Pesendorfer 2006.

31. Vogel 1995, 2003; and Selin and VanDeveer 2006.

32. Mazey and Richardson 1992; and Hallstrom 2005.

NGOs adopted the Copenhagen Chemicals Charter, which outlined five key demands for improved chemicals safety.<sup>33</sup> In an effort to have these demands translated into EU policy, many NGOs were highly vocal and active supporters of REACH.

Efforts to strengthen European protection standards are also often supported by the public.<sup>34</sup> In the Eurobarometer from 2005, Europeans express much uneasiness about chemicals risks. In 2005, chemical safety was listed fifth on a list of 15 environmental issues that Europeans were most worried about. At the same time, the Eurobarometer shows that the public deeply distrusted both the EU organizations and national governments on environmental issues. In 2005, 12% said they trusted the EU most while 11% trusted national governments the most. In 2003, 13% trusted the EU the most and 12% most trusted national governments. In both polls, environmental protection organizations and scientists scored the highest on trust: environmental protection organizations scored 42% in 2005 and 48% in 2003, and scientists scored 32% in 2005 and 35% in 2003.

### Coalition Politics and the Development of REACH

This section analyzes the development of the REACH regulation in more detail using a process-tracing technique to critically examine the policy process over time whereby coalitions of actors emerged and interacted for the purpose of shaping policy outcomes.<sup>35</sup> This analysis is divided into four closely connected chronological phases: first, main components and criticisms of EU chemicals management prior to 1998; second, early discussions on the need for new chemicals policy ending with the publication of the Commission's White Paper, 1998–2001; third, the Commission's re-drafting of its proposal resulting in a revised proposal by the Commission, 2001–2003; and, fourth, the co-decision procedure, 2003–2007. Table 1 presents a timeline of key events in the development of REACH.

#### *EU Chemicals Management Prior to 1998*

Chemicals are of great importance to modern societies and policy-makers are faced with the challenge of regulating hazardous chemicals in a socially acceptable way, often in cases of competing interests and scientific uncertainty.<sup>36</sup> EU

33. These five demands were: 1) a full right to know—including what chemicals are present in products; 2) a deadline by which all chemicals on the market must have had their safety independently assessed, and that all uses of a chemical should be approved and should be demonstrated to be safe beyond reasonable doubt; 3) a phase out of persistent or bioaccumulative chemicals; 4) a requirement to substitute less safe chemicals with safer alternatives; and 5) a commitment to stop all releases to the environment of hazardous substances by 2020.

34. Vogel 2003.

35. George and McKeowan 1985, 35.

36. Brickman, Jasanoff, and Ilgen 1985.

**Table 1**  
Key Events in the Development of the REACH Regulation.

April 1998	EU environment ministers express concern about critical shortcomings in EU chemicals assessment and management
June 1999	The Council requests that the Commission proposes changes to EU chemicals policy
June 1999–February 2001	The Commission develops a White Paper based on the request from the Council
February 2001	Publication of the Commission's White Paper on the future of EU chemicals policy
June 2001	The Council issues conclusions on the White Paper
November 2001	The Parliament gives opinion on the White Paper
September 2001–May 2003	DG Environment and DG Enterprise develop and present a first draft of a REACH proposal
May–June 2003	Public internet consultation on the draft REACH proposal
July–October 2003	DG Environment and DG Enterprise redraft the REACH proposal
October 2003	The Commission releases its Proposal for Regulation COM(2003)644 and beginning of co-decision procedure
December 2003	Member states decide that the new European Chemicals Agency overseeing REACH will be located in Finland
October 2005	The Parliament's Environment Committee votes on REACH with eight other committees giving opinion
November 2005	The Parliament adopts a REACH proposals that is an amended version of the one passed by the Environment Committee
December 2005	The Council adopts a common position on REACH that differs from the one adopted by Parliament resulting in continued negotiations
December 2006	The Council and the Parliament agree on a final version of the new REACH regulation
June 2007	The REACH regulation enters into force

chemicals legislation has been developed since the late 1960s.<sup>37</sup> Although over 100 pieces of EU legislation covered chemicals before REACH, policy was structured around four main sets of legal instruments in the form of three directives and one regulation.<sup>38</sup> These covered: the classification, packaging and labeling of dangerous substances; existing substances; classification of dangerous preparations; and restriction of marketing and use (see Table 2).<sup>39</sup> These four sets of legislation, all of which have been amended since they were originally adopted, were administered by DG Environment and DG Enterprise.

By mid-1990s, a growing number of European policy-makers and stakeholders argued that EU chemicals policy and management suffered from multiple, critical shortcomings (although they did not always share the same concerns). First, a general criticism of EU chemicals legislation by member states and the chemical industry was that it was too complex as it included too many separate legislative pieces.<sup>42</sup> National authorities had, moreover, chosen diverse methods of implementation for many of the chemicals directives, which had created significant national policy differences between member states. In addition, the registration of a new chemical to the competent authority in one member state equated to notification throughout the EU, and it was difficult for both public and private sector actors to get an EU-wide overview of notification.

A second criticism was that human health and environmental protection was inadequate.<sup>43</sup> This issue is related to the regulatory division between existing and new substances created by the sixth amendment to the Directive on the Classification, Packaging and Labeling of Dangerous Substances adopted in 1979. This amendment introduced controls on new chemicals introduced to the common market after September 18, 1981, but left approximately 100,000 chemicals that existed on the common market before this date unregulated. The Regulation on Existing Substances, from 1993, placed also existing chemicals under EU authority, but controls remained lower than for new chemicals. For most existing chemicals, which make up over 95 percent of all commercial chemicals, there are little data on emissions, toxicity, and ecosystem and human health effects.<sup>44</sup>

37. McCormick 2001.

38. European Commission 1998; Montfort 2002; Royal Commission on Environmental Pollution 2003; and Schörling and Lund 2004.

39. A directive is binding with regard to the results it sets out to be achieved but gives flexibility to national authorities to choose the specific forms and methods they use for its implementation. A regulation sets out more specific rules and requirements for implementation that must be followed identically by all member states.

40. There have been approximately 2,700 notifications of new substances since 1981, with notifications of over 300 new substances each year since 1996. Out of these 2,700 substances, approximately 70 percent have been classified as dangerous.

41. It is estimated that somewhere between 90 and 95 percent of all chemicals that are sold in Europe are preparations.

42. European Commission 2001; Nordbeck and Faust 2003; and Royal Commission on Environmental Pollution 2003.

43. Nordbeck and Faust 2003; Geiser and Tickner 2003; and ENDS 1998.

44. EEA and UNEP 1999; and European Commission 2001.

**Table 2**

The Four Main Pieces of EU Chemicals Legislation before REACH.

<i>Directive on the Classification, Packaging and Labeling of Dangerous Substances (1967)</i>	Introduced labeling and packaging requirements for “dangerous” chemicals. The sixth amendment, passed in 1979, introduced environmental concerns and made a regulatory distinction between “new” and “existing” chemicals. It introduced a pre-market notification procedure for new chemicals that entered the common market after 1981, which included testing requirements by the applicant depending on the substance’s marketing volume (all new chemicals sold in over 10 kilograms annually had to be registered). <sup>40</sup>
<i>Regulation on Existing Substances (1993)</i>	Placed existing chemicals under EU regulatory control, although they did not become subject to the same regulations as new chemicals; manufacturers and importers only needed to provide authorities with basic data depending on the volumes in which they were produced or imported. Introduced uniform principles for risk assessment and increased testing and labeling requirements for existing substances, as well as determined that notification of a new chemical in one member state equated to notification throughout the EU.
<i>Directive on the Classification of Dangerous Preparations (1988)</i>	Set out harmonized classification, packaging and labeling requirements for preparations, similar to those applying to dangerous substances. A preparation is defined as a mixture or solution of two or more substances. The directive made no distinction between “new” and “existing” preparations, and those new substances that are included in mixtures or solutions were subject to notification requirements. <sup>41</sup>
<i>Directive on the Restriction of Marketing and Use (1976)</i>	Regulated the sale of hazardous chemicals. Under “ban with exemptions,” the marketing and use of a substance or preparation was only allowed for specifically approved uses. Under “controlled use,” which was the most common type of restriction, the marketing and use of a substance or preparation were allowed except in cases where there were specifically identified prohibitions. A 1994 amendment prohibited public sale of all substances and preparations that are carcinogens, mutagens, or reproductive toxicants.

Third, the Commission, many member states, and environmental NGOs believed that the influence of precaution on EU chemicals regulation was too limited.<sup>45</sup> The Maastricht Treaty stated that all EU environmental policy should be based on the precautionary principle, but the EU had been slow in integrating precaution in chemicals management for at least two reasons.<sup>46</sup> First, the burden of proof remained largely on regulators to prove that a chemical was not safe, rather than the producer and/or seller having to produce data demonstrating that a substance would not cause adverse environmental and human health effects. Second, much time was spent producing scientifically detailed risk assessments, which resulted in long regulatory processes and left little room for precaution. Member states also differed in their application of the precautionary principle.

A fourth problem was that the separation between existing and new substances in effect acted as a disincentive for innovation of less hazardous substances and substitution on the market.<sup>47</sup> For every new substance that the chemical industry wanted to introduce into the European market, they needed to do a risk assessment that was not mandatory for existing substances. This required both time and resources. As such, existing legislation in effect put a barrier on substitution of an old chemical, for which there may be little or no risk assessment data, for a new chemical that has been developed with more recent technology and for which there is a better understanding about its inherent properties and environmental behavior.<sup>48</sup>

In sum, criticism of EU chemicals legislation and management was growing among member states and other stakeholders in the late 1990s. Existing chemicals policy was regarded as much too complex as it included over 100 different pieces of legislation that had been adopted incrementally over a 30 year period with little effort to streamline expanding legislation. Additionally, critics wanted to improve European environmental and human health protection from hazardous chemicals, in part by more effectively implementing the precautionary principle in chemicals assessment and regulation of both existing and new substances. Finally, critics of EU chemicals policy wanted to create new guidelines and stronger incentives for the phase-out and substitution of hazardous chemicals to less harmful substances and/or non-chemical alternatives.<sup>49</sup>

#### *Early Discussions, 1998–2001*

Early agenda-setting discussions on principles for a revised EU chemicals policy were dominated by a small coalition. In the late 1990s, green leader states in-

45. ENDS 1998.

46. European Commission 2000; and Eckley and Selin 2004. A commonly cited definition of the precautionary principle states that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” (UNCED 1992, Principle 15).

47. European Commission 2001; and Geiser and Tickner 2003.

48. Nordbeck and Faust 2003.

49. European Commission 2001, 2003.

cluding Austria, Denmark, Germany, the Netherlands, Sweden, and the United Kingdom voiced growing dissatisfaction with the slow pace of EU chemicals assessment and regulation and its lack of precaution.<sup>50</sup> In November 1998, the Commission also issued a report criticizing the implementation of EU chemicals policy, prompting the Council to call for a more coherent and integrated EU chemicals policy. Informed by a stakeholder meeting held a few months earlier, the environment ministers at a meeting in May 1999 issued a joint statement criticizing shortcomings in EU chemicals policy. One month later, the Council formally requested that the Commission develop a new strategy for more effective chemicals management.<sup>51</sup>

During a two-year process, the Commission drafted a comprehensive set of principles and ideas for a revised system for chemicals assessment and regulation. This policy process was heavily dominated by DG Environment under the leadership of the then new Commissioner Margot Wallström from Sweden, the member state that most vigorously supported the policy review. Wallström made chemicals a top priority for DG Environment.<sup>52</sup> In addition, DG Environment worked closely with Swedish public officials and representatives from other member states that had originally championed the idea of a new chemicals strategy. In February 2001, the Commission presented its *White Paper on a Strategy for a Future Chemicals Policy*. A cornerstone of the Commission's proposal was the creation of a new REACH regulation, which would impact over 40 pieces of existing legislation.

Under the Commission's proposal, the producer or user of an existing or new chemical during the *registration* phase would be required to compile a dossier on its scientific properties, production and use volumes, and usage areas in order to conduct a provisional risk assessment. During *evaluation*, a new European Chemicals Agency and designated authorities in member states would evaluate those chemicals that are used in the greatest quantities or those identified to be of particular concern to assess the need for specific risk reduction measures. Chemicals of high concern would have to undergo an *authorization* process in which a company would need to get explicit permission from authorities before it could sell and use such a chemical. Companies would also have to demonstrate that the chemical could be used safely or that there were no viable alternative for a particular use.

Supporters of the White Paper hoped that a new REACH regulation would advance national policy harmonization by replacing several broader directives. REACH would also abolish the regulatory distinction between existing and new substances and accelerate the assessment and regulation of those existing substances that were deemed to require tighter controls for more effective human health and environmental protection. In doing this, the Commission sought to better operationalize precaution in chemicals management, including shifting

50. ENDS 1998.

51. European Commission 2001; Nordbeck and Faust 2003; and Geiser and Tickner 2003.

52. Interviews with DG Environment staff, Green MEP, and CEFIC representatives, November 2003; Pesendorfer 2006.

the burden of data generation from public authorities to manufactures and sellers. Finally, REACH would include requirements that less harmful substances be substituted for hazardous chemicals while seeking to maintain the competitiveness of the European chemical industry.<sup>53</sup>

Member states and the Parliament responded to the Commission's White Paper with both support and criticism. Environmental ministers from Denmark, Sweden, the Netherlands, Germany, and the United Kingdom continued to support the Commission's work and the REACH proposal during discussions in the Council. They did so in part hoping to export their own more ambitious national policy goals and stricter standards to the European level, and many were also continuing to strengthen domestic regulations parallel to policy developments within the EU.<sup>54</sup> For example, with the goal of phasing out domestic production and use of the most hazardous substances, Sweden was working towards its goal of "a non-toxic environment;" Denmark was working on its "generational goal;" and the Netherlands developed its "strategy on management of substances."

Many leader states desired a regulatory system in which a chemical with certain characteristics would be automatically restricted or banned.<sup>55</sup> For example, Sweden adopted a national goal of eliminating the production and use of hazardous substances by 2020 two years before a similar goal was incorporated in the EU Sustainable Development Strategy in 2001.<sup>56</sup> To that end, many leader states wanted to expand data gathering and establish a principle of "no data—no market" (that is, a firm would have to provide data showing that there was no cause for concern in order to sell and/or use an existing chemical or introduce a new one). This would generally strengthen the role of precaution, and those leader states that had earlier pushed for the inclusion of the precautionary principle into EU treaties and documents now advocated for a strong REACH as way to better implement precaution into EU chemicals management.

In the Parliament, Green MEPs in particular joined the pro-REACH coalition and supported the REACH proposal and the way that it was intended to fundamentally change EU chemicals management for similar reasons as the environment ministers from the leader states.<sup>57</sup> The Environment Committee, through its rapporteur Inger Schörling (Green-Sweden), issued a Committee report to the entire Parliament in October 2001. The report welcomed most of the specific proposals by the Commission.<sup>58</sup> The full Parliament Resolution on the White Paper, from November 2001, however, was more cautious as a majority of MEPs believed that the committee report was too pro-environment. The resolu-

53. European Commission 2001, 2003.

54. Geiser and Tickner 2003.

55. For example, targeting substances that are carcinogenic, reproductive toxicants, mutagens or endocrine disrupters.

56. European Commission 2002.

57. Interviews with Green MEP and DG Environment staff, November 2003; Schörling 2003; and Schörling and Lund 2004.

58. Interview with Green MEP, November 2003; and Schörling and Lund 2004.



tion acknowledged the need for policy revisions, but noted concerns over economic costs and negative effects on the competitiveness of the European chemical industry and job losses.

Many NGOs, including the WWF and Friends of the Earth also became vocal members of the pro-REACH coalition.<sup>59</sup> Leading NGOs had addressed chemicals for a long time, but European chemicals management was not a top priority for much of the 1990s. The release of the White Paper in 2001, however, resulted in much more NGO attention to EU chemicals issues. NGO activities were often coordinated through the European Environmental Bureau. More recently, the International Chemical Secretariat—a Swedish NGO founded in 2002 and supported by the Swedish Environment Ministry and the Swedish Chemicals Agency—has also been a strong lobbyist for REACH.<sup>60</sup> While NGOs supported the policy goals of leader states and efforts to introduce more stringent regulations, many also wanted to avoid increases in animal testing as a result of efforts to generate more risk assessment data.

In contrast, the European Chemical Industry Council (CEFIC), representing 27,000 chemical companies across Europe, aggressively criticized the Commission's proposal. In fact, REACH "attracted more hostility from industry than any other item of EU environmental legislation in 30 years."<sup>61</sup> Major CEFIC members including Bayer, BASF, and Shell Chemicals outright rejected the idea of creating a registration, evaluation, and authorization scheme for existing chemicals.<sup>62</sup> They believed this would be too burdensome and threaten their international competitiveness.<sup>63</sup> Instead, CEFIC preferred the continuation of a traditional selective assessment mechanism focusing on individual substances.<sup>64</sup> DG Enterprise and Parliamentary Committees such as the Committee on Industry, Research and Energy and the Committee on Internal Market and Consumer Protection expressed an understanding for many of CEFIC's concerns.

In sum, a few leader states initiated the review of EU chemicals policy in the late 1990s. These leader states quickly found an ally in DG Environment, which at the time was the dominant force on REACH in the Commission. Forming a small but influential coalition, they largely commanded the process leading up to the publication of the Commission's White Paper in 2001. The Parliament's Environment Committee and Green MEPs welcomed the White Paper and joined an expanding pro-REACH coalition that came to include members from the Commission, the Council, and the Parliament. Their efforts

59. Interviews with representatives of WWF and the EEB, November 2003; WWF 2002; and EEB 2002.

60. The International Chemical Secretariat is loosely modeled after the Swedish NGO Secretariat on Acid Rain, which has also received much public funds and been a strong lobby organization on European air pollution issues for over two decades (Selin and VanDeveer 2003).

61. ENDS 2003.

62. Montfort 2003; and CEFIC 2003a.

63. Petry, Knowles, and Meads 2006.

64. Interview with CEFIC representatives, November 2003.

were greatly supported by environmental NGOs. In contrast, the chemical industry rejected the Commission's proposal and, together with some MEPs and European politicians, argued that REACH program as outlined by the Commission would be too costly for both the chemical industry and national regulatory agencies.

#### *Commission's Re-drafting, 2001–2003*

As European coalition politics intensified after the publication of the White Paper, the Commission began re-drafting its REACH proposal in the fall of 2001 based on comments by member states, the Parliament, environmental and public health NGOs, and industry groups. During these revisions, DG Enterprise became much more active and engaged in protracted negotiations with DG Environment, often in collaboration with the chemical industry.<sup>65</sup> To solicit comments, the Commission organized a large internet consultation in May and June 2003, which generated further stakeholder response. In a shift of strategy, CEFIC moved from opposing REACH *per se* to trying to weaken its requirements as it became increasingly likely that a proposal would go forward.<sup>66</sup> In addition, political leaders of several EU members, many with large chemical industries, publicly voiced concern even though their environment ministers expressed strong support for REACH.<sup>67</sup>

For example, the British Prime Minister Tony Blair, the French President Jacques Chirac and the German Chancellor Gerhard Schröder in a joint letter to Commission President Romano Prodi, shortly before the Commission was to present its revised REACH proposal, stressed that a new EU chemicals policy must not endanger the competitiveness of the European chemical industry. They believed that the proposed registration procedure was still "too bureaucratic and unnecessarily complicated" and did not "prioritise sufficiently between the handling of substances" (i.e. too many substances were proposed for mandatory registration and falling under the principle of "no data—no market"). Focusing on the economic aspects of REACH, they stated that the Commission's proposal was "a long way from being the fast, simple and cost-efficient procedure that was promised."<sup>68</sup>

As a result of the concerns emanating from the chemical industry and its political supporters, the revised REACH proposal presented by the Commission in October 2003 relaxed several requirements compared with the White Paper from 2001.<sup>69</sup> The revised proposal led *The Economist* to note that "[P]lans to regulate the chemical industry in Europe approved by the European Commission

65. Interviews with DG Enterprise staff and CEFIC representatives, November 2003; and Pesendorfer 2006.

66. Interview with CEFIC representatives, November 2003.

67. ENDS 2003.

68. ENDS 2003.

69. ENDS 2003.

on October 29th amount to a minor triumph for industrial lobbyists over environmental campaigners.<sup>70</sup> Nevertheless, the revised REACH proposal would still significantly strengthen existing chemicals policy. Even though the pro-REACH coalition had to partially relent to growing political pressure, it managed to withstand the most aggressive attacks because of its critical cross-scale support from environmental ministers from green member states in the Council, DG Environment, the Parliament's Environment Committee, and the NGO sector.

The Commission's revised proposal was moreover largely consistent with the EU's Sustainable Development Strategy that was adopted by the European Council in June 2001. The Sustainable Development Strategy calls for better management of hazardous chemicals and sets the goal to, "by 2020, ensure that chemicals are only produced and used in ways that do not pose significant threats to human health and the environment."<sup>71</sup> A similar goal for global chemicals management was adopted at the World Summit on Sustainable Development in 2002 on an EU initiative.<sup>72</sup> The Sixth Environment Action Programme, which provides the environmental component of the Sustainable Development Strategy for the period 2002–12, outlines additional priorities that are consistent with REACH, including generating more scientific data, accelerating risk management, and the substitution of hazardous chemicals.

The Commission's revised proposal nevertheless included changes in four main areas based on criticism by the coalition of REACH skeptics. First, the new proposal lowered registration requirements for substances produced and used in quantities of less than ten metric tons per year (approximately 20,000 substances). Second, it introduced broad exemptions on polymers (large molecules consisting of repeatedly linked, identical smaller molecules) and substances that were already subject to other EU legislation. Third, where the White Paper envisioned a scheme where chemicals with inherent hazardous properties would have to be replaced with safer alternatives, the revised proposal reduced such substitution requirements for existing substances. Fourth, the revised proposal introduced broader confidentiality rights for producers and reduced their information requirements to the public.

Member states' governments continued to express mixed reactions. When the Competitiveness Council met in November 2003, Spanish and Italian ministers continued to criticize many aspects of the REACH proposal. They argued that it remained too complex and expressed fears that it would lead to substantial job losses.<sup>73</sup> Several Conservative MEPs and CEFIC also argued that the new proposal was still unduly burdensome and costly to industry.<sup>74</sup> In contrast, envi-

70. Economist 2003.

71. European Commission 2002, 35.

72. At the World Summit on Sustainable Development countries agreed that by 2020 chemicals world-wide should be "used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment" (United Nations 2002, Paragraph 23).

73. Carstens 2003.

74. Florenz 2003; and CEFIC 2003b.

ronmental ministers from northern member states continued to support the Commission's efforts to increase data collection and promote substitution of chemicals with intrinsic hazardous characteristics. There were also public displays of disagreements within governments. For example, the Swedish and German environment ministers, in an op-ed in a German newspaper in 2004, essentially argued against other German ministers and the chemical industry in favor of a strong REACH.<sup>75</sup>

Several Green MEPs expressed much disappointment that the Commission had lowered many data and regulatory requirements compared to its White Paper, which they had strongly supported. They argued that these changes largely went against the recommendations by the Parliament in its Resolution from November 2001 (and even more so the highly REACH friendly report by the Environment Committee from October 2001).<sup>76</sup> These concerns were generally shared by all major environmental NGOs, including the WWF, Friends of the Earth, and the European Environmental Bureau.<sup>77</sup> Also, some downstream users of chemicals expressed disappointment that information requirements were reduced in the Commission's new proposal. Their disappointment was shared by consumer groups campaigning for the removal of hazardous substances in consumer goods.<sup>78</sup>

REACH moreover attracted much international attention and the United States (US) in particular was a vocal critic.<sup>79</sup> The US accounts for one-fourth of global chemicals production, and REACH will have significant implications for the US chemical industry.<sup>80</sup> The US government and chemical industry argued that REACH would introduce unnecessary requirements on existing substances, that it would be too costly for the chemical industry to comply with added data and assessment requirements, and that REACH will violate international trade rules. Instead, the US government and industry, like much of the European chemical industry, preferred the continuation of existing procedures for assessment and regulation.<sup>81</sup> The Commission responded that REACH would not violate any trade agreements under the World Trade Organization, but US concerns were used by European REACH skeptics in their arguments against the Commission's proposal.

As the debate about the economic implications of REACH intensified, the Commission estimated that the revised REACH proposal reduced direct costs

75. Sommestad and Trittin 2004.

76. Interview with Green MEP, November 2003; Breyer 2003; Schörling 2003; and Schörling and Lund 2004.

77. European Environmental Bureau 2002; World Wide Fund for Nature 2002; and Interviews with representatives of WWF and EEB, November 2003.

78. Geiser and Tickner 2003.

79. United States House of Representatives 2004; and Interviews with representative of the American Chamber of Commerce to the European Union, November 2003 and staff at the Delegation of the European Commission in Washington D.C., April 2004.

80. American Chemistry Council 2005.

81. Interview with representative of the American Chemistry Council, April 2004; and Selin 2006.

for the industry by 80% compared to the proposal that was outlined in the White Paper, but costs and benefits of REACH were hotly debated and estimates differed greatly.<sup>82</sup> In the White Paper, the Commission estimated an additional cost of €2.1 billion over eleven years for the chemical industry. In contrast, industry estimated its total additional cost to €7.8 billion.<sup>83</sup> A report by the consulting firm Arthur D. Little commissioned by the German chemical industry that was released shortly after the White Paper predicted 2.35 million job losses and a 6.4 percent reduction in German GDP.<sup>84</sup> In another industry-commissioned study, Mercer Management Consulting estimated that REACH would cost the French chemical industry €29 to €54 billion over ten years and eliminate 670,000 jobs.<sup>85</sup>

These industry-sponsored reports, however, have been widely attacked as being based on “false economics” when calculating direct and indirect economic costs.<sup>86</sup> In an assessment of the revised REACH proposal that was issued by the Commission in October 2003, Ackerman and Massey estimated that the total cost for REACH over eleven years would be €5.25 to €8.05 billion, less than 0.1 percent of the chemical industry’s sales revenues.<sup>87</sup> In addition, members of the pro-REACH coalition stressed that environmental and human health benefits should be included in any cost-benefit analysis, even if these are notoriously hard to quantify.<sup>88</sup> Supporters of REACH moreover argued that benefits should be included from stimulated innovation and reduced costs of cleaning up contaminated sites and wastes from more proactive regulation.<sup>89</sup>

In sum, the pro-REACH coalition of environment ministers from leader states and DG Environment continued to be highly active during the re-drafting process together with the Parliament’s Environment Committee and Green MEPs. Many environmental and public health NGOs also actively pushed a strong REACH. CEFIC led much opposition to REACH and occasionally gained support from DG Enterprise, which often took a more industry-friendly position in negotiations with DG Environment. Political leaders from countries with major chemical companies also expressed concerns about the scope of REACH, sometimes listening to critics from outside the EU. As a result of opposition from the coalition of REACH skeptics, the revised proposal weakened several requirements compared to the White Paper, but would still strengthen many existing standards with critical support of key groups in the Commission, the Council, and the Parliament.

82. ENDS 2003.

83. Nordbeck and Faust 2003.

84. Arthur D. Little 2002.

85. Mercer Management Consulting 2003.

86. International Chemical Secretariat 2004; and Schörling and Lund 2004.

87. Ackerman and Massey 2004.

88. Pearce and Koundouri 2004.

89. One assessment estimates that European costs of PCB decontamination alone could be as high as €15 to €75 billion (Kemikalieinspektionen 2004)

*Co-decision Procedure, 2003–2007*

After the Commission's final proposal was released in October 2003, REACH became subject to the co-decision procedure involving the Council, the Parliament, and the Commission. The EU enlargement in 2004 had little impact on the REACH negotiations, for a few reasons. First, the ten new countries did not become members until much of the general framework of REACH already had been established. Second, harmonization of domestic legislation with existing and developing EU environmental policy was a requirement for accession for all new members. Third, the new members in the Council and their representatives in the Parliament did not act as a bloc, but rather joined existing coalitions during the co-decision process. Yet, the accession of ten new members and the election of a new Commission slowed down the REACH process for much of 2004.<sup>90</sup>

At the onset of the co-decision procedure, there was much debate about which Parliamentary Committee should lead on REACH. Some MEPs, supported by the chemical industry, feared that the Environment Committee would be too skewed towards environmental perspectives and worked to move the handling of REACH to the Industry or Internal Market Committees. Yet, these efforts were rebuffed by other parliamentarians, and the Environment Committee remained lead committee. As before, Green MEPs strongly supported REACH and found an ally in the Environment Committee rapporteur, Guido Sacconi (Socialist-Italy).<sup>91</sup> When the Environment Committee met in October, 2005, it voted decisively in favor of a relatively strong REACH proposal supported by Sacconi. Many MEPs outside the Environment Committee, however, were still concerned about financial costs and administrative burdens, and demanded revisions.<sup>92</sup>

In particular, many German Conservative MEPs led "the attack against earlier pro-green versions of the legislation" during heated debates in the Parliament that followed the vote by the Environment Committee.<sup>93</sup> These attacks against the REACH proposal that was endorsed by the Environment Committee were somewhat successful, and a weaker compromise proposal that was informally agreed upon by the leaders of the center-right and socialist party grouping passed during the Parliamentary plenary vote in November, 2005.<sup>94</sup> Most importantly, this compromise proposal reduced the amount of information that industry would have to supply for registration, reduced the number of substances produced annually in quantities between 1–10 tons that would require tests for registration, and reduced testing requirements for registration for substances produced in quantities of 10–100 tons.<sup>95</sup>

90. Interview with staff at the Delegation of the European Commission in Washington D.C., November 2005.

91. Beunderman 2005.

92. ENDS 2005a.

93. Beunderman 2005.

94. Bowley 2005; and ENDS 2005b.

95. Beunderman 2005; and Mason 2005.

Similar to the situation in the Parliament, many member states supportive of a strong REACH preferred to continue negotiating REACH in the Environment Council.<sup>96</sup> In contrast, several other member states and the chemical industry preferred to negotiate REACH in the traditionally more industry-oriented Competitiveness Council. With support from the Italian EU Presidency in late 2003, member states skeptical of a strong REACH succeeded where their allies in the Parliament failed, and the Competitiveness Council was made lead Council.<sup>97</sup> While the Environment Council continued to address aspects of the REACH proposal, the Competitiveness Council was the decision-making body. Northern member states in particular also sent environmental ministers and officials to the Competitiveness Council, as member states have the right to send whomever they choose to any Council meeting.

In the Competitiveness Council, coalitions across old and new member states were formed for the negotiations of different parts of the highly complex and detailed REACH proposal. Negotiations among member states mirrored many of those in the Parliament, with green member states pushing for a strong REACH regulation, and other member states adopting a position closer to that of the chemical industry and REACH skeptics in the Parliament.<sup>98</sup> In September 2005, the UK (as holder of the EU Presidency) circulated a first formal proposal in the Competitiveness Council that was intended to strike a balance between differing member states' views, including on issues of registration, data requirements, and administrative procedures.<sup>99</sup> Following a series of lengthy negotiations, the Competitiveness Council, at a meeting in December 2005, eventually reached a common position.<sup>100</sup>

Representatives of environmental leader states announced that they thought that the Council's common position was acceptable (if not ideal). For example, the German environment minister argued that the Council's proposal was "good and balanced."<sup>101</sup> In contrast, leading environmental NGOs believed that European governments had bent too much to pressure from the chemical industry and other members of the coalition of REACH skeptics.<sup>102</sup> Although the Parliament and the Council were in near agreement on many central components of REACH, differences remained between the two with the Parliament supporting several higher standards than the Council.<sup>103</sup> Because the Council's position differed from the proposal that was passed by the Parliament, the co-decision procedure continued in order to develop a single version that was satisfactory to both the Council and the Parliament.

96. Interview with staff at the Permanent Representation of Sweden to the European Union, November 2005.

97. Interviews with staff at the Permanent Representation of Sweden to the European Union and the Delegation of the European Commission in Washington D.C., November 2005.

98. CEFIC 2004; and ENDS 2005c.

99. ENDS 2005c.

100. ENDS 2005d.

101. ENDS 2005d.

102. ENDS 2005d.

103. ENDS 2005d; and Swedish Chemicals Agency 2006.

Negotiations continued throughout most of 2006, and it was not until late November that representatives of the Council, Parliament, and the Commission concluded an informal make-or-break deal. Under this deal, the Parliament kept in some of the higher standards that it had earlier supported, while the Council also got several of its preferred requirements into the final agreement.<sup>104</sup> The compromise proposal was passed by both the Parliament and the Competitiveness Council in December, 2006. Whereas Guido Sacconi, the rapporteur of the Parliament's Environment Committee, hailed the compromise as resulting in the "most ambitious chemicals legislation in the world," environmental NGOs denounced it as too weak stating that REACH was "alive but not kicking."<sup>105</sup> In contrast, the chemical industry argued that REACH remained too "bureaucratic" and "expensive," but pledged to make REACH work as attention shifted towards more practical implementation issues.<sup>106</sup>

In short, REACH targets approximately 30,000 existing substances that have to undergo a registration procedure during an eleven year period (2007–18). Registration covers most kinds of chemicals that are produced and/or imported into the EU in quantities of over one ton annually, but exceptions are made for polymers, intermediaries, and certain kinds of products that are covered by separate regulations (e.g. pesticides, pharmaceuticals, and cosmetics). Chemicals that are manufactured in quantities of over 1,000 tons/year and those that are carcinogenic, mutagenic, and reproductive toxicants will be registered during the first three years. For chemicals that are handled in quantities of at least ten tons/year, the manufacturer or importer will have to compile a chemicals safety report. During evaluation and authorization, the European Chemicals Agency and national authorities will assess if further studies are necessary and decide on possible restrictions and bans.

The responsibilities of the new European Chemicals Agency were also clarified by the Parliament and the Council during the co-decision procedure. The chemicals industry was a vocal supporter of a new central Chemicals Agency that would take much responsibility for the implementation of REACH together with national regulatory agencies. The Parliament, the Council, and the Commission largely supported this idea, and the creation of the Chemicals Agency will shift much authority and responsibility away from member states' regulatory authorities to the Chemicals Agency and the EU level. From an industry perspective, this will have the dual benefit of ensuring a more uniform implementation across all EU member states and easing "fears that some member states may be heavier in their interpretation of REACH than others."<sup>107</sup> The Chemicals Agency is placed in Helsinki and will play a critical role in the implementation of REACH.

104. Interview with staff at the Delegation of the European Commission in Washington D.C., October 2006; and ENDS 2006.

105. ENDS 2006; 2007.

106. ENDS 2006; 2007.

107. ENDS 2005c.



In sum, the attempt by REACH skeptics to move REACH away from the Parliament's Environment Committee failed. In contrast, a similar effort succeeded in the Council where the generally more industry-friendly Competitiveness Council became the new lead council. In a continuation of coalition politics, green leader states in the Council, the Parliament's Environment Committee, and Green MEPs supported by DG Environment and environmental NGOs actively worked to protect a strong REACH. Although an opposing coalition consisting of the chemical industry, several conservative and socialist MEPs, and high level European politicians succeeded in lowering several requirements compared to the Commission's earlier proposal, the pro-REACH coalition succeeded in advancing a new REACH regulation that will significantly reshape and strengthen EU chemicals policy. REACH will moreover be implemented under the supervision of a new Chemicals Agency.

### **Concluding Remarks**

This article has explored the question of how it was possible for a relatively small group of green policy advocates (e.g. environmental ministers in a few northern member states, DG Environment, Green MEPs, and environmental and public health NGOs) to secure the adoption of a new REACH regulation in the face of strong resistance from major European interests (e.g. the chemical industry, high-level politicians from countries with large chemical industries, and many conservative and socialist MEPs). The coalition politics of REACH is largely consistent with institutionalist arguments of characteristics and drivers of EU policy-making; governments as well as EU organizations and NGOs were critical in the development of REACH. Governments and EU organizations moreover did not behave as unitary actors, but advocacy coalitions were formed across groups within different governments and organizations.

More specifically, it is argued that the pro-REACH coalition was successful in large part because it included key supporters from all the major EU policy-making centers; the winning coalition was small, but it consisted of the right actors in the necessary places for policy expansion. The environmental ministers that initiated the policy review process in the late 1990s quickly found an ally in DG Environment. This alliance was facilitated by the fact that the new Commissioner for DG Environment made chemicals policy a top priority and worked closely with national experts from leader states. Together, these policy actors dominated the agenda-setting phase up until the Commission released its first REACH proposal in the White Paper in 2001. It was not until this point in time, and only after critical frames of the debate were established by the White Paper, that the chemical industry and other REACH-skeptics began to form an opposing coalition.

As the political debate continued, the pro-REACH coalition found critical allies in the Parliament's Environment Committee and Green MEPs. These groups were able to dominate much of the Parliament's early work on REACH

as other parliamentary committees and MEPs did not pay much attention to the REACH proposal until 2002–03. By then, efforts by CEFIC and other opponents to stop the development of a REACH regulation were futile, as it became increasingly clear that a REACH proposal would go forward as the full EU policy-making machinery was picking up speed. During the debate before the Commission's revised proposal was released in the fall of 2003 and the political negotiations under co-decision procedure, the environmental leader states, with the backing of DG Environment, the Parliament and the NGO community, secured enough support in the Council for the adoption of a new REACH regulation in collaboration with Parliament.

Those interested in global chemicals politics would be well-advised to pay attention to REACH and related EU policy developments on chemicals for two main reasons. First, the EU is likely to push for similar policy developments globally. As far back as 1973, in the first Environment Action Programme, European political leaders stressed the importance of active engagement in international forums for achieving Community interests, and the EU continues to be highly active in international environmental politics.<sup>108</sup> In other words, EU policy developments on chemicals will shape the behavior of the European Commission and EU member states in international policy-making forums. For example, the EU argues that many of the goals that it tries to accomplish with REACH would benefit also global chemicals management, including accelerated risk assessments and regulations based on a stronger commitment to precautionary action.

Second, EU environmental policy can have a direct impact on policy and economic activities in non-member states, including those that are seeking EU membership and/or have close economic and cooperative ties with the EU.<sup>109</sup> A growing EU (in both membership and political and economic importance) exerts an increasing influence over the setting of international regulatory standards for products and for environmental and consumer protection.<sup>110</sup> As EU chemicals standards are raised higher than anywhere else in the world (including the US, which has often been the *de facto* setter of international product standards), companies in non-EU countries are forced to accept new EU standards if they want to stay in the economically-significant European market. In this respect, new regulatory standards under REACH clearly extend beyond the EU borders, with important implications for both private companies and regulatory agencies.

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