

**FOOD FOR THOUGHT:  
REPRESENTING DUTCH INTERESTS  
IN THE EU SUBSTANCES POLICY**

**EFTA/REACH ‘Baseline Evaluation’  
and ‘Interministerial’ Sub-study**

**Final Report**

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## SUMMARY

Since the end of the 1990s, the Dutch government has actively engaged in the modernisation of its substances policy. Whereas originally, the central theme was the development of the national Strategy on Management of Substances (*Strategie Omgaan met Stoffen*, SOMS - Cabinet Memorandum, 2001), in subsequent years the government switched the focus to the European policy arena. This culminated in Dutch policy officials becoming intensively involved in the procedure of drawing up the new EC Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation, 2006). To achieve their objectives, the Netherlands/the Ministry of Housing, Spatial Planning and the Environment (VROM) had to play on a number of parallel playing fields (within the government, with interest groups and industry, bilaterally and within the European institutions).

This evaluation analyses and assesses the approach to SOMS and REACH taken by the Netherlands/VROM with a view to establishing what lessons can be learned for the effective representation of interests in future European dossiers. The analysis and assessment are based on three questions:

- What did the Netherlands/VROM want to achieve from SOMS/REACH (the objective)?
- How was this tackled (the approach)? and
- What has been achieved, and what was the Dutch contribution to these results?

To this end both the process and the discussion of the content have been analysed at the EU level and in the Netherlands, paying specific attention to interministerial coordination in the Netherlands.

The key finding of this report is that the SOMS/REACH process can in a number of respects serve as an example of a 'major' European dossier that has been handled successfully by the Netherlands/VROM. By means of a carefully thought-out objective and approach and by involving a large number of stakeholders in the preparations, they were able to avoid several pitfalls common to the coordination and implementation of European dossiers. From the analysis of the content it can be concluded that many of the Netherlands' and VROM's concerns and preferences have been incorporated into the wording of the regulation. Four specific success factors can be pinpointed:

- *The (pro)active approach, based on knowledge and commitment*, which included seconding a national expert to the European Commission during the drafting stage, but also the active presence and input of members of the Dutch government in the Council working party and in bilateral contacts.
- *The early formulation of the priorities of the objective*, as set out in the SOMS memoranda and letters to parliament on REACH. At the same time, the Dutch delegation demonstrated flexibility during the process, by adapting these priorities to changes in the European playing field and in national political relationships.
- *Focusing on 'European' solutions* instead of on the country's own policy solutions. Whereas the Dutch objective was originally inspired by the specific philosophy behind SOMS, during the process, efforts became geared more towards achieving a European consensus.
- *Ensuring internal consistency and integrity in the overall balance of interests* by preparing for the formulation of the position in a dossier team; the use of the framework instruction, transparency in information provision and the ample opportunities for representation of interests at fixed points in the policy process.

On the basis of these findings, how can the Netherlands/VROM optimise their involvement in European dossiers? A number of recommendations are made in the final chapter. Two 'lessons' from REACH catch the eye:

- *Do not underestimate the European Parliament.* The reconstruction clearly shows that the Netherlands/VROM intentionally deployed a lot of resources to the Council and less to the examination of the dossier by the European Parliament, the latter being the co-decision-maker. To avoid the risk of points won in the Council being weakened or lost entirely as a result of EP amendments, careful attention to the EP stage in strategy formation for 'major' dossiers is a point for consideration. This applies all the more now that the power of this institution is set to increase even further under the Lisbon Treaty.
- *Keep all interests involved and guarantee integrity.* During the negotiations it was not possible for all the ministries involved to participate at the fast pace set whilst at the same time generating sufficient internal political support and content-related input. In order to effectively take into account all interests involved with respect to European proposals such as REACH, that have great significance for the Netherlands, all the ministries involved need to set aside enough time and resources at a top administrative and political level. An evaluation and feedback moment must also be built into the negotiations in order to enable the negotiation strategy and the allocation of resources to be reviewed if necessary. This would enable all parties and interests to participate in an intensive process such as REACH with sufficient expertise and with the necessary political involvement.

European negotiations are by definition a matter of give and take. This requires all concerned to have the capacity to assess the value of the final outcome in a realistic way. From this perspective, the conclusion is that the negotiations are successful if nobody is entirely satisfied, or, in different words, if everyone is satisfied to some degree. Seen from this viewpoint, the search for a consensus in the intensive REACH dossier, to which the Netherlands has undeniably made a particularly active contribution, has certainly borne fruit.

## CHAPTER 1 INTRODUCTION

### 1.1. Background study

Government policy on chemicals both in the Netherlands and in Europe has been in a state of flux since the end of the 1990s. The risks posed by many of the chemicals being produced, traded or used in the European Union (EU) were unknown at that time. Furthermore, the existing EU policy framework was so inadequate that its implementation was at risk of falling short. In order to achieve a safer, more effective and more cohesive framework for managing substances, various policy review initiatives were developed.

In 1999, the Ministry of Housing, Spatial Planning and the Environment set about developing the *Strategie Omgaan met Stoffen* in a consultation process with industry and social organisations.<sup>1</sup> The SOMS strategy memorandum was adopted by the Cabinet in March 2001 following intensive administrative preparation. In the meantime the theme of chemicals policy had also been raised at EU level. On the initiative of a coalition of 'green' Member States including the Netherlands, the European Commission published a White Paper in February 2001, which initiated a revision of the fragmented European legislation and regulations in this area<sup>2</sup>. After detailed negotiations with the European Parliament and the Member States, the Commission proposal of October 2003 resulted in the REACH regulation in December 2006. The regulation regulates the registration, evaluation and authorisation of more than 30,000 chemicals in and by EU Member States.

These two processes of policy and regulation (SOMS, REACH and their interconnection) are central to this study, which focuses in particular on the objective and approach of the Netherlands, or, more specifically, that of the Ministry of VROM.

The study which is set out in this report, was conducted between October 2007 and April 2008 by a project team from the Clingendael European Studies Programme (CESP) on behalf of the Chemicals and Standards Department of the Ministry of VROM Chemicals, Waste and Radiation Protection Directorate.<sup>3</sup> This report presents the analysis, findings and recommendations of the so-called 'baseline evaluation' of the processes around SOMS/REACH and of the 'interministerial' sub-study that forms part of it.

### 1.2. The challenge of a national EU dossier approach

The aim of this study is to revisit the Netherlands' approach to SOMS and its objective and approach regarding REACH, one of the biggest dossiers to have been handled by Brussels in recent decades, and to learn lessons from this process about the way similar dossiers should be approached in the future.<sup>4</sup> This analysis therefore forms part of a series of studies on the representation of (national) interests in European dossiers.<sup>5</sup> The above studies highlight a number of concerns which, taken

<sup>1</sup> Strategy on Management of Substances (SOMS).

<sup>2</sup> White Paper on the Strategy for a future Chemicals Policy, COM(2001)88 def, 27 February 2001.

<sup>3</sup> See Annex IV for the members of the project team.

<sup>4</sup> In the Future Environmental Agenda, REACH is described as an example of 'dealing with Brussels better', particularly because of the active, initiating role played by the Netherlands in the procedure of drawing up the regulation.

<sup>5</sup> In this context, see the recommendation of the Council of State, Parliamentary Documents ii 2005/06, 29 993, no. 22, and the Cabinet's reaction to this recommendation, The Hague, 23 May 2006, Parliamentary Documents ii 2005/2006, 29 993, no. 27; the Council for Public Administration, *Nationale coördinatie van EU-beleid: een politiek en proactief proces* [National coordination of EU policy: a political and pro-active process]. The Hague, 2004; Advisory Council on International Affairs, *De Europese Unie en de band met de burger* [The European Union and its ties with the citizen], The Hague, 2005 (written recommendation); Rood, J.Q.T., S.J. Nollen, M. van Keulen and G.A.T.M. Arts, *Nederland en de totstandkoming van EU-milieurechtlijnen* [The Netherlands and the drawing up of EU environmental directives], Clingendael Institute, The Hague, December 2005; Final report of the 'Gemengde Commissie Sturing EU-aangelegenheden' [Mixed Committee on management of EU affairs], The Hague, 2005; Advisory Council on International Affairs, *Europa Een Prioriteit!* [Europe a priority!], The Hague, 2006; Keulen, M. van, 2006: Going Europe or Going Dutch, How the Dutch Government Shapes European Union

together, do not exactly constitute a recipe for success but at least set out the major ingredients for operating effectively in Brussels (see Table 1.1). Such an analysis framework is important for the assessment and evaluation of the SOMS and REACH case studies: what are the pitfalls, and how can they be redressed or avoided on time?

In the expanded European Union of 27 Member States, it is a challenge for all the actors involved (Member States, institutions, industry and interest groups) to shape their own objective with regard to priority dossiers and to secure their influence. An initial relevant factor in operating effectively at European level is thus evident: the *extent of each player's expertise, commitment and activity*. At first glance, the Member States' national governments would seem to be at an advantage in this complex playing field, particularly because of their 'permanent' place at the Council table. Traditionally the Dutch government has focused on this 'royal road' of national interest representation. On the other hand, in view of the large number of dossiers in which the EP is involved as a co-legislator alongside the Council, it has long been impossible to rely on this institution (i.e. the Council) alone.

What follows from this is the importance of careful 'timing' as a second aspect in the representation of interests. As staff is by definition scarce, and the Netherlands cannot depend on *quantitative* power in the enlarged EU, a sound European strategy essentially also means *making choices*. This starts with defining the nature of the relationship between national and (envisaged) European policy-making. If the Netherlands merely reacts to proposals from Brussels, there is a danger that these proposals will already have been shaped to such an extent by the agenda-setter (in most cases the European Commission) that they can no longer be adapted. Problem-exporting agenda-setting means that the Netherlands searches for a European solution to a national problem. The problem with this strategy in an expanded EU is that a large number of interested parties in Brussels are trying to influence the EU agenda with this motive in mind. Reservations concerning the approach to national dossiers in the recent past have resulted in efforts to influence Brussels through pro-active agenda-setting, including government attempts to help define the European agenda based on national interests *on time*. As the European Commission has the right of initiative for new legislative proposals in the European policy process, Dutch government ministries have invested much in the Commission in past years. The expert committees used by the Commission constitute an important stage with regard to the provision of early input, and it is more common now than in the past to coordinate the message put forward there by the Dutch representatives. But investing structurally in the secondments of government officials to the Commission apparatus and the implementing agencies and maintaining a solid network of (not only Dutch!) Commission officials are also crucial at this stage. For the purpose of influencing the agenda-setting and drafting stage, use can also be made of other actors that can influence the Commission, such as interest groups, industry or international organisations.

The need for an *early and pro-active involvement* notwithstanding, it is also of vital importance to mobilise sufficient support in the *decision-making phase*, in which the Council of Ministers and the European Parliament amend and adopt the proposal, in order to ensure that the proposal is adopted in the desired form. Holding the EU Presidency, as the Netherlands did in the second half of 2004, often gives a Member State that opportunity, because its national administration is much more focused on the EU during that period than usual, and more resources are available. At the same time, however, a presidency also demands due neutrality, with the result that the promotion of the country's own interests can suffer.

Even in the case of well thought-out policy choices, the *form* in which these attempts to influence are shaped is certainly at least as important as the consideration of the content that takes place prior to the intervention. It is crucial to put forward arguments and knowledge from an open stance: Experience

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Policy, Amsterdam, AUP.

has told us that too much ‘pontification’ can be counterproductive. In the presentation of one’s own ideas, therefore, the emphasis must always be on the way in which the *European* consensus can be workably and lastingly shaped.

Another requirement for operating effectively, to which much importance is attached in the literature, is ‘speaking with one voice’ or the *coherence and internal consistency of the (national) position*. For the Dutch government, in contrast to single-issue institutions, it is important to keep an eye on the balance between all interests involved, in order to achieve a truly all-encompassing approach to dossiers. In the context of the sub-study into the interministerial balancing of interests in REACH, therefore, it is not only the process of defining the position that is important, but also the question of how and to what extent such an all-encompassing balance of interests has been achieved, is crucial. This is a challenge for the Dutch government, on account of the structure of ministerial coordination in The Hague, which gives individual ministries a relatively high degree of autonomy. In combination with the Dutch politico-administrative tradition of ‘poldering’ (exhaustive consultations), in which disputes are settled between experts at an early stage, and the traditionally low involvement of the parliament, there is a risk of monopolisation and compartmentalisation. In contrast, the ‘strategic’ approach of priority dossiers requires *the higher level* in the government to identify which dossiers on the European agenda are of particular importance to the Dutch government. . Thereafter it is important to retain this focus right up to the implementation and execution stages in order to avoid (legal)problems in the ‘follow-up process’. This too is a particular challenge, *inter alia* because of the large number of actors generally involved in the implementation of EU policy, the relatively short implementation times<sup>6</sup> and the fact that a ‘wall’ is generally built between preparation and implementation in the government.

**Factors in operating effectively in the EU:**

- Expertise, commitment and activity of an actor
- Timing and prioritisation
- Early and pro-active involvement
- Focus on achieving European consensus
- Coherent and internally consistent (national) interest balancing and input

Table 1.1

As can be seen in this section and in Table 1.1, a considerable number of factors need to be taken into consideration by organisations and Member States’ governments that want to be active at the European level - in order to ensure their interventions to be successful in the eyes of all concerned. The extent to which concerns of this kind have played a role in the Dutch approach to the REACH dossier is described in Chapter 4. It should be noted that as a consequence of the complexity, dynamics and time pressure of European processes, the emphasis on ‘workability’ must be put into perspective to some extent. In practice, all actors that want to play an active role in Brussels, with their - by definition - limited resources, already find it difficult enough to grasp opportunities wherever they arise and to respond adequately to new circumstances. Seen from this particular perspective,, European ‘success’ can be defined in a rather minimalist way: ‘preventing’ or ‘hindering’ unwanted or poorly fitting policy as much as possible. In the case of European chemicals policy, however, the Dutch government has shown itself to be decidedly ambitious by seeking to translate its position in the EU as a trend-setter or ‘leader’ in this area into influence in the shaping of a new European policy framework. Particularly after a case such as SOMS/REACH, which is ambitious in terms of its content and extremely intensive in terms of its process, it is very valuable to identify lessons for the future with the benefit of hindsight. This is the aim of the analysis presented in this report.

<sup>6</sup> This certainly applies in the case of REACH, as the regulation was foreseen to enter into force within 20 days.

### 1.3. Set-up and method

During the study period the analysts gained insight into the three angles of this evaluation study on the basis of a review of the literature, interviews with the parties concerned, an in-depth analysis of studies, reports and (official) documents on SOMS and REACH, and by testing these findings against the opinions of academics and policy practitioners. The questions studied in the baseline evaluation were:

1. To what extent has the Netherlands/VROM achieved the objectives formulated in the context of European chemicals policy?
2. What was the European playing field in which the Netherlands was operating in this dossier?
3. How did the Netherlands/VROM operate in this dossier?

Because of the complex constellation of interests in SOMS/REACH, the way in which different interested parties were involved in determining the overall position is an important dimension in assessing the process leading up to REACH. In order to obtain a picture of this process within the Dutch government, a number of sub-issues were examined in a specific analysis in the context of the EVA/REACH 'interministerial' sub-project. For the sake of consistency, the analysis and findings of this sub-study have been incorporated into this final report. The following specific study questions were central to the sub-study:

- a. Which actors in the Dutch government were on which moments involved in the formulation of negotiation positions in the REACH process? How do these actors relate to each other, and, in particular, to the dossier 'leaders' VROM and EZ?
- b. How was the process of defining the position given shape during the various stages in the process of negotiations on REACH? In particular:
  - What formal structures and informal processes characterised the interaction between the actors involved?
  - How was the coordination role given shape in this process?
  - How were possible conflicts of interest handled, and how were joint negotiation instructions arrived at?
- c. What influence did the process of defining the position have, on the one hand, on the outcome achieved in REACH (the content) and, on the other, the strategy and tactics followed (the process)?

While using the 'intensive process analysis method', the various stages of the policy process have been outlined by means of an examination of dossiers, a literature review and interviews. The evaluation presented in this report focuses on the perspective of the Dutch government and VROM. However, interactions and contacts with other organisations and institutions, particularly other ministries involved, parliament, industry, knowledge centres and NGOs, other Member States and European institutions naturally play a major role and were also specifically involved in the evaluation. As a result of an analysis of documents and reports, a total of 25 questionnaire-based interviews were held with parties in the government, industry, the European Commission and the European Parliament who were directly involved in the dossier.<sup>7</sup> The question asked in these interviews concerned the respondents' own roles and involvement in the process of SOMS and REACH, with particular emphasis on the study questions formulated above. The interviews also aimed to examine respondents' views on whether and to what extent more general lessons can be learned from the two processes for the way in which the Netherlands/VROM operate in Europe. The interviews produced a broad picture of the positions of the various interests and their involvement and experiences in the SOMS/REACH processes.

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<sup>7</sup> The choice of respondents was coordinated with the other EFTA/REACH sub-studies, so that material from other project teams could be used in this study.



#### 1.4. Structure of the report

The rest of this report is structured as follows:

- Chapter 2 presents a general *outline* of the processes involved in drawing SOMS and subsequently REACH, with specific focus on the repercussions SOMS has had on REACH, the socio-political context and how REACH relates to the original ambitions of SOMS; the influence of SOMS on the national and European playing field, and key moments in the process of initiation, agenda-setting, negotiations and decision-making in respect of the REACH dossier.
- Chapter 3 contains an *analysis of the process of defining a position and coordination* between VROM, EZ and the other ministries, and the involvement of parliament, industry and NGOs in this dossier. The approach to execution and implementation of this dossier is also described, followed by a discussion of the Netherlands' position and its coordination in the European playing field and the way in which it dealt with the Commission, the Council and the European Parliament.
- The key *findings* from the outline and analysis are explained in Chapter 4. This chapter refers back to the study questions so as to paint a picture of the approach, the results achieved and an assessment of the Dutch role in drawing up SOMS/REACH.
- Based on the findings of this study, Chapter 5 sets out a number of *recommendations* for protecting Dutch interests at EU level which can serve as a guideline for the way similar dossiers will be approached in the future.

## CHAPTER 2 FROM SOMS TO REACH: AN OUTLINE

This chapter provides a general outline of the process in which REACH was drawn up. In view of the limited scope of this study, it is impossible to cover all aspects of this process, which took almost ten years. Where applicable, some aspects are discussed in greater depth in subsequent chapters. The Dutch objective in the REACH negotiations and a comparison between this objective and the final outcome of REACH are described in separate boxes in this chapter. Table 2.1 lists some key dates in the process of drawing up REACH which will be explained in more detail in the course of the chapter. The chapter focuses specifically on the formal negotiations and government input. Informal negotiations and lobbying by industry and NGOs undeniably had a major influence on the development of REACH; this interplay between government, industry and NGOs is examined in Chapter 3.<sup>8</sup>

<b>Important dates in the process of drawing up REACH</b>	
April 1998	Chester Informal Environment Council
June 1999	Council asks Commission to review chemicals policy
February 2001	White Paper on Strategy for Chemicals
June 2001	Council conclusions on White Paper
November 2001	EP reaction to White Paper
May-June 2003	Internet consultation
October 2003	Commission proposal (2003)644
October 2005	EP position at first reading
December 2005	Political agreement in the Council
June 2006	Common position of the Council
December 2006	EP position at second reading and Council and EP compromise
June 2007	REACH enters into force

Table 2.1

### 2.1. Background: a brief outline of the substances arena

The European Union has been actively managing and controlling chemicals since 1967.<sup>9</sup> In 1979, the European substances policy was adapted so that substances placed on the market after September 1981 would have to comply with (limited) information and testing requirements. Substances that were already on the market (registered before September 1981) could be traded without additional restrictions. In the mid-1990s, experts from a number of Member States with a leading role in the area of substances observed that although the trade barriers had been removed as a result of the European and international substances policy, this had taken place throughout the EU without the much-needed increase in knowledge of the substances being traded and the necessary measures to protect public health and the environment. The existing substances policy was regarded as ineffective, because insufficient information was available on substances dating back to before 1981, and because the burden of proof for the responsible use of substances lay entirely with the government, which did not have sufficient resources to map out the potential risks.<sup>10</sup>

#### 2.1.1 Agenda-setting

In the Meeting of Competent Authorities,<sup>11</sup> in which the Netherlands played an active role at policy

<sup>8</sup> For a detailed analysis please refer to EVA/REACH *Deelonderzoek Bedrijfsleven* [Sub-study on Industry], Erasmus University, and EVA/REACH *Deelonderzoek NGO's* [Sub-study on NGOs], internship report by Bas van Huut, University of Leiden.

<sup>9</sup> See, for example: 1967 Council Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances.

<sup>10</sup> For an analysis of the limitations of this system and its implementation, see, for example, '*Problemen met de uitvoering van Bestaande Stoffen Verordening*' [Problems with the execution of the Existing Substances Regulation], a document received and input under 'Miscellaneous' during the Environment Council meeting on 16 December 1997.

<sup>11</sup> The Meeting of Competent Authorities (CA) is a six-monthly meeting organised by the European Commission, at which policy-related and political matters around the implementation of the EC Existing Substances Regulation are discussed.

and expert level, it was felt that there was a need for an overarching policy, and a Black Paper was drawn up. After agreement at expert level by Austria, Denmark, Finland, Sweden and the Netherlands, this point was addressed at the informal Environment Council in April 1998. One year later, in the Council conclusions of June 1999, the Commission was called upon to review the then extremely fragmented substances policy. This call coincided with the Commission's SLIM initiative, which aimed to improve the workability of existing EU legislation.<sup>12</sup>

### 2.1.2. *The Chemicals White Paper*

As a result of the European Commission's review of the functioning of four existing instruments<sup>13</sup> and various debates in the Environment Council, the Commission set down its ideas for a new overarching substances policy in the form of the 'Chemicals White Paper', which was presented in February 2001.<sup>14</sup> The aims of the White Paper were threefold: to ensure a high level of protection of human health and the environment; to ensure the efficient functioning of the internal market; and to improve the opportunities for industry to innovate and strengthen its competitiveness. To achieve these aims, the White Paper provided for one overarching system of regulation for existing substances (those already on the EU market in September 1981) and new ones (those placed on the EU market after September 1981), in accordance with a new registration system for all substances being placed on the EU market in volumes of more than 1 tonne per annum. Substances placed on the EU market in volumes of more than 100 tonnes would have to undergo assessment. For the highest risk substances, the use of which was deemed to require strict control, the White Paper provided a tailor-made authorisation procedure. Responsibility for providing the required information and the risk assessment was handed to industry and was phased in on the basis of volume.

The aims of the White Paper were broadly endorsed by the Member States in the Council conclusions of June 2001, although the Commission was asked to clarify or amend certain points relating to the implementation of the proposal. Points of concern mentioned in the Council conclusions included specific care for the health and safety of workers, keeping costs down, restricting the use of high-risk substances to clearly defined situations, specifying reasonable deadlines within which industry must comply with the information obligations, and sanctions for industry for non-compliance with the requirements of the new authorisation system.<sup>15</sup>

In an opinion of November 2001, the European Parliament indicated that it viewed the focus of the White Paper 2001 positively, although at the same time, it called for some modifications to the authorisation system, most of which related to points that were also highlighted in the Council conclusions.<sup>16</sup>

## 2.2. *From SOMS to REACH*

In the European context, the Netherlands was one of the initiators who raised the issue of the need to modernise the chemicals policy. Prior to REACH, the Netherlands had already developed its own initiative aimed at modernising the Dutch substances policy: the Strategy on Management of Substances (SOMS). The initiative for this review of the Netherlands' chemical policy was taken by the Ministry of VROM, but other Ministries, primarily VWS (Public Health), SZW (Social Affairs and Employment) and EZ (Economic Affairs), were also closely involved.<sup>17</sup> In the context of SOMS,

<sup>12</sup> The SLIM initiative stands for 'Simpler Legislation for the Internal Market'; see COM (96) 155.

<sup>13</sup> Namely: the Dangerous Substances Directive, the Existing Substances Regulation, the Dangerous Preparations Directive and the Marketing and Use Directive. For this review see Commission Working Document SEC (1998) 1986 final.

<sup>14</sup> White Paper: 'Strategy for a future Chemicals Policy', 27 February 2001, COM(2001) 88 final.

<sup>15</sup> See '*Verslag Milieuraad 7 juli 2001*' [Environment Council Report 7 July 2001], Second Chamber, Session Year 2000–2001, 21 501-08, no. 136 and '*Verslag Milieuraad door PV*' [Environment Council Report by the Permanent Representative] (internal document).

<sup>16</sup> See the European Parliament resolution on the Commission White Paper on Strategy for a future Chemicals Policy, A5-0356/2001, final version, November 2001.

<sup>17</sup> This involvement initially took shape in the interministerial Substances Working Party and, during the SOMS process, in the SOMS Interministerial Working Party (IW SOMS).

the central government created the SOMS Sounding Board in 1999 with a view to investigating the problems in the chemicals policy and searching for potential solutions in collaboration with industry and civil society. This tripartite consultation not only aimed to create broad support for the policy modernisation, but was also consistent with the Kok II Cabinet's efforts to shift responsibility - in this case for the risks of chemicals - onto industry. However, in August 2000, the NGOs participating in the consultation stated in an official letter to the Minister of VROM that they would be withdrawing from the SOMS process.<sup>18</sup> Nonetheless, the tripartite consultation continued on the shop floor, and the Cabinet presented the Strategy on Management of Substances in March 2001, two years after it had commenced. This came one month after the publication of the White Paper by the Commission. The Dutch position with regard to the White Paper was therefore largely determined by the concepts formulated in SOMS (see box 'the Dutch objective'). A few other Member States such as Sweden, the United Kingdom and Denmark were also actively involved in a national process of policy modernisation ahead of European developments.

Dutch industry responded to the Strategy Memorandum in April 2001 with a declaration of intent.<sup>19</sup> In this declaration, the industrial sector announced that in the short term, it intended to expand its knowledge of the dangers and risks of substances, improve communication about them in the supply chain and increase the expertise available within companies. The cooperation between the government and industry was given shape in various settings, in the Versterking Arbeidsomstandigheden-beleid Stoffen [Reinforcing the Working Conditions Policy on Hazardous Substances] programme (VASt) from 2003 onwards and in the Substances Covenant in 2004. During those years, the strategy document was supplemented by two progress reports and the implementation plan 'Nederlands stoffenbeleid in internationaal perspectief' [Dutch Substances Policy in an International Perspective]. As agreed with industry, which remained involved in the SOMS process together with the NGOs, the government actively promoted the Strategy Memorandum and the later results of SOMS at a European level, both to the Commission and the European Parliament, as well as bilaterally in the other Member States.<sup>20</sup>

At the same time, work was being done to shape Dutch legislation and regulations in response to the new substances policy.<sup>21</sup> For example, a preliminary draft for a new Chapter 9, 'Substances and Products' in the Environmental Management Act was published in June 2002, which served as a discussion paper in the Cabinet and in consultations with industry and the environmental movement.<sup>22</sup> In July 2002, an amendment to the Environmentally Hazardous Substances Act Registration Decree was proposed with a view to embedding the SOMS policy in law (see Section 3.3.2). However, these steps designed to implement the SOMS policy in legislation and regulations - one of the wishes of the joint NGOs - resulted in a breakdown in relations with industry, which stated that it did not wish to enter into any further obligations in advance of European measures based on the Chemicals White Paper.<sup>23</sup>

### 2.2.1. Commission proposals

The European Commission worked on the REACH proposal between 2001 and 2003. During this period, a VROM/SAS policy team member was seconded part-time to the Commission as a chemicals

<sup>18</sup> See Section 3.2 for a summary of the NGOs' arguments.

<sup>19</sup> Presented by VNO-NCW on behalf of industry, 'Intentieverklaring bedrijfsleven – overheid betreffende de uitvoering van een vernieuwing van het stoffenbeleid' [Declaration of Intent between industry and government concerning the execution of the substances policy modernisation], 2 April 2001

<sup>20</sup> For example the SOMS Strategy Memorandum was translated into English and presented to the appropriate Commission DGs and the relevant ministers in all Member States. The Dutch MEPs were also informed about the Netherlands' SOMS policy.

<sup>21</sup> See the letter from the Minister of VROM updating on progress in embedding the Substances and Products chapters of the Environmental Management Act in law, 2 May 2002, Second Chamber, non-dossier document vrom20585.

<sup>22</sup> See the Minutes of the General Meeting with the Minister of VROM of 7 March 2002, 26 March 2002, Second Chamber, Session Year 2001–2002, 27 646, no. 10, and see footnote 21.

<sup>23</sup> Both the preliminary sketch and the draft Registration Decree were regarded by industry as undesirable ahead of European measures. See, for example: the VNCI Activity Overview 2002, January 2003, p. 12. For the reasons for this resistance to the SOMS approach, see the internal VROM document 'Informeel overleg ROM/DGM & CEFIC op 21/01/03 inzake Quick Scan en ECETOC model: Kansen voor samenwerking' '[Informal VROM/DGM and CEFIC consultation on 21/01/03 concerning the Quick Scan and ECETOC model: Opportunities for cooperation].

expert. This expert was involved in shaping the proposals, which were made available for internet consultation in May 2003. The internet consultation produced more than 6,400 responses, including a joint response from VROM, EZ, SZW, VWS and LNV, and a response from RIVM.<sup>24</sup>

The Commission proposal, including the results of the internet consultation, was presented in October 2003.<sup>25</sup> The Commission proposal contained a number of changes compared with the draft version of the proposal published before the internet consultation. These included a considerable reduction in the number of obligations for industry, exclusion of polymers, a dramatic reduction in the test requirements for substances placed on the market in low volumes, greater focus on innovation and the protection of confidential business information, and a shift in responsibility from national governments to the Chemical Agency.<sup>26</sup>

#### THE DUTCH OBJECTIVE

The Dutch objective during REACH was to a large degree influenced by experience gained during the SOMS programme. One of the central points of departure in SOMS was to shift responsibility from government to industry. The duty of care and the precautionary principle were central to this.<sup>27</sup> Classification of substances was to take place using a fast screening method based on hazardous properties and areas of application. This is further elaborated upon in the instrument of the *quick scan* in the first SOMS implementation progress report.<sup>28</sup> Because of the broad focus of the SOMS project, much attention was also paid in SOMS to achieving an integrated approach to the risks of substances in terms of the environment, working conditions and consumer protection.<sup>29</sup> As a result of the policy modernisation of the SOMS programme, which had started as early as 1999, by the time the Chemicals White Paper was published, the Dutch government already had a comprehensive picture of the preferences and wishes of the various Dutch parties involved regarding the focal points of a modernised European substances policy. In a letter to the Commission as an initial response to the White Paper, the Ministers of VROM and EZ stated that the Netherlands was able to support the principle features of the modernised European substances policy, but regarded the proposed solutions as inadequate. In particular, the Netherlands cited the fact that it failed to embed industry responsibility and the lack of prioritisation on the basis of (hazardous) properties. Also lacking was the explicit link between the modernised substances policy and the modernisation of the product policy, on which the Integrated Product Policy Green Paper was published at the same time as the Chemical White Paper<sup>30</sup>. The BNC document on the White Paper comments that the 'expansion of the Netherlands' substances policy to European level [is regarded as] extremely desirable'.<sup>31</sup>

The Dutch objective in response to the Commission proposal of October 2003 was coordinated at interministerial level in the BNC Working Party.<sup>32</sup> In the framework instruction a number of points

<sup>24</sup> For a summary of the responses to the internet consultation see:

[http://ec.europa.eu/enterprise/reach/consultation/contributions\\_en.htm](http://ec.europa.eu/enterprise/reach/consultation/contributions_en.htm)

<sup>25</sup> Commission proposal (COM(2003) 644 final) for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of chemicals (REACH), establishing a European Chemical Agency and amending Directive 1999/45/EC and Regulation 850/2004/EC on Persistent Organic Pollutants, and Commission proposal for a Directive of the European Parliament and the Council amending Council Directive 67/548/EEC in order to adapt it to Regulation (EC) of the European Parliament and of the Council concerning the registration, evaluation, authorisation and restriction of chemicals.

<sup>26</sup> See the Ministerial letter with the annotated agenda of the Competitiveness Council of 10 November 2003, Second Chamber, Session Year 2003–2004, 21 501–30, no. 25.

<sup>27</sup> See 'Strategienota Omgaan Met Stoffen' [Strategy Memorandum on Management of Substances], as adopted by the Cabinet on 16 March 2001, p. 29.

<sup>28</sup> See 'Voortgangsrapportage uitvoering SOMS' [SOMS implementation progress report], VROM 2002–29, December 2001.

<sup>29</sup> See the Strategy Memorandum on Management of Substances, as adopted by the Cabinet on 16 March 2001, p. 11 and 17–18.

<sup>30</sup> See the Minutes of the General Meeting of the Minister of VROM of 15 March 2001, Second Chamber, Session Year 2000–2001, 21 50–108, no. 127.

<sup>31</sup> See the letter from the State Secretary of Foreign Affairs with three documents compiled by the Working Group for the Assessment of New Commission Proposals (BNC), 13 March 2001, Second Chamber, Session Year 2000–2001, 22 112, no. 189.

<sup>32</sup> See Chapter 3 for a description and analysis of the interministerial coordination and division of powers between VROM and EZ.

were presented which were central to the Dutch objective during the REACH negotiations. These key points were: general duty of care, compulsory exchange of animal experiment data, chain responsibility, public access to information, prioritisation system, practical workability and the role of the agency, competitiveness, and consequences for non-EU countries and non-EU producers (further details on these points can be found in the box ‘The final REACH compromise and the Dutch objective’).

The SOMS implementation plan ‘the Dutch Substances Policy in an International Perspective’ of April 2004, brought the SOMS programme to a conclusion and described how the results of SOMS were being used in the Dutch objective with regard to the negotiations in Brussels.<sup>33</sup> The Dutch objective was articulated comprising four key elements: creating knowledge, prioritising substances, specifying the industrial sector’s duty of care, and sharing knowledge. A year later, the State Secretaries of VROM and EZ presented the Dutch objective ‘aimed at practical workability, suitability and cost-effectiveness’ in a letter to the Second Chamber, in which they explicitly stated that the above key elements should be viewed in the context of the Cabinet’s efforts to create a level playing field in the European market and to reduce the administrative burdens and regulatory pressure.<sup>34</sup>

Already during the SOMS programme, the Dutch government had brought the results of the Dutch policy modernisation to the attention of the Commission, the European Parliament and other Member States

Two international workshops were also organised: one with the EU Member States and the other with European industry. In the run-up to the start of the REACH negotiations, and with the upcoming Dutch EU presidency in mind, high-level bilateral consultations took place with the United Kingdom, Ireland, Italy, Sweden, Germany and France in the spring of 2003 (see also Section 3.4). By this stage it had already become clear that support could not be counted on for all parts of the Netherlands’ policy. It became evident, for example, that some of the Member States were not keen on the *quick scan* approach proposed by the Netherlands.<sup>35</sup> For this reason, it had already been stated in the framework instruction for the BNC document that the Netherlands was not insisting on the quick scan per se, but was open to any approach with a similar outcome.

At the beginning of 2004, well before its own presidency, the Netherlands introduced a position paper at European level setting out its priorities on the duty of care, substances in goods, prioritisation, exchanging animal experiment data, chain responsibility, public access to information, practical workability and the role of the Agency, competitiveness, consequences for non-EU countries and non-EU producers; and authorisation.<sup>36</sup> The Netherlands also put forward at the EU level specific proposals on prioritisation, the inclusion of a general duty of care, and the inclusion of chain responsibility. For a comparison of the Dutch objective and the final outcome of REACH, please refer to the box entitled ‘The final REACH compromise and the Dutch objective’.

### 2.3. Decision-making in the Council and the EP

As the review of the chemicals policy had been placed on the agenda of the Environment Council and Commission responsibility for the existing substances policy was in the hands of DG ENV, the initiative for drafting the White Paper was initially with this DG. Prompted by the major interests of the European chemical industry and the possible consequences for the competitiveness of European industry, DG Enterprise demanded that it be given a bigger role in the drafting process. Prior to the

<sup>33</sup> See ‘Nederlands stoffenbeleid in internationaal perspectief: Uitvoeringsnota SOMS’ [Dutch substances policy in an international perspective: SOMS implementation plan], adopted by the Cabinet on 23 April 2004.

<sup>34</sup> See the letter from the State Secretaries of VROM and EZ, 2 May 2005, Second Chamber, Session Year 2004–2005, 21 501-08 and 21 501-31, no. 200.

<sup>35</sup> See internal VROM documents: IMZ travel reports. This can also be read in the BNC document of 23 January 2004.

<sup>36</sup> See the Note from the Netherlands delegation to the Ad-hoc Working Party on Chemicals, Brussels, 5 February 2004.

presentation of the Commission proposal in October 2003, it was furthermore decided in the European Council under the Italian presidency that REACH should be examined in the Competitiveness Council<sup>37</sup> in coordination with other Council formations. During the Council's examination of REACH, however, parts of the proposal were also placed on the agenda of the Environment Council, so the negotiations actually took place in the Environment Council as well as in the Competitiveness Council. As a consequence of this ambiguous arrangement and constellation of interests, a separate decision-making forum was set up at working party level: the Council Ad Hoc Working Party on Chemicals. In addition to the Council, the European Parliament was also involved in decision-making in the REACH dossier in the context of the co-decision procedure, in which the Council and Parliament are co-legislators and can submit amendments.

During the process of drawing up REACH, various Member States that held the presidency of the Council were able to leave their mark on the process and its progress. The various presidencies and their roles in the process are shown in the table below.

<b>Period</b>	<b>Presidency</b>	<b>Role</b>
Jan - Jun 2001	Sweden	Presentation of White Paper
Jul - Dec 2003	Italy	Presentation of REACH proposal
Jan - Jun 2004	Ireland	Intelligent reading
Jul - Dec 2004	The Netherlands	Article-by-article discussion
Jan - Jun 2005	Luxembourg	Article-by-article discussion, continued
Jul - Dec 2005	United Kingdom	Reaching of Political Agreement on a Common Position in the Council
Jan - Jun 2006	Austria	Formal approval of Common Position at first reading
Jul - Dec 2006	Finland	Negotiations in European Parliament at second reading – Agreement

Table 2.2

Prior to the submission of the proposals by the Commission, British Prime Minister Blair, French President Chirac and German Chancellor Schröder jointly took the initiative to send an open letter to the Commission President Romano Prodi. In this letter the three leaders underlined the importance of the Lisbon strategy and expressed their concern that the Commission's proposals would be too bureaucratic and unworkable; that they would give insufficient priority to the highest-risk substances, and that they would adversely affect the competitiveness of the EU.<sup>38</sup> Italian premier Berlusconi also wrote to Prodi during this period, calling for the REACH dossier to be examined in the Competitiveness Council.

After the initial discussion on the division of roles between the Councils, the first examination of the key principles of the proposals was commenced under the Irish presidency: a so-called *intelligent reading*. In the first half of 2004, the aspects of prioritisation in the registration phase, the role of the Agency, the duty of care, authorisation and restriction, the role of substitution, and quality assurance of registration dossiers were discussed in general terms.

The Netherlands took over the presidency of the Council from Ireland in July 2004. In anticipation of the Dutch, Luxembourg and UK presidencies, the incoming presidencies set up a 'Friends of the Chair' arrangement in which the three countries coordinated their approach to the dossier. In the preparations for the presidency, it became clear to VROM/SAS that 2004 would be a year of many transitions on account of the accession of ten new Member States, the European Parliament elections and the installation of a new Commission. In any case, REACH became one of the priorities of the

<sup>37</sup> The original Dutch name for the 'Competitiveness Council' was changed from *Concurrentiekrachtraad* to *Raad voor Concurrentievermogen* during the REACH negotiations.

<sup>38</sup> See the letter from Blair, Chirac and Schröder to the President of the European Commission, Prodi, 20 September 2003.

Dutch presidency, even if, in view of the above limitations, the focus ultimately lay on achieving progress in the process.<sup>39</sup> This process-related progress had to be achieved by means of an examination of each article of the proposal at the meetings of the REACH Ad Hoc Working Party. The Netherlands decided to focus on Title I General Issues, Scope and Definitions; Title II Registration of Substances; and Title III Data Sharing and Avoidance of Unnecessary Testing. The article-by-article discussion was combined with separate expert meetings on the content of the various technical annexes on the structure of registration dossiers.

It was also decided to shape the progress of the procedure in another way, namely by comparing the estimated consequences of the = legislation package. The issue of the likely *impact* of REACH on different sectors and industries had existed ever since the Commission issued the first draft proposals. Under pressure from the results of the *business impact studies* performed on behalf of the Commission in the context of the draft proposals, the Commission had significantly amended the proposal before it was submitted to the Council and the European Parliament in October 2003. Various Member States called urgently on the Commission to produce additional impact assessments, not least because other actors, such as Member States themselves, industry and environmental organisations, were commissioning impact studies on the consequences of REACH. At the suggestion of EZ it was decided to organise a Workshop Impact Assessment REACH during the Dutch presidency in October 2004.<sup>40</sup> Prior to this workshop, the 36 available impact studies were collected by VROM and EZ,<sup>41</sup> which allowed joint conclusions on the consequences of REACH to be drawn on the basis of this document during the workshop in Scheveningen. One of the workshop's key recommendations, which was also presented in the press release published on this subject, was the need to focus additional efforts on reducing costs for industry, particularly SMEs, without abandoning the ambitions for the protection of human health and the environment.<sup>42</sup> The conclusions were sent to the Environment Council and the Competitiveness Council for confirmation via the Ad Hoc Working Party.

During the Dutch presidency, REACH was placed on the agenda of the Competitiveness Council in November 2004 and on the agenda of the Environment Council in December 2004. In addition to the results of the Impact Assessment Workshop, discussions at Council level also covered the obligatory exchange of test data on substances and the interpretation of shared data, information requirements for substances placed on the market in low volumes, prioritisation in the registration process, and registration of substances in articles.<sup>43</sup>

The article-by-article discussion of the REACH regulation was continued under the Luxembourg presidency in the first half of 2005. Title IV Information in the Supply Chain, Title V Downstream Users, and Title VI Evaluation were completed and a start was made on the subjects of permits and restrictions for dangerous substances and preparations. Under the Luxembourg's presidency, an additional impact assessment workshop was organised which examined the consequences of the REACH proposals for specific sectors.

The remaining points for discussion were in the second half of 2005. The UK presidency presented a compromise text in the Council on 4 November 2005. At the same time, the European Parliament defined its position at first reading. In the EP, the Environment Committee took the lead in examining

<sup>39</sup> See the letter of the State Secretary of VROM on the ambitions of the Dutch EU presidency, 14 June 2004, Second Chamber, Session Year 2003–2004, 21 501-08, no. 182.

<sup>40</sup> See internal VROM document '*Verslag dossierteam REACH 9 February 2004*' [Report of the REACH Dossier Team 9 February 2004].

<sup>41</sup> Witmond, B., S. Groot, W. Groen, and E. Dönszelmann, The impact of REACH: Overview of 36 studies on the impact of the new EU chemicals policy on society and business. October 2004, Ecorys and OpdenKamp Advisory Group for the Dutch Presidency: The Hague, Netherlands. [http://www.eu2004-reach.nl/downloads/Comprehensive\\_Overview-v2.pdf](http://www.eu2004-reach.nl/downloads/Comprehensive_Overview-v2.pdf)

<sup>42</sup> For an analysis of the Workshop and its consequences for the REACH negotiations, see the EFTA/REACH Impact Workshop Sub-study, interneeship report by Michiel Smulders, Erasmus University Rotterdam.

<sup>43</sup> See '*Milieu-resultaten tijdens het EU-Voorzitterschap*' [Environmental outcomes during the EU Presidency], 11 February 2005 (annex to Second Chamber, Session Year 2004–2005, 21501-08, no. 195).



the REACH dossier,<sup>44</sup> and rapporteur Sacconi was appointed. After examining a large number of amendments, the European Parliament reached a position at first reading in November, after prior agreement in the Environment Committee. One of the points discussed by the EP was the obligatory substitution of particularly dangerous substances and cutting back on the registration obligations for low volume substances.

After the first reading in the EP, the Council reached political agreement on the UK presidency's compromise text on 13 December 2005. Under the Austrian presidency, work was done on achieving agreement on the preamble, the incorporation of the political agreement and the translation of the Common Position, which was ultimately accepted by the Environment Council on 27 June 2006. The differences between the Council's political agreement and the EP's position at first reading had been compared previously at a special conference organised by Austria in May 2006.

The discussion at second reading focused primarily on the requirements for substituting particularly dangerous substances with safer alternatives. The number of tests for low volume substances and the period for protecting commercially sensitive information in the supply chain were also changed in the last negotiations. After six so-called 'Trilogues', agreement was reached on 30 November 2006.<sup>45</sup> On 13 December 2006, the EP agreed to the consensus with a large majority,<sup>46</sup> and the Council approved the result on 18 December 2006.

#### **THE FINAL CONSENSUS ON REACH AND THE DUTCH OBJECTIVE**

The Dutch positions in the negotiations and the achievement of the objectives are discussed below, based on *inter alia* the framework instruction (14 January 2004), the points from the BNC document (23 January 2004), the Dutch *position paper* (5 February 2004) and letters from the State Secretaries of VROM and EZ on the progress of the negotiations (2 May 2005), the compromise proposal of the UK presidency (22 November 2005), and the final consensus at second reading (16 December 2006).<sup>47</sup>

*Duty of care:* The Netherlands advocated the inclusion of a general duty of care to clarify the shift of the burden of proof for the safety of chemicals placed on the market from government bodies to industry. The proposal met with resistance from other Member States whose national (environmental) legislation did not include a duty of care and which were concerned about a lack of legal certainty. The duty of care is not included as an enforceable rule in the final text of REACH, although it is mentioned in the preamble, based on an amendment of the European Parliament.

<sup>44</sup> In addition to the Environment, Public Health and Food Safety Committee (the Environment Committee), nine other committees (namely the Committee on International Trade, the Committee on Budgets, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, the Committee on Legal Affairs, the Committee on Women's Rights and Gender Equality, and the Committee on Petitions) were also involved in examining REACH.

<sup>45</sup> Trilogues are negotiation sessions between the European Parliament, in the person of the rapporteur (Sacconi) and two shadow rapporteurs, the Council, represented by the (Finnish) presidency, and the Commission.

<sup>46</sup> The distribution of votes in the EP on 13 December 2006 was 529 in favour, 98 against and 24 abstentions.

<sup>47</sup> The 2005 and 2006 letters constantly refer back to the priority areas in the BNC document, although these are, confusingly, presented in a different way in subsequent letters to the Second Chamber.

*Compulsory exchange of animal experiment data:* The Netherlands advocated the obligation to exchange animal experiment data, but envisaged problems in its implementation in law. The United Kingdom and Hungary submitted a joint proposal at the European level, aimed at limiting the number of registrations to one substance, one registration (OSOR). The OSOR proposal was broadly supported by a large number of Member States, although some details needed to be expanded upon to avoid legal implications. The final outcome of REACH includes provisions that aim to minimise animal testing, among other things by making it compulsory to share animal experiment data, and by providing obligations that are more easily implementable and enforceable.

*Chain responsibility:* The Netherlands proposed giving users in the supply chain (so-called downstream users) the opportunity to ask suppliers to account for their duty of care. As an enforceable duty of care did not make the final consensus, this suggestion was only adopted in part. Despite the additional protection of commercially sensitive data in the supply chain provided in the final consensus (protection being extended from three to six years), the necessary exchange of information in the supply chain was sharpened in comparison with the original Commission proposal.

*Public access to information:* In the framework instruction the Netherlands attached a great deal of importance to active disclosure because it regarded public access to test data as an essential requirement. At second reading the EP strongly advocated protecting commercial information (see *chain responsibility*). In the final consensus it was decided that test data should be disclosed after 12 years. The Netherlands anticipated that this would have negative implications for SMEs in particular, although it believed that what was 'considered a less desirable' departure from the Common Position constituted insufficient reason to refuse this compromise package. The Agency and the Member States were, however, allocated the task of actively making non-confidential data available to the public.

*Prioritisation system:* In the light of the SOMS philosophy, the Netherlands was very much in favour of prioritising in the registration phase those substances that were of greatest concern in terms of the environment and health. This emerged from concerns about the practical workability of closing the gap in the collection of information on existing substances, which REACH supported. The original Commission proposal in 2003 provided for prioritisation based on volume. In the original proposal priority was also given to CMR substances. The BNC document argued that 'this form of prioritisation for the compulsory registration of substances was, however, inadequate' and gave preference to the broader *quick scan*. Although the Netherlands was focusing on prioritisation on the basis of both volume and substance properties, the volume approach put forward in the Commission proposals remained dominant. In the final package the priority for CMR substances was, however, augmented with priority for substances with potential PBT and vPvB properties in volumes of more than 100 tonnes per year, based on a Dutch proposal.

*Workability and the role of the Agency:* Under the heading 'Workability and the role of the Agency', the BNC document emphasised the importance of an effective and workable division of tasks between the Member States, the Commission and the Agency. It also emphasised the fact that the proposal provided inadequate harmonisation with related regulations. The framework instruction furthermore contained a sentence highlighting the need to guard against unnecessary administrative burdens. In the letters to the Second Chamber in 2005 and 2006, however, limiting administrative burdens became one of the primary focuses of the negotiations. These and other aspects of cost-effectiveness are discussed in brief under the heading 'Competitiveness' below. With regard to the role of the Agency, during the Council negotiations France put forward a proposal to strengthen and centralise the role of the Agency. This proposal was supported by many Member States including the Netherlands, with the proviso that certain legal guarantees be furnished. However, the Dutch proposals to reduce the Agency's administrative ballast were not adopted. The impact of REACH on other policy areas such as waste and consumer protection only received limited support in the Council.

The distinction between REACH and other substance regulations was clarified in the final consensus, with the exception of ‘the continuing lack of respect for freedom of measures in the area of industrial safety.’

*Competitiveness of the industry:* In the BNC document the Netherlands emphasised the importance of business impact studies which would describe the consequences of REACH for industry. In addition to the direct and indirect costs for industry, the Netherlands also deemed it important to examine the anticipated benefits of REACH for public health, the environment and working conditions. As already stated, a workshop was organised under the Dutch presidency in the autumn of 2004 to compare the 36 impact assessments that were available at the time. One of the conclusions was the need to make REACH as cost-effective as possible for industry to implement. Cost-effectiveness and, in particular, limiting administrative and other costs for SMEs were therefore one of the main thrusts of the Dutch objective. The costs for industry were significantly lower in the final package than the estimates based on previous proposals, partly as a result of reducing the requirements for substances in low volumes.

*Consequences for non-EU countries and non-EU producers:* In the framework instruction the Netherlands called for emphasis to be placed on compliance with international obligations, in particular WTO compatibility. It also wanted the potential effects on exporters and producers in developing countries to be considered. The Netherlands submitted a proposal to this effect in 2005, which the Council adopted in part.

Other points that were not specifically highlighted in the framework instruction but were relevant during the REACH negotiations mainly relate to cost-effectiveness, such as *information requirements for low volume substances*. In the final compromise the number of tests made compulsory for low volume substances was radically reduced. Excepted were substances with CMR properties that are placed on the market in low volumes, which must meet additional test requirements compared with the original proposal. *Substances in articles* is another point which did not come to the fore in the framework instruction or the BNC document but was highlighted in the Dutch position paper and the November 2005 letter. The Netherlands advocated a notification obligation for products containing substances of very high concern. In the consensus package this notification obligation was limited to products containing substances of very high concern above a concentration limit of 0.1%, and in total quantities of more than 1 tonne per year per producer or importer.

#### 2.4. Conclusion of European decision-making and preparation for implementation

After the Council and the EP reached agreement in December 2006, the regulation entered into force in June 2007. REACH has not yet been implemented, however, as most of its sections will only apply from June 2008, when the pre-registration phase begins and the European Chemicals Agency opens for business. The registration phase will not be completed until June 2018, with low volume substances.

In addition, there are various details in REACH that are not yet regulated in the regulation and which could be of great importance to its implementation. Decisions on these details will be taken on the basis of comitology. For example, the Council has delegated the compilation of a list of candidate substances for authorisation, the decision to grant authorisation, the definition of the circumstances under which substances of very high concern are ‘adequately controlled’, the definition of qualification requirements for members of the Agency’s Board of Appeal, and the working procedures of the Board of Appeal to committees of policy experts under the chairmanship of the European Commission.

The Commission furthermore intends to evaluate REACH six years after it is adopted. This could result in amendments in the various annexes, and possibly even the drawing up of specific

implementation legislation. Various Member States have already submitted requests to the Commission to exclude certain substances or preparations from REACH in this evaluation. It is also possible that some current exceptions, such as most of the polymers and intermediate substances, will actually be included in REACH after the evaluation.

One of the major uncertainties of REACH is the way in which it will work in practice. To overcome this, the so-called REACH implementation projects (RIPs) were set up during the Council and EP negotiations. The RIPs consist of a REACH process description, the development of an IT system, the development of guidance documents for industry and public authorities, and the setting up of the European Chemicals Agency. A number of practical simulations, such as SPORT and PRODUCE, have also been launched at the EU level.<sup>48</sup>

#### 2.4.1. Implementation in the Netherlands

Although the Dutch business impact studies by KPMG/TNO and SIRA Consulting showed that the costs for industry in the Netherlands would not be as high as in other EU countries, it was nonetheless deemed important for Dutch industry to prepare for REACH in good time.<sup>49</sup> As research showed that the biggest expense in the substances policy in the Netherlands relates to communication, the Dutch government set out to promote the new regulation at an early stage. Thus EZ collaborated closely with VROM and other ministries to launch an awareness campaign for industry in March 2005, followed by another in 2007.<sup>50</sup> These information campaigns were mainly targeted at sector organisations and the Chambers of Commerce. Together with RIVM and SenterNovem they also set up the national REACH Helpdesk, to which businesses can address queries about their obligations arising from the introduction of REACH.

REACH is a regulation with direct effect, which had to be implemented within 20 days. Dutch legislation and regulations had to be amended to allow for the correct entry into force of REACH. Ministry of VROM lawyers developed a four-pronged approach for this purpose. This approach is characterised by its timeliness, communication with Parliament, the fact that the implementation arrangements for REACH were already being tested during the negotiations, and the anticipation of factors delaying its implementation.<sup>51</sup>

The Inspectorate for Housing, Spatial Planning and the Environment was given primary responsibility for enforcing REACH in close cooperation with the Food and Consumer Product Safety Authority and the Labour Inspectorate. To avoid problems with the enforcement of REACH, the Inspectorate for Housing, Spatial Planning and the Environment has already been involved in the REACH negotiations since the beginning of 2005.<sup>52</sup> Together with the Swedish enforcement organisation, the Inspectorate for Housing, Spatial Planning and the Environment has led the European consultations on coordinating the harmonised enforcement of REACH.

The Dutch government decided to delegate the implementation of a large proportion of the national tasks in REACH to an implementing body. To this end, Bureau REACH was set up. Bureau REACH emerged from the now obsolete Environmentally Hazardous Substances Agency (BMS), which was responsible for implementing substances legislation before REACH.

<sup>48</sup> The SPORT simulation was set up to evaluate the entire process from pre-registration to evaluation report in July 2005. PRODUCE looks at downstream users.

<sup>49</sup> See 'Gevolgen en administratieve lasten van REACH\* voor het Nederlandse bedrijfsleven' [Consequences and administrative burdens of REACH for Dutch industry] by KPMG/TNO and SIRA Consulting, 30 August 2004.

<sup>50</sup> See 'EU stoffenbeleid REACH' [REACH EU substances policy], internal VROM preparatory document for the new minister.

<sup>51</sup> For a detailed description of the four-pronged approach, see H.E. Woldendorp, A. Swart-Bodrij and J.K. Kwisthout, 'REACH komt, de WMS gaat' [REACH is coming, the Environmental Management Act is going] in *Milieu en Recht*, 34:8 2007 and section 3.1.4.

<sup>52</sup> See internal VROM document 'Overleg met VROM-inspectie over REACH' [Consultations with the Inspectorate for Housing, Spatial Planning and the Environment on REACH], 11 March 2005.

In addition to the Ministry of VROM, Bureau REACH performs tasks on behalf of the Ministries of VWS and SZW.<sup>53</sup>

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<sup>53</sup> See '*Uitvoeringsorganisatie REACH en interdepartementale samenwerking*' [REACH implementing organisation and interministerial collaboration], 26 April 2007 (Annex to the First Chamber, Session Year 2006-2007, 30 600, C).

## CHAPTER 3 PLAYING FIELD, COORDINATION, CONTROL AND SUPPORT

Policy-making around SOMS and REACH took place in a complex playing field, which is the central theme of this chapter. The process of defining a position and coordination between VROM, EZ and the other ministries is explained in Section 3.1. Section 3.2 discusses the way in which ministers and parliament have attempted to steer the process at a political level. The involvement of industry, civil society and the implementing organisations in this dossier is described in Section 3.3. Section 3.4 takes a closer look at the European power configuration and the position of the Netherlands in respect of the European Commission, the Council and the European Parliament.

### 3.1. The organisation of SOMS and REACH in the government

#### 3.1.1. Organisation and coordination

In December 2003, REACH was discussed by the interministerial working party *Beoordeling Nieuwe Commissievoorstellen* [Assessment of New Commission Proposals (BNC)], which produced an initial assessment of the Commission's proposal and discussed which ministry should be given lead responsibility for its further examination at the Council stage.<sup>54</sup> In view of the range of interests involved, it was clear that alongside the leading role played by VROM and the Ministry of EZ, other ministries would also be closely involved in the process of defining the position on account of their interests. This resulted in a formal coordination structure, which is illustrated in diagram form in Annex 2. The negotiations and preparations for the Council stage took place in three different 'playing fields': within the Ministry of VROM (shown in the right-hand column in Annex 2), at interministerial level (middle column) and at European level (left-hand column). The lynchpins in this process were the *REACH Dossier Team*, consisting of the chefs de dossier at VROM, EZ, the Netherlands Permanent Representation to the European Union (PermRep/EU) and a representative of the Economic and Ecological Cooperation Directorate at the Ministry of Foreign Affairs (BZ/DES) as the formal coordinator of environmental policy. The dossier team was set up to prepare for the presidency but was continued subsequently on account of the positive experiences.

The instructions for the Dutch objective in the negotiations were drawn up by the dossier team.<sup>55</sup> The Ministry of VROM was the leading party, working in close consultation with EZ. The Ministry of Foreign Affairs had three roles: interministerial coordination of the formulation of the Dutch position, monitoring consistency in the Dutch input into REACH in relation to other dossiers, and the role of porte-parole at the Council stage through the Permanent Representation. BZ attempted to intermediate in cases of conflicting interests or opinions between the parties involved in the *REACH Interministerial Working Party (IW REACH)*, which in terms of its membership was a continuation of the SOMS working party which had been responsible for coordination in this national process. In these terms the blueprint for the interministerial approach to REACH was delivered by the constellation of interests of SOMS, with the result that a number of particular interests and interested parties that had not played a role in SOMS, such as transportation of substances (an interest represented by the Ministry of V&W), were also less involved in the REACH process. The extent to which the integrality of the internal formulation of the position was assured depended on a number of factors, including the internal organisation and coordination of European dossiers within the ministry concerned (see Section 4.1.4).

The instructions drawn up by the dossier team and coordinated by IW REACH were then discussed by the interministerial *International Environmental Affairs Coordination Committee (CIM)*. But because of the complexity and urgency of the process, no substantive discussion took place at this level.<sup>56</sup> The instructions for the Permanent Representative for the COREPER meetings at which REACH was discussed and the instructions for the ministers in the Council, were sent via the usual channels of the PermRep instruction meeting and the

<sup>54</sup> See the letter from the State Secretary of Foreign Affairs with thirteen documents drawn up by the BNC Working Party, 23 January 2004, Second Chamber, Session Year 2003-2004, 22 112, no. 302.

<sup>55</sup> As described in Chapter 2, the regular discussions held by the SOMS and REACH Sounding Board Groups with the social arena and industry provided input for this team.

<sup>56</sup> It also happened that the members of IW REACH and the ministerial representatives in CIM were informed simultaneously on account of the pressure of time.

CoCo. This structure was reinforced in the preparations for the presidency (see Section 3.1.4.).

### 3.1.2. The interplay between VROM and EZ

As mentioned, the REACH dossier required somewhat special preparation for the formulation of the position at national level, since two Council formations were involved in the negotiations. Notwithstanding the initial emphasis on environmental and health aspects and the leading role played by DG ENV in drawing up the proposal, it was decided at the European Council of 16-17 October 2003, under the Italian presidency, that the REACH dossier would be discussed in the Competitiveness Council (the ministers of Industry and Economic Affairs) *in coordination with other Council formations*<sup>57,58</sup>. Nonetheless, certain aspects of REACH, particularly in relation to environmental and health aspects, were placed on the agenda for a decision in the Environment Council, which persuaded some Member States to also delegate their environment ministers to the Competitiveness Council for this agenda item.<sup>59</sup>

The above decision at top political level complicated the domestic process of coordinating positions for the national input into the negotiations.<sup>60</sup> The division of responsibilities and therefore the ‘leading position’ caused much racking of brains at an administrative and political level during the compilation of the BNC document.<sup>61</sup> Because the SOMS process had been led by VROM and its Hazardous Substances Agency, which has a great deal of subject expertise, it seemed logical to assign it lead responsibility. In the discussion, the Ministry of Economic Affairs called expressly for VROM and EZ to be made *jointly* responsible in the manner of the Council constellation at EU level. After discussions at DG level, the formulation ‘*Ministry with lead responsibility: VROM in close cooperation with EZ*’ was chosen.<sup>62</sup> EZ objected to this formulation, however. Ultimately VROM’s dossier responsibility was defined at Cabinet level, including the formulation that ‘the official preparations in Brussels [would be approached] jointly’.<sup>63</sup> Regardless of whether REACH was examined in the Environment Council or the Competitiveness Council, however, there was always official support and subject expertise present from both VROM and EZ. The ongoing intensive involvement of the PermRep/EU also ensured continuity in the Council input.

The above discussion seems to have come about on account of the fact that the differences in the two ministries’ focuses in terms of content and process were able to be highlighted more clearly at certain points during the process. EZ focused on the creation of a European level playing field for industry and business, while VROM, on the one hand, emphasised environmental protection (content) and, on the other, wanted to make use of the experience it had gained with SOMS as a process of policy modernisation (process). From conversations with persons involved and internal memorandums, it is evident that with the exception of one or two wrangles, official cooperation and personal relationships during the REACH process are rated as positive. At the same time, however, the intense personal involvement of the State Secretary of Economic Affairs in this dossier, whose prime concern was the burdens on industry, had its impact on the negotiations. For example, during the Dutch presidency of the EU in 2004, a discussion took place because the question of the burdens REACH was likely to impose on industry was politicised by the State Secretary of EZ.<sup>64</sup> A second example is the letter sent by EZ to the Second Chamber in September 2005, as the Council negotiations were drawing to a close, without any official preliminary consultation. In it the State Secretary of EZ calls on Parliament to consider reducing the

<sup>57</sup> European Council Conclusions of the Presidency, Brussels, 16/17 October 2003. This contrary to the position of the Netherlands and the other Member States regarded as the initiators of the dossier. The NL instruction called for it to be examined in the Environment Committee, including consultation of the Competitiveness Council; see also following paragraphs. Internal document ‘*Notitie Europese Raad*’ [European Council Memorandum], October 2003.

<sup>58</sup> The Italian presidency’s strong preference in this matter and the lobby of industrial interests probably played a major role in this decision. Selin 2007, p. 85.

<sup>59</sup> This also took place in other Member States, particularly those with decentralised EU coordination such as Germany and Italy.

<sup>61</sup> The BNC document provides a brief summary of the key points of the proposal and the Dutch position, and also defines which ministry has lead responsibility for drawing up the negotiation instructions and communicating with the House. See the internal memorandum of 18 December 2003.

<sup>62</sup> “... in consultation with VWS, SZW, LNV, V&W, BZ, JUST, FIN, IPO”. Parliamentary Documents TK 2003-2004, 22112, no. 302: ‘*Nieuwe commissievoorstellen en initiatieven van de Europese Unie*’ [New committee proposals and initiatives of the European Union], 23 January 2004.

<sup>63</sup> This did not eliminate all ambiguities, however; during the course of the negotiations VROM initiated an examination of the possible consequences of formulating the division of responsibilities in the manner defined in the document. See VROM internal memorandum of 24 March 2005.

<sup>64</sup> Internal memorandum of 23 November 2004.

costs for businesses (particularly SMEs) and proposes making REACH more flexible with a view to achieving this.<sup>65</sup>

### 3.1.3 The process of defining the position at interministerial level

The process of defining the national negotiating position at interministerial level is characterised by the diversity of interests, as well as by the different roles played by the ministries involved. This constellation of interests of the ministries involved in REACH is illustrated in Table 3.1.

#### **Ministries involved and their interests:**

- VROM/SAS: substantive lead in substances policy; drafting team
- EZ: co-leader; administrative burdens; industry; *level playing field*
- SZW: health and safety policy and covenants
- VWS: substances in articles, consumer protection
- V&W: substances in surface water (RIZA); exception for transport
- LNV: various exceptions; artificial fertilizers, biocides; farmers
- OS: consequences of REACH for developing countries
- RIVM: expertise (BMS); organisation in NL
- BZ: coordinator, monitoring consistency, porte-parole via PermRep/EU

Table 3.1

In the interministerial power configuration it was clear to all concerned that VROM had by far the most expertise as regards the subject matter of the substances policy. Furthermore, the resources earmarked by the other ministries, including the co-leader EZ, paled into insignificance compared with the resources allocated by VROM, which had three full-time employees with a considerable body of subject and legal expertise as well as policy experience working on the REACH dossier. In VROM, the members of the Department of Substances and Standardisation working on the dossier, had a special position on account of their extensive subject expertise and experience and their network from the SOMS programme. The International Environmental Affairs Directorate contributed advice and knowledge in respect of the European and bilateral playing field, procedures and the approach to the dossier, particularly in the run-up to the Dutch European Council presidency in 2004. VROM had furthermore intentionally accumulated the necessary legal expertise in-house at an early stage because of the importance of being prepared in good time for the implementation and execution of the REACH regulation. Add to this its previous knowledge of the European and national constellation of interests in the area of substances and of the positions of various Member States and actors gained through the active use of the secondment of a VROM policy worker to the Commission when the REACH proposal was being written, and it can be concluded that VROM's position in terms of both content and process was reinforced during the negotiations.

Partly as a result of the high degree of complexity and urgency of the process in which REACH ended up during the Council stage, VROM/SAS's position logically influenced both the course of the process of defining the position and its relationship with the other ministries and departments involved. The process of interministerial coordination is rated positively by many of those involved. Everyone concerned, both internally and externally, are without exception full of praise for the involvement and activity of the VROM/SAS dossier team in the REACH dossier. One important point cited was the structural attention paid to inviting contacts from other ministries to various internal and external consultations. Consultations were held regularly, and the necessary documents were always circulated in advance. During the Council negotiations, however, it regularly happened that the negotiation instructions prepared by the dossier team were agreed with the other ministries by email on account of the great pressure of time. Sometimes a response was requested within just a few hours. How the various ministries were able to respond to this depended on the way REACH was approached and organised in the ministries. It is important to emphasise that it is up to each involved ministry itself to organise the formulation of its position *internally* in such a way that all possible relevant interests have the opportunity to deliver their input in the ministry. This internal procedure differed in the case of REACH: one ministry set up a special dossier team to coordinate its input internally, and in another it was up to the individual spokesperson to

<sup>65</sup> Letter to the Second Chamber, 6 September 2005.



decide to what extent all of subspecial interests represented in the ministry would be taken into account.

When the points raised in the interministerial consultation in respect of the instruction coincided with the dossier team's view, the coordination generally progressed to everyone's satisfaction. But as soon as discussions on the content commenced, for example on the feasibility of certain proposed texts which involved one particular ministry's interests, VROM's dominance in terms of knowledge, staff and political priority, could be clearly seen. This contrasted markedly with the limited time and political attention the other ministries were dedicating to this dossier and which, as mentioned, was a reflection of each ministry's internal relationships. As a result, certain interests or positions were not always taken on board to the full satisfaction of the protectors of those interests. The reason given by VROM in such cases was the fact that the input was insufficiently feasible, ill-timed, or backed by insufficient technical expertise. Furthermore, the procedure by which new input was dealt with differed. For one specific subaspect, the dossier team invited the chefs de dossier concerned to put forward his vision in person at the REACH Ad Hoc Working Party in Brussels. Other discussion points were judged by VROM/SAS to be insufficiently feasible, as a result of which certain points of concern were not included in the instruction. BZ played the role of mediator in such discussions, and attempted to obtain consensus not so much on the basis of the content but rather on the basis of responsibility for the coordination process.

#### 3.1.4. Coordination during the presidency

REACH was designated as one of the priorities of the Dutch EU presidency in 2004.<sup>66</sup> During these six months, the normal coordination structures in VROM were augmented by the Presidency Team and the Presidency Steering Group (shown in dotted lines in Annex 2). In Brussels the role of porte-parole was taken over by a member of the VROM/SAS delegation, while the PermRep/EU chaired the REACH Ad Hoc Working Party. Because a position paper highlighting the Netherlands' specific concerns had been introduced before the Dutch presidency, it intentionally played a 'neutral' role during the presidency. Now that attention was focused on the process rather than on the formulation of a position on the content, this implied that the instructions were driven more strongly by VROM/EZ, which was noticeable in the lower intensity of interministerial coordination.

#### 3.1.5. Focus on implementation and execution

The negotiations on the content of European legislation and the implementation of European rules by the government are often strictly separate processes in administrative terms. In the past this has created problems in the follow-up process and in relations with the Parliament.<sup>67</sup> Problems are particularly likely to occur when ministries are responsible for implementing European legislation that covers more than one policy area, which is often the case with environmental legislation. Doing justice to all interests can then potentially have the effect of delaying the prompt and correct implementation and execution.

To avoid such problems, in its approach to the REACH dossier, the Ministry of VROM, which was responsible for implementing the regulation, made sure it allocated sufficient time for preparing the implementing legislation. It was therefore decided to keep the discussion with Parliament on the shaping of the implementing legislation separate from the discussion of the position; an approach which, with one or two exceptions, proved successful. With the same aim - to avoid problems in the 'follow-up process' - the dossier team intentionally started working on preparing for the implementation process during the Council negotiations, bringing in a 'flex lawyer' from the VROM Environmental Directorate who was able to pinpoint the legal and legislative angles in the draft texts.<sup>68</sup> In order to mentally prepare everybody for this at the national level, those involved reported that a certain degree of persuasiveness was in fact needed, because the processes of policy preparation and implementation, enforcement and inspection were usually kept separate.<sup>69</sup> This perhaps explains why attempts

<sup>66</sup> Memorandum of the Dutch EU presidency 2004, as presented to the First and Second Chambers on 28 May 2004, and see: *'Milieuraad; Brief staatssecretaris over ambities Nederlands EU-voorzitterschap'* [Environmental Council: Letter from the State Secretary on the ambitions of the Dutch EU Presidency], Second Chamber, Session Year 2003-2004, 21 501-08, no. 182.

<sup>67</sup> See, for example, Rood, Van Keulen, Nollen and Arts, 2006, and Steunenberg and Voermans, 2006.

<sup>68</sup> For a detailed description of the implementation legislation *'REACH komt, de WMS gaat'* [Reach is coming, the Environmental Management Act is going] and its preparation, see, Woldendorp, Swart and Kwisthout in M&R and *'De uitvoeringswet REACH: leerpunten over de uitvoering van een Europese verordening'* [The REACH implementation act: lessons on the implementation of a European regulation], in: NTER 2007 p. 141-151.

<sup>69</sup> There was, however, consultation between the Public Prosecution Service and the Inspectorate for Housing, Spatial Planning and the Environment on the REACH dossier and its impact in the spring of 2005.

by VROM/SAS to involve the Legal Affairs directorate and the Inspectorate (the parties responsible for enforcing the REACH provisions) in the negotiations were not regarded as successful by those involved. At the same time, the timely development and assembling of legal and legislative expertise on REACH, including at EU level, may well have helped clarify some REACH provisions. For example, it became evident in the summer of 2006 that the national implementation regulations could give rise to problems because of translation differences between the English and Dutch texts of Annex XVII as far as the terms were concerned. This point was brought to the attention of the European Parliament and was repaired by means of amendments.

### 3.2. Political involvement

#### 3.2.1. Involvement of ministers

Whenever there were still conflicts of interest at an administrative level, it was up to the individual ministries to have them addressed at a top administrative or political level. Although EZ and VROM actively used this route, intentionally escalating the dossier in this way has not been as evident or simple an operation in all ministries. Its success also depends on the minister's political interest and the power relationships in the government coalition and the Cabinet. This applied equally to the political involvement within VROM: the strong, independent involvement of the Minister of VROM in the process of drawing up a draft Executive Decree during the SOMS process (see Section 3.3.2) is one example of this.

The divergent levels of political interest was also evident in other ministries that were involved in SOMS and REACH. In certain cases it proved difficult to get the administrative and political leadership interested in this dossier, in other areas it was just as hard to rein in the minister's political involvement. This applied to contacts with the Second Chamber, but also during a political momentum such as the stating of the conclusions of the 'impact assessment studies' workshop during the Dutch EU presidency in 2004. Given the relationships, it is clear that in both cases the official room to manoeuvre is determined by this political involvement. The Netherlands' priority areas as a Member State are also clearly influenced in terms of content by the priorities of the successive cabinets. Thus the shifting of responsibility onto industry that was established in SOMS is consistent with the ideology of the Kok II Cabinet. The limiting of the administrative burdens, which explicitly received new political momentum in the Balkenende I-IV Cabinet, also influenced the Dutch position at the time of the Council negotiations. This changing political context has therefore influenced the representation of (sub-)interests in the formulation of the position, and therefore for the Dutch objective, the representation of interests and the achievement of objectives in negotiations at EU level.

#### 3.2.2. The Parliament

A similar varied picture also emerges in respect of the political involvement of parliament in the REACH process. At the time of the SOMS programme, parliament was informed by VROM by means of cabinet memoranda and supplementary letters. The SOMS memoranda and the progress of the process were discussed several times in General Meetings in the Second Chamber. Technical hearings on both SOMS and REACH were also organised with a view to informing Members of Parliament.<sup>70</sup> Information on REACH was provided by VROM and EZ. In addition, a number of substantive debates on REACH were held at the General Meetings in response to the progress letters or in the run-up to the Council meetings.<sup>71</sup> The division of responsibilities between the two leading ministries also came up for discussion several times in the relationship with the Second Chamber.

The REACH dossier did not contain any major issues for the Second Chamber in terms of its content. At the same time, however, the parties had different focal points: while the Christian Democratic Appeal (CDA) and the People's Party for Freedom and Democracy (VVD) focused on the burdens on industry, it was the Labour Party (PvdA) and the Socialist Party (SP) in particular who pressed for protection of human beings and the environment. REACH was also debated by the First Chamber, *inter alia* in an oral consultation between the First Chamber and the two ministers in November 2005.

<sup>70</sup> The technical hearing on SOMS took place in 2001, and that on REACH on 2 November 2005.

<sup>71</sup> See the General Meetings of 9 December 2004, 23 June 2005, 15 September 2005, 5 October 2005, 1 December 2005, 9 March 2006 and 14 December 2006.

As REACH was a regulation that had to enter into force within 20 days, and in order to avoid discussions at too late a stage in parliament, the REACH implementation process and the introduction in the Netherlands of the new statutory provisions in the Environmental Management Act and the Hazardous Substances Act had already been discussed in parliament at the time of the negotiations. These two processes - parliamentary control over the negotiation instructions and the legislative implementation process - were kept strictly separate from one another. All things considered, parliament does not seem to have had a very big influence on the REACH dossier, apart from a few specific interventions which seem mainly to have been inspired by the active lobbying by representatives of particular interests.<sup>72</sup>

### 3.3. Relations with civil society

As mentioned, the government was not the only actor involved in the process of drawing up SOMS and REACH. Below is discussed in brief the government's relationship with the main players involved in civil society: interest groups and industry. For a more detailed analysis of this relationship, please refer to the EVA/REACH sub-studies 'NGOs' and 'Industry'.

#### 3.3.1. Interest groups

VROM/SAS had created the SOMS Sounding Board in 1999, with the aim of providing industry and NGOs in the Netherlands with a platform and consultation structure where they could make their views on the review of the existing chemicals policy known. The specific objective was to organise the input delivered by interest groups and industry and to involve them in developing a vision and a strategy. Interestingly, only a small group of relatively small interest group organisations played an active role,<sup>73</sup> while some of the biggest NGOs (the Dutch Consumers' Association, Friends of the Earth Netherlands and WWF) chose not to participate in the consultations. This demonstrates that, as was the case with another study into the role played by civil society in developing European regulations, the personal commitment and interests of individual members of small NGOs can have a great impact on the organisation's involvement.<sup>74</sup>

The most significant episode in the relationship between the government and civil society was undoubtedly the disruptions during the shaping of SOMS. In August 2000, the NGOs in the SOMS Sounding Board that had been involved in the development of the policy modernisation up to that point wrote to the Minister of VROM to announce their withdrawal from SOMS because of the decision to opt for a covenant instead of a regulation. One of the reasons given for this withdrawal was that in the social organisations' opinion the government had put forward too few concrete proposals. Another cause for concern was the fact that the interlocutors from industry did not represent major buyers and retailers. Despite the fact that no further work was done on a tripartite covenant after that, the NGOs remained involved in the SOMS process after the publication of the strategy memorandum, if only in the less ambitious role of commentator.

During the REACH negotiations, VROM kept the participating NGOs actively informed of the progress. The fact that they were closely involved in shaping SOMS policy but were only informed and consulted on REACH - which is understandable in itself, given the government's different responsibilities (the SOMS policy modernisation process versus European negotiations on the REACH regulation) - has resulted in a lack of clarity.<sup>75</sup> It needs to be noted though that the organisations involved claim themselves that they see their role more as one of commentator than of co-definer of the policy strategy. They felt that this was the government's role.

<sup>72</sup> For a more detailed analysis, please refer to *EVA/REACH Deelonderzoek Parlement* [EVA/REACH Parliament Sub-study], University of Maastricht.

<sup>73</sup> *Stichting Natuur en Milieu* [The Netherlands Society for Nature and the Environment] and *Stichting de Noordzee* [The North Sea Foundation] were particularly actively involved in SOMS. At the time of the REACH negotiations, the relatively small interest group Women in Europe for a Common Future, a network organisation advocating a sustainable living environment, played a particularly active role. Greenpeace was also actively involved in the REACH phase.

<sup>74</sup> Berg, E. van den, *De lange weg naar Brussel. De Europese betrokkenheid van Nederlandse maatschappelijke organisaties en hun leden* [The long road to Brussels. European involvement of Dutch social organisations and their members], The Hague, SCP, 2006.

<sup>75</sup> For a more detailed analysis, please refer to *EVA/REACH Deelonderzoek NGO's* [EFTA/REACH sub-study on NGOs], interneership report by Bas van Huut, University of Leiden.

### 3.3.2. Industry

As with the interest groups, the relationships as they were developed in the SOMS process, were also decisive for the relationships with industry during SOMS and REACH. The chemical industry, united in the Netherlands Chemical Industry Association (VNCI), took the lead in the Chemicals Working Party set up by the Confederation of Netherlands Industry and Employers (VNO-NCW). The umbrella organisation UNICE also became actively involved at a later stage. CEFIC, the European umbrella organisation for the chemical industry, in which a number of major companies (BASF, DOW, Shell) wield considerable influence, had already announced that it took an extremely critical view of the original ideas formulated in the White Paper, particularly that of the introduction of new assessment mechanisms, which they believed could harm the competitiveness of European companies. At the Commission stage, the representation of these major companies' interests was focused on DG Enterprise, which resulted in the proposal being toned down compared with the original White Paper.<sup>76</sup> During the negotiations this lobby influenced the various positions and amendments through the national contacts in the Council and in the European Parliament.<sup>77</sup> During the course of the shaping of REACH, this industrial lobby gained strength in relation to the 'green' coalition of Member States, which had placed the initiative for a policy modernisation on the agenda, resulting in a shift of emphasis in the substantive provisions of the REACH regulation.

In the shaping of the substances policy, VROM/SAS had already strengthened its existing contacts with industry in the SOMS phase and had organised them in the SOMS Sounding Board. Industry was already focusing on reducing the adverse effects of REACH in the form of 'administrative burdens', at the time of the declaration of intent in 2001. This was a priority area of cabinet policy in the Balkenende I-IV Cabinets and was purposefully highlighted several times at a political level by EZ. EZ in fact also played a leading role in the REACH information programme in parallel to the REACH policy preparations designed to prepare industry for the consequences of the new regulation on the registration of chemicals.<sup>78</sup> Specific sector organisations were also able to find their (usual) way to other ministries such as SZW and LNV.

The relationship between government and industry in the chemical dossier deteriorated as a result of the discussion about the draft amendment decree in the last phase of SOMS. This document was notified to the European Commission by VROM in July 2002 in accordance with the usual notification procedure, from where it was then submitted to the Member States' European law specialists.<sup>79</sup> Among other things, this resulted in a number of objections from the French regarding its legal tenability, and a reaction from the chemical umbrella organisation CEFIC expressing concern that Dutch policy on the matter of the categorisation of chemicals according to risk could potentially be out of line with the proposed EU rules.<sup>80</sup> In order to investigate these objections, the European Commission imposed a so-called '*standstill*' on the Netherlands, which was extended until July 2003. On account of the Commission proposal that was to be published and the aforementioned objections, the Executive Decree did not enter into force at the time. The draft Executive Decree was not actually withdrawn by the Netherlands, since the dossier team was of the opinion that it could act as a lever during the negotiations to demonstrate that the Dutch government was serious about its concerns with regards to screening and prioritisation.<sup>81</sup>

<sup>76</sup> With lower registration requirements, exceptions for polymers and stricter rules on the confidentiality of test and other data; see Selin, *ibid.* 2007, p 80, see also *The Economist*, October 2003.

<sup>77</sup> Particular use was made of the channels via the German Federal Government and the *Länder*. See also the letter from Blair, Chirac and Schröder to Commission President Prodi, which emphasised the possible harmful consequences for the competitiveness of European industry, sent shortly before the publication of the revised Commission proposal, and see *The Toxic Lobby* by Greenpeace, May 2006, for Greenpeace's analysis of the industry lobby. During this preliminary phase the industry also published a large number of impact studies, some of which were so mutually contradictory that the organised lobby fragmented during the course of the process, according to parties involved.

<sup>78</sup> From March 2006 onwards it collaborated in this information process with VROM, SZW, VWS and LNV, the umbrella organisations VNO-NCW and MKB-Nederland, and the industry organisations VNCI, FME, Koninklijke Metaalunie, VVVF, FOCWA, NVZ and VHCP. The REACH helpdesk was set up by the EZ agency SenterNovem in the autumn of 2006 to answer specific questions and provide subject-related information material.

<sup>79</sup> Notification number 2002/292/NL in accordance with Directive 98/48/EC, Notification of technical instructions.

<sup>80</sup> Letter from CEFIC to Sabine Lecrenier, DG ENT, 2 October 2002: Comments on the draft Dutch Decree on the Registration of Chemicals, as notified to the Commission under the reference number 2002/292/NL-COOC.

<sup>81</sup> Internal VROM document '*Aanbiedingsformulier Stas-staf Registratiebesluit*' [Registration Decree STAS-staf presentation form], 17 June 2003. The draft Order in Council was formally withdrawn at the beginning of April 2007.

This episode actually marked the end of the SOMS process, as from that point onwards the Netherlands focused its efforts on the opportunities to influence the proposed *European* substances regulations. In the next phase, VROM decided to focus political and administrative attention specifically on inputting the national position in the REACH negotiations. Logically, this was at the expense of focusing at the national level on aspects of SOMS that had already been started, such as the aspects of efficient implementation, in the testing of which some experience had already been gained in a number of trials.<sup>82</sup> As VROM's attention was now focused on REACH, this implementation problem was picked up by SZW in activities such as the VASt project and the Chemicals Covenant. In the context of REACH, there was also the development of a tool for the REACH implementation projects (RIPs). A number of ministries participated in these RIPs, along with RIVM. The parties involved saw this as an extraordinarily useful process which provided valuable experience and contacts for the current stage in the implementation and execution of REACH.

### 3.4. The Netherlands in the European playing field

#### 3.4.1 The constellation of interests in the Council

According to those involved, the Dutch delegation stood out in the discussions at Council level both from an administrative and political point of view, on account of its presence, its activity, its broad input (in contrast to some Member States that only focused on a few specific points), and its expertise. Within the EU, the Netherlands occupies a relatively solid position on the chemicals dossier. This is due to the high quality of the available expertise, in training and education, in the academic world and in its national administration, but also due to the fact that a large number of chemical companies are based in the Netherlands, and many chemicals are shipped via our country. Because the policy process in the Netherlands is organised in such a way that input can be delivered on the basis of expertise ('short lines'), and Dutch experts also have access to a broad network and have a relatively good command of languages, the available knowledge can be brought in quickly and effectively at EU level.<sup>83</sup>

In the Council's power configuration, the Netherlands can, with the benefit of hindsight, be grouped in a coalition of 'green' Member States, in which Sweden took a leading role and which also consisted of Austria, Denmark and the UK.<sup>84</sup> This group of Member States took the lead in putting on the political agenda the Black Paper in which the Council asked the Commission in June 1999 to develop more detailed proposals for regulations.<sup>85</sup> Germany also originally belonged to this group, but as a result of internal conflicts of interests and partly due to the influence of the industrial lobby, the centre of gravity in the German position shifted during the negotiations towards protecting the industry and businesses. In doing so it found common ground with the coalition of Southern European Member States, including Italy, but also Ireland, which during the process called for attention to be focused on the possible adverse economic consequences of European regulations and obligations.

The fact that the negotiations on REACH coincided with the accession of ten new Member States, could have complicated the process considerably. The process of preparing for and adjusting to the new Council formation, combined with the European Parliament elections and the installation of a new Commission, could have had the effect of delaying the European examination of dossiers during 2004. In practice, however, enlargement seems to have had only a limited effect on the REACH dossier, as the accession states, with their relatively less-developed environmental policies, contributed little content to the discussions and were furthermore relatively easily able to support certain positions of the existing coalitions.<sup>86</sup> Efforts were made to actively involve the new Member States in the negotiations. The UK submitted the OSOR proposal together with Hungary, for example, and Malta

<sup>82</sup> These trials are elaborated upon in VASt, for example.

<sup>83</sup> The role of expertise is described in more detail in *EVA/REACH Dealproject Experts* [EFTA/REACH Experts sub-project], Erasmus University, Rotterdam.

<sup>84</sup> These Member States took the initiative to place the Black Paper on the agenda jointly. Text proposals during the REACH negotiations were for the most part introduced unilaterally by these Member States.

<sup>85</sup> An important forum was the regular consultation of competent authorities of Member States' governments; see 'Report of the ad-hoc meeting of the competent authorities', 19 March 1997

<sup>86</sup> Selin, Henrik, 'Coalition Politics and Chemical Management in a Regulatory Ambitious Europe', in *Global Environmental Politics*, Vol 7 no 3, August 2007.

and Slovenia put forward a joint proposal for information requirements for low volume substances.

### 3.4.2. European Commission

The coalition of Member States which had placed the revision of substances regulations on the agenda at Council level, found a willing ear in the DG Environment of the European Commission, partly thanks to the political involvement of the Swedish European Commissioner Wallström. After a short but intensive internet consultation, in which a number of representatives of particular interests in the Netherlands delivered input individually, the proposal was amended in the drafting team between the main European Commission DGs involved, the Directorates-General for Environmental Protection (ENV) and Enterprises (ENT). At this stage, REACH was still emphatically regarded as an ‘environment dossier’,<sup>87</sup> but the tension with its commercial and economic objectives, which was set to dominate the negotiations on REACH right up to the time the decision was made in the Council and the EP, was already visible. Parties involved emphasised that there was good cooperation in the interaction between these two DGs (ENV and ENT) at drafting team level. In the process of ‘interservice consultation’, however, the power struggle between ‘economy’ and ‘ecology’ dominated, as a result of which other interests, such as working conditions and health aspects, received less attention. This constellation of interests also meant that the Commission had painted itself into a corner in the subsequent phase of negotiations, as a result of which those involved felt that it was in a less flexible position when it came to dealing with the various wishes and preferences of the Member States and the European Parliament.

As a result of the experience gained in the SOMS process, which VROM/SAS was determined to put to use internationally, it was proposed that the Dutch government second a substances expert to the European Commission. This would offer an opportunity to follow the drafting process from the inside out and, despite the expert’s temporary position as a ‘neutral’ European official, possibly to influence it as well. There was actually a degree of hesitation in VROM with regard to this plan. Some saw it mainly as a loss of in-house expertise with an uncertain return, which in any event would only become visible over the longer term. With the necessary persuasiveness and the support of the department head, however, a policy official from the VROM/SAS/SN department with an in-depth knowledge of the existing substances policy and the policy process was ultimately seconded part-time to the Commission’s REACH preparation unit as an ‘*expert national détaché*’ from February 2001 to December 2003.<sup>88</sup> By making active use of the position of a Dutch substances expert at the heart of the drafting process, and intensive communication during his part-time secondment with the VROM policy directorate, VROM/SAS accumulated a large body of knowledge on the formation of ideas at the Commission stage and the interests and positions of other parties. This was invaluable for the formulation of its position and during the negotiations. Because this Dutch official helped draft the Commission proposal himself, there is good reason to believe that the proposal itself was also influenced by the Dutch policy context, and the knowledge and experience (gained during the SOMS process) of one of its authors. The secondment also contributed to the image of the Netherlands as a ‘knowledge country’ in the substances sphere, partly because the person concerned was very open in his relationship with experts from other Member States and helped other delegations formulate national concerns and preferences on several occasions.

### 3.4.3. The European Parliament

The divergent interests outlined above also dominated the process in the European Parliament, both in the various parliamentary committees as well as in the political groups. The REACH proposal was examined in the Environment Committee, a few active members of which had already spoken out in favour of the ‘green’ coalition and the original Commission plans after the publication of the ‘White Paper’. As many as nine other committees expressed opinions in the preparations for the first reading. It is interesting to note that in the process of aggregating amendments within political groups and committees, MEPs put forward their national (industrial) interests with much verve. The active lobby of some German MEPs is particularly noteworthy in this context, as is the rapporteurship of the Swedish MEP Schörling. Despite this sometimes acute internal controversy and robust lobby, the EP succeeded in making its mark on the negotiations and the final result by putting forward a

<sup>87</sup> The legal basis was Art. 95 EC.

<sup>88</sup> The secondment took place shortly after the White Paper and the SOMS strategy memorandum were published in the Netherlands. In December 2003, when the secondment came to an end, the REACH proposal was published by the Commission.

total of 1,039 amendments.<sup>89</sup>

How did the Netherlands deal with this relatively important player in the European negotiation process? When the national SOMS process was being developed, Dutch MEPs were sent information on this policy strategy and the experience gained in the Netherlands and in bilateral talks was shared with other Member States. During the European Parliament's readings on REACH, some Dutch MEPs proved to be extremely active in the process of formulating and introducing amendments. For this purpose they also kept in regular contact with representatives of industry, in particular the chemical industry, and NGOs. The Ministry of VROM intentionally kept its options open at this stage and did not actively attempt to influence the position of the Dutch MEPs,<sup>90</sup> although there were contacts between VROM and Dutch MEPs for the provision of information.<sup>91</sup> There was an expectation that the EP would principally shape the dossier from a political point of view, while the Dutch government, which focused strongly on the workability of REACH, was mainly able to take advantage of input during the more 'technical' negotiation process in the Council. Some respondents furthermore refer to national guidelines that apparently forbade official contact with the EP, in the same way that restraint has to be exercised in contacts with the national parliament.<sup>92</sup>

The Ministry of Economic Affairs played an active role in the contacts with MEPs or their assistants and in highlighting specific (economic) concerns. According to those involved, this must be seen in the light of the European experience and involvement of the minister, which persuaded political and administrative leaders to encourage greater focus on the EP in general.

This chapter has concentrated on the playing field in which discussions on SOMS and REACH were concluded. In the context of the 'interministerial' sub-study, close attention was paid to the way in which the process of defining a position and coordination between VROM, EZ and the other ministries in the REACH dossier was given shape. The sub-study also looks at the way in which parliament, industry and NGOs were closely involved in this dossier during the process. Finally, it was analysed how the Netherlands operated in the European playing field of the Commission, the Council and the European Parliament. The following chapter discusses the findings of this analysis and the consequences for the involvement with and approach to similar European dossiers.

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<sup>89</sup> There were 1,039 amendments at first reading, 430 of which were adopted. At second reading the EP submitted 450 amendments, 173 of which were accepted. See Beunderman, M. 'REACH Chemicals Law makes progress' in EUObserver, 10 November 2005.

<sup>90</sup> An exception to this is a legal point raised by the Netherlands during the second reading in the textual negotiations between the Council and the EP. This was not an attempt to protect interests but rather to repair a possible legal deficit.

<sup>91</sup> For example, a VROM expert provided Dutch MEPs with content-related information at two lunch meetings organised by the PR/EU.

<sup>92</sup> It certainly seems that politicians assumed the existence of administrative contacts with the EP, as can be seen from a memo of a meeting between ministers of VROM and EZ: 'Thereafter [after the appearance of ministers in the Commission] contacts with the EP should take place via the official apparatus.' See internal document '*Voorbereiding voorzitterschap*' ['Preparations for the presidency'], minutes of meeting Van Geel and Brinkhorst, 17 March 2004.

## CHAPTER 4 FINDINGS

This chapter discusses the findings from the three questions asked in this report: What did the Netherlands/VROM want to achieve with SOMS/REACH (the objective), how was this tackled (the approach), and what was the Dutch contribution? An important issue in the evaluation and assessment is whether and to what extent the points of concern in the effective representation of interests were addressed in the approach to and objective of REACH. This concerns a number of factors: the importance of knowledge and pro-active involvement, making choices in terms of timing and priorities, the emphasis on ‘European’ consensus instead of imposing national solutions, and ensuring the consistency and integrality of the internal and interministerial balance of interests.

### 4.1. Approach and tactics

#### 4.1.1. Ambition for SOMS and REACH

The Netherlands’ experience with the new national paradigm for the SOMS chemicals policy inspired it to become actively involved in the initiative for a European policy review. Even as SOMS was being developed, the intention was to bring this policy philosophy, in which interest groups and industry were closely involved in the policy-making, to the attention of the Commission, the Member States and European industry. In the 2001 SOMS progress report, this is articulated as follows:

‘As long as the new European chemicals policy has not yet been established in EU directives, the Netherlands will continue to influence the opinion-forming process in the EU [...] by actively promoting the strategy formulated in the policy memorandum and the proposals formulated to give practical shape to that strategy, including the criteria and decision-making rules described in the present report, within the European Commission [and] among EU member states’.<sup>93</sup>

In this context, the SOMS Cabinet Memorandum referred to experience from past attempts to exert influence at the European level, which had resulted in Dutch regulations being successfully converted into Community requirements.<sup>94</sup> A number of involved players with extensive experience of the European policy-making process (such as the Ministry of EZ, the Hazardous Substances Agency and the former International Environmental Affairs Directorate (IMZ)) emphasised the importance of focusing on ‘European’ solutions: one of the factors for the representation of interests described in Chapter 1. It was important to avoid giving the impression that the Netherlands wanted to ‘impose’ its own cabinet policy onto its European partners.<sup>95</sup> The specifically Dutch ‘polder’ approach to SOMS [a process of exhaustive consultations] would find little resonance with those Member States and EU institutions that tend more towards top-down regulation and a more hierarchical relationship between government and industry.

The latter seemed to be proved right when the European Commission published its White Paper. The Dutch government openly expressed its disappointment with the text, which had a more ‘centralist’ approach with stronger government involvement than the policy it advocated.<sup>96</sup> After all, the emphasis in the SOMS process had specifically been on an open exchange of knowledge between government, interest groups and industry on mutual concerns and positions. Because this trend towards regulation became more manifest during the REACH negotiations, the lead built up by the Netherlands as a result of SOMS became less relevant in favour of a more pragmatic stance towards the new European system to be created. As those involved in VROM/SAS gained more experience in the European game of ‘give and take’, the emphasis shifted to the input of spearheads of SOMS

<sup>93</sup> Progress Report on the implementation of SOMS, VROM-2002-29, December 2001.

<sup>94</sup> See the Strategy Memorandum on Management of Substances, as adopted by the Cabinet on 16 March 2001, p. 53.

<sup>95</sup> This warning was also articulated in the section entitled ‘Aandachtspunten stoffenbeleid’ [Focal points of substances policy] in Verschuuren, J.M., C. Bastmeijer and A. Schout (2002), ‘Europese dialoog over voorstellen tot aanpassing van de Nederlandse milieuwetgeving’ [European dialogue on proposals to amend Dutch environmental legislation], an advisory report on the optimisation of VROM’s involvement in Europe produced on behalf of this ministry.

<sup>96</sup> See the coordination documents on the interministerial definition of a position in the initial reaction to the White Paper, March 2001.



into the REACH negotiations.

#### 4.1.2. Commission stage

An important factor in 'operating effectively' is the targeted and pro-active input of knowledge in the influencing of the thinking- and drafting process. The European Commission is the institution tasked with this in the European process. According to those involved, however, the decision to second a Dutch government expert to the Commission during the drafting process was not so much prompted by considerations of a strategic nature; personal interest and involvement played a greater role in this placement. Indeed, within VROM some reluctance had to be overcome internally - ultimately a job would be 'lost' for the national process - while the potentially achievable European outcome was uncertain and would in any event only manifest itself in the longer term.

With the benefit of hindsight, this secondment was in fact taken strategic advantage of, in the sense that the knowledge gained from the Commission's reasoning, the positions of various Member States and the network of key players in Europe was of great value in determining VROM's position and during the negotiations. The secondment furthermore contributed to the image of the Netherlands as a 'knowledge country' in the sphere of chemicals, and made it easy for both sides (the Commission and the Dutch government) to implement certain ideas and suggestions via intensive communication and to test their viability.

According to parties involved, VROM's inside knowledge of the Commission stage has also played a role in the interministerial process of defining a position, since VROM was able to use this knowledge to adapt the national instruction to European reality, which also meant that it sometimes questioned the feasibility of certain (text) proposals from other ministries. Some of the interests involved state that they occasionally felt as if they were lagging behind when this discussion resulted in their proposals only being adopted by the dossier team in modified form, if at all. This applied in particular to those ministries that lacked an understanding of the European constellation of interests (because of a shortage of resources, network or subject expertise, for example) and were dependent on the insights of the negotiators in this regard. This point underlines the importance of mutual trust in the interministerial process.

#### 4.1.3. Council and EP negotiations

As has been stated, the nature of REACH differed from the policy philosophy behind SOMS. Nonetheless, the network and the subject knowledge developed during the course of SOMS offered the Netherlands much added value in the Council phase of the negotiations in the form of a knowledge benefit and insight into the positions of both national and international players. Thus a series of bilateral discussions had already been held in 2003 in places including London, Bonn, Dublin, Paris, Rome and Stockholm in the context of preparing for the EU presidency. This information was useful in drawing up the framework instruction for the BNC document in which the key points of the Dutch objective in terms of content were explained (including to parliament). During the negotiations the Second Chamber was kept informed of developments in these points in a number of letters.

In the run-up to the Dutch EU presidency, another process was intentionally initiated. For REACH, and other current dossiers in this special period, the neutrality of the office took precedence over the national position on the content. For this reason, the Netherlands submitted a position paper emphatically highlighting its own concerns before its presidency. An internal guideline was developed for the delegation, in which the Dutch objectives were formulated as 'getting as close as possible to political agreement at first reading'. Besides a fallback option (i.e. a common approach towards a number of aspects), this document also contained a playing field analysis of the positions of various negotiation partners.<sup>97</sup> During the six months of the presidency, the focus was on achieving process-related progress in the negotiations, including with the aid of footnote documents compiled jointly with the Commission and the Council Secretariat.

Whereas the emphasis during the presidency had been on steering the process, in the heat of the negotiations (in 2005) the key issue for the Dutch delegation was to constantly put forward positions on points in the wording of

<sup>97</sup> 98) Internal document, 'Uitwerking milieuprioriteit voor NL voorzitterschap in 2004' [Impact of environmental priority for the NL presidency in 2004], section 'Internationale beleidsvernieuwing stoffen - REACH' [International substances policy modernisation - REACH], January 2004.

the regulation that were important to the Netherlands promptly and expertly. The decision was taken to use the tactic of responding to situations as they arose along the way. During this Council phase VROM built on its own expertise to the greatest possible extent and grasped opportunities wherever they occurred.

As has been pointed out, with this emphasis on the Council phase, VROM/SAS focused less attention on the European Parliament, which was a co-decision-maker in the REACH dossier. The developments in the EP were closely monitored by the dossier team, and substantive information was exchanged during the lunch meetings organised by the PermRep/EU and in contacts with assistants of Dutch MEPs. However, VROM/SAS was of the opinion that any influencing of the EP by the Council after reaching the common position had to be left to the respective Council chairs. As the UK and Finland were at the helm during this period, the Netherlands felt that the dossier was in good hands.

Given the large number of amendments introduced by the European Parliament in the discussion of REACH (including at detail level), the question must be asked in this evaluation whether this was not a high-risk strategy, since some points in the parliamentary process reached in the Council could in fact have been toned down or even rejected by the EP, which could have negated the outcome of the Dutch delegation's active involvement at the Council stage. By then the Netherlands had already gained useful experience in providing the Commission and the Member States with information on certain proposals and their implications. This experience could also have been used at the EP stage to highlight specific Dutch concerns and preferences. This applies all the more given that the overview has shown that (sub-)interests from civil society and industry *did* in fact make active use of the influencing channel offered by the EP at first and second reading in this institution.

#### 4.1.4. Interministerial coordination

The government structure for internal coordination of its objective and approach to REACH was to a significant degree based on experience gained with the sounding board and the interministerial working party in the earlier SOMS process. As far as the REACH dossier was concerned, however, coordination was more complex insofar as responsibility for preparing for the negotiations was shared by VROM and EZ. It is clear that this special constellation entailed a risk of controversy and fragmentation, particularly on account of the different points of departure and interests of the two ministries with 'prime responsibility' and the extreme time pressure and dynamic that characterised the REACH dossier in the negotiation phase. The Hague's coordination of instructions is, however, rated by almost everyone involved as particularly positive. A number of success factors can be cited for this: working with the dossier team, the provision of detailed information to other ministries, the regular interministerial consultations, and the fact that by working with a framework instruction the key points of the Dutch objective had been made clear to all involved beforehand. The role of the representatives of the Ministry of Foreign Affairs, both in the The Hague arena and at EU level (the role of *porte-parole*), is also regarded as a success factor. The decision to place the representation of the Dutch position in the hands of an experienced diplomat with expertise both in the subject matter and in the ministerial power configuration was rated extremely positively, also by the parties involved in Brussels. This prevented that discussions in The Hague on the division of responsibility influenced the input of the national position in Brussels during the negotiations, as had sometimes all too evidently happened with other Member States.

The analysis already mentioned that some ministries indicated afterwards that they were less satisfied both with the process and with the outcome of the intensive interministerial coordination. This can be explained by a number of factors.

- First, knowledge of and expertise in the area of chemicals policy is needed in order to be able to operate skilfully in the textual and other negotiations. A number of other ministries did not have the knowledge and experience, which the responsible persons at VROM/SAS had gained as a result of the SOMS exercise.
- Second, internal prioritisation is a significant factor. Less resources were made available in ministries in which REACH had not been designated as an internal priority, which in many cases could be explained by the low level of political involvement on the part of the minister.
- A third related factor is how REACH is organised in the ministries concerned. Some ministries (VROM, EZ, LNV) had a specific internal coordination procedure for formulating their position on REACH. In other

ministries (VWS, SZW, V&W) this input and its organisation was left up to the chef de dossier, who also had other dossiers on his or her desk.

This power configuration resulted in some of the representatives of particular interests involved occasionally feeling that they were slipping behind. This finding and its consequences are discussed in more detail in Chapter 5.

#### 4.2. Evaluation of outcomes

In the context of ‘The final REACH compromise and the Dutch objective’, Chapter 2 explained how the Dutch objective<sup>98</sup> relates to the final outcome of the REACH negotiations in December 2006. Comparing this ‘input’ and ‘output’ is a challenge, since it is necessary to take into consideration the scope of the dossier, the complex constellation of interests and the changes that occurred in the Dutch negotiation position over time. These shifts in emphasis were partly the result of changes in the socio-political reality in the Netherlands and changes in the European power configuration. A comparison of the Dutch objective with the result of the negotiations, allowing for these points of consideration, is given in Table 4.1.

<b>Core points of the Dutch objective:</b>	<b>Outcome of the negotiations:</b>
– Explicit inclusion of a general duty of care	<i>Not adopted</i> , although adopted in preamble
- Compulsory exchange of animal experiment data	Proposal by UK-HU: <i>adopted</i>
- Chain responsibility and exchange of information	<i>Partly adopted</i>
- Active disclosure of information	<i>Partly adopted</i>
- Prioritisation (first: quick scan, focused later on extending to include PBT and vPvB substances)	Quick Scan: <i>not adopted</i> , extension: <i>adopted</i>
- Implementability (centralisation of agency, limiting of administrative ballast, horizontal integration of other policy areas)	Centralisation of agency (proposal by FR): <i>adopted</i> ; limiting of administrative ballast: <i>not adopted</i> , horizontal integration: <i>not adopted</i>
- Competitiveness of industry (later: cost effectiveness)	<i>Adopted</i>
- Consequences for countries outside the EU	<i>Partly adopted</i>

Table 4.1

How can the process and the result of the input and efforts now be assessed with the benefit of hindsight? There are three important elements in this question, which is in fact the third study question underlying the baseline evaluation.

To begin with, a distinction must be made between the evaluation of the process and the actual achievement of the objective. With regard to the first point, the process evaluation, it is appropriate to comment that as a Member State in a European Union of 15, then 25 and now 27 players, the Netherlands can in any event only exercise limited influence. The Netherlands actively used the opportunities that arose during the course of the process to influence the chemicals policy in its own direction, with great commitment of expertise and knowledge of the subject matter and positions. In SOMS this involved a bilateral contribution of experience and putting forward proposals on the basis of national best practices. In REACH it made active efforts to collaborate in the writing of Commission and other Member States’ texts. In this process, the original objective was amended along the way on the basis of socio-political developments and pragmatic considerations. For a small Member State that has to depend on knowledge and skill rather than political power, the tactic described above is a logical one, which in the case of REACH has in any case been played with great commitment.

Whether this approach was effective or not is a question that has received a variety of replies from respondents. One must, however, understand the standpoint from which the assessment is being made. For some it was crucial that the Dutch delegation set out to play a facilitating role based on input of knowledge and was always willing to contribute to achieving a consensus. Other parties involved, who are less happy with the final outcome, point

<sup>98</sup> As formulated in the framework instruction, the BNC document and the Dutch position paper of January and February 2004.

out that there could have been a greater emphasis on inputting specific Dutch interests. They felt that the neutral role was emphasised too strongly, particularly in the way the Dutch operated during its EU Presidency in 2004, which they believe resulted in opportunities for representing national interests in the REACH dossier being lost. In this regard there was in fact evidence of a government-wide strategy, since on earlier occasions the strategy of pushing forward national wishes during the presidency had proven to be a high-risk one for the Netherlands<sup>99</sup>.

If the attention is then shifted to the *content*, and a comparison with the Dutch objective is drawn on that basis, a number of comments can be made. Government regulation of chemicals is based on a fundamental tension between environmental and public health considerations on the one hand and economic, industrial and commercial interests on the other. This contrast, which defines the constellation of policy-making interests on this subject, is reflected both in the manner in which SOMS and REACH were approached in the Netherlands and the way in which it was handled in the process of policy-making at the EU level. The particularly strong lobby of industrial interests with regard to the drafting of the new chemicals legislation has undeniably resulted in the fact that the emphasis in the setup of REACH, which originally lay on guaranteeing environmental protection and a healthy living and working environment, shifted during the course of the process to the costs and (administrative) burdens resulting from the implementation of the new system. Certainly by comparison with the ambitions of SOMS, the policy modernisation process on which the formulation of the Dutch position was based, the REACH regulation is a less far-reaching and less ambitious document.

This shift in emphasis is also evident in the Dutch objective in the negotiations. Compared with the objectives described in the BNC document and the framework instruction, a greater emphasis on considerations of an industrial and economic nature can be observed in the assessment of the outcomes submitted to the Second Chamber. On the basis of an *'input-output'* analysis as presented in Chapter 2, in which the original national objective is compared with the outcome of the European negotiations on a point-by-point basis, the picture is mixed but positive. Certain points from the Dutch objective can be clearly recognised in the text, although less result was achieved in other subjects. In both cases the question of the causality of the efforts and the achievement of objectives clearly presents itself; in other words, the extent to which the Dutch efforts have contributed to shaping the final outcome cannot be stated with any certainty. Given the complexity of the European negotiations, this observation should not come as a surprise: negotiations in the EU of 27 are by definition a process of give and take.

The development of the REACH dossier gave impetus to the 'Europeanisation' of the chemicals policy arena, also in the sense of the gradual development of European awareness on the part of all actors involved in the shaping of this policy, which was controlled nationally up to the end of the 1990s, despite the existence of fragmented European regulations. In view of the ever further-reaching development of European environmental policy, the experience gained in the REACH dossier can certainly be rated as positive.

Another perspective from which the assessment of the outcome can be viewed is one in which the added value of REACH as a regulatory framework in the chemicals field is examined from some distance in terms of time and involvement. Success is in the eye of the beholder in this case too. In general the negotiators involved are satisfied, with the side note that during the course of the process and under the influence of many forces, REACH acquired a different character from the one originally intended in the original SOMS policy modernisation process. From another perspective, that of implementation, it was observed that resistance in various regions of the *industry*, which will ultimately have to work with REACH, remains great. Those involved report that they are under intensive regulatory and time pressure to comply with all the new provisions. This resistance has scarcely diminished, even now that they have had some time to adjust to the prospect of the new regulation, which could be an indication that its impact is greater than originally thought. The resources required by the new procedures is also putting considerable pressure on SMEs. The Ministries of VROM and EZ, but also SZW, have actually expended a great deal of effort in preparing 'the field' for REACH. However, the question is

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<sup>99</sup> In particular, the negative experience during the 1991 presidency (so-called 'Black Monday') cast its shadow before it. See also Keulen, M. van and J.Q.T. Rood (2004), *'Nederland op de voorzitterstoel van de Europese Unie'* [The Netherlands in the Presidency of the European Union], in *Internationale Spectator*, June 2004, p. 287-292.

whether this could have been avoided with greater efforts in the preparatory and information phases.

The actual *environmental and health benefits* that can be achieved through REACH are being debated from various sides. For example, some environmental organisations and even some of the ministries involved have pointed out that the vast majority of low-volume chemicals are not covered by the regulation, even though they can in fact be exceptionally hazardous even in such low volumes.<sup>100</sup>

#### 4.3. Final analysis

The key finding that comes to the fore in this chapter is that the SOMS/REACH process can in several respects serve as an example of a ‘major’ European dossier that has been handled successfully by the Netherlands/VROM. Thanks to a well-thought through objective and approach, the preparation of which involved a large number of stakeholders, several well-known pitfalls in the coordination and implementation of European dossiers could be avoided. From an analysis of the content it can be observed that many of the Netherlands’/VROM’s concerns and preferences have been incorporated into the wording of the regulation. Four specific factors can be pinpointed:

- *Use of the knowledge and the network* in the area of substances, acquired during SOMS and in the subsequent secondment of a national expert to the European Commission. This knowledge and this network were intentionally brought in and used in defining the Dutch objectives and ambitions for shaping REACH.
- *The early formulation of priorities for the Dutch objective*, as defined in the SOMS memoranda and letters to parliament on REACH. From the overview it can be concluded that over the course of time, partly under the influence of changes in political power relationships, the emphasis shifted from inspiring partners on the basis of the national experience with SOMS to a more pragmatic contribution to the European REACH negotiations. The emphasis of this input and influence lay at the Commission and Council stages, with relatively less attention being focused on the European Parliament.
- *Placing the emphasis on ‘European’ solutions* instead of focusing on the country’s own policy. Whereas the specific philosophy behind SOMS started off as the inspiration for the Dutch objective, efforts during the course of the process were targeted more towards achieving a European consensus.
- *Ensuring internal consistency and integrity in the balance of interests*. The REACH dossier team has invested much in ensuring that all ministries and parties in the field involved in defining the position received prompt and detailed information. Not all parties involved were equally satisfied with the progress and result of this procedure, however. This can be explained partly by the perception of the outcome of the negotiations in terms of content, and partly by the specific politico-administrative constellation in which this position was defined *within* ministries. This finding will be discussed in more detail in the next chapter, in which a number of recommendations or ‘lessons’ has been put forward for handling similar European dossiers in the near future based on the experience gained with SOMS/REACH.

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<sup>100</sup> On being asked, Dutch EP member Dorette Corbey, for example, stated: ‘REACH was a fantastic structure, but it was demolished before anything at all got off the ground.’ Greenpeace is also disappointed with the watered-down compromise, but emphasises the opportunities for implementation and execution (Schopping, K: *REACH: work in progress: Greenpeace’ visie op de uitkomsten van REACH* [REACH: work in progress: Greenpeace’s vision of the outcomes of REACH], Milieu en Recht 34, 8).

## CHAPTER 5 RECOMMENDATIONS

The processes of representing interests from SOMS to REACH and from The Hague to Brussels and back were reconstructed and analysed in the previous chapters. The most important general finding is that the SOMS/REACH process can in several respects serve as an example of a successful approach to a complex dossier in which major interests were at stake for the Netherlands. A summary of various relevant elements in the approach to the SOMS/REACH dossier is provided in Table 5.1. The question discussed in this final chapter is: what recommendations can be formulated with a view to optimising the representation of Dutch interests in the EU?

### Lessons learned from SOMS/REACH:

- Secondment actively used
- Use of the instruments of the dossier team and the framework instruction
- Transparency in the process towards stakeholders inside and outside the government
- VROM/EZ forming one front in Brussels: not exploited
- NL EU Presidency: keep the position in terms of content separate from progress in the process
- Focus on implementation during policy preparation

Table 5.1

### 1. Target expertise on presence and influence

It is clear that the Netherlands cannot depend on a ‘formal’ quantitative strength in the enlarged EU. The strength of the Dutch objective lies in its government’s and knowledge institutions’ broad experience and expertise in both the content and process, resulting among other things from the Netherlands’ economic and technological position and reputation as a ‘knowledge country’. The assignment for the Dutch government is to collate this knowledge at an early stage and to bundle it into a workable and feasible input into the European process.

Nowadays, the need for early Dutch objective in the EU backed by substantive expertise, both in contacts with the Commission and in the bilateral run-up, is regarded as crucial for representing Dutch interests effectively. It can be concluded from the analysis of REACH that there was evidence of such a pro-active approach, both in the priorities set by the Netherlands and in the approach to this dossier. The secondment of a national expert to the European Commission was a factor of particular significance. The challenge for the Netherlands/VROM was to keep expertise within the limits of the political instructions in the heat of the process, and in doing so to retain as much support as possible from the parties involved at home. European awareness and an understanding of the difference between the national and the European policy context, as well as the capacity to ‘switch’ effectively between the two playing fields at the right moment, proved to be crucial for the ability of those involved to play the game at the fast pace required. The development of the REACH dossier also seems to have given major impetus to the ‘Europeanisation’ of the substances and chemicals policy arena and to the European awareness of those most closely involved. This experience will undoubtedly prove to be of great value for the Netherlands’ and VROM/SAS’s approach to similar dossiers in the future.

### 2. Keep the process transparent and filter information

Chemicals policy is an intrinsically complex subject that cannot be shaped without an in-depth knowledge of the subject. The REACH negotiations were furthermore characterised by conflicts of interests, the multi-tiered structure (involvement on various playing fields) and, in fits and starts, extreme pressure of time. Providing correct and timely information on both the content and the process was a crucial factor. In the current model for coordinating the Netherlands’ EU positions, lead responsibility for delivering input in the negotiations lies with the lead ministry. In addition, other ministries involved on account of their particular interests are themselves responsible for ensuring efficient use of time and resources to secure an effective input of their own opinions and considerations. In the examination of complex, long-running dossiers, this raises the question as to how to strike a balance between the sometimes large volumes of information and the available, but sometimes scarce,

resources in other ministries to process this information promptly and effectively. After all, particularly in what can sometimes be a highly technical examination of such dossiers, it is important to continue to ensure support for those internal and external interests that may have intrinsically valid points to contribute but that risk losing out in terms of subject expertise. This situation calls for solid management of information flows in order to build and maintain mutual trust between the parties involved.

### **3. Direct policy preparation and implementation in parallel**

REACH is an example of a dossier in which, at the time of the negotiations on the text, the emphasis was placed deliberately on involving the legal and implementation dimension in order to prepare the players involved in this phase for the upcoming European regulation at the earliest possible stage. VROM/SAS has invested much time and effort in involving these stakeholders. There are some general lessons the government can learn from this approach: notwithstanding problems with timely and correct implementation of European policy in the recent past, it still all too often places implementation problems on the agenda at too late a stage, with all the negative consequences this entails. The early anticipation of implementation issues is crucial in terms of the Dutch objective in the negotiations on European regulations, particularly to avoid unpleasant surprises further down the line. It is also important in terms of ensuring support and acceptance of European regulations, both at political and administrative level (implementation bodies), as well as in relation to the stakeholders.

### **4. Do not underestimate the European Parliament**

In the reconstruction of the Dutch efforts in the REACH dossier, it is striking that VROM/SAS intentionally deployed a lot of resources at the Council stage and less at the stage where the dossier was the subject of (sometimes heated) discussion in the European Parliament. Contact with the EP in REACH seems to be limited to a certain technical point concerning implementation which was brought up by VROM because it had not yet been 'repaired' by the time it reached the second reading. The Ministry of Economic Affairs did in fact take the initiative to approach (Dutch) MEPs. According to those involved, the involvement of the minister as an 'enthusiastic European' and former member of the European Parliament had a degree of influence in this.

Of course, the Netherlands has a 'permanent' place in the Council as the natural forum for the representation of national interests. It is therefore tempting to focus attention on this institution. The REACH dossier also teaches us that early involvement at the Commission stage can give a country a significant advantage. In this phase the key aims of the proposal are formulated and the stage is set for later negotiations in the Council phase and discussions in parliament. But experience also teaches us that the European Parliament in particular sometimes introduces far-reaching changes in European legislation (see, for example, the Services Directive) by way of amendments. Therefore, the risk of points that have been successfully introduced in the Council subsequently being toned down or deleted by the EP is not inconsiderable. Full attention should therefore be paid to the EP phase in the strategy-forming process for 'key' dossiers, particularly as the power of the EP is set to increase further under the new treaty regime.

### **5. Keep all interests involved and safeguard integrity**

From the analysis it can be concluded that it was not easy for all parties involved to play the interministerial game at the required pace or generate sufficient internal political involvement to include all interests promptly and effectively in the adoption of a position. The specific objections some parties were left with as a result of the course of events illustrate the risk involved in the current process of shaping the coordination of European dossiers in the Netherlands. In recent years this has been a central theme in various high-level administrative advisory reports and scientific studies, in which reference is made to the specific politico-administrative constellation in which the formulation of the Dutch EU position is concluded, including the strong degree of ministerial autonomy, the relatively large number of official coordination bodies and the traditionally reactive political involvement in the process of adopting a position and coordinating EU policy.<sup>101</sup>

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<sup>101</sup> See also the advisory reports and studies mentioned in footnote 5.

In the current process of shaping Dutch European policy, dossiers are often not formally coordinated between ministries during the negotiations at the Council working party stage.<sup>102</sup> They are therefore only discussed between the ministries at the stage in which the instruction for the PermRep is produced. There is therefore a risk that Dutch involvement at the preceding (and sometimes crucial) stage of discussions in the Council working party will be shaped too strongly by one specific (leading) interest. This risk is greater in the case of a complex dossier like REACH, in which, as has already been mentioned, a great deal of expertise and insight into the positions was required in order to be able to keep up with the fast pace of the negotiations, let alone in order to be able to intervene in them effectively from outside.

If the approach to REACH is seen in the light of the aforementioned critical considerations, it can be observed that the pitfall of 'black holes' in the coordination was successfully avoided. A number of success factors can be quoted here:

- One of the first positive experiences in REACH was the use of the tool of the interministerial *dossier team* with representatives of the Ministries of VROM, EZ and BZ. Introduced during the Dutch presidency, but continued during the later stages of this negotiation process, this teamwork has not only contributed significantly to achieving effective coordination at the 'The Hague' level, but has in particular ensured that the Netherlands spoke with one voice in Brussels in both administrative and political terms.
- Also worth noting is the use of the tool of the *framework instruction*, which provided the negotiators with the required degree of flexibility during the negotiation process. Use of this tool requires ongoing and prompt feedback to The Hague so that the instruction can be amended to reflect new European realities.
- Third, the dossier team took great pains to keep the process as transparent as possible and to provide the other ministries involved with ample information in the form of Council documents, text proposals and position papers. Notwithstanding the 'pressure cooker' situation in which the negotiations took place, those involved were kept properly updated. During the negotiation process, a great deal of attention was also deliberately paid to the preparations needed to convert and implement the REACH provisions on time.
- Finally, there were ample opportunities for informed input by particular interested parties at the appropriate moments in the policy process (publication of the Commission proposal, contribution of the Council working party, preparations for COREPER or the Council). Not only was REACH structurally the subject of discussion in the permanent International Environmental Affairs Coordination Committee (CIM), in which all environmental dossiers are discussed on an interministerial level, but a special IW-REACH interministerial working party was also set up, in which the VROM/EZ/BZ dossier team discussed positions with the other ministries and details of negotiations were fed back. The success of this approach, which ensured the provision of structural information and coordination between those involved, is illustrated by the knowledge that the process of working with interministerial and inter-administrative working parties and dossier teams in The Hague, is now, some years later, widely imitated.

Nonetheless it must be observed that certain interested parties are of the opinion that their input in the formulation of a position on REACH was inadequate. This begs the question as to how this - in itself successful - approach to REACH could have been optimised. Two concrete suggestions can be made in response to this.

#### 1. *Ensure priority and resources for all interests involved*

A strategic approach to any European dossier requires prompt identification and action. Such identification has recently been taking place in the context of the 'list of major proposals' in which European proposals relevant to the Netherlands are identified. However, this kind of prioritisation should also go on to have consequences. It is therefore important to ensure on a high administrative or political level that enough time and resources are made available for the dossier concerned in all the ministries involved during the course of the negotiations. After all, from the perspective of the Netherlands as a Member State, a lack of resources cannot justify insufficient allowance being made for certain valid aspects in the outcome of a negotiation. It is also important to schedule regular and interim evaluations during the process at higher (CoCo or Cabinet) level, even while the negotiations are in full swing; these would enable us to examine at some distance from the heat of the negotiations at EU

<sup>102</sup> The 'black hole' in the Council Working party phase is often mentioned in this context. See: Joint Parliamentary Committee of Voorst tot Voorst, *Eindrapport Sturing EU-aangelegenheden, Project Andere Overheid*, [Final report on management of EU affairs, 'Other Government' project], The Hague, 2004.



level exactly how this prioritisation is working out in practice, whether the Dutch negotiation strategy needs to be reviewed, and perhaps whether an enhanced or revised allocation of resources is required.

## 2. Towards more active coordination by the lead ministry<sup>103</sup>

In the current coordination model for EU policy in the Netherlands, other ministries are themselves responsible for the timely and correct input of their interests in the 'lead' ministry, in addition to the formal coordination moments (as a result of a new Commission proposal, and to prepare for the instructions for the PermRep and Cabinet). In the United Kingdom's coordination model, responsibility also lies with the chef de dossier, who must ensure that other interests are at all times properly informed of matters which the chef de dossier considers to be potentially relevant to them. This model is classed as 'active', as ministries not only receive 'passive' documents but are actively involved in the adoption of a position when issues which are relevant to them are at stake.

Experience in the UK teaches us that a similar model of issue coordination can be organised largely informally between chefs de dossier, with the result that a large number of the set meeting moments in the Dutch system could be dropped. A similar system requires the chef de dossier to make a prompt and careful selection of the information that is relevant to others and, more importantly, that he/she develops the capacity to actively brainstorm with other ministries to secure and shape the input of their interests. A more important requirement, however, is that this 'informal' coordination be based on an overall balance of interests which must be shaped at political level. Not only does such a 'reversal' of the Dutch coordination model naturally require a politico-administrative decision, it is also important to perform the above exercise, which involves a structural review of where exactly the issues in dossiers lie that are relevant to the Netherlands *as a whole* and how they can be tackled in all areas of government.

These two recommendations could contribute to the strategic and overall representation of interests by the Netherlands in the European process, giving particular interests the opportunity to participate fully and with sufficient expertise in an intensive process such as that surrounding REACH.

In conclusion there is, however, an important caveat to this consideration. EU negotiations are by definition a question of give and take. This fact not only calls for prioritisation of subjects that are 'essential' to the Netherlands in a negotiation process, but also for sufficient realism on the part of all parties concerned in order to rate the value of the final outcome of what is by definition a complex and multi-tiered European negotiation process. In this context, one of the respondents commented at the time of this study that it can be concluded that the process was successful as nobody was entirely satisfied – or put in another way: *'everybody [went away] a little bit content'*. Seen from this angle, it can in any event be concluded that the efforts in the search for a consensus in the complex and intensive REACH dossier, to which the Netherlands has undeniably played a particularly active role, have certainly borne fruit.

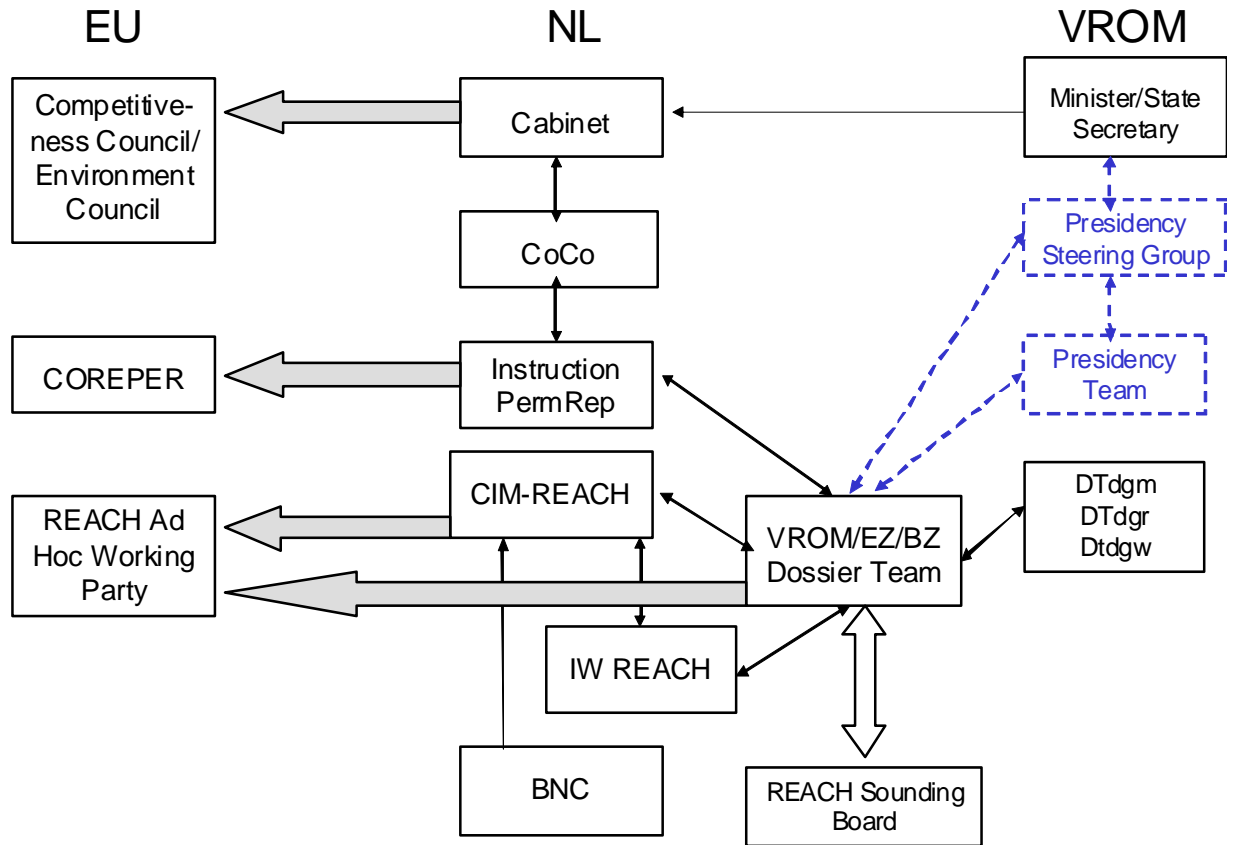
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<sup>103</sup> This suggestion was elaborated upon in a recommendation by the Public Administration Council, *Nationale coördinatie van EU beleid: een politiek en proactief proces* [National coordination of EU policy: a political and pro-active process], The Hague, 2004.

**ANNEX I: LIST OF ABBREVIATIONS AND THEIR MEANINGS**

AHG	REACH Ad Hoc Council Working Party
AMvB	Executive Decree
BMS	Hazardous Substances Agency
BNC	Assessment of New Commission Proposals Working Party
BZ	Ministry of Foreign Affairs
CEFIC	European Chemical Industry Council, the umbrella organisation of the chemicals industry
CIM	International Environmental Affairs Coordination Committee
CMR	Carcinogenic, Mutagenic and Reprotoxic (substance properties)
CoCo	European Affairs Coordination Committee
CP	Common Position
DG	Directorate General
ECHA	European Chemicals Agency
EU	European Union
ENV	Environment
ENT	Enterprise
EP	European Parliament
EZ	Ministry of Economic Affairs
IMZ	International Environmental Affairs Directorate
IW-REACH	REACH interministerial working party
LNV	Ministry of Agriculture, Nature and Food Quality
NGO	Non-governmental organisation
OSOR	'One Substance, One Registration' (proposal during the negotiations)
PBT	Persistent, Bioaccumulative and Toxic (substance properties)
PermRep/EU	Netherlands Permanent Representation at the European Union
PRODUCE	Practical simulation at EU level to prepare for the introduction of REACH
REACH	Registration, Evaluation, Authorisation and restriction of Chemicals
RIP	REACH Implementation Project
RIVM	National Institute of Public Health and the Environment
SAS	Chemicals, Waste and Radiation Protection Directorate
SLIM	Simpler Legislation for the Internal Market (initiative in the European Commission)
SOMS	Strategy on Management of Substances
SME	Small and Medium-sized Enterprises
SN	Substances and Standards Department
SPORT	Practical simulation at EU level to prepare for the introduction of REACH
SZW	Ministry of Social Affairs and Employment
VASt	Programme for Reinforcing the Working Conditions Policy on Hazardous Substances
VROM	Ministry of Housing, Spatial Planning and the Environment
VWS	Ministry of Health, Welfare and Sport
V&W	Ministry of Transport, Public Works and Water Management
WMS	Environmentally Hazardous Substances Act
vPvB	Very Persistent and Very Bioaccumulative (substance properties )

**ANNEX II: FORMAL STRUCTURE FOR THE FORMULATION OF THE DUTCH POSITION IN REACH**



**ANNEX III LIST OF RESPONDENTS**

- Dick Jung, (VROM/DGM/SAS/SN)
- Jan-Karel Kwisthout (VROM/DGM/SAS/SN)
- Arnold van der Wielen (VROM/DGM/SAS/SN)
- Hans Woldendorp (VROM/DGM)
- Adriaan Oudeman (VROM/IZ)
- Hugo von Meijenfeldt (VROM/IZ)
- Joris van der Voet (VROM/IZ)
- Simon Smits (formerly PermRep/EU)
- George van Bergen (BZ/DES)
- Tjalling Dijkstra (BZ/DGIS)
- Frits von Meijenfeldt (EZ)
- Maarten Treep (formerly EZ)
- Martine van der Weiden (VWS)
- Henk Roelfzema (VWS)
- Ad Vijlbrief (SZW)
- Albert Hollander (formerly SZW)
- Gerrit Niebeek (V&W, RWS)
- Heddy de Wijs (V&W)
- Marian Hopman (LNV)
- Lucie Vollebregt (formerly seconded to LNV)
- Dick Sijm (RIVM, Bureau REACH)
- Cees de Heer (RIVM, SIR)
- Dirk van Well (VNCI)
- Jenda Horak (FOCWA)
- Geert Dancet (European Commission/ECHA)

*Respondents to joint interviews and interviews in sub-studies:*

- Wim Zijlstra (VNO/NCW)
- Katleen Hendrix (European Commission)
- Eva Hellsten (European Commission)
- Robert Donkers (European Commission)
- Aukje Berden (European Parliament, assistant to Ria Oomen)
- Mark Koene (Netherlands Society for Nature and the Environment)
- Daniele Rosche (WECF)

#### **ANNEX IV: COMPOSITION OF THE PROJECT TEAM**

This study was performed by a project team in the Clingendael European Studies Programme comprising:

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