

**Opportunity Lost? Environmental Interests,
Industrial Competitiveness and the European Parliament**

Mitchell P. Smith

Department of Political Science and
School of International and Area Studies
The University of Oklahoma
mps@ou.edu

Paper prepared for the Third pan-European Conference of the European
Consortium on Political Research, Standing Group on EU Politics,
panel on "Constructing the Single Market."
Bilgi University, Istanbul, September 22, 2006.

Opportunity Lost?
Environmental Interests, Industrial Competitiveness and the European Parliament

Mitchell P. Smith, University of Oklahoma

The literature on diffuse interests in the EU, including environmental and women's rights movements, depicts the development of EU policies on the environment and gender equality as a favorable shift in opportunity structures for these interests (Pollack, 1997; Pollack and Hafner-Burton, 2000).¹ The essence of the argument is that EU institutions seeking to advance their own interests in deeper integration constitute productive access points and stimulate the organization of diffuse interests at the European level. For environmentalists, the Council of Environment Ministers, the European Commission's DG Environment, and the European Parliament's Committee on Environment, Public Health and Consumer Policy represent institutional venues sympathetic to and often acting as advocates for, these interests.² The last of these institutions has been particularly consequential; on a range of environmental and health issues, from auto emissions (Pedler, 2002; Warleigh, 2000; Würzel, 2002) to tobacco

¹ In his investigation of political opportunity structures for environmental movements at the international level, Hein-Anton van der Heijden (2006) reviews literature that collectively identifies components of the capacity of interest associations to organize and gain access to the policy making process, as well as the degree to which these efforts translate into policy outputs. Measured along the first dimension, the EU represents a favorable shift in opportunity structures; this is less so along the output dimension.

² Rachel Cichowski (1998: 403) also identifies the significance of the European Court of Justice, whose expansive interpretations of environmental directives "construct a legal framework that opens the door to those who have been traditionally closed out of EU decision-making."

control (Judge and Earnshaw, 2003: 271-6), the Environment Committee has steered the European Parliament as a whole toward a position that has rendered legislative outcomes more favorable to environmental interests. In other cases, the European Parliament has played an indirect role, stimulating the European Commission to act on behalf of the public interest, as in the case of the 1992 Habitats Directive (Fairbrass and Jordan, 2001: 512). In the decade since Amsterdam, marked by expanded formal and evolving informal power of the European Parliament, we should expect even more favorable conditions for the advancement of such interests.

However, in this article I argue that trends in the representation of environmental interests run contrary to this expectation. This is so for two reasons, one institutional, one ideational. Moreover, the institutional and ideational factors interact, reinforcing one another. Favorable opportunity structures depend not simply upon the existence of an alternative arena for organized interests to pursue their preferences, but upon the status of access points as nodes in the policy making hierarchy. Simply put, some institutional nodes are more consequential than others in the determination of policy outcomes. As Peter Hall has demonstrated so convincingly for twentieth-century British and French economic policy making, “the organization of policy-making affects the degree of power that any one set of actors has over the policy outcomes (Hall, 1986: 19; others?).

The European Parliament’s Environment Committee (ENVI) has occupied a prominent position in the EP’s institutional hierarchy, accounting for 29% of all codecision procedures concluded during the fifth parliament (1999-2004), more than any other committee (European Parliament, 2004b: 11), and serving as a leader in the Parliament’s effort to advance its institutional status. However, I argue here that

deference to ENVI as a lead committee has diminished, beginning approximately from the latter years of the fifth parliament and into the sixth. Actors involved in policy making increasingly view the construction of environmental regulation as cutting across policy areas -- in particular, with significant consequences for industrial competitiveness. The intersection of heightened competitiveness concerns with environmental regulation has drawn in more actors to debates over environmental regulation. This includes intensified industry lobbying, more extensive EP dialogue with the Council during the first reading of proposed legislation, and the active involvement of additional EP committees. Foremost among these is the new Committee on Internal Market and Consumer Affairs (IMCO), which in several recent instances has claimed shared competence with ENVI over regulations having both environmental and competitiveness implications. The involvement of these actors has multiplied and diversified information resources, reducing exclusive reliance upon and deference to the Environment Committee, and rendering ENVI reports less likely to carry convincing majorities in plenary without concessions to the competitiveness concerns of MEPs outside ENVI.

At the ideational level, the revival of the seemingly moribund Lisbon process has been accompanied by the appropriation of “Lisbon” discourse by actors seeking to subordinate environmental concerns to the competitiveness objective. This is reflected in the rising stature of the Competitiveness Council, the active role in environmental legislation undertaken by the Parliament’s Internal Market (IMCO) and Industry, Research and Energy (ITRE) committees, and segments of industry lobbying in Brussels. The emphasis of these actors on the need to safeguard competitiveness has produced concrete consequences for environmental policy making, particularly pervasive use in the

drafting of regulation of impact assessments that tend to emphasize the quantifiable costs of the potential regulatory burden on industry and mute the more nebulous benefits that may accrue to the environment and human health. Furthermore, when institutional actors like the Competitiveness Council and concentrated interests such as national chemicals sector industry federations frame debates over environmental issues in terms of competitiveness, environmentalists are unlikely to pose an effective alternative frame. Competitiveness framing typically acknowledges the importance of environmental protection, but subsumes the environmental frame by positing that a robust business environment is a precondition for investments in production processes that can improve environmental quality. In general, the number and complexity of issues confronting the EP puts a premium on technical expertise. But while IMCO members may defer to ENVI members on technical environmental issues, they do not make the same concessions on questions of economic impact of environmental measures. This increases the likelihood that ENVI will have to amend its positions in accordance with the wishes of MEPs from other committees in order to gain majorities in plenary.

The institutional shift represented by the diminished standing of the Environment Committee is reinforced by the ascent of competitiveness discourse. As the competitiveness frame becomes more deeply embedded as the compass for EU policy making, institutions like the European Parliament's Internal Market Committee and Industry, Research and Energy Committee gain additional leverage to claim shared competence over proposed legislation, to legitimate the need for close attention to competitiveness concerns, to limit deference to the Environment Committee, and even to

induce ENVI to recast its positions on environmental legislation in anticipation of resistance within the EP.

I illustrate each of these dimensions of the argument with reference to recent debates over regulation in two policy areas marked by the coincidence of environmental and health concerns with competitiveness interests: regulation of the chemicals sector in the EU (known as REACH, for registration, evaluation, and authorization of chemicals), and nutrition labeling. At the outset of the legislative process for the new chemicals sector regulation in 2000-2001, national environment ministers from several member states as well as the EU Environment Commissioner firmly backed a rigorous approach to protecting the environment. In the European Parliament, the Environment Committee, with a Green Party rapporteur, assumed responsibility for the institution's response. A dramatic shift in favor of environmental protection appeared likely. Yet, by completion of the European Parliament's first reading of the REACH legislation in November 2005, and the announcement of a Council common position in December, the regulation had become the most heavily lobbied piece of legislation in EU history, and had been transformed from a piece of environmental legislation to a regulation focused on competitiveness of Europe's chemicals sector.

The European Commission's 2003 nutrition labeling proposal, designed to reduce the incidence of misleading health claims on food and drink packaging, followed a similar trajectory. In this instance, the European Parliament's Environment Committee itself became deeply divided, and ultimately produced a lead-committee report that eliminated the most restrictive components of the Commission's proposal.

In both the chemicals and nutrition labeling cases, divisions within the European Parliament prevented it from serving as a leading advocate for diffuse environmental and health interests. In the chemicals regulation case, deference to the Environment Committee within the EP was neutralized by the Internal Market Committee's advocacy for competitiveness concerns; in the case of nutrition labeling, concerns for competitiveness infiltrated the Environment Committee (ENVI) itself. Therefore, in neither case did the availability of ENVI as an access point result in powerful institutional advocacy for organized environmental and health interests. The evidence from these cases points to the overarching implication of a dramatic narrowing of the favorable opportunity structure facing diffuse interests.

Diffuse Interests:

European Integration as a Favorable Shift in Opportunity Structures

The existing literature suggests that diffuse interests have advantages in EU policy making relative to national policy making, largely because the geographically decentralized and institutionally fragmented EU political system multiplies access points, adding to the national level of policy making the participation of the European Commission, European Parliament, and European Court of Justice (Pollack, 1997). Where diffuse interests are not deeply embedded in domestic policy networks, they can engage to influence the agenda at the European level (Marks and McAdam, 1996; Fairbrass and Jordan, 2001).

EU institutions, in turn, can reap institutional benefits by encouraging the aggregation and intermediation of interests at the European level. A European Commission that seeks to advance the cause of integration and to generate support for

European-level solutions to policy problems and an increasingly powerful European Parliament that provides direct representation of the people of the EU constitute sympathetic venues for the advancement of diffuse interests. The existence of EU-level institutions with their own preferences for further integration stimulates the mobilization of societal interests at the European level. In other words, the European integration process enhances the political opportunities facing diffuse interests.

This argument focuses on the relationship between opportunities for the pursuit of preferences at the national level and opportunities created by institutional evolution at the European level. Much of the debate about the impact of EU policy making on diffuse interests concerns the relative balance of political activity between national and European levels (Imig and Tarrow, 2001: 47). However, the political opportunity structures approach tends not to differentiate between institutional nodes of access. Some of the institutionalist literature in comparative political economy (for example, Peter Hall's work on the role of ministerial hierarchies, particularly Treasury Department dominance, in understanding the failures of industrial policy in postwar Britain) underscores the importance of national policy making structures in determining the relative influence of particular ideas and interests on policy outcomes. Similarly, not all access points within the European Union's policy making apparatus are created equal. Identifying the place of particular access points in the structure of policy making becomes essential to evaluating the extent to which access genuinely enhances opportunities for organized interests to translate their preferences into outcomes.

Environmental interests have benefited from the sectoral autonomy of EU policy making across policy areas, in which horizontal policy coordination has been weak. For

example, individual Commission DGs have been able to operate as policy entrepreneurs (sources?), cultivating constituencies and expanding their policy competence to the extent they could draft proposals that gain qualified majority support in Council. While some Commission DGs (competition, internal market) have been most powerful in the determination of policy since the advent of the single market process, the effect of the increased horizontal policy coordination associated with the invigoration of the Lisbon agenda and focus on competitiveness under the Barroso Commission is to reduce autonomy and strengthen hierarchy within the Commission. Similarly, where European Parliament committees in the past substantially have been able to represent interests and advance legislation corresponding to their substantive domains, the ascendance of competitiveness concerns within the Commission, Council, and industry interests highly mobilized and organized at European level has sharpened competition between EP committees and limited autonomy to realms in which committee goals do not conflict.

Institutional and Ideational Shifts

In 1999, the European Commission began developing a new regulatory framework for the chemicals sector (REACH) at the behest of national environment ministers of several member state governments. The initial approach of REACH bore the strong imprimatur of European environmental interests. However, by the time the European Parliament had completed its first reading and the Council of Ministers had reached a common position in late 2005, the regulation scarcely resembled the initial proposal, imposing far lighter compliance burdens on industry. Ultimately, the contours

of a piece of legislation originally focused on concerns for human health and environmental protection were molded by the objective of industrial competitiveness.

The following sections explain this outcome by examining the institutional downgrading of the role of the European Parliament's Environment Committee in the legislative process involving REACH. Once a legislative proposal enters the first reading process in the EP, the ultimate objective of the lead committee is to obtain an outcome closest to its preferred position. However, it must first win the support of the plenary for its report; additionally, a substantial majority enhances the bargaining position of the EP vis-a-vis the Council because it increases the likelihood that the EP will be able to retain a majority in opposition to Council revisions. Accordingly, even an activist committee that has been heavily lobbied by NGOs with critical information resources and with whose positions the median member of the committee sympathizes will make some concessions to opposing views. In particular, the lead committee will make concessions to opinion-giving committees just sufficient to prevent the emergence of an alternative set of proposals from any group of MEPs.

In several recent instances in which a legislative proposal has both environmental and competitiveness implications, the EP's Conference of Presidents has responded by invoking the enhanced Hughes procedure, which grants a second committee enhanced status in report drafting, moving partially (though not completely) toward shared competence between committees. The internal rules of the EP establish the relationship between lead committees and those assigned to provide opinions; the responsible committee considers these opinions, and may draw on them in order to craft a position likely to win approval in plenary, but is not required to incorporate them into its report.

The enhanced Hughes procedure, introduced in 2002, was crafted with the expectation that committees would engage in "enhanced cooperation" when a piece of legislation fell astride the substantive realms of two committees, or contained parts encompassing two distinct substantive policy areas. There are three aspects to the process. First, the two committees jointly decide on the timetable for considering the legislation. Second, the rapporteur from the lead committee and the draftsman from the committee engaged in enhanced cooperation "endeavour to agree on the texts they propose to their committees and on their position regarding amendments." The third dimension is the most complex and ambiguous, for it calls upon the chairman of the responsible committee to accept the amendments of the cooperating committee relating to its field of jurisdiction.³

By extending to alternative committees augmented powers to introduce their amendments into the report on a piece of legislation, the enhanced Hughes procedure intensifies the lobbying focused on those committees, renders their positions more distinctive, and increases the threat that such committees will bring amendments directly to plenary. In other words, the likelihood of an alternative position increases, and the substance of the alternative becomes more distant from the position of the lead committee. The lead committee must incorporate elements of the alternative up to the point at which its position overlaps with the bargaining range of the committee promoting

³ The rules state that "the committee responsible shall accept without a vote amendments from the committee asked for an opinion where they concern matters which the chairman of the committee responsible considers, on the basis of Annex VI, after consulting the chairman of the committee asked for an opinion, to fall under the competence of the committee asked for an opinion, and which do not contradict other elements of the report." Rules of Procedure of the European Parliament, 16th ed., July 2004, Article 47. Accessed at http://www.europarl.eu.int/omk/sipade3?SAME_LEVEL=1&LEVEL=2&NAV=X&DETAIL=&PUBREF=-//EP//TEXT+RULES-EP+20040720+TOC+DOC+XML+V0//EN.

the alternative. This is necessary because under the enhanced Hughes procedure, the committee presenting the alternative has a stronger claim of authority within the EP and is therefore, in the absence of a deal with the lead committee, more likely to persist with its effort to win plenary support for an alternative position than a group of MEPs or opinion-giving committee in the absence of enhanced Hughes.

Furthermore, under the post-Amsterdam co-decision procedure, the Council can accept the EP's first reading position without establishing an independent common position. Accordingly, members of plenary will favor proposals that overlap with the anticipated position of the Council, provided they represent the independent perspective of the Parliament. At the very least, there is the risk of dividing the plenary and yielding a weak majority for the lead committee, undermining the EP's bargaining position vis-à-vis the Council in the second reading and conciliation stages of the legislative process.

A second development affecting the outcome of first reading positions of the EP is an ideational shift marked by the appropriation of the Lisbon agenda by institutional actors (the recently-formed Competitiveness Council, the EP's Internal Market and Industry committees) and elements of the industry lobby focused on a particular definition of the concept of "competitiveness." The initial language of Lisbon reflected the inherent ambiguities of the competitiveness concept. The Lisbon agenda posited that augmented dynamism of European industry and enhanced protection of the environment were interrelated components of future competitiveness. At least by implication, industrial competitiveness could be driven by environmentally-friendly innovation, in addition to intensified investment in research and development and liberalization of

markets. However, after three to four years in which a wide range of actors, including environmental interest association, sought to invoke Lisbon in order to advance their preferences, a dominant framing of Lisbon has emerged, defined by a focus on the costs of regulation to industry. This is illustrated clearly by REACH, for example, in which sectoral interests ultimately diluted the environmental protection afforded by REACH by appealing to the need for "workability" and emphasizing the danger of imposing high implementation costs of small and medium enterprises.

The debate following the November 2004 Kok Report marks the turning point in the substantiation of Lisbon. The high-level group authoring the report underscored the need to infuse the Lisbon agenda with meaning, noting that, at mid-term, the Lisbon agenda "is about everything and thus about nothing."⁴ The Kok report hardly settled the ambiguities of the Lisbon agenda, but while it acknowledged that environmental technologies can boost competitiveness and create first-mover advantages for European industry, it decisively gave primacy to competitiveness and job creation over environmental protection (Wilkinson et al, 2004). As Wilkinson et al point out, according to the Kok Report, "growth and employment are preconditions for social and environmental protection" (Wilkinson et al, 2004: 18).

Operating within a policy network anchored by the EU's Competitiveness Council, European industry federations in 2004 formed a mega-federation, the Alliance for a Competitive European Industry (ACEI), to revive the Lisbon process. The initiative

⁴ "Facing the Challenge: The Lisbon Strategy for Growth and Employment," Report from the High Level Group chaired by Wim Kok, November 2004. Luxembourg: Office for Official Publications of the European Communities; accessed at http://europa.eu.int/comm/lisbon_strategy/index_en.html.

also constituted an effort by industry to help infuse the Lisbon concept with a particular meaning. Concrete goals of the industry federation alliance include a uniform, routinized impact assessment process. Intensifying pressure on the European Commission to embrace impact assessment procedures more sympathetic to the regulatory costs imposed on business, ACEI called specifically for an external impact assessment process independent from the Commission and reporting to the Council and the European Parliament on the grounds that the existing impact assessment process lacked transparency, independence, and quality control.⁵

Reflecting the growing influence of DG Enterprise within the Commission, in its statement of strategic objectives for 2005-2009, the Commission emphasized the critical role of impact assessment as an integral component of its quest for “better regulation” and a reinvigorated Lisbon agenda. The Commission’s strategy document underscores the need to reduce the regulatory burden on business, stating that “Impact assessment, including on competitiveness, before initiatives are launched and throughout the legislative process, must become second nature” (Commission, 2005: 5). Reporting for the UK’s All-party Parliamentary Environmental Group, Wilkinson et al suggest the new approach to impact assessment “has got off to a disappointing start, and there is a danger that it will continue to be dominated by concerns about short-term costs to competitiveness” (Wilkinson et al, 2004: 4). Moreover, while the Commission has responded to pressures from industry with a sustained focus on developing methods for quantifying administrative burdens, the Commission has not granted comparable

⁵ Press Release, “Alliance for a Competitive European Industry Calls on EU Institutions to Prioritise Impact Assessments,” November 29, 2004. See www.euractive.com/en/innovation/new-business-alliance-wants-better-independent-impact-assessments/article-132944?

attention to means of quantifying environmental and health benefits (Wilkinson et al, 2004: 18).

Chemicals Sector Regulation: The Impact of Competition Between EP Committees

The initial battle over the REACH legislation in the Parliament was a struggle for jurisdiction – a struggle resulting from the legislation’s quality as an environmental regulation with potentially significant implementation costs for industry. Accordingly, the draft regulation invoked environmental and competitiveness concerns alike. The EP’s Conference of Presidents (comprised of the President of the EP and the chairs of the political groups) initially assigned REACH to the Environment Committee (ENVI). Asserting that the REACH regulation was about industrial policy rather than environmental policy, the Internal Market Committee (IMCO)⁶ contested exclusive ENVI responsibility for REACH.⁷ In response, the Conference of Presidents invoked enhanced Hughes, taking the unusual step of granting *both* the Internal Market and the Industry, Research, and Energy (ITRE) committees enhanced status. Ultimately, the additional authority extended to these committees ultimately made it necessary for ENVI to hew closer to the industry position in order to obtain a majority in plenary.

⁶ The Internal Market and Consumer Affairs Committee is the newest EP committee, created in 2004. IMCO’s brief is the internal market, competitiveness, and economic protection of consumers (protection of consumer health falling under the remit of ENVI).

⁷ See "The New Chemicals Policy (REACH): an MEP’s views on the upcoming Parliamentary debate," speech of MEP and Industry Committee Rapporteur for REACH Elly Plooij-van Gorsel to the Conference of the Industrial Minerals Association - Europe Conference, May 13, 2004; <http://www.plooij.nl/engels/toespraken/096.htm>.

In the case of REACH, the potential alternative to the Environment Committee position was represented by the Internal Market Committee, though the position of Industry, Research and Energy (ITRE) was closer to IMCO than to ENVI, and ITRE and IMCO tended to work together to advance their positions. IMCO's position overlapped with that of the Council, although IMCO, with a membership broadly representative of the full EP, retained a preference for slightly stronger environmental protection. In order to salvage more rigorous environmental protection without losing its majority in plenary, the ENVI rapporteur, Italian Socialist Guido Sacconi, had to incorporate concerns for industrial competitiveness up to the point at which the Sacconi Report on REACH overlapped with the position of IMCO and just touched on the bargaining range of the Council. This position consists of a tradeoff between acceptance of the IMCO position on chemicals registration and retention of the ENVI position on authorization, a stance required to sustain support for the Sacconi Report *within ENVI*. Reflecting the potential for IMCO to defeat the ENVI position, the compromise on registration supported by IMCO was endorsed in plenary by a vote of 438 to 155, with 41 abstentions, while the authorization package reflecting the ENVI position passed only by a margin of 324 to 263, with 13 abstentions.⁸ The latter result left the EP position on authorization vulnerable to challenge by the Council.

⁸ See Secretariat of the Committee on the Environment, Public Health and Food Safety, European Parliament, "Background Note on the Results of the Vote on the Proposed New Chemicals Legislation (REACH)," Strasbourg, 17 November 2005; and "REACH: MEPs strike a balance between health, the environment and industry," European Parliament news headlines, http://www.europarl.eu.int/news/public/story_page/008-2560-318-11-46-901-20051118STO02559-2005-14-11-2005/default_en.htm; downloaded on February 20, 2006.

The chemicals industry federation (CEFIC) initially aimed its lobbying efforts across institutions as well as EP committees, including ENVI.⁹ However, with IMCO and ITRE granted enhanced status, CEFIC was able to focus its activities on MEPs with whom it already had strong relationships. As a CEFIC official responsible for EU Government Affairs explained, “During the process it became rapidly clear that in terms of getting our political messages across, we had to work more intensively with the Industry and Internal Market Committees, though you have to ensure that you keep all options open to get the winning compromise.”¹⁰

Further diminishing the position of the Environment Committee in the policy-making hierarchy, environmental NGOs, in contrast with chemical industry representatives, found their network links with Environment Committee MEPs substantially neutralized by ENVI's need to compromise with IMCO and ITRE. Environmental interest associations did not possess the resources to build anew relations with members of other committees. Moreover, environmentalists experienced a critical asymmetry: while industry federations CEFIC and UNICE enjoyed access to IMCO and ENVI alike, IMCO members expected environmental interests to present their arguments predominantly through ENVI.¹¹

⁹ This seems to be consistent with the findings of some recent research on lobbying Congressional committees in the U.S. context, which suggests that organized interests concentrate their lobbying resources on efforts to provide allies with information and arguments to fend off hostile amendments rather than attempting to win over opponents and engaging in "counteractive lobbying" simply to refute the arguments of opponents. See, e.g., Hojnekci and Kimball (1998: 785).

¹⁰ E-mail correspondence, January 16, 2006.

¹¹ Interview with EU Policy Officer, EEB, 3 April 2006; interview with Chemicals Campaigner, FOEE, 5 April 2006.

The Environment Committee voted on its own amendments to the Commission proposal, and then did the same for the amendments proposed by all other committees, including IMCO and ITRE. Reflecting the shift in the position of the Environment Committee required to prevent division of the plenary, ENVI incorporated a significant share of IMCO amendments into its report. ITRE proposed 287 amendments in its opinion on the Commission's REACH proposal; ENV incorporated 29 of these into its report. A much larger share of IMCO's amendments -- 89 out of 335 -- were included in the Sacconi Report.¹² Illustrating the difficult compromises forced on ENVI, the Sacconi Report was approved in the Environment Committee only by a margin of 40 to 19, with 2 abstentions. Moreover, IMCO used the enhanced status it garnered from the Hughes procedure to induce ENVI to bring the IMCO/ITRE-favored approach to the registration of chemicals directly to the plenary. This step was the product of a deal between REACH rapporteur Sacconi, ENVI Chairman Florenz, and the Chairs of IMCO and ITRE; the Green Party coordinator in ENVI opposed this solution.¹³ Indicating how the enhanced status of the Internal Market and Industry Committees altered the EP's position on REACH, a CEFIC official concludes that "Undoubtedly, had the ENVI Committee been the only responsible committee, it would have been much more difficult to get industry's positions taken into consideration."¹⁴

¹² Calculated from European Parliament (2005).

¹³ European Report, No. 2995, Oct 8, 2005; <http://web.lexis-nexis.com/universe>.

¹⁴ E-mail correspondence, January 17, 2006.

Nutrition Labeling: The Divided Environment Committee

In 2003, the European Commission proposed a regulation that would restrict the use of health claims on food and drink packaging. In particular, producers of foods having high levels of fat, sugar or salt, would not be allowed to make claims about beneficial health effects. Such “nutrition profiles” became the most contentious part of the proposal. The European Consumers’ Organisation (BEUC) applauded the attempt to reign in the welter of false and misleading health claims, which threatened to encourage bad dietary habits (BEUC, 2003). Meanwhile, representatives of food manufacturers such as the Confederation of Food and Drink Industries of the EU (CIAA) and Britain’s Food and Drink Federation (FDF) criticized the Commission for categorizing foods as “good” or “bad” rather than encouraging a focus on total dietary habits. The CIAA urged that there simply be a requirement of scientific substantiation for all health claims.¹⁵

As in case of REACH, the European Parliament’s Internal Market Committee was granted enhanced status for the nutrition labeling proposal. Two provisions of the Commission proposal were especially contentious. The first (Article 4) required that foods carrying health claims also carry nutrient profiles detailing the content of fats, sugars, and sodium in the product. The second was a ban on implied health claims relating to general well-being or psychological and behavioral benefits (Article 11).

The Environment Committee rapporteur, Adriana Poli Bortone, favored nutrition profiles (although conceding a longer period for their establishment), as well as a procedure for authorizing scientifically-verifiable claims regarding psychological and

¹⁵ See “Euro food and supplement industries balk at revised health claim proposal,” *Nutraceuticals International*, Vol. 8, No. 8 (August 2003); accessed via <http://web.lexis-nexis.com>.

behavioral effects such as reduction in the sense of hunger (acknowledging here the need for a rapid and efficient procedure to ensure legal certainty for producers of food products) (EP, 2005b: 38-39). In contrast, the Internal Market Committee (IMCO) justified its deletion of Article 4 and a series of additional amendments on competitiveness grounds. First, existing legislation on advertising and labeling already addresses the problem of misleading claims (EP, 2005b: 80). In addition, regulating packaging raises broader questions of applicability to advertising, threatening to create legal uncertainty in the food advertising industry; and the cumbersome nature of the proposed procedure for authorizing behavioral claims threatens to create a barrier to innovation by food manufacturers (EP, 2005b: 81).

Industry lobbying focused on the impact of labeling restrictions on innovation and competitiveness. Furthermore, pressure from the Parliament's PPE-DE party group, both through the Internal Market Committee and its members in the Environment Committee, contributed to a divided Environment Committee. This division was reflected in the Environment Committee's April 2005 report to plenary for the first reading of the bill. The report, which dropped Article 4 on the compulsory labeling of nutrient profiles, passed the committee on a 30 to 15 vote. Critics from within the committee attributed the outcome to lobbying by large industrial food companies from Germany and the UK.¹⁶ The weakly-supported ENVI report failed to carry a strong majority in plenary, which

¹⁶ See "MEPs drop compulsory labeling for 'health' food," www.euractiv.com, April 25, 2005.

supported the ENVI position by the narrow margin of 303 votes to 286, with 10 abstentions.¹⁷

REACH: the Competitiveness Frame Triumphs

International environmental initiatives contributed to the impetus for development of a new regulatory regime for chemicals at the European level. Throughout the 1990s, international environmental efforts and publicity surrounding findings of cumulations of hazardous substances in the human body – such as rising levels of toxic fire retardants in breast milk¹⁸ -- drew increasing attention to concerns about organic pollutants and bio-accumulative substances. International activities taking place under the auspices of the UN Environment Program included the International Forum on Chemicals Safety, established in 1994 to improve chemicals risk assessment, and an Intergovernmental Negotiating Committee, which agreed in December 2000 on the Stockholm Convention on Persistent Organic Pollutants (POPs). Indeed, examining transnational efforts to advance regulation of chemicals yields suggestive evidence of the role of epistemic communities in bringing heightened attention to chemicals risk assessment in different settings.¹⁹ By spring 1998, these concerns reached the agenda of Environment Ministers

¹⁷ “Consumer Affairs: Parliament Waters Down Key Nutrition Claims Regulation,” *European Report* No. 2965, May 27, 2005.

¹⁸ The first evidence of the danger of polybrominated diphenyl ethers (PDBEs) was uncovered in a study of levels in breast milk in Sweden from 1972 to 1997 conducted by a research team at Stockholm University. The findings prompted a ban of these substances by a directive of the Council and European Parliament.

¹⁹ The Final Report of the Third (triennial) Session of the IFCS contains priorities for further action that are mirrored in provisions of the initial REACH proposal. These include the principle that “For all chemicals in commerce, appropriate data detailing the

from Austria, Denmark, Finland, the Netherlands and Sweden, who ultimately induced the EU Environment Council to ask the Commission to review existing chemicals sector legislation (Shörling, 2004: 55-6).

The Commission review identified grave shortcomings in the existing regulatory environment -- essentially inadequate requirements for the gathering of safety data and risk assessment, including the complete exclusion from any such assessment for substances marketed prior to September 1981. From 1993 to 2003, only 140 chemicals produced in high volumes were identified for risk assessment (relative to 100,000 pre-1981 and approximately 3,000 post-1981 chemicals on the market); the assessment process was completed for only 4 of these.²⁰ In response to these findings, the Council invited the Commission to develop a new regulatory framework for the sector. The Commission was charged with incorporating several principles into the regulation: (1) adoption of the precautionary principle, requiring that firms provide safety data before gaining authorization to bring chemicals to market in cases where there is evidence or suspicion of a danger to health and environment; (2) a single system for the review of all chemical substances (both "existing" and new); (3) a shift in the burden of proof for demonstrating safety from public authorities to industry; and (4) incentives for technical innovation (including that created by ending the regulatory exclusion for existing substances) (RAPID IP/03/1477, 29/10/03; Shörling, 2004: 59 and 62).

inherent hazards of those chemicals should be made available to the public.” See Intergovernmental Forum on Chemical Safety, Forum III Final Report, Annex 6, p. 3 (<http://www.who.int/ifcs/documents/index.htm>).

²⁰ See "Chemicals: Commission presents proposal to modernise EU legislation," RAPID press release IP/03/1477, October 29, 2003. Accessed via RAPID web site, <http://www.europa.eu.int/rapid>.

The Commission began drafting the proposed regulation in 1999 and 2000. The regulatory framework evolved, from the European Commission's February 2001 White Paper, to the responses of the Environment Council and of the European Parliament later in 2001, the Commission's official proposal in 2003, the EP's first reading position on the proposed regulation in November 2005, and the common position reached by the Competitiveness Council in December 2005. Environmental NGOs that had elevated awareness of the need for stricter chemicals regulation among environment ministers called for a regime that would fully identify risks, provide the public with information about the hazards of chemicals in the environment and in the products they consume, and establish a process for completely phasing out the production of harmful chemicals by a fixed date.

Although environmental NGOs advocating rigorous regulation of the chemicals sector had won institutional allies in the European Commission's Environment DG and the EP's Environment Committee, opponents of REACH outflanked environmentalists in the framing of the issue. Environmental interest associations made the case that benefits to human health and the environment substantially exceeded the costs to industry of implementing REACH. There were two weaknesses in the environmentalists' argument. First, there was widespread disagreement about the cost-benefit analysis. Health benefits are inherently difficult to quantify; estimates of the implementation costs to industry varied widely. In their insistence on numerous impact assessments,²¹ industry associations simply needed to create uncertainty about implementation costs, rendering

²¹ In October 2004, the Dutch presidency of the Council held a workshop to consider the 36 REACH impact studies that had been completed at that point. See "EU Officials Seek to Make Sense of 36 REACH Reports," November 3, 2004, at <http://www.euractiv.com/Article?tcmuri=tcm:29-131725-16&type=News>.

credible the claim that REACH would threaten the competitiveness of Europe's chemicals industry. Second, producers were highly successful in appropriating the language of the Lisbon process to make the impact on competitiveness the defining issue for decisions about REACH. Even policy makers sympathetic to the claims of environmentalists had to acknowledge concerns about competitiveness and seek to reduce the costs of REACH to industry, especially small and medium enterprises that claimed to be seriously threatened by the expense of implementing the registration and testing provisions of REACH.

Nutrition Labeling and the Competitiveness Frame

In the case of nutrition labeling, competitiveness discourse is highly evident in the language used by opponents of the proposed regulation in the EP's first reading debate. The PPE-DE party group, especially its German delegation, led the effort to frame the nutrition labeling regulation as an instance of excessive regulation, an infringement on consumer choice, and a threat to the competitiveness of the European food industry. German PPE-DE MEP Angelika Niebler, draftsman of the opinion of the Industry, Research and Energy Committee (which called for deletion of both articles 4 and 11), suggested that the Commission's proposal represented a case of overregulation in which "Everything is banned unless it is allowed." Niebler invoked Lisbon as a basis for opposition to the regulation: "How this proposal for a regulation is supposed to be compatible with the Lisbon strategy, heaven knows."²² Similarly, Renate Sommer (spokesperson for PPE-DE) warned that the nutrition labeling regulation would undermine innovation in food manufacturing, destroy jobs, and hurt small and medium

²² The quotations in this paragraph are taken from the European Parliament website, Debates, Wednesday 25 May 2005; <http://www.europarl.europa.eu/omk/sipade3?>

enterprises. MEP Horst Schnellhardt charged that the regulation infringed on market principles, “degrading citizens to sheep-like consumers and introducing a great deal of bureaucracy.” MEP Avril Doyle invoked the promise that Commission President Barroso would “Lisbon-proof” all Commission proposals, and called upon the Environment Commissioner to “bring this particular piece of legislation to his attention and immediately ‘Lisbon-proof’ it.”

Conclusion

The Council of EU Health Ministers restored Article 4 to the nutrition labeling regulation in their common position of June 2005. Ultimately, it was the Council rather than the European Parliament that advanced the interests of diffuse health interests through EU regulation.

Intensified competition between committees in the European Parliament reflects the deeper infusion of broader European political debates into the EP. In particular, industry concerns about the impact of regulation on competitiveness have become firmly embedded not only in the EPP-DE party group, but also in the Internal Market and Industry, Research and Energy Committees. Whereas the EP long operated within the framework of a cooperative game to advance the collective interests of the institution (including deeper European integration and institutional aggrandizement), legislative politics in the EP increasingly conform to a competitive logic in which parties and committees compete to harness the institution’s influence to advance their policy visions. Indeed, as Charlotte Burns has argued, such competition between committees “may . . .

be indicative of a normalization of the EP's internal organization as the parliament evolves into a mature legislature" (Burns, 2006: 245).

Such an evolution has critical implications. The rising power of the European Parliament in the post-Maastricht era, and especially since Amsterdam, encouraged the mobilization of diffuse interests that could find in the EP both a point of access and institutional advocacy for their environmental and health concerns. Two things facilitated this dynamic: (1) the deference accorded the Environment Committee on highly salient environmental issues, because of the Committee's embeddedness in a network with environmental interest associations that provided reliable information concerning threats to the environment and human health; and (2) the coincidence of the European Parliament's advocacy of diffuse interests with the institutional objectives of the EP as a whole.

With the ascent to dominance and institutional embedding of the competitiveness frame, this dynamic has changed. Deference to the Environment Committee within the EP, while still operative in instances of "purely" environmental issues, has been eroded significantly by closer attention to competitiveness implications of environmental regulations. Collective advancement of the institutional interests of the EP has been transcended by party-based and committee-based promotion of contending perspectives on Europe's economic model. Accordingly, incentives to mobilize at European level for interests organized to reduce the regulatory burden on industry have increased dramatically. Whereas environmentalists could once claim privileged access to the Environment Committee as a potent point of access within the EP and sometimes gain the Parliament as an institutional advocate, access is now less privileged and institutional

advocacy more highly contested. Increasingly, the plight of diffuse interests in the EU may be a case of opportunity lost.

SOURCES

BEUC (The European Consumers' Organisation). (2003). "BEUC Position Paper: Comments on the proposal for a Regulation of the European Parliament and the Council on nutrition and health claims – COM (2003) 424(01).

Burns, Charlotte. (2006) "Co-decision and Inter-Committee conflict in the European Parliament Post-Amsterdam," *Government and Opposition* 41, No. 2: 230-248.

Cichowski, Rachel A. (1998). "Integrating the environment: the European Court and the construction of supranational policy," *Journal of European Public Policy* 5, No. 3 (September): 387-405.

Collins, Ken, Charlotte Burns, and Alex Warleigh, "Policy Entrepreneurs: The Role of European Parliament Committees in the Making of EU Policy," *Statute Law Review* 19, No. 1 (1998): 1-11.

Commission of the European Communities. (2001) "White Paper: Strategy for a future Chemicals Policy," COM(2001) 88 final, Brussels, 27.2.2001.

Commission of the European Communities. (2003) "Proposal for a Regulation of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency and amending Directive 1999/45/EC and Regulation (EC) on Persistent Organic Pollutants," COM(2003) 644 final, 29 October 2003.

Corbett, Richard, Francis Jacobs, and Michael Shackleton, *The European Parliament*, fifth ed. (London: John Harper Publishing, 2003).

Costain, Anne N. "The Struggle for a National Women's Lobby: Organizing a Diffuse Interest," *The Western Political Quarterly*, Vol. 33, No. 4 (Dec. 1980): 476-91.

European Parliament. (2001). "Report on the Commission White Paper on Strategy for a Future Chemicals Policy," Committee on the Environment, Public Health and Consumer Policy. 1999-2004 Session document, FINAL A5-0356/2001, 17 October 2001.

European Parliament (2004a). "Activity Report of the Committee on the Environment, Public Health and Consumer Policy," 1999-2004 Parliament. DT\537810EN.doc.

European Parliament. (2005a). " Report on the proposal for a regulation of the European

Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency and amending Directive 1999/45/EC and Regulation (EC) No .../... on Persistent Organic Pollutants. 2004-2009 session document FINAL A6-0315/2005, 24 October 2005. Guido Sacconi, Rapporteur.

European Parliament. (2005b). " Report on the proposal for a regulation of the European Parliament and of the Council on nutrition and health claims made on foods (COM(2003 0424 – C5-0329/2003 – 2003/0165(COD)). Commission on the Environment, Public Health and Food Safety, Adriana Poli Bortone, Rapporteur. Final A6-0128/2005.

Fairbrass, Jenny and Andrew Jordan (2001). "Protecting Biodiversity in the European Union: national barriers and European opportunities?" *Journal of European Public Policy* 8, No. 4 (August 2001): 499-518.

Friends of the Earth Europe. (2001). "European Commission's White Paper: 'Strategy for a future Chemicals Policy' COM (2001) 88 Final, Response from Friends of the Earth Europe," May 2001.

Hall, Peter A. (1986) *Governing the Economy: The Politics of State Intervention in Britain and France* (New York: Oxford University Press).

Hall, Peter A. (1993) "Policy Paradigms, Social Learning, and the State," *Comparative Politics* 25, no. 3 (April): 275-96.

Kohler-Koch, Beate, and Christine Quittkat, "Intermediation of Interests in the European Union," *Arbeitspapiere, Mannheimer Zentrum für Europäische Sozialforschung*, No. 9, 1999.

Lenschow, Andrea, "Environmental Policy: Contending Dynamics of Policy Change," in Helen Wallace, William Wallace, and Mark A. Pollack, *Policy-Making in the European Union*, fifth ed. (Oxford: Oxford University Press, 2005), pp. 305-327.

Pollack, Mark A. "Representing diffuse interests in EC policy-making," *Journal of European Public Policy* 4, No. 4 (Dec 1997): 572-90.

Van der Heijden, Hein-Anton (2006). "Globalization, Environmental Movements, and International Political Opportunity Structures," *Organization & Environment*, Vol. 19, No. 1 (March): 28-45.

Wilkinson, David, Claire Monkhouse & David Baldock (2004). "The Future of EU environment policy: challenges & opportunities," A special report for the All-party Parliamentary Environment Group, British Parliament.

