

PREFERENCE ATTAINMENT IN MAKING OF CHEMICAL POLICIES IN EUROPE



Case study - Classification Labeling and Packaging of Chemicals

An insight into preferences attained by different actors in making of CLP in the European Union

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ABSTRACT

This thesis is a case study on regulation 1272/2008/EG, commonly known as CLP, which stands for classification (Classification), labeling (Labeling) and packing (Packaging) of chemical substances and mixtures. The primary goal is to investigate how much of each participatory actor group's preference was taken along in making of the CLP policy. The actor groups studied were grouped into three classes' viz., supranational actors, the member states and the interest groups.

The preference of each of the actor group is measured with the help of "Preference Attainment Method", based on measuring the distance between the negotiated outcome and the actor's original position. Data required for measuring preferences were taken from internet consultation used by the Commission for seeking feedback on the draft CLP legislation.

The outcome of the analysis using preference attainment was reviewed through the lenses of Intergovernmentalism, Supranationalism and interest group theories, in order to answer the central question of this research. Using a Congruence Analysis approach, congruencies between predictions driven from theories and empirical observations within the case were made.

Analysis using Preference Attainment Method showed that the compromise achieved in CLP was a balanced one where voices from all actor groups were heard and worked on to get a "workable" outcome. However none of the three theories used in Congruence Analysis individually could provide a complete understanding of the preferences attained by the actors in CLP. The outcome reinforced the concept of "Multilevel Governance" in which various supranational and subnational actors work together towards a mutually acceptable position.

CHAPTER 1

GENERAL INTRODUCTION

1.1 Introduction

EU policy making around chemicals have shifted from managing their risks to environment and human, animal or plant health using the traditional preventive approach towards more precautionary approach (Eckley & Selin, 2004). This is evident from recent EU policies such as REACH and CLP. REACH which stands for Registration, Evaluation, Authorization and Restriction of Chemicals - regulation **1907/2006/EG** introduces a system for the registration, assessment and authorization of chemical substances manufactured or imported into the EU above certain volumes, with the aim of safeguarding the public health and the environment and securing the competitive position of the European Union. CLP- or EU-GHS regulation **1272/2008/EG** concerns the classification (Classification), labeling (Labeling) and packing (Packaging) of chemical substances and mixtures. The regulation is based on the worldwide harmonized system of the United Nations (UN-GHS). The regulation concerns measures to communicate the dangers posed by chemical substances and mixtures, to the people who handle those chemicals (called users). CLP applies to all substances irrespective of the annual volumes. Both REACH and CLP regulations specify hazard communication rules but they are different: labeling rules are set out in CLP whereas the Safety Data Sheet (SDS) rules containing physical/chemical properties, toxicity profiles are set out in REACH; for all chemicals within EU, a CLP compliant label must always be used together with SDS. The classification of a substance is one mandatory part of REACH registration dossier whereas the classification criteria are set out in CLP.

Persson asserts that an “ open “ policy-making process and involving interest groups in such a policy-making is significant in preserving the democratic legitimacy of the EU policy-making. In order to achieve this, the European Commission has introduced a strategy on improved consultation methods with the interested parties on EU policy making. With regard to the implementation of REACH, the most discussed issues in the history of EU chemical policy, all the participatory mechanisms in the European communities were put into critical test as they participated in the consultation process on shaping REACH policy. Upon analysis, Persson observed that participation among the national and transnational actors were not equal during REACH policy, which led him to conclude that although open consultation brings in broad participation in shaping EU policies, it does not bring equal participation among all the EU actors, a concern for proper functioning of democratic governance (Persson, 2005). This unequal participation from different stakeholder groups in the open consultation process in EU policy-making leaves a doubt as to how far EU governance is democratic governance. Another important criterion for democratic legitimacy is the involvement of interest groups in the

policy-making reflecting the civil society close to the citizens. But studies on interest groups as formulated by Kohler Koch assert that business interest groups are represented in Brussels better than labor and consumer interest groups (Kohler Koch, 1997). However, it is a guiding principle of the Commission to give all the interested parties a “chance” to participate in the consultation process and these participatory mechanisms contribute up to an incremental democratization of policy-making in EU, since these consultations only supplement the procedures and decisions of the EU legislative bodies like the Parliament and the Council. Therefore, for raising the democratic standards in EU policy-making, it is not only open consultation which is important, but also to ensure that the different actors have equal opportunities to participate in the consultation process (Persson, 2005). It is by analyzing these consultation processes, that we can observe the particular preferences of all the participatory actors involved in the policy-making and through an empirical analysis of the outcomes in the policy-making, it is possible to observe which actors had been able to influence the policy-making the most or to put this differently, which actor’s preference reflects the most in the outcome of the policy in EU. When applied to the specific case of CLP formation in EU, it can be observed from studying the consultation documents, who were the actors involved in the consultation process in EU during CLP formation and what were their preferences and through empirical analysis based on the data collected. Additionally, it can be determined as to which actor’s preferences reflected the most in the outcome of the CLP formation in EU.

There exist numerous articles where scholars have mentioned about the difficulty in measuring influence particularly relating to the influence of interest group as political actors. Studying the preferences of political actors in a policy area and to understand which actor has been the most dominant in that policy making, would entail measuring influence of all the participating actors separately. Various scholars have stated about different methods for measuring influence. Andreas Dur has researched on three principle methods of measuring influence, more precisely, interest group influence. They are-process tracing, attributed influence and preference attainment method (Dur, 2008:45).

For the purpose of this thesis, the third method of measuring influence-“Preference Attainment Method” will be used. This method requires assessing the actor’s degree of preference in a policy and a study of the policy outcome could be analyzed to assess to what degree the actor’s preference has been influential in the policy-making stage. A comparison of the policy outcomes are made here to the ideal points of the participatory actors. The core idea of this approach is that, the distance between the policy outcome and the ideal point of the actor would reflect the influence of this actor in the policy making. Scholars like Schneider, Baltz and Mahoney have mostly used this method for measuring interest group influence in policy making. But there seems to be a dearth of literature on the influence of other political actors like the EU Council representing EU member states, the EU Commission and the European Parliament using preference attainment method, particularly, in the regulation and

implementation of chemical policies in EU. Therefore, this motivates me to study the preferences /influence of these political actors together with interest groups and measure their influence in the policy outcomes using preference attainment method. The policy which would be chosen for the purpose of this thesis would be a chemical policy known as CLP (Classification, Labeling and Packaging of Substances and Mixtures) which came into force in the EU from January 2009.

More detailed information on the preference attainment method is provided in Chapter 5 of this thesis on Research design/methods.

1.2 Motivation of the thesis (Theoretical and societal relevance)

In the EU multilevel governance based on networks, policies formulated in various areas reflect stakeholder participation, their individual or collective preferences and influences. The outcomes of such policies tell us who has been the most influential in the entire policy-making process. This is in general applicable to all policies in the EU including the chemical field in the EU. This was also seen during the recent implementation of REACH. No other chemical policy in the EU has been so much of a debatable issue as was the case with REACH. As a background reflection based on the study of REACH, my literature survey showed that there is a lack of similar literature on the study of stakeholder participation in other chemical policies such as CLP. This motivates me to research in the case of CLP to see who were the actors involved during the implementation of CLP and what their preferences were and consequently whose preference has been the most dominant reflecting in the outcomes.

Theoretical relevance

This thesis is an attempt to measure influences of actors involved in making policies in Europe using the method of preference attainment. In literature, measuring preferences has been deemed as “challenging” and consequently the amount of literary works on this subject is limited (Dur, , 2008). In addition, the case selected for this study (CLP policy making) is relatively new and consequently has not been extensively explored by political scientists. It will be interesting to see whether the complementary theory approach in Congruence Analysis can be used to provide a better understanding of the actor preferences in policy making, particularly relevant for the chemical sector in the EU. It will be also interesting to see how Preference Attainment Method can be applied to this specific case.

Social relevance

The top four chemical producing countries in Europe are Germany, France, Italy and the Netherlands (CEFIC Facts and Figures). About 4.7 million people in the EU are employed in the chemical sector

which contributes to about 13.5 % of total manufacturing employment. Policies related to chemicals in the EU might have a positive/negative impact on this population. This research may provide awareness on preferences attained by different actor groups in the making of policies in the EU. As EU policy-making entails democratic legitimacy, the research on preferences attained and explanation on the basis of conventional theories like Intergovernmentalism and Supranationalism can help general people to understand as to how much democratic a policy outcome in reality is.

1.3 Aim of the thesis and formulation of research question

This thesis will investigate the various political actors that participated in the consultation process during the implementation of CLP which is an adaptation of the GHS framework imposed by the UN. Research will be formulated on their different motivations and preferences which the actors tried to put forward in the consultation documents. This includes studying the responses of the open consultation methods used by the EC and linking them to the outcome of the CLP. The theories of Intergovernmentalism and Supranationalism will be tested to check their applicability in the case of CLP. The research will concentrate on three groups of actors:

- ❖ Supranational actors (Commission and the European Parliament)
- ❖ The Member states/Council of Ministers
- ❖ Interest Groups

The primary goal is to investigate which actor has been the most influential in the formation of CLP or in other words, which actor's preference reflected the most in the outcomes of the CLP policy formation. The preferences of each of the actor will be measured with the help of “ Preference Attainment Method “ and the data collected from the consultation documents will be used to empirically analyze the preferences of these actors as reflecting in the policy outcome. Based on my research goal, the central research question is:

“Does the theory of Intergovernmentalism, Supranationalism or lobbying of interest groups provide a better explanation for understanding the outcome of CLP legislation?”

1.4 Structure of the thesis

Following an introduction to this thesis briefly talking about the aim of this thesis and the motivation in carrying out this thesis as mentioned above, the research question is introduced (Chapter 1). Chapter 2 will provide an overview of the literature survey undertaken to formulate this research. A short description of the EU decision making process will be stated first with particular highlight on the “co-decision procedure “in Chapter 3. Chapter 4 will investigate the making of public policies in the EU with two parts, the first part dealing with theoretical framework covering both the theories of

Intergovernmentalism and Supranationalism. The predictions stemming out from each of the theories will be identified in this chapter. The second part of the chapter will investigate on interest-group influence as the third actor influencing policy-making in the EU. Chapter 5 will be mostly dealt with research design to be used for this thesis work and the methodology followed. Chapter 6 will introduce the policy of CLP with detailed insight of what the policy is all about. The following chapter 7 will envisage into analyzing the stakeholder participation in the CLP formation. This will be done by studying the consultation documents of the actors and empirically testing the predictions measuring their influence in the policy making based on the outcomes. The final chapters 8 & 9 will provide the analytical discussions and conclusions providing necessary recommendations for future scope of research.

CHAPTER 2

LITERATURE SURVEY

2.1 Goal of the literature survey

The goal of this chapter is to review existing literature on roles played by different EU actors in EU policy making in general and specific policies in the chemical/environmental sector. Particularly relevant for this thesis is to explore what theories and methods are used by political scientists to study preferences of the political actors, and how they are linked to the outcome. The three actors in focus are the Commission/European Parliament, the member states and interest groups.

2.2 Literature review on the role of EU actors in policy-making

There is an abundance of literature analyzing the EU supranational actors as well as the member states playing significant roles in major policy making in EU. Pollack has studied the roles played by the EU actors and their preferences in policy-making using the “principle-agent” theory where he considered the member states as the principle and the supranational actors as agents (Pollack, 1997:2). He focused on the Commission’s role in the institutional relationship between the Commission and the member states (Pollack, 1997). Pollack mentioned in this article that in the principle-agent analysis, research on the preferences of the supranational organizations and the member-state preferences can be carried out using “process-tracing” method which would reveal the “ path-dependent “ effects of decisions made earlier (Pollack, 1997:10). Pollack’s conclusion was that the Commission has independent preferences and is a “competence-maximizer” as reflected in the areas surveyed by him in structural policy and competition policy. According to his survey, the Commission’s influence and preferences reflect a lot on community policies where the Commission has stressed for “more Europe”. But in trade policy, the Commission was not a chief negotiator as it had to face strong member-state preferences (Pollack, 1997:52-53). Pollack further observed with the help of principle-agent theory that in the case of budgetary policies, the member states who act as principles, delegate specific powers to the supranational actors like the Commission and the Parliament but they also design control mechanisms to avoid policy diversion by the supranational actors. Budgetary policies reflect more intergovernmental elements (member-state negotiations) with supranational actors having limited powers although the Parliament had a stronger position as was the case with the Budgetary system adopted in the 1980’s (Pollack, 2008:1-15).

When it comes to policies regarding food safety, pharmaceuticals and chemicals, literature review shows that interest-groups play a dominant role. Articles by Pesendorfer and Persson are also consulted to get helpful insights on actor analysis in EU policy-making. Pesendorfer has remarked that the EU has a polycentric and multilevel system of governance based on broadening of

participation in the decision-making process and in the chemical policy area, the policy specialists are the main actors. The “industry” especially the chemical industry has a dominant position in the chemical policy formulation in the EU. According to Pesendorfer, these chemical industries are business interest groups who have a privileged position in the policy formulation process due to the structural power which they possess in influencing the decision-makers. The governmental actors are dependant on them for expert knowledge for effective policy-making and effective resource mobilisation capacity. (Pesendorfer, 2006:101). The two most important business interest groups representing industries dominant in the making of chemical policies are CEFIC (European Chemical Industry Council) and FECC (European Association of Chemical Distributors). The MEP’s and the EU member states with large chemical sectors also play vital roles in chemical policy-making in the EU specially countries like France, the U.K, Germany, Italy and Ireland. Intergovernmental negotiations form a significant part of the consultation process where the national governments considered to be more competent authorities than the Parliaments or political parties, are largely dependant on the industry (Pesendorfer, 2006:102). Pesendorfer particularly mentioned about Sweden as an EU member-state as bringing the major impetus for new ambitious chemical policies in EU supported by Austria, Denmark, the Netherlands and Finland. With regard to the REACH policy-making, Pesendorfer analysed actor participation at the member state level as well as among the business interest groups and environmentalists as each tried to put forward their preferences and tried to show how a degree of consensus is required for any major policy change and that each of the participating actor’s opinion in the consultation process is important which the Commission cannot ignore. Pesendorfer, however does not make a conclusion by saying which actor has been the most influential in the REACH implementation (Pesendorfer, 2006:104).

2.3 Arguments for formulation of the Research

My primary research goal in this thesis would be to look into the particular preferences of the stakeholders by looking into the consultation documents available in the official website of CLP and make an empirical analysis of their preferences reflecting in the policy outcome and find out which actor has been the most dominant during the CLP formation (European Commission, 2012).

The theoretical basis for this research is based on two most important theories of European intergration being -Intergovernmentalism and Supranationalism (Hix & Hoyland, 2011). Member states preferences would be studied in the CLP formation using Intergovernmentalism and the preferences of the supranational actors would be studied using the theory of Supranationalism. Interest-group influence will also be studied here as the third important actor in influencing the CLP formation. Again with regard to what Richardson has remarked, that EU policy-making is now based on open methods of consultation taking into consideration the opinions of all the actors, interest groups are important actors as lobbyists influencing the policy-making process. Therefore, this study

would be a combined research of the EU supranational actors, member-states and interest-group participation in CLP formation, a relatively unexplored area of EU research in GHS/CLP as literature survey revealed.

Lewis and Richardson comment that EU policy-making should reflect democratic legitimacy and transparency. Survey on the actor preferences and the CLP policy outcome analysis might also bring into the limelight who won or who lost in the outcome or all the actor preferences are equally reflecting in the outcome (Lewis, 2000; Richardson, 2006).

2.4 Conclusions based on literature survey

Based on these literature surveys, it is clear that not much work has been done in linking preferences to outcomes for chemical policy in the EU, particularly in the CLP regulation. This study aims to fill this gap by doing an actor-preference analysis for CLP. Further details on data collection and research designs and methods are described in chapter 5.

CHAPTER 3

DECISION MAKING IN THE EU

This chapter aims at describing the decision making procedures in EU. EU law is based on primary and secondary legislation. The primary legislation is the treaties which provide the ground rules for all actions taken in EU politics. Secondary legislation comprise of directives, regulations and decisions which are set out in the EU treaties. The standard decision making procedure in EU is the “ordinary legislative procedure” formerly known as “co-decision” procedure. This means that the European Parliament which is directly elected shares with the European Council (member state governments), the power to approve EU legislation which is drafted and implemented by the EU Commission (European Union, 2012).

3.1 Background on EU Decision-making

Multitude of studies has been carried out on EU decision making mostly concentrating on legislative decision-making. Hosli and Thomson have based their study on EU decision making on the context of the relative balance of power among the three main EU actors- the Commission, the EP (European Parliament) and the Council of Ministers. They argue that by understanding this balance of power among the three actors, it is possible to understand which actor is the most influential in the decision-making process since the power of a particular actor or institution influences the content of legislation in all policy areas in the EU (Thomson & Hosli, 2006:392). Each of the three actors has a separate function in the legislative decision-making process. The Commission possesses the power to initiate legislative proposals and it also possesses the potentials to influence the content of legislation. The Commission initiates the proposal on the basis of the treaty article. The legislative authority in EU lies in the Council and the Parliament. They have the power to amend the Commission’s proposals. Several scholars like Hosli consider the Council, representing the member states to be the most important political actor in EU. However, in contrast to Hosli, Garrett and Tsebelis highlight the importance of the Commission possessing agenda setting power (Garrett & Tsebelis, 1996:279).

However, the right to initiate proposals does not necessarily mean that the Commission possesses effective control on the policy-making process. Since the 1957 Treaty of Rome that established the European Economic Community, the Commission was bound to initiate proposals as requested by the Council and with the Treaty of the European Union this power was extended to the Parliament. Therefore, although the Commission was the sole institution to formally initiate a proposal, this proposal could only become a law with a unanimous support of the Council. Thus between 1966 and

1986 the Council of Ministers played the most dominant role in decision making in the EU under the legacy of the Luxembourg negotiations. Hence, as an outcome of intergovernmental bargaining under the Luxembourg compromise was a policy that reflected preference of the member government with the least integrationist intention while the other actors like the Commission, the Parliament and the other Council members preferred to increase integration.

The preference of the Commission usually reflects strong pro-integration and that of the Parliament are similar to the Commission although the instrument of citizen control is present to deviate from original preference. Under the final legacy of the Luxembourg compromise, the “assent procedure” covers various areas under which the Council votes on the Commission’s proposal on the basis of unanimity subject to the agreement of a majority in the Parliament. Therefore an important addition in the final legacy of the Luxembourg compromise of 1966 was the introduction of Parliamentary veto on Council decisions. Garrett and Tsebelis therefore assert that decision making procedures in the EU can be better conceived in terms of the Luxembourg compromise phase in cases where the Council voting is based on unanimity and the roles played by other EU institutions could be ignored. In other areas of EU jurisdiction, the rule of qualified majority voting prevails in the Council since the ratification of the SEA (Single European Act, 1986).

As we go back to the initial discussion that by analyzing the balance of power among the three institutions it is possible to understand which institution is the most influential, we focus on the legislative procedures in decision making in the rest of the chapter.

The legislative procedures related to specific proposals describe the formal interaction rules between the Commission, the Parliament and the Council (Thomson & Hosli, 2006:392). Today, the most popularly used legislative procedures in EU are the “consultation” and “co-decision” procedures. According to Arndt Wonka and Andreas Warntjen (Wonka & Warntjen, 2004), consultation procedure consists of the following steps:

1. The Commission submits a proposal
2. The European Parliament issues an opinion by a simple majority but its opinion is non-binding
3. The European Council decides, either by unanimity or qualified majority depending on the policy domain

The co-decision procedure is now known as the “Ordinary legislative procedure” under article 294 of the Lisbon Treaty of 2007 (European Commission, 2012). The ordinary legislative procedure is based on the principle of parity and it states that neither of the EU institutions (the Commission, the Parliament and the Council) may adopt any legislation without the approval of the other (European Commission, 2012)

In addition to these two procedures, there is also the co-operation procedure used in certain policy areas, most importantly used in the “internal market” issues until the Maastricht treaty in 1992 (Garrett & Tsebelis, 1996:284).

3.2 Consultation Procedure

This is the oldest decision making procedure in the EU elaborated in the Treaty of Rome in 1957 but its implementation was blocked by the Luxembourg negotiation. The consultation procedure is widely used today in different policy areas like competition policy, free movement of capitals, industry subsidies, chemical policy and various others (Garrett & Tsebelis, 1996:283). Under the consultation procedure, the Commission makes a proposal and the Council takes decision on the proposal, while the European Parliament has an advisory function (Thomson & Hosli, 2006:392).

One major difference between the consultation procedure and the assent procedure from the Luxembourg compromise is that under the consultation procedure, a Commission proposal becomes a law if it is accepted by the Council on the basis of qualified majority voting.

Consultation is one of the EU legislative procedures defined in Article 289 of the Treaty on the Functioning of European Union (TFEU) which state that the Parliament is consulted for opinion on a particular proposal by the Commission before the proposal is adopted by the Council (European Parliament, 2012). The proposal can be approved or rejected by the Parliament or it can propose amendments to the proposal. The Council is legally not bound to take into account the opinion of the Parliament but it must not take decisions without having the Parliament’s views. Although the Parliament had only an advisory role in the consultation stages of legislation during the 1957 Treaty of Rome, later on with the (SEA) Single European Act of 1986, the Maastricht Treaty, the Amsterdam Treaty, Nice and Lisbon treaties extended the Parliament’s powers according to which, the Parliament now possess co-legislative powers on equal ground with the Council on numerous policy areas like consumer protection policy, economic governance, energy, transport and environmental policy. Consultation was introduced as a special legislative procedure in some policy areas like chemical policy as was the case during the implementation of REACH chemical policy in EU (European Parliament, 2012).

3.3 Co-operation Procedure

The Single European Act of 1986 introduced the co-operation legislative procedure. This procedure is used in the policy areas like social policy, environmental policy and in the fields of research and developments. Under this procedure, the power of the Parliament is significantly increased having “conditional agenda setting power” and can make amendments to the Commission’s proposals. The proposal goes to the Council if the Commission accepts the Parliamentary amendments which the Council cannot modify. The Parliament can also reject the proposal by a qualified majority vote in the

Council during the first reading of the bill. This rejection can be overruled only by a unanimous vote in the Council. If the Parliament's preferences match with the Commission, the policy outcomes under this procedure would be similar to the outcome under the consultation procedure.

3.4 Ordinary legislative procedure (Ex Co-decision Procedure)

The Co-decision procedure was added in the Maastricht treaty of the European Union in 1992 and it gained more prominence by the Amsterdam treaty of 1999. This procedure is now known as the ordinary legislative procedure. With the Lisbon treaty of 2009, this procedure has become the main decision making procedure in the EU. With the increasing use of this procedure, the influence of the MEP's has also increased. The EP and the Council now has an equal weight and power on the final outcome of legislation.

This procedure gives equal power to the European Parliament and the European Council on a number of policy areas. Majority of EU laws are now jointly adopted by the Parliament and the Council. This procedure replaced the cooperation procedure for issues related to the internal market.

The Co-decision procedure as laid down in Article 251 TEC entails three readings (Hix & Hoyland, 2011)

1. The Commission submits a proposal, the Parliament issues an opinion (possibly making amendments) by a simple majority and the Council may adopt the act (including amendments by the Parliament). Otherwise it adopts a Common Position (CP) by a double majority or unanimity.
2. If the Council accepts all proposed amendments from the European Parliament, the proposal becomes law. If the council has a different opinion on the CP the bill goes for second reading and the procedure continues: the Parliament sends its amendments to the Commission and the Council. The Council may adopt the amended act after the Commission has given its opinion.
3. If the Council and the Parliament do not agree, a conciliation committee is convened. If there is no agreement at this stage the legislation fails. If the conciliation committee reaches a Joint Text (JT) that is approved by both Council and Parliament, the JT is adopted.

CLP legislation was formulated by the Ordinary Legislative Procedure. This procedure is not discussed in details in this chapter since this discussion is beyond the scope of this thesis.

CHAPTER 4

MAKING OF PUBLIC POLICIES IN THE EU: THEORETICAL FRAMEWORK

4.1 Introduction

The aim of this chapter is to provide a theoretical basis for explaining the preferences of the EU actors/stakeholders who participate in the consultation process during EU policy-making. These stakeholders' are- a) EU member states b) Supranational actors like the Commission and the European Parliament and c) Interest groups. The theory of Intergovernmentalism and the theory of Supranationalism will be used to analyze member state preferences and supranational actor preferences respectively. The "influence" of interest groups as the third group of actors will also be discussed in this chapter.

4.2 Intergovernmentalism

Hix and Hoyland propose two theoretical frameworks in understanding EU politics. The first is Intergovernmentalism and secondly, Supranational politics (Hix & Hoyland, 2011). According to the theory of Intergovernmentalism, EU politics is principally dominated by the member-state governments where governments of the bigger member states like Germany, France and Great Britain are more prominent. The governments have clear preferences on what they want to achieve in various policy areas at the EU level, and in doing so, their preferences may vary across policy areas or over time. A particular member state can favor a more harmonized EU policy in one area of policy at a period of time as well as be opposed to a more EU harmonized policy in a different area in the same time or perhaps in the same area but at a different time. These governments also possess resources as well as substantial information regarding the position of the other political actors while putting forward their preferences, while they are also aware of the outcomes of a particular decision at the EU level. To further the collective interests of the governments, the member states delegate power to the EU institutions which make the EU institutions "agents" of the EU governments in effect, instead of powerful independent political actors in the policy making process. But since power balances between the EU member states are not equal, this creates a bargaining culture at the EU level when a losing member state on a particular policy decision demands either compensation through some other policy like the EU budget or does not agree to the decision at all (Hix & Hoyland, 2011).

Richardson surveyed actors in EU governance as stakeholders and asserted that intergovernmental way of functioning is important in the EU given the multiplicity of policy processes going on in the EU which is quite complex. The national governments try to put forward the national interests of their

states or their own political interests and the institutional presence of these governments are established through the Council of Ministers (Richardson, 2001:22).

Intergovernmentalist approaches to EU integration focused on the bargaining among national governments over the outcome from the treaty negotiations. The treaties demarcate the national government preferences and their ability to promote those preferences during interstate bargaining (Garrett & Tsebelis, 1996:269). In this sense, Intergovernmentalism viewed Neo-functionalism from a critical perspective in the 1960s claiming that European integration was possible only if it was in the strong interests of the national governments. Integration was not possible if the strong member countries were against it (Verdun, 2002:11).

However in the following years after the 1960's, the concept of Intergovernmentalism as a part of the Integration theory faded away until 1991 when Moravcsik re-introduced the concept bringing the role of the state and national interests of the national governments into the limelight. This marked the rise of Moravcsik's " Liberal Intergovernmentalism" (Pollack, 2001:225) . According to Pollack, Liberal Intergovernmentalism is a " *two-step sequential model of preference formation*" (which Moravcsik drew from Liberal theories in IR and International Political Economy) and "*international bargaining*" (taken from bargaining theory and Putnam's two level game analysis). During the first stage, the national chiefs of governments (COGs) put together their own interests as well the interests of their domestic constituencies and express national preferences towards EU integration. At the second stage, the national governments put forward their preferences at the intergovernmental bargaining meeting in Brussels. Here the agreements drawn upon, reflect the relative strength and power of the member states where the supranational institutions like the EU Commission has little or no influence (Pollack , 2001:225).

In this sense, the "state" or the "national government" is considered to be a unitary actor and the process of integration takes place as a consequence of interstate bargaining (Verdun, 2002:2). The bigger member states namely France, Germany and Great Britain play dominant roles in this interstate bargaining and the societal groups play indirect role here as they only influence the policy-making process through lobbying their own national governments so that the governments take into account their " interests" when they define their "national interests" (Verdun, 2002:25). Keohane and Hoffmann also assert that the relative power capabilities of the member states and the balance of power among the state coalitions play fundamental role in integration in any policy area. They identify Germany, the U.K and France as the three most powerful member states in intergovernmental bargaining and the preferences of these three member states must converge in order to have integration in a particular policy area (Keohane and Hoffmann,1991, 23-25). The reason why these three states are deemed " powerful" has to do with their economic stability, size of population and their political importance in Brussels which is rooted in history (Hix & Hoyland, 2011).

Intergovernmentalist analysis seeks to explain the preferences of the national governments by investigating their domestic politics underlying those preferences. They see EU integration happening only when the national governments show interest in integration if their domestic interests converge with the interests of other dominant member states and there is policy-coordination leading to further integration. Other approaches on EU integration like multilevel governance also acknowledges the Intergovernmentalists when they say that the national governments play a crucial role in EU politics (Verdun, 2002:3).

Intergovernmentalism approach has gained increasing importance in the EU decision-making with the increase of EU legislative output in recent years. The Council of Ministers which is the institutional basis for interstate bargaining between treaty rounds is one of the most extensively researched fields today in EU politics. In the decision-making procedures in the EU, balance of legislative power between the member states/ Council of Ministers, the Commission and the Parliament varies with the procedures under which EU policy decisions are made (Garrett & Tsebelis, 1996:280). One of the decision-making procedures in EU policy-making is the “consultation procedure” in which the Council of Ministers play the most significant role in shaping policy decisions and it is in this procedure that Intergovernmentalism and bargaining takes place explicitly.

According to some authors (Garrett & Tsebelis, 1996:269), one can understand the policymaking dynamics in the EU by understanding the “bargaining” process among member governments in the Council of Ministers. These authors have used “Banzhaf’s power index” to measure the power of member governments in the bargaining process (Garrett & Tsebelis, 1996:269). However Tsebelis and Garrett argue that the power index analysis tends to overestimate the power of the larger member states with extreme policy preferences like the U.K and underestimates the power of smaller member states like the Benelux region. Tsebelis and Garrett also comment that just a single line approach of Intergovernmentalism or Neo-functionalism cannot sufficiently explain the complete dynamics of institutional decision-making in EU and they underestimate the impact of the Single European Act of 1986 and the Treaty on European Union of 1992 on agenda setting power. The entire legislative process of the EU can be understood by analyzing the interactions among the Council of Ministers, the Commission and the European Parliament (Garrett & Tsebelis, 1996:270).

According to Moravcsik, the key to understand the strategic interaction between member states lies in understanding domestic politics within the member state. According to him, power and preferences in the European community can be explained using a liberal intergovernmental approach. Although the EC is a unique institution, Moravcsik asserts that it does not require a *sui generis* theory- refinements and extensions of existing theories of foreign economic policy, intergovernmental negotiations and intergovernmental regimes are enough to explain its working. These theories are based on “Supply-Demand” dynamics of preferences and strategic opportunities. Demand is created by the perception of

potential benefits to be gained by national governments upon policy-coordination. The ‘Supply’ is a result of interstate strategic interactions and their pressures on the EC political systems. Moravcsik concludes that Intergovernmentalism augments rather than restrict the ability of the government to achieve domestic goals.

4.2.1 Intergovernmentalism criticized

However, with time, this theory of Intergovernmentalism also faced some criticisms as not providing enough explanation to the EU integration process. According to Kassim and Menon, (Kassim & Menon, 2010), Moravcsik’s analysis using Intergovernmentalism ignores some aspects of the EU- notably the practical policy decisions that emanate from routine policy making. They assert that Intergovernmentalist approach is "not enough to fully capture on the full ability of the member state influence or the ability of the latter to shape both the institutions of and substantive outcomes produced by the union.” Scholars of EU Governance like Marks, Hooghe and Mc Adam have also rejected Moravcsik’s concept of Liberal Intergovernmentalism stating that the EU can be best explained in terms of multilevel governance in which the member state governments are just one among the various supranational and subnational actors in a complex system of multilevel governance (Pollack. , 2001:227).

Multilevel governance approach in EU asserts that although the national governments are significant actors in policy-making in the EU as the Intergovernmentalists state, other actors present in the EU also play important roles in the entire policy-making process when they participate in a particular policy making. Contradictory to the Intergovernmentalist approach, a “historical-institutionalist approach” emphasize the role of institutions” being the most crucial in policy-making in the EU and they base their investigations on the mechanism of “path-dependence” (Verdun, 2002:12).

Despite these criticisms, it is worth mentioning that Intergovernmentalism still stands significant in understanding the process of EU integration and this theory can help in understanding member state preferences while a particular policy is being implemented in EU and how the member states bargain at intergovernmental forums and try to articulate their own national preferences. It is in these intergovernmental forums amidst a bargaining culture that a winning and losing situation takes place in which some member states (mostly the larger states are stronger) win and some member states lose or compromise.

4.2.2 Propositions from Intergovernmentalism

Since the theory of Intergovernmentalism states that “*EU politics is principally dominated by the member-state governments where governments of the bigger member states like Germany, France and*

Great Britain are more prominent”, under more Intergovernmentalism influence, one would expect the following predictions to be true:

I. Bigger member states like Germany and the UK will have more success in the outcome than relatively smaller member states

II. Member states will be more successful in achieving their objectives as compared to Supranational actors

4.3 Supranationalism

The claim that the EU is becoming increasingly “supranational” is a central phenomenon in contemporary research on EU integration. The Commission, the Parliament and the European Court of Justice are significant institutions in the policy-making in the EU. The power that these institutions possess has led to the re-emergence of the claim that the process of EU integration closely resemble to that of Ernst Haas’s Neofunctionalism. According to this theory of Supranationalism, government is just one of the many other actors in the bargaining process during policy formulation, the others being the European Commission, the European Parliament, the European Council, the European Court of Justice and private interest groups. Therefore, the member state governments are not all powerful and the EU institutions are not merely passive “agents” of the governments. Since the Commission, the Parliament and the ECJ possess autonomous powers and interests in combination with decision-making rules and policy bargains, the EU policy outcomes sometimes can be different from the original preferences and intentions of the national governments.

However, the three EU actors- the Commission, the EU Parliament and the ECJ are considered to be the three main supranational institutions in EU politics. The relations between these institutions as well as between them and the Council of Ministers and the roles played by them are conceived in several treaty bases of the EU namely- the Treaty of Rome ratified in 1958, the Single European Act 1987, the Maastricht Treaty on European Union 1993 and the Amsterdam Treaty of 1997. The roles played by them can be divided into three principle functions in the EU-the Parliament is the legislative institution to legislate and formulate policies. In this branch the Parliament shares co-decision responsibilities with the Council, the Commission is the executive branch to administer and implement policies and the ECJ forms the judicial branch to interpret policies and possess adjudicating power in cases of disputes (Tsebelis & Garrett, 2001:357). Until the Single European Act of 1987, the Parliament had no strong influence over legislation but with the ratification of the Amsterdam Treaty of 1999, the Parliament became a co-equal actor with the Council in passing legislations in all policy areas that requires both qualified majority at the Council and an absolute majority at the Parliament. The ECJ’s judicial mandate is to interpret the treaty base of the EU and secondary legislations passed in effect to the treaties in arbitration of conflicts between the EU institutions, between the institutions, the Council/member states and the citizens. Finally the

Commission is the executive branch of EU institutions possessing the power to implement legislation and monopoly on drafting bills. All these three EU institutions play significant roles in the EU policy-making which has been re-instated more strongly in the Maastricht Treaty on European Union in 1993 cemented in Amsterdam later on (Tsebelis & Garrett, 2001:359).

In recent years, several scholars have focused on the dominant roles played by the three supranational institutions in creating an atmosphere of “More Europe”. Some of the influential studies stem from Alec Stone Sweet and Wayne Sandholtz’s “Supranational governance” in EU. Anne-Marie Burley and Walter Mattli also take neo-functionalist approach as they acknowledge the importance of supranational actors in EU policy-making. Garry Marks, Liesbet Hooghe and Kermit Blank finally promote “Multilevel Governance” in which they all claim that the EU supranational actors play significant roles in the making of EU policies functioning in a complex governing system involving all the participatory actors. Burley and Mattli further claim that the Commission is particularly a powerful EU actor since it has the reputation for being impartial in providing expertise and information above the political disagreements.

The original treaties of Rome delegated powers to three supranational bodies. Quoting Pollack, (Pollack ,2008) on the roles of the three supranational bodies:

- “the executive Commission, which was given agenda-setting powers in the legislative process, enforcement powers vis-à-vis non-complying member states, regulatory powers in areas such as competition policy, and exclusive representation of the Community in external trade matters;
- the European Court of Justice (ECJ), which was given the right to interpret EU law, adjudicate disputes among the member states and institutions and hear “preliminary references” from national courts; and
- The Consultative Assembly (later European Parliament), which was given nonbinding rights to “consultation” in selected issue-areas as well as the right to supervise and censure the Commission.”

Pollack has given examples of EU policies where the Commission has used its executive power over member states and interest groups and which shows that it has independent preferences. (Pollack,1997). In the 1990’s, the Commission aggressively used Article 90 to liberalize the telecommunication sector despite strong challenges from some member countries. During the adoption of 1989 Merger regulation, “the Commission was able to achieve major victory by rallying

and relying upon the support of some member governments, a large number of transnational interest groups, and the supranational court of justice” (Pollack, 1997).

4.3.1 Supranationalism criticized

According to some recent publications, the concept of Supranationalism has somewhat weakened in the last decade. Kassim and Menon assert that there has been a reassertion of powers on the member states and a relative decline in the status of the Commission. (Kassim & Menon, 2010). They link their propositions to three observations: “First, the member state governments have been more involved in day to day policy making. Second, few new responsibilities have been delegated to the Commission and the Commission’s budget has been kept to a closed control. Third, the community method has ceased to be the default method for decision making.”

4.3.2 Propositions from Supranationalism

Since the supranational bodies are not mere agents of the member states and have autonomous power in a policy making process, under more supranational influence, one would expect the following prediction to be true:

1. Supranational actors will be more successful in achieving their objectives as compared to member states

4.4 Conclusions on Intergovernmentalism and Supranationalism

From the foregoing discussions on Intergovernmentalism and Supranationalism, it seems that neither of them are robust enough, when used alone, to explain the process of policy making in EU. Therefore my goal is to use them complementarily using Congruence Analysis Approach to explain the making of the chemical policy in Europe-CLP. Details of Congruence Analysis will be discussed in Chapter 5.

However, these two theories on EU integration does not provide sufficient insight into understanding the role played by “ interest groups” as the third actor in policy-making. Therefore, a theoretical treatment is given to the influence of interest groups in policy-making in EU.

4.5 Influence of interest groups in policy-making

The role played by interest groups in the EU is a significant element of democratic decision-making. As Andreas Dur states, “ citizens can express their opinions to decision makers through interest groups which form a major channel of communication between the civil society citizens and the decision-makers” (Dur & De Bièvre, 2007). The decision making process might reflect more democratic with the participation of the interest groups in policy-making when they tend to support

policies in line with the citizen preferences or block policies that reflect only governing elite interests. However, intense interest group politics may sometimes undermine the legitimacy of decision-making in a democracy which might happen in the case when certain interest groups constantly win. Therefore a normative evaluation of the roles played by interest groups in policy-making in democracies depends crucially on how much power the interest groups have and this evaluation is essential to explain policy outcomes (Dur & De Bièvre, 2007). If the policy outcomes in a particular policy area reflect the interest group preferences enormously, it can be said that the interest groups that participated in such a policy have been the most dominant “actor” in the policy-making process. Actors are powerful/dominant if they can manage to influence outcomes in a way that can bring them closer to their ideal points.

According to Eising’s study on interest groups, with the multilevel governing character of EU politics, interest groups have become an increasingly important actor in EU policy-making. He concentrates on the business interest groups particularly when he says that with the gradual geographical extension of the EU, as more policy areas are effected and as EU Directives and Regulations are more frequently replaced now than before complementing national laws, more business interest organizations promote their preferences to the EU institutions.

4.5.1 Insights taken from interest group theories

Insights from Access theory

Multitude of scholarly articles are available in which scientists have studied the role of interest groups in policy-making using several theories. The elements used in these theories are used here to analyse the importance of interest groups as a participating actor in policy-making. One important theory is the Access theory on interest group politics used by Pieter Bouwen in which he says that the European institutions and interest group organizations are mutually dependant on each other for resources. Interest groups desire to have access to the European institutions for influencing the policy outcomes. The interest groups can obtain this access by providing three kinds of “access goods” resources to the European institutions namely-expert knowledge, European encompassing interest and domestic encompassing interest (Bouwen, 2002). Bouwen’s study concentrated on the influence of “business interest groups” (firms/associations) in policy legislation in the EU. According to him, gaining access to the EU institutions does not necessarily mean influence. It is rather a “ *conditio sine qua non* “ to exercise influence in policy-making. He, therefore used “ access” as a helpful indicator to study “ influence” (Bouwen, 2002).

Insights from Exchange theory

Bouwen also based his study on the Exchange theory of interest groups according to which, lobbying activities of interest groups can be understood by conceiving that the public and private actors are interdependent on each other for resources, in an exchange relation which is similar with business interest lobbying. But all business interest groups do not provide equal access to the EU institutions, for e.g. large firms with big R& D divisions promoting “European strategies” provide qualitatively better expert knowledge (one of the access goods) to the EU Commission (the supranational institution promoting common European interests). The Commission therefore values the “European encompassing interests” provided by large-scale business firms to increase both input and output legitimacy in the policy-making process (Bouwen, 2002). The Commission is the most permeable institution open to interest groups and this openness re-inforces the Commission’s claim to legitimacy. Therefore with the increasing level of lobbying the Commission in Brussels, interest groups adopt more and more “euro-lobbying” strategies (Richardson, 2000:1014).

Insights from the theory of Lobbying

David Lowery has researched on interest groups as being motivated actors whose prime purpose is to survive in the policy-making process by influencing public policy through various lobbying strategies. Lowery has used a multi-goal and multi-context theory of lobbying in understanding the organizational behaviour of interest groups (Lowery, 2007:30). Reach of private interests representing citizen views into public affairs reflects a democratic character which is particularly significant for the EU to maintain its democratic legitimacy. It is through the process of lobbying particular interests that these public opinions and views reach the political institutions and they are made aware of what the citizens want. Professional lobbyists are often the most knowledgeable and the most experienced strategic political actors in everyday politics which the political institutions require for information and expertise. According to the theory of lobbying, the art of lobbying is primarily a method of “legislative subsidy”, a suitable grant for expensive policy information, intelligence and labor to the enterprises of selected legislators. The prime motive is not to change the legislator’s mind but to help them in achieving their own objectives forming natural allies in similar policy preferences. Thus lobbyist assistance relaxes budget constraints and in this sense it can be said that the objective of lobbying is not only “preference-oriented but more significantly “budget-centred” (Hall & Deardorff, 2006:69).

Lobbying is also viewed as an instrument of persuasion which means that the legislator-lobbyist relationship is based on information transmission. Interest groups sometimes use private information on constituencies to persuade legislators in taking positions which favour the group’s preferences (Hall & Deardorff, 2006:71).

In light of the above discussion, it is evident that interest group lobbying poses significant dimension to policy-making by influencing or altering policies in their favour.

Insights from Policy Network theory

Policy Network theory has also been used by some scholars to explain the role played by interest groups in policy-making (Barendregt, 2007). According to this theory, actors are mutually dependent on each other for resources. The EU institutions require knowledge, legitimacy and implementation support whereas interest groups need access to the policy-making process and implementation process to influence the policy. Policy networks are open systems in which interest organizations can join a certain policy network to enter into competition with other interest groups while lobbying for their own preferences (Barendregt, 2007). There are several lobbying methods which interest groups use to promote their own interests. For example, during the implementation of the chemical policy REACH, the two most important business interest group associations on chemicals (CEFIC & GREENPEACE) had provided extensive access goods to the EU institutions and they had lobbied in various ways in Brussels like sending position papers to Rapporteurs and some MEP'S, forming alliances, conducting personal contacts with decision-makers etc.

These theories discussed above provide insight into what roles interest groups play in the decision-making process and why they are important. For the purpose of this thesis, none of the theories discussed above will be used separately. But insights taken from these theories as highlighted in the above discussion will be used to understand the roles played by them in the decision-making process particularly in the chemical policy area. In analyzing this, it would perhaps also be possible to see if any particular interest group has been influential in my case study.

4.5.2 Propositions from interest group theories

Interests groups are very diverse and tend have conflicting interests (e.g., Business interest groups vs. NGOs). They typically have greater access to resources (especially bigger groups) as compared to other two actors in this study. Under more “Interest group” influence, one would expect the following prediction to be true:

IV. Interest groups due to greater access to resources will be more successful in achieving their objectives as compared to the member states

V. There will be less harmony within the preferences of the Interest groups as compared to the member states (Stems from Policy Network theory)

VI. Bigger Interest groups will have higher success in getting their desired preferences as compared to the smaller ones (Stems from theory of Exchange goods).

CHAPTER 5

RESEARCH DESIGN AND RESEARCH METHOD

This chapter consists of three parts. The first part (section 5.1) of the chapter focuses on the available research designs and then makes a choice for the most suitable research design. The second part (section 5.2) focuses on the common methods available for measuring influence/preference and then makes a choice for the most appropriate measuring method for this research work. The last part (section 5.3) of the chapter reflects on the type of data collection carried out for this thesis and will also mention about the kinds of difficulties encountered by the researcher during formulating this research work.

5.1 Discussion on available research designs

As mentioned in Chapter 1, the central research question of this thesis is

“Does the theory of Intergovernmentalism, Supranationalism or Lobbying of Interest Groups provide a better explanation for understanding the outcome of CLP legislation?”

In order to explore this research question two research designs are discussed:

- Cross-sectional design
- Case studies/Congruence Analysis

5.1.1 Cross-sectional design

This is a large N design and is based on generality and the strength of causal effects but this type of design does not explain any particular case in details (Gschwend & Schimmelfennig, 2007:11). A control independent variable is carefully selected here. This design envisages on regression analysis on the data for estimating the results. The primary goal of the statistical analysis is to find out a correlation between a dependant variable and several identified independent variables. As Vaus points out, this design relies on the existing differences rather than examining interventions (Vaus, 2001:172). In this design, data is collected at just one point of time. A co-variation can be established for internal validity other variables being statistically controlled. However Vaus observed that there is a difficulty in identifying time sequence of events and this gives rise to the problem of identifying a causal direction (Vaus, 2001:173).

External validity is quite high for this design if the research sample represents population and also generalizing is easier here than experimental designs. However, there are few threats to its internal validity. It is possible that a relevant variable is excluded and instead an irrelevant variable is included in the research which can lead to standard errors like inefficiency. The more standard errors there

exist; it becomes difficult to reject the null hypothesis which is often referred to as type II error. It is therefore imperative to identify independent variables on the basis of plausible causal relationships stemming from theories and from literature of the subject (Kellstedt & Whitten, 2007:93). Another possible threat with this type of design is that, there is not enough number of cases. If there are more cases, type II error would not occur that often. The rule of thumb suggests that there should be at least 5 cases for each of the independent variables and these cases should be randomly chosen as they would have to reflect various representatives of the population in order to increase the external validity. It is also important to establish a variation and for this cases not related to the independent variables should also be chosen.

However this design does not seem suitable to carry on with the chosen research phenomenon since the main crux of this research design is to look into a broad array of cases and to generalize them. Taking a cross-sectional design would require measuring the influence of actors on different policies, not just CLP. The aim of the chosen research is rather to focus on only one case in the EU chemical policy. Additionally, large N study is not possible to be formulated due to time restrictions.

5.1.2 Case study-Congruence Analysis

According to Blatter and Haverland, a Congruence Analysis is a small-N research design in which “case studies are used to provide empirical evidence for the explanatory relevance or relative strength of one theoretical approach in comparison with other theoretical approaches” (Blatter & Haverland, 2011:1). Explanation here is not drawn from co-variation but by establishing congruence within one case itself between theoretical observations and expectations. Firstly, a set of specific propositions and observable implications are deducted from abstract theories. Then, empirical observations are compared with the theory driven implications. To increase the number of observations, the researcher can speculate multiple observations stemming out from theories within the case. Therefore relevant theories need to be chosen first and the cases need to be selected (Blatter & Haverland, 2011:9).

A significant part of research design is to operationalize the concepts and variables. In Congruence Analysis, the predictions need not be transferred into indicators. The relevant criterion for judging the quality of predictions and empirical evidence is the validity of their concept (Blatter & Haverland, 2011:30).

A Congruence Analysis has two subtype approaches:

- a. A competing theory approach
- b. A complementary theory approach (Blatter & Haverland, 2011:2).

The competing theory approach assumes that different theories lead to contradictory implications in the real world. The theories stand in opposition to each other and the goal is to identify the best or the most important theory.

In the second type of approach, the assumption is that theories lead to complementary implications in the real world and a plurality of theories provides a stronger basis for more comprehensive explanations as well as conceptual and practical innovations (Blatter & Haverland, 2011:3).

The approach that will be undertaken for this research will be a complementary theoretical approach in Congruence Analysis.

The internal validity on individual cases is ensured by congruence and therefore causal analysis is based on the congruence between theoretical explanations and empirical data. Ruling out alternative explanations depends on number of factors like number of predictions, certainty of predictions, and subtleness of the patterns of predictions and the degree of the uniqueness of predictions. In the case of external validity, generalization of population is not possible but rather generalization to theory is carried out by selecting appropriate cases for theoretical discourse (Blatter & Haverland, 2011:80-81).

5.2 Discussion on available methods for measuring influence/preference

Now that the research design for this research is chosen as case study combined with Congruence Analysis, it is now important to discuss about the available methods for formulating this research since the aim of this research is to establish which EU stakeholder/actor was the most dominant player in the legislation of the case of CLP in the EU. To establish this, it is necessary to measure the influence of the stakeholders or in other way, to find out their preferences in the CLP legislation. Andreas Dur has stated that measuring influence is difficult because of three reasons- existence of different channels of influence, presence of counteractive lobbying and thirdly, influence can be wielded at different stages of policy making. However, Dur proposed three good methods for measuring influence or preferences which are discussed below and finally one of his methods has been chosen for this research (Dur, 2008).

5.2.1 Process-Tracing method

As Dur writes, process-tracing method has been one of the most frequently used methods used by scholars for measuring influence. By this method, the researcher investigates the steps of influence making path which helps the researcher to investigate the factors that drive influence and help uncover the causes that affect the outcomes. Scholars investigate on group's preferences, the processes by which groups reach the decision-makers and the decision-makers response to these influence activities, degree to which the preferences of the groups reflect in the policy outcomes and the group's dissatisfaction with the outcomes. One advantage of this method is that the researcher can

get insights of almost all factors influencing a policy decision and the developments can be seen which are not traceable in document based analysis since this method entails a lot of semi-structured interviews.

However getting all empirical data can at times be impossible which can create gaps in the causal chain and the researcher has to rely heavily on interviews and overestimate influence of interest groups. This can lead to gaps in correlating the group activities with the influence if all the factors are not possible to be known. Additionally, cross-checking with interview based information with other data sources might be difficult as well as making generalizations from small-N cases might be difficult too (Dur,2008).

5.2.2. Attributed Interest Method

Measuring influence by this method is based on surveys. The group members under examination can rank each other according to their influence either over individually or by group. This is a relatively simple method for researchers measuring a group influence. This method serves as a reliable indicator for researchers since standardized set of survey questions are used for different evaluated group and the result can be expected to be the same every time. There is however a threat to reliability since there can be at times self estimation of influence which can be biased. Survey reports can therefore be biased. Estimation of influence of other actors can be exaggerated since the actors might try to bring down the role of other actors. If experts are asked, they might just base their answers on the widely accepted opinions like for e.g.-the big companies are always powerful. In any case, therefore this method tends to measure actually perceptions of influence of actors rather than their actual influencing role in the real world (Dur, 2008a: 565-566; Dur, 2008b:1224).

5.2.3 Preference Attainment Method

This method is based on comparing the outcomes of political processes with the ideal points of the actors involved in those political processes. According to Dur, “the idea is that the distance between an outcome and the ideal point of an actor reflects the influence of this actor” (Dur, 2008a:566). In more complex form of approaches, researchers can use control on other factors that might influence the outcome to move closer to the ideal points or away from the ideal points. One of the strongest advantages of this method is that large-N cases can be used and it is possible to detect influence from various channels. Another advantage is that this method allows the researcher to detect influence even if nothing visible happens like secret lobbying etc. and also making generalizations of the findings are allowed when appropriate cases are selected. However, this method also has some disadvantages in the sense that large-N case might be problematic in explaining the clear differences between the preferences and outcomes as well as in determining the channel of influence. Dur also assert that

identifying as well as measuring and controlling the issues in large-N cases are difficult with this method (De Jesus, 2012:76-77).

5.2.4 Selection of method: Preference Attainment Method combined with Congruence Analysis

Preference Attainment Method has been chosen for the purpose of this research as this method fits best with the goal of the research in attaining the preferences of the stakeholders/actors in the CLP case and reaching a conclusion as to which actor has been the dominant player.

As put forward by Klöver, “The question of who wins and who loses lies at the heart of any analysis of policy-making”. (Klöver,2011). A common method used for finding this out is the method of Preference attainment (Dur, 2008). As this method entails comparing the outcomes of political processes with the ideal points of actors, the preferences of the actors will be first investigated during the policy making process and the outcome will be looked into, to check which actor’s preferences are reflected in the outcome. This requires knowing the initial and final position of the lead actors (Supranational, national, interest groups in my case) in policy making.

The challenge is how to quantify the initial and final positions as one number? Another challenge is to determine the degree of relevance of the demands. e.g., “If a group is successful on 20 percent of the issues and unsuccessful on 80 percent, a simple quantitative analysis would suggest that the group is little influential. It may be, however, that the group is successful on the issues that are highly salient to it (for example, because it invests more resources on those issues), and unsuccessful on those that are not salient to it. In that case, it should be considered quite influential.” (Dur, 2008)

The actor preferences would be attained and analyzed first to see which of the actors is the dominant player in the political process. Then a congruence analysis research design would be carried out to understand which theory best explains the process of CLP legislation. This would help eventually to answer the research question “Does the theory of Intergovernmentalism, Supranationalism or lobbying of interest groups provide a better explanation for understanding the outcome of CLP legislation?”

5.3 Data Collection

According to Yin (Yin, 2009), case studies are based on basically six kinds of data sources. These are:

- a. Documents
- b. Interviews
- c. Direct observation
- d. Archival Records

- e. Participant observation
- f. Physical artifacts.

The following section discusses about the type of data used to conduct this research.

5.3.1 Desk Research

This research is based on desk research data collection. Several documents are consulted. As Yin says, documents can refer to administrative documents, agendas, memoranda, newspaper and journal articles, draft reports and press releases. According to Yin, *“the most important use of documents in case studies is to corroborate and augment evidences from other sources”* (Yin, 2003:87). But nevertheless it should be kept in mind that all sources have their own strengths and weaknesses like for e.g. a document can have a biased report (Yin, 2003:86). The documents that will be used for data collection are: official documents, official reports, public statements, stakeholder comments, academic articles, and academic journals, some EC Directives corresponding to my case.

Some relevant websites will be extensively consulted as well, they being- EU Commission website on CLP/GHS, the official website of ECHA, Eur-Lex, UNECE (United Nations Economic Commission for Europe), OECD and GHS section of the HSE website of the government of U.K will be consulted too although not that extensively.

A major data source will be stakeholder responses to the European Commission’s draft proposal on GHS/CLP regulation available in the Commission websites under archives section. (European Commission, 2012). They are available in the form of online questionnaires.

5.3.2 Additional Data

Apart from desk research, another source of data collection could be based on some interviews of individuals working at the Commission or at the Parliament as well as individuals working in chemical companies. But since attaining the preferences of the stakeholders/actors is the prime goal as the first step in the research, these preferences could be studied by looking into the consultation documents available in the EU official websites. Additionally interviews serving as supportive data seem difficult to be carried out due to time restriction.

Since there exist vast data on the stakeholder responses (around 370), not all of them will be taken for the purpose of this research due to practical difficulties like time restriction. Preferences need to be determined not only of the stakeholders but also on the basis of each empirical issue corresponding to the case of CLP. Therefore determining the preferences of around 370 stakeholders would not be practically possible in a short time. The specific comments and conditions put forward by stakeholders in the consultation documents also need to be studied to see if those

comments/conditions are added in the final CLP legislation that would help in analyzing if their preferences reflect in the outcome. Many of these comments are in their national languages like German or French. This requires translation and additional time. Therefore for the purpose of this research the following actors have been chosen:

- I. EU Member states - United Kingdom, Germany, Italy , Belgium, The Netherlands
- II. Supranational actors- the European Commission, the European Parliament
- III. Interest Groups- CEFIC, Verband der Chemischen Industrie E.V, Concawe, CEPE, European Crop Protection Association (NGO), Friends of the Earth (NGO)

Table 5.1 below mentions the types of data sources to be consulted for using the Preference Attainment Method.

Table 5.1 Data sources

Data Sources	Purpose
<ul style="list-style-type: none"> a. 1st Draft proposal on CLP/GHS in Commission website b. Government responses in consultation documents c. Commission website, Parliamentary 1st Reading of Draft d. Business interest and NGO responses in consultation documents. 	<p>To identify the sources of preferences of the actors</p>
<p>Final CLP legislation in Commission website on CLP/GHS (EC Directive CLP-Regulation -EC No 1272/2008)</p>	<p>To compare the preferences with the outcome</p>

CHAPTER 6

INTRODUCING CLASSIFICATION, LABELING AND PACKAGING OF SUBSTANCES AND MIXTURES (CLP)

This chapter aims at introducing the case chosen for the purpose of this research project. It will provide a background to the case and explain what the case is all about. The case also has several issues handled separately. This chapter will also deal with those issues making it understandable for the reader to relate these issues with the corresponding stakeholder responses later on in the following parts of the thesis.

6.1 Background to CLP

Since years, countries around the world have been pre-occupied with different ways of classifying and communicating hazards of chemicals. This led to conflicting provisions sometimes at the global level which was neither at the optimal level to protect the environment and health of people nor bring in smooth trade facilitation. Moreover, chemical production and their handling entail several important steps that might be dangerous to human health and environment. People from different ages and from different social conditions and cultures speaking different languages are confronted in their daily lives with potentially dangerous chemical products like cleaning agents, pesticides etc. It was therefore necessary to ensure the safe use of such chemical products as well as their safe transport and disposal given the extensive global trade of chemical products all over the world. This necessitated the introduction of national programs to be based on internationally recognized approaches to classification and labeling of chemical products. It was recognized that once the countries would have reliable and appropriate information on the chemical products they produce in their countries or which they import, the infrastructure to monitor chemical exposure and protect the people and environment could be established in a comprehensive way (ECHA, 2009). In the 1992 Rio de Janeiro Earth summit, the international mandate for adopting this proposal was provided at the United Nations Conference on Environment and Development, harmonization of classification and labeling systems for chemical products being its supreme aim elaborated in chapter 19 of the UNCED (United Nations Conference on Environment and Development) in Agenda 21. Three basic elements were identified here:

- a) A globally harmonized system of classification of chemical substances
- b) A globally harmonized system of classification for mixtures and preparations
- c) A globally harmonized system of hazard communication to the workers, consumers and transport including labeling and Safety Data Sheets (SDS) (OECD , 2012:1-5).

6.1.1 Globally Harmonized system of Classification and Labeling of Chemicals (GHS)

The GHS was agreed in 2002 by the UN Committee of Experts on Transport of Dangerous Goods and the Globally Harmonized System of Classification and Labeling of Chemicals (CETDG/GHS). In September 2002, the World Summit on Sustainable Development encouraged countries to implement GHS soon. Finally the GHS (Globally Harmonized system of Classification and Labeling of Chemicals) was formally adopted in 2003 by the UN-ECOSOC Sub-Committee of Experts on the Globally Harmonized System of Classification and Labeling of Chemicals (SCEGHS) and it was revised in 2005 and 2007. The implementation of the GHS at the regional, national and global level provided a coherent approach in identification of hazards of chemicals and provide protective measures to users of the chemical products in handling them (OECD , 2012:5). Gradually GHS gained widespread popularity as more and more countries began to enter into partnerships with this program. GHS is therefore a UN program which identifies hazardous chemicals and provides information to users about the hazards through symbols and phrases on the packaging labels and by means of Safety Data Sheets (SDS) (OECD , 2012).

GHS was implemented in EU in 2009 (OECD , 2012:4). The existing EU classification and labeling system of chemicals correspond to the following features:

- a) Directive on dangerous substances (67/548/EEC)
- b) Directive on dangerous preparations (1999/45/EC)
- c) Annex II of REACH regulation EC 1907/2006, originally the Safety Data Sheet
- d) Directive 91/155/EEC title XI of REACH regulation EC 1907/2006, classification and labeling inventory (European Commission , 2012).

This EU system and the GHS have a similar logic as they commonly cover classification and hazard communication by means of labeling and safety data sheets (SDS). Positive responses came from all the EU member states to the recommendation proposed at the World summit on Sustainable Development and the European Commission took up the initiative of GHS implementation in EU.

6.2 Classification, Labeling and Packaging of Substances and Mixtures (CLP)

CLP stands for the regulation on Classification, Labeling and Packaging of Substances and Mixtures. This new regulation was published in the official journal of the European Union in December 2008 and it entered into force on January 20th, 2009.

On the 27th of June 2007, the European Commission adopted a proposal for the regulation of the European Parliament and the European Council on Classification, Labeling and Packaging of chemical Substances and Mixtures, thereby amending the existing “Directive 67/548/EEC” and Regulation EC no “1997/2006”. This was the “CLP” proposal (European Commission , 2012).

The CLP regulation aligns the previously existing EU legislation on Classification, Labeling and Packaging of chemical products to the GHS regulation (Globally Harmonized System of Classification and Labeling of Chemicals). The main objectives of CLP are:

- a) Facilitating international trade in chemicals
- b) Maintaining the existing level of protections of human health and environment
- c) Deadline for substance classification was set at December 1, 2010
- d) Deadline for Mixtures was set at June 1, 2015.

The aim of CLP was to replace the existing rules on classification, labeling and packaging of substances by means of Directive 67/548/EEC and preparations after the transitional period by means of Directive 1999/45/EC (European Commission , 2012). “Preparations” here mean chemical mixtures.

Since the CLP proposal stage up to the implementation stage in the EU, there have been several technical discussions on CLP among EU Member states and other EU stakeholders who are affected by the new CLP regulation in EU. The proposed CLP regulation was based on Article 95 of the EC treaty to ensure two significant elements:

- I. A common level playing field in the 27 EU member states for the suppliers of chemical substances and mixtures in the “EU internal market”.
- II. To ensure a high level of protection of human health and environment (European Commission , 2012).

Internet based consultation surveys were held by the Commission in 2006, before the CLP proposal was published, to get information on the preferences of various stakeholders in EU, who were affected by the GHS/CLP chemical regulation in EU. This survey was done on the basis on of online questionnaires. Responses came from several business interest groups like chemical companies, NGO’s and some EU member states. Many of them provided with their opinions on the existing GHS legislation and the CLP draft regulation. They were also asked to make comments on them and put forward their conditions for the regulation, if they had any.

The Commission proposal which was published after this consultation survey took place was subject to legislative “co-decision” procedure. The European Parliament and the European Council considered the GHS regulation to be a high priority and worked together to its final adoption in the end of 2008. Two milestones were reached in this process. They were:

- I. On June 27th 2008, under the Slovenian Presidency the Permanent Representatives Committee of the Council approved the text of CLP regulation unanimously.

II. On 3rd September 2008, the CLP regulation was supported by a majority vote in the European Parliament (European Commission , 2012).

A comprehensive timeline of the phases of development of CLP in the EU community is provided in Table 6.1 below.

Table 6.1 Timeline of CLP

Year	Main events
1992	Agreement at the UNCED meeting in Rio de Janeiro to develop a globalised scheme for classification and labelling
2001	The White Paper, 'Strategy for a future Chemicals Policy to simplify the current labelling system and improving comprehensibility through GHS
2002	EC made commitments at the world summit for Sustainability Development in Johannesburg to implement GHS in EU. Plan of implementation signed
2002	White Paper Working Group on Classification and Labelling: Summary of Recommendations from Technical Working Group on Tasks 1 and 2
2003	EU member states fully endorsed the initial GHS text and also the first round of changes
2004	Final report: Technical Assistance to the Commission on the implementation of the GHS Ökopol Institute for Environmental Strategies, July 2004
2005	Status paper CWG/08/2005: Implementation of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS). DG ENTR (REACH). 1 June 2005
2005	Commission seeks consultant help to prepare Annexes for the draft CLP regulation. Final report of the consultant is published in Dec 2005. Doc name: Technical support for the preparation of Annexes for the draft EU legislation implementing the Globally Harmonised System for Classification and Labelling of Chemicals (GHS)
July-2006	Commission published studies on Impact assessment of CLP prepared in consultation with RPA and London Economics
Aug-Oct 2006	Public stakeholder consultation on GHS. Evaluation of Stakeholder replies
2007	Commission presented the proposal for CLP published on 27th June 2007. 60 articles; 7 annexes
Dec 2008	CLP published
20th Jan 2009	CLP (EC 1272/2008) entered into force. 62 articles. 7 annexes
Sept 2009	First ATP
March 2011	Second ATP
2012	Third ATP in preparation

6.2.1 CLP REGULATION-EC NO 1272/2008

By means of this directive of the European Parliament and the European Council, the CLP regulation was adopted in 2008 and came into force in 2009. This new regulation contributes to the existing GHS aim that the chemical hazards would be explained and labeled in the same way all over the world and an internationally agreed classification and labeling elements would be used for facilitating trade and protecting human life and environment from the effects of hazardous chemical products during handling them from the stage of production to their transportation and disposal. The CLP regulation was also aimed at complementing the REACH regulation on Registration, Evaluation, Authorization and Restriction of Chemicals (European Commission , 2012).

The CLP regulation involves several declarations in which the community confirmed its contribution to the globally harmonized system for classification and labeling through the incorporation of GHS regulation into community law. It is aimed at benefitting enterprises from the globally harmonized

classification rules and labeling rules having consistency on one hand and the global rules for classification and labeling for supply and use for transport on the other hand. The regulation is legally binding on all the 27 EU member states and is directly applicable to the industries.

6.2.2 Issues in CLP

In order to operationalize this research work, nine issues discussed below were selected. These issues were selected because they were measurable and they covered the core of CLP. All these issues of CLP were present in the internet based consultation survey documents in the form of separate questions which the participating actors were required to comment on. These issues in the form of online questions were taken into account with high priorities during the consultation stages before the Commission made the 1st draft proposal of CLP, based on this survey. The responses received from the actors on these nine issues were assumed to be the ideal points of the participatory actors on CLP.

1. Implementing GHS by replacing 67/548/EEC and 1999/45/EEC

The first issue was whether the actors would agree to replace the existing rules on the classification, labeling and packaging of substances (67/548/EEC) and preparations (Directive 1999/45/EEC) (European Commission , 2012).

2. Hazard classification

The GHS draft regulation does not propose additional hazard categories to those already existing in the current EU system i.e., directives 67/548/EEC and 1999/45/EC. The issue is whether this is the right approach? (ECHA, 2009)

3. Classification

Under CLP, suppliers need to classify their chemicals as substances or preparations before placing them on the market. Steps to classify the chemicals are given in the CLP. CLP Article 4 -11 of the draft legislation (ECHA, 2006) lay down the obligations of actors to classify under CLP. The issue is whether the actors agree to these articles?

4. Labeling

A substance or mixture contained in a packaging should be appropriately labeled as per CLP if the substance or mixture is hazardous or contains at least one component which is considered hazardous. Manufacturers, importers, downstream users are required to comply with this requirement before placing it on the market. Specifics of the label such as dimensions and languages to be put are also prescribed under CLP. Articles 12-19 of the draft of CLP lay down the obligations of the actors to label under CLP. The issue is whether the actors agree to these articles? (ECHA, 2006)

5. Packaging

CLP prescribes specific packaging standards for manufacturers in order to ensure safe handling of chemicals (CLP recital 49 and CLP title IV). Specific rules are set for distributors regarding re-labeling and re-packaging. There are different labeling rules according to capacity of the package and rules were also set for difficult to label packages (Article 20 of draft legislation) and chemicals supplied to general public-e.g. packaging rules for the provision of child-resistant fastenings and tactile warnings (Article 20(e)). The issue is whether the actors agree to the articles related to packaging? (ECHA, 2006)

6. Transition period for substances

The issue here is-Do the actors agree to a three year transition period (Article 39 of draft legislation) for the classification of substances as per the new directive (ECHA, 2006)?

7. Transition period for mixtures

This issue is-What should be the length of transition period for mixtures- 4 or 5 yrs or even longer (Article 39 of draft legislation)?

8. Notification

CLP Article 24 of the draft legislation specified requirements for manufactures and importers to notify certain information to ECHA. Information requested is:

- If the substance is subject to REACH registration.
- If the substance is classified and is placed on the market irrespective of the volumes.
- If the substance is classified hazardous as per CLP and is present in a mixture above the threshold limits specified in Annex I of CLP.
- Downstream users are not required to notify.

The issue is whether the actors agree to the notification rules and the deadlines set up under CLP (ECHA, 2006)

9. Management of Change (MOC)

Management of change is an important element under CLP. Manufacturers, importers and downstream users are required to take all reasonable steps to make themselves aware of new scientific or technical information that may affect the classification of their substances or mixtures. Relevant articles dealing with this topic in the draft legislation are Article 5, 11, 16 and 24. The issue is whether the actors agree to these articles on MOC? (ECHA, 2006)

The goal of this research will be to find out what preferences the participating actors had put forward during the regulation of CLP. For this purpose, the stakeholder responses (answers to the online questionnaires) will be looked at, where they had made their specific comments and then the final legislation of CLP will be consulted to see which preferences are incorporated into the final legislation. This stakeholder analysis will bring into the limelight which stakeholder/actor had been the dominant player in the CLP legislation- this being the main aim of this thesis.

CHAPTER 7

PREFERENCE ATTAINMENT METHOD APPLIED TO THE CASE OF CLP

The goal of this chapter is to analyze the success of three groups of actors in achieving their intended objectives in CLP legislation in the EU. In the context of negotiated outcomes, political scientists have defined the word ‘success’ as the distance between the negotiated outcome and the actor’s original position. For this reason, some researchers have used the word “Preference Attainment” over “success” (Traber, 2010 & Weiler, 2011).

Preference Attainment Method is used in this part of the chapter to investigate the preferences of the relevant stakeholders/actors who participated in the consultation stages of CLP legislation in the EU. This chapter explicitly shows how the preferences of these actors are attained by looking into the stakeholder consultation documents. The responses of the actors in the consultation documents were assumed to be the “ideal points” of the actors. As the research is revolved around three groups of actors, the responses of the three groups of actors are elaborated separately with the help of tables and each of the actor group response is graded with a score to show if their preferences are attained or not attained or partially attained. This is possible to find out by looking first into the initial consultation documents where the actors have put forward their comments or conditions on the draft proposal of CLP and then, the final legislation of CLP is consulted to see if those comments or conditions in the form of their preferences are reflected in the outcome (final legislation of CLP).

7.1 CLP issues under analysis

Nine important issues in CLP were considered for the analysis. The position of actors on these issues was studied from stakeholder replies posted in the official webpage of CLP. These issues have been already discussed in chapter 6 in the CLP introduction chapter.

7.2 Empirical Analysis using Preference Attainment Method

The scoring methodology used for preference attainment is shown in Table 7.1. These scales are similar to the ones used by Mahoney in studying lobbying success in the US and the EU (Mahoney, 2007). The degree of preference attainment (0, 1 or 2) is filled in on each issue for every sample for each of the three actor groups analyzed in this research. This can be done by studying the response of each actor (from 1 to N), and comparing the response with the final outcome.

Table 7. 1 Scoring methodology

Score	Outcome	Scoring guidelines
0	Did not attain objective	Put ‘0’ if the actor replied in negative on the issue
1	Attained some portion of their objective	Put ‘1’ if the actor partially agreed and/or expressed a opinion which was not taken along in the final outcome
2	Fully attained objective	Put “2” if (a) the actor agreed in affirmative (b) No comments and/or (c) his comments was taken along in the final outcome

After giving them scores as (0, 1 or 2) the numbers are summed up. The total score, expressed as a percentage of max score (18) is an indication of the preference attained by the actors. Next, the average of the preference attainment scores was calculated to get one representative number. The resulting table is shown in Table 7.2 below.

Table 7.2 Methodology- measuring the degree of preference attainment of an actor

Issues ->	1 to 9	Sum
Actor 1 to N	Fill in the degree of preference attainment for each issues 0 = did not attain objective at all 1 = attained some portion of their objective 2 = Fully attained objective	Max score is $9 \times 2 = 18$ implies 100% preference attained
		Average score (%)

In determining total preferences it is assumed that all nine issues have equal weightage. In reality, this is not true. Some issues are more important than the others and therefore it is more important to achieve higher ‘success’ during the negotiations of those issues. This means that the simple method presented above can be improved further by adding weighing factors. However due to lack of information on the relative weights of these issues, it is assumed that all issues are equally weighted.

7.3 Measuring success of actors in the outcomes of CLP legislation

This is the second part of the chapter where the success/failures of the actors are actually explored. We first provide some basic information about all the actors here for the reader to get a general idea about the actors. Then we start with the preference measurement of our first group of actors (Supranational actors) and move on to the second group of actors (EU Member States) and then the last group of actors (Interest groups).

7.3.1 Supranational actors: the Commission, the Parliament

a. The Commission- EU Commission is the executive institution of the EU. The main function of the Commission is to draft proposals for new European laws. The Commission manages the daily business of the implementation of EU policies and spending EU funds. The Commission represents the EU internationally through negotiations between the EU and other countries. The Commission represents the interests of EU as a whole. There are 27 Commissioners working in this institution, one Commissioner representing each of the 27 EU Member States (European Union, 2006).

In the view of the Commission, *“the compromise agreed in CLP is a balanced one. The changes introduced by the co-legislators are quite significant in number. They contribute to the legal certainty and workability of the CLP Regulation but they alter neither the philosophy nor the structure of the original Commission CLP proposal”* (European Commission, 2008).

There were originally 39 articles in the consultation document prepared by the Commission in 2006. But in the final legislation published in 2008, there were 62 articles. The main changes as quoted by the Commission are provided in Appendix II.

Based on these responses, following conclusions can be drawn:

(a) The Commission was completely successful on the issue of implementing GHS in the community by replacing 67/548/EEC and 199/45/EEC and also on the transition periods for moving to the new regulation. It was also successful with the timeframes given for notification and its conditions related to management of change.

(b) The Commission was less successful in passing over the conditions for classification, labelling and packaging and had to make several adjustments to the initially proposed text. This is evident from the comparison of the original draft and the final accepted version and also from the changes quoted by the Commission itself. Therefore the preference attainment scores of the Commission is computed as follows.

Table 7.3 Preference attainment scores for the Commission

Actor- Commission	Implementing GHS by replacing 67/548/EEC and 1999/45/EEC (Issue 1)	No new Hazard classification (Issue 2)	Text of Classification (Issue 3)	Text of Labeling (Issue 4)	Text of Packaging (Issue 5)	Three year transition	Five year transition period	Notification text	Management of Change (Issue 9)	Sum	Preference attainment
						(Issue 6)	(Issue 7)	(Issue 8)			
Preference	to replace	No new hazard	No change to draft text of CLP			3 yrs	5 yrs	No change to draft text	No change in draft texts		
outcome	replaced	No new hazard	Significant changes in the text			3 yrs	5 yrs	No change to draft text	Text accepted with minor changes		
Score	2	2	1	1	1	2	2	2	1	14	78%

- b. **The Parliament-** the European Parliament is the legislative institution of EU. It shares its legislative functions with the European Council on numerous policies under Ordinary Legislative Procedure previously known as the Co-Decision procedure. The main roles played by the Parliament are passing European laws along with the Council, scrutinizing other EU institutions particularly the Commission to ensure democratic legitimacy and adopting EU’s budget. The EP consists of members of the Parliament elected directly by EU voters every 5 years. These MEP’s represent the common EU people.

The European Parliament in general was in agreement with issues 1, 2, 6, 7, 8 and 9 but proposed several amendments in other Articles (e.g. 9, 12, 17) some of which were accepted by the Commission in the final document. Details of these changes can be found in the official website of the EP reported by Amalia Sartori in 2008 (Sartori, 2008) and are not discussed here for the sake of brevity. Based on the comparison between the changes proposed by the Parliament and the final CLP legislation, the preference outcome of the Parliament on each issue is provided in Table 7.4 below:

Table 7.4 Preference attainment scores for the Parliament

Actor- Parliament	Implementing GHS by replacing 67/548/EEC and 1999/45/EEC	No new Hazard classification (Issue 2)	Text of Classification (Issue 3)	Text of Labeling (Issue 4)	Text of Packaging (Issue 5)	Three year transition	Five year transition period	Notification text	Management of Change (Issue 9)	Sum	Preference attainment
						(Issue 6)	(Issue 7)	(Issue 8)			
Preference	to replace	No new hazard	No change to draft text of CLP			3 yrs	5 yrs	No change to draft text	Minor changes in the text		
outcome	replaced	No new hazard	Significant changes in the text			3 yrs	5 yrs	No change to draft text	Some sentences were re-phrased		
Score	2	2	1	1	1	2	2	2	1	14	78%

Conclusion on the responses of the Commission and the Parliament

Studying the Tables 7.3 and 7.4 together, the preferences of the Commission and the Parliament can be summed up in the following way (see Figure 7.1):

- a) Both the Commission and the Parliament had no objection in the GHS implementation in EU.
- b) They also agreed on the issue that CLP need not introduce any additional hazard classification in the community as existing regulations were adequate.
- c) With regard to the issues of classification, labeling and packaging both the Commission and the Parliament had attained some portions of their own preferences.
- d) Both the Commission and the Parliament agreed on the transition period for substances and mixtures, notification and management of change.
- e) Both the Commission and the Parliament had attained their preferences in some issues and in some they had to give in.
- f) It seems that none of the actors had more influence than the other in the legislation. They reached a compromise in which both had gained some and lost some.

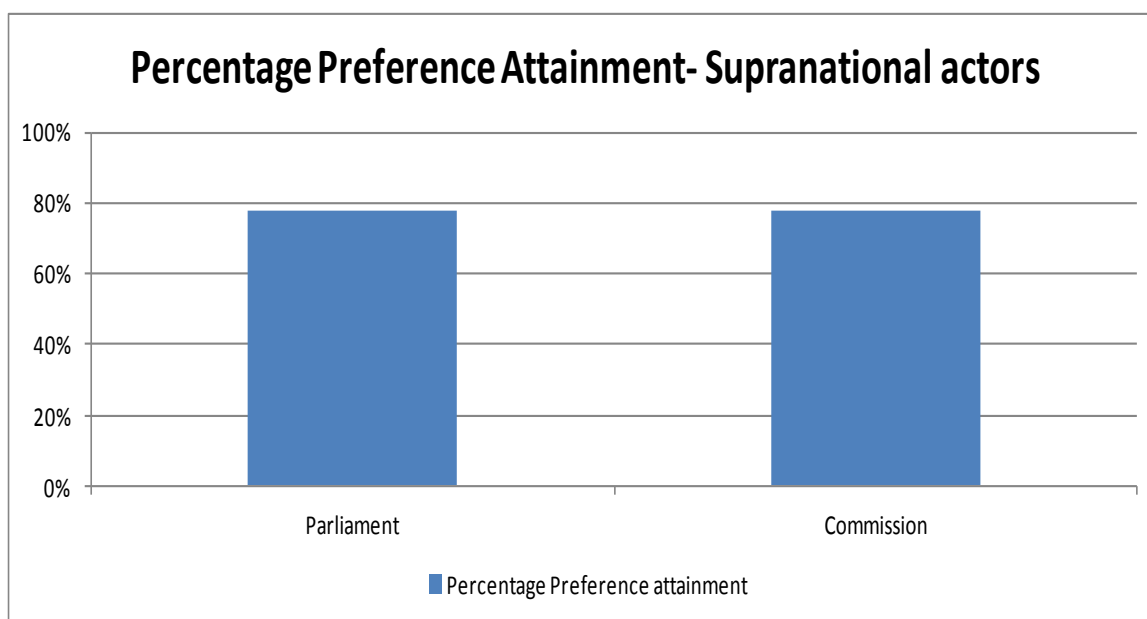


Figure 7.1 Preference Attainment of Supranational actors

7.3.2 Measuring EU member State preferences

From the member states, 18 governments and/or public authorities sent comments. Public authorities from non-community countries (Romania, which is now an EU member State, Iceland, Norway and Switzerland) gave their input as well. We randomly took a sample of 6 responses from the UK, Italy, Germany, Belgium and the Netherlands evaluated them using Preference Attainment Method.

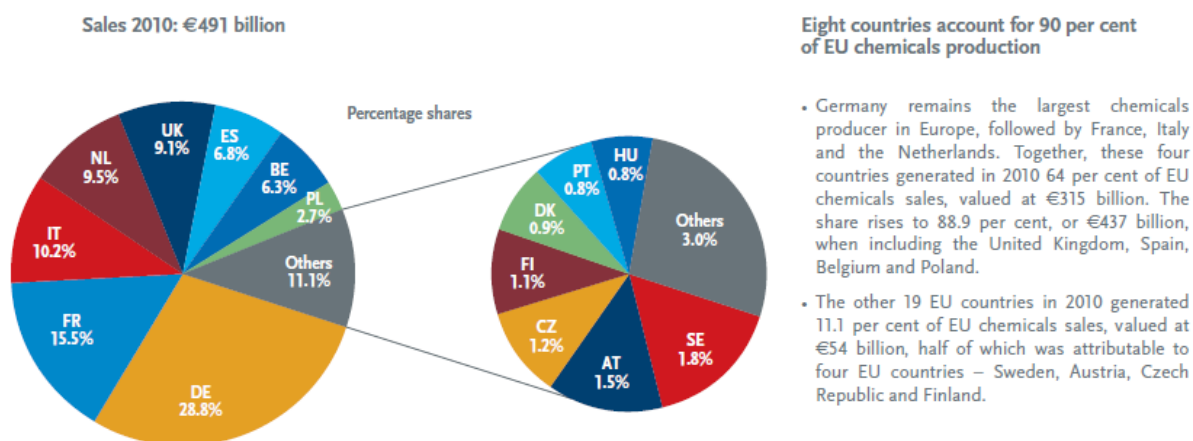


Figure 7.2 Chemical sales in Europe. (Source: CEFIC facts and figures, 2011)

These countries taken together contributed about 60% of total sales in Europe in 2010 (Figure 7.2). So these countries are good representatives of the voice of the member states as the second group of actor investigated. The responses of these member states are compared between their comments in the draft proposal of CLP legislation and the final legislation. In principle all the member states agreed to the implementation of GHS in the community although some member states like the U.K and the Netherlands were in favor of shorter transition periods for substances/mixtures. UK gave no comments on the main text of CLP but most other member states had given detailed specific comments. These comments are available from the webpage of stakeholder responses (European Commission , 2012) and are not repeated here for the sake of conciseness.

Results of preference attainment of the member states are shown below in Table 7. 5:

Table 7.5 Preference Attainment scores for the member states

Actor - Member States	Implementing GHS by replacing 67/548/EEC and 1999/45/EEC	No new Hazard classification (Issue 2)	Text of Classification (Issue 3)	Text of Labeling (Issue 4)	Text of Packaging (Issue 5)	Three year transition (Issue 6)	Five year transition period (Issue 7)	Notification text (Issue 8)	Management of Change (Issue 9)	Sum	Preference attainment	
UK	2	2	2	2	2	0	2	2	2	16	89%	
Italy	2	2	1	1	1	2	2	2	2	15	83%	
Germany	2	2	1	1	1	2	2	2	2	15	83%	
Belgium	2	2	2	1	2	2	2	2	2	17	94%	
Netherlands	2	2	1	1	1	2	1	2	2	14	78%	
Summary												
Preference	to replace	No new hazard	No clear preference.						no comments	no comments		
Outcome	replaced	No new hazard	Some of the proposed changes were accepted						Commissions proposal was accepted	Commissions proposal was accepted		86%

Conclusion on the responses of member states

From the percentages of preferences attained shown in Table 7.5, it is clear that some member states had achieved higher preferences on some issues than on others. Also there was more unanimity on some issues – example issue 1, 2, 8 and 9 than on others. This information is graphically represented in Figure 7.3

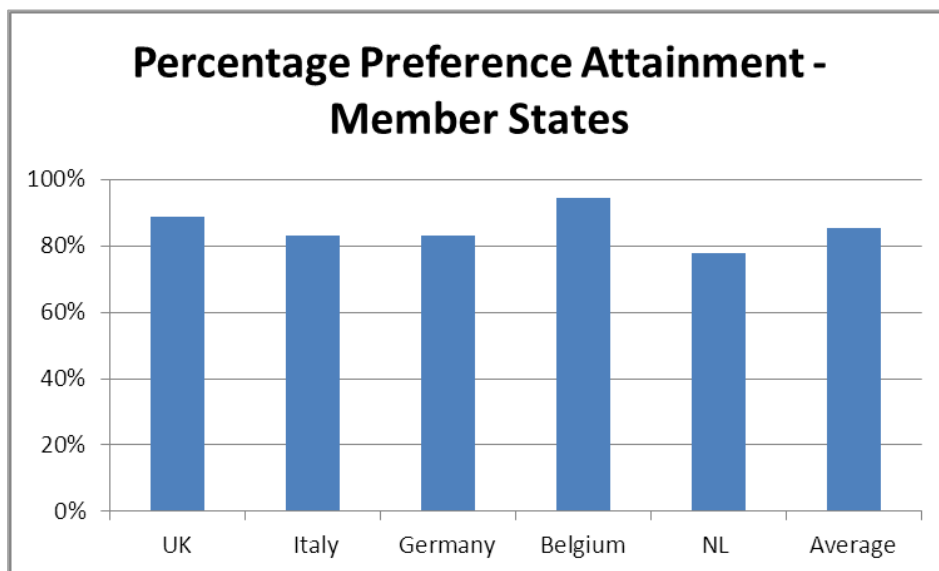


Figure 7.3 Preference attainment scores for member states

7.3.3 Interest groups

On the online consultation survey, around 370 contributions were received, out of which 95% of the responses came from several interest groups. 82% of these were sent by industry, i.e. by associations responding on behalf of their members and by companies. Out of the 254 company responses, 45% replies came from enterprises with less than 250 employees. The companies making mixtures / preparations account for 85%, which were 217 out of 254 company responses. Most of these companies are also members of industry associations like CEFIC, CEPE & CONCAWE. Since majority of these interest groups are members of industry associations, responses from these groups were taken as the voice of the industry

A sample comprising of four major industry associations and 2 NGO's was taken to measure preferences along Preference Attainment Method. The thinking behind taking the responses of these bodies as representative of interest groups is illustrated below:

- 1) **CEFIC**- The European Chemical Industry Council (CEFIC) is a Brussels based chemical industry association, representing the forum and voice of the chemical industry in Europe. This association is an active member of the International Council of Chemical Associations (ICCA) representing

chemical producers and manufacturers around the globe. Cefic is a committed partner of EU policymakers facilitating dialogue with industries on the basis of its vast expertise. Cefic represents approximately 29,000 chemical companies in Europe that provide about 1.2 million jobs accounting for 21 % of world's chemical production. On behalf of its members, CEFIC communicates daily with EU institutions and international organizations, NGO'S, media and other stakeholders. One of the most important activities of Cefic revolves around EU legislative agenda concerning the chemical field (CEFIC, 2011). This interest group played a leading role in the consultation stage of CLP legislation as several amendments have been made by CEFIC relating to some specific articles and text of CLP (CEFIC, 2006).

- 2) **Verband der Chemischen Industrie E.V-** Verband der Chemischen Industrie e.v (VCI) or Association of the Chemical Industry is a Germany based industry association based in Frankfurt am Main in Germany. This interest group represents around 1650 chemical companies in Germany. As a member of the European Chemicals Association CEFIC (European Chemical Industry Council), it is actively involved in the European lobbying on issues relevant to the chemical field, economy, science and media (VCI, 2012).

Comments were also put forward by this industry association in the CLP legislation (VCI , 2006)

- 3) **Concawe**-This interest association was established in 1963 by a small group of leading oil companies for the purpose of carrying out research on environmental issues that are relevant for the oil industry. At present, membership in Concawe includes almost all oil companies in Europe. The activities of Concawe revolve around environmental and health and safety issues, air and water quality issues, fuel emission, fuel quality etc. This interest group also acts as an expert dialogue between relevant stakeholders of health and safety issues, environment and so on like industry and public at large (Concawe, 2010).

Concawe played a significant role in the consultation stage of CLP legislation since several comments and amendments on specific text of CLP legislation have been put forward by Concawe and these can be found in the Commission website on CLP/GHS website under stakeholder replies (European Commission , 2012).

- 4) **CEPE**- This interest association represents 85 % of paints, printing ink and artists color industry in Europe. This represents a value about 17 Million Euros. Approximately 120,000 people are directly employed in this industry. Beyond Europe, CEPE is a member of the International Paint and Printing Ink Council. This interest group campaigns on health, safety and environment issues and contributes on legislations for the industry relevant to these issues (CEPE, 2012).

CEPE also played an important role during the consultation stage on CLP legislation and it also put forward its position statements on GHS/CLP legislation (CEPE , 2006).

NGO's-

- 1) **European Crop Protection Association-** The ECPA is an NGO which acts as the representative of the crop protection industry and national associations in Europe. Within the European network of companies, this NGO leads and coordinates its member companies and other national associations. The aim of the ECPA is to uphold the human health safety standards as well environmental standards in agriculture based on sustainable, productive and scientific farming methods in Europe (ECPA , 2012). ECPA membership consists of 19 research and development companies and it has affiliates in 29 countries.

- 2) **Friends of the Earth-** This interest association with around 2 million members globally, forms the world's biggest environmental network campaigning on the most urgent environmental and social issues specially climate change laws and green energy issues.. It operates internationally representing 76 national member groups and around 5000 local activist groups in every continent of the world (Friends of the Earth , 2012). Friends of the Earth, Europe is a part of the Friends of the Earth international and it unites more than 30 national organizations. In Europe this association primarily carries out campaigns on issues of sustainability, as well as environmental issues (Friends of the Earth, 2012).

The interest groups mentioned above can be classified into two categories based on their membership size. CEFIC, Friends of the Earth, CEPE can be considered as typical examples of “Big” interest groups. On the other hand, Concawe, ECPA and VCI containing less than 2000 members can be considered as typical examples of relatively smaller interest groups.

Measuring interest group preferences

Table 7.6 illustrates the preferences scores of the industry associations and NGO's. These scores were given based on the responses given to the excel based questionnaire and comments given directly on the draft proposal which are posted in the Commission website (stakeholder responses) as PDF documents.

Table 7.6 Preference attainment scores for interest groups

Actor - Interest groups	Implementing GHS by replacing 67/548/EEC and 1999/45/EEC	No new Hazard classification (Issue 2)	Text of Classification (Issue 3)	Text of Labeling (Issue 4)	Text of Packaging (Issue 5)	Three year transition	Five year transition period	Notification text	Management of Change (Issue 9)	Sum	Preference attainment	
						(Issue 6)	(Issue 7)	(Issue 8)				
CEFIC	2	2	1	1	1	2	2	2	2	15	83%	
CONCAWE	2	2	1	1	1	2	2	2	2	15	83%	
CEPE	2	2	1	1	1	2	2	2	2	15	83%	
Verband der Chemischen Industrie e.V	2	2	1	1	1	0	1	2	2	12	67%	
European Crop protection association	2	2	1	1	1	1	0	2	2	12	67%	
Friends of the Earth	2	0	1	1	1	2	1	2	2	12	67%	
Summary												
Preference	to replace	No new hazard	No clear preference.					no comments	no comments			
Outcome	replaced	No new hazard	Some of the proposed changes were accepted					3 months	Commissions proposal was accepted			75%

Conclusions on responses from interest groups

From the above Table 7.6, it is evident that certain interest groups such as CEFIC, CONCAWE and CEPE have higher scores on preference attainment as compared to others – European Crop Protection Association and Friends of the Earth. Also there was accord on some issues – such as issue 1, 8 and 9 and less on others. Four out of six interest groups in our sample (66%) agreed to a transition period of 3 years for substances. Three out of six (50%) interest groups agreed to a transition period of 5 years for mixtures.

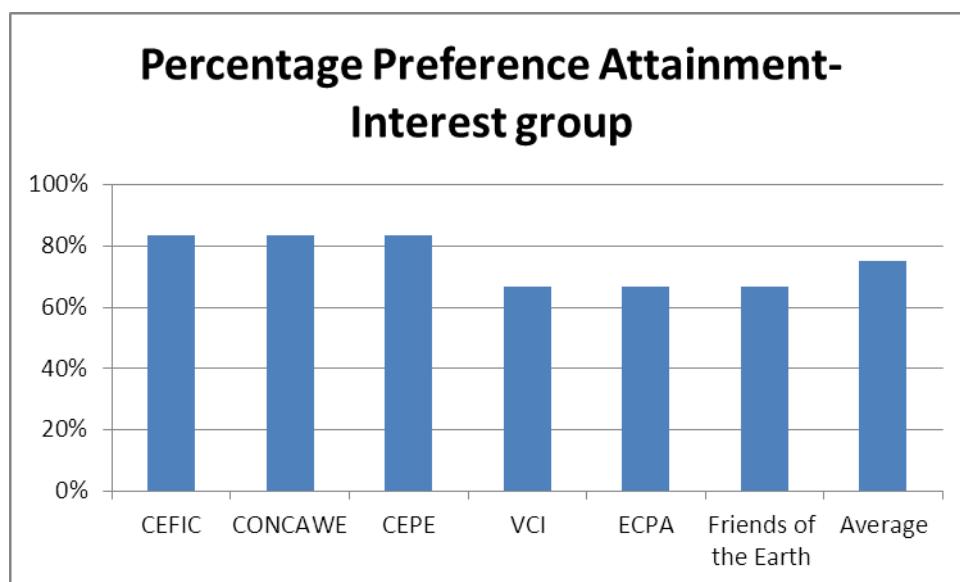


Figure 7.4 Preference Attainment score for Interest groups

Figure 7.4 shows the percentage of preference attained by the interest groups. On average the interest groups sampled in work achieved 75% compliance. Comparing this with the corresponding numbers

for member states it is clear that interest groups had a wider distribution in their preferences as compared to the member states. The idea of replacing existing regulations by GHS/CLP was acceptable to everyone in the sample population. Nobody in our sample group found the main text of CLP (issues 3, 4 and 5) acceptable as proposed and consequently had put a lot of comments.

7.4 Conclusions drawn from the empirical analysis

Nearly all actor groups agreed to implement GHS in the EU community by replacing existing regulations. Responses from interest groups dominated the response to open consultation. Government representation (EU member state) was only 5%. Most actors had specific comments on the text of the CLP proposal. This led to the Commission to make significant changes in the draft version. As a result of divided opinions on the transition period, the Commission was successful in implementing its preferred time period for transition to CLP: 3 years for substances and 5 years for mixtures. Notification and management of change issues were supported by all the actors- presumably due to similarities with previous regulations.

7.5 Conclusions on Preference Attainment Method

Analysis showed that all actors attained some portion of their objective. The outcome can be regarded as "balanced". Among interest groups, 66% agreed to a transition period of 3 yrs for substances. This is slightly more (6%) than that reported by the Commission in its evaluation of stakeholder responses. 50% of interest group respondents agreed to a transition period of 5 yrs for mixtures. This is same as that reported by the Commission in its evaluation of stakeholder responses. Industry responses were divided, with significant support for a 5 year period for mixtures, whereas most of the member States were looking for a shorter transition period. This method also showed that there was more spread in the "preference scores" of the interest groups compared to member states.

CHAPTER 8

EXPLAINING ACTOR PREFERENCES THROUGH CONGRUENCE ANALYSIS

8.1 Introduction

In Chapter 8, the success of three groups of actors/stakeholders in achieving their intended objectives in CLP legislation in EU was analyzed using Preference Attainment Method. The goal of this chapter is to review the preference outcomes of the actors through the lenses of Intergovernmentalism, Supranationalism and Interest group theories, in order to answer the central question of this research:

“Does the theory of Intergovernmentalism, Supranationalism or lobbying of interest groups provide a better explanation for understanding the outcome of CLP legislation?”

This is done by establishing congruence between theoretical predictions from each theory, presented in Chapter 4 with preference outcomes of the actors. This method is commonly known as Congruence Analysis and has been introduced in Chapter 5 of this thesis.

8.2 Evaluation through lenses of Intergovernmentalism

According to the theory of Intergovernmentalism, EU politics is principally dominated by the member-state governments where governments of the bigger member states like Germany, France and Great Britain are more prominent. Based on this one would expect the following prediction to be true:

(i) Bigger member states like Germany and the UK will have more success in the outcome than relatively smaller member states

In the context of negotiated outcomes, political scientists have defined the word ‘success’ as the distance between the negotiated outcome and the actor’s original position. It is possible to estimate this distance using “Preference attainment”.

Within our samples, the preference attainment scores for Germany, the UK and Italy were not very different from the Netherlands and Belgium. This is shown in Figure 8.1. Also the average preference attainment of these two groups is very similar. This suggests that the above prediction is not applicable in the case of CLP.

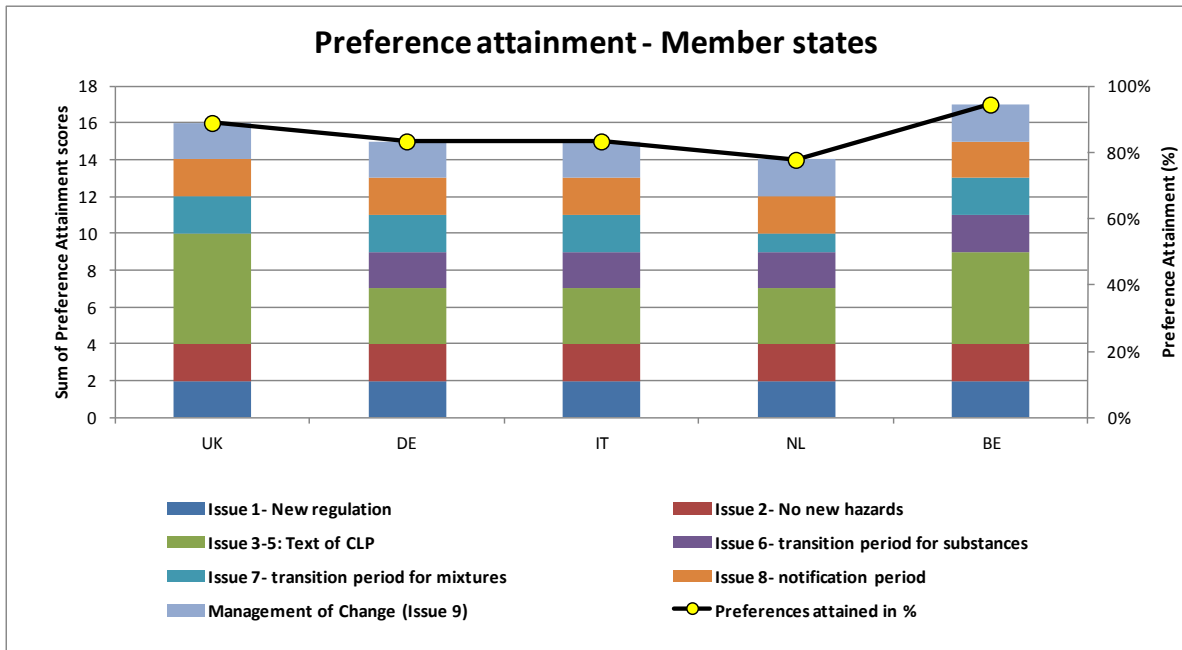


Figure 8.1 Preference attainment of member states

A major proposition of Intergovernmentalism is that member states delegate power to EU institutions which make the EU institutions “agents” of the EU government in effect (Hix & Hoyland, 2011). Based on this, one would expect the following prediction to be true:

(ii) Member states will be more successful in achieving their objectives as compared to supranational actors

By simply looking at the average scores of these two actor groups, one may think that the proposition is true (Table 8.1) because the member states has 8% higher score than the supranational actors and hence should be more “successful”. However this difference might not be significant in reality because the member states have a larger diversity in responses (range 78% – 94%) which overlaps with the scores of the supranational actors. Standard deviations of these averages are not calculated due to small sample sizes. Based on these arguments we conclude that the preference attainment scores of these actors do not really differ much.

Table 8.1 Comparative Preference Attainment scores for supranational actors and member states:

	Average of preference attainment scores	Ranges
Supranational actors	78%	Both 78%
Member states	86%	[78% to 94%]

Further contradiction with proposition (ii) is shown in Figure 8.2. In contrary to the prediction, supranational actors seem to have slightly higher scores on “Fully achieved goals” than member states. This suggests that that prediction (ii) is also not applicable in the case of CLP.

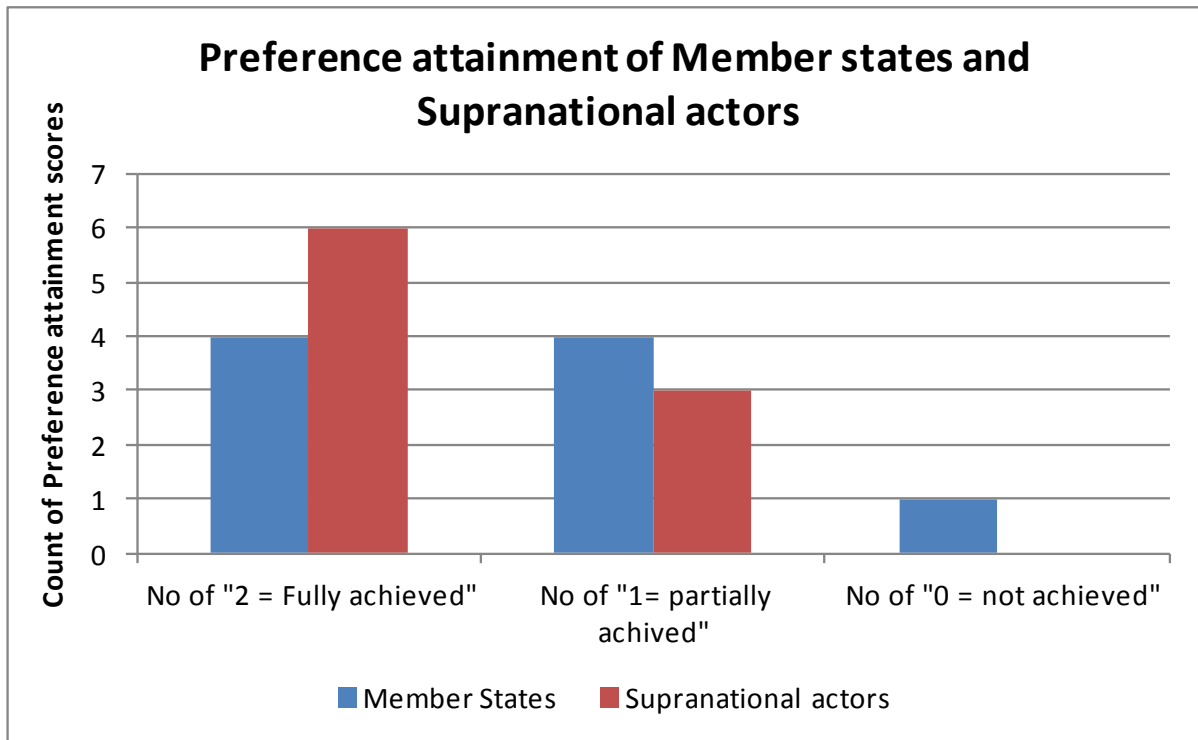


Figure 8.2 Comparative evaluation of preference attainment of member states and supranational actors.

Conclusion on Intergovernmental theory

Both predictions based on theory of Intergovernmentalism do not seem to stand in the case of CLP. These observations are supportive to the opinions expressed by scholars of EU Governance like Marks, Hooghe and Mc Adam stating that EU can be best explained in terms of multilevel governance in which the member state governments are just one among the various supranational and subnational actors in a complex system of multilevel governance (Chapter 4 of the thesis).

8.3 Evaluation through lenses of Supranationalism

In contrast to Intergovernmentalism theory, Supranationalism theory asserts that member state governments are not all powerful and the EU institutions are not merely passive “agents” of the governments. Since the Commission, the Parliament and the ECJ possess autonomous powers and interests in combination with decision-making rules and policy bargains, the EU policy outcomes sometimes can be different from the original preferences and intentions of the national governments.

As remarked by Burley and Mattli (Burley, Anne Marie & Mattli, 1993), the Commission is particularly a powerful EU actor since it has the reputation for being impartial in providing expertise and information above the political disagreements. Based on the theory of supranationalism one would expect the following prediction to be true:

(iii) Supranational actors will be more successful in achieving their objectives as compared to Member states

This prediction is reverse of the prediction (ii) mentioned before. As already mentioned, average preference attainment scores of supranational actors is within the range of the preference attainment scores of the member states. Therefore even though Figure 8.2 shows that supranational actors have a slightly higher scores on “Fully achieved goals” than member states, this does not necessary mean that they were more “successful” than the member states.

8.4 Evaluation through lenses of interest group theories

From the foregoing discussions on Intergovernmentalism and Supranationalism, it seems that neither of them is robust enough, when used alone, to explain the outcome of preference attainment in CLP. These theories do not take into account the role played by interest groups which is a significant element of democratic decision-making. There are several theories on Interest group influence (Chapter 4 of this thesis) of which four key ones are: (a) Access theory, (b) Exchange theory, (c) Lobby theory and (d) Policy network theory. According to Access theory, European institutions and interest group organizations are mutually dependant on each other for resources. However not all interest groups have equal access to resources. This is where Exchange theory plays a role. According to Exchange theory, the outcome of policy is an exchange process- large firms with big R&D can provide lots of expert knowledge to the Commission in return for more favorable policies. The Lobby theory states that “access” and ‘exchange” might be important but “art of lobbying” is also very important for achieving personal objectives. As per the Policy Network theory, interest groups form networks (e.g., associations like CEFIC, Friends of Earth) to compete with other interest groups while lobbying for their own preferences.

Based on these multiple theories of interest groups, one would expect the following predictions must be true:

(iv) Interest groups due to greater access to resources will be more successful in achieving their objectives as compared to the member states (stems from Access theory)

(v) There will be less harmony within the preferences of the Interest groups as compared to the Member states (Stems from Policy Network theory)

(vi) *Bigger Interest groups will have higher success in getting their desired preferences as compared to smaller interest groups (Stems from the theory of Exchange goods)*

Table 8.3 Preference attainment scores of the three actors

	Average of preference attainment scores	Range
Supranational actors	78%	Both 78 %
Member states	86%	[78 % to 94 %]
Interest groups	75%	[67 % to 83 %]

Table 8.3 shows the preference attainment scores of interest groups within our sample compared to the other two actors. Although the average scores of the member states is highest among the three actor groups, taking into account the range of scores within each sample group, we conclude that there are no real differences in the preference attainment of these actors. A more detailed breakdown of the preferences attained is given in Figure 8.3 below.

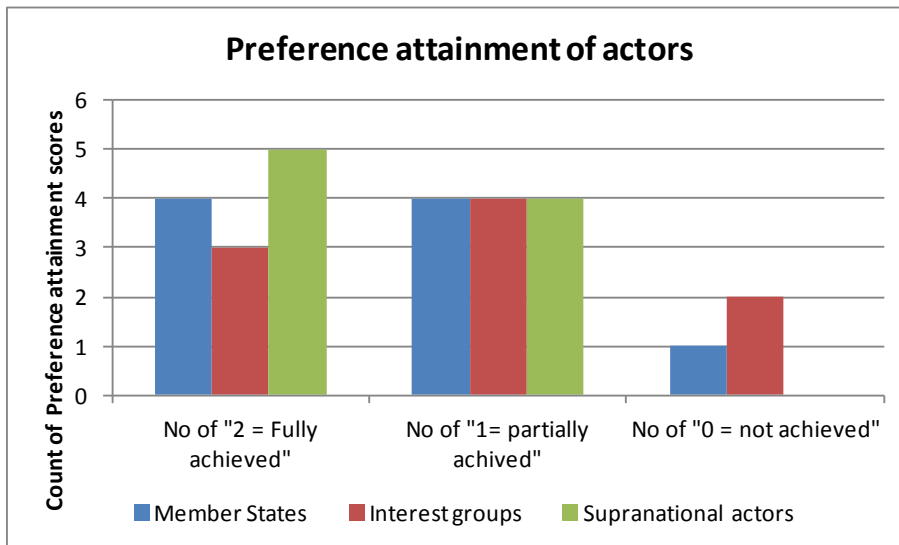


Figure 8.3 Preference attainment scores of the three actors

On three of the nine issues, the preferences of the interest groups were fully met. This is lowest as compared to the other two actors. Interest group achieved partial agreement on four of the remaining six issues. These results therefore do not support the prediction that interest groups due to greater access to resource goods are more successful in achieving their objectives as compared to member states.

On two issues, the opinion within the interest group were very diverse, with at least two of them clearly indicating that their preferences were not achieved while the rest of the group stating either partially achieved or fully achieved. The member states also had a similar ambiguity but within our sample, this was detected on only one issue. This explains why distribution in preference attainment scores was wider for interest groups as compared to member states. Although this difference may seem to be negligible in our sample, in reality out of 370 responses received by the Commission, interest groups accounted for 95%. Further some of the interest groups preferences were competing e.g., CEFIC vs. Friends of Earth had opposite preferences on the issue of transition periods. Based on these arguments it is conceivable that there exist less harmony within the preferences of the interest groups as compared to the member states.

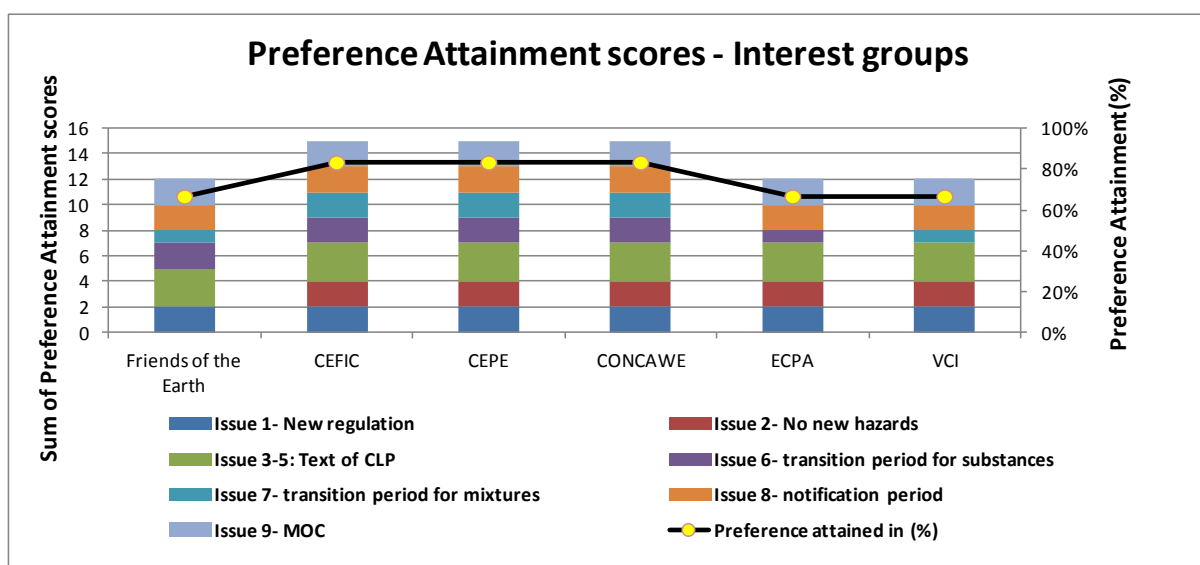


Figure 8.4 Preference attainment scores within Interest groups.

Figure 8.4 shows the preference attainment scores of the so called “Big interest groups” such as Friends of the Earth, CEFIC and CEPE as compared to relatively smaller ones- Concauwe ECPA and VCI. The average of preference attainment scores for the so called “big players” is 78% and for the so called “small” players it is 72%. The range of preference attainment score in both cases was quite similar. This result does not support the prediction that bigger interest groups have higher success in getting their desired preferences as compared to smaller interest groups.

8.5 Conclusion

The goal of this chapter was to determine if the theory of Intergovernmentalism, Supranationalism or influence of interest groups provide a better explanation for understanding the outcome of preference attainment of the actors in CLP. This was judged by validating the “correctness” of predictions made from each theory with the outcome of preference attainment scores for the different actors.

Results showed that bigger member states did not achieve more success in the outcome than relatively smaller member states (Prediction 1). Also, the member states were not really more successful in achieving their objectives as compared to supranational actors (Prediction 2). This does not mean that the reverse was true i.e., supranational actors were more successful (Prediction 3). This is because of the nature of the issues. Although it is assumed here that the weighing factors are equal for all the issues, this may not be true in reality. It could be that some issues were more important than other issues in the legislation. Therefore even if the supranational actors have achieved their full preferences (score ‘2’) in more issues than the member states, we cannot conclude that the supranational actors have been more successful in their objectives than the member states. Although interest groups and particularly business interest groups had greater access to resources and dominated the stakeholder responses, our results showed that they were not the “winners” either (Prediction 4). There was more spread in the responses of the interest groups as compared to the member states (Prediction 5). This was expected from the diverse background of the interest groups and considering the fact that some of these groups had contradictory interests (e.g. Business interest groups vs. NGOs). Bigger and more powerful interest groups did not achieve higher preferences than the relatively smaller interest groups (Prediction 6). A summary of the outcome is shown in Table 8.4 below.

Table 8.4 Summary

Theories	Predictions	Outcome
Intergovernmentalism	Prediction# 1	False
	Prediction # 2	False
Supranationalism	Prediction # 3	False
Interest groups	Prediction #4	False
	Prediction #5	True
	Prediction # 6	False

From the above Table 8.4 it is clear that none of the theories individually provides a complete understanding of the preferences attained by the actors in CLP. Although elements from all the theories are important, some of them (e.g. Interest group) can provide better explanation than the others (viz., Supranationalism and Intergovernmentalism). This outcome is in itself not surprising and matches with the opinions of scholars of EU Governance like Marks, Hooghe and Mc Adam stating that EU policy making can be best explained in terms of multilevel governance in which the member state governments are just one among the various supranational and subnational actors in a complex system of multilevel governance (Pollack M., 2001:227). The Commission has itself stated that the compromise reached in CLP was a “balanced” one and changes included have contributed to legal certainty and workability.

CHAPTER 9

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

9.1 Summary

This thesis is a study of actor preferences in making of policies in the EU. The case study selected for this research is regulation 1272/2008/EG, commonly known as CLP. CLP- or EU-GHS concerns the classification (Classification), labeling (Labeling) and packing (Packaging) of chemical substances and mixtures. The regulation is based on the worldwide harmonized system of the United Nations (UN-GHS). The main actors whose preferences are researched are:

- ❖ Supranational actors (the Commission and the European Parliament)
- ❖ The Member states/Council of Ministers
- ❖ Interest Groups

The primary goal is to investigate which participatory actor group has been the most influential in the formation of CLP or in other words, which actor's preference reflected the most in the outcomes of the CLP policy formation. The preferences of each of the actor group are measured with the help of "Preference Attainment Method ". This method is based on measuring the distance between the negotiated outcome and the actor's original position.

The European Commission did an online stakeholder consultation on the GHS draft regulation during the period from 21st August to 21st October, 2006 (European Commission , 2012). During the consultation, participants were invited to give comments and YES/NO type answers to an excel based questionnaire or to send comments by e-mail to a specified mailbox (Table 2). These questions were the basis for choosing the issues of CLP and measuring responses using Preference Attainment.

Next, the preferences outcomes of the actors are reviewed through the lenses of Intergovernmentalism, Supranationalism and Interest group theories, in order to answer the central question of this research. This approach is based on Congruence Analysis. Congruence Analysis typically deals with one case and tries to establish congruence between expectations driven from theories and empirical observations within the case itself. In the case of CLP, several predictions based on the three theories are made. The "truthfulness" or "validity" of those predictions was debated in the light of preference attainment scores of the actors.

9.2 Conclusion

From the empirical analysis of actor responses it is clear that all actor groups agreed to the basic concept of the regulation which was to adopt GHS in the European community by replacing the existing directives 67/548/EEC and 1999/45/EC. Among interest groups, 66% agreed to a transition

period of 3 yrs for substances. This is slightly more (6%) than that reported by Commission in its evaluation of stakeholder responses. 50% of interest group respondents agreed to a transition period of 5 yrs for mixtures. Industry responses were divided, with significant support for a 5 year period for mixtures, whereas most member states were looking for a shorter transition period. There was more spread in the “preference scores” of the interest groups compared to member states.

Responses from interest groups dominated the list of stakeholder consultation responses. In spite of this the compromise achieved was a balanced one where voices from all stakeholder groups were heard and worked on to get a balanced outcome.

None of the three theories used in Congruence Analysis individually provides a complete understanding of the preferences attained by the actors in CLP. This outcome matches with the concept of “Multilevel governance” in which various supranational and subnational actors work together towards a mutually acceptable position.

9.3 Recommendations for further research

Apart from desk research, another source of data collection could be based on some interviews representing the several actor groups. This will help to identify issues which are important for that particular actor in CLP. Based on those answers appropriate weight factors can be built in to the model to calculate preferences. The questionnaire used by the Commission was designed to capture feedback from the actors about the draft CLP. It was not designed to capture preferences. As a further follow-up, of this work a structured questionnaire can be designed around the issue of preferences, instead of the online consultation questionnaire set up by the Commission and used in this research.

Not all responses were available from the website of the Stakeholder responses posted by the Commission. Further, Business interest groups dominated the responses and there was not enough representation from the EU member states. Selecting the right sample type and size was therefore difficult for this research. For further work, size of the sample could be improved by seeking responses from “big” as well as small actors, within each actor type. This could be achieved by means of structured interviews instead of desk research.

This thesis used a simplified Congruence Analysis approach using theories of Intergovernmentalism, Supranationalism and Interest groups. These theories are just few of many other theories used by Political Science scholars to study “influences”. Among interest group influence there are multiple theories which were briefly introduced not explored in detail in this thesis. This leaves ample room for future research in this field!

REFERENCES

1. Barendregt, E., 2007. *Influencing the EU REACH Policy Process*. Erasmus University .
2. Blatter, J., & Blume, T., 2008. In search co-variance, causal mechanism or congruence ? Towards a plural understanding of case studies. *Swiss Political Science Review*, 14(2), 315-56.
3. Bouwen, P., 2002. Corporate lobbying in the European Union: the logic of access. *Journal of European Public Policy*, 9(3), pp365–390.
4. Burley, Anne Marie & Mattli, W., 1993. Europe before the court. *International Organization*, 47(1), pp41-76
5. Campbell, D., 2005. The Biopolitics of Security: Oil, Empire and the Sports Utility Vehicle. *American Quarterly*, 57(3), pp943-972.
6. Cefic., 2006. *Cefic Comments on Commission Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Classification and Labelling of Substances and Mixtures based on the Globally Harmonised System*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/consultation_replies/061016_cefic_comments_updated_en.pdf [Accessed on July, 2012]
7. CEFIC., 2011. *At the Heart of CEFIC*. Available at <http://www.cefic.org/About-us/> [Accessed on July, 2012]
8. CEPE ., 2006. *CEPE Position Statement and Comments* . Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/consultation_replies/061019_cepe_specifcomment_en.pdf [Accessed on July, 2012]
9. CEPE., 2012. *CEPE*. Available at http://www.cepe.org/ePub/easnet.dll/ExecReq/Page?eas:template_im=100087&eas:dat_im=0501CF [Accessed on July, 2012]
10. Cohen, L., Manion, L., & Morrison, K. , 2007. *Research Methods in Education*. New York: Routledge.
11. Conca, 2010. Available at <http://www.concawe.be/content/default.asp?PageID=597> [Accessed on July, 2012]
12. De Jesus, A. M., 2012. Policy making process and Interest Groups: How do local government Associations influence policy outcome in Brazil and the Netherlands. *Brazilian Political Science Review*, pp69-101.
13. Delerux, T., 2007. The EU as negotiator in multilateral chemical negotiations: Multiple principles, different agents. *EUSA tenth biennial International Conference*. Montreal : IIEB.
14. Douglas-Scott, S., 2002. *Constitutional law of the European Union*. Longman.
15. Dur, A. , 2008. Interest Groups in the European Union: How Powerful Are They? *West European Politics*, 31(6), pp1212-1230.
16. Dur, A., 2008. Measuring Interest Group Influence in the EU. *European Union Politics*, 9(4), pp550-559.

17. Dur, A., 2008. Measuring Interest Group Influence in the EU: A note on methodology. *European Union Politics*, 9(4),pp 559-576.
18. Dur, A., & De Bièvre, D., 2007. The Question of Interest Group Influence. *Journal of Public Policy*, 27(1),pp 1-12.
19. ECHA,2006., Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/ghs/ghs_sc_volume1_en.pdf [Accessed on July,2012]
20. ECHA., 2009. *Introductory Guidance on the CLP Regulation*. European Chemical Agency .
21. ECHA., 2012. *Legislation-CLP Regulation*. Available at <http://echa.europa.eu/web/guest/regulations/clp/legislation>[Accessed on July,2012]
22. Eckley, N., & Selin, H.,2004. All Talk,little action: Precaution and European Chemicals Regulation. *Journal of European Public Policy*, 11(1), pp78-105.
23. ECPC . ,2012. *European Crop Protection Association*. Available at <http://www.ecpa.eu/content/about-ecpa>[Accessed on July,2012]
24. Egeberg, M., 1999. Transcending intergovernmentalism? Identity and role perceptions of national officials in EU decision making. *Journal of European Public Policy*, 6(3), pp456-474.
25. Eising, R., 2004. Multilevel Governance and Business Interest Groups in the European Union. *Governance: An International Journal of Policy, Administrations and Institutions*, 17(2), pp211-245.
26. Enterprise and Industry-European Commission., 2012. *Chemicals -Classification (CLP-GHS) archives*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/archives/index_en.htm#h2-2[Accessed on July,2012]
27. Europa . , 2010. *Economic and Monetary Policy*. Retrieved June 2012, Available at http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0031_en.htm [Accessed on June,2012]
28. European Commission . , 2012. *Chemicals Classification (CLP-GHS) archives : stakeholder consultation*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/archives/index_en.htm#h2-1[Accessed on July,2012]
29. European Commission . , 2012. *CLP/GHS-Classification, labelling and Packaging of Substances and Mixtures*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/classification/index_en.htm[Accessed on June,2012]
30. European Commission., 2001. *European Governance: A White Paper*. Brussels: European Commission.
31. European Commission., 2006. *Evaluation of the Stakeholder Replies*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/consultation_replies/results_internet_consultation_en.pdf[Accessed on July,2012]

32. European Commission. ,2008. *Proposal for a Regulation on Classification, Labelling and Packaging of substances and mixtures: Globally Harmonised System of Classification and Labelling of Chemicals (GHS) and its incorporation into Community legislation*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/ghs/ghs_further_background_2_en.pdf [Accessed on July,2012]
33. European Commission., 2012. *Chem archives: Consultation Replies*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/archives/consultation/replies_en.htm, [Accessed on May 2012]
34. European Commission., 2012. *Chemicals: CLP legislation, guidance and archives*. Available at <http://ec.europa.eu/enterprise/sectors/chemicals/documents/classification/>[Accessed on May 2012]
35. European Commission., 2012. *THE CO-DECISION OR ORDINARY LEGISLATIVE PROCEDURE*. Available at http://ec.europa.eu/codecision/procedure/index_en.htm[Accessed on May 2012]
36. EUROPEAN COMMISSION: ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL.,2006. *Chemicals and construction REACH: GHS IMPLEMENTATION: ON THE OPTIMAL LENGTH OF THE TRANSITION PERIOD*. Available at http://ec.europa.eu/enterprise/sectors/chemicals/files/ghs/ghs_sc_note_transition_period_final_en.pdf[Accessed on July,2012]
37. European Parliament. (2012). *European Parliament- Consultation Procedure*. Available at <http://www.europarl.europa.eu/aboutParliament/en/00c5e7159b/Consultation.html>[Accessed on July,2012]
38. European Union., 2012. *Decision making in the European Union*. Available at http://europa.eu/about-eu/institutions-bodies/index_en.htm[Accessed on June,2012]
39. European Union., 2012. *European Commission*. Available at http://europa.eu/about-eu/institutions-bodies/european-Commission/index_en.htm[Accessed on July,2012]
40. Friends of the Earth , 2012. *Friends of the Earth International*. Available at <http://www.foei.org/en/who-we-are>[Accessed on July,2012]
41. Friends of the Earth., 2012. *Friends of the Earth Europe*. Available at <http://www.energyunion.eu/en/partner/foee>[Accessed on July,2012]
42. Garrett, G., & Tsebelis, G., 1996. An Institutional Critique of Intergovernmentalism. *International Organization*, 50(2), pp269-299.
43. Greenwood, J., 1997. *Representing Interests in the European Union*. London: Macmillan.
44. Gschwend, T., & Schimmelfennig, F., 2007. *Research Design in Political Science: How to Practice what they preach*. Palgrave Macmillan .
45. Hall, R. L., & Deardorff, A. V., 2006. Lobbying as Legislative Subsidy. *American Political Science Review*, 100(1), pp69-84.
46. Haverland, M., 2009. How leader states influence EU policy-making: Analysing the expert strategy. *European Integration online papers*, 13.

47. Hix, S., & Hoyland, B., 2011., *The Political System of the European Union*. Palgrave Macmillan.
48. HSE. ,2011. *European Regulation (EC) No 1272/2008 on Classification Labelling and Packaging of Substances and Mixtures (CLP Regulation), adopting in the EU the Globally Harmonised System (GHS)*. Available at <http://www.hse.gov.uk/ghs/eureg.htm>[Accessed on June,2012]
49. Kassim, H., & Menon, A. ,2010. BRINGING THE MEMBER STATES BACK IN: THE SUPRANATIONAL ORTHODOXY, MEMBER STATE RESURGENCE AND THE DECLINE OF THE EUROPEAN COMMISSION SINCE THE 1990s. *ECPR Fifth Pan-European Conference*. Porto.
50. Kellstedt, P. M., & Whitten, G. D., 2009. *The Fundamentals of Political Science Research*. New York: Cambridge University Press.
51. Kluver, H., 2009. Measuring Interest Group Influence Using Quantitative Text Analysis. *European Union Politics*, 10(4), pp535-549.
52. Kluver, H., 2011. *Nuffield's Working Papers Series in Politics*. Available at http://www.nuffield.ox.ac.uk/politics/papers/2011/Heike%20Kluever_working%20paper_2011_04.pdf[Accessed on June,2012]
53. Keohane,R.O & Hoffmann,S., 1991. Institutional Change in Europe in the 1980's .*The New European Community:Decision making and Institutional Change*. Westview Press.
54. Lewis, J. ,2000. The methods of community in EU decision-making and administrative rivalry in the council's infrastructure. *Journal of European Public Policy* , 7 (2), pp261-289.
55. Liefferink, D., & Skou-Andersen, M., 1998. Strategies of the 'green' member states in EU environmental. *Journal of European Public Policy*, 5(2), pp254-270.
56. Lindseth, P. L. ,1999. *Democratic Legitimacy and the Administrative character of Supranationalism: The example of the European Community*. Available at http://heinonline.org/HOL/Page?handle=hein.journals/clr99&div=35&g_sent=1&collection=journals[Accessed on May,2012]
57. Lowery, D., 2007. Why Do Organized Interests Lobby? A Multi-Goal, Multi-Context Theory of Lobbying. *Polity*, 39(1), pp30-55.
58. Mahoney, C., 2007. Lobbying Success in the United States and the European Union. *Journal of Public Policy*, 27(1), pp35-56.
59. Michalowitz, I., 2007. What determines influence ? Assessing conditions for decision-making influence of interest groups in the EU. *Journal of European Public Policy*, 14(1), pp132-151.
60. Milieu., 2005. *Technical support for the preparation of Annexes for the draft EU legislation implementing the Globally Harmonised System for Classification and Labelling of Chemicals (GHS)*. Milieu Ltd .
61. Moravcsik, A., 1997. Taking Preferences Seriously: A Liberal Theory of International Politics. *International Organization*, 51(4), pp513-553.

62. OECD ., 2012. *The GHS and the Global Partnership:A Success story from Rio to Rio-Achievements, Lessons learnedand Future Directions*. Unitair .
63. Persson, T., 2005. *Democratizing European Chemicals Policy:Lessons from the open consultation on REACH*. Mannheim Centre for European Social Research MZES.
64. Pesendorfer, D., 2006. EU environmental policy underpressure: Chemicals policy change between antagonistic goals? *Environmental Politics* , 15 (1), pp95-114.
65. Pollack, M., 2001. International Relations Theory and European Integration. *Journal of Common Market Stduies*, 39(2),pp 221-244.
66. Pollack, M. A., 1997. The engines of Integration? Supranational Autonomy and Influence in the European Union. Seattle: 5th Biennial International Conference of the European Community studies Association,pp 1-55.
67. Pollack, M. A., 2008. Member-state principles, supranational agents and the EU budgetary process, 1970-2008. *Conference on Public Finances in the European Union*, Brussels, pp. 1-67.
68. Richardson, J., 2000. Government, Interest Groups and Policy Change. *Political Studies*, 48, pp1006-1025.
68. Richardson, J., 2006. *European Union: Power and Policy Making (3rd Edition)*. Routledge
69. Ruzskowski, H. J., 2006. SUPRANATIONALISM AS A CHALLENGE FOR THE EUROPEAN UNION IN THE GLOBALIZED WORLD. *Global Jean Monnet Conference ESCA-World Conference*. Brussels.
70. Sartori, A., 2008. *DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION*. Available at <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2008-0140&language=EN#title1>[Accessed on July,2012]
71. Thomson, R., & Hosli, M., 2006. Who Has Power in the EU? The Commission,Council and Parliament in Legislative Decision-making. *Journal of Common Market Studies*, 44(2), pp391-417.
72. Traber, D., 2010. Preference attainment in Swiss legislative decisioin-making:Draft prepared for the annual meeting of the Swiss Political Science Association, University of Geneva.
73. Tsebelis, G., 1990. *Neste Games: Rational Choice in Comparative Politics*. Oxford: University of California Press.
74. Tsebelis, G., & Garrett, G., 2001. The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union. *International Organization*, 55(2), pp357-390.
75. Vaus, D. A., 2001. *Research Design in Social Research*. Sage Publications.
76. VCI . ,2006. *Comments of the Verband der Chemischen Industrie e. V. (VCI) to the Stakeholder Consultation "On the Implementation of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in Community Legislation"*. Available at

http://ec.europa.eu/enterprise/sectors/chemicals/files/consultation_replies/061012_vci_generalcomments_en.pdf[Accessed on July,2012]

77. VCI., 2012. *Verband der Chemische Industrie E.V.* Available at <https://www.vci.de/Seiten/Startseite.aspx>[Accessed on July,2012]
78. Verdun, A., 2002. *The Euro: European Integration theory and Economic and Monetary Union*. Rowman and Littlefield Publishers INC.
79. Weiler, F., 2011. *Preference Attainment: Why are some Countries more Successful in Negotiating the Earth's Climate?* Zurich: Centre for Comparative and International Studies .
80. Wonka, A., & Warntjen, A., 2004. *Governance in Europe: The Role of Interest Groups*. Nomos Verlagsgesellschaft .
81. Yin, R. K. ,2003. *Case Study Research: Design and Methods 3rd edition*. Sage Publications.

APPENDIX-I

Online questionnaire used by the Commission for open consultation

Implementation of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) in Community Legislation ((European Commission,2006)

Stakeholder Profile
Question 1: Please enter your contact details, e.g. name, company/organization, address, phone number etc. (max. 400 characters)
Question 2: Please specify the location of your organization headquarters. (1 answer)
Question 3: Please specify your primary field of activity. (1 answer)
Question 4: Please specify the most relevant role(s) of your enterprise. (max. 2 answers)
Question 5: Please specify the number of employees of your enterprise.
Question 6: To what extent (percentage of annual turnover) are you importing from outside the EU?
Question 7: To what extent (percentage of annual turnover) are you exporting outside the EU?
Confidentiality statement: Please state if your identity and / or contribution may be presented on the Commission's website for public access.

Legislative Proposal
Question 8: At the World Summit for Sustainable Development in Johannesburg 2002, the EU Member States and stakeholders from industry and non-governmental organizations have endorsed the UN implementation plan to have the GHS operational by 2008. Do you agree to implementation of the GHS in Community law by means of a Regulation replacing the current EU classification and labeling system for substances (Directive 67/548/EEC) and preparations (Directive 1999/45/EC)?
Please specify these conditions.
Question 9: After the entry into force of the GHS Regulation, companies will be allowed to apply either the current or the GHS criteria for classification and labeling during a transitional period. By the end of the transitional period, reclassification and re-labeling of substances and mixtures according to the GHS rules will have to be completed. The length of the transitional period is a trade-off between giving the necessary time for companies to adapt to the new system and reducing the burden of applying a dual system. The GHS draft Regulation proposes 3 years after entry into force of REACH for substances and further 4 or 5 years for mixtures. The choice of the length of the transitional period for mixtures is further explained in the enclosed note by the Commission Services. Do you agree to the proposed timelines? You are invited to give an answer for substances first.
Please answer the question related to the transitional period now for mixtures. (1 answer)
Question 10: The GHS draft Regulation does not propose additional hazard categories to those already existing in the current EU system, i.e. Directives 67/548/EEC and 1999/45/EC for supply & use, or needed for reasons of consistency with transport legislation. Do you agree that this is the right approach?

Question 11: Do you have any specific comments on the text of the draft proposal for the GHS Regulation? If you have comments, you may insert them in the text box below or send them by email to entr-ghs@ec.europa.eu. If you do not have any comments, please insert "none" in the text box.

Impact Assessment Study

Question 12: The costs and benefits of implementing the GHS have been assessed in the RPA / LE impact assessment study. On the basis of the cost items identified in this analysis, do you think these GHS implementation cost estimates are generally plausible? (max. 4 answers)

Please specify the cost items that you consider to be underestimated and give further explanations.

Question 13: It is expected that harmonized criteria for classification and labeling all over the world will benefit trade in chemicals with non-EU countries (EU exports and imports into the EU): companies incur less trade-related costs as they no longer will have to spend time and resources to deal with different criteria for classification and labeling. Table 2 in the RPA and London Economics study summary shows that the GHS implementation costs are on average relatively small. On the basis of your experience, do you agree with the consultants that these costs will be outweighed by the trade-related cost savings of the GHS?

Question 14: Do you have other specific comments on the RPA / London Economics impact assessment study?

Analysis of Potential Effects on EU Downstream Legislation

Question 15: The analysis related to EU "downstream" legislation examines potential effects of the proposed GHS Regulation on the various EU downstream acts which refer to the current system of classification and labeling. The analysis suggests that potential effects could be minimized by modifying the references to the classification criteria in various acts without changing their scope. Do you agree with the findings of this analysis? (max. 2 answers)

My comments refer to the following parts of the analysis: (multiple choice; max. 26 answers)

You may now insert your comments in the text box below or send them by email to entr-ghs@ec.europa.eu.

If your comments refer to other acts, please specify these acts. Please insert your comments in the text box below or send them by email to entr-ghs@ec.europa.eu.

APPENDIX-II

Main changes made by the Commission in response to the Actors comments:

- I. “Clarification of obligations in the supply chain; *in Article 4, the roles of the different actors in the supply chain (manufactures, importer, downstream users and distributors) were specified.*
- II. Clarification of the concept “hazardous” vs “dangerous”; *Article 3(2) of the Commission proposal was deleted, because not all EU languages allow the differentiation of "hazardous" and "dangerous", therefore the use of the term "dangerous" was avoided and the applicable scope defined for REACH in Article 56 of the CLP Regulation and for the downstream acts in the amendments to the acts themselves.*
- III. Clarification of the “read across” and “expert judgment” concept; *in Article 9(4) and Annex I Part 1 the use of "expert judgment" was further specified.*
- IV. Use of human data obtained from other sources; *Article 7 of the Commission CLP proposal did not allow testing on humans and non-human primates. Both the EP and some Member States (MS) were concerned that this would mean that certain necessary (but very limited) tests would no longer be allowed (“patch testing”). The compromise allows now the use of human data obtained from other sources, such as clinical studies, for the purpose of classification.*
- V. Confidentiality, use of an alternative name; *Article 26 was aligned closer to the provisions in Directive 1999/45/EC and under REACH.*
- VI. Labeling of small packaging and of outer, inner, single packaging; *the labeling exemptions for small packages (Article 31) were further developed and the provisions for outer, inner and single packaging (Article 36) clarified by the co-legislator.*
- VII. Deadlines for labeling up-date; *Article 33, also here the provisions were further specified.*
- VIII. Harmonization of information to poison centres; *Article 45 requires the Commission to carry out a review to assess the possibility of harmonizing the information, including the format, that suppliers need to submit to poison centres and to make a proposal, if appropriate.*
- IX. Scope of child resistant fastening (CRF), tactile warning (TW); *in Annex II, the provisions were fully aligned with the provision of the current legislation.*
- X. Possibility to establish networks for specific product sector; *Annex I Part 1 allows suppliers in an industry sector to cooperate through formation of a network to share data and expertise when classifying substances and mixtures. However, each supplier remains fully responsible for any requirement under the Regulation.*
- XI. Promote C &L development for PBT/vPvB at the UN; *in Article 53, MS and the Commission are required to promote the harmonization of the criteria for classification and labeling of PBTs or vPvBs at the level of the United Nations” (European Commission, 2008)*