The use of Covenants in Target Group Policy:
Evaluating a Dutch Environmental Policy Innovation

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This paper describes and analyses the use of new policy instruments, covenants, in modern environmental policy in the Netherlands, with a focus on the Target Group Policy, a collaborative sector-based policy program. The new strategy leans heavily on more voluntary approaches. Voluntary agreements have thus become a widely used policy instrument in the Netherlands. This reinforces the strong neo-corporatist traits of the Dutch society with its tendency towards bargaining and cooperation with interest groups. Over the years the authoritarian policy style with a distant, negative attitude towards target groups has changed into a new approach designed to encourage self-regulation. Instead of simply imposing legislation, the Dutch government often concludes agreements with, for example, relevant sectors of industry regarding the implementation of environmental objectives. Through negotiations between sectors of industry, the Ministry of the Environment, and regional governments, agreements are sought concerning the contribution of specific industrial sectors to the goals of the NEPP. These goals aim for 50-90 percent emission reductions for specified pollutants. Since 1989 more than 70 agreements have been reached, including 11 broad-based agreements (covenants) with sectors of industry.In 2002/2003 we carried out a study on the effectiveness of the covenants, commissioned by the Dutch ministry of the Environment (VROM). It was an extensive study that included the industry sector covenants. The focus in the project was on the identification of success and fail factors, building on the insights of a European project Neapol (De Clercq 2002). The project has resulted in a checklist for the future use of covenants. Our central conclusion on the use of the covenants is quite positive, although we have also identified several constraints. In the paper we highlight the guidelines for future use as well as our analysis on why the covenants are relatively successful in the Netherlands.

1. Introduction

The Dutch Target Group Policy, introduced to implement the first National Environmental Policy Plan (NEPP), is the central element in the current Dutch system of industrial environmental regulation. Since the level of ambition was increased enormously in NEPP, it was obvious that these targets could not be reached by conventional policy-instruments only. The publication of the ambitious NEPP coincided with the growing lack of confidence in the traditional policy approach with its emphasis on direct regulation. The new ambitions and the lack of confidence in traditional approaches thus called for another strategy and style than the authoritarian style that accompanied the use of direct regulation. The new strategy should aim more specifically at eliciting private initiative and 'shared responsibility'. Instead of setting technology-forcing standards unilaterally the approach builds on close collaboration with industry. In this paper we describe and analyze the use of covenants in Dutch environmental policy. Our main question is what factors explain the success or failure of those instruments in order to establish their value in the total mix of policy instruments.

The setup of the paper is as follows: in the next section we will elaborate somewhat more on the development and the description of the use of covenants in Dutch environmental policy. Section 3 presents a discussion of the four hypotheses that were the theoretical background of the EU research project Neapol, and summarizes briefly its results. Section 4 revisits these same hypotheses, but this time on the basis of the material of the Dutch evaluation study, in which a 'near-population' sample of 57 covenants was studied by document analysis and interviews with 'neutral key actors', mostly the mediators that chair and facilitate the negotiation processes in all but a few cases. This study did not confine itself to the four hypotheses on success factors. In section 5 a checklist of relevant factors for covenant success is presented and discussed, that is derived from this broader range of variables. In section 6 we draw up our conclusions.

2. The development of the use of covenants in Dutch environmental policy

Present Dutch environmental policy holds a somewhat unique position in the world. This is due not so much to its results, although those are also regarded in a positive way. Rather, it is due to its approach, the way in which the policy was realized and is being implemented. Often the Dutch National Environmental Policy Plans and the way these are implemented through national target group consultations, covenants, the activation of various intermediary organizations and the stimulation of self-regulation (such as the OECD 1995), are regarded with envy as well as – sometimes – disbelief. Many of these things are also wholly or partly seen in other countries, but nowhere else does this approach exist so fully and so dominantly compared to other policy strategies. In fact, this policy approach was not followed from the very beginning of Dutch environmental policy, but implies a major shift away from the environmental policies of the seventies (Bressers 1991). Here we will focus on environmental policy in the narrower sense, namely the policy followed by the General Directorate of Environmental Policy and its forerunners.

The seventies: construction of the legal framework
Already in the seventies, Holland liked to see itself as a 'pioneering country' in the field of environmental policy. However, this referred to the speed with which legislation was passed and the strictness of policy-makers' intentions rather than to the special nature of the policy approach. This approach may be characterized as a relatively conventional one, not much different from what was being done in many other countries in the same period. When various environmental problems had been recognized by politicians and a first wave of public attention arose for the environment, the construction of a legal framework was begun. This resulted, in the course of the seventies, in a series of laws dealing with the various sectors of the natural environment, such as water and air, and making pollution of the environmental sector in question with waste materials subject to licensing.
Around 1980 this stage of policy making was more or less completed. At the same time, however, the first developments began to be seen which were to lead to considerable changes in the policy approach.

The eighties: evaluation and adjustment followed by rapid development
Early policy evaluations of the impact of the new environmental acts (e.g. Twijnstra Gudde 1981; for a survey see Bressers and Coenen 1989) showed the following: the application and enforcement of the licensing systems showed serious deficiencies. Licensing procedures took a long time – perhaps too long – to be processed. Adjustment problems, having to do both with content and procedure, arose between the various types of sectoral legislation.
Various measures were taken in response to these new insights in the course of the eighties:

- The licensing obligation was limited by the gradual introduction of systems of general regulations for many branches of industry. The end result of this will be that the vast majority of firms will no longer require individual environmental licenses. This reduces the procedural burden on the government and on businesses.
- The capacity to implement environmental acts was increased. First this was done mainly through the stimulation of a planned approach to policy implementation by means of subsidies (Noise Pollution Act and environmental implementation programs). Later on, more extensive financial stimuli were also applied to policy implementation, combined with the obli-

gation imposed on municipalities to cooperate in implementing the environmental tasks. This led to a considerable increase in the number of environmental officials.

- An 'umbrella law' was introduced, the General Environmental Hygiene Regulations Act, which coordinated the procedural aspects of the various sectoral laws and provided additional opportunities for in-depth coordination, such as 'Environmental Impact Reporting'.
- Furthermore, policy memoranda on environmental policy were increasingly formulated in terms of 'environmental issues', i.e. environmental problems exceeding the boundaries of the various sectors. Eventually, the Environmental Control Act was passed which regulated the licensing systems of most sectoral laws.

More than a hundred policy evaluation studies were performed in the field of Dutch environmental policy (Schuddeboom 1994). There is almost no other area in which the authorities so expressly tried to make it possible to learn from experience in policy-making. However, the new evaluation studies also showed that in the course of the eighties the impact of these policies did not quite live up to expectations. Moreover, new environmental problems kept appearing on the agenda, particularly in the second half of the eighties.
The acceptance in the Netherlands of the principle of 'sustainable development' from the Brundtland report (1987) and its rapid application to the Dutch situation by the State Institute of Public Health and Environmental Hygiene (RIVM 1988) subsequently made redefinition of environmental policy as a matter of (inter)national priority inevitable.

In response to these reports, the first National Environmental Policy Plan (NMP) was drawn up, which did not just redefine the policy view of the environmental problem, but also set new and more ambitious targets. This national plan, which was unanimously accepted in Parliament, was much admired abroad. Nevertheless it was criticized at the national level. In addition to the remarks made by the environmental movement, which called for even more radical targets, this criticism focused on the fact that in view of the still disappointing results of the licensing system, insufficient thought had yet been given within the National Environmental Policy Plan to the way in which these ambitious targets might be achieved. After all, not only did the evaluation studies show that the effectiveness of environmental policy had its limitations, but also gradually a more general picture emerged that the government could influence developments in society only to a limited extent, let alone steer these developments. In retrospect we can see this moment as a breaking point in the development of the policy strategy of Dutch environmental policy. With its greatly intensified objective and a new awareness of the limited possibilities offered by the current policy approach, environmental policy, at the height of its public support, was urgently in need of a revision.

The nineties: a 'new deal'
It was for this reason that the 'NMP+' (National Environmental Policy Plan Plus) emphasized the changes that were needed in policy strategy. Collaboration offers the opportunity to bring together experts from a variety of different disciplines and arenas to fashion solutions that can go beyond the limited perspectives of individual stakeholders (Gray 1989; Hartman et al. 2002). The NMP+ pays a lot of attention to the partners that are necessary to realize these goals. A special Appendix on policy instruments, among other things, announced new directions in policy strategy, which were intended to supplement the existing emphasis on licensing and other forms of direct regulation. One of these strategies was to try to induce the target groups to take more responsibility themselves for a clean environment.

This was elaborated in the Dutch target group policy. The objectives of the NMP+ were taken as a starting point for consultations with representatives of, by now, nearly all the main branches of industry. When an agreement is reached on the contribution that the branch in question has to make to achievement of the objectives, this agreement is usually recorded in a covenant. These covenants are not just intended to directly influence the behavior of the firms, but also to serve as a guideline for licensing at a later stage. Also the subsidizing of new environmental technologies and other policy instruments takes place increasingly in the context of target group policies. It is no exaggeration to say that target group policies have come to dominate the environmental policy agenda where this is focused on business and industry.

The results of these policies seem encouraging up to now insofar as they deal with technical adaptations of production processes (RIVM 1995). It is true that there are several fields where target achievement is not 'on course' toward the NMP objective. But this does partly involve the environmental behavior of 'hard-to-reach target groups', which makes organized consultation more difficult to accomplish and yield results (NMP 2 1993, p. 11), and environmental problems for which technical adaptations are difficult to apply (such as CO^2 emissions).
Besides, strong economic growth leads to a rapid increase in the environmental burden (RIVM 1996).

Sensible choices or fortunate coincidence?
This concludes our presentation of some developments that have taken place in Dutch environmental policy. Above we have consistently presented these developments as rational responses to new insights and circumstances. The perception of the environmental problem gave rise to a policy that corresponded to that of our neighboring countries. Evaluation studies led to attempts to remove the problem areas that were found. New insights into the environmental problem resulted in redefinition. Recognition of the limitations of the existing instrumentation yielded a new approach. This picture is not only outlined above, but this is also how successive policy-makers have defined their policy actions.

But is the argument that is presented here really correct? Are all these developments really only the result of considered choices? Some doubts arise if we look not only at what has in fact been done, but also at what might have been done but has not in fact been accomplished.

Firstly, together with the development of environmental policy as a complex of, chiefly, licensing systems in the seventies, very different approaches were chosen by other Ministries in other policy fields. Thus, energy conservation was encouraged by the Ministry of Economic Affairs through enlightenment and subsidies (Van der Doelen 1989), water pollution was combated by the Water Boards and the Ministry of Traffic and Waterways by means of government facilities and charges (Bressers, Huitema & Kuks 1995), and after it had long made refused to take the problem seriously, the Ministry of Agriculture, Conservation and Fisheries tackled agricultural pollution, using the great variety of instruments that is also typical of general agricultural policy (Termeer 1993). Briefly put: the choice of licensing systems as a means to combat pollution by firms in particular, was common practice if we look at what was done abroad, but it was not completely self-evident.

Secondly, already in the early eighties the first attempts were seen to get in touch with the target groups. The environment minister Winsemius (see Winsemius 1986: 61-67) initiated vigorous efforts to persuade the environment policy-makers and target groups to abandon their en-

trenched positions. Direct individual contacts served to mitigate any hostile thinking in the individual Ministries, making the Ministries' own policies less dependent on the involvement of other Ministries. This appeared to have been inspired by general ideas on good management rather than being a response to the inadequacy of other policy instruments. In those days there was not yet any question of a 'crisis mood' concerning the environment. Even before the National Environmental Policy Plan (NMP) was passed, the then Minister Nijpels concluded several covenants (Klok 1989). Such developments did not take place, or to a far lesser extent, e.g. in Germany (viz. Weidner 1996). Briefly put: already preceding the 'bankruptcy' of the old approach, a great deal of preparation went into the approach which was to bear fruit only in the nineties.

Thirdly, when Alders, the Minister under whose leadership the new policy approach really took shape, was appointed, he still stated that no new covenants would be concluded during his term of government. One year later the NMP announced not one, but two new directions that were intended to supplement policy strategy. In addition to the emphasis on cooperation with partners, at least as much attention was given to the need to develop a system of financial stimuli. However, little came of this in practice. Alders even declared that in retrospect he felt that his efforts on behalf of a CO^2 charge, which did not make it, was 'his greatest mistake as a Minister', because he gave those who opposed environmental policy the chance to regroup and join forces, and because the proposal cost a disproportional amount of energy on the part of himself and his Ministry (oral information, 1996). In brief: the choice of the 'consultation strategy' was certainly not an undisputed one, or free of competition by other new innovative ideas. Why this addition did bear fruit while the others did not, cannot be understood from the perspective of the intentions of the politician in question.

On reflection we find, therefore, that the changes in direction of this policy partly anticipate, partly lag behind the developments to which they appear to be a logical response. Apparently, other forces were at work – at least partly – than purely rational responses to the above-mentioned insights and changing circumstances to which they appeared to correspond so beautifully, at any rate from a distance.

In previous articles, one of the authors of this paper already examined these developments from the perspective of the relationship between government and target groups in the policy network (Bressers 1998, Bressers & O'Toole 1998). The chance for a certain instrument type to be chosen is explained from the degree to which it corresponds with the existing ways in which authorities and target groups interact in the policy network. Instrument choice is seen as to re-create and even reinforce the ongoing relationships under normal conditions. These relationships are characterized by two factors: the degree of interconnectedness (a/o. the intensity of interaction[1]) and the degree of cohesion (support for the other party's main objectives). Negotiated agreements are concluded to have the best chance to be preferred under conditions of high interconnectedness and low cohesion. The reason is that more equal objectives might make a negotiation based approach feasible, but not necessary or preferred as various support schemes are more likely.

Present position of the approach

[1] Which can also include multiple affiliations of persons to different network organizations and of organizations across functions, job-hopping between organizations on both side of the public-private distinction, joint committees, intermediate organizations, etceteras.

A fundamental principle underlying the 'covenant' policy approach is that the responsibility for reaching the environmental targets lies primarily with the target group (Suurland, 1994). Apart from negotiated agreements (or: covenants), also environmental business management systems and their certification (ISO, EMAS), environmental reporting and accounting and liability rules can be seen in this perspective. Reasons for the branches of trade to join into the negotiated agreements are first the recognition that the continuation of industrial production is at stake in defining the boundaries of sustainable development. Second, the influence of the industry would only increase compared to the situation at present. Finally, the market increasingly made demands on environmental conditions (Van den Broek and Korten, 1997). Furthermore, Suurland (1994) recognizes the major advantage of the streamlining of licensing and enforcement procedures. Besides, he emphasizes the advantages of integration of sectoral industrial and environmental policies and the integration of environmental and strategic company planning.

In 1995 the Dutch Prime Minister presented a document which contained indications for negotiated agreements (Staatscourant, 1995:249). The document poses that whenever a choice has to be made between regulation or a negotiated agreement, regulation should be preferred. However, if more efficacy and effectiveness is expected of the conclusion of a negotiated agreement, the option could be considered in four cases. First, in anticipation of regulation, a negotiated agreement can meanwhile reach results. Second, if regulation is expected to become superfluous in the near future, this can be speed up by concluding a negotiated agreement. Third, a negotiated agreement can serve the goal of exploring possible forms of regulation. Finally, a negotiated agreement might be able to support regulation. To what extent negotiated agreements are embedded in Dutch environmental policy today is shown by the fact that within the Dutch ministry for the environment regulation is again and officially labeled as a 'negatively prioritized policy instrument'. Since subsidies and taxes are in many cases no option either, this in effect means that negotiated target group policies still have the lead in Dutch environmental policy.

The challenge of environmental policy has shifted from winning corporate co-operation to harnessing corporate creativity. Dutch environmental policy is now emphasizing consultation between government and target groups while encouraging self-regulation among businesses. Such a policy calls for delicate handling. Because consultation can only succeed if realization of the environmental objectives is ultimately perceived by all participants to be 'inevitable', and this perception can only be achieved by means of sufficient social and political pressure. In such a twin-track policy, therefore, it is vital to achieve an optimal fine-tuning of, on the one hand, legislation and enforcement and, on the other, consultation and self-regulation.

3. Four key factors influencing covenant success: the multiple case study 'Neapol'

In the period 1998 to 2000 an EU sponsored study was held on the performance of 12 negotiated agreements in 6 different European countries. This study was the Neapol project (Negotiated Environmental agreements: Policy Lessons to be Learned). The study was coordinated by CEEM (De Clercq 2002) and one of the authors of this paper was participating in the team. Based on the existing literature on voluntary agreements, during the theoretical phase 4 hypotheses were postulated concerning the influence of the socio-economic context on the performance of negotiated agreements.

The central question of the Neapol research was the following: *'Which specific characteristics of negotiated agreements and which factors within the institutional-economic context wherein a negotiated agreement is used, influence the performance of this negotiated agreement?'*

3.1 Success indicators and the theoretical influence of four factors

Based on theoretical insights gained during the theoretical phase the performance of environmental negotiated agreements was defined as a mix of the degree of application, impact and resource development (see also Brand, Bressers & Ligteringen 1998: 21-36). This means that a multi-facetted perspective on agreement's performance was taken. These facets of 'performance' were specified as follows:

A. Application:
1a. Compliance with (interim) environmental performance targets is good
1b. The agreement is not broken down or eroded substantially during its intended life span
2. Compliance with the individual obligations is good

B. Impact:
1. There is a significant improvement on the target environmental variable, compared to the business as usual situation
2a. The application of the agreement is cost-efficient with respect to compliance
2b. The administration cost of the agreement is fairly low
3. There is no negative impact on competition due to the application of the agreement

C. Resource development:
1. The agreement led to an important improvement in the attitudes of the parties concerning environmental issues
2. The agreement led to an important improvement in learning
3. The learning has led to substantial innovation in policy-making in this area
4. The agreement led to greater trust and more productive relationships between parties
5. The agreement has generated product- or process-related innovations and/or market opportunities

Four hypotheses were postulated regarding the relation between the elements that constitute the institutional-economic context and the performance of the negotiated agreement. They are given here, together with some of the theoretical backing from the "Contextual Interaction Theory" (Bressers & Klok, 1988, Klok 1991, Bressers & Ringeling 1995, Bressers 2002).

Policy hypothesis: The fact that the public environmental policy evolves in a tradition and in a climate of consensus seeking, joint problem solving, mutual respect and trust is a crucial positive factor for the performance of negotiated agreements.
When parties are used to a certain instrument such an approach gets the benefit of all kinds of 'sunk costs'. Organizations develop what is called standard operating procedures (cf. Peters 1993) – learned responses of the organization to certain problems. These standard operating pro-

cedures are important for organizations for they enable an efficient response. Without them the response would be slower and the organization would likely be less effective. The parties already know how to deal with the intricacies of the policy process and the incentives that stem from it and most prerequisites for its functioning are already in place (Bressers, 1985). There are strong indications that environmental agreements/covenants are used more often and more successfully in countries where there is a tradition of decentralization, consensus-building and negotiation in decision-making processes (EEA 1997: 11). While consensus seeking and joint problem solving are the essence of negotiation the independent variable in this hypothesis is really only twofold: the continuity (tradition and climate) and the prerequisite resource of mutual respect and trust (Klok 1993: 150). Though the latter can be expected to be included in the former, the opposite is not necessarily true. Functional respect and trust can also originate from a younger date or even being build up during the process itself.
The implementation process can be typed a "social interaction process" between at least two parties. The "Contextual Interaction Theory" (Bressers 2003) stresses that this kind of processes can be explained by the combined values of the motivation, information and power of the actors involved, forming "configurations" or "settings" which explain or predict certain types of interaction and their probable effects. Following this line of reasoning, one can argue that a tradition of trust and productive joint problem solving has these first order effects:

- the motivation of the authorities ("implementers") will be influenced to be somewhat more hesitant to force an unwelcome demand upon the target group out of fear that the gain of force will be counterbalanced by damaging this productive relationship; the motivation of the target group will be equally moderated by the fear of damaging the long term trust relationship;
- the information of both the implementers and the target group will tend to be on a higher level due to the opener and more credible exchange of information which is related to a tradition of trust and joint problem solving;
- the power position of both actors will not be substantially changed; due to the good relationship, in the short run a tactical use of the other side's valuing of the relationship to exert pressure might be possible, but soon it would turn out that such a one-sided use consumes the resource of trust rapidly.

A second order effect might be that:

- the moderation of the motivations of authorities and target groups will further co-operation-type interactions that are related to a robust application of the agreement as long as the contents of the policy isn't thought of in hindsight as over-ambitious; in that case the ambition of the authorities to implement may falter and no real implementation will take place or only in an eroded form.

This reasoning supports the hypothesis, with the specification that in cases where the authorities in hindsight regard the agreement as over-ambitious, the same mechanisms might produce a more lax implementation. Analogous reasoning might hold for the previous process of negotiation previous to the agreement though the theoretical module was not developed for that part of the policy cycle.

De Bruijn and Lulofs (1996: 100) see the inclination to invest in the *building up of resources* to enable future compliance as a consequence of "congruent" goals of the actors in a network. Likewise a tradition and climate of trust provides a good climate for learning. A tradition of trust might replicate itself by the way the policy process operates in a specific case. Of course this is

part of the reason the approach of negotiated agreements is used to begin with. By preventing trench-warfare the ability to learn from experiences and take next steps accordingly remains better intact. A negotiated agreements approach is not only partially dependent on a climate of trust, but can also be seen as an investment in the good will and commitment of the target groups. The question here is whether there is a basis to suppose that this envisaged positive effect will be stronger when there already existed a climate of trust to begin with. Probably the performance on this point will be better under these circumstances, but there is no obvious basis to suppose that the contribution of any singular productive case to this climate will be bigger when trust already has a long tradition, as compared to the situation in which the case is one of the first building blocks for such a climate of trust. Nevertheless, a case will contribute more to the replication of trust and thereby the ability to learn and to invest in necessary resources for future environmental improvements, to the degree that it is regarded as productive by the participants. As we saw above there is some reason to hypothesize that the likelihood for this increases when a tradition and climate of trust already is in place before the case starts.

Instrumental hypothesis: The fact that the public policy makers show readiness to use alternative policy instruments, as a stick behind the door to deal with the environmental problems, in case the negotiated agreement fails, is a crucial positive factor for the performance of negotiated agreements.

'Speak softly and carry a big stick' is an old adagio. A policy that aims at encouraging companies for the good, rather than restricting them from the evil, calls for a delicate balance between external pressure and internal motivation. A policy approach on the basis of 'consensual' negotiations can only succeed if the realization of the environmental objectives is ultimately perceived by all participants to be 'inevitable', and this perception can only be achieved by means of sufficient social and political pressure. In such a twin-track policy, therefore, it is vital to achieve an optimal fine-tuning of legislation and enforcement on the one hand and consultation and self-regulation on the other (cf. de Bruijn and Norberg-Bohm 2001).

Alternative instrumental options form an important part of the power position of the authorities viz. the target group, though power is only relevant when objectives differ (Klok, 1989: 232). In case that the authorities are the driving force (and the sector is opposing new obligations - the situation implicitly supposed in the hypothesis) a strong power position of the authorities will not prevent the risk of conflicts and delay, but diminishes the risk that the contents of the agreements will be compromised down to an inadequate level.

Compliance with the agreements, even if these are costly for individual firms, depends among others on the power relation between the firms and the authorities. The possibility of alternative instruments can of course be an aspect here. Even when such instruments are formally not put in operation yet, there might be an indirect influence on the cost-benefit balance of the sector. Often entering a process of negotiating an agreement has a clear purpose for the sector in preventing the alternative of direct regulations. To reach this goal, concluding an agreement only provides delay, if the agreement is not put into practice in a satisfactory way.

A counter argument is that what is rational on the level of the sector, is not obvious so on the level of the individual firm, that may act as a free rider. Here an even more indirect influence could be more important, that does not enter the decision making process of the firm in the sphere of the individual cost-benefit balance, but in the sphere of social and normative/legal motives. Compliance is partially dependent on the idea that the changes are inevitable. Knowing that they will have to improve the environmental performance one way or another anyhow might

create a sense of 'normality' to the induced changes. This sense of inevitability can be assumed to be productive not only for the effectiveness of the agreement (degree of compliance induced by the agreement), but also for lowering the transaction costs involved in implementation. Like all high effectiveness a dynamic effect might also be that actual costs of compliance after a while get substantially lower by increased circulation of relevant information, technological improvements and new internalised business routines (Bressers, 1989: 30-40).
The effect of a stronger power position of the authorities and of their willingness to take leadership, on the degree to with the agreement stimulates learning and openness for future steps is partially a resultant of the effects discussed above. More effectiveness means generally positive feedback, especially in as far as it is not associated with towering costs. Typically a negotiated agreements approach would not only enhance, but also depend on a certain degree of openness (cf. the first hypothesis). For positive feedback to have a maximum influence it is important that the 'screen' of perception of 'laggards' is opened. That means that parts of the target group might need a display of political leadership to 'open up'. Having instrumental alternatives and display the willingness to use them, might provide this incentive.[2]

Sectoral hypothesis: The fact that the industry sector involved is homogeneous, has a small number of players and is dominated by one or two players, or has a powerful industry association that can speak for all its members, is a crucial positive factor for the performance of negotiated agreements.

The independent variables in the hypothesis have a common denominator. In instrument theory, especially the modules on the feasibility of policy instruments these variables are used as indicators of the 'accessibility' of target groups. In Dutch environmental policy with its emphasis on negotiated agreements with sectors of industry, from the second NEPP onward, less accessible target groups are regarded one of the main sources of remaining environmental burden. The factors mentioned in the hypothesis all contribute to the inability of the target group to negotiate as one collective actor and thereby to the difficulty for the authorities to apply a negotiated agreements approach.

It is consistent with the above to suppose that when an agreement is reached despite of these contra-indications not only the quality of the negotiation process and the resulting agreement, but also the possibilities for an adequate application to the individual members of the target group will be hampered. Only in case that for this purpose another type of instrument is chosen (e.g. licensing) the framework of the agreement can prove to be a useful guideline for implementation, but in that case it is not the negotiated agreement that is evaluated.

Competition hypothesis: The fact that firms can gain competitive advantages by co-operating in the negotiation and by compliance of a negotiated agreement, is a crucial positive factor for the performance of negotiated agreements, due to the consumer pressure.

While some of the hypotheses address to factors that relate most to the resources of the actors involved (like information and bases of power), the factor that is stipulated here is more related to the motives of one of the parties, the target group. To use consumer pressure as an in-

[2] As the well know joke goes: "A farmer bought a donkey from a trader that assured him that it was not a stubborn and disobedient animal at all and would only need some loving care and comforting words to fulfil its tasks. The other day the farmer came back stating that he did precisely what the trader told him, but the donkey would not do a thing. The trader got a two-by-four and smashed the donkey on the head. The farmer got angry about the misleading advice that the trader had given him. But the trader said: Well, I was right that the donkey would take orders from a few comforting words, but of course first you've got the get his attention."

strument in negotiations and when implementing and hence as a basis of power is not impossible but at least difficult, since the public reactions are not easy to manipulate by government.

The main general effect of closeness to final markets and consumers is that bad environmental performance is more risky for the industry involved. Due to the salience of the often well known products, the chance of being criticized in public media increases, with possible effects on both sales to consumers and on the 'toughness' of the provoked responses by authorities. It gives firms an additional incentive to keep a clear environmental record, both by accepting and complying with regulations and sometimes also by improving environmental performance on their own initiative. Of course this depends not only on their visibility, but also on the question whether the consumers have a real choice among various companies, which is not always the case.

A second effect on motives could be that the authorities feel extra stimulated to address the industry because of its high visibility to the public. This would partially undo the effect with the industry, at least in terms of the degree of convergence of objectives between government and industry.

The flip-side of all this is that industries that are more well known to the public are also more salient to the media in case they themselves take the initiative to seek coverage of there position, for instance because they feel like they are treated unfair by the authorities or when they want to point to the consequences of regulations for consumer prices. All in all both industries and government will probably be more careful in their mutual relationship. De Bruijn and Lulofs (1996: 100) see the inclination to invest in the building up of resources to enable future compliance as a consequence of "congruent" goals of the actors in a network. In as far as closeness to final markets stimulates firms to take environmental objectives more serious, the inclination to invest in innovation might increase.

3.2 A brief summary of empirical results

The twelve cases were plotted on both the explanatory factor of each of the hypotheses and on their performance (cf. figure 1). These plots showed often relationships in the expected direction. Nevertheless with each hypothesis there were also outliers. For the purpose of this paper we present own calculations of correlations in stead of showing all the plots (though of course with this small n the coefficients are always interpreted with an eye on the plots!). Performance is here taken as the combination of application, impact and resource building (the last component is only insignificantly correlated with the other two and the full combination).

With the *policy hypothesis* initially there was not even a correlation (Spearman's Rho .043, p=.448, n=12). In closer look this depended mostly on two outliers. Without these, the correlation was .632 (p=.025, n=10). The two outliers were situations of rather high performance without the backing of initial trust. If the performance was not taken as a combination of application, impact and resource building, but only of the first two components, than the corresponding figures are: rho=.189 and rho=.719, so a bit stronger.

With the *instrumental hypothesis* the correlation was .661 (p =.010, n=12). Again the four cases that seemed to be relative outliers were cases of relatively high performance without the backing of this alternative threat factor. So not cases of lower performance that to be expected on the basis of the hypothesis. Without the one most deviating case (the French packaging recycling

agreement) the relationship rises to .804 (p=.001, n=11). When performance is taken as the combination of application and impact only the initial correlation is already .800 to start with, rising to .846 without the one case, that is here less of an outlier.

With the *sectoral hypothesis* the initial correlation was .606 (p=.018, n=12). The same one case presented itself on this plot as relative outlier, again on the more-performance-than-to-be-expected side. Without this one the relationship rises to .774 (p=.003, n=11). When performance is taken as only the combination of application and impact the initial correlation is already .802 to start with, rising to .870 without the one case.

With the *competition hypothesis* the correlation is absent again (rho=.130, p=.344, n=12). But now there are by no means one or two outliers while the rest line up as expected. So this hypothesis is not supported by the data. When performance is taken as only the combination of application and impact the initial correlation gets even a negative sign (-.176).

The *combined socio-economic context* correlates rho=.690 (p=.007, n=12) with the performance indicator. When performance is taken as only the combination of application and impact the initial correlation is rho=.823 (p=.001, n=12). Given the fact that the data don't support the competition hypothesis we also tried to use a socio-economic context estimator that was based on only the factors of the first three hypotheses. This estimate of the favorability of the socio-economic context correlates rho=.720 (p=.004, n=12) with the three component performance indicator and even rho=.881 (p=.000, n=12) with the application plus impact performance indicator.
All in all, three of the four factors really seem to matter. Especially the presence of a 'stick behind the door' (instrumental hypothesis) and of 'strong representation' (sectoral hypothesis) seem to matter most clearly.

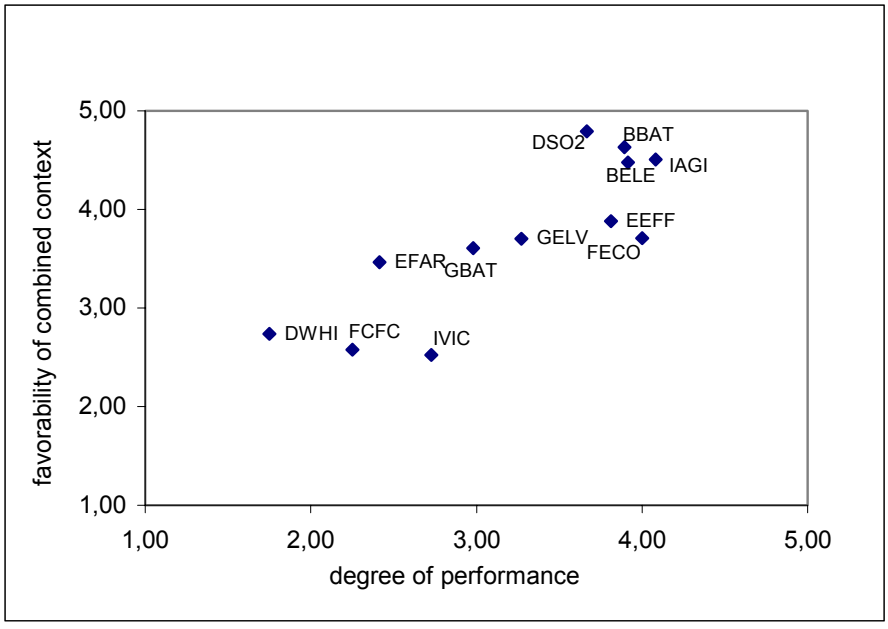


Figure 1, The relation between the combined socio-economic context and the average performance of the agreements studied. Source: De Clercq a/o. 2000

When the four factors of the hypotheses were combined as predictors of performance "it is remarkable that the outliers in each of the four previous graphs have disappeared. The unfavorable policy style for the Italian gasoline quality agreement (code in the figure 1: IAGI) was compensated by the sector homogeneity and the existence of a strong alternative threat. The absence of a strong alternative threat in the French packaging recycling agreement (FECO) and the sector heterogeneity were offset by the high demand pressure and the favourable policy climate, etc…. This leads us to conclude that the favorability of each of the socio-economic aspects we studied is not a necessary condition for the well-performance of a negotiated agreement. Moreover, the fact that one socio-economic aspect is unfavorable towards a negotiated agreement, can be outweighed by the positive influence of other socio-economic aspects." (De Clerq a/o. 2000).

While these multiple case-study results are interesting a follow up study with substantially more cases was deemed necessary by the research team.

4. Explaining the degree of success of Dutch environmental covenants

4.1 Introduction: research design and methods

During 2002 and 2003 the Dutch government commissioned us with the evaluation of the Dutch environmental covenants. Among other research goals, also the four Neapol factors were revisited in this study in which 59 Dutch environmental covenants were analyzed, a near population sample. In this subsection we will elaborate what methodological differences there were between this study and the EU study, apart from the far larger sample. Following in subsections are treatments of each of the four hypotheses. The last subsection contains the conclusion.

A large sample of cases has clear advantages. However they come at a price. The source of comparative data in the EU study were the expert assessments by the case study researchers of the several aspects of performance and of each of the four explanatory factors. These were given after extensive studies and after several meetings that straightened out most of the differences in interpretation of the concepts. In the Dutch evaluation study we had to rely on the assessments as given instantly in telephone interviews by "the most neutral insider" (almost always the professional mediator that is hired to guide and organize the negotiation processes)[3]. So there can be expected somewhat more random disturbance which will lower most relationships.
The data from the almost 70 telephonic interviews was further complemented by workshops that were organized for 8 covenants. Of course, the information that resulted from the workshops cannot be used in a statistical analysis. It can, however, be used to explain certain tendencies we observed and to provide additional explanations.

The purpose of the study was of course much more than a replication of the EU study. So various specifications and formulations had to be adapted to the Dutch situation, and to the possibilities of the data gathering procedure. Nevertheless we think that our questions were quite well matching the previously used concepts of performance and explanatory factors to allow replication and comparison.

[3] In case there was no such 'neutral insider' we had held two interviews, one on the side of the authorities and one with a representative of business. This is been done in 15 cases.

A further complication arose as both the performance concepts and the explanatory factors are composed of sets of different indicators. A number of them proved to invoke a large degree of non-response. The main reason for this non-response was that part of the respondents (mostly the mediators in the follow up negotiations) were not involved from the outset and consequently didn't know how to answer questions on the ex ante situation. This forced us to use also 'streamlined' specifications of the performance concepts and sometimes the factors, in order to harvest the large number in our initial data-set. We will report on the empirical results of the various specifications.

4.2 A climate of respect and trust

Measuring the "policy style factor" we left the national policy style out as one of the indicators, not to avoid non-response, but since it doesn't vary in our country. The other two aspects were covered: a climate of trust in the area covered by the agreement and the readiness of the targets to take up self-responsibility.

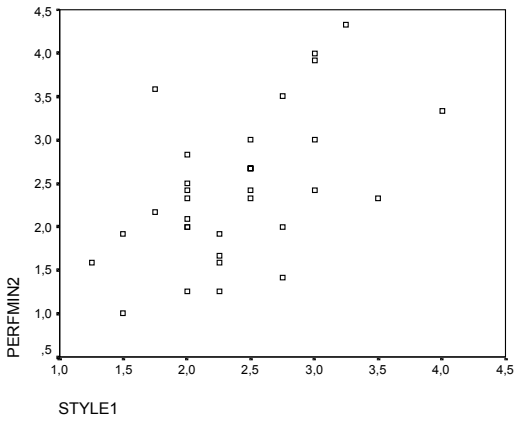
This factor had modest correlations with the application (Spearman's Rho .503, p=.002, n=31) and impact (.306, p=.053, n=29) variables, but not with the resource development (.070). With general performance the correlation was . 360, p=071, n=18. Combining only application and impact the correlation with this factor was .478 (p=.012, n=22). Note that there is a substantial loss in numbers in this analysis.

When minimizing the specification of the performance concepts, we skipped one of the sub-indicators of '*application*' (leaving compliance with interim targets and compliance with individual obligations). With '*impact*' we skipped the cost-efficiency of the compliance, leaving the assessment of a substantial environmental improvement, minimization of administrative costs, and lack of disturbance of competition. With '*resource development'* we had to skip the generation of innovations, but kept the improvement of attitudes, the learning of new modes to attain the objectives, the policy innovation stimulus and greater trust and understanding between authorities and target groups. Consequently also the combination of all three in a general performance variable, and the combination of the first two were streamlined this way.

The correlations remained quite similar and generally a bit stronger. The policy style factors correlated with these new performance indicators as follows:

- application .470 p=.002 n=36
- impact .352 p=.014 n=39
- resource .038 p=.408 n=39
- performance all .408 p=.010 n=32
- performance a&i .511 p=.001 n=33

The last mentioned relationship is illustrated in the plot below. It shows one outlier with high performance even though the initial trust and self-responsibility were lacking.

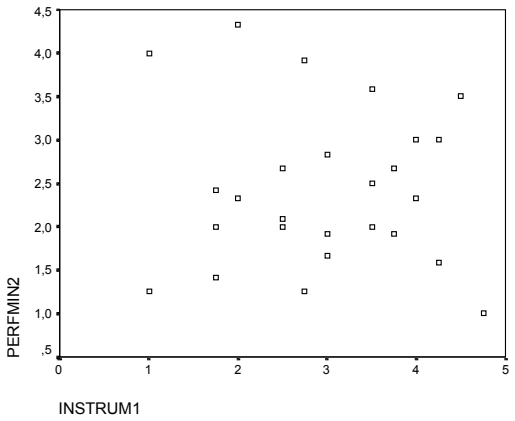


While the n rose from 18-31 to 32-39, not much changed in the empirical relationships. Overall the importance of this variable is confirmed, but clearly further resource development is not so much related to the initial situation on trust and self-responsibility. While this might seem contra intuitive it can very well be explained by initial high levels making an even further improvement of attitudes, learning and trust more demanding.

4.3 The stick behind the door

In the Neapol study the 'alternative instruments' factor was indicated by the sub-questions whether there was a high chance that alternative instruments would be used in case of failure and whether these would have more severe consequences for the target group. In the Dutch study the division was whether such instruments were a realistic option for the authorities and whether they actually posed the treat, both questions asked for the situation during the initial negotiations and during the follow-up negotiations.

None of these four indicators – nor combinations of them – correlated with any of the performance indicators, positively nor negatively. In the Neapol study this was initially also the case with the policy factor, but this could be attributed entirely to two outliers. So let's see what the situation is in this analysis. The plot below shows the correspondence of the 'instrum1' variable (the combination of all four indicators) with the 'perfmin2' variable (the combination of 'streamlined' application and impact). It shows that the lacking correlation can be attributed to only five of the 26 cases, a situation not unlike the Neapol study. But here there are not only cases in with performance was high even though a instrumental alternative was lacking, but also two cases with relatively low performance, even though the pressure factor was high. Could it be that it has been working contra-productive in these cases?



4.4 Strong representation

In the Neapol study this factor was called the 'sectoral structure' factor. Next to the question whether the target group had a strong representative organization that could negotiate on their behalf (if they were with too many companies to engage all in the process), also aspects of sector homogeneity and possibilities for free-riders were included. Considering the last aspect in our study we had only the item in how far there was due attention paid to the issue in the covenant text. This indicator proved to correlate modestly, but significant with performance, but negatively! It's quite possible that attention in the covenant signals more that freeridership is a realistic option, than that it prevents this from happening!

The sector homogeneity item was fully unrelated to any of the performance indicators. So in the analysis we concentrated on the sole issue of the possibility of the sector to have itself represented, which by the way was also the core argument in our theoretical discussion in section 3.1.

Again the correlation of this factor with the performance indicators were quite similar when using the somewhat streamlined versions. Therefore we present only the latter here:

- application .433 p=.003 n=38
- impact .338 p=.016 n=40
- resource .178 p=.132 n=41
- performance all .517 p=.001 n=32
- performance a&i .499 p=.001 n=34

The picture is quite similar than with the 'policy style variable'. The relationship is confirmed except for the 'resource development' performance.

4.5 Consumer pressure

In the Neapol study this factor proved uncorrelated with performance indicators. It consisted of a multiplication of two indicators, namely that buyers could distinguish the environmental per-

formance of the firms and that they value environmentally sound products. In our study we had a sole indicator: the degree to which the image of the target group or its main product is vulnerable for environmental issues. This indicator correlated with the performance indicators as follows:

- application .302 p=.033 n=38
- impact .384 p=.007 n=40
- resource .291 p=.034 n=40
- performance all .460 p=.004 n=32
- performance a&i .444 p=.004 n=34

These correlations are only slightly lower than with the representation factor. In the smaller sample obtained when not skipping some sub-indicators of performance the correlations are even a bit higher.

A plot shows that six cases where the performance was relatively good, even without consumer pressure, lower the correlations. Without them the correlation with 'performance a&i' rises even to .791 (p=.000 n=28). So the variable seems to behave like the other Neapol variables: the factors prove to be important, but not necessary conditions for success.

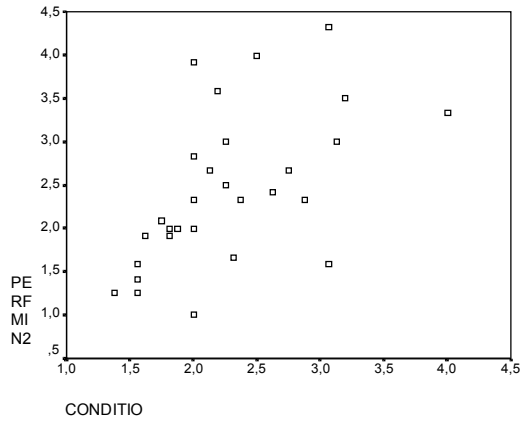
This raises the question why in the Neapol study this relationship was not established empirically. Our explanation is that in many of its cases the buyers could indeed see and value environmental performance, but had not really a choice. The implicit assumption of a competitive market was not always realistic. Our more general specification in hindsight worked better to grasp the essence of the variable.

4.6 General socio-economic conditions and conclusion

When analyzing the four explanatory factors, apart from their general confirmation, also the conclusion of the Neapol study could be confirmed that these factors are important conditions, but that their impact on success can also be provided by other factors. This makes each of the factors important and sometimes even sufficient, but not necessary conditions. So the average of the four factors for each case should be even a better predictor of covenant success.

The combined socio-economic conditions were clearly correlated with the performance indicators:

- application .603 p=.000 n=30
- impact .434 p=.005 n=34
- resource .221 p=.105 n=34
- performance all .640 p=.000 n=29
- performance a&i .635 p=.000 n=29



The last relationship is visualized in the plot above. Intriguing is that while the relationship is clear, there are still some cases that seem to do extremely well with only moderately favorable conditions. Is there still a fifth or even sixth and seventh factor lacking in our explanatory model? In the next section all the available data on conditions in the set of the Dutch official evaluation will be utilized to see whether a still better explanation of performance is possible.

5. A checklist for the use of covenants

5.1 Finding additional explanations through workshops

As we have seen, the statistical analyses based upon the data gathered through the telephonic interviews can only explain a certain amount of the variance observe in the performance of covenants. To look for additional explanations five workshops were organized in which 8 covenants were discussed. In total some 60 people participated in the workshops. Among them were representatives of all relevant parties: various governmental agencies, industry, trade associations, independent mediators, environmental NGOs, etc. The debate within the workshops focused on the surplus value of covenants over other policy instruments. In addition, we tried to explore causal relationships to complete the statistical analysis.
As an (important) sideline, during the workshops it became obvious that assessing whether a covenant has been successful is a difficult task. In some cases, the partners can not agree fully on what to measure, the baseline for comparison, the value of parameters, etc. This shows the importance of continuous monitoring and the need to lay down in the covenant how this monitoring will take place, preferably via third party involvement.

What did we learn from the workshops? Throughout the study for VROM (the Dutch environment Ministry) as well as the NEAPOL study it was obvious that the covenant itself is very important for getting good results. There is a clear need for concrete and quantified targets in covenants with agreements on deadlines, responsibilities, etc. A covenant needs to send out a signal for action. Therefore, it needs to be clear who is addressed. Obviously, in some cases it is much easier to arrive at such agreements than in other situations.

In the previous section we have already identified some important explanatory factors:

- Climate of trust
- Readiness to take up self-responsibility
- Possibility of alternative instruments
- Strong representative organization
- Vulnerability for environmental issues

The workshops confirmed the importance of these factors, and added new insights. First of all, the participants to the workshops stressed the importance of having *initial* trust. Although trust can be build through the processes of negotiation, partners need to start with a basic level of trust in one another. On the one hand covenants do need to have clear and quantified targets in order to be effective. Having flexibility during implementation is, on the other hand, one of the main arguments for working with covenants. Flexibility can promote first movers by freeing the private sector to think creatively about how to achieve improved environmental performance, rather than responding in a more remote fashion to meeting regulations with proven and familiar technology, e.g. best available technology (BAT), maximum achievable technology (MACT), etc (Ashford 1993; NAPA 2001; Porter and Van der Linde 1995).Agreements shouldn't nail down every detail. Some aspects should, therefore, be left at the partner's discretion. This can only happen if partners start of with a basic level of trust in each other.

Where our statistical analysis already revealed the importance of having a stick behind the door, the participants to the workshops added the notion of having a stick *before* the door. Target groups need to have a clear argument for joining the 'voluntary' negotiations. This stick can have many forms. In some cases it was the government threatening to introduce tough regulations that drove industry to the negotiating table. In other cases it was the public opinion that made industry realize change was inevitable. We also had the example of an environmental group that was able to develop so much pressure and mobilize the community, that the industry felt forced to act. Of course, the same holds true for the government actors, sometimes driven by the same (societal) forces as industry. Participants summarized it by saying that there needs to be a 'sense of urgency' by all partners.

A further specification was given with respect to the interplay with other instruments. Not only the *threat* of other instruments is important. Covenants need to be embedded in the policy system. Other instruments can support the covenant, vice versa. Direct regulation can deal with free-riders. Subsidies can help lift technological barriers. The sole use of covenants will be less effective than the design of a complete package containing many instruments. It is not only the socio-economic context but also the accompanying policy approaches that determine what results covenants lead to.

Next, the level of information proves to be important. For one, because without some basic understanding of the environmental problem at hand, establishing clear targets is very difficult. If on the other hand all partners know beforehand what solutions there are to the problem, then it is questionable whether a covenant is the most efficient way to go. The transaction costs involved are substantial. We have come across quite some viscous processes that can carry on for years. The question on whether these efforts are justified is legitimate. This means that covenants are probably best used in a certain phase of a policy cycle, namely for dealing with problems that need some further exploring before solutions are found. If after a while these solutions become obvious, the question is justified whether the covenant can be succeeded by regulation.

The most important addition from the workshops concerned the importance of the negotiating processes for the effectiveness of the instrument. Contrary to our expectation, processes that could be qualified as tough or even quarrelsome proved to lead to better results than processes that seemed to run smoothly. Without negotiations in which all major disagreements have been discussed, it is hard to arrive at an agreement that is clear and feasible and supported by all partners. Potential conflicts need to be settled during the negotiations, otherwise the covenant will turn out to be a form of 'conflict displacement' (Mayntz 1976). A more or less independent participant that directs the processes can be useful in this respect. In order to discuss all relevant points partners also need to have frequent contact. Where the statistical analysis showed the importance of the socio-economic context for the results that covenants deliver, the workshops pointed at the crucial importance of having the negotiating processes themselves develop well.

5.2 Getting to the essentials

The statistical analyses, based upon some 70 telephonic interviews, together with the workshops gave a good insight into the success and fail factors for covenants. We have combined the outcomes of both parts of the research into a checklist. This checklist distinguishes four phases:

1 Initial choice for the instrument
2 The negotiating processes
3 The covenant itself
4 Implementation.

For each phase the success and fail factors are summarized. Taken together they determine the level of success of the instrument to a large extent. Of course, not all factors are evenly important. Within the rather long list of factors we distinguish five central conditions:

- ✓ *The sectoral structure should enable the use of covenants;*
  A strong representative partner is a necessity, one that can really negotiate on behalf of the target group. This is probably easier realized in cases where the target group is not too large and not too heterogeneous.

- ✓ *There is a clear stick before and after the door that keeps the target group motivated.*
  The covenant needs to be embedded in the policy system as a whole. In the end, covenants are much dependent upon other elements of this system for their effectiveness;

- ✓ *All major disagreements are solved during the negotiating processes;*
  Parties need to discuss potential major issues since these will come to the forefront sooner or later. If not dealt with during the negotiations, they are likely to disrupt the implementation of the agreements.

- ✓ *The covenant holds concrete, quantitative goals with responsibilities assigned to partners;*
  From reading a covenant it should be obvious who is supposed to do what and when, and to what end.

- ✓ *All the way through the processes there is ample attention for monitoring, progress and evaluation.*

We have seen some examples of processes in which in the end parties disagree on what has been established or this is simply unknown. Like it goes for all policy processes, monitoring is a crucial element for evaluating the value of the covenant.

When these conditions are met, chances are that a covenant will be successful. The use of covenants is, however, far from easy as they require governments to play different roles simultaneously. Our study shows the importance of employing different instruments and different strategies. Governments, therefore, need to collaborate and negotiate, put pressure on target groups, punish and listen to arguments. Combining these strategies is a tall order.

6. Conclusions

Since the end the 1980s we have seen an increasing use of voluntary approaches and covenants (OECD 1999). This is a worldwide trend. Nevertheless, some countries lead the way. The Netherlands is one of those countries. The use of covenants is not undisputed though. The question on their effectiveness is to some extent still unanswered, as is the question on success- and fail factors. In two separate studies we tried to systematically contribute to answers to those questions. Our main focus was on analyzing the value of covenants in the total policy mix. The main research question focused, therefore, on identifying the situation in which the use is most appropriate and situations in which the use should be dissuaded from.
All in all, our judgment is quite positive on the contributions that covenants can have to successful environmental policy. Next to the positive environmental results that have been realized, the main benefit is found in the processes that go together with the use of covenants. Through these processes mutual trust is strengthened, new knowledge is developed, and the partners have the option of building their relationship in a constructive manner. There are some constrains too: technological breakthroughs do not evolve easily from covenants; the transaction costs can be huge; and covenants are not a panacea for all situations. With our analyses we have determined the most important socio-economic conditions. Moreover, covenants are dependent upon other, accompanying policy approaches (sometimes based on direct regulation or subsidies) for their effectiveness. In the end the real question, therefore, is not whether the covenant is effective or not; it is the policy system as a whole that is effective or not. Given the results of our studies we feel that covenants can play an important role in this system.

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