Rough Notes & Outline

# A flight plan for a lobbyist in Brussels

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# The skills you need as a lobbyist and campaigner and some useful checklists

Here I look at:

1. the importance of values for lobbying and campaigning,
2. some lessons learned from political campaigning,
3. two pots on the importance of good policy memos,
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## 1. The skills you need as a lobbyist and campaigner

## The skills you need as a lobbyist and campaigner

### 1.Values Work – Why Not Use Them

15th July 2014 by Aaron

**If It Works For Greenpeace, why not copy them**

A year ago I met a senior Greenpeace staffer and a victory reception for the Common Fisheries Policy and I asked them what Greenpeace did that made so many of their campaigns win?

The staffer explained two things to me that amounted to using (1) Value Communications and (2) Social Network Analysis (which I may write about later on).

I came across a good piece where Karen Rothwell of Greenpeace develops that thinking. She writes:

"Value Modes provide a powerful additional tool for developing almost any form of communication because they give insights into the emotional motivations when, and how these differ across different groups. The holy grail communicators is to be able to see and feel the world is the people that want to root see and feel, and value modes can help us do that. Without this insight it's all too easy to develop work based on what works me – and come up with things that don't work from the people we want to reach.

**Why I Use It**

I use Value Communications for a very simple reason. It works.

I use it with some of my clients. I explained the ideas beforehand behind the thinking beforehand, and if clients are comfortable with it, we can use it.

I been reading Chris Roses books since I was an undergraduate. That is a long long time ago. A few years ago I met Chris Rose and we have kept in touch. When we met, he mentioned his latest book 'What makes people tick', I bought it and I read all 238 pages in a few days. I been posting copies to friends and contacts ever since!

**How to guess what the other side want**

A client asked me how I seem to be able to anticipate what the other side are going to do and say. It's not hard I explained. I just tried to look at things as they do. When you can do that, it's very easy to guess what the other side are going to say, the arguments they will use, and how they will react, or not, to the points you raise.

**It Worked for Reagan, Clinton and Blair**

I came across what I now call Value Communications through excellent documentary by Adam Curtis about the life of Edward Bernays. The "history of self", which you can watch here, explains in its final episodes about how politicians starting with Ronald Reagan, then used by Bill Clinton and imported to Europe by Tony Blair, had used psychological insights into how people think and what makes them tick to reach out to them and speak directly with them on.
If the leading campaigners and politicians of our day can use these techniques surely there is a lot worthwhile using them.

**Health Warning**

There is an important warning. If you want to persuade people to your way of thinking and on your terms, so that they look at the world exactly as you see it, please read no further**. It does not work!**

**Settlers, Pioneers and Prospectors**

Chris Rose and his colleagues at Cultural Dynamics Strategy and Marketing help map the values of settlers, prospectors, pioneers. Please see the diagram below. They have done it for many European countries.
When you read it, it's really very obvious and intuitive that different groups of people look at the same thing in very different ways. To be honest it's so bloody obvious that it is bewildering that

most campaigns, whether by NGOs or firms, basically come down to “see the world as I do and support us, and if you don’t you should”.

This strategy amounts to little more than wishful thinking. It’s predicated on the hope that the people you are trying to persuade, whether they are 500 politicians and regulators, several thousand people see the world as you do.

I realised a long time ago that there are very few people in the world who share the same values and perspectives that I do. I learnt that trying to persuade 99% of any given audience that they are wrong and I am right is, in most cases, not going to work out for me.

http://www.cultdyn.co.uk/ART067736u/Beyond-Class.pdf, page 24

**How I Use Value Communications**

I have used value communications with two progressive clients. One working in the fisheries agenda and another in the energy field.

It’s really very easy. First, you look at the group of men and women you are trying to persuade. You look at, or guess, what value group they come from: are they settlers, pioneers, or prospectors.

You then take your various positions and deconstruct them, and turn them into the language that each of the groups would use.

It’s also very helpful to develop plain and simple stories and examples to support your position. A plain and easy to read graph works wonders.

**Dangerous Side Effects**

The side-effects are remarkable. For a fisheries client it led to politicians from across the political spectrum embracing the client’s position as if it were their own.

For the other client I later found out that it had helped change the mind of an influential official who recommend their politician change their position on a key vote. As someone reported back “it was like you knew the concerns of X and you cleared their concerns away in the language that X understood. No one does that in Brussels”.

## 2. 5 Lessons on Political Campaigning

21st May 2016 by Aaron

1. **There Are No Conspiracies**

The longer I work I realise there are no conspiracies, just one side is better organised, with simple plans that are well executed, facing off against others who embrace chaos as a strategy and internal dialogue as action. This is how David beats Goliath.

**2. Have A Map at Hand**

It is going to be hard to get to where you want you to be without a map or a GPS system (for me at least). You'd be foolhardy to travel 4000 miles without having planned out the journey in advance and having the right directions. Yet, all too often when groups and people are trying to influence a piece of law they start off and continue without knowing the likely journey and the process for adopting that piece of law. However, many people have found some generic map that gets you from A to Z for all journeys. If you find that map, please send me a copy.

**3. Have a Guide Who Knows Where They Are Going and Knows How To Get Back**

And, you would be considered very brave to go on trek into the wilderness, climbing a hazardous mountain range, or sailing across the Atlantic Ocean without a very experienced guide. People may think you are suicidal.

You would usually hire a guide to get you there and back. You'd expect that your guide had gone on the same journey many times back and forth successfully before they had become a guide. You would not think that a guide would have learned just from books and online courses and they were in fact taking you out on your first trip. Whilst you may live to tell the tale, and that is a big if, it's not a journey you'll have positive memories about.

**4. Have a Live Marketing Sales List**

People buy marketing lead lists because they are likely to be targeting the people who are going to buy the product they are selling. Random sales pitches may work but focusing on the real buyers is a smarter idea.

Not knowing in advance who the core of your market is very brave. Too many campaigns start out in advance not knowing who in each country will make or influence the decision they want to change. There is an easy way to know, ask them for a copy of the list of key contacts (along with a copy of the usually not-existent plan).

It is not hard to prepare. I have found on EU decisions, it is about 200 men and women across 28 Member States and Brussels who will decide on your given issue. If you have no idea who most of them are in advance, your chances of getting to them are slight. You may get lucky and stumble across them in a bar one evening (which I have done) but the bar bill and hangover the next morning does not make it a long term strategy.

**5. Speak the Language of Your Market**

People may be confused if you ran an ad campaign in Irish on the British mainland. You'd be narrowing down your target market who'd understand anything you were saying to a very few people. It may raise some curious interest, and the Gaelic speakers of Wales and Scotland, and the Irish language fraternity of Kilburn, would be interested. But, you'd likely be missing out on 99% of your audience.

For some reason, which after 25 years I still have not understood, many campaigners in NGOs and Industry are convinced that the public and decision makers, whether they are officials or politicians, are equally interested/obsessed about their pet issues as they are. Campaigners go full on writing or talking about the issue as if the equations, technical Phd jargon, and sound science language is commonly used and understood and officials and politicians, who are disproportionately lawyers, economists (for officials) , or political activists, teachers and lawyers (for politicians) care and understand about this.

I clearly had a nasty bump on the head as a child either player rugby or having some rubble fall on my head after a bomb explosion in N. Ireland. I discovered that very few people saw, let alone cared, the world from my perspective. The next global meeting of free trade personalist social democrats is at the Ritz red phone box on 23 June 2016. Standing Room only.

I found out that the only way to get other people to be interested in the issue I was campaigning about was to pitch it to them in a way that resonated with them. You can either talk about bushmeat in terms of gorilla conservation or you may want to add in the threat of ebola coming into Heathrow to the Sunday Times. You can talk about fish stock conservation or billions in subsidies to an unprofitable industry to free trade politicians.

That's not to say you'll not find that there are some key people you need to persuade that are not passionate about conservation. An unexpected ally once came in the form of a Commissioner who sent his Spanish Cabinet official (it seems Cabinet officials dealing with fisheries are often Spanish for some reason) with instructions that they fully backed WWF/Greenpeace's work on Blue Fin Tuna conservation and would be supporting the issue. The Spanish official was clearly not very happy. I have even met officials with post-doc work in chemistry who wanted to talk about the science on a substance ban. But, if you go in expecting that that is usual you are going to be disappointed.

## 3. A checklist for your policy memo

2nd December 2018 by Aaron

A good lobbyist will spend a lot of their time writing memos.

The spent here is a lot more useful than sitting on internal calls, meetings and brainstorms. There is something coldly objective about seeing a case written down. Your weaknesses and gaps glare up from the page. Puffery and weak thinking are amplified. This is a good thing. It's better that your weaknesses and foolishness are exposed to a small group of allies before they are launched out, and then over night torn apart by others.

The memo gives you a great opportunity to make your case. In some cases, it is as, if not more, important than a face to face meeting.

Richard N. Haass provides helpful guidance about what be a memo to a boss in government should contain. I think the guidance is just as useful for a memo or policy briefing written by a lobbyist for clients, politicians and officials.
The advice is excellent. It is not easy to follow. Good clear policy writing is so rare because it is not easy. If you produce it, you'll start to find your recommendations taken up and advice co-opted.

Most of the time, you are simply not going to be able to make your case in person to your client, donor, boss, politician or official. They are busy people. The memo allows your case to be read by the target audience when they have the chance to consider it.

After my 20 plus year experience in Brussels, I think you need receive or to send a memo in advance of any meeting. As a basic rule, a week in advance works well. It helps the politician or official understand your position, and seek any internal clarifications before meeting you.
If your memo is garbled and unclear on what you want, you are not only wasting your own time, but more importantly, wasting the reader's time.

Yet, if you send a good memo or briefing in advance, you'll get to the heart of the issue quickly, reach a conclusion on any decision you need, and not waste time.
A good memo will often mirror the internal briefing the Commission official or MEP has been provided with. You'll either be looking at the issue from a similar perspective, or sometimes, your memo will have been used as the basis for their own briefing.

**Golden Rules**

I have listed the headings Haass gives and paraphrased his guidance with some personal examples.

1. Memos should be as short as possible.
Your memos will be concise. Supporting information, if needed, can be in an annex.

I have come to an age that one page – A4 , 12 font – works.
A lot of people like to use font 11.  Don't. It is hard to read.

2. The purpose of the memo should be clear from the outset.
You'll not let the reader wonder what the memo is about. You'll not waste their time. From the start, you'll make clear if you asking a question or looking for a decision.

4. Anticipate what issues are of concern to the reader

You'll address something that is of importance or interest to the reader. There is no point raising an issue that is not on the agenda or is seen as just wasting their time.
It's not hard to anticipate what your reader want to know. Speak to them rather than foisting your own, or your client's, concerns on them.
5. Figure out how much work a memo needs to accomplish.

Is your memo a door opener to a meeting, or is it the only chance you get to get a decision? The amount of time you put into to drafting the memo will vary depending on what you are looking for.

6. A memo is a not a novel.

Get to what matters most in the first paragraph. Most briefings leave the key point to the end. By then, most readers have lost interest, or shut off.

7. The analysis must be rigorous.

Weak, biased or lazy analysis will show through. You'll use sound analysis, and not fake facts, so that even those who don't agree with your recommendations, accept your analysis.

If you do this, your memos will be read and acted on. They'll stand out as a blaring exception.

8. The real costs and benefits of each option should be assessed over a period of time that is relevant.

You'll be honest about the baseline scenarios, you'll not be afraid of any uncertainties involved in your assessment. Acknowledging the unfavourable points shows integrity.

Policy makers will want these answers. If you don't want to give them, you do yourself and your interests, a disservice.

Exaggerating the costs and benefits will tarnish your case. Being clear about the ranges adds kudos to your case.

9. One of your options should be the status quo.

"Don't just do something" can be good advice. When movement starts, it be backwards as well as forwards. The constant call for change hits a government machinery. Government is naturally reluctant to embark on radical new changes. If you want change, best craft it as evolutionary, incremental changes that can be resolved quietly within the existing structures.

10. Divorce politics and partisanship from analysis.

It's best to keep your political views out of the memo. It shrouds the analysis. If there are political points you'd like to raise, whether within your organisation, or directly with the politician, do that face to face.

Being silent about your political preferences in your analysis will serve you well. Brussels officials are faintly apolitical. Whilst officials may be party members, the best officials I worked with kept their work and politics very much divided. You should too.

11. If there is relevant history, include it.

It helps if what you have tried has worked somewhere else. If what you are asking for has ben tried and failed, explain that.

During the CFP reform, using the examples of discard bans in Canada and Norway, helped MEPs, Ministers and officials, adopt it in the reform.

12. Include what will be necessary to implement your recommendation

As Haass notes "The best idea in the world is wasted if you cannot figure out how to get it done".

On the discards ban in the CFP,  the discards ban has in large part not be implemented. Greater work at the time on how to get it implemented was missed.
13. Make sure you include any weaknesses or risks in your own case.

You may as well as point out the weak points in the memo. Hiding them does not mean they are not going to go away. Instead, your opponents will highlight them more. If the opposition comes as a surprise to the reader, the chances that your proposal are killed off rise expeditiously.

14. Overcome an opposing argument or perspective by preempting it.

It's best to address any opposing points up front. You need to do this is a fair and analytical way. If you don't do so, you'll have lost a good opportunity, and if you do so in a partisan manner, you'll damage your own case.

15. Do not provide analysis without offering judgement about what is the best option.

You'll outline your recommend course of actions.  A lot of people like to disagree rather than put a concrete solution forward. If you option to disagree, you have to come forward with a better way to go forward.
Your recommendations can't be on the spur of the moment. They need to be considered. The well thought out recommendation is noticeable by its absence.

16. Make sure the options are real ones.

Don't give false choices. Too often memos outline 3 options. The first and last options are so deliberately unpalatable or off the wall, and you force people into the middle option.

The reality is that you'll be found out very soon, and the soundness of your overall case discredited.
You don't need to be held to 3 options. You need to draw out the real choices and what each option needs to get implemented.
17. Be sure of your facts.

In an age when too many think facts are fake, there is no better way to discredit your case with sober forces than abusing facts.
It is better to be unfashionable. Make sure the facts you use are accurate.
Ignoring the facts that go against you weakens your case. Better address them.

18. Be explicit and careful about your assumptions and your methodology

Outline your reasoning. Don't skip on this or use weak reasoning. If you do, your case will be weakened.
19. Be aware of appearances.

A sloppy memo gives the impression of sloppy thinking.  That will detract from your sound advice and counsel.

I find the best way around this is two-fold. Draft the memo, and sleep on it. Your glaring errors jump out at you after a good night's sleep. After refinement, ask a colleague to review it and provide brutal feedback.

20 Memos can take on a life of their own.

I simply presume that any memo I write gets leaked within 24 hours of being sent. It is sometimes frustrating to see your words in the press or memo laying on the desk of someone who it was not intended for.

Haas provides wise counsel "Before you send a memo, always ask yourself how it might look in a newspaper or help someone with a different agenda".

Source: The Bureaucratic Entrepreneur. Richard N. Haass, pages 71-75 (link).

## Some Useful Checklists for Public Policy Writing

**22nd April 2019 by Aaron**

Writing Public Policy: A Practical Guide to Communicating in the Public Policy Making Process, Catherine F Smith.

"In Public Policy work, if you can't write it or say it, you can't do it."

As a lobbyist, you'll spend a lot of your time writing public policy. If you want to improve your craft, read the latest edition of Smith's excellent handbook.
Good public policy writing is hard work. The rewards of communicating your case well in writing more than outweigh the hard work you'll need to put in.

Most public policy writing is dreadful. It's often unclear, imprecise, and does not inform. It confuses rather informs the public policy maker.

There is a special class of public policy writing. That's the passive-aggressive or straightforward aggressive style. That such writing has little to no positive impact seems immaterial.

**Checklists**

If you want to raise your writing game, Smith provides a series of helpful checklists to measure your work by.

Checklist 1: Is Your Information:

- Informative
- Believable
- Trustworthy

After all, you are producing an information product. It needs to be coherent, concise and to the point.

Checklist 2: Features of Effectiveness

- It addresses a specific audience about a specific problem
- It has a purpose related to a specific policy action
- It represents authority accurately and ethically
- It uses appropriate form and expression
- It is designed for use

Checklist 3: Measures of Excellence

- Clarity: the communication has a single message that intended recipients can find quickly, understand easily, recognise as relevant, and use.
- Correctness: the communication's information is accurate.
- Conciseness: the communication presents only necessary information in the fewest words possible, with aids for comprehension.
- Credibility: a communication's information can be trusted, traced, and uses with confidence.

Checklist 4: Writing Clearly
Tips on Writing a Policy Memo, By Peter J.Wilcoxen

- Be Concise
- Briefly Explain Key Results
- Don't Drag the REader Through Step by Step Calculations
- Identify the Winners and Losers
- Anticipate Questions
- Don't Use Unnecessary Jargon
- Use Tables
- Write for an intelligent Nonspecialist
- Focus on Your Results, Not Your Opinions: the memo should include all the facts a policy maker would need to reach her own conclusions and should not emphasise your personal opinion.
- Evaluate Means, not Not Ends: Focus on whether the policy is a good means for achieving its stated or implicit purpose, not whether the purpose is good or bad.

Checklist 5: Ethics. Smith felt compelled to set aside the final chapter (11) for 'Ethics for Policy Communicators'.

Apart from the golden rules"Write to others as you would have others write to you." (Williams & Colob, p.125), Smith lays out the following 'Principles' to follow:

- Judgement
- Honesty
- Understandability
- Sensitivity
- Civility

**Some Asides**

Useful suggestions come out from every page. Here is just a sample.
1. On Simplification

Be careful about framing, narrative, metaphor and selective referral (using one part of the problem to represent the whole problem).

You are going to need to simplify, but It's important to oversimplify deceptively.

2. Policy communication needs to know how, practical skills, and critical thinking.
Your communication is going to provide (1) useful information, (2) relevant and serves action, (3) something happens because of it, and (d) must be publically available.

3. Publically available. It can't be stressed enough. Everything you write will land up in the public domain. I more or less expect any letter, briefing, or position to land up being leaked. It's safer to presume what you write is going to going to be public.
This means that the world of real 'non-documents' does not exist.

If you go to a meeting, you have to hand over a briefing, and you have to presume it's going to become public.

If you can't do that, either just don't have the meeting, or display a photographic memory during the meeting, and hope your audience has a photographic memory too.

5. If your reader is over 45. Don't use font 11. Anyone over the age of 45 is going to find it hard to read.

6. Write for the reader. Think about what the reader needs to know. Is it the right type of information – is it a one-page memo or 50 pages of analysis.

## 4. Politics, Process, Policy and Campaigning – 4 vital skills you need to win

24th December 2017 by Aaron

A friend recently asked me about the skills needed for politics, political campaigning and policy making. It's a smart question. The lines often seem blurred.

In Brussels and DC, a lot of smart young people come to town. After an internship in the Commission, or DC think tank, they think they are newly minted mythical creature of policy, political and campaigning experts rolled into one.

Too often people find themselves in political positions and find out late that that they don't like politics. In fact, they don't really like the process, policy, campaigning, let alone the politics. In Brussels policy experts find themselves promoted and find out they dislike the politics and campaigning, and find the process unpleasant. When interviewed, they come look like a scared rabbits caught in the headlights.

An understanding, if not mastery, is essential if you are going to represent your client or interests well.

**Politics**

A lot of people who like policy hate politics. They hate having to do what needs to be done to get enough broad political support to get their positions adopted. They hate the deal making with political opponents, the fleeting political alliances, and backslapping. I have always liked it, but I came up through the political machine.

The political operator is the person who returns every phone call, no matter how late at night. They are your go to person to garner a political coalition that gets what you want.

Yet, at the same time, they are going to keep your base constituency on board.

The great Irish-American, Congressman Tip O'Neil, was a great political deal maker.

I always rated Ken Collins MEP, the dominant Chair of the European Parliament's Environment Committee. He got the laws he wanted adopted whoever was sitting up against him. I approached him to seek his backing to secure the adoption of the 1st Daughter Directive on ambient air pollution, back in 1997. When I secured his endorsement, I knew the job of my MEP, Anita Pollack, was going to be a lot easier.

**Policy**

There are a lot of eggs heads in Brussels and Washington DC. Clever young men and women come to town thinking that 200-page policy reports will change things. As J.W. Kingdon notes this rarely happens.

Policy expertise can be useful at the start. But, too many policy experts neuter themselves by their inability to converse with anyone outside their policy community.

As a rule, I'd keep think tankers very far away from the political debate. There is a strong political autism strain that runs deep. Their ability to offend politicians and policy makers is high.

The policy expert who can communicate lucidly and concisely with a broader community is a powerful force. EPC's Fabian Zuleeg is one of that rare breed.

**Process**

I have added process because I think this is the vital ingredient. Most people ignore it.

You need someone who can secure the adoption of their organization's position through the machinery of the government or legislature.

Too often, people do not have an understanding or mastery of the rules of procedure for getting laws into proposals or adopted as amendments onto the Statute book.

They are also the person who keeps your internal machine flowing. They make sure that crap position papers and insulting lobbying letters don't even reach your desk, let alone go out the door.

Ludwig Kramer, the former DG Environment lawyer and head of unit, was a veritable master of the process. His crisp yet powerful brief policy briefs would expose the weakness of the opposition and lead to even sceptics often siding with him. He secured the adoption of so many laws into the OJ because he knew the process better than almost anyone in the Commission.

**Campaigning**

The apprenticeship for becoming a skilled political campaigner puts most people off. If you can't communicate your case clearly and persuasively, in particular beyond your bed rock political constituency, it really matters little. You are not going to win.

A lot of campaigners don't stray and resist the lure of government. James Carville stuck strictly to the campaign trail. Ed Rollins tried government and hated it.

There are a few master class political campaigners out there. Chris Davies, the UK Liberal Democrat and former MEP knew how to assemble a winning bi-partisan coalition in the European Parliament.

Greenpeace's Saskia Richartz and WWF's Stefania Scampogianni I rate as an exceptional pros.

**Multi-Skilled**

There are few people I know who combine all the skills. Former WWF's Director, Tony Long, had it. There are a few more, but I will make their lives easier by not naming them.

## 5. What does good public policy look like

**18th November 2018 by Aaron**

I have a weakness for good public policy. Some would call it a fetish.

In Brussels finding examples of good public policy is like the search for the unicorn. It is rumoured to exist, yet few, if anyone has seen it.

For me, good public policy making moves beyond the gut response of most. Too often, the case for action is because it is 'good'. When you look behind the fig leaf of the 'evidence' put forward to advance the case, you are struck by the nothingness that it is. All too often, people out of politeness hate to say that there is a just a shrivelled jumble of evidence that does not add up.

Sadly, too often opposition to a proposal comes down to 'it will cost me money' or 'I am not the issue'. Finally, the least believed line in my 20 + years in Brussels, is 'if you introduce the proposal, I'll close my European operations'.

It's easy to spot poor policy making. Supporters and opponents resort to slogans. Evidence and expert analysis is banished to the sidelines. It is a late night bar brawl. Often ugly and impassioned, it is off-putting as it brings out the worst in people. Sober analysis is cast aside with the dregs.

Too many prefer to throw cheap threats and insults around at those who have provided sober analysis. I can only deduce they find some short-lived exhilaration. They find themselves quickly sidelined, requests for meetings politely but firmly declined, and their case discredited in the eyes of policy makers and political decision makers.

**Good policy making**

Instead, good public policy looks to identify if there is a problem and if there is an issue, whether EU action can help. Good public policy sets a high hurdle to initiate action. It is not something to be done lightly.

Core questions in environmental issues – my own area of personal interest – that need to be answered to understand the nature of the problem include:

- source apportionment – contributions of sources to the problem
- causal links
- can actions be taken to reduce those contributions
- costs for and against action
- what are the first and second order consequences of actions – will you simply transfer a problem or make things worse
- what the measures be proposed be implemented and enforced
- what is the reasonable worse case scenario of delivery. Over optimistic projections about how fast a law will take effect and effectively deliver are a sure recipe for disaster.

It is obvious that your case is saturated with objective evidence and data. It examines the case against action objectively. The more analytical and sober the better. Presenting data in visual form is a great plus.

In your case, you go out-of-the-way to highlight your proposal's weak points. If you don't someone is going to do that for you. You may as well draw the attention of your weak points to the Regulatory Scrutiny Board, Inter-Service Group, Inter-Service Consultation officials and cabinet leads at the start, or MEPs and Member State officials later on. It's a good thing to be clear about the weaknesses.

**Good examples**

If you are tasked with writing up the basis for a directive I would emulate the clarity and thinking in these two examples:

"A Roadmap for moving to a competitive low carbon economy in 2050".
Phase down of HFCs in the EU

## 6. Getting your issue taken up in Brussels – 7 Key Questions You Need to Answer Before You Start

**16th December 2018 by Aaron**

An old friend recently called me. She wants the Commission to adopt a piece of legislation. She wants it to happen soon.

I was asked “is it doable”?

At 48 I am cautious. It is a side effect of age. Getting new legislation tabled, let alone adopted, is not for the faint hearted.

With the Commission clearing the decks for ’emergency measures’ for Brexit and the last few months of this European Parliament, my gut reaction was ‘no chance for a year’. But, it got me thinking.

My rule of thumb is it takes 10 years to get your issue taken up in new law and implemented. I break this down:

1. 2-3 years to get your issue on the political and policy agenda

2. 2-3 years to get the Commission to adopt the proposal

3. 2 years to get it adopted by the European Parliament and Council

4. 3 + years to get it implemented on the ground (or sea) or not.

You need patience if you want to change policy and laws. If you want to make sure that what you pushed is successfully implemented, you need to think in 10 years cycles.

You also need to be well resourced for 10 years.

**Doing the leg work**

People forget how much leg work there is in developing interest in an issue. Proposals don’t jump out of no-where. I know there are lots of issues that deserve attention and many of those issues may well benefit from being addressed by new regulation or legislation. The truth is that most never are considered.

In my experience, it takes around a year to develop the case for action, and another year to generate public and then political interest to legislate.

In both cases, you are working full-out and your well resourced. This is not cheap.

Also, your organisation needs to be focused on getting your initiative adopted. The risk for any organisation is that they have too many competing issues being tabled for uptake by regulators and legislators. If you have too many, your risk slippage.

**7 Key Questions to Answer**

In that time, you’ll find the answers for 7 simple questions. If you can’t answer them and provide the evidence – real facts please – please don’t waste your time.

These 7 questions are the same 7 the European Commission ask themselves:

1. What is the problem and why is it a problem?
2. Why should the EU act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are their economic, social and environmental impacts and who will be affected?
6. How do the different options compare in terms of their effectiveness and efficiency (benefits and costs)?
7. How will monitoring and subsequent retrospective evaluation be organised?

I have found that most of the time people can't find strong cases to these 7 questions. If you can't, drop the issue, or delay, and find the answers and evidence.

You need to find answers to all 7 and not jut 1.

The Commission may over look one or two of them, if the political pressure to act is too high. That hurdle is high. In practice it amounts to the personal Â interest and intervention of the French President, German Chancellor, or Secretary-General.

This hurdle is not impossible to leap over – I have done it- but in practice it is best to go through more established channels.

Often, what you identify as a 'problem' is something to do with the local market failure or the actions of a member state. It's got little or nothing to do with the EU. If that's the case, the reason for the EU to step in and act is minimal.

**Starting a Meaningful Debate**

After you have 7 good answers, with preferably independent facts to support your case, you'll need to promote a public policy debate. Working with think tanks in Brussels and the national capitals is key. In Brussels, I have personally found Friends of Europe and EPC to be important for pushing ideas up the political decision-making tree. Indeed, I cling to the belief that promoting a mindful debate via well-connected think tanks at the national and Brussels level is your surest bet.

Well placed stories in the FT, the Economist, and Politico help. I found that for reasons that remain largely unclear to me, coverage in the National Geographic has an important influence.

**Policy windows**

J.W. Kingdon (link) talks about policy windows to put your ideas forward. The most successful organisations have the studies and draft Bill ready in the drawer for when the political cycle returns on an interest.
Some organisations in Brussels practice this. Most don't.

**Getting your issue taken up in Brussels**

The old days when you could get a good story placed in the press would lead to a Commissioner co-opting the issue and getting their staff to draft a legislative proposal have, for the most part, long gone.

Today, the windows of opportunity are prescribed by 'Better Regulation'. The Better Regulation Guidelines lay out the procedure, steps and questions that a proposal needs to go through.

You'll need to get proposal through the Commission's internal adoption procedure.

This does not man you can't use the 'policy windows', it just means you need to be aware of the Commission's time-windows for when the policy windows occur.

**Work Programme**

*Normal Work Programme*

See this note.

*New Commission Work Programme*

If you are looking at the next Commission (November 2019)

1. Next President's Political Priorities (July 2019)
2. Next Commission's Â first Work Programme (December 2019)
3. Next Commission's second Work Programme (October 2020)

The Commission Services prepare in advance a draft Work Programme for the next President for the incumbent's validation. This is being prepared.

*Commissioner Confirmation Hearings*

Another pathway is to have MEPs on the lead Committee(s) raise the issue during the confirmation hearings (October 2019). This may secure a political commitment to address the issue.

**Fast is rarely good**

In my experience, well prepared legislation is good legislation. This is not a speedy thing.

The 1st Daughter Directive on Ambient Air Pollution was drawn up by experts for 3 years before being given to the European Parliament and Council. The prior deliberations assisted the co-legislators in their deliberations. It brought the objective evidence to the table and helped clear up where the real sensitive points were.

**Fast Track – Single Use Plastics**

This file is an example of how fast a proposal can be taken up. This is one of the most fastly adopted – from idea, adoption, to political agreement – in this Commission.
Blue Planet II launched 29 October 2017 created a world-wide debate about plastics and marine pollution.

The proposal benefited from having the first Vice-President, Commissioner Timmermans, finally back the proposal, after initially not supporting it.

Yet, this issue first surfaced in the early 1970s, and has been laying beneath the surface, since then. It did not go away, but was washed over by other related issues. For an excellent exploration, I recommend this piece by Chris Rose.

*Regulating Plastics – A timescale*

- 13 September 2017: State of the Union (link) and letter of intent that mentions 'concluding: a strategy on plastics working towards all plastic packaging on the EU market being recyclable by 2030" (Draft Work Programme)
- 24 October 2017: Work programme published 24 October 2017 (link) mention "a strategy on plastics use, reuse and recycling" (non legislative, Q4 2017)
- 9 November 2017: Commission ask ECHA to start look at REACH Restriction on micro plastics
- 15 December 2017: Public consultation on Inception Impact Assessment Reducing marine litter: action on single use plastics and fishing gear (link) ending 12 January 2018
- Â 16 January 2018: Communication "A European Strategy for Plastics in a Circular Economy" (link) including:
- start the process to restrict the intentional addition of micro plastics to products via REACH
- Actions to reduce single- use plastics: analytical work, including the launch of a public consultation, to determine the scope of a legislative initiative on single use plastics
- 17 January 2018: ECHA notification (link)
- 5 March 2018: Regulatory Scrutiny Board " Negative Opinion on Reducing Marine Litter
- 6 April: Regulatory Scrutiny Board "Positive Opinion (with reservations) " Reducing Marine Litter
- 22 May 2018: College of Commissioner adopt a Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment(link)
- 28 May 2018: Proposal for a Directive on reduction of the impact of certain plastic products on the environment (link) (press release)
- 28 May 2018: Public Consultation on proposal until 24 July 2018 (link)
- 24 October 2018: European Parliament – Plenary – 1st Reading
- 6 November 2018: First trilogue (information negotiations between Council and EP)
- 14 December 2018: Second trilogue
- 18 December 2018: Third trilogue (final?)

So, what looks like on first glance to be 'fast' policy making, is likely something that has been in the 'policy mix' for more than 40 years. It benefited from unusual, but not unrepeatable, circumstances to get to reach the surface and be adopted.

## 7. A Simple Test to Know If Your Lobbying Efforts Will Come to Anything

**15th January 2019 by Aaron**

**A Simple Test I Use**

Is there a sure thing to know if a campaign you are going to work is going to succeed or flop before you spend a cent? I believe there is.

I use a simple, but highly effective technique, to know if you stand a chance of getting what you want.

My simple test is to ask for a copy of a written 'lobby plan'. Those plans that are clear, well considered, and brutally objective, tend to lead to victory.

If there is no written plan, the chances of success are at best low.

For reasons that are still not clear to me, many lobbyists and campaigners reject the idea of using lobbying plans.

**Checklist Approach**

I prefer to use to a checklist approach.

It's an approach that works well for other professions, including aircraft pilots and surgeons.

These checklists have done much to improve safety and save lives for many and improve quality.

The use of checklists is often resisted by 'professionals'. They'll often claim that the situation they are dealing with is 'unique' or 'special'. These claims are usually wrong.

For example, if you chunk down the steps in the journey of a EU Directive, from idea to publication, there are around 109 steps.

In practice, there are around 38 key procedures that I use frequently. I use flow charts to chunk them down.

Many of those steps provide an opportunity to intervene and to influence the process.

Many of those individual steps have particular 'rules' of procedure, that if used knowingly, can assist your interests.

This goes for both ordinary legislation and secondary legislation (delegated acts, implementing acts and Regulatory Procedure measures). Indeed, some fields of legislation, like financial services or energy efficiency, have their own 'special' procedures.

Indeed, in every area I have focused, from fisheries to chemicals, a lack of understanding of the key steps will neuter your work from the very beginning.

For example, in fisheries, the stocks for many North Sea fish stocks are agreed to under a bi-lateral fisheries agreement between the EU and Norway. Whilst the EU may meet in the last days before Christmas at a Fisheries Council to agree quotas for the North Sea, many of the key decision have been taken under the EU-Norway Agreement.

Most EU laws are secondary legislation. I estimate around 97%. The procedures for adopting secondary legislation is much different from ordinary legislation. Yet, as many lobbyists a mono-focused on ordinary legislation, they overlook the contrasting voting rules for secondary measures.

This means that too often people step in at the wrong time, with the wrong arguments, and miss the chance to influence.

**Why you need a lobby plan or why you should listen to Karl Rove**

I could begin and end very quickly by simply citing Karl Rove.

"First come the message and the theme. But, after you have agreed on what the message is, and what the theme is, you then need to sit down and write out a plan".
As he simply puts it "If you have no plan, you will lose." And, whilst, his comments are directed to political campaigns, they are just as relevant to lobbying.
In fact, I think his wise words (and I say this coming from a different political tradition, deserve copying:
" The length of the plan may be a lot shorter and a lot more concise depending on the type of campaign.
But, you take the elements of the campaign and reduce them to writing and to numbers, and spread them over a calendar so that you have a concrete idea of what it is that you're going to do and when you're going to do it, and how much it's going to cost.
Campaigns that plan tend to be campaigns that have a greater propensity to win because it means that they've made conscious decisions about what's necessary to do, and when to do it, and to make certain that they have the resources in order to execute that plan.
It starts with the message and the theme and you need to take those ideas, what is that you want to talk about, and plan them out, when you're going to talk about them, and how you're going to talk about them.
All of this has to be agreed upon at the beginning of the campaign and committed to paper and then reduced to numbers (how much are you going to spend).
You have to follow through and evolve. … If you have no plan, you will lose. "
Whilst I don't agree with is politics, I agree with his method.

**Clarify your chances of winning early on**

Putting your ideas and thoughts about how to deliver them on paper is powerful. Lazy thinking and incoherent jumps of logic are exposed. It's only through putting thoughts down onto paper that the strength or the weakness of your case is exposed.

Snake oil salesmen, often masquerading as cheerleaders of a cause, may through the spoken word, whip their supporters up into a frenzy, and their wallets open up, to support their lobbying campaign.

The trick when you meet them is to ask for a copy of their 'lobby plan'. Any such plan, will often expose that weakness of the case.

Circulating a written document in advance of a meeting gives others the chance to soberly consider the proposed path of action. This often leads to input that strengthens the plan and increases the chances of winning.

**Helps you know what you need to do**

The simple advantage of a checklist is that it spells out the steps that you need to take and in what order to take them.

In the heat of the moment, you are prone to overlook things you need to do. Sometimes you may overlook something important.

For example, in secondary legislation, you are unable to include new 'essential elements' that change the enabling legislation. These are technical decisions that can't stray into the realm of policy making.

Any attempt to alter the legislative agreement of the enabling legislation should be blocked.

Yet, on the odd moments when political expediency, lead the Commission to ignore their narrow discretion, to see either the Member States, the European Parliament, or an individual Member State challenging the measure once it has got through. It has happened. Running down a blind alley can be avoided.

I find the process coldly sobering. Many do not like this. I do. I find the harsh bite of political reality (or procedural and legal reality) helpful.

The alternative for me is like going into a morphine induced never world. It may be pleasant, but it masks an underlying condition, that will soon enough appear. It is, in my experience, better to know the reality of your political condition from the very start.

**Why most skip a lobby plan**

There are many reasons why you may not prepare a lobby plan before you start work. I'll consider the most obvious.

First, you are a thetan, whose abilities to discern the future are not of this world. As you can walk through walls, shoot fire from your finger tips, moulding EU legislation and policy to your will is child's play.

Second, you may believe in telepathy. If you write a position paper, the thoughts and ideas laid out on paper will mysteriously filter through to the men and women making the decisions. All you need to is write out the position and your work is done!

Third, you may be put off by sitting down for a 5 hours to write out the plan, find out who you need to meet, find the evidence to support your case, and craft your message to words that persuade your target audience.

Yes, it is hardly fun. But, with some good music and coffee, your work is done quickly enough.

Finally, you have worked yourself into a frenzy of self-belief. You don't need a plan, because the 'animal spirits' tell you that you are going to win.

Whilst 'animal spirits' may have guided Keynes and others, I prefer to rely on less meta-physical forces.

**What's in the checklist**

A checklist provides a sober and objective set of steps.

When you go through the checklist, I find it helpful to do so like a surgeon with a detached analytical framework.

The finest regulatory scientist I know has the ability to separate his personal views, and look at the issue just as if he were on the other side of the table. At times, his assessments are off putting. He is able to predict with unnerving accuracy the points that will come up, the best (and worse) responses, and how to present the case. It is like he is able to get inside the head of those making decisions. He does this with the ability to separate this analysis from what his personal view point may be.

Background
[] What is the issue about – short description
[] Short background about the proposal's development

[] What type of legislation/policy are you dealing with:
- [] Ordinary,
- [] Secondary
- [] Delegated
- [] Implementing
- [] RPS
- []Policy

[] What stage is the proposal
- [] Pre-adoption within Commission
- [] Post -adoption First reading, Second Reading, trilogue, conciliation

[] Why are you working on it
- [] Short description why the issue is important. You can't work on everything.

[] Ownership
- [] Who owns the project
- [] Who is paying for the project and how much does it cost
- [] Who signs off on any positions
- [] Who is the team implementing the work
- [] Who decides on any changes in the position

[] Your Goals
- [] What is your real goal?

[] What is your policy objective
[] What are your advocacy goals

[] Research Phase
[] Have similar votes happened in the recent past?
[] What was the outcome
[] What lessons can be learned

EU Vote Watch is a very useful resource here.

[] Before you start talking to anyone you need:
[] What are your key messages
[] What is the evidence to support your key messages
[] How will others respond to your messages/case?
[] How will you respond to them? Base everything on the reasonable worst case scenario – the toughest questions will come up.
[] Research what your opponents are saying. What's your response to their position.
[] Do you have the backing of the 'key influencers' who will carry your message?

[] Material/ key documents you should have
[] Narrative
[] One-pager / leave behind
[] Key messages
[] Q&A
[] Amendments
[] Letters
[] Legal opinion (if needed)

[] What supporting evidence do you have:
[] Data
[] Study commissioned
[] Study published
[] 3rd Party review
[] Rebutals to other studies

[] Who decides and infleucnes
[] Power analysis: list your potential allies and opponents
[] Identify the hidden 'decision' makers
[] List them – key 200/500
[] Verify their position

**Social Network Analysis – knowing who makes the decisions**

It may be stating the obvious, but you are not trying to persuade everyone to back you.

You just need the majority you need for that vote.

This means you need to focus on trying to bring together coalitions of MEPs and Member States. You don't need them all.

If you identify in advance who you need to influence, both in terms of Brussels and the national capital, your job is going to be a lot easier.

It practice, whilst this list may be 500, there are around 200 your need to focus on and 20 who are core.

The challenge is that they don't publish their names online, and rate their importance.

You'll need to speak to people, look their details up, and put it down on paper.

**Answer these 7 Questions**

When you are dealing with public policy there are 7 questions you need to have the answers to. These 7 questions are the same 7 the European Commission ask themselves:

1. What is the problem and why is it a problem?
2. Why should the EU act?
3. What should be achieved?
4. What are the various options to achieve the objectives?
5. What are their economic, social and environmental impacts and who will be affected?
6. How do the different options compare in terms of their effectiveness and efficiency (benefits and costs)?
7. How will monitoring and subsequent retrospective evaluation be organised?

## 8. Campaigning v Lobbying

8th April 2019 by Aaron

Recently I was asked about my approach to political campaigning and lobbying. As the question was asked well after my bedtime, the answer probably sounded incoherent. So, in case I am asked it again, here is the less sleep deprived version.

If you are serious about campaigning, you are going to have a wornout copy of Chris Rose's 'How to win campaigns: Communication for Change'.

I am surprised at how few campaigners and lobbyists have read this 'bible'.

When asked about campaigning, I simply resort to going back to the source and reading it out loud. When the original is so good, why bother adapting it?

I am a lobbyist and campaigner. I do a lot less campaigning today than I did. Instead, I spend a lot of time playing defence.

Campaigning is vital to get the issue on to the political agenda. Lobbying is vital to get the idea you are campaigning for into the statute book.

**My simple lobbying checklist**

As a lobbyist, I look to chunk things down into this simple checklist:

1. is there a clear issue
2. is there a clear solution

3. is there a convincing story/case
4. is the story/case understandable to an official and politician
5. are there resources at hand to get the issue adopted – this can take 2-3 years
6. is there an opportunity to raise the issue
7. is there supporting evidence
8. is there supporting text: policy, legislative and legal text
9. are there political allies to co-opt your agenda
10. is there political support within the Commission to table the proposal
11. is there political support within the European Parliament and the Member States to adopt it
12. is there a legislative or policy opportunity to have your issue tabled

The fewer questions you can answer objectively as yes, the less your chances of success.

**Most campaigns fail**

As Rose notes 'most campaigns fail' (page 1). This is important.
There is plenty of campaigns that never really get off the ground. They tend to fail because they have a bad strategy, the facts don't support the message, or they no resources or skilled campaigners to execute the campaign.

Many political campaigns fail because they don't achieve their end game. The endpoint should at the least be changing the law or policy. If the campaign does not succeed in getting the law or policy changed, it failed.

A lot of people must revel in the sweet taste of failure. I found the taste bitter. Getting your issues taken up in an amendment but not adopted into the final law is a failure. Not getting the change you worked for is a failure.
Failure is not a bad thing. From it, you learn a lot. Indeed, you are going to need a lot of resilience to failure to make it in campaigning. Your win v loose rate is going to be skewed to loosing for the first few years.
That campaigns fail is not a bad thing. I've learned a lot from loosing. It teaches you not to repeat it.
I recommend, whether win or lose, you perform a brutal autopsy at the end of the campaign. Look at what went well and what did not. Success – and failure – leave clues. If you want to increase your chances of winning next time, it's good to focus on what works
Strangely, hardly anyone does this.

**What's is in a Campaign**

'Campaigns mostly involve communication: a conversation with society' …. ' It's about borrowing power from the public, in the public interest' (Rose, page 1)

It's about harnessing the public's will to change actions, corporate or government decisions, policies and laws.
At times it looks like PR – it's about persuading people – but PR looks to sell something, or make a something or somebody look better.

'Campaigns are wars of persuasion'. It's not about issue expertise. Most organisations are full of issue experts. Issue experts usually can't campaign. They are often dreadful communicators outside their narrow circle.

**What a campaign is not**

- PR
- Media Strategy
- Social Media Strategy
- Issue Management
- Report launch

**What's your campaign communication strategy**

A good campaign communication strategy needs to be:

1. Keep it short and simple;
2. Be Visual;
3. Create events;
4. Tell stories about real people;
5. Be proactive – don't just respond
6. Get your communication in the right order; and
7. Communicate in the agenda of the outside world – don't export the internal agenda, plan, jargon or 'message'

(Rose, p.4)

By that checklist, there is very little campaigning happening in Brussels.

**Campaigning compared to advocacy**

Rose contends that the difference campaigning and advocacy is public engagement.
Lobbying is focused on getting the law or policy changed and adopted. It is rarely played out in the public gaze.
I use the toolbox of campaigning and lobbying, sometimes together, often quite distinctly.
There are many campaigners who don't know how to get their issue taken up into a new law or policy. There are a lot more lobbyists who can't campaign, or communicate in public. There are a few who operate in both camps, but they are not many.

**Your campaign checklist**

Rose produces a helpful checklist about a campaign ideally needs. I have the following creased in my wallet, and on my moments of tiredness, used or make sure my brain is seeing straight:
'1. Be multidimensions: communicating in all the dimensions of human understanding and decision-making. Political, emotional, economic, spiritual, psychological, technical, scientific, maybe more.
2. Engage by providing agency – it needs to give its supporters greater power over their own lives. It must be credible, feasible, and an attractive way to make a new and additional difference.

3. Have moral legitimacy, which it gets not by whom it represents but by a meeting of a need. Campaigners and their supporters have to be convinced the campaign is needed to make something in society that ought to be happening but that is not. The more widely shared this feeling becomes, the greater the moral authority of the campaign and the more that can be done. Most campaigns are planned in the mind, won in the people's hearts and rationalised in the mind.

4. Provoke a conversation in society. I say they prove a conversation rather than conduct it because, to be really effective, campaigns often need society to rethink its views and actions on a particular issue.

5. Have verve, elan, infections energy. It may feed aspirations, or provide security but, above all, it needs an inspired vanguaged. If your campaign doesn't exvite you, then it probably won't engage others.

6. Be strategic. It must plan a way to assemble enough forces to change what it wants to change. …

7. Be communicable, first verbally, as a story …second, visually.' (page 11, Rose).

This checklist helps identify if you have a campaign or something else. Against this checklist, most efforts fall short. What's actually being done is PR, issue management, media or social media engagement, public affairs, but it's not campaigning.
Most industry find it hard to deal with a well prepared, executed, and resourced campaign against them. If you read Rose closely enough, how an industry can effectively respond to a campaign jumps out. Most have not read Chris Rose.

## 9. A 10 point checklist before you start your campaign journey

**24th April 2019 by Aaron**

I just re-read Chris Rose's campaign bible chapter on 'How To Begin'. He recommends a method of designing a campaign that many will find alien. Instead of jumping in, there is a detailed screening exercise before the outward facing action starts.

Set against this pre-departure the checklist, most campaigns, both NGO and corporate, fall far short. It helps explains why most campaigns don't land up where they planned to be.

**A 10 point pre-departure checklist**

**First**, you need to understand what motivates your audience.
The best way to do this is to split your time between listening and sending information. You have to listen to your target audience, your allies and opponents.

And, before launching, and throughout the campaign, you need to check back to see if it makes sense.

Few do this. The pre-launch testing, re-calibrating are techniques used by few. The too common cult-like messaging session is still standard. They tend to land up being sessions amounting to affirmations of faith.

**Second**, you need to Keep it Simple. Too many campaigns messages need a PhD to understand what's being said. After all, if you use language that only you can understand, you can't be surprised that it is only you who supports your message.
**Third**, the best communication "raises awareness, that ensures alignment, brings about engagement and secures action.
To do this, you need to highlight a problem, identify someone who is responsible, and provide a solution." You need to provide all three.

*Campaign*ing is:

- Solutions focused
- Driven by Events as events galvanise people.
- Practice Simplification

*Campaigning is not:*

- Education
- A set of arguments
- Complexity

**Fourth**, too many "want to educate others to see the issue in the right way before accepting their support." You need to ignore these people. Personally, I'd recommend keeping them locked away for the duration of the campaign. These people will go off script too quickly. They'll look to educate, convert, and in their eyes, save the target audience when they have the chance. Your target audience will run a mile, and you'll throw away their support.
**Fifth**, you need to be "opportunistic, not in terms of their beliefs and values but in terms of reaching audiences". Many reject opportunism. I don't. I've spoken to a group of self-declared libertarian MEPs on the evils of fisheries subsidies, and to former Communist bloc States on the chance to harness energy sources from Canada.

The key is to reach your target audience. I've never minded that if a politician supports you for only one vote, just as long as they vote for you on the vote that counts. I even helped persuade Nigel Farage to turn up to vote in the Fisheries Committee to ban discards. In a tight vote, every vote counted. His vote helped.

**What's your essential communication components – a useful checklist**

Rose provides a useful checklist:

- "Channel – how the message gets there
- Action – what we want to happen (and what the audience is asked to do)
- Messenger – who delivers the message
- Programme – why we are doing it – to assess the effectiveness
- Context – where and when the message arrives, including what else is going on
- Audience – who are we communicating with
- Trigger – what will motivate the audience to act"

**Sixth**, I've seen too many times – in NGOs and industry – that each of these elements is guessed at, or even worse, made up on the go.

It's important to research this and be very clear about it. You can't underestimate the importance of pre-launch research. As a rule of thumb, I set aside 25% of the total budget for the initial research phase. Many think this is too much. From my experience, it's better to know before you go public that the core premises that your campaign is based on are wrong. It is better than launching and then finding out mid-campaign that the facts don't support you.

The biggest challenge is curbing the enthusiasm of colleagues to go with a 'great idea', and resist the research phase for an 'obviously great idea'. This zealotry is a good indicator that the research won't provide the evidence to support your campaign. And, whilst it is hard to tell people the bad news, it's far better to do it before you have launched.

Every time I have stopped a campaign because the research shows the facts did not support the campaign I've been accused of vile crimes akin to infanticide. I have been subject to pressure to let it pass this one time. If you do let it pass, your Achilles heel will reveal itself at the very worst time, and sink all your good work. It will probably set back your reputation by 5 years.

If you speak to you your target audience, at the wrong time, in the wrong tone, and through a channel your audience does not know exists, you have more or less guaranteed from the start that your communications are about to fail.

I wish such foolishness was rare. The vital research step is often ignored. There are few journals of record that politicians and officials read – FT, The Economist, and the National Geographic – whose coverage is influential.

**Seventh**, perhaps the most useful lesson is to do "what works for your target audience, and not what works for you". If you want to win, you need to get people to back you on their terms, rather than on yours. Most organisations, both NGOs and industry, find it hard, if not impossible to do this.

For me, this inability to quiet the ego is the reason most campaigns, both NGOs and corporate, fail. Self-vindication is not a winning idea.

**Eighth**, I dislike the word 'strategy'. It is a much-abused word. It is often used as a broad cover for a set of actions, often bundled together erratically, with the hope and prayer, that it will lead to some outcome.

Rose defines it in the proper sense as "changing the prevailing forces so that you can win. The strategy is your map change: more than a conventional navigation, one that doesn't just traverse

the terrain of society, but reshapes it. Your communication strategy and engagement tactics need to take supporters on a journey too."

**Ninth**, after you come up with the idea you need to develop the strategy. This involves testing the messages and evidence. After this, you need to prepare an activities and resources plan. This should be a cautious costing. I recommend over budgeting by 25%. There is often project creep. Better to be cautious from the start.
When this is done, you need to get the project signed off. After it is signed off, usually by more senior people, you roll out the campaign. You need objective criteria in place to track the success of your campaign. It's important to build in the latitude to revise. Finally, you need to build in checkpoints to see if you need to go on, adapt, or stop.
**Finally**, the greatest challenge is you'll be so bought into the strategy, that you'll not be able to identify the (huge) gaps. Self – belief and ego will cloud reality.
I find it helpful to hand the draft strategy to a seasoned professional to dispassionately review the strategy, identify the weak spots, and be brutally honest with you. This only strengthens the final product. Most people don't do this. They dislike the risk of their ideas and plans being torn apart. These people should get out of campaigning.

## 10.You need to tell a good story

**24th April 2019 by Aaron**

The biggest contrast between NGOs and industry is that most NGO's can to tell a good story.
Rose sets aside a whole chapter about "Communicating with Humans." He reminds us that stories are something we have been brought up with. Stories have been around a lot longer than the written word.

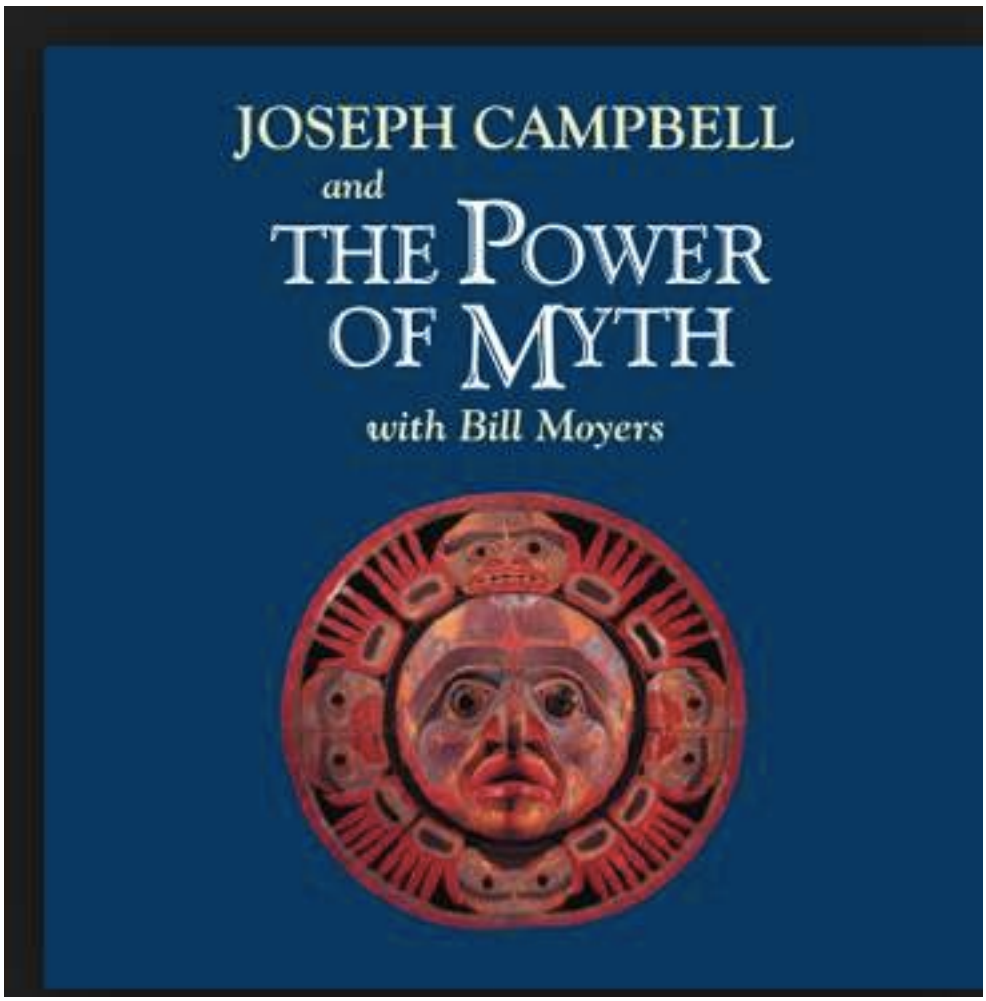
Campaigns are full of great stories. Even so, most campaigners don't talk about them.

**Policy is boring**

I am a policy nerd. I like policy, politics and process. A long time ago, I got beyond the denial and realised that most people think that public policy is dull.
I realised that my interest in Brookings Policy Briefings was not going to win over more than a small group. Life is too short to try and changes thier minds!
Reading Rose showed me that even the dullest public policy issue could be made interesting by telling a good story.

**Can you learn to Tell a Good Story**

If you are serious about storytelling you need to apply the lessons from this book.




Rose mentions "six types of stories you need to tell:
1. Who I am stories

2. Why I am here stories

3. My vision stories

4. Teaching stories

5. Values in actions stories

6. 'I know what you are thinking stories " (p.46).
I like the 'good v evil' storyline. Celebrity culture has grown, and that's useful.

**Case Studies**

When I worked in fisheries, as a campaigner and not a fish head, I realised that the public, politicians and most officials found technical fisheries policy issues dull.

To this day, if you get a shoal of fisheries campaigners together, you'll hear the call for "what do we want: an eco-system based fisheries management following MSY, when do we want it, now."

HOME » NEWS » EARTH » EARTH NEWS

# US calls for total ban on bluefin tuna fishing

Bluefin tuna catches by ICCAT countries were 58,000 tons - the legal quota was 32,000

Bluefin tuna catches by ICCAT countries were 58,000 tons - the legal quota was 32,000

By Charles Clover, Environment Editor
10:00AM GMT 08 Nov 2007

Raul Garcia of WWF said it was "a shocking state of affairs" that ICCAT countries were incapable of enforcing the regulations in force in the Mediterranean and Atlantic.

"There is only one solution to the imminent risk of collapse faced by the Mediterranean bluefin tuna fishery, and that is the immediate closure of the fishery - until the population shows some sign of recovery, and until a management plan is put in place based on scientific recommendations."

Last year catches of bluefin tuna by countries that are members of ICCAT were 58,000 tons, while the legal quota was 32,000 tons. Italy, Japan and France were the most over-quota.

A "recovery plan" was agreed at a meeting of ICCAT in Dubrovnik at which United States officials said there was clear evidence of organised criminal activity among the pro-fishing delegations.

A white lily, a funeral flower taken to be a Mafia death threat, was found placed on the table occupied by one of the environmental organisations.

The Spanish consultants' report say that the value of bluefin produced annually by live capture and "farms" or ranches - which are stocked by rounded-up wild tunas - is £1.8 billion, making bluefin one of the most valuable foodstuffs in the world.

Instead of talking of MSY, we highlighted the link between the mafia, foreign multi-nationals, and overfishing of blue-fin tuna.

Celebrity naked photoshoots raised awareness in the public and the pulses of every 50-year-old male to the issue of North Sea Cod conservation.

Or more recently

When the FT, Telegraph or Daily Mail cover the story they pick it up and run with it not because of the reportage but because they have been pitched a compelling story.

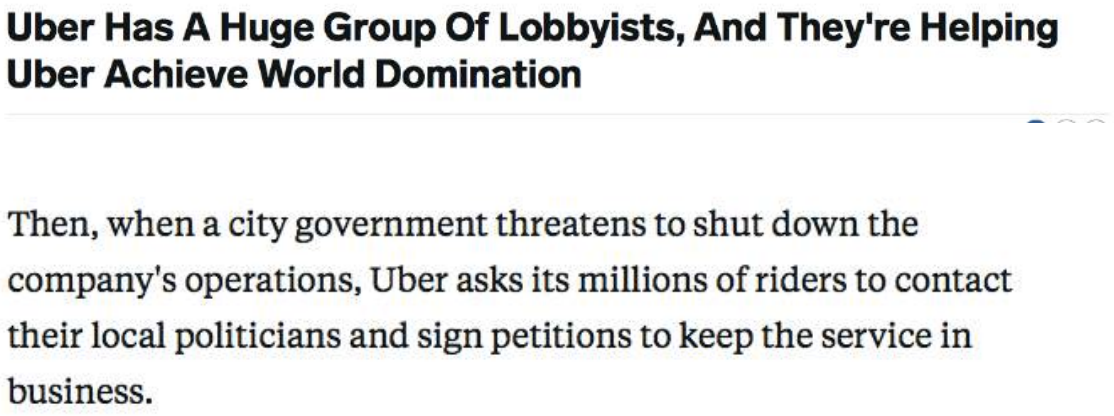
**Can Corporates tell good campaign stories?**

Too many in industry seem convinced that they have to tell 'a dull story' when it comes to public policy or legislation.
When you speak to their salespeople, or better yet, the inventor of the product or service, you'll hear how this genuine innovation is making the lives of their customers better.

The TV is full of great advertisements that tell powerful stories about the product or service.

I remember a company whose services makes the lives of countless tens of millions of people in Europe better. The company was facing an onslaught of new legislation. What was remarkable, the company seemed un-interested in telling the story about the 'benefits'. The only discernible issue of focus for the company was preserving the next quarter financial targets.

One of the greatest forces in campaigns is when ordinary people come forward with their stories. When this connection happens, a powerful political force is unleashed. This often happens by accident.
Yet, many companies seem afraid to harness the power of their customers. Many companies seem worried that they can't tell their customers that a service or product they sell to them is under threat.




Source: Business Insider.

The only company I know who have looked to harness the power of their customers is Uber. Their customers provided a powerful counter-weight against well organised incumbent taxi services.

**Visuals are a lot more important than words.**

Today, the industry is obsessed with position papers and briefings. I am sceptical of their value beyond a narrow clique of the policy elite. Even then, charts and infographics are just as, if not more useful than a long briefing note.

NGOs are full of issue experts. Many issue experts default option is to go for boring. They'd rather battle it out in academic peer-reviewed journals than in a TV debate. I know it, I've seen it.

The difference is that for most NGOs, a long time ago, senior people far higher up the food chain realised that winning the peer review journal game was not going to bring about change. If they wanted to stay relevant they needed to adapt. Some did and survived.
A good solution is to bring in a separate professional campaign and media team. They develop and execute the campaign strategy. The scientific experts don't have a big hand in taking the idea forward. They make sure the facts don't fall by the wayside.

Few firms are prepared to go this far. Maybe they should.

## 11. How to deal with policy makers

**26th May 2019 by Aaron**

I am often asked how to deal with policymakers.
The advice below is based on working for NGOs, industry, politicians and the Commission. It's the same advice I give friends working for industry and NGOs

Some people apparently liken the prospect of dealing with a policy maker as they would meeting ET.

Many people react like Michael and Gertie when they met ET.

It's important to get it right. If you get it wrong, you'll set back your cause, sometimes irreversibly.

I may have an advantage. I've been an official and worked for politicians. We must have the same DNA.
It's key to understand who you are dealing with. On any given issue there are going to be no more than a handful – around 20 – who really decide.

They likely know each other well. Many will have worked together at some time in their career. Some will be friends. The decision-making chain is shallow.
From this flows the obvious. Don't moan and complain about any official personally. It's going to be counterproductive. It's such a small world that it will not look good on you.

Too often, when people lobby they speak a language that officials and politicians cannot understand. It often sounds as if they are speaking the language from the Phaistos Disc.
The greatest challenge is to speak a language that your intended audience – officials and politicians – can understand.
There is an easy way to tell if you have lost your audience. They stop listening to you. Your audience will start chatting amongst themselves, laugh in disdain at your points, and cross their arms in front of you.
If you lose your audience, there are two things you can do. First, re-calibrate on the spot, and speak to them in a way that they understand. Second, if that does not work, end the meeting abruptly, and leave.
If you can't speak to them in a way your audience can understand, you should not be in the room.


When working for Anita Pollack MEP, an industry delegation came in and gave a master class in male chauvinism that would not have been out of place before women got the right to vote.

When working for WWF on fisheries, the head of Cabinet called me in to meet, as he, at last, understood what we were asking for. The reason for this change? I had banned the use of fishing quota equations in letters. Once translated into plain English, he understood what we asking for.

The only time I bring a lawyer to the meeting is if the meeting is with a lawyer. Otherwise, I use their advice and leave them outside. I do so for a very simple reason. It is seen by most, if not all, officials I know that your scientific or technical case has no merits, and you are getting ready to go to Court. That's not a good signal to send.
If the meeting is about a legal point, bring them in, and ask for the other side's lawyer to be there. Ideally, send a summary of the legal argumentation in advance. As you are paying by 6-minute increments, you don't want to run up needless billable hours on a point that can be disposed of in minutes.

Today, I have switched from one seemingly technical and science heavy areas, fisheries, to another, chemicals. The lessons remain the same.
It's a key cornerstone of both, that you need to keep up to date, and have a flow of word class and up to date data and studies. You need them to objectively and dispassionately deal with each and every point that can be raised.

This is just a baseline expense that needs to be borne. There is no shying away from it. As the body of knowledge increases, you need to be on top of those changes, and commission new studies to answer any questions that come up.

You need to do this because governments, international organisations, and universities, will be working to find answers to emerging challenges. If you wait and see, and don't have a pipeline of research to address upcoming challenges, you'll find yourself too late in the game when regulators and politicians act.

The best practice I have seen in industry and NGOs is for a significant budget to be set aside in the hands of a chief scientific advisor. The chief scientific advisor commissions studies that deal with both current and emerging challenges. This feeding of the 'body of knowledge' is not an add on. This constant research is core. Too few practice it.
When dealing with fisheries and chemicals I found having the best quality studies prepared ahead of time key. In both situations, that's involved have the best experts undertake an objective analysis of the situation years ahead of when it would be officially needed. It's obvious that the expert will use the same stringent criteria the Commission or Agencies use. There is no point using your own criteria for a study and find out it's rejected because you are not using the Commission or Agency's criteria.
After doing this for 20 plus years, it's clear many years in advance when new information is going to be needed to influence decisions. Ideally, you'll come in early, or on time, with a well-rounded body of information filling in the gaps.
If you choose to bring new research to the table just before the decision is taken, or after the decision is taken with a view to re-open the process, the current mood of most regulators is to ignore it. It's seen as a delaying technique.

**Stages of grief**


Most people never really advance beyond the anger stage. It is common in industry and NGOs.

The few who do move beyond anger, tend to walk out unscathed, or relatively unscathed.

There is a phrase that indicates you will never be able to move on.

That phrase is "this is the worst thing that could ever happen".

## 12. 10 lessons for the chemical lobbyist

**1st June 2019 by Aaron**

If you read the minutes of the Regulatory and Advisory Committees, you'll get a good idea of what works best. I find it useful to read the minutes from the:

SEAC

RAC

Member State Committee

Reading the official record, you will see the approaches that work and those that don't. I've adapted my game plan based on these useful feedback loops.

A browse through the official record brings up some useful lessons for any chemical lobbyist:

1. If after a classification decision has been made, and you have new science, the best option is to get a Member State to submit a new classification proposal with the new studies.
2. Governments and the Commission won't stall a decision because a new study came up after the decision has been made. They just see it as a means to stall the decision.
3. There have been a few cases when new and relevant science has come up during the adoption of a decision. The Commission sent the opinion back to the RAC. I believe that in all those cases, the RAC re-confirmed their previous position.
4. There are always going to be uncertainties – scientific, technical and economic – but that's not a reason not to act.
5. The Commission and Member States common view is that remaining uncertainty is often due industry providing limited or no feedback.
6. Alternative evidence is not only welcome but is taken into account and it can change the outcome.
7. You need to bring good quality independent information to the table.
8. To do this, you'll need to start early and prepare your case. If you present information after the key decisions have been made, the information is unlikely to be taken up.
10. The same goes on any on-going or emerging issue. If you don't have the right evidence available, pleading for extra time just won't work.

## 13.A digital declutter – some useful links for a chemical lobbyist

**Tracking**

Financial Times
POLITICO
Chemical Watch
EU Issue Tracker
VoteWatch Europe
ENDS
EP Legislative Observatory
Commission Law Making Procedures
Register of delegated acts
Register of Implementing Acts
Commission Press Releases
Court of Justice Press Release
Council Press Releases
European Council Agenda
College meeting
College Agenda
College Minutes
College future items
ECHA RAC
ECHA RAC Meetings
ECHA MS Committee
ECHA MS Meeting
ECHA SEA
ECHA SEA Meetings
CARACAL
Council – WP on the Environment
Council -Coreper
Council – Agenda
Council – voting results
Council – Environment Council
Council – Voting calculator
CARACAL – CIRCABC

**Reference**

Staff Directory
DGs & Agencies
DG ENV
DG ENV Planning
DG ENV ORG Chart
Better Regulation – Road Maps etc
Commission Work Programmes
Better regulation: guidelines
Public Consultation
Public Consultation Road Maps/inception impact assessments
Current Public Consultations
Feedback on Proposals
Feedback on draft delegated acts/implementing acts

**Submit ideas for REFIT**
**Transparency Register**
**Track National transposition**
**EP ENV Committee**
**EP ENV Newsletter**
**EP ENV Meeting Agenda**
**EP ENV Meeting Minutes**
**EP ENV Voting Records**
**EP ENV Video record of meetings**
**EP Watch live**
**EP Find MEPs**
**EP Political Groups**
**Greens/EFA – Staff**
**EPP – Staff**
**S&D – Staff**
**ALDE – Staff**
**ECR – Staff**
**GUE/NGL – Staff**
**Rules of Procedure – Commission**
**Rules of Procedure – Council**
**EP – Rules of Procedure of the European Parliament – 2019 March**
**Commission' – Guideline on Implementing Acts**
**Commission – Guidelines on Delegated Acts**
**Committee Standard Rules of Procedure**

## 14.21 things you need in your lobby plan

8th March 2018 by Aaron

A friend asked me why I am keep mentioning the importance of lobby plans and what is in them.

I think they are key for three reasons.

First, I can't remember every person who is going to a make or influence a key decision. I think the only way to quickly recall a lot of information is to have it written down. Personally, I prefer paper, but online works as well. I realise I am in small minority here. Most lobbyists seem to have didactic memories. I don't.

Second, I think on paper. I find writing, and re-writing, helps expose weaknesses and fallacies in a plan. The only way I have worked out how to do this is through the writing process. If there is another way of getting there, please let me know.

Third, the easiest way to share with others the next steps and evidence to back a lobbying campaign is to have it written down. In the absence of telepathy, it seems the best approach. Again, I am very open to trying alternatives.

**The 21 steps**

My friend then asked me what is in a lobby plan contains.

I think there are around 21 bits to a basic lobby plan.

1. **You need a short description of what the issue is about.**

It is useful to make sure everyone in the room is there for the same reason. Over 20 years of lobbying, this tends to throw people. Some people turn up for the wrong reason. This helps them leave early on.

Sometimes, you find out that the aim seems to be amount achieving world peace in a week type goal. Ambitious not doubt. Feasible? No, just a pipe dream.

**You need to know the background to the proposal**

I think it is useful to have an aide memoire on the background to the proposal.

This can be helpful for two reasons.

First, it is useful to deal with mock indignation that the proposal has come out of no-where. Few proposals ever come out of the blue. There is a long history to them. Having a few lines to remind you and your colleagues of the history is useful.

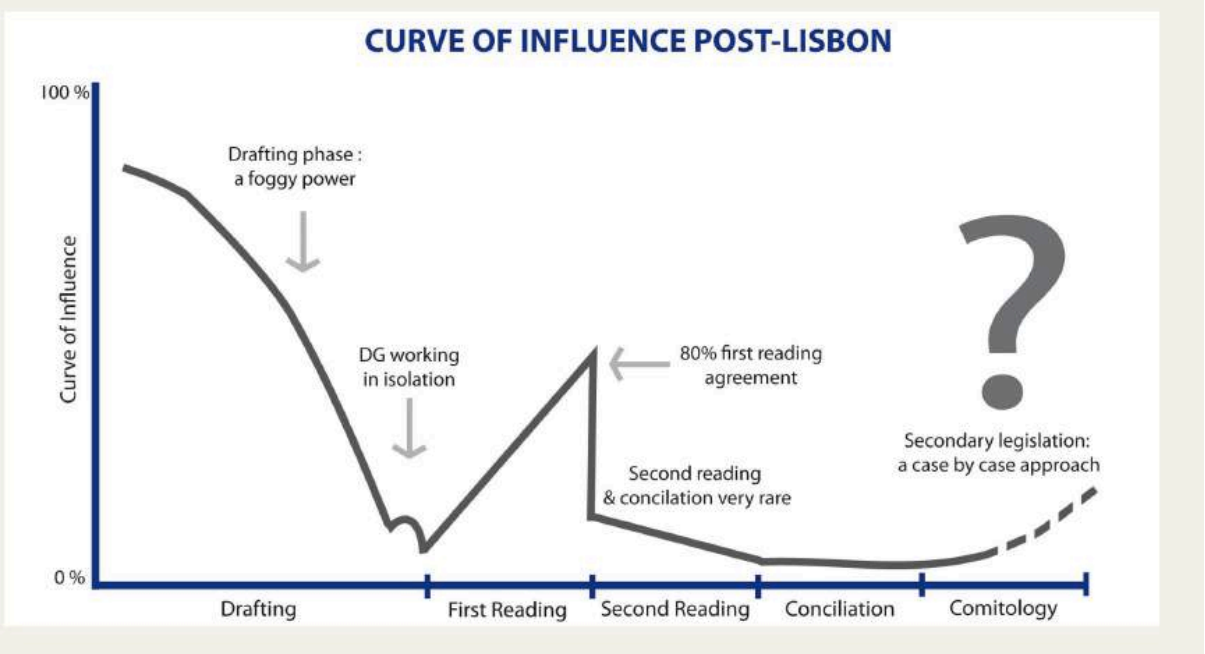
Second, the aide memoire provides a useful reminder of the background, players, and reasons for the proposal.

3. **You need to know what type of legislative proposal are you dealing with**

99% of EU legislation is secondary legislation. Most lobbyists frame everything in terms of co-decision (am too old to call it by the proper name of ordinary).

I prefer deep simplicity. It is helpful to make sure you are clear from the start what legislative process you are dealing with. From that, you'll know the steps, and more importantly, how many votes you need at which step.

**You need to know where you are in the process**




Here Daniel Guegen's excellent slide tells you everything you need to know.

The earlier you start in the process, the easier it is to influence.

5. **You need to be clear who leads on this issue**

It is vital to be clear who leads, who decides, and who executes. Campaigns are riddled with too many chefs in the kitchen. It gets bad when none of them know how to cook.

6. **You need to be clear why this is an issue for you**

Again, this is not just a test for early signs of dementia. It is useful to be clear from the start why you are working on the issue. What is the real issue for spending scare time and resources on this.

I have no problem on fighting for the principle of an issue, but when that principle costs millions to advance, and burns away goodwill, it is helpful to be clear why you are really working night and day to defend a principle.

As an aside, lawyers and political consultants love a client who wants to fight to the end to defend the principle. The fees they rack up are amazing.

7. **You need to know what you want to achieve politically?**

For me this is simple. You want to know how the legislation is going to be altered. The more specific you can be the better.

I tend to run away from grand visions and posturing. I get nervous. I prefer the dull and mundane. As lobbying is about changing laws, I tend to stick to textual change that can be put into the law books and implemented in practice.

8. **You need to be clear what is your reasonable worst case scenario is from day 1**

I am a lifelong Labour Party member. So, coming from the centre left winning does not happen that often. I think it is useful to know from the start what your ideal is and what is your reasonable worst scenario.

Things tend to swing to the reasonable worst case pretty often, and planning for it lets you get plans in order for when it happens.

9. **You need to know how previous votes have gone down**

Past votes don't predict future votes perfectly. Past votes on the same issue, with the same people, give you a dammed good idea on how they going to vote again on a similar issue.

Here I can only recommend the services of Vote Watch Europe.

10. **You need real facts, not pub facts**

You are going to have your message bible. That's well and good. It helps if your messages have some evidence to back them up. It helps even more if you have this all written out. It helps people like me whose mental powers of instant memory recall are not so well accentuated.

The advantage of having them written out, is that you, or your expert, can spot your pub facts. Those are messages and facts that sound great in the pub after 5 beers, but in the cold light of day need to be flushed away. Too many campaigns are based on pub facts.

11. **You need the devil's advocate**

The Jesuits contribution to western civilisation have been many. I think one of the greatest is their historic role as the "devil's advocate".

If you are serious about winning, you need to put your best people on the case of tearing your case apart.

Whilst is is painful, it helps make your case stronger. And, to be honest, any decent opposition will do the same, so it is better to be verbally brutalised in private, rather than humiliated in public.

12. **You need to need to do research – you don't have the answers yet**

    I spent my holidays when at law school working for a law firm do criminal law cases. I learned the key to winning was a lot of research before the day of trial.

In lobbying, you need to have the best, credible and independent evidence at hand. You need to make it clear and understandable. Putting forward the latest thinking of a Nobel prize winner is not likely to have much impact if your audience are politicians and officials. It is key to make the expert understandable to their audience.

13. **You need to know what research you need to have do, and have it on time**

It is good if you can commission the expert to do the research you need. It is pointless if their research is going to be published a year after the final vote or decision is going to be made.

14. **You need to have a copy of your ideal legislative text in your back-pocket**

There is a really easy way to know from the beginning if your campaign is going to win. Just ask for a copy of the legal text in the amendment and supporting explanatory memorandum.

If it is not already written down, your chances of winning are low. It is lower if you don't have a written plan.

15. **You need to know who really makes the key decisions?**

I think there are around 250 key people who make the decision on any piece of EU law. The tricky part is to know who they are and to have their contact details.

You need to know who they are before your start. Anything else is well meaning amateurism.

16. **You need to know your friends**

You need to know who your allies are. You need to speak to them directly and check they stand shoulder to should with you on your issue. If you don't, the first time you publicaly call them out as a supporter, they will too often say they are not.

Do the same with your opponents. When I worked on fisheries legislation, there were vast parts of southern Europe I devoted no energy to. I knew where they stood.

17. **You need a budget**

I hate to break it to you. A good lobby campaign is not cheap. You need to pay for experienced staff, expert evidence, clear and powerful material, media and online output.

Too many people think this is all happens for nothing.

My rule of thumb is to have 50% fixed costs, such as labour & rent and 50% flexible funding to focus on the campaign.

Anything less, you won't have the cash on hand when you need it to run that advertisement in Politico or the FT.

18. **You need a media and social media plan**

If you don't have it, get it.

For me, the real benefit is it gives very busy people a chance to learn your view on the position before they have met you.

19. **You need to go old school**

You need a step by step plan on who is going to meet who. Yes, it like the last hurrah in the age of technology, but if you don't know how your target audience are going to vote on your key issue, all the hard work is lost. I am old school, so I like do face to face meeting. It is easier to know if someone really is going to vote for you.

20. **You need to try Basecamp**

You need to track how your team's meetings went, you need to have a list of how people are going to vote for you, and you need to have all the key documents available.

You need something like https://basecamp.com/. If you have the funds, you can use Fiscal note.

21. **Just do it**

When you have your house in order, your plans set, your case prepared, you just need to go out and do it.
Plans are useful. Most of it will change really quickly. Events will overtake you. But, you'll have a solid foundation and survive the changing tides.

There is a sure way to loosing and that is not to have a plan, or to have a plan, but ignore it.

## 15. Having Your Own Canary in the Legislative Mine – 10 year time horizon

19th May 2019 by Aaron

On Friday I gave a talk to the Public Affairs Council. I was asked how far in advance I could tell if a legislative or regulatory proposal would come. I answered '10 years out'.
Maybe this sounds like an incredulous mystic, so I thought it would be useful to test out this 'gut feeling'.
This gut feeling is that there are sure tell tail signs that legislation or regulation is in the pipeline. When you know what to look for, you can identify the signals from the background white noise, and act accordingly.

My rule of thumb is you can tell around 10 years out.

To test my gut feeling, I looked back at the development of PM 2.5 legislation in Europe. I have skin in the game here. I worked on the adoption of air quality legislation regulating particulate matter in 1997.
Back in 1997, the European Parliament did introduce limits on small Particulate Matter. Then, long term exposure to PM 2.5 only 'suggested that long term exposure to PM is associated with reduced life expectancy and with chronic effects on lung function' (Commission proposal, 1997, p.26) (link). Today, it is clear.

**Some Key Dates**

1979: Emerging scientific studies in 1979 . e.g. Holland WW, Bennett AE, Cameron IR, Florey CDV, Leeder S R , Schilling RSF, et al. 1979. Health effects of particulate pollution: Reappraising the evidence. Am. J. Epidemiol. 1 10;525- 659
1993: An Association between Air Pollution and Mortality in Six U.S. Cities, Dockery, C. Arden Pope, (link)
1994: Dockery and Pope, Acute Respiratory Effects of Particulate Air Pollution, 1994 (link). Indicates epidemiologic evidence of a relation between particulate air pollution and daily mortality and a causal effect on increases in daily mortality.

1995: Review Health Effects Institute, Particulate Air Pollution and Daily Mortality: Replication and Validation of Selected Studies', August 1995 (link). Vindicated Dockery and Pope studies, namely robust associations were reported between long-term exposure to PM2.5 and mortality.
1996: Directive 96/62/EC on ambient air quality assessment and management (link) 21 November 1996. No reference to PM 2.5.
19 97: Proposal for a Council Directive relating to limit values for sulphur dioxide, oxides of nitrogen, particulate matter and lead in ambient air (link) 8 October 1997. Requirement to measure PM 2.5.
1999: Council Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (link) 29 June 1999. Requirement to measure PM 2.5.
2004: Clean Air Working Groups first meetings (link) 7 October 2004.
2004: Public Consultation on a new Directive, December 2004-January 2005.

2005: WHO Air Quality Guidelines for particulate matter, ozone, nitrogen dioxide and sulfur dioxide (link).
2005: Proposal for a Directive on ambient air quality and cleaner air for Europe (link) 21 September 2005. Article 15 – exposure reduction targets.
2008: Directive 2008/50/EC on ambient air quality and cleaner air for Europe (link) 11 June 2008. Article 15 – limit values on PM 2.5.

**Observations**

First in 1993 when Dockery and Pope published their findings, it was clear they had identified something important. They are respected experts.

Second when HEI – funded by both the EPA and Industry (car and oil) – subjected the above study to peer review from hell, it was, in hindsight, just a matter of time before measures would be taken. HEI are respected by regulators globally.
Third, European legislators were reluctant to act in 1997. The science was not clear enough. I know this because I worked for the Rapporteur.
Fourth, even as the causal link became clear, it took the Commission time to re-look at the issue again.

Fifth, more than a decade after the canary in the mine tweeted, the EU introduced legislation to address PM 2.5 directly.

My final observation is that most firms, trade associations, NGOs and Foundations do not have a ten-year time horizon to deal with issues. I think this is a mistake.
Some governments, a few officials in the Commission, and academics do and as they have the patience to keep with the issue, it's governments, a few Commission officials, and universities who land up setting the agenda.

## 16.5 useful techniques for producing winning campaign ideas

27th May 2018 by Aaron
I have ditched ideas that I initially thought were winners. They were not. I threw them away and then won.

I use 5 simple techniques to help develop the 'winning ideas'.

I guess it comes down to one very simple idea. I always test ideas out on key decision makers and influencers before I go live with them.

1. **Don't fall in love with an idea before it is tested**

Don't fall in love with an idea or an opportunity that has not been tested. Too many people become convinced that this idea is going to work. They just don't test it before using it in the real world, and this leads to problems.

People like to use an idea because it appeals to them. This does not make sense to me.

If political or legislative action is not going your way, it is unlikely that your worldview holds much sway with key political decision makers and influencers.

Indeed, if your views are the polar opposite of the prevailing majority of decision makers, you may want to keep your ideas to yourself.

I am a supporter of solving the fisheries problem of too few fish being caught by too many fishermen by property rights. I think assigning property rights to the seas makes sense. It has worked well. But, it is unpopular across the political spectrum in the EU. And, in this case, I found it sensible to drop it, for fear of weakening support for my other issues.

2. **Don't test your ideas against your opponents**

Too often, you will test your ideas on your opponents. You'll look to your opponents, or who you think are, and test your ideas on them.

This usually leads to confirmation bias. It often does not work out very well. People on opposite sides are unlikely to agree to a solution or the problem. Most messaging sessions are based on what amounts to 'our response to our opponents' case.

3. **Just because an 'expert' says so, does not mean it is so**

Worse don't gobble down any idea because it appeals to the 'experts'.

Experts work in think tanks or universities. They don't usually do politics or decision making. And, even if Brussels is a technocracy, where experts' views are respected, they don't decide.

On discarding of fish, most NGOs were not that interested in it. Instead, they wanted to campaign on the idea of 'MSY' – Maximum Sustainable Yield. This is popular in academic fisheries community. I have sat in rooms for several hours whilst smart people with Ph.Ds. in fisheries biology spoke about MSY.

Fortunately, the idea of throwing good fish back into the sea made the issue of overfishing clear and simple for the public. It caught their imagination and then the attention of politicians.

4. **Don't fool yourself**

Cognitive bias is a dangerous thing when it comes to lobbying. There is no point wailing at the walls or displaying mock indignation. If things were as you saw them, you'd not be suffering the 'injustice'.

Instead, pinch yourself, and see where you really are, politically speaking, and work out how to deal with the issue you are. It saves you wasting time and chasing demons.

A long time ago I entered, fresh-faced, a long-standing fisheries campaign. Our lack of progress was full of due to mysterious factors. And, whilst I have read all of Robert Ludlum's novel, the real reasons for slow progress were far more mundane. When they were fixed, the campaign achieved a lot more.

5. **Test your ideas with your intended audience**

I try something else. I speak a representative sample of key decision makers and influencers. I want to understand how they see the issue and how they respond to pre-launch ideas. I always discover something really useful.

Sometimes, you find out you are pushing at an open door. They already agree with you. Other times, you find out that the campaign is just a proxy fight for something far bigger.

## 17.Why timing is everything for a lobbyist

5th April 2018 by Aaron

I like the occasional long flight. It lets me rummage in an airport bookshop and pick up some easy reading.

I just bought and read Daniel Pink's new book "When – the Scientific Secrets of Perfect Timing". Over 7 chapters and 218 pages he shows the importance of timing.

**Miles Davies "Timing isn't the main thing, it's the only thing"**

As anyone with a teenage child knows, their sleep patterns go very strange. Midnight seems like wide awake time. Traffic accidents peak at certain times (2-6 am, and 2-4 pm). Taking tests in the morning – but after 8;30 am – leads to better results than taking them at 2:00 pm. And, short siestas are good for you.

A lobbyist instinctively knows timing is everything.

Too often, a lobbyist steps in too late in to process Whatever you say, however useful, will simply be ignored. What you are putting forward has not been delivered at the right time.

A good lobbyist knows that the windows of opportunity to influence decisions are narrow. They are prepared for those short openings.

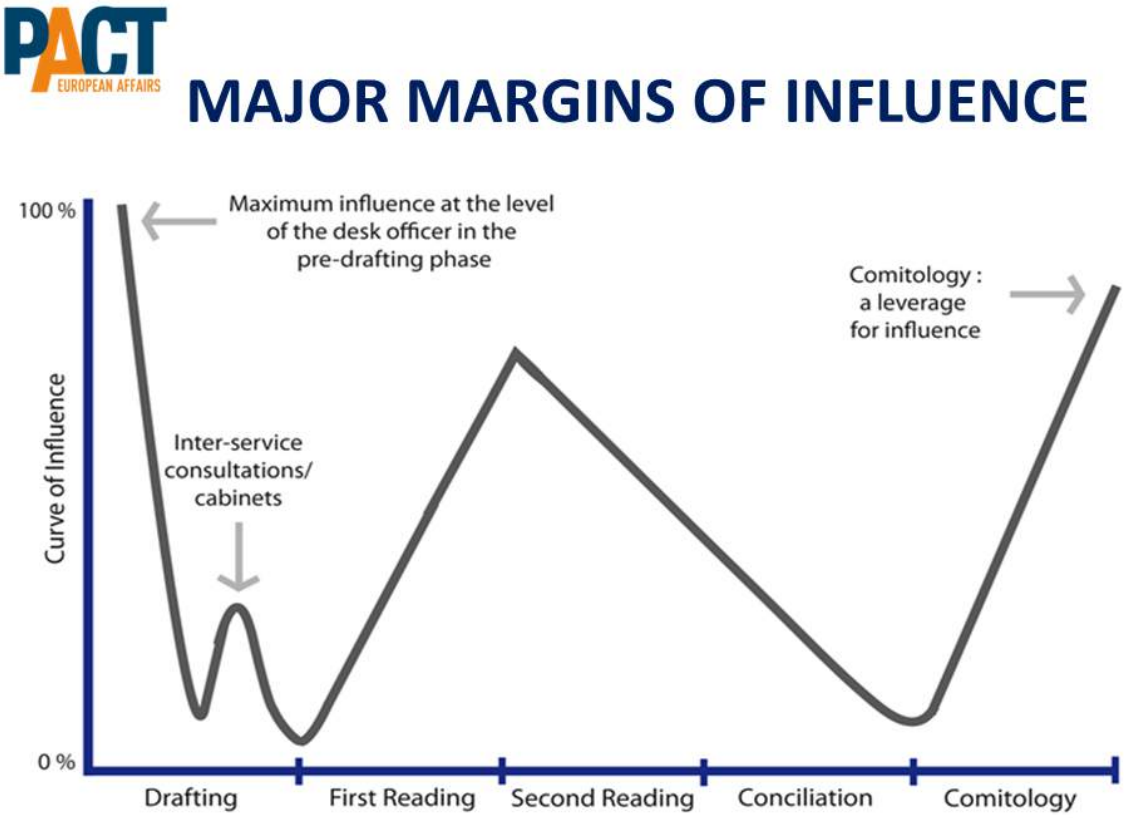
**20 vital time slots**

1. When the Commission start to prepare new proposals, they give you lots of opportunities to feed into the process. Take those opportunities. It's better to feed in early to the public consultations.
2. Work backwards. Pink writes about doing a premortem at the start. Work out what can go wrong and take steps to remove those hurdles. The biggest challenge in lobbying is not having a credible position with supporting evidence ready in time. This can be avoided. First, I base things on the "reasonable worst case scenario". Second, I try and work out in advance the hardest questions I am going to get asked and have the answer prepared. Those questions always come up. Third, I don't believe in political tooth fairies.
3. Inter-Service Consultation is usually for 10 or 15 days. It can be shorter. If you miss the opportunity to let members of the Inter-Service Steering Group and their Cabinets know you position just before or within that narrow period of time, you must like this scene from the deer hunter.
4. You need to have your amendments ready and prepared in time. If they are late it is pointless. Today, the European Parliament settles all ordinary legislation at first reading,

and they are pushing through the remaining files on their books quickly. This means that as soon as the Commission have their proposal published, you need to have your amendments ready. You can't sit around for plenary or 2nd reading.

5. During the great recession, politicians and ministers were open to taking on board concerns about the cost of environmental legislation. They really feared that jobs would be lost. Today, those same arguments that worked in the recession don't work in the booms.
6. Somedays you need to accept that MEPs or Council officials just won't be available. Some days are better than face to face meetings than others. They have Committee meetings to attend or Council Working Groups.
7. Try and avoid 2:30 pm meetings. Pink observes that humans get tired around 2 pm. It makes sense to me. I worked for politicians for a few years. The 2-5 pm slot was not ideal for meetings with lobbyists. I found it best to have a meeting in the morning slot or after 6 pm. Our circadian rhythms seem to equate to that.
8. Where you issue appears on the Committee schedule is everything. Ken Collins MEP, the legendary Chair of the Environment Committee, taught me that. If the Chair of the Committee schedules your issue at the start of each Committee, you'll have a more engaged Committee, who are more receptive, and this helps you get your proposal through quicker. If you schedule it later in the day, the members are less receptive, too often you won't have a quorum or your item will just fall of the agenda.
9. If you do have to have long meetings, there is a trick to making it productive. Have a break and come back. It refreshes people.
10. Elections bring opportunities. If you are looking for a job with a new MEP, the best time is the end of May 2019. There will be a new European Parliament and newly elected MEPs will be looking for political advisors to guide them through the labyrinth.
11. New Commissioners will be nominated and appointed in 2019. The confirmation hearings and the preparation of handover briefings is the right time to influence future policy direction.
12. In meetings with politicians and civil servants, please don't waste time. Raise the question you want the answer to, ask some quick clarifications, thank them, and leave. They don't get paid by the billable hour. If they ask you questions, all well and good. You can make the meeting more useful by sending them a 1 page briefing a few days before the meeting. If you are there to discuss a report you have prepared, send them the report and a 2 page summary a week before. The point of the meeting is to get answers and nothing else.

13. I like this slide from PACT. It shows you when you chances of influencing a decision are highest. I'd start very early in the process. Most people don't.




14. It is useful to go and see politicians when they are most receptive to listening to people. Party Conferences provide the perfect opportunity.
15. Avoid religious festivals, especially if those you are trying to influence are religious. Even if you are a non-believer, there are plenty of people of faith around.
16. It's smart to work with the media to get certain stories out at certain times to influence decisions. It works.
17. Each political group in the European Parliament adopts their voting lists in a certain way and more importantly at a certain time. If you miss that small window of opportunity, you'll have missed the boat.
18. Even though a politician may intend to vote a certain way, you may still have time to reverse a groups voting line if it as odds with their national Party line. You then have just a few hours to change the voting list.
19. If your position does not add up, whatever you say won't really help. If you get in early, at least you'll know what you are saying is not working, and you have time to change.
20. In the words of the late Andy Grove "only the paranoid survive". You will be prepared ahead well ahead of time and harness every window of opportunity. They are often open for a very short period of time. Most will miss it.

## 18.21 Simple Things You Can Do To Persuade The European Parliament – The Basics

**<u>27th February 2018</u> by Aaron**

I came to Brussels back in 1997 a wide eyes federalist. Soon afterwards, I landed up working for 2 excellent British Labour MEPs.

I was very lucky. I just worked on getting difficult pieces of legislation through quickly. First, I worked for Gordon Adam MEP on fisheries legislation. Then after that law was passed I jumped to work for Anita Pollack MEP on getting through the first Ambient Air Quality Directive. Channel 4 TV even made a fly on the wall documentary about this law.

By accident or design I have spent the next 18 years working on fisheries and environmental legislation. I have spent a lot of time dealing with the European Parliament.

**21 Simple Things**

2. Avoid confirmation bias. I could never understand why industry wanted to go and meet Roger Helmer, the former conservative then UKIP MEP, or NGOs deal only with some hardened Green MEP. They just agreed with you. The only problem is that whilst they may reflect your own world view, it is unlikely going to help you win your vote.
3. In case it is not clear, you are there to get support so your amendment is adopted. To be more direct, you need to get your amendment adopted in the final legislative text. Stop celebrating when your political clone of a MEP submits an amendment from the non-lead Committee. It only really counts when the amendment is sitting there in the OJ. Then you can celebrate.
4. Not all MEPs have equal influence. If you are serious, look at http://www.votewatch.eu to find out the voting records of MEPs. And, if you are really serious about winning, commission VoteWatch Europe to do one of their excellent insight pieces on the key influential MEPs on your issue. You'll learn lots and save the small amount of money you spent on spending time chasing dud leads.
5. Know the voting rules. Know when you need a simple majority and when you need an absolute majority. On the Canadian Oil Sands comitology challenge, all it took was for the shifts from the Baltic, Bulgarian and Romanian MEPs to put the challenge 2 votes short.
6. Know how each political group prepares their voting list. Each Group has a different process to agree a voting list. Know who decides it. Mrs Grossetête is key on how the EPP votes on environment issues.
7. The most important power of the Chair of the Environment is the least understood. It is the power to place an issue on the agenda. Ken Collins, then Chair of the Environment Committee, placed Anita Pollack's Air Quality dossier at the top of the agenda. It helped us get the file through in record time.
8. The S&D Group have a tradition of loyalty to the Party. They stick to the voting list. Other Groups have a more fluid view. When the 5 Star MEPs sat in the EFDD Group, they seemed to follow the Green Groups voting lists on most matters. It is important you know how strong the Party tie is.
9. Some personal political advisers are genuinely influential in their own right. Some MEPs designate their political adviser to take the file through adoption. If that's the case, take the meeting with the assistant. They will be writing the report.
10. Some of the Group Advisers set the agenda. I know of a Group Adviser on the Environment Committee to whom MEPs from other political groups ask for "lines to take". If you can sway them, your job is a lot easier.
11. It's key you get in early. By early, I mean ideally before the Commission has even issues their proposal. Once files have been allocated, you'll be asking for a meeting. If you turn up late, you need to ask yourself if you want to win or to loose.

12. Take the time to make sure what you are calling for makes sense. It is not important that it makes sense to you. You could likely persuade yourself that gravity is a hoax, if the incentives were right. I mean will it make sense, both in writing and in person, to the MEPs you want to back you and switch their support to you.
13. Don't forget back home. Struan Stevenson MEP, an affable and decent conservative MEP, corrected his errant voting proposals on Blue Fin Tuna after his shadow Fisheries Minister learned of how Struan intended to vote. A 10 pm call cleared things up. Struan knew who had spoken to his shadow Minister.
14. The very smartest thing the most effective firms, organisations and NGOs do is have a network of well connected, cross-Party, politically smart people in many of the 28 member states. These are the men and women who develop a good working relationship with national party officials, MPs, Ministers, their political advisers, and MEPs. Having a trusted voice to deliver a message is key.
15. "Find out what influences them" is so obvious but so rarely done it is shocking. I know that citing biblical scripture is a more persuasive tool to influence a deeply religious politician than the specifics of an issue. Lawyers zone in on process issues. Talk to them about what interests them and not necessarily what interests you.
16. Have the suggested text and amendments in your back pocket when asked. If an MEP asks for suggestions, send them immediately. Don't wait for until your organisation has deliberated on the text. If they had it their way, they would only get around to sending the text until after the vote.
17. Have your champion when it comes to the trilogues. Few good things happen at 2 pm in the morning with stale coffee to keep you awake. Late night political compromises don't often land up well. It is important that you have one person in the room who sees your interests as their own. They need to keep an eye out for you.
18. One-night stands may get you what you want once but will often leave the other party resentful when you don't remember them. In politics, it is best to have long term relationships, that transcend political lines.
19. If you are really smart, you will see as font of useful information, that you provide without promoting.
20. Thankfully Brussels is not sullied by Political Action Committees. Your best chance of success is well reasoned and persuasive case that speaks to your audience.
21. Work with the media to pre-suade your audience. I found a story by George Monibot led to a spark of new support from MEPs across the political spectrum. Coverage in low circulation political weeklies has a surprisingly positive return.
22. Be pleasant and civil. Treat any meeting as a civl conversation. Avoid posturing and hectoring. Mirror their language and concerns, your job is to persuade and not to piss off.

## 19.A checklist for getting the right law

**12th February 2017 by Aaron**

I enjoyed "The Checklist Manifesto: How to Get Things Right" by Atul Gawande.

It puts forward a simple idea to avoid mistakes. Use a checklist to work through the action steps you need to take. It is used by pilots. Gawande wants doctors to use it to reduce accidents in surgery.

I think political campaigners and lobbyists would benefit a lot from using checklists.

My checklist for getting a piece of EU legislation on the books would look something like this:

1. Is your issue/amendment Legal – will the legal service of the Commission, EP or Council squash it?
2. Will the Commission table the proposal?
3. Can you get it tabled by a DG or Commissioner?
4. Can you issue past the Regulatory Scrutiny Board?
5. Is your issue in line with the Commission's Political Guidelines and Better Regulation Toolbox?
6. Can you it through Inter-Service Consultation?
7. Can you get a Rapporteur, shadow Rapporteur or key MEP to back your issue at the Committee stage?
8. Can you get a simple majority of MEPs at Committee stage to back your issue/amendment?
9. Can you get a simple majority of MEPs are plenary to back your issue/amendment?
10. Can you get enough Member States to support your issue/amendment – no blocking minority?
11. If the Commission does not support the issue/amendment, will they let it go forward?
12. Do you have a clear and compelling case to support your position?
13. Do you have independent experts validating your position?
14. Do you have the information / studies available at the right time?
15. Do you have a list of the 250 people in Europe and their contacts who will decide your issue?
16. Do you know how they stand on your issue?
17. Do you have access to these people in most (although not necessarily) all Member States
18. Do you champions and poster childs who will be the face of your campaign?
19. Do you have a budget for your campaign? Is the budget enough?
20. Do you have a campaign plan to get you from where you are to where you want to be
21. Do you have material to roll out in your campaign?
22. Do you material that will persuade only your natural political allies or do you have a material to bring about a winning coalition?
23. Do you have people who can persuade key decision makers or do they just antagonise the key decision makers?
24. Can you make your issue interesting enough that key people will back it even if there is no direct gain for them?
25. Does the timetable align? Can you get the Commission to table your proposal in the Annual Work Programme (October) or outside?
26. Do you have a good working relationship with the right media and think tanks so your issue can be taken up?
27. Do you already have a two pager in your filing cabinet and an elvator pitch to hand over if you get called up at the last moment?

The fewer things you can say yes today on this list , the less chance you have of getting what you want.

## 2. Bad lobbying

1. 21 Ways to lose a political campaign
2. 21 Ways to fluff a campaign

**21 Great Ways to lose a Political Campaign**
18th February 2018 by Aaron

15.

There has never been a time in political campaigning history when good political campaigners have been in more demand than they are today. And, still only a few of the campaigners produce most of the beneficial results.

Why is this? Top political campaigners know how to get results. They know how to get the most productivity from the resources they have to hand, persuade people and change laws.

I have spent 30 plus years working on and winning political and lobbying campaigns, having worked for many clients, from some of the largest NGOs to companies, and have read hundreds of books and articles on campaigning and lobbying.

In this blog, I am going to share with you 21 of the best strategies ever discovered to guarantee you **lose your campaign**.
Your job as a campaigner is to get results, quickly, efficiently and at the lowest cost. Your entire success as a campaigner will be determined in your effectiveness in getting the job done in a timely fashion.

In this blog, you are going to learn the 21 greatest campaign strategies ever discovered on how to flunk a campaign.

Let me tell you where these ideas come from. I have been working on political campaigns since I was 15 for the British Labour Party when we really knew how to lose elections. We took sure things and threw them away. I drifted into working for politicians and then as political consultant for NGOs and industry.

Then I asked why some campaigns won and so many lost, and indeed most never got off the ground at all.

That's when I learned the law of cause and effect. This law says there is a cause for every effect, there is a reason for everything that happened.

So, I spoke to the best campaigners around, and asked them what they were doing differently from the others. And, they told me, and I did it, and I won more campaigns.

From that moment on, I read every book, article, watched every DVD, went to every course I could get on how to win campaigns

Campaigning is a profession. It is science and an art. It is based on technique and methodology. There are certain things you can do as campaigner that will bring you extraordinary results as a campaigner.

Successful campaigners are (1) result orientated. They are focused on getting the job done and getting it done well. (2) They are solution focused. And, they are (3) action orientated.

## 2. **21 ways to fluff your political campaign**

Key Idea 1: Framing the debate is for others.
Don't frame the debate. You wait for the other side to frame the debate. And, when they have done so, you will engage privately and publicly in the debate on their terms.

Key Idea 2: Clarity is repugnant.
You will make sure that the only people who can understand your case have done a post-doc at Caltech. Yours is a world where the only people who understand your position paper have never stepped inside the world of government or politics.

Key Idea 3: Faith not evidence.
The people you are trying to persuade don't need evidence, and will trust you on a blind faith. The other side will present state of the art science, clearly presented, outlined by an expert whose been coached to speak to the media, politicians and the civil servants. This is not for you. You'll rely on a "for hire" expert, whose long ago been discredited for their latest research that proves "gravity does not exist".

Key idea 4: Plain English is a fad
You won't join the latest fashion of plain-English. Instead, you'll present 9-page position papers in font 10. And, banish anyone who slips in a chart to summarise the case.

Key idea 5: Words, not visuals
Visuals are not for you. Infographics are for others. Videos are for entertainment. Written text, preferably lots of it, with Latin, will serve us well.

Key idea 6: Engage only with your own allies
Engage only with those who support you. Ignore those who are not true believers. Ignore those who are not your natural allies. Heroic defeats are more important than winning the vote.

Key idea 7: Civility is old fashioned
You will throw everything into win, whatever the cost. It does not matter how many bridges you burn. You won't need to deal with the same officials and politicians again.

Key Idea 8. Journalists !
Yours is a world where no comment is the only statement you'll ever say to the 4$^{th}$ Estate.

Key idea 9. Speak to the press as a last resort
Don't return journalists calls for comments, let alone provide a background briefing. If forced to

issue a press release, make sure it is 5 pages long and 5 days late. Don't be the point of contact for insight and comment for a busy journalist.

Key 10. Display your wealth
You will attend meetings with a politicians and regulators with a watch last seen on the wrist of an oligarch. Your tales of economic hardship if a decision goes one way will not be diminished your ostentatious displays of the fees your making from this.

Key Idea 11 Shoot from the hip
You are right and they are wrong. There is no middle way. You need to tell them. It worked for President Carter's Hamilton Jordon.

Key idea 12: Media training
You are one in a million and a natural before the screen. You have the wit and wisdom of Jordon B. Peterson. You don't need preparation. Tony Haywood is your muse.

Key Idea 13. Speed talking
Speak really quickly with people, ideally in a language they don't understand, or is there 3rd language. If you slow down, use lots of jargon from the start.

Key Idea 14. Be in an internal meeting
The vote will wait for you to have an internal meeting. Don't worry.

This is where the key decisions to win are made, not out there in face to face meetings with decision makers. Be unavailable for meetings because the weekly staff meetings is at the same time.

Key Idea 15. PowerPoint works.
PowerPoints are always right. Whatever you do, always come with a very lengthy Powerpoint. It doesn't matter that this is your only opportunity to be face-to-face and actually converse with the person that will ultimately make the decision on your case. What matters is that you go through your 57 slides.

Key Idea 16: Don't follow their guidelines
Law and policy makers often follow well established principles and guidelines when they are preparing decisions. If you speak to them about breaches of their rules they are likely to listen. You'll appeal to them on different grounds.

Key idea 17. Ignore their rules
Laws and policies are follow well laid out procedures. It is the one thing law making has in common. There are points in the process that are there for you to engage in and influence. You'll step in when it suits you and not before.

Key Idea 18: 2 minutes after midnight.
Don't step in early whilst proposals are being discussed and drafted. You'll step in long after the ink has dried. Now is the time to raise hell on earth and demand changes.

Key Idea 19: Talk about what interests you and not the decision makers.
Don't speak to decision makers about the things that interest them and focus obsessively on what interests you. It does not matter that they may have backed you because your case raised issues that interest them. Go in and tell them how it is and nothing else. Make sure what you give to them can only be understood by a few people and certainly not by the people making the decision.

Key Idea 20: Don't budget.
The money tree exists for many governments and so it does for you. You will start you campaign with no a care in the world for how much it is going to cost, let alone having the money on call.

Key Idea 21: You don't need guidance.
If it looks like you are going to lose, keep digging. And, do not employ guidance from a professional hand, because after all how hard can it be.

## Better Regulation

1. Better Regulation – A Primer
2. Better Regulation & Ordinary Legislation in one easy chart
3. EU Better Regulation in 10 easy charts & checklists
4. EFTA & Better Regulation
5. Why Better Regulation works

## 1. Better Regulation – A Primer

18th April 2018 by Aaron

Services like Blinklist look to summarise the key elements of a book into a short read. I wanted to take advantage of a day off sick to write up a very condensed note on better regulation. I recommend using the Guidelines and Toolbox.
I get a lot of questions from lobbyists about Better Regulation. A lot still don't think it is that important, or not important enough to read, let alone master. They are like the modern day doctor who scoffs at the idea of using penicillin.

I recognize that too many Commission departments treat Better Regulation as novel and a passing fad. This group is steadily declining. They will be lost in the evolutionary struggle to modernity. In the next Commission, I expect they will become extinct.

I have drawn out key 5 elements for each area. It is just a primer and not exhaustive. You'll have to read the relevant chapters of the Guidelines & Toolbox.

**What is Better Regulation**

1. Evidence-based policy making
2. Process to deliver better quality legislation and policy
3. A system to consider second and third and order impacts from the very beginning
4. A system to minimise duplication & unnecessary costs
5. Involve stakeholders at an early stage

**What it is not**

1. Deregulation
2. Block, although a restraint, on proposals being developed
3. Restraint, but not a block, political intervention
4. Restraint, not a block, on animal spirits leading to new proposals being tabled
5. Political. It has benefited all sides.

**Your Road Map**

**The first step – Political validation**

1. 1st Vice President provides "political validation" before any Directorate-General (DG)l starts work on a "major new initiative".
2. DG writes a roadmap or inception impact assessment (in this case an Impact Assessment is needed)
3. Sec-Gen publishes plain English text online (here).
4. Stakeholders have 4 weeks to reply.
5. You need an impact assessment when the measure is expected to have (1) "significant impacts" and (2) where the Commission has a 'political choice' to make.

**The second step – Impact Assessment**

1. The ISG (Inter-Service Group) prepares the Impact Assessment

2. Considers all policy options
3. Consider the practical feasibility of implementing the options & spell out impacts on innovation
4. Quantity (to the extent possible) social, economic and environmental for the policy options
5. Not a show trial where a DG or Commissioner works to make the facts support their preferred outcome.

**Step 3 – the Regulatory Scrutiny Board**

1. Do not lobby the Regulatory Scrutiny Board. Submit a first-class case and evidence during the Public Consultation. Evidence-based policy making is what the label says it is.
2. The lead Directorate General sends the draft Impact Assessment ( + executive summary and minutes) to RSB
3. Documents sent at least 4 weeks before the meeting of RSB
4. RSB review draft Impact Assessment against Better Regulation guidelines
5. Not a block on a proposal's adoption. Even if 2 negative opinions the proposal can go forward for political adoption.

**Step 4 – Inter-Service Consultation**

1. Check that feedback of the RSB incorporated into draft Impact Assessment and proposal
2. Ensure that the Explanatory Memorandum spells out how the subsidiarity and proportionality tests were passed
3. If no Impact Assessment, the Explanatory Memorandum will explain why
4. Explain in the staff working document an implementation plan that explains how complex legislation will be implemented
5. Take into account relevant REFIT reports

**Step 5 – Public Consultation**

1. All feedback needs to be considered. A summary of feedback is prepared.
2. Too many people think "consider" is the same as "agree with". If your case is weak and evidence not strong, it will be "considered" and discarded
3. Stakeholders have 4 weeks (sometimes shorter and sometimes longer) to give feedback on roads maps and inception impact assessment
4. Stakeholders have 12 weeks to give feedback on impact assessments
5. Evidence rich submissions are needed, but too often not provided

## 2. Better Regulation & Ordinary Legislation in one easy chart

**11th May 2017 by Aaron**

I wanted to put down in one easy chart how the Commission adopts ordinary legislation. This is the chart I came up with.

The advantage of the Better Regulation rules is that the process for adopting a legislative proposal is quite straightforward.

First, you have to go through the Better Regulation guidelines and toolbox. If you don't want to go through that, I have added a process chart.

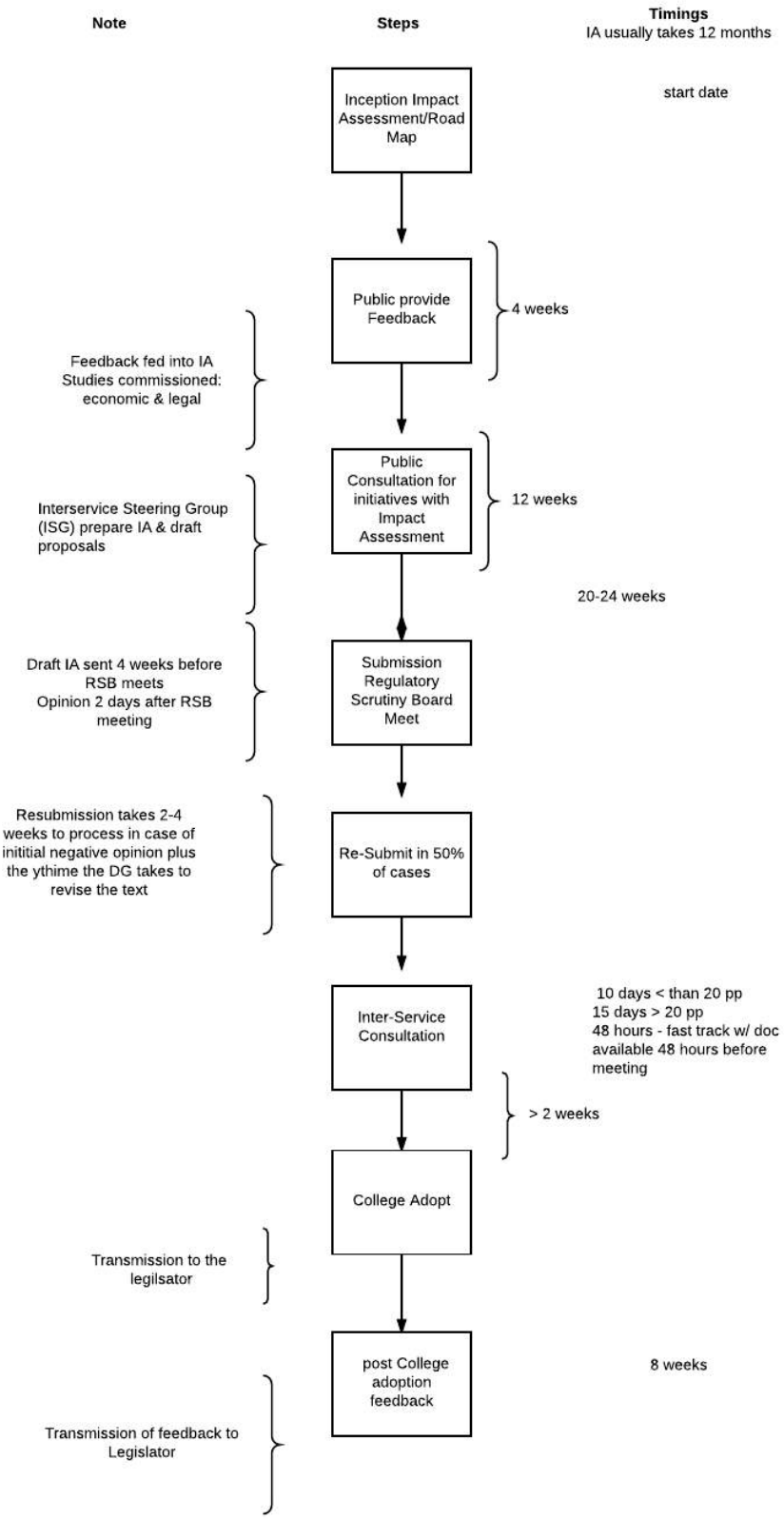
Second, you need know who is involved in the Inter-service Steering Group and the Inter-Service Consultation at the Services and Cabinet level. You are going to need to know max around 50

people. That's a lot less than 200 + people you need to know when it goes to the ordinary legislation stage

Third, around a year after the political validation for the work to start, and the first road map/inception impact assessment, you are likely to see a legislative proposal being adopted.

Fourth, to be honest, the smoke signals that regulation in your area is likely to be seen many months and years before political validation. The only excuse for not seeing the signs is long term hospitalisation or political hibernation. After 25 years I have not yet encountered a piece of legislative action that "came out of the blue". As soon as the smoke signals are seen, and hopefully before, your work developing your case and story will start.

Finally, that gives you a few months to get your facts and story in a line to persuade 50 people that your solutions are the best and get them to back your side of the story.


Note
Steps
Timings
IA usually takes 12 months
Inception Impact Assessment/Road Map
start date
Public provide Feedback
4 weeks
Feedback fed into IA
Studies commissioned: economic & legal
Public Consultation for initiatives with Impact Assessment
12 weeks
Interservice Steering Group (ISG) prepare IA & draft proposals
20-24 weeks
Draft IA sent 4 weeks before RSB meets
Opinion 2 days after RSB meeting
Submission Regulatory Scrutiny Board Meet
Resubmission takes 2-4 weeks to process in case of initial negative opinion plus the ythime the DG takes to revise the text
Re-Submit in 50% of cases
Inter-Service Consultation
10 days < than 20 pp
15 days > 20 pp
48 hours - fast track w/ doc available 48 hours before meeting
> 2 weeks
College Adopt
Transmission to the legilsator
post College adoption feedback
8 weeks
Transmission of feedback to Legislator

## 3. EU Better Regulation in 10 easy charts & checklists

**6th August 2017 by Aaron**

The current guidelines, 19.5.2015, are here. They are 91 pages long. They are supported by a Toolbox (here) of 414 pages. This rule book has been updated. It has been transmitted to the European Parliament and Council. It is now 90 pages of detailed guidelines and supported by a 500 page Toolbox.

I would recommend that you read this Manual. But, in case you don't want to, I have listed some of the most useful checklists and charts.

**In Praise of Better Regulation**

I have been an isolated supporter of 'Better Regulation'. I think it is the most revolutionary and positive action of the Juncker Commission.

There is a virtue in the certainty in the preparation and development of policy and law. Bruno Leoni, in Freedom and the Law, writes about the importance of officials discretion being limited by clear rules.

The Guidelines provide a clear set of rules that any official can follow. The Guidelines are so clearly written so there should be no reason why they are not followed.

I welcome two main aspects of the Guidelines.

First, by codifying good practice it limits administrative discretion in developing new rules. It places weaker restraints on the exercise of political discretion by Commissioners, and very few on elected MEPs or Member States. Politicians and governments, as a broad class, are reluctant to have their hands tied, let alone follow basic good practice.

Second, it opens up European law making to public scrutiny. Now there is a lot of scrutiny. I am not sure how many people login into to it. I check it out every week. You can find it here.

Better Regulation is about 'designing EU policies and laws so that they achieve their objects at minimum costs. …. It is a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders'. Why anyone could be against this is beyond me, but there are many who are.

**When to follow and not**

Officials have to follow the steps laid out in the Guidelines. The Toolbox provides additional guidance. The Toolbox is only binding if "expressly stated".

There are times when the Guidelines may be by-passed. These include:

- social partner agreements (see Art.155 Treaty),

- a political imperative to move ahead quickly,
- an emergency,
- specific deadlines in legislation, or
- a need to respect security related or confidential information

If officials want to apply an exception they need to ask for this at:

1. When the initiative is getting political validation
2. Permission from the Secretary-General and First Vice-President

The Guidelines are meant to be read by all 'officials involved in regulatory activities.' It would be interesting to know how many have.

The greatest weakness to Better Regulation is political will and time at the very highest levels of the Commission to follow and implement it. A First Vice-President who is clearly so busy and active must have little time to pick political fights with his fellow Commissioners and high ranking officials who would rather pre-determine the policy outcome from the very start than go through an exercise that may deliver results they do not like.

**Key Checklists and Charts**

Below I have gone through the new Guidelines and Toolbox and pulled out the 10 most useful charts and checklists.

**When is Political Validation Required?**

*See: Box 2. Scoping, political validation and interservice work*

• Political validation is required to move beyond the informal consideration of a possible initiative and to start the substantive preparatory work including engagement with stakeholders.
• The level of political validation depends on the nature and importance of the initiative. "Major initiatives" should, in principle, be entered into Decide at least 12 months prior to adoption by the College. They must be validated by the lead Commissioner, relevant Vice-President and the First Vice-President before being accepted to be included into the Commissions' planning. "Other initiatives" should be validated by the lead Commissioner or by the Director-General of the lead DG as appropriate.
• Political validation must be understood as giving the green light to start the substantive preparatory work. It should not be interpreted as a decision on a particular initiative or course of action that prejudges the outcome of any impact assessment process, stakeholder consultation or later political discussion in the College.
• For major initiatives and for evaluations (including fitness checks), once political validation is granted, roadmaps or inception impact assessments must be finalised and published as quickly as possible. They explain to external stakeholders what the Commission is considering and allow them to provide early feedback.
• Roadmaps are used for initiatives which do not require an impact assessment. The reasons justifying the absence of an impact assessment will be included.
• Inception impact assessments are used for initiatives subject to an impact assessment. These set out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.

• A roadmap is prepared for each evaluation or fitness check. This specifies the context, scope and purpose of the evaluation and outlines the proposed approach.
• All roadmaps (including for evaluations and fitness checks) and inception impact assessments are published by the Secretariat-General on the Commission's website12 so that citizens and stakeholders are informed and can provide initial feedback (including data and information they may possess) on all aspects of the intended initiative and where applicable its impact assessment.
• Evaluations, impact assessments, stakeholder consultations, policy proposals and implementation plans must be discussed collectively by the services13 within an interservice group. It is important that all services with an interest participate actively in the interservice work from the outset, particularly those DGs with specific expertise (e.g. competitiveness and innovation, SME impacts, economic, social impacts, environmental impacts and scientific/analytical methods).
• The launch of the interservice consultation must be agreed politically (in a similar way to the validation of new initiatives). In addition, where an initiative is supported by an impact assessment, a positive opinion of the Regulatory Scrutiny Board is required in order for the initiative to be presented to the Commission for decision.

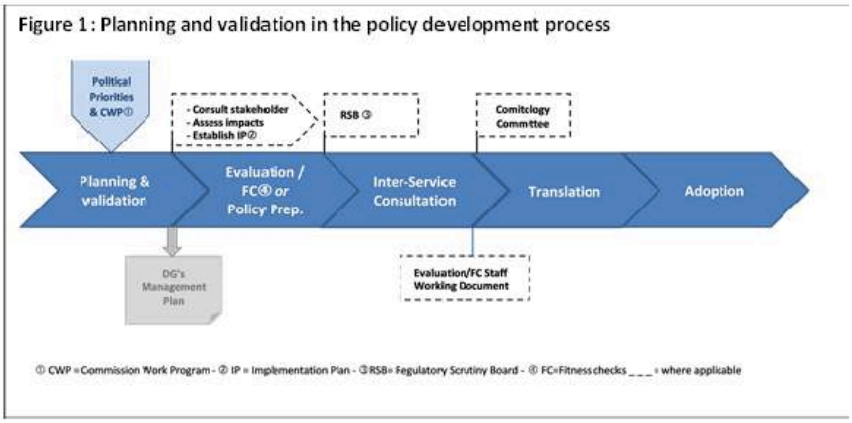
## 2. Who validates for what & the implications

*Table 1. Political validation of initiatives and linked requirements*

| Initiative type | | Who validates? | Roadmap or inception IA? | ISG needed ? |
|---|---|---|---|---|
| "Major" initiatives (*Decide entry at least 12 months prior to adoption*) | All major initiatives | FVP & VPs & Commissioner in close collaboration with the President | Yes | Yes |
| "Other" non-major initiatives (*Decide entry*) | Initiatives which are neither "major" nor evaluations or fitness checks *(Decide entry at least 3 months before adoption)* | Commissioner | No | No |
| | Evaluations & fitness checks *(Decide entry at least 12 months before completion)* | DG (*Management plan*) | Yes | Yes |
| Initiatives handled outside Decide | | DG | No | No |

## 3. The Planning and Validation Process – A schedule

Figure 1: Planning and validation in the policy development process



**4. The Key Questions an Evaluation Must Answer**

1. What is the current situation?

2. How effective has the EU intervention been?

3. How efficient has the EU intervention been?

4. How relevant is the EU intervention?

5. How coherent is the EU intervention internally and with other (EU) actions?

**5. Key Timelines for Public Consultation**

| **Mandatory timeframes for consultation and feedback** | | |
|---|---|---|
| ***Mandatory open, internet-based public consultation:*** | ***How long?*** | ***When?*** |
| • Initiatives with impact assessments<br>• Evaluations<br>• Fitness checks | Minimum 12 weeks[129] | Decision on case-by-case basis |
| • Consultative Communications<br>• Green Papers | | After adoption by the Commission |
| ***Stakeholders must be enabled to give feedback on:*** | ***How long?*** | ***When?*** |
| • Roadmaps for evaluations and fitness checks | 4 weeks | After publication |
| • Roadmaps, inception impact assessments | 4 weeks | After publication |

**6. What documents go to the Regulatory Scrutiny Board?**

**6.1 Impact Assessment**

**What?**

Note signed by the Director General of the lead DG addressed to the chair of the RSB.

- Draft IA report (SWD).

- IA summary sheet accompanying the IA report (SWD).

- Minutes of the meeting of interservice group that has been preparing the IA report immediately prior to submission of the IA report to the I

- Links to where important underlying reports or studies can be found which underpin the IA report.

- Underlying evaluation SWD, if this evaluation has not been scrutinised separately by the RSB.

**When**

- The lead DG should reserve a slot at a future meeting of the RSB at which the IA report will be discussed. In general, **the slot should be reser**
- This slot should reflect the envisaged timing of the political initiative, the time needed to adapt the IA report in light of the Board's opinion(s formal adoption by the College.

- The draft IA report should be submitted to the RSB at least 4 weeks before the RSB meeting where the draft IA report will be discussed.

- In a few exceptional cases, the RSB may decide that the draft impact assessment report does not need to be discussed at a formal meeting c decided on a case-by-case basis once the draft IA report has been submitted to the RSB and will depend on the quality and lack of complexity

**Re-Submissions**

- Where the RSB issues a negative opinion, the lead DG will have to incorporate the Board's recommendations into a revised IA report, to disc
- The RSB will aim to issue a revised opinion within 4 weeks following resubmission. In most cases, the opinion will be issued following a writt meeting. In such cases, the RSB secretariat will organise an appropriate slot in consultation with the lead DG.

## 7. Fitness Checks and Evaluations Selected for Scrutiny by the RSB

**What?**

Note signed by the Director General of the lead DG addressed to the Chair of the RSB.
- Draft evaluation SWD/fitness check report (SWD).

- Executive summary of the evaluation SWD or fitness check report.

- Minutes of the meeting of interservice group that has been preparing the evaluation report immediately prior to submission of the draft eva

- Quality assessment discussed and agreed by the ISG.

- Any report prepared by consultants (where relevant).

**When?**

The lead DG should reserve a slot at a future meeting of the RSB at which the evaluation/fitness check report will be discussed. In general, **the**
• In line with the "evaluate first" principle, the fitness check report or evaluation SWD should usually be reviewed by the RSB ahead of the sub

• The draft evaluation/fitness check report should be submitted to the RSB at least 4 weeks before the RSB meeting that will discuss the draft

• In a few exceptional cases, the RSB may decide that the draft evaluation report does not need to be discussed at a formal meeting of the Bo
a case-by-case basis once the draft evaluation SWD or fitness check report has been submitted to the RSB and will depend on the quality and

**Follow up**

The lead DG is expected to incorporate the Board's recommendations into a revised fitness check report or evaluation SWD and to discuss the
• A negative opinion does not prevent the launch of an interservice consultation on the fitness check report or evaluation SWD. However, the
cases, the Board will aim to issue an opinion within 4 weeks usually by written procedure. In some cases, the lead DG may be invited to a mee

## 8. Initiatives for which the need for an IA should be assessed

| |
|---|
| 1. New legal acts |
| Revision of existing legal acts |
| Recasts of existing legal acts |
| Non-technical repeal of existing legal acts77 |
| Delegated acts (Art. 290 TFEU) |
| Implementation measures (Art. 291 TFEU) |
| Transposition of international agreement into EU law78 |
| White papers |
| Policy communications |
| Action Plans |
| Recommendations |
| Recommendations for the negotiation of international agreements. |
| Social partner agreements pursuant to Articles 154-155 TFEU79. |
| Financial programmes (i.e. all basic acts for spending programmes and financial instruments) |

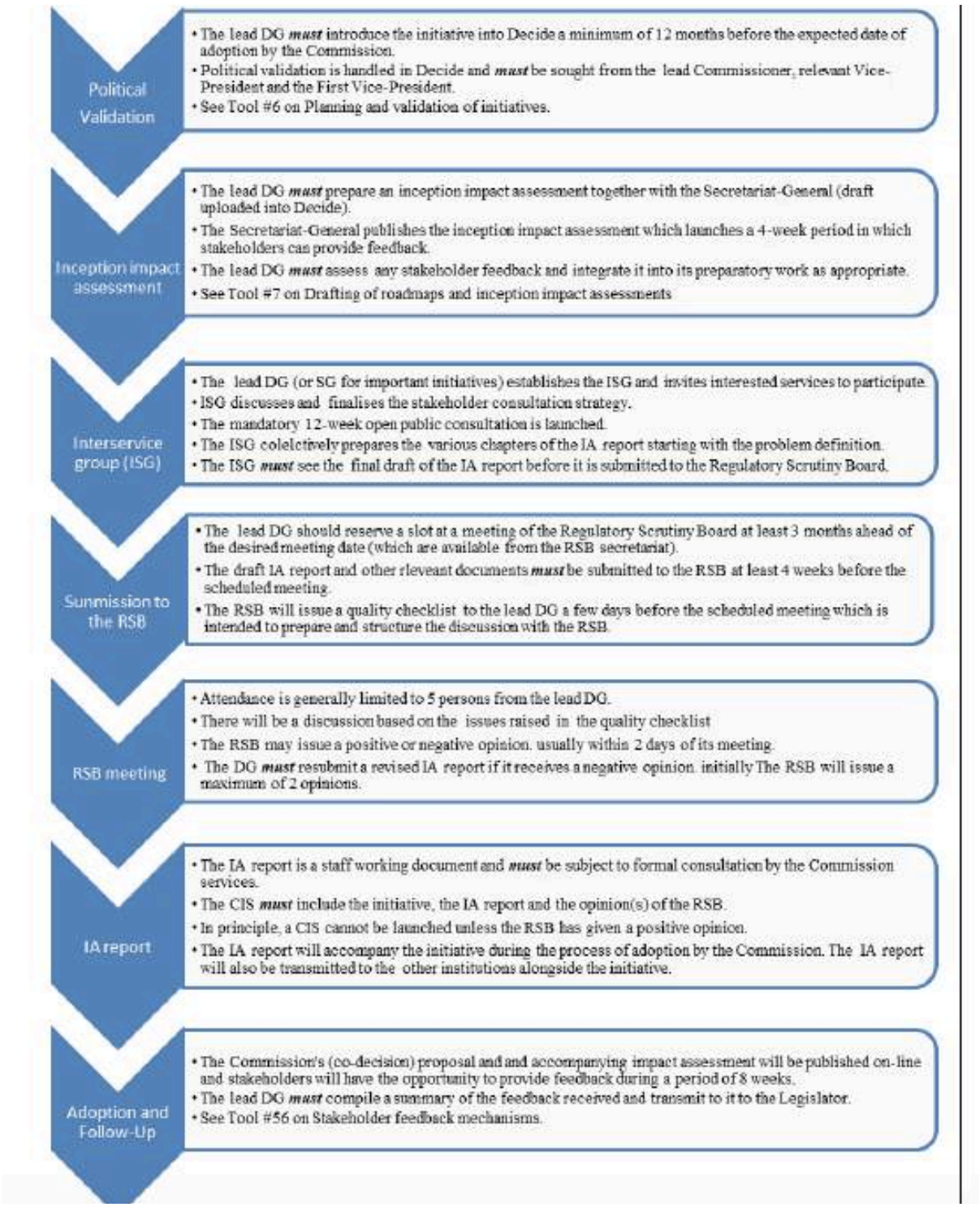
**9. Initiatives for which no automatic need for an Impact Assessment**

| Type[81] | Reason |
|---|---|
| Administrative decisions | Lack of significant impact (or relevance for policymaking) |
| Enforcement of EU law (competition law enforcement cases, infringement decisions, etc.) | Lack of policy alternative as decision parameters are set by existing EU (case) law. |
| Trade defence cases and enforcement action under international trade rules | Lack of policy alternatives |
| Budgetary procedures and measures, Financing Decisions and programme management decisions | Lack of policy alternatives/ex-ante evaluation not required |
| Commission reports /scoreboards | No policy decision, lack of impacts |
| Communications to the Commission | No policy decision, lack of significant impacts |
| Economic governance: recommendations, opinions, adjustment programmes | Specific processes supported by country specific analyses |
| Green papers | No policy decision, lack of significant impacts |
| Legal alignments | Lack of policy alternatives / no significant direct impacts |
| Legal codifications | Lack of policy alternatives / no significant impacts |
| Staff working documents | No Commission decision, lack of significant impacts |
| Conclusion, signature and provisional application of Bi/multi-lateral agreements with Third Countries: conclusions signature, provisional application and/or prolongation of existing protocol. | Lack of policy alternatives given finalisation of negotiations |

**9.2. Do you need an Impact Assessment when an EU Agency is Involved?**

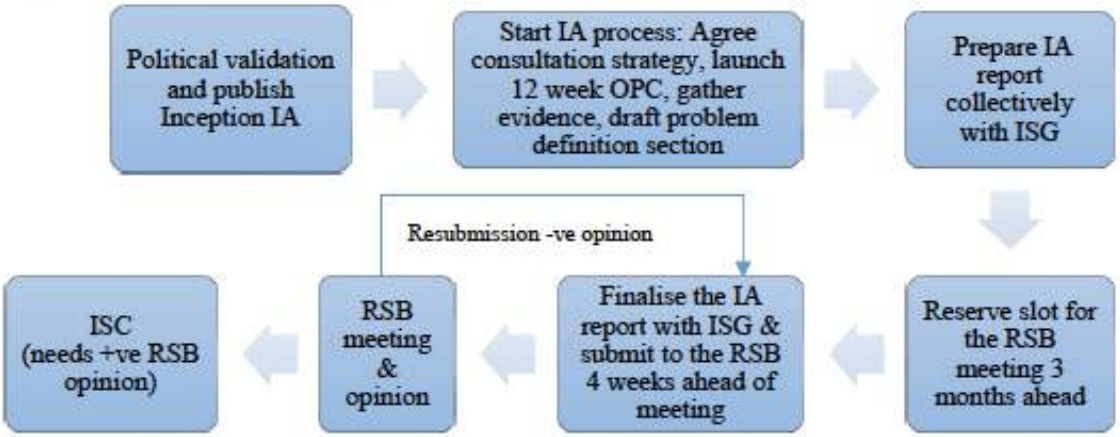
| *EU agencies and IAs* |
| --- |
| • Whenever specific legislative procedures mandate an EU agency to carry out the main policy-design work and prepare an IA-like document, no Commission IA is necessary a priori.<br>• The Commission's internal rules on better regulation and impact assessment do not apply to EU agencies[82]. However, the lead DG should ensure that the agency's analysis broadly meets the Commission's consultation and IA standards and takes responsibility/ownership for the quality of the assessment.<br>• The lead DG should (in consultation with the Secretariat-General) consider whether the Commission's initiative would benefit from further analysis and a complementary IA due to its complexity, or the significance of the expected impacts or where the Commission is likely to deviate from the advice of the relevant agency or indeed where the Agency's work does not meet the Commission's usual standards.<br>• During policy preparations, the lead DG may decide itself or be asked by the SG or other Commission services to supplement the agency analysis if duly justified and/or – in consultation with the SG – to undergo scrutiny by the Regulatory Scrutiny Board. In the latter case, the lead DG is responsible for submitting a draft IA report to the RSB in accordance with the better regulation Guidelines and this Toolbox. |

## 10. Key Steps ad Requirements for an Impact Assessment




**10.2. Process Chart for the typical Impact Assessment**

***Box 1. Process to prepare a typical impact assessment***




*The time needed will depend on the evidence which is already available, the need to rely on the results of study contracts etc. Typically up to 12 months although can be significant shorter.*

## 3. EFTA Opens Up the EU's Secret Law Making to the Public

10th February 2016 by Aaron

EFTA has opened up the secret world of EU law making by delegated legislation.

You can visit the site here or http://www.efta.int/eea-lex
They have put on line draft and adopted implementing and delegated acts that impact EFTA members.

This is a big step to open law making. Whilst Member States and the European Parliament – and the players who are leaked the proposals in advance – have access to Commission proposals, the public do not.

**93% of EU laws made this way**

Around 93% of EU laws are adopted by what was called comitology, laws adopted by committees. Delegated legislation is important. It is about the adopting of technical rules to make EU laws work. All countries have it. Politicians are not going to decide on the latest air quality modelling system to use for monitoring and how to transfer air quality data and information between countries. But, they ask the Commission to work with experts and Member States to come up with rules to allow that to happen. Those delegated laws are necessary.

**Real laws deciding important things**

Sometimes they touch on sensitive and political issues. In the last 2 years important issues have been decided that even the mainstream high end press started writing about.

Recently when the Commission tabled a piece of delegated legislation that weakened existing laws on diesel emissions from cars. A Committee of Member State officials and finally the EP agreed to it.

The importation of Canadian oil sands into Europe was given the nod after the Commission adopted a piece of delegated legislation that allowed it. Many MEPs and NGOs were surprised because they thought the issue has been settled a few years earlier in a Directive (and spent a small fortune thinking they had achieved) but they may have overlooked what the original directive had allowed for, and the Commission re-opened the matter, and tabled a proposal to allow the importation of Canadian oil sands into the EU.

**EFTA Opens the System up to the European Public**

Before this EFTA site went on line, proposed implementing acts were available via a Commission site that whilst public, would test a good hackers skills to find out where any of the Commission's proposals were.

Proposed delegated acts were kept hidden from the public and officially only available to MEPs and Member State officials.

Thank you EFTA for striking an important blow for open law making.

Maybe the Commission will follow EFTA's lead and get their game into the 21st century.

**Note**

I'll follow this up with a blog on how difficult it is stop a proposal from the Commission (whether it is a delegated or implementing act) and how opening the process up public scrutiny will help MEPs and Member States to effectively scrutinise the Commission. The Commission are just up-dating the rules under the Better Regulation package they recently agreed with the European Parliament and Council.

## 4. Why lobbyists need to leave the Regulatory Scrutiny Board alone

6th March 2018 by Aaron

A good lobbyist know when to lobby and, more importantly, when not to lobby.

Just as you would not lobby judges ruling on your case, it stands to reasons you would not try and lobbying the Commission's Regulatory Scrutiny Board.

Whilst it is obvious to me that you should not, I have heard of cases of people trying to do so. The results were consistent. The attempt backfires very badly.

The Board's own rules of procedure make it really clear they should not be approached and their work is confidential.

**How you can influence the RSB**

There is of course a very easy way to positively influence them. Better Regulation's Public Consultations needs lots of good data and information to prove a case. So, the best way you can influence the RSB is to make an excellent submission.

Here I'd focus on proving your case by reference to the Commission's very own Guidelines and Tool Box and sending up a crystal clear case, full of data and evidence, to support your case.
Too often, the quality of the submissions from 3rd Parties is too weak to be taken too seriously, or asks for things that are outside the remit of Better Regulation.

## 5. Why Better Regulation Works

1st November 2016 by Aaron

I hold a lot of deeply unfashionable views. I am a free trade social democrat of green persuasions. I am even a fan of 1st Vice President Timmermans and his, nearly single hand effort, to install better regulation on the Commission. It is, I realise, a small niche.

**Better Regulation Is not De-regulation**

Some people for and against Better Regulation give the idea that it is Any Ryand on amphetamines.

I am sorry for those and who think that way. They are wrong.

This quote from Cass R Sunstein, Risk and Reason, on describing the use of cost benefit analysis is appropriate:
"If they were taken seriously, and implemented in the right way, they would have an extremely important effect on risk regulation, potentially saving billions of dollars and tens of thousands of lives. Understood in light of this pragmatic goal, the movement toward cost – benefit analysis should be seen as an effort to ensure, not the companies open speech marks save money close, close each month and not look regulation is open speech marks scaled back, close speech marks but the regulation is understood with a firm sense of its consequence for those who are subject to it," (page 6).

Much the same case can be used for Better Regulation.

Better Regulation, and the tool box and instruments that support it, are not to shed EU rules, but rather to make sure that the rules that are there, and are introduced, are the most effective ones. The greatest tragedy is not to have new rules introduced, but rather to have new rules introduced that do not live up to their promise and fail to deliver. As Europe struggles to deliver on a historic promise to 508 million citizens, Better Regulation should be seen as delivering well on a few things, rather than leaving a long paper trial of inept or unenforced laws that fails the many.

**Are you boouvered**

Too often people seem as self obsessed as Lauren Cooper when she met Tony Blair. The reaction of Tony Blair is likely to be the reaction of the Secretary-General as they review the submissions.

**Tool Box – Use it, read it**

The feedback to Better Regulation public consultations overall has been limited and often lacks depth. There is around 440 responses for each public consultation. Those numbers, on closer examination, are even worse. There were 189 public consultations published between 2015-2016. A few got most of the public feedback.

The tool box (see here) is a model of clarity. It really spells on what you need to bring to the table. Despite this, it is seeming that less than a handful of people have ever opened it outside the Commission. I doubt a handful have ever opened it within the Commission.
If people want to use Better Regulation, they will need to raise your game. The quality of submissions so far has all too been often been examples in wishful thinking rather than serious analytical case studies in persuasion. The amount of people using it remains pitiful.

**Feedback loops**

Your only risk is being strangled by feedback loops.

| When | How | Link |
|---|---|---|
| Road map Inception Impact Assessment | Feedback | here |
| Evaluation Roadmap | Feedback 12 weeks | here |
| Draft implementing rules | Posted for 4 weeks | here |
| Commission proposal & IA | 8 weeks post adoption | here |

A good summary chart is available from the Commission's Guidelines (here) at section 6.1.3

| Mandatory timeframes for consultation and feedback | | |
|---|---|---|
| **Mandatory open, internet-based public consultation:** | **How long?** | **When?** |
| • Initiatives with impact assessments<br>• Evaluations<br>• Fitness Checks | Minimum 12 weeks 107 | Decision on case-by-case basis |
| • Green Papers | | After adoption by the Commission |
| **Stakeholders must be enabled to give feedback on:** | **How long?** | **When?** |
| • Roadmaps for Evaluations and Fitness checks | 4 weeks | After publication |
| • Roadmaps, Inception Impact Assessments | Indication to be provided | After publication |
| • Draft Delegated Acts 108 | 4 weeks | After conclusion of the Inter-Service-Consultation in parallel with Member State experts. |
| • Draft Implementing Acts 109 | 4 weeks | After conclusion of the Inter-Service-Consultation and before the vote in the Comitology Committee |
| • Legislative or policy proposals adopted by the College and, where applicable, the accompanying impact assessments | 8 weeks | After adoption by the Commission |

**Why using them is important**

Your chances of influencing after the Commission publish their proposal are limited. Two very experienced senior officials in DG Environment I had the pleasure to work for, put the extent to which the Commission's proposals were changed at by the Parliament and Council at 10%. Maybe the numbers have changed these days, but I am doubtful.

Most EU legislation is delegated legislation; these figures are telling:

| | 2014 | 2015 |
|---|---|---|
| Delegated Acts | 130 | 104 |
| Implementing Acts | 1538 | 1558 |
| RPS | 180 | 143 |
| Total | 1848 | 1805 |

Around 50% of delegated legislation is subject to the Better Regulation checks.

**Better Regulation Really Works**

The short answer is yes, but not many people use it.

A proposal on Roaming Charges was withdrawn after a few hundred objections were posted (see Press Release of the Commission 9 September 2016 here). I have used Better Regulation arguments for a client who faced seemingly insurmountable political odds. They walked away relatively unscathed. It is even now used for REACH substance bans (see here) despite the push back by the Commission Services.

There are sure fire ways of getting little or nothing out of Better Regulation. Repeating well know mantras that speak to the home fans, rather than the audience you are trying to persuade (regulators), is the usual approach. It does not work. Submissions need to be deeply analytical and fact driven. Plain English helps.

Hard analytical and clear argumentation that address the concerns of the regulator may well be unfashionable. It is an old fashioned view I cling to, knowing that every time I have used it, the interests I represent win.

Categories EUPost navigation

European Commission's 2017 Work Programme – Time to Deliver & Implement

## How to influence the development of legislation and policy

1. Using review clauses
2. All you need to know how to influence the EU in one easy chart

## 1. If you don't like the law, the read this – using review clauses

4th July 2018 by Aaron

A lot of laws get passed that people don't like. It is unsurprisingly common.

When the law makers agree to a directive or regulation you don't like, there are a few things you can do.

A common response is to deny that it says what it says. I would not go for this approach. I have never seen it work.

In the past, guidance documents prepared by the Commission and the Member States liked to fudge things. That's getting harder to do.

An old tradition is to see if a piece of secondary legislation can undo what the co-legislators agreed to. This used to work quite well until the European Parliament – well in practice just one political group official – woke up and discovered that the Commission were re-writing the law behind their back. This does not happen so much anymore. The Court has been very clear on the limited options here.

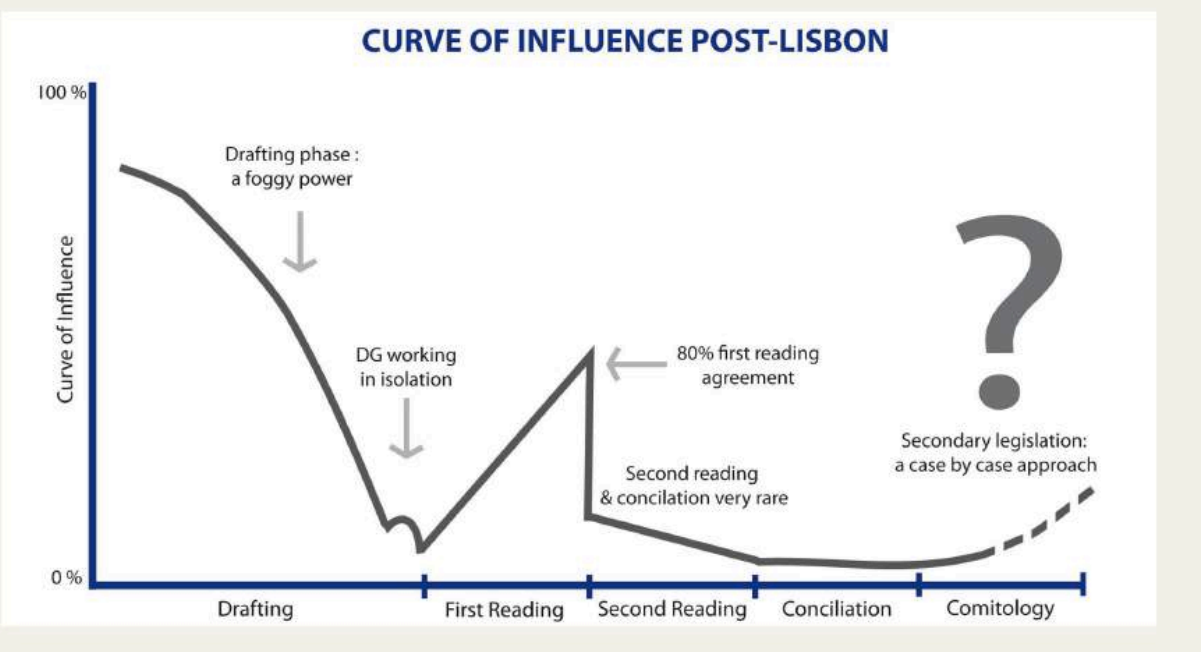
Recommendations from the Court of Auditors reports have a good record of leading to policy and legislative change.

I like to use a slightly duller technique. I have found the best way to deal with any defects in any legislation is to look at when the legislation is going to be reviewed. I have found this to be by far the best opening. I've worked to prepare thorough and learned studies in advance of any reviews. When the public consultation comes up, I am ready to provide a very clear and persuasive case for the need to change. In fact, if your own 'mid-term' review is ready in time, you'll find the Commission use it as the basis for their own review and proposals.

Every time I mention this option, people respond indignantly. This approach requires them to go through the law and find out when the review(s) starts. Not being allergic to paper, I find this hard to understand. Fortunately, the European Parliament provide a clear and easy to use report on 'Review clauses in EU legislation'. You can now use the PDF search do the work for you.

## 2. All you need to know how to influence the EU in one easy chart

12th February 2017 by Aaron




A former WWF colleague introduced me to to this chart a few years ago. It comes from Daniel Guegen. I think it is excellent. It accurately explains how the EU works.

**Winning the Battle of Ideas**

In 1997, I was younger and had come to Brussels to work for a British Labour MEP. I had just left University academic life and was very naive.

I asked two very experienced officials in DG Environment, who had passed many environmental laws, how much of an original Commission proposal got changed. They ventured between 10% – 15%.

Over time, that number has stuck with me. I personally think that the number is less than 10%. Sometimes, millions are spent on lobbying, and at the end of the day, very little changes from the Commission's original proposal.

That took me to thinking what is the most effective way to influence the Commission before they adopt a proposal, so what they publish looks similar or indentical to what you wanted in the first place.

I read a lot and borrowed a lot of tips.

In "Think Tanks, Public Policy and the Politics of Expertise" I came across an excellent idea (well there are many). The one I really like is having a proposal and the supporting material sitting in the filing cabinet, ready for the day when an official or politician asks you for the solution to a problem. I'd recommend all organisations have a set of ready to adopt proposals sitting in the filing cabinets, waiting for the day a call comes from an official or politician looking for the solution to a problem. I have used this idea. It really works. When working on fisheries at WWF, we knew the Commission had to produce a mid-term review of the CFP. It is set out in the law, so it was easy to predict that interest was going to peak at a certain time in the near future.

Stealing ideas again, this time from from Cialdini, we commissioned the leading experts on European fisheries, MRAG, to produce a shadow review of the CFP. And, to make sure we were not winding up the Commission, we passed a draft to them and gave them carte blanche to make any corrections.

The side effect of being non-confrontational, using peer experts, and producing the report in a timely way was that the Commission's final set of proposals for the reform of the CFP looked very similar to the WWF mid- term review.
This was not easy to get out the door. The report was not a vindication of all WWF positions. There was pressure to edit the report so it said what some colleagues wanted it to say. The report was commissioned and paid for by WWF but it did not reflect all WWF's positions. But, it supported many (around 90% of WWF's positions).

There is an advantage letting go and letting others speak on your behalf, even if they don't agree with everything you believe in or want. Your ideas get taken up more often.

If you want ideas to be taken up, it does not happen by accident.

I learned the following.

Magazines: A story in the National Geographic will have many key opinion formers calling you. The Economist will have Cabinets and key MEPs asking you in for a visit.

Newspapers: Coverage in the FT, New Yorks Time, Guardian, Times of London, the Sunday Times, Le Monde or La Fiagoro will have your phone ringing off the hook the day after.

Academics: Each field has its key academics and research consultancies. These are the go to people that politicians and governments tap for advice. You'll know who they are, and if you are smart, you will have the same experts on your pay roll for advice. There are super academics, like Cal Sunstein on risk and regulation or Vaclav Smil on energy, whose intervention will skyrocket your issue.

Policy circuit: Each field will have its key circuit of think tanks and research centres that are exploring the latest ideas and thinking in your field. You'll of course be on that circuit. It is a great place to identify what is coming up in the near future. Those summer schools and policy retreats are a great place to mingle to better understand what's driving the policy agenda.

Think Tanks: If think tanks did not have an influence, organisations would not spend so much on them. But, perhaps like advertising, the hard part is working out what half of the money is having a positive impact. I think Conservatives have seen the long-term power of ideas and invested in think tanks, especially in the USA and the UK. The long-term investment in Hertiage Foundation , Cato Institute, and the UK's IEA has paid off. The long-term game plan was deliberate. Those funding the the center left and left has been less focused on the "battle of ideas", and the lack of a clear and persuasive narrative today stands out.

Drafting Phase

Ideas for the Commission's work programme do not come out of no-where (whatever the Daily Mail says).

Today, there is less chance for issues to be tabled that are on not in the Commission's Work Programme or the Commission President's Priorities.

The Commission's Work Programme is published the end of October. A few organisations are smart and focus a lot of effort getting their proposals taken up then.

The easy way to do this is to work back from September, when proposals are being firmed up.

I think the easiest way is using the following paths:

- Parliamentary Questions
- Council Statements/Declarations
- Member State(s) interventions
- Trailing the idea on the conference circuit many months in advance
- EP own initiative reports
- Using legislative reviews as a pretext to open up a directive
- Using the DG's Strategic Plan (4 year plan) and Annual Plan
- Frequent contact with key officials in DG and Cabinets
- Following the Commission's own think tank, European Political Strategy Centre
- Working with main political Parties think tanks

## How to influence the adoption of legislation and policy

8. Playing the long game.
9. The Many Chances to Let the Commission Know Your Views
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## 1. If you want to influence EU public policy, play the long game

13th September 2018 by Aaron

I have learned that if you are serious about influencing EU public policy and legislation you need to play for the long game, take opportunities, and learn that support can from unexpected places.

By long game, I think it takes around 10-year commitment to change existing policies and laws. It is a long game that takes deep pockets, a long-term mindset, and focus.

I wanted to share my experience working on fisheries reform in 2007 and highlight the strong influence of the Court of Auditors in influencing key decision makers.

The European Court of Auditors audits Community policies. Their influence is powerful. Their caustic analysis and damming recommendations can rock the credibility for a Community policy. Their words are taken on board by the Commission. It often kick-startsthem into reform. When the Court of Auditors publish during a public consultation or review their words have extra clout.

### Lessons as a Panda

I learned the long game back in 2007 when I worked on fisheries for WWF.

We had a strategy to kick start the reform of a failing Common Fisheries Policy (CFP). There were some steep hurdles. The Commission did not think there was a problem and the review only needed to happen in 5 years.

### Key Dates – Reform of the Common Fisheries Policy

- December 2002 – Common Fisheries Policy Regulation (link)
- October 2007 – WWF Mid Term Review of the Common Fisheries Policy (link)
- December 2007 – European Court of Auditors' Special Report 7/2007 (link)
- July 2011 – European Commission present proposals for reformed CFP (link)
- December 2012 – Review Clause for CFP
- 1 January 2014 – new CFP comes into force

### The Role of the Court of Auditors

The Court of Auditors report was so damming that the Commission started their reform.

The Commission replied:

> 121. *The Commission shares the conclusions of the Court on the shortcomings of the provisions concerning control, inspection and enforcement, which endanger the effectiveness of the Common Fisheries Policy.*

*In the light of that situation, the Commission already started a reflection in view of an ambitious reform of the European policy for fisheries control.*

*The recommendations made by the Court with regard to improving the situation, can serve as an effective contribution to the success of this reform.*

The findings were in line with WWF's analysis.

**Bring the Best Ideas to the Table**

Just as with the Regulatory Scrutiny Board, you can't lobby the Court of Auditors. They are based in the EU compound in Luxembourg. You can't prompt them to look into an issue. They seem to have a penchant for intervening when there is considerable public interest or it is being reviewed.

You can influence them, as you can anyone, by bringing first class, clear and original research to the table.

I find the best way to do this is to pay for the best external experts you can afford to answer a series of questions for you. The experts write the report and you write the introduction.

It is smart if you hand the draft report over to the Commission and ask them for any feedback. First, you'll give the Commission the right to correct any errors of fact. You don't want to put junk out. If it is junk, you'll bin it.

If the Commission disagree with a view of events, you'll likely remove it. You want to publish a report that influences the debate. You want something that decision makers see as credible, balanced and evidence based. There is more than enough evidence and fact light reports selling policy recommendations going around. You'll stand out by being credible.

There is a downside to this. The experts you hire to answer the questions you ask – and those questions are likely to be the same any serious official will be asking – may come to a conclusion you don't agree with. This is likely to happen.

When this happens, my advice is living with it.

First, if your case is so weak that real facts don't support your view, you get to know before anyone else. You can then go back to the drawing board, drop the issue, or go ahead on a campaign with no real evidence to back you up. A campaign you are likely to fail.

Second, any report that backs your views 100% is going to look by it has written up by a cheerleader or ghost written by you. Even if your own side salivate and celebrate, it is not going to be taken seriously by the people who count.

Third, when you disagree with your own report's findings, acknowledge it. Denial is not a winning strategy. People do not mind when you report that real experts don't back your ideas 200%.

Fourth, I think it is good that the people you paid to do a report disagree with you on some points. It makes clear you have not bought your very own hagiography to clone your narrow world view.

Finally, if the Commission feel compelled to revise the legislation, in light of a damming report by the Auditors, you'll have all the evidence and recommendations you need to feed into the process. Maybe, you'll get a surprising call from the Commission asking if you don't mind if they use your report to prepare their new proposal.

**Timing made easier – review clauses**

It is not even hard to predict when to get this all ready. All legislation has review clauses. They advertise when work is meant to start. There is no reason to be caught out.

And, if you are serious about influencing public policy, you'll be serious about winning the battle of ideas. You'll have a rolling research agenda to answer the most pertinent public policy questions. You'll be speaking with the Commission and Member State officials, politicians, and think tanks to know the questions they are asking and bring the answers to the table.

This takes several years. This is going to take patience, focus and financial resources to play out the fully policy cycle. It is not for the feint hearted.

What to do if you have only 4 weeks to turn things around?

1st October 2018 by Aaron

Around 97% of the laws the EU adopts each year are secondary legislation. Unlike ordinary legislation, most of the time the College of Commissioners are blind to what's being put out the door in their name.

Rarely, when dealing with politically sensitive files, like the Fuel Quality Directive and the Endocrine Disruptor Criteria, the College of Commissioners step in and decide.These are two exceptions. I worked on both of them.

Technocrats make the law

Most people in Brussels prefer technocrats to make the decisions for secondary legislation. This makes a lot of sense most of the time. I doubt Commissioners want to scrutinize where air quality monitoring machines are meant to be placed.

99% of the time this is not going to be a problem. I think that 1% of the time something is going to get through that really deserves the political scrutiny of the Commissioners. These are stories that the anti-European press feed on.

The chance that the Commission can weed out suspect proposals is low. Most secondary legislation does not benefit the review provided by Better Regulation. Today, only a small percentage of initiatives get a road map and even fewer benefit from an impact assessment. The Regularity Scrutiny Board can't step in a point out that the earnest technocrat got the case wrong, developed amnesia for subsidiarity, or forget the limits created by the enabling legislation. The only people who benefit are the anti-European media.

I've worked inside the Commission and Parliament passing laws. The truth is most officials and Parliamentarians are hard working, dedicated and informed. Yet, none of them, even the most talented, had solved the problem of knowledge.

## Checks in the System

Good governance puts checks in the system. Some technocrats don't like it – their freedom is restrained – but the best support it.

The real checks for secondary legislation come down to this. First, the proposal needs to go through interservice consultation. Second, after that interservice consultation, the draft delegated and implementing acts are made public for a 4-week public feedback. Third, after that the Commission adopt the proposal.

Member States and MEPs get to scrutinize proposal. Getting them actively involved is hard to do. I write this as someone whose pulled this off more than once.

I readily admit that the chances of changing things substantively once the Commission put something out the door are limited.The longer a file goes on, there is less chance to genuinely influence things positively.

Indeed, for implementing acts, if the College of Commissioners wake up very late in the system and realise things have gone very wrong there is nothing they can do about it. The rules provide that "Where there is a qualified majority in favour of the draft implementing act (positive opinion), the Commission is required to adopt it (Article 5(2) of the Comitology Regulation)." The Commission hands are tied. They can't act even if they wanted to.

15. **Inter-service consultation**

During interservice consultation, the Cabinet can press a button to accept or block a proposal.

In practice, the system stands and falls on herculean service and cabinet officials. After all, they have to make a judgement based on a short description about the proposal.

For example, when they are looking at proposals about chemicals, they get to look at text with the full scientific name, a name that is so rarely used in practice, no-one other than the desk officer knows what the proposal is about.

The services and overworked cabinets have 10 to 15 days to understand the ramifications of the proposal and annexes. It is going to take a remarkable political official to pinpoint that a new proposal on page 22 of Annex II, point 5, has been inserted from out of the blue. The Cabinet official won't know if it has been inserted at the request of a member state, interested group, or act of revelation.

Officials have no incentives to highlight the sensitive elements in a proposal. That's going to send the proposal up to the College and increase their work load a hundred-fold.

Anyway, interservice consultation is not public.

See my blog post here.

**2. You have 4 weeks to turn things around**
You really only have one slim chance to make a difference. Secondary legislation now has a 4-week public consultation. Directorate-Generals look at the feedback. You can than raise the evidence and sweet merry hell. The Commission has – like for mobile roaming charges – stepped in and withdrawn poor proposals.

You can track it here.
Not enough people take this opportunity. Take it. But, realise you are dealing with civil servants, so highlight the procedural breachs, how the text ignores the spirit and letter of the law, or is based on fake evidence.

Don't go for green ink 62 page submissions citing strange conspiracies – the don't work.

**Recommendations**

There is no practical way the College of Commissioners can filter all the proposals going out in their name. A regulatory state needs some political control to make sure that the 1% of the 97% of proposals are not barmy and open up the EU to ridicule.

So, until officials solve the problem of knowledge combined with superhuman endurance, these simple fixes would improve things:

1. The public got to know when the proposal was entering Inter-Service Consultation
2. Allow for five-day public consultation on all inter-service consultations. Most of the time, there will be nothing to say, but once in a long while, someone is going to point out the Commission's about to propose something silly
3. A unit of officials reporting direct to the President with the mandate to scrutinize each and every proposal. They should be able to block any proposal that does not add up.

Source: Guidelines for the services of the Commission Implementing Acts and Delegated Acts

## 16. The Many Chances to Let the Commission Know Your Views

**25th July 2018 by Aaron**

You have the chance to let the Commission what you know about virtually every step of the way. Just go and visit 'Have Your Say'. The only chance the Commission come forward with anything that surprises you is if you have been living off grid with no contact with the internet or you have been sectioned.

**Chances to feed in**

They are calling out for your input:

| Feedback on | Time for feedback | Link |
|---|---|---|
| Road Maps & Inception Impact Assessment Initiatives – when the idea is being developed | 4 weeks | |
| Public Consultations – when the policy options are firmed up | 12 weeks | |
| Feedback on legislative proposals – when the proposal has gone out the door | 8 weeks | |
| Draft secondary legislation – what do you think of the technical measure | 4 weeks | |
| Rules that need to be changed – lighten the load – what do you think should be changed | | |

**Making it easy for you**

If you do not want to click on a web link, you can subscribe to updates, and have them sent to your email box. Here is the link.

Through the Road Maps and Inception Impact Assessments, you get a very clear idea of 'ideas' being considered. Then is your chance to step in and frame the policy future.

If an 'idea' makes the way off the drawing board, and is validated by the first Vice-President, or Commissioner for secondary legislation, firmer ideas will be put out for public consultation.

The Commission gives you the chance to provide feedback on ordinary legislative proposals that put out the door. They even send it to the European Parliament and Member States in the Council. Now, I am not sure whether MEPs or government attaches negotiating the text read the feedback. But, it makes sense, if you think the issue is important enough, to put your well-reasoned feedback on the record.

The most useful section is tracking upcoming secondary legislation. As that is around 97% of EU laws, it is important to follow, and most people ignore it.

They are even giving your time time to feedback. They are no ‘answers by the end of the day’.

**Are there gaps?**

Yes there are gaps. The system is not perfect. It has improved a huge amount, but it can improve.

The main missing gaps are knowing when (1) ‘validation’ is given and (2) when the all-important ‘inter-service consultation’ starts. Knowing when these two events occur would be useful. To be fair, it would help Commission officials. making it public will help a lot of officials, who don’t have the time to track the initiatives being cooked up in their own department, let alone in other departments.

Sometimes, urgent and important proposals skip the process. When the migration crisis hit, measures

I guess the only challenge is for the blind, the illiterate and let’s not forget those living deep off the grid and the sectioned.

**Do they listen?**

The simple fact is that daft ideas and proposals that have snuck through have been pulled.

For example, someone in the Commission tabled technical roaming charge rules that seemed designed to favour telecom firms. The public let the Commission know. The political grown ups in the Commission stepped in and pulled the proposal.

The system works. If you want to change something, you need to make a strong case. Wailing to the wall is not going to cut it.

**Real facts not pub facts needed**

It is an ‘evidence based’ approach . That means you need to provide evidence. That means data to support your point.

This means facts. Not pub facts, but real facts. Too many people use pub facts. Don’t. You are wasting your time. Pub facts may persuade inebriated acquaintances down the pub, and may well pass as news in the Daily Mail, but they don’t count.

It does not mean wailing at the walls. By evidence, I mean sober, analytical , reasoned supporting analysis that supports a particular policy choice or outcome. If you want to see a good example read ‘Factfullness’ by the late Hans Rosling, or anything by Vaclav Smil.

**Policy Wonk Fantasy**

To be fair, officials are left to sift through a lot of dross. Most submissions miss the point and ignore putting forward any evidence.

It’s a policy wonks fantasy. Think tanks and umber crunchers of the world must be in ecstasy.

In reality, too few people have ‘real facts’ to support their ‘world view’. Open law making calls them out. They’ll need to stay with pub facts.

## 17.21 ways to frame the agenda of the next European Commission

12th March 2018 by Aaron

If you want to influence long term policy direction you need to win the battle of ideas. That takes planning, resourcing, and long-term thinking. Long term thinking is often in short supply.

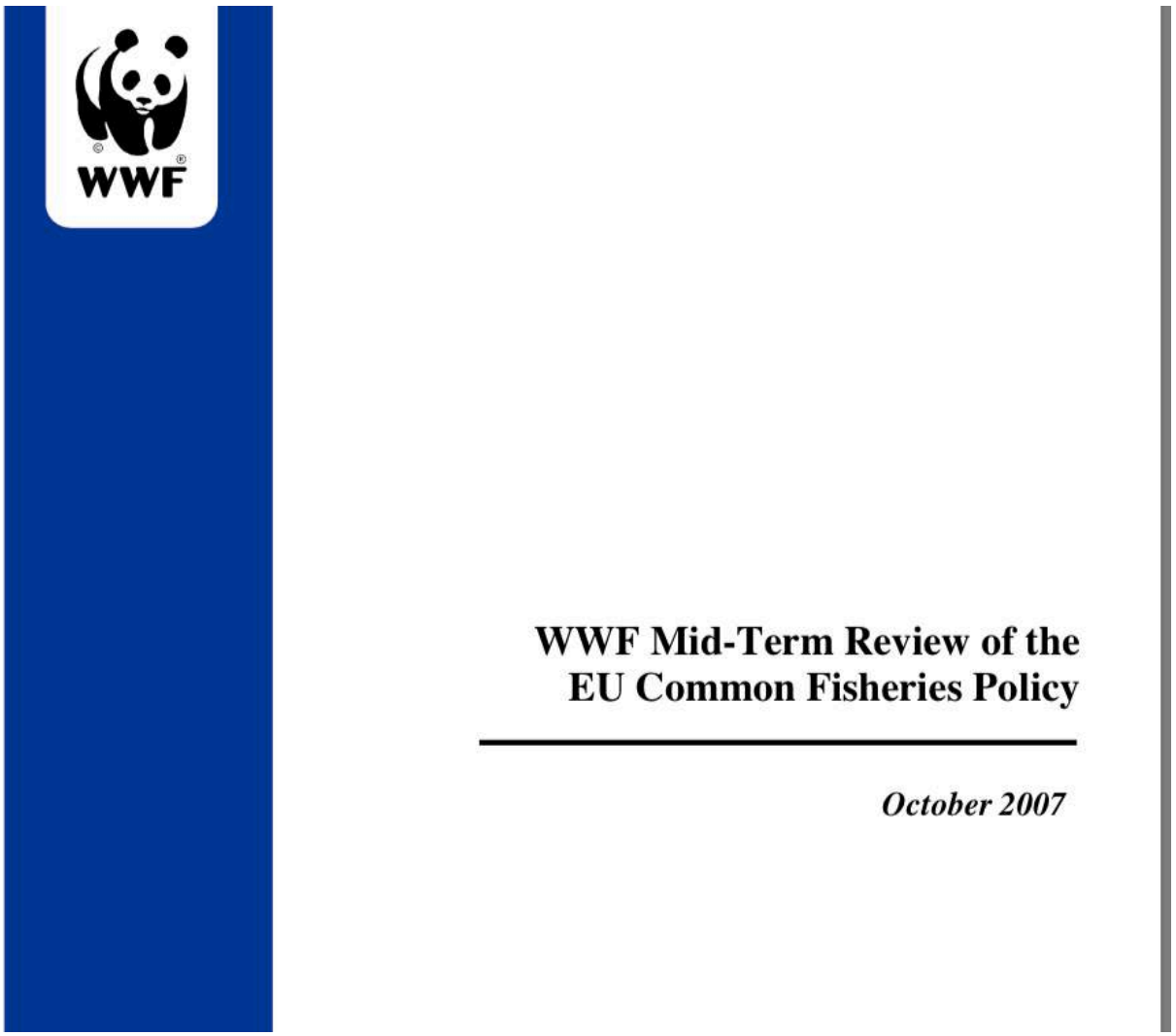
Today, there is a simple reason to think about framing the public policy debate. The next European Commission takes office on 1 November 2019. The current Commission’s last hurrah of legislative proposals comes out by 29 May 2018. Come the summer, many departments will start writing their handover briefings.

That leaves a interregnum for people to get their thinking hats on to work out what they want the next Commission to do. Here are some ideas for them.

**How to frame the future debate**

1. Ideas matter. Well written, lucid ideas that offer solutions to big problems are hard to find. When decision makers find them they take them up.

2. The best investment I ever made was getting this report written for WWF. Colleagues did not totally buy into it. I asked some questions and paid the bill. We published it. It became an operational bible for re-writing the CFP by the Commission.




3. If you want to know how to influence the thinking of the key decision makers on your issues there are three easy steps. First, you need to know who they are. Second, you go and meet them, listen to their views on the issue you are looking at, and finally ask them what they read.

4. If every key decision maker in your field, swears by one think tank, academic or writer, see if you can retain them. It's going to save you a lot of scarce time and resources.

5. It is good to get your report picked up by the influential media. I find that the most influential newspapers of record in the English speaking world are the FT, Guardian, Times and IHT. For the Times, I discovered a certain French President read it every morning. Well placed stories there helped change opinion. Each country has their key favourites. Brussels has Politico, our very own Pravda.

6. For magazines, I swear by the Economist and National Geographic. The latter I find the most persuasive for the opinion forming elite.. A well placed item in the Economist helps sway debates at the highest level.

7. There are academics who are trusted voices in their policy communities. If they support you, see if they can help write your report.

8. Don't make your report too long. Most policy makers don't have the time to digest 400 page report. Make it simple for them. A crisp executive summary is basic common sense. If you insist on the magnus opus, go for a 5 page briefing.

9. In the early 2000s I attended a summer graduate school at the EUI, Florence. Jos Delbeke was talking about carbon markets. Many people ridiculed the idea. Mr Delbeke got his carbon market.

10. Think tanks matter. In DC, small fortunes have been spent to instigate a flow of ideas from CATO, Heritage Foundation etc. The money is not spent out of intellectual curiosity. Some smart people with a long term time horizon understood the need to influence the ideas that underpin the policy debate and agenda. After a decade or more, many of their ideas got taken up by governments.

11. You need to bring solutions to the table. Being a manic depressive whose standard response is "no" just pleases the home crowd, but it does not change minds and the policy agenda.

12. I agree that the "just say no" crowd do slow things down. They tend to ultimately fail, but I think just slowing things down is part of the agenda.

13. Public policy writing needs to be clear and understandable for a regulator or politician. Too many academics think gobbledygook makes sense.

14. The most effective reports I have read from think tanks and research centres all have gone through the loving care of a barbaric editor. They turn well meaning mutterings to a small community of policy nerds into something that makes sense to the people who will write the proposals.

15. This is all takes time. Good ideas don't happen over night. A good report takes a lot of research. If you turn it around really fast think of 6 months.

16. If it is not obvious, this takes money. If you bring in outsiders to write it for you, start looking at 6 figures. Good things take time and money.

17. Best thing I ever did was to hand over the reports to the target audience and give me their feedback before they saw the light of day. To be honest, I wanted them to tell me why the report was wrong and note every error. In good faith, if the report is nonsense I am not going to publish it. If it is riddled with errors, I get them fixed. Both sides win.

18. It pays to be early in the debate to set the scene, but not too early to be irrelevant. For the EU, the timing is often indicated with flashing signs. Laws have revision deadlines set down. Elections are know about in advance.

19. Have a good filing cabinet. It's good to have a collection of reports ready to go when your issue comes back into the policy cycle. It is good to have the solution report ready for when your issue returns. I have been working in environmental and fisheries for over 20 years. The issues come around.

20. There is no point having a report and just sending it to the key people. You need to go and speak with them. If you are smart, you'll have how a page with the legislative text pre-written that solves the issue you are raising. With luck, you'll find it used in a new la soon enough.

21. Governments, political parties, and organisation need ideas. Many of them have their own think tanks to support them. You can help them by giving them ideas to frame the debate. This is hard work. It takes time, real thinking and ideas backed up by real facts.

## 18. How to ignore your Commissioner

6th July 2018 by Aaron

Back in the late 1990's, the first question the MEPs I worked for asked the Commission lead official was

"What do you want me to re-table that you lost in inter-service consultation"

It is a smart thing to do. You got to strengthen a proposal that had likely been neutered by other Directorate-Generals or Commissioners. You saved yourself a lot of time and work. The Commission Services just give you their hard work. You get the legislative language and technical justifications for the amendment. It's a good tool for getting legislation through quickly.

Sure, it by-passed what the Commission originally intended, but the job of a MEP, especially when they are the Rapporteur, is to get the new proposal into the Official Journal. You don't care so much what the Commission want.

**A rules based system**

Secretary-General Catherine Day wised up to this. The Secretariat-General put a system in place to limit officials going rogue.

Officials from the Secretariat-General started to turn up to the negotiations. Their job to make sure red lines were not crossed. Red line that Commission Departments found easier to cross.

The introduction and then formalization of Better Regulation helped systemize the steps officials needed to take. They are after all laid out in detail in the Manual of Procedure. Today, too many officials seem to be unaware of the Guidelines and toolbox, but that is another matter.
And, the Secretariat-General kept tables on all initiatives that each Commission Department had in the pipeline and were going to publish.

Inter-Service Consultation and political validation by the Vice-President and First Vice President is there to make sure that 'political direction' rather than civil service zeal sets political direction/

**A flash back**

Yet, even today, the system, whilst much tighter than it was was in the 1990s, shows recidivist tendencies.

MEPs ask and receive amendments from officials that were either rejected in inter-service consultation or indeed never even considered.

**Making it work**

Can Commissioners sleep at night knowing that their political will is being implemented?

It's going to be hard to have an official from the Secretary-General attend every meeting and call with a MEP. After all, the exchange between MEPs and Commission officials is vital.

The Commission, when altered to such cases, are going to find it hard to withdraw 'the Commission tabled amendment'. They can instead simply make clear from the start that they'll require unanimity on that amendment.

The lead Vice-President and 1st Vice-President and their Cabinets can more carefully police their own system.

Under Catherine Day the system was more effective. Secretariat_General assigned a point person l to each Directorate-General to track their work. That official had a list of all initiatives, legislation or upcoming proposals, being dealt with by that Directorate-General. Today, no-one official has the oversight on a Directorate-General. This makes it easier for 'non-validated' ideas to slip by.

Over time, that will be provide the signal to follow the system, and help Commissioners know that officials are going rogue.

## 19. Inter-service consultation – the basics

25th February 2018 by Aaron

I was sitting down with some people who are working on a new proposal the Commission hope to put out the door before 29 May cut off.

I asked where they were in the process. It had gone to the Regulatory Scrutiny Board and passed with flying colours. In a few days a legislative proposal would be drafted and sent up for adoption.

On the next step, before the proposal sent to the EP and Council, most people get blurry and haze over.

**Inter-service consultation**

The procedure where the Commission adopt the legislative proposal is known as 'inter-service consultation".

I think it is the most important part of the whole legislative process. I do so for one very simple reason. On most files, whatever the Commission puts out the door, finally gets adopted without fundamental changes. In my experience, despite all the money interests spend lobbying the European Parliament and the Member States, 85%-95% of the Commission's proposal goes through unaltered.

Surprisingly, a lot of interests ignore inter-service consultation. I think this is a mistake.

If you can make a difference, this is the best time to engage.

Now, there is an issue that this process is not public. But, with Better Regulation, you must have recurring amnesia to be caught out surprised with a new major initiative.

**MindMap**

I have tried to summarize the process in a mindmap. I hope it is useful.

**A Case Study Blue Fin Tuna – CITES**

In my time at WWF, I worked on the CITES listing of Blue Fin Tuna. Monaco has tabled a proposal for protecting this endangered species to CITES. The EU needed to work out if they would support the proposal.

CITES sits with DG Environment. They wanted to back the motion. DG MARE opposed.

A few of us campaigning on the issue thought that this issue deserved some more coverage. The FT and other news outlets picked it up and covered the process. We did not want DG MARE to block DG ENV.

Source: FT (link)

# EU considers bluefin tuna protection

Stanley Pignal in Brussels AUGUST 21, 2009

Support is growing in Brussels for a commercial ban on bluefin tuna amid recommendations from policymakers to add the fish – prized by sushi lovers – to a list of endangered species.

The recommendations are included in a draft document prepared by the European Commission's environment section. This will form the basis for the 27-member European Union's common position ahead of the next meeting of the Convention on International Trade in Endangered Species.

"From a scientific and technical point of view, the criteria for the listing of Atlantic bluefin tuna [as an endangered species] appear to be met," the draft states.

I don't think a lot of Commission officials, Heads of Cabinets and Ministerial advisers appreciated the degree public interest and scrutiny. More than one expressed their frustration to me. This after all is meant to be a secret process they would plead.

I naively disagreed and the publicity paid off. DG ENV won.

**What does the process look like?**

At the time, I was fortunate. I had worked in DG ENV and learned that the best way to to adopt a proposal is to have a rudimentary understanding of how the Commission adopt their proposals.

Fortunately, the Commission spell out the mechanics of adopting proposals clearly.

There is a helpful handbook from the Commission on their 'Working Methods'. the_working_methods_of_the_european_commission_2014-2019_november2014_en I realise at times that officials may not follow the procedure with a zeal, but knowing them helps you call out errors, and maybe even influence things for the better.

The adoption procedure is in two distinct steps.

First, there is consideration by the Services. The Services are consulted on the draft legal text, the impact assessment together with the opinions of the Regulatory Scrutiny Board.

The second step is the political scrutiny by the Commissioners. Here the College of Commissioners adoption by written or oral procedure.

Adoption by written procedure requires all services to give a positive position during the ISC. Any negative opinions must be lifted via bilateral negotiation for adoption by written procedure to proceeed.

**Step 1**

The Commission use an electronic system called "CIS-Net".

The lead department needs to consult the following:

- Departments with a legitimate interest in the proposal

The following department usually have to be consulted:

- Legal Service
- Sec-Gen
- Human Resources
- Budgets
- OLAF
- Communications

If the lead Department does not follow the correct procedures, the Sec-Gen can intervene and suspend the procedure until the errors are rectified.

The Departments can say:

- No Opinion/ No Answer
- Positive Opinion
- Positive Opinion with comments
- Negative Opinion

The lead department then works to incorporate the changes.

**Who is involved**

There are not too many people involved. Those engaged in the proposal come from:

- Inter-service Group
- Director Generals
- Chef de fiche – Cabinet Officials working on the file
- Heads of Cabinet
- Commissioners

In practice, you are dealing with around 20 people.

Finding out who follows the file in the Cabinet is easy enough. Their officials portfolio are posted on-line. However, double-check that they are still there – there is a high turnover.

The InterService Group is harder to find., but you need to find out who they are. They hold the power of the pen.

The rest are easy to find out. Their names are all public.

The trick is only a very few people are interested. As a rule of thumb, it is around 20 people.

When an agreement is reached at the Service level the the file is given over to political validation.

Most of the time the Commissioners agree with the proposal and there is now disagreement. Rarely there is a vote in the College, but it is very rare.

If they can't reach an agreement, the Commissioners will go several rounds looking to reach an agreement. After a few rounds, the President's Cabinet will step in to reach an agreement. On Blue Fin Tuna CITES listing, the internal wrangling went on over the summer. The Director-General of DG Environment got annoyed that his Commissioner was ignoring his advice. His Commissioner won the day.

## 20. When to make an Impact Assessment public

**20th January 2019 by Aaron**

**Impact Assessments improve law making**.

They are used for the important "Commission initiatives that are likely to have significant economic, environmental or social impacts".

They are to be used for 'legislative and non-legislative initiatives as well as delegated acts and implementing measures'.

All impact assessments and the related opinions of the Board are published online once the Commission has adopted the relevant proposal.

These documents are invaluable for legislators and the public. They point out the strengths and weaknesses behind the proposal. The opinions of the Regulatory Scrutiny Board (RSB) are good to review. They highlight fuzzy thinking and weak analysis.

**A Basic Problem**

The basic problem is the Commission only makes the Impact Assessment and Opinion of the RSB publish them online 'once the Commission has adopted the relevant proposal'.

For Ordinary Legislative Proposal, the Impact Assessment and Opinion are released at the start of the legislative journey. They are published along with the legislative proposal sent to European Parliament and Council.

For secondary legislation, the impact assessment is made public at the end of the legislative journey, and only when the Commission adopts the draft measure.

This means the intellectual foundation, or the lack of, behind the Commission's proposal is kept away from pubic scrutiny until it is too late. Any errors in the impact assessment can't be raised at the right time.

As secondary legislation is around 97% of the Commission legislative output, you can understand why some officials may want to keep the public in the dark. If you can't see the impact assessment until after it is sent to the EP and Council for 'scrutiny', your life is going to be a lot easier.

Any fuzzy thinking or weak analysis only faces getting past colleagues during inter-service consultation. Indeed, I am sure there are ways to run a public consultation that by-passes those whose opinion you may prefer to ignore.

As you can see below, the Commission release the key documents to support their case at very different times.

**Secondary v Ordinary**

*Example 1: Eco-design requirement for air heating products – Secondary Procedure: RPS*
June 2009: Commission launch preparatory study

20 September 2010: Commission to Propose Eco-design Criteria for Central Heating

19 April 2011: First Stakeholder meeting

27 September 2011: Second stakeholder meeting

5 March 2012: Draft Report of preparatory study

17 April 2012: Third stakeholder meeting

9 July 2012: Final Report of preparatory study

25 September 2013: Consultation Forum meets

19 February 2014: Impact Assessment Board Opinion (link)

13 August 2015: WTO Notification

15 September 2015: WTO Notification period ends

8 December 2015: Committee on the Eco-design and Energy Labelling of Energy-using Products approve

23 April 2016: Scrutiny Deadline for EP and Council

30 November 2016: Commission adopt draft measure

30 November 2016: Impact Assessment published
20 December 2016: Commission Regulation published in Official Journal

*Example 2: Electricity Market Design (Electricity Regulation) – procedure: ordinary*
October 2015: Inception Impact Assessment launched

16 September 2016: RSB issue negative opinion

7 November 2016: RSB issue revised positive opinion

30 November 2016: Proposal on the Internal Market for electricity

30 November 2016: Impact Assessment published
18 January 2019: Council endorses compromise agreement

**Case C 57/61 P – Client Earth v Commission**

In case C 57/61 P, ClientEarth v. Commission, the European Court of Juctice's Grand Chamber dealt with access to impact assessments. The Commission had rejected ClientEarth's application for the impact assessment. The Grand Chamber rejected the Commission's secretive approach.

The judgement deserves reading in full.

I highlight three paragraphs:

- '… the exercise of those rights presupposes not only that those citizens have access to the information at issue so that they may understand the choices made by the EU institutions within the framework of the legislative process, but also that they may have access to that information in good time, at a point that enables them effectively to make their views known regarding those choices. (para 84)'
- 'that not only acts adopted by the EU legislature, but also, more generally, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, fall to be described as 'legislative documents' (Para 85)'

impact assessment reports and the accompanying opinions of the Impact Assessment Board contain, in such a context, information constituting important elements of the EU legislative process, forming part of the basis for the legislative action of the European Union. (Para 91)

There is no reason for the European Commission to continue their practice of issuing impact assessments for ordinary and secondary legislation at different times. Based on the case above, the Commission should put on the line (link) when they provide their opinion.

The current Commission's practice on releasing these vital documents for secondary legislation appears to be at odds with the (1) ideas behind Better Regulation and (2) the ruling of the European Court of Justice.

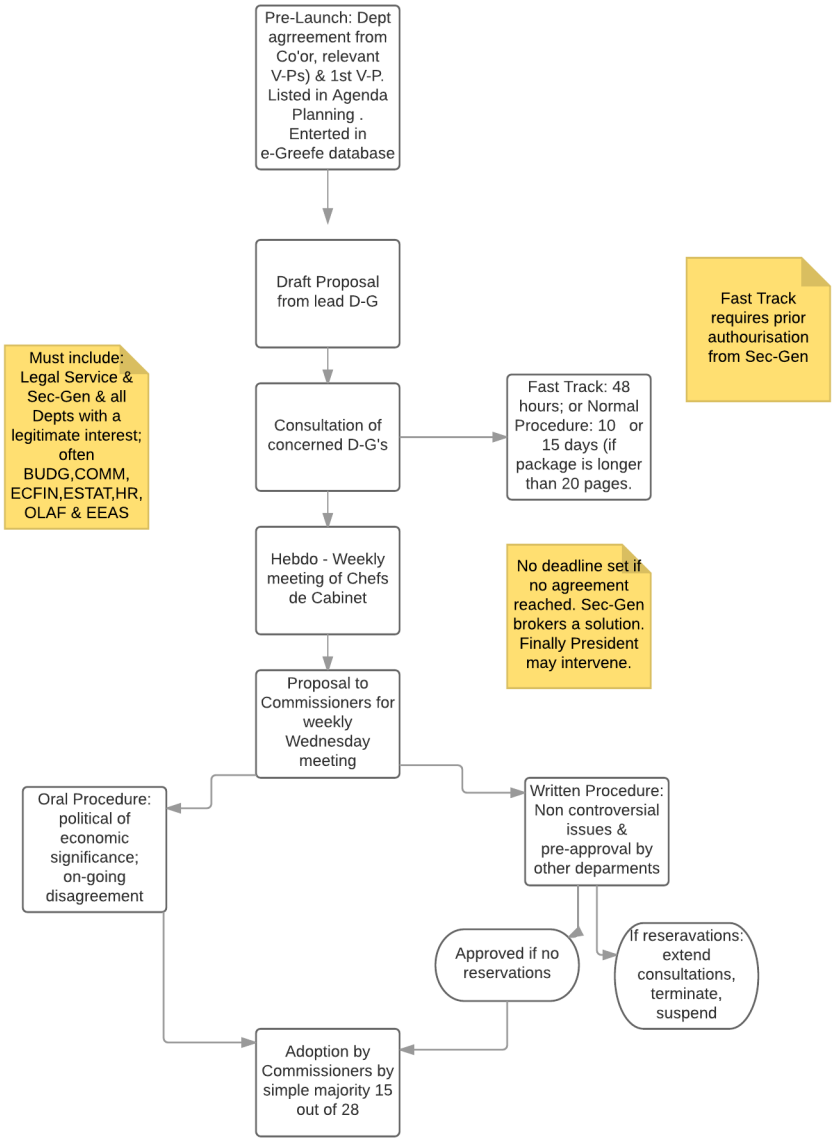
**How does the Commission adopt proposals – Interservice consultation**

20th May 2016 by Aaron

The European Commission does not just invent proposals and publish them out of the blue. That may be what the Daily Mail tells their readers, but the truth is a lot duller.

Generally, before any decision is taken by College of Commissioners is taken, the documents requiring a decision by the College needs to have gone through Inter Service Consultation (ISC), usually know by the French acronym of CIS.

Below you can see a process chart for ISC.




**Key Considerations**

**Normal procedure**

The normal procedure requires the lead department (D-G) to get the approval of the other Commission departments. They need to have the approval of the legal service and the Sec-Gen, and often other departments (BUDG, COMM, ECFIN) ESTAT,HR,OLAF, and EEAS).

If the package of documents is longer than 20 pages it will last 15 days (3 weeks), and if under it lasts 10 days (2 weeks).

After the inter-service consultation, the proposal is finally reviewed by the Head of Cabinet and then it sent for adoption by the College of Commissioners.

The documents must be presented in English or French.

**Majority Needed**

The College adopt measures by simple majority (15 out of 28). A vote is very rare and it usually goes through by agreement. I recall former French Commissioner Barnier under President Barroso calling for a vote on support for bio-fuel, although that was a rare instance. Commissioner Barnier lost.

**Fast Track**

For some urgent or politically sensitive matters, the lead D-G can request the Sec-Gen for a fast track inter-service consultation. In this case, the Inter-Service Consultation lasts 48 hours.

## 21.A Sure Thing – How to get the Commission to table a new law

**5th November 2016 by Aaron**

What if there was a way as way to nearly guarantee that the European Commission proposed a law you wanted. If the odds of that proposed being tabled was around 95%. And, as you'll know, once the Commission have tabled the draft law, it has even higher odds of being adopted.

The Daily Mail would go into clear melt down.

**A Sure Thing**

But, there is a way. And, it is all public.

The European Commission's REFIT Platform (see here) put forward 22 Opinion this year. 21 were taken up by the Commission in their 25 October 2016 Work Programme for 2017. It would have been 22 out of 22, but the Member States had recently rejected something similar to the one Opinion.

**How can you get your Opinion adopted**

There is a catch here. The Opinions that are taken up are very good submissions. There is no channeling of Ayn Rand on amphetamines, no frothing at the mouth for deregulation, and no howling at the winds for imagined unfairness.

Instead, what does work? That is easy. Analytical and considered submissions, that identify a problem clearly, shows how for example different pieces of EU regulation produces mutually contradictory results and unnecessary duplication. Showing that there will be no negative public health, environmental or public good impacts is key. Evidence is vital, so a focus on several practical real life examples is ideal. No-one starts legislating on the back of hypothetical or imagined problems. Identifying solutions rounds of the case.

**Hard Work**

This is also a lot of hard and a relatively hard slog work. It likely requires looking at the issue not only from your own perspective, but also from the perspectives of others, and answering their questions and concerns convincingly in advance. But, a sure thing is never that easy.

A 95% strike rate in anything is pretty amazing. Getting 95% of your proposals taken up the Commission and tabled is more than amazing. The numbers are so good,  I am sure only a few people will ever bother putting in the hard work needed to get that good.

## How the Commission adopts policy and proposals

1. How does the European Commission prepare and adopt the Annual Work Programme
2. Why timing is everything in lobbying – setting the Commission's Work Programme
3. Adopting the Work Programme in a transition year
4. What happens to unfinished legislative business
5. How the Commission adopts a proposal

## 1.How does the European Commission prepare and adopt the Annual Work Programme

**1st May 2017 by Aaron**

**Questions**

Better Regulation rules and adoption suspended for W-P items

2nd Vice President and validation – needed?

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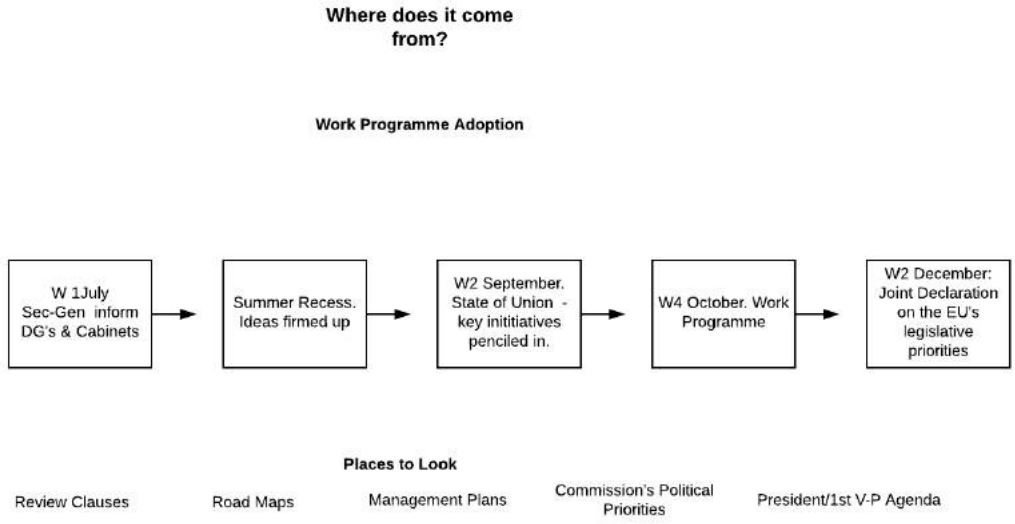



**Schedule**

- July w 1 Sec-Gen inform Director-Generals and Cabinets
- Summer break Ideas Firmed up
- September w 2 State of Union key initiatives pencil in
- October w 3 Work Programme adopted

**Who Decides**

It is a two-stage process.

First, the lead DG and Commissioner submit their ideas.

Second, the Director General and Commissioner meet with First Vice President Timmermans and his Cabinet.

The First Vice President Timmermans chairs meeting with a Commissioner and the Services.

The First Vice-President and the Chief of Staff of President, Martin Selmayr, agree a final list.

There are in fact two list of proposals.

The first list is around 20 priority initiatives (see link).

The second is a "catalogue" items. They are published in the Annex. The Refit proposals are usually here (see here)

To be tabled onto the Work Programmed, the issue has to be tabled in sufficient detail to identify a problem and how to fix a problem. It has to fit into President Juncker's priorities.

**Other Initiatives**

Other initiatives can be tabled throughout the year. They will have to go through the ordinary process.

Ordinary Process: Validated, Entered system, GRI, Road Map, Impact Assessment

**Key Players**

- Martin Selmayr
- First Vice President
- Commissioner
- Director-General

**Case Study**
**2016 Work Programme Key Dates and Steps**

1 July 2016 Sec-General contact Commissioners & Director Generals kickstarting process

25 July 2016: Initial meetings with Cabinets and First V-P Timmermans

17 August 2016: First V-P meet with Commissioners for shortlist

28 August 2016 Timmermans and Martin Selmayr meet

5 September 2016 initial list agreed by First V-P and Martin Selmayr

6 September President Juncker signs off

14 September 2016 State of Union released – present to European Parliament in Strasbourg

| | |
|---|---|
| 16 September 2016 | President Juncker presents to informal meeting of Heads of State/Government |
| 1 October 2016 | Work Programme drafted |
| 25 October 2016 | Adopted |
| 13 December | Joint Declaration with EP and Council |

**Check List to see if the initiative is going to be tabled**

| | |
|---|---|
| Does the initiative fall into President's Priorities | Yes – No |
| Is the initiative robust and reasoned | Yes – No |
| Has the D-G tabled the initiative to 1st V-P Timmermans | Yes – No |
| Does Martin Selmayr support the initiative | Yes – No |
| Is the initiative mentioned in the State of the Union | Yes – No |
| Is the initiative in the draft Work Programme | Yes – No |
| Is the initiative in the adopted Work Programme | Yes – No |
| Is the initiative backed by the EP & Council in Joint Declaration | Yes – No |

## 2.Why timing is everything in lobbying – setting the Commission's Work Programme

22nd July 2018 by Aaron

On 10 July 2018, the College of Commissioners had their first exchange of what should be in the Commission's 2019 Work Programme. Titled 'Preparation of the Commission Work Programme for 2019 and organisation of interinstitutional work' (link), represents the last chance for any Commission department to get their new initiative considered to be in the Work Programme. If a proposal is not adopted, it will be waiting around until the next Commission takes office.
August is the most important month for key political decisions in Brussels. Most people are off on holiday. Yet, in the last 2 weeks of August, the Commission's Work Programme is agreed.

It's been like that every August under President Juncker. It's been more or less the same for a long time. Most people regard August as the quiet month and go off on vacation. In reality, it's when the most vital decisions are made.

The Commission is now working on the preparation of the Commission's Work Programme for 2019. This work programme is likely going to be short. Only legislative proposals that can be adopted by April 2019 are going to be tabled. That means not many. The Commission has highlighted time and again the principle of 'political discontinuity'. They are not going to put forward proposals or initiatives that bind the next Commission. The scarce resource of Parliamentary time is likely going to have to be set aside to deal with contingency measures to deal with Brexit.

This work programme will be published around the 3rdweek October 2017. President Juncker has made great play of his record of delivery on his Political Priorities. He has delivered. President Juncker has met his key targets: a lot less legislation and the Juncker Investment Plan. He may well have in mind some politically symbolic withdrawal proposals.
Any proposals are judged as against the 'Political Guidelines' (15 July 2014). These guidelines, drawn up the then Secretary-General, reflect a new ethos of a 'political commission', introducing tight political control on the Commission Services. The backlog of blocked initiatives that have not been 'validated' or 'tabled in the Work Programme' are a reflection of more effective political control.
None of this should be a surprise. The Commission makes great pride of it (link).

**Timetable**

Looking at the schedule of the of 2017 Work Programme, the following timetable can be expected:

- 10 July July: Initial discussion in College on 'Preparation of the Commission Work Programme for 2019 and organisation of interinstitutional work'
- End of July: Firm initial list of proposals
- Mid-August: State of Union drafted
- End of August: College Discussion at Commission retreat
- 13th September: President Juncker State of Union (link)
- 24th October: adoption of the Commission work programme (link)
- 14th December: Joint Declaration on the Legislative Priorities (link) between the European Parliament, the Council and Commission

The package of submitted proposals is decided at the highest level (Director-Generals, Commissioners, Cabinets) and agreed to by 1stVice President Timmermans and President Juncker. Proposals that are tabled can, if needed, by-pass the detailed Better Regulation framework.

The proposals are fine-tuned into a coherent package by an inner circle of staff reporting to the Secretary-General.

President Juncker will deliver his final State of the Union on 12 September 2018 (link).
For me, the core lesson is if we want to get what you want proposed, you have one time in the year. If you miss it, you need to wait another 12 months. You need to get the sequencing right. Too early or too late you won't get what you want to be tabled. The new Commission won't come forward with their Work Programme until around December 2019 (link).

## 3.Adopting the Work Programme in a transition year

**A checklist for the new Commission – file away for 2024**

1st August 2019 by Aaron

**To be opened in 2024**

Every five years a new Commission takes office. Every time it happens, I forget the nuts and bolts of the transition, so I wanted to write a short note to myself for 2024.

I started this after preparing a note on how the Commission prepares the Work Programme during the transition. You can find the 'normal' procedure here. This note merges what happened under President Juncker and what's known about President-elect von der Leyen. I'll update it at the end of the year.
Speaking to officials who have worked in Cabinets, the truth is each transition is unique. The is no pre-set process. For example, President Juncker laid great stress on deriving his Political agenda form the European Council's Strategic Agenda. President-elect von der Leyen looks like she is preparing her work programme in conjunction with European Parliament's Political Groups, rather than carrying out the political will of the European Council.

**Windows of Opportunity**

The windows of opportunity to advance your interests are always short. In hindsight, those moments are obvious, but at the time, you are just too busy with your face at the coal face to notice the opportunities.

You'll see from this note that the windows of opportunity to promote your case are clear. The framing at the start in the Political Guidelines, the drafting of the mission letter and work programme are all key. If you miss them, you run the risk of sitting on the political sidelines for the next five years.

I'd planned to have written more about the Services submissions for the 'next Commission's agenda'. Much of that work seems to be filed away in a cupboard, in a dark basement, since Martin Selmayr opted for a new career direction.

**The transition from one Commission to next**

- 23-26 May: European Elections.
- 27 May: Election results.
- 20 June: European Council meet. European Council adopts 'Strategic Agenda 2019-2024'(20 June).
  21 June: EU Leaders fail to agree on new leadership (link).
- 27 June: European Parliament negotiations start for the formation of political groups (link).
  28-29 June: EU leaders discuss nominations in sidelines of G20, Osaka (link).
  30 June – 2 July: Special Summit European Council on nominations
  (link).
- 1 July: Previous Parliament term ends.

- 2 July: EU Leaders nominate new EU leaders (link).
  3 July: Small transition team for the President-elect from Berlin & Commission Services in Charlemagne Building (link) (Commission Decision). Provision of up to five administrators and three assistants.
  2 July: European Parliament meets for the first time (link).
  3 July Election of the new President, Vice Presidents, size and composition of the Committees (link) (link).
  4 July: Election of Questors (link); Election results authorized (election results needs to be confirmed by the competent authorities of the Member States).
- 7-10 July: President-elect bi-lateral meetings with Political Groups (link).
  10 July: European Parliament Committees elect Chairs and Vice- Chairs (link), Constitutive meetings of Committees (link).
  13 July: First Member State nominates a Commissioner-designate (link).
  16 July: European Parliament elects European Commission President (link); President-elect adopts Political Guidelines (link).
  17 July: President-elect seeks Commissioner nominations from EU leaders. Transition Team prepare 1. President's Speech for 22 October, 2. Draft College portfolio, 3. Work Programme, 4. Mission Letters, 5. Political dialogue with the groups on the Work programme, 5. Bi-laterals visits with the Member States for nominations.
- 22 July: Election of Committee Chairmen, Vice-Chairs (link).
- 26 August: Deadline for the Member States to nominate Commissioners-designate.
- 2 September: President-elect interviews candidates for Commissioner (link).
- 5 September: The Council, by common accord with the President-elect, propose the list of Commissioner-designate list forwarded to European Parliament (link) (decision by written procedure).
- 6 September: Commissioner-designate secondment of one administrator and one assistant to 'transition Cabinet' to prepare for the confirmation hearings. Officials can come from outside the Commission or be seconded from the Services.
- 10 September: President-elect presents a new team of Commissioners, allocation of portfolios and supporting services (link).
- 23 September: Last week September/first week October: Hearings of the Commissioners-designate by relevant Parliamentary-Committees (Rules of Procedure Rule 118) (link).
- 17-18 October: European Council meets: adopt decision appointing the European Commission, enabling its entry into office on 1 November 2019.
- 22 October: Vote of investiture European Parliament has to give its consent to the entire College of Commissioners (link).
- 22 October: Speech by President of the Commission to European Parliament (link), President presents Work Programme 2019 (link).
- 23 October: After confirmation, Commissioner recruits Cabinet team. Officials can be brought in from outside the Commission or from the Commission Services.
- 23 October: European Council adopts Decision appointing the European Commission (link).
- October-December: Commission prepares 2020 Work Programme in consultation with the European Parliament and the Member States.
- 31 October: European Council Decision of 17 October appointing the European Commission published in Official Journal (link). The decision enters into force on 1 November.
- 1 November: New Commission takes office (link), President publishes Mission Letters for Commissioners (link), Commission President appoints new Secretary-General; New Cabinets start work.
- 13 December: European Council meets.
- 16 December: Commission adopts Commission Work Programme 2020 (link).

## 4.What happens to unfinished legislative business

- **12th September 2018 by Aaron**
- The best way to limit the European Parliament going too far is not to give them any proposals to work on. That at least appeared to be the thinking behind the Juncker Commission in November 2014.
- Juncker's Commission brought forward the least amount of proposals since President Santer in 1999. He spoke with passion about political discontinuity. He would not push his legislative agenda onto his successor.
- When President Juncker took office, he faced a live legislative agenda pushed out by President Barroso in the last months of office.
- President Juncker's solution was swift and brutal. On 16 December 2014, the Commission's Work Programme proposed several withdrawals of legislation. At the time, the environment proposals seemed to be targeted, from waste to national emissions, to reviews to cull the birds and habitats directive.
- People tried to understand the logic behind the kill list. None existed. A senior official just went through a list and struck out every 2nd item. The Commission turned around on the birds and habitats directive after NGOs returned to political campaigning and raised a public outcry . They quietly backtracked on all.
- For a few years the Environment Committee had a lot of spare time on their hands. They got around to looking at the poor state of the implementation of EU environmental legislation. Their degree of scrutiny of secondary legislation went through the roof.

- **Casting off political discontinuity**

- In May 2018, the Commission's reluctance to bring forward meaty legislative files got cast off. From the revision of the EU Fisheries Control, reform of pharmaceutical waivers, to Single Use Plastics, the Commission pushed out an avalanche of legislation into the laps of the EP and Council.
- Many experienced legislative hands did not think the timing accidental. It struck some that the timing seemed designed to limit MEPs ability to scrutinise and table amendments and make sure the proposals become law before the European Elections 23-26 May 2019.
- It is clear that many existing legislative files won't be agreed to by the time the European Parliament goes into recess (week 18 April 2019). So, a question that is coming up is what happens to the unfinished business.

- **What happens to unfinished legislative files**

- After speaking with 3 experienced legislative officials, the practice of dealing with unfinished legislative business is clearer to me.
- As a general rule, any unfinished Parliamentary business lapses. After all the agreements of old Parliaments should not bind their successors.
- The Parliament has figured out a way to deal with this through their rules procedures (Rule 229).

**Rule 229 : Unfinished business**

At the end of the last part-session before elections, all Parliament's unfinished business shall be deemed to have lapsed, subject to the provisions of the second paragraph.

At the beginning of each parliamentary term, the Conference of Presidents shall take a decision on reasoned requests from parliamentary committees and other institutions to resume or continue the consideration of such unfinished business.

These provisions shall not apply to petitions and communications that do not require a decision.

- The position depends on (1) if the Parliament has an agreed position, expressed by a plenary vote, or (2) the file was stuck in the Committee.
- If the old Parliament held a plenary vote, the new Parliament can carry on.
- The new Committee agrees on whether to take forward the previous Parliament's position. The discussions between the MEPs and officials usually lead to an agreement to continue. After the Committee agrees, the Conference of Presidents endorses it. This stage seems to be a formality.

- **Case Study – Plastic Bags**

- For example, on Plastic Bag Directive, published on 4th November 2013, the Parliament reached a first reading agreement on 16th April 2014. The European Parliament faced elections on 22-25 May 2014.
- When the new European Parliament returned, the re-elected Margrete Auken (Denmark/Green) MEP resumed work on the file as Rapporteur. She secured the agreement of the Committee to go forward on the basis of the first reading agreement of the previous Parliament. On 24 September 2014, the Environment Committee decided to open negotiations with the Council.
- Yet, if the file is still languishing in the Committee in the old Parliament, the new Parliament must start work on the proposal from scratch.

- **Commission**

- The new Commission can choose to withdraw proposals they inherited from the previous Commission. If this happens again, and the Commission re-evaluates everything, it would be the middle of 2020 before any new legislation is put forward.

## 5.How the Commission adopts a proposal

**12th February 2017 by Aaron**

**Development of the Commission's Proposals**

The EU does not develop proposals out of nowhere. With Better Regulation, there is a systematic process for the development and the adoption of most Commission proposals.
This requires that interested Parties participate earlier in the process and bring more evidence to the table through designated public consultation. Indeed, it creates the dilemma that if information is not brought to the fore early in the policy development process, it will not be able to be relied on until after the Commission adopt their proposal.

The schematic details how the Commission will adopt proposals is below.

Idea2

On 19 May 2015, the College of Commissioners adopted Better Regulation Guidelines (see here). These Guidelines and accompanying Toolbox (see here) set out how the European Commission develops and adopts proposals. There are no exemptions for certain D-Gs, whatever they may think.

**What Changes have been made**

Now the formulation of decisions has been turned over to the Cabinet officials, Commissioner, and Secretary-General service. The 1st Vice President, Frans Timmermans along with the Secretary-General has been devolved the privilege of "vindicating" any major initiative. New initiatives can not enter the Commission's work plans without sign off from the appropriate Vice-President, validated by 1st Vice-President Timmermans, and after adoption in line with the Better Regulation guidelines. Individual Directorate Generals are no longer to develop proposals without the early input of other departments and the Sec-Gen.

**Who are the key players**

The development of important proposals is steered by the Secretary-General with the support of an Impact Assessment Steering Group. This is made up of around 20-30 officials from the D-Gs and Sec-Gen responsible for developing the Impact Assessment and future proposal.

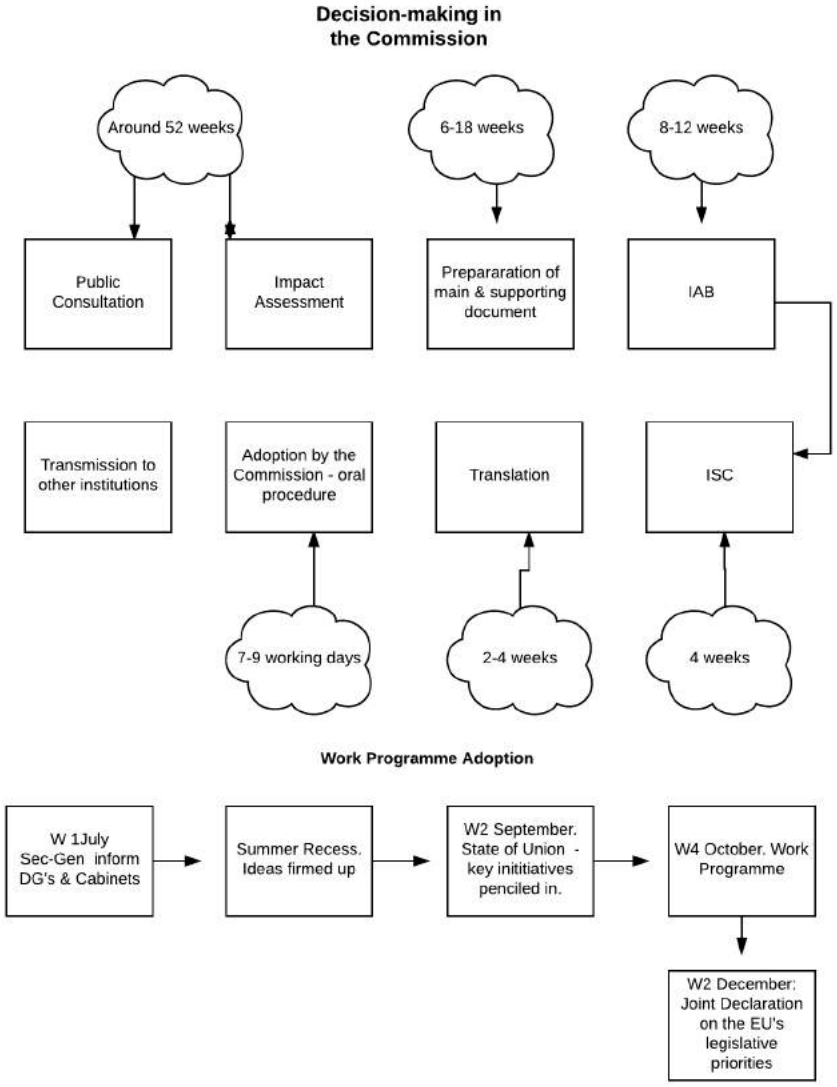
**The Regulatory Scrutiny Board**

The Regulatory Scrutiny Board cannot be lobbied. Their approval of impact assessment, to see that is compliance with the Guidelines, is needed before a proposal can enter into Inter-Service Consultation.

Some proposals have received negative opinions from the Regulatory Scrutiny Board twice. Whilst normally fatal, indicatives that are politically sensitive, such as the RED II proposal, have still been tabled for consideration for adoption despite having received two negative opinions. However, as in the case of the Endocrine proposal, the Regulatory Scrutiny's Board rejection of potency and option 4, proved fatal.

**Does Public Feedback Work**

Yes. The public consultation rules are used for the adding of substances under REACH Annex XIV (see here). In one case, negative public feedback on a proposal for mobile roaming fees charges led to the draft being withdrawn.
The quality of the input at the Road Map stage and subsequent public consultations is vital. Submissions that are general and non-specific will have little influence




**Lobbying ISC?**

Sometimes people will ask if it is worthwhile lobbying the inter-service consultation process. I am of the view it is. I think it is for three reasons.

First, from my experience, many legislative proposals from the Commission are often finally adopted without significant alteration. This is especially the case with delegated legislation.

But, even for ordinary legislation, I would guesstimate that the trials, tribulations and alterations of the Parliament, EP, campaigns and lobby change between 10-20% of the proposal, and often not at

a fundamental level. If you want to change what will land up on the statute book, changing it at inter-service stage is often your real last and best hope.

Second, there are a limited number of people deciding at this stage, from officials in the Services, the Cabinets and maybe the Commissioners. That makes it a lot easier to meet with and put forward a persuasive case to them.

Third, I have found working on what is seen by many as the technical, scientific and arcane world of fisheries, that adapting your argumentation so that it makes sense in plain English is a must. Using clear examples, often with comprehensible charts, is a great advantage, bundled together in a two pages (annexes allowed).

But, if you want to close down conversation, or at least close down the take up of your message, a briefing paper and conversation littered with algorithms, appeals to sound science, and technical jargon is a sure-fire way of making sure officials shut down very quickly.

Even though there are clear benefits, many interests do not engage. Often it takes large organizations or coalitions too long to get internal sign off to advance a clear position, and they find they are asking for meetings with the officials from the Services or Cabinets after the Commission has adopted a position. Indeed, this challenge only becomes tougher if the Commission use the 48 Fast Track procedure.

**Better Law Making**

This challenge may become less with the Commission set to publish a more up to date rolling public Agenda Planning. Also, the Commission's self commitment to have 4 week public consultations on initiatives before the College adopts significant proposals will be helpful for the public to alert the political masters of the Commission of defects in any proposals being considered for a proposal.

Another welcome step is the requirement that proposals being entertained for inter-service consultation have been validated by the Commissioner(s), relevant Vice-President(s) and the First-President and entered into Agenda Planning. However, this requires the lead departments to be more self-critical on the side effects of their initiatives, and to flag more clearly the impacts. I have been surprised that some proposals, both ordinary and delegated legislative proposals, have secured adoption without validation by the First Vice-President or others. Indeed, sometimes important proposals are not entered into Agenda Planning at all!

**Blue Fin Tuna on CITES listing – A short case study**

An example of the benefits of engaging is my then work for WWF. In September 2009, the then Environment Commissioner, Mr. Dimas, had tabled a proposal to support the listing of Blue Fin Tuna as an endangered species deserving of protection under CITES. Commissioner Borg, Fisheries and Maritime Affairs, did not support this.

With then colleagues in Greenpeace we reached out to many Commissioners and held meetings with many Cabinets. Unexpected support came from the College who supported Mr Dimas, much to the consternation of DG MARE and Commissioner Borg.

These two departments were unable to resolve their differences of opinion, despite many weekly meetings of special chefs (usually on a Friday), Head of Cabinet (usually on a Monday), College (usually on a Wednesday but on a Tuesday if the Parliament is in Strasbourg) and Commissioners bi-laterals.

Fortunately, the Financial Times ( see e.g. here and here) and other press outlets decided to follow the story and they provided a rare insight into the Commission's inner workings on agreeing a proposal.

President Barroso intervened after a number of weeks of non-movement and brokered a solution that supported an adjusted proposal from the Environment Commissioner.

Agreement was clearly facilitated by President Sarkozy, who surprisingly came around to support the idea for CITES listing of Blue Fin. The Commission of course prefers to table proposals that will be supported by Member States and takes soundings from key national capitals.

In many cases, it seems some Commissioners take their line on supporting a proposal not from their Department but from advisement from their national capitals (notwithstanding any oath of office they may sworn).

## Dealing with ordinary legislative process

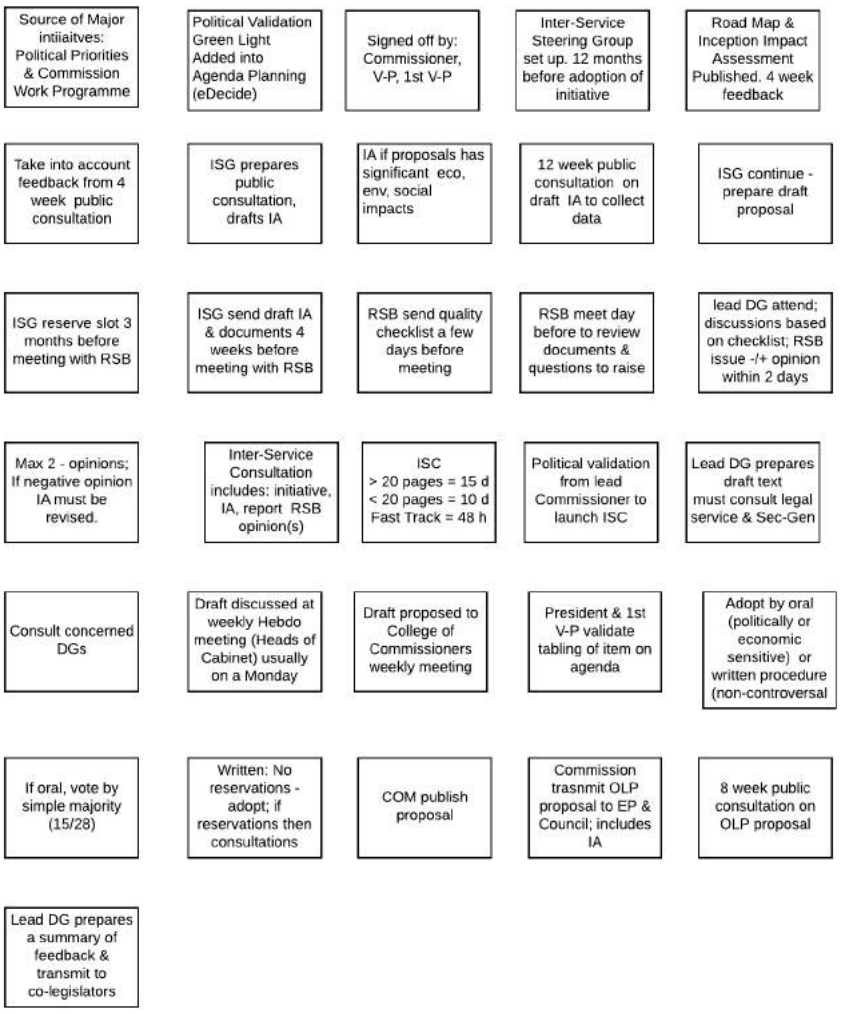
1. A road map for the adoption of OLP
2.Do you use the 8 week post-proposal window – Ordinary Legislation
3. Everything you wanted to know about trilogues, but were afraid to ask

### 1. A road map for the adoption of OLP

1st July 2019 by Aaron

From time to time, you'll need to deal with with an ordinary legislative proposal.

The process chart below outlines the steps in the journey for the adoption of the proposal.



## 2.Do you use the 8 week post-proposal window – Ordinary Legislation

**3rd July 2019 by Aaron**

The European Parliament has a very useful 'Legislative Train Schedule' (link). It tracks some of the key legislative proposals from the Juncker Commission.
I wanted to see how much feedback some of these key proposals got. Especially, I wanted to see how many people used the 'post proposal 8 – week feedback' window.

**8 Week Post Proposal Feedback**

One of the really good things about Better Regulation is the opening up of public consultation (link).
As the Commission note: "Once the Commission has finalised a legislative proposal and submitted it to the European Parliament and the Council, you have another opportunity to give feedback. The feedback period for Commission proposals is 8 weeks, after which the contributions will be passed on to the Parliament and the Council."

For more information see section 3.1 in the Toolbox – Tool 56 (link).
You can follow this link to give your feedback.
The scheme looks like it's been up and running since March 2017.

The post feedback provision was laid out in the 2nd Edition of the Better Regulation Guidelines of 7.7.2017 and made clear in the Toolbox (26.7.2017).
This is what it looks like:


**SPC Waiver**

On 28.5.2018 the European Commission made a proposal on the supplementary protection certificate for medicinal products (link).
When the Commission was developing the proposal they ran a public consultation from 12 October 2017 to 4 January 2018 (link).

**Gap Analysis**

I just can't find any record of the post-proposal feedback. When I spoke to people who worked on the file, they had no information.

It's unclear why there was no public consultation on the SPC waiver. Maybe, the officials just forgot to run it.

A quick look at some other proposals suggests it is not an isolated incident. The amnesia seems targeted on some Commission departments.

DG MARE are following the rules.

**Fisheries**

| Proposal Name (short) | Date | Feedback |
|---|---|---|
| South Pacific | 16.7.2018 | Yes |
| North West Atlantic | 7.8.2018 | Yes |
| Fisheries Control | 30.5.2018 | Yes |
| Multiannual plan Western Waters | 18.4.2018 | Yes |
| Multiannual recovery plan Swordfish | 24.4.2018 | Yes |
| Mediterranean management | 22.3.2018 | Yes |

New system comes in

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| | | |
|---|---|---|
| Multiannual plan Adriatic | 24.2.2017 | No |
| Technical Measures | 11.3.2016 | No |
| North Sea demersal stocks | 3.8.2016 | No |
| Control measures ICCAT | 17.6.2016 | No |
| Sustainable management external fleet | 10.12.2015 | No |

## 3.Everything you wanted to know about trilogues, but were afraid to ask

**2nd April 2018 by Aaron**

Today, EU legislation – ordinary – is adopted earlier and faster.

Today, it seems that 100% of ordinary legislation is completed at first reading agreement.

Ordinary legislation is now agreed to over trilogues.

Gone are the days of waiting for the plenary to vote in 2nd reading to get your issue taken up. Too many people are not aware that the old ways just don't work.

A lot of people have no idea what the informal and secluded meetings on ordinary legislative dossiers attended by representatives of the Parliament, the Council and the Commission. If you don't, take some time to read this useful report by the the EESC 'Investigation of informal trilogue negotiations since the Lisbon Treaty' June 2017 (link)
Some people think they are secretive. The name must give the odour of smoke-filled rooms.

The European Court of Justice (link) and European Ombudsman (link) have both called for more open trilogues.
Today, there is nothing to stop the process being opened up today, except inertia and political self-interest. Yet, even if they are opened up, it is only going to show a small part of the modern legislative system. The bulk of legislative negotiations are done by email and phone conversation. It's been the case since the mid-1990s. The meetings are important as they formalize pre-agreed compromises and agreements, and help iron out niggling issues.

amendments into its common position.

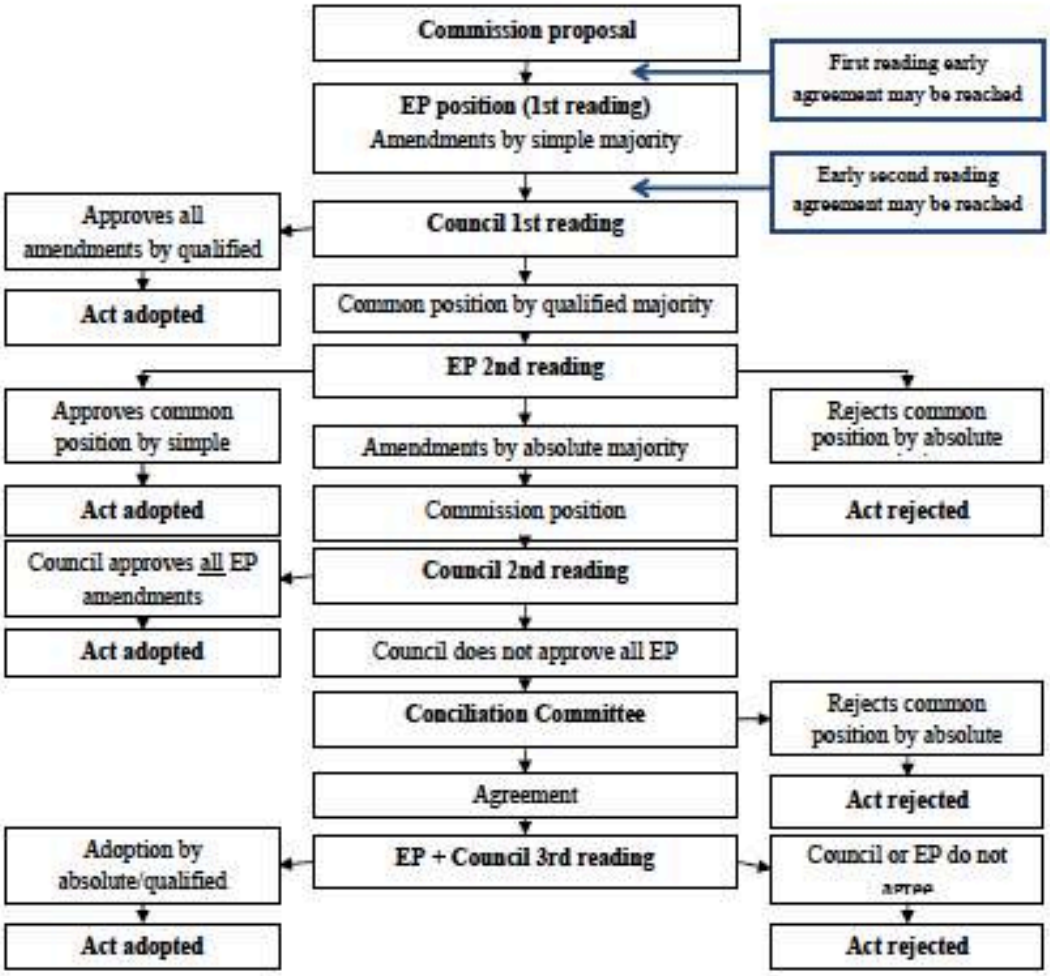



Figure 1: The ordinary legislative procedure and early agreements

**Agreements get done earlier year by year**

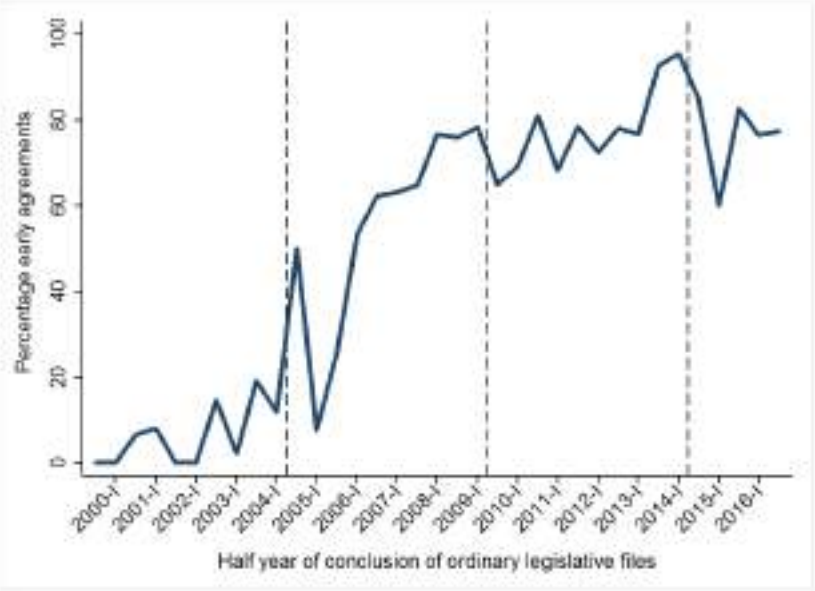



**Figure 2: Percentage of early agreements per half year (1999-2016)**

**Far less legislation under the Juncker Commission**

seventh term.[63]

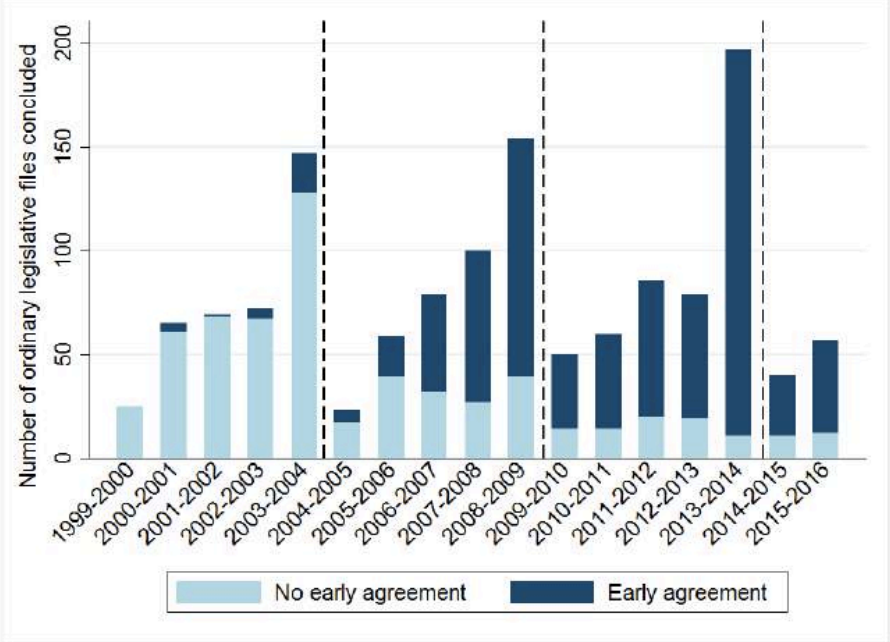



**Figure 4: Number of ordinary legislative files and early agreements per legislative year**

**Agreements reached quicker**

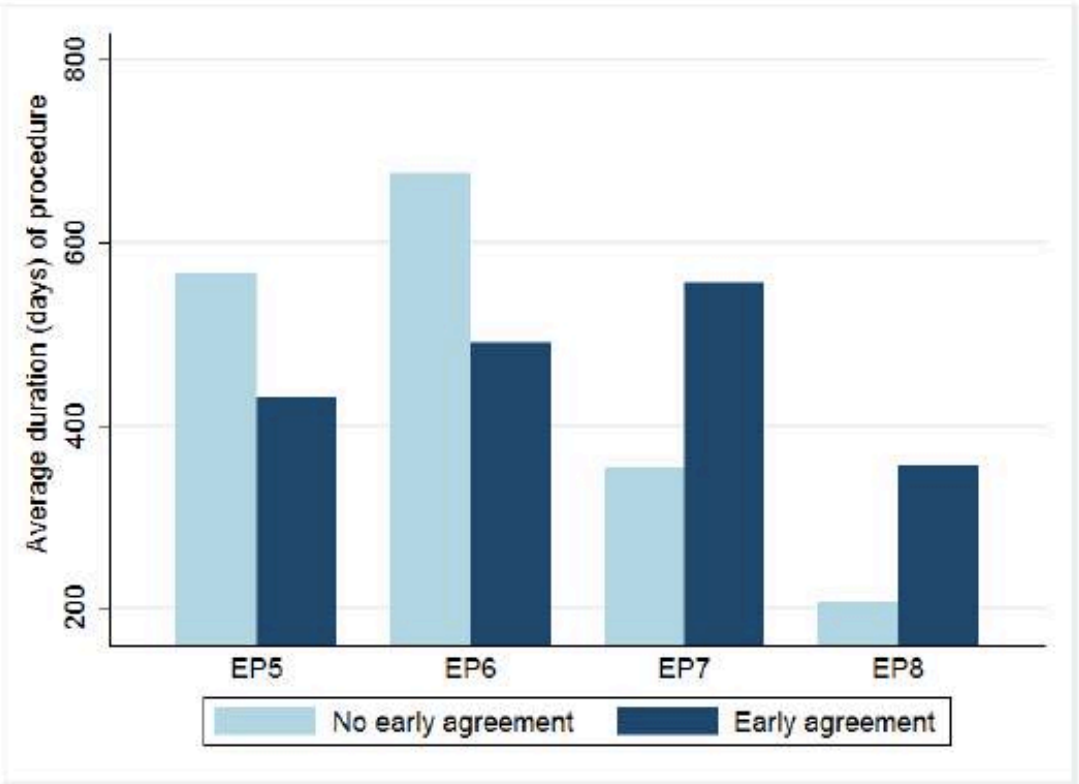



**Figure 6: Duration (days), excluding unfinished files of previous parliaments**

## Parliament and Council – Core Rules

**Table 2: Current rules and practices governing trilogues within the Parliament and the Council**

| | *EP* | *Council* |
|---|---|---|
| How is the composition of the negotiating team for political trilogues determined? | In the EP's Rules of Procedure (Rule 69f), consisting of the committee chair, the rapporteur, and the shadow rapporteurs | By practice: the presidency represents the Council in political trilogues |
| What forms the basis of the initial negotiating mandate? | The committee report, as endorsed by plenary | The Coreper mandate or a General Approach |
| Can the mandate be changed once trilogue meetings have started? | Yes, but it will need the approval of the committee responsible | Yes, but it requires a supporting majority in Coreper |
| What is the negotiating team required to report to the rest of their institution? | The chair and/or rapporteur must report back to the committee responsible after each trilogue meeting. Where it is not possible to arrange a committee meeting, the chair of the negotiating team and the rapporteur must report back to a meeting of the committee coordinators.<br><br>The rapporteur and the shadow rapporteurs each report back to their political group in the EP. | The presidency reports back to Coreper and the relevant working party after each trilogue meeting |
| Which trilogue documents are made available to the respective institutions? | The updated four-column document is shared with the shadow rapporteurs and the rapporteur after each trilogue | All national delegations/permanent representation gain access to the updated four-column document after each trilogue meeting |

## EESC Recommendations

The EESC report is good. It has a set of recommendations. I find them subdued

1. Make Council's Mandate Public

2. Create a Joint database of on legislative files:

- Publish meeting dates of trilogues
- Publish 4 column document after legislation adopted
- Database providing up to date information on the progress of a file

## A Simple Solution

The reality is that any Member State or MEP could open up the system today.

I think that would be a good thing. Laws should not be made in secret. Sunshine has a positive disinfectant quality. Any MEP or Member State could:

- publish the 4 column document when they get it
- publish the minutes of the meetings
- publish the agenda of the meetings
- name the participants of the meetings

To be fair, I don't think there is anything to stop the Commission doing this tomorrow.

And, even if they did, it leaves most of the serious heavy lifting of political negotiations untouched.

In practice, legislative negotiations occur in practice over the phone, bi-lateral meetings over coffee and email. That's been the case since 1997. The formal meetings all too often just ratify pre-agreed agreements. I spent a year being followed by Channel 4 in 1997. Even then, they noticed that all the real agreements were done outside any formal meeting.

In most democratic system, the public gets to the follow what their legislator is doing and why. In some countries, you have TV channels devoted to it.

Why the public can't see all the paperwork and watch things live is beyond me.

It's like turning off the cameras when the European Parliament vote for fear of the voters.

**What this means for Lobbyists**

The trend for early political agreements and trilogues means:

1. You need to know who has the power of the pen
2. Which officials and GRoup advisers are doing the work
3. You need to get in very early – if you don't it is a lost cause. By early, you need to get in and speak to the people holding the pen in the European Parliament and Member States within a week or so of the Commission's proposal going out the door.

## Dealing with the secondary legislative process.

1. How to control the European Commission when law making – Delegated legislation – Part 1
2. How to control the Commission when law making – delegated legislation – Part 2 – The Benefits of Better Regulation
3. The Environment Committee Keeping Control Of the Commission – Success in the Scrutiny of Delegated Legislation
4. Delegated legislation – the pre-adoption phase
5. What to do if the Commission's delegated legislation proposal is against you?
6. Can a lobbyist block secondary legislation?
7. A 5 year legislative slumber set to hit Brussels

## 1. How to control the European Commission when law making – Delegated legislation – Part 1

14th March 2016 by Aaron

**"Who will guard against the Guardians". Juvenal.**

Most EU legislation is delegated legislation. Around 93% (and perhaps more) of EU law adopted each year is delegated legislation. The remaining is ordinary (co-decision) legislation, where most NGOs and trade associations spend most of their time and resources, often with marginal substantive impact. Most NGOs and trade associations ignore delegated legislation because they think it is either too complicated or unimportant. I think they are wrong on both counts.

When Member States and the European Parliament hand to the European Commission, through enabling legislation, the power to bring forward new secondary laws, they are handing over considerable power. It would appear that many Member States woke up very late in the day to how much power they had handed over to the European Commission under the Lisbon Treaty (2009), and realised how little control they had to amend or block Commission delegated legislation proposals. At the time, the European Parliament only seemed to be concerned with being on the same footing as the Council, and did not seem to care that they were standing on quicksand.
Today, the Member States and the European Parliament power to control European Commission exercise of delegated power is limited.

More importantly, at the moment, given the relative secrecy in which these proposals are made and adopted, the public's right to comment and participate is even more limited. However, important changes are happening by way of the Better Regulation reform in 2016 that will make delegated law making more open. The changes will also introduce more checks and balances on the Commission.

In this blog, I will cover in two parts, and in broad brush strokes:

1. The current types of delegated legislation in the EU and 3 systems for their adoption
2. How the Commission is (or is not) controlled by the European Parliament, Member States and the public

In a follow up blog, I will give some case studies that, I think, show how difficult it to stop a Commission proposal once it is made, and to update the blog in light of the new Better Regulation agreement and the Commission's self-commitments that impact delegated legislation.

**Further Reading**

For those interested, I'd recommend the following further reading:

- IEEP, The New Comitology Rules: Delegated and implementing acts, May 2011
- Carl Fredrik Bergstrom's 'Comitology: Delegation of Powers in the European Union and the Committee System' (2005) an excellent historical perspective and insights from some leading experts.
- Daniel Gueguen, 'Comitology: Hijacking European Power?' which I am prone to hand over as a present to people who are facing the labyrinth of delegated legislation. for the first time.
- Daniel Gueguen and Vicky Marrissen's Handbook on EU secondary legislation (2014)

- Daniel Gueguen, who I regard as the Godfather of comitology, also publishes a comitology newsletter and provides a good training course on the system.

**Introduction – Delegated Legislation in the EU**

This law making procedure has been around for a long time, and it was often known by the term "comitology", or decision making by committee. Since the Lisbon Treaty in 2009, there was an attempt to streamline and simplify the process.

The EP has provided a useful summary here.
Today, delegated legislation there are three systems for the adoption of delegated legislation. They are:

1. Delegated acts
2. Implementing acts, or
3. Regulatory Procedure with Scrutiny.

The Lisbon Treaty only refers to delegated acts (Article 290) and implementing acts (Article 291). But, around 300 Directives exist that use the pre-2009 system and so the Regulatory Procedure with Scrutiny (RPS) system remains. The RPS is due to be phased out in 2017, but it's end has been on the cards since 2010.

Member States and the European Parliament oversee the following types of acts/measures:

- Delegated acts: resulting from legal acts adopted after the entry into force of the Lisbon Treaty (article 290);
- Implementing acts: resulting from legal acts adopted after the entry into force of the Lisbon Treaty (Article 291)
- Measures falling under the Regulatory Procedure with Scrutiny (RPS): resulting from legislative acts adopted before the entry into force of the Treaty, but which are not yet aligned.

In this blog I focus on the Parliament as they have, to date, been the most active branch of the legislature, in challenging the use (or abuse) of delegated power.

**Not Avoiding Political Choices**

First, it is important to realise that the Parliament and Council are making a political choice when the decide or not to delegate rule making powers to the Commission. It comes down to whether the, in particular for the Parliament, whether they have a future say in any future specific measure (delegated acts) or not (implementing measure).

Second, much to the surprise of many in Brussels, there are core limits to what can be delegated. The Parliament and Council can not delegate "essential elements". This means if the measure concerns an essential emolument it can only be dealt with in the ordinary legislation and that power to introduce measures can not be delegated.

The Court of Justice has given their opinion on what an "essential element" means. In the German Sheep meat case the Court rules that: "rules which (…) are essential to the subject-matter envisaged" and "which are intended to give concrete shape to the fundamental guidelines of Community policy." "[R]ules being merely of an implementing nature may be delegated to

the Commission" (Judgment of 27 October 1992, C-240/90, Germany v Commission, paragraphs 36 and 37).

The Court developed their thinking and clarified that essential elements of a basic are those that "entail political choices falling within the responsibilities of the European Union legislature, [by requiring] the conflicting interests at issue to be weighed up on the basis of a number of assessments" (Judgment of 5 September 2012, Case C-355/10, European Parliament v. Council, paragraphs 63, 76 to 78).

This is important because this prevents the EU legislature avoiding taking hard policy choices. They Parliament and Council cannot avoid taking political choices by asking the Commission to settle them for them via delegated legislation. This is in marked contrast to the US, where, at least in the field of air quality regulation, the Congress finds itself unable to make tough political choices of what air pollutant limits should be, and delegates to the US EPA those choices. Fortunately, in Europe, we avoid that abdication of political responsibility.

A summary of the grounds to object, timing, majorities in the EP and consequences of objection is below.


1. **Article 290 – Delegated Acts**

As the EP state "Delegated acts are used to change or supplement existing legislation. They are a way for Parliament and the Council to authorise the European Commission to revise non-essential parts of legislation, for example by adding an annex. However, Parliament and Council cannot delegate their legislative powers to the Commission to change essential parts of legislative acts.

If Parliament and the Council do not agree with the Commission's subsequent proposal, they can veto it."

The Parliament usually have 2 months with the possibility to ask for an extension of another 2 months. For environment measures, the Environment Committee send a monthly newsletter for both draft delegated, RPS, and implementing acts. A MEP needs to email the Environment Committee Chair and Secretariat of the intention to object. If the Committee backs the objection (by simple majority) the matter is usually tabled for a vote at the next plenary session of the Parliament. At the plenary, the high hurdle of 376, an absolute majority, is set to block a draft measure.

An example of a successful challenge to a proposed delegated act is the European Parliament's successful challenge is on 12 March 2014 to the Commission's proposed measure on the definition of engineered nanomaterials in food (see here). The Parliament's challenge was adopted 402 votes for, 258 against and 14 abstentions. The Commission's proposal was defeated.

**Article 290**

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

| | |
|---|---|
| (a) | the European Parliament or the Council may decide to revoke the delegation; |
| (b) | the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act. |

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective 'delegated' shall be inserted in the title of delegated acts.

**2. Article 291 – Implementing Acts**

As the EP write "Implementing acts describe how legislative acts should be implemented. They are normally prepared by the Commission, which consults committees made up of representatives from EU countries.

MEPs can object to an implementing act. Although the Commission must then consider Parliament's position, it is not bound by it.".

**Article 291**

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

An example of a challenge to an implementing act is Authorisation of GM maize 1507 for cultivation (see here). The vote on 16 January 2014 was carried with 385 in favour, 201 against, and 30 abstentions. The Commission ignored the European Parliament.

**3. Regulatory Procedure with Scrutiny**

The EP state "This is a defunct comitology procedure that operated between 2006 and 2009 for "**quasi-legislative measures**. It can no longer be used in new legislation but appears in more than 300 existing legal acts and will **temporarily continue to apply** in these acts until they are formally amended. This procedure empowers the European Parliament and EU Council **to block a measure proposed by the Commission** if it:

- exceeds the Commission's implementing powers,
- is not compatible with the aim or content of the legal act, or
- exceeds the EU's powers or remit (see subsidiarity and proportionality)."

RPS is used extensively in the environment field. Around 300 directives use the procedure. The Commission is due to table a omnibus proposal to update all the RPS into delegated acts for 2006. That said, talk about the demise of RPS has been on the table since 2010.

An example of a successful challenge to a RPS measure is Parliament's challenge to criteria for End-of-waste of paper waste (see here). This vote on 4 th December 2012 was adopted with 606 for, 77 against and 10 abstentions.

**How often used**

It is estimated that around 93% of EU laws adopted each year are delegated legislation.

In the last European Parliament, the 7th legislative term (14 July 2009 to 30 June 2014), the European Commission tabled 584 co-decision/ordinary legislative proposals, and 488 files were adopted by the co-legislators (the European Parliament and Council).

Over time, the trend for more co-decision proposals has grown. See below: (Source: Activity Report on Co-decision and Conciliation, page.4.)

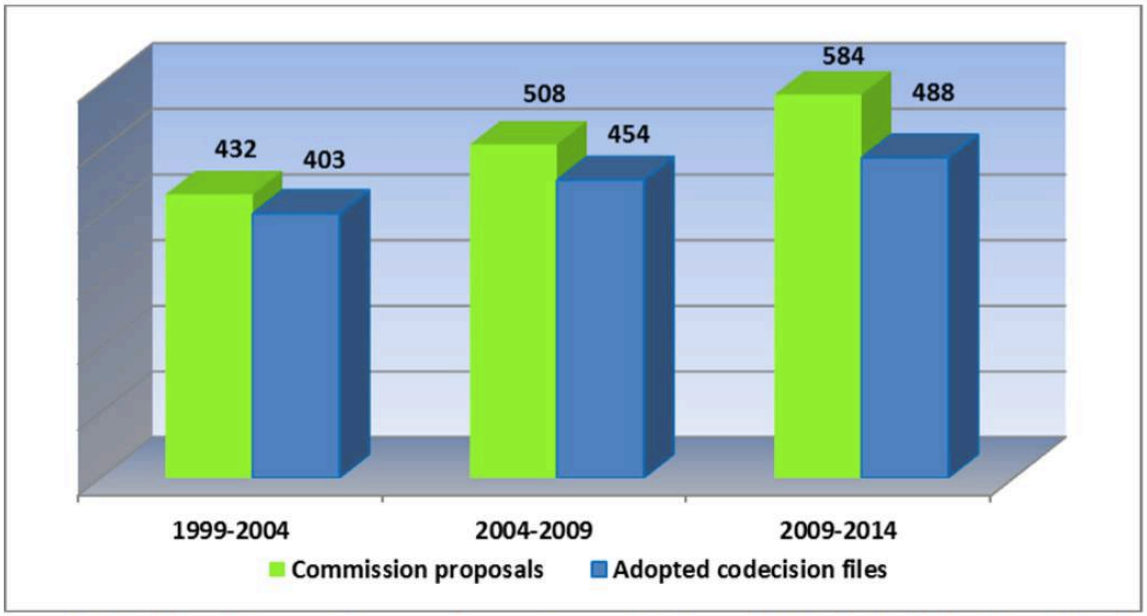



**Figure 2**: *Number of Commission proposals and adopted codecision files per legislative term between 1999 and 2014, based on date of adoption*[7]

But, the adoption of proposed delegated legislation is far higher. The same Parliament report provides the following chart (page 24) on the growing volume of delegated legislation that has been sent to the Parliament.

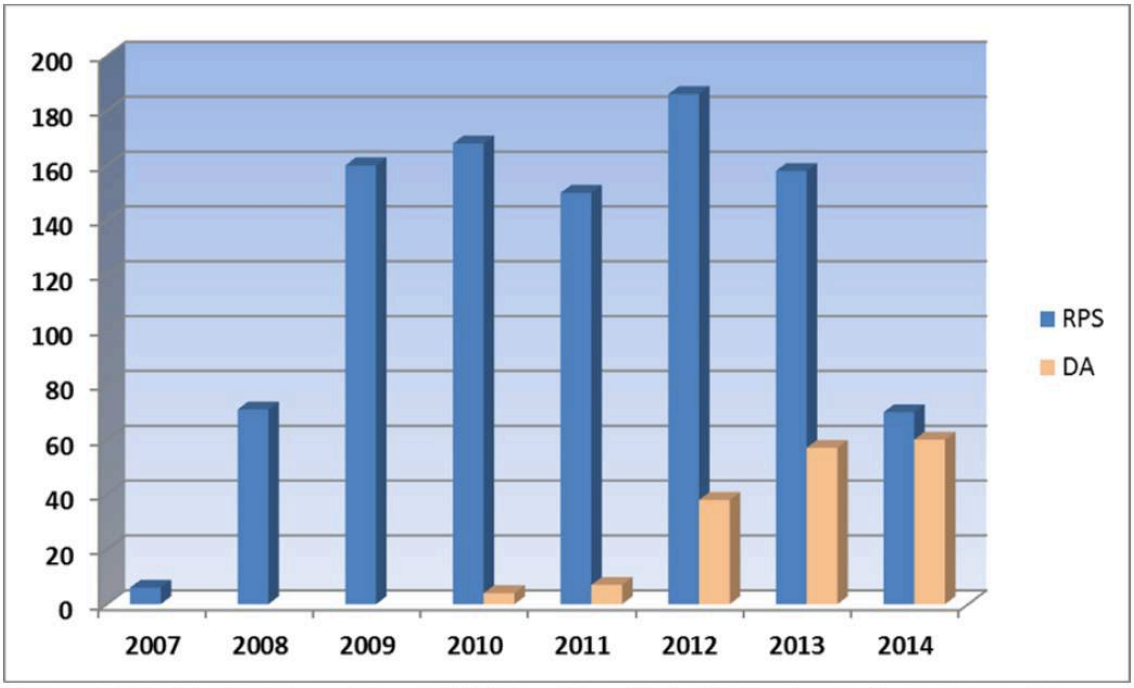



**Figure 12:** *Final draft RPS measures and delegated acts (DA) submitted to Parliament per year*

**93% (or even 97%) of EU law passed each year**

The European Commission in their "Report on the Working of the Committees during 2014" note that 1 899 Opinions were adopted, 1 563 Implementing Acts were adopted, and 165 RPS measures were adopted (see page 7).

By that measure, the ordinary (co-decision) legislation represents around 3% of the overall legislative workload of the EU.

**Caveat**

I will update this section when I can identify the correct number of pieces of delegated legislation (delegated, regulatory procedure with scrutiny, and implementing acts) sent each year to the Parliament and Council and adopted. This is an obvious discrepancy between the information from the EP and the Commission.

I focus on the work of the Environment Committee. I do so because this is the Committee I am most experienced. Also, they legislate more than other Committee in the European Parliament, and have being more for longer than any other Committee for some time. Also, they have more experience of scrutinising delegated legislation than other Committee and the most successful track record, to date, of holding the Commission and their proposals to account.

**More Examples of Delegated Legislation**

Today, delegated legislation is either a delegated act or an implementing act. It will be clear from the legal text.

The European Parliament have provided three recent examples where the European Parliament sought to control Commission delegated legislative proposals:

"MEPs vetoed a delegated act concerning sugar in baby food in January, as they fear the allowed limits are too high.

In February MEPs decided against vetoing a delegated act proposing to temporarily raise NOx emission limits for diesel cars after the Commission promised to include a review clause.

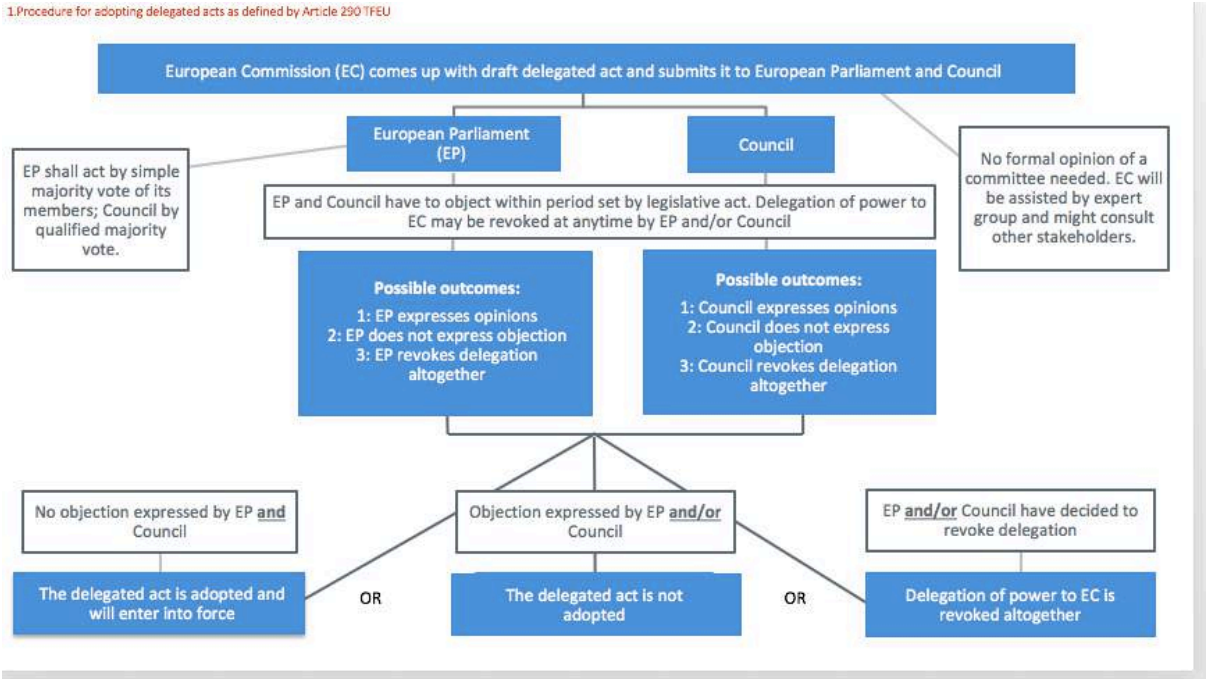
Also in February MEPs objected to implementing acts approving three types of genetically modified soybeans as they were concerned the soybeans could contain traces of a herbicide that was classified as "probably carcinogenic".

The main consequence is that the Parliament or Council (or both) will find it far easier to veto a delegated act. The Commission has not withdrawn any implementing act measure the Parliament has objected to.

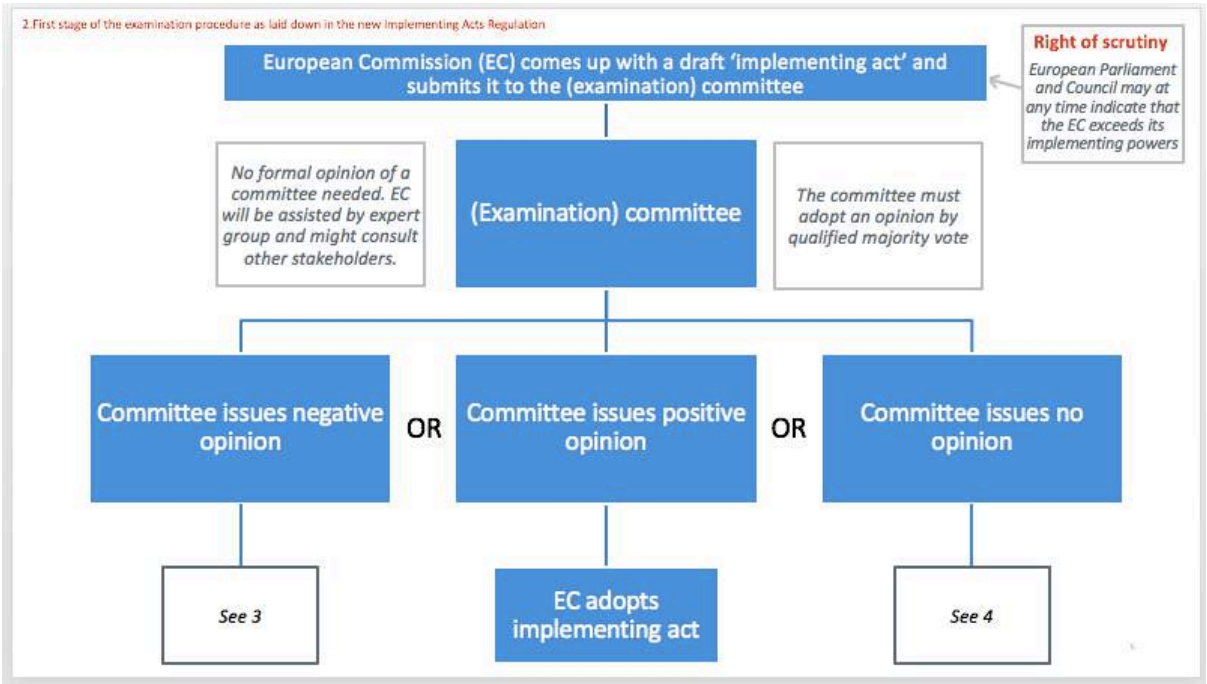
**The Process in Charts**

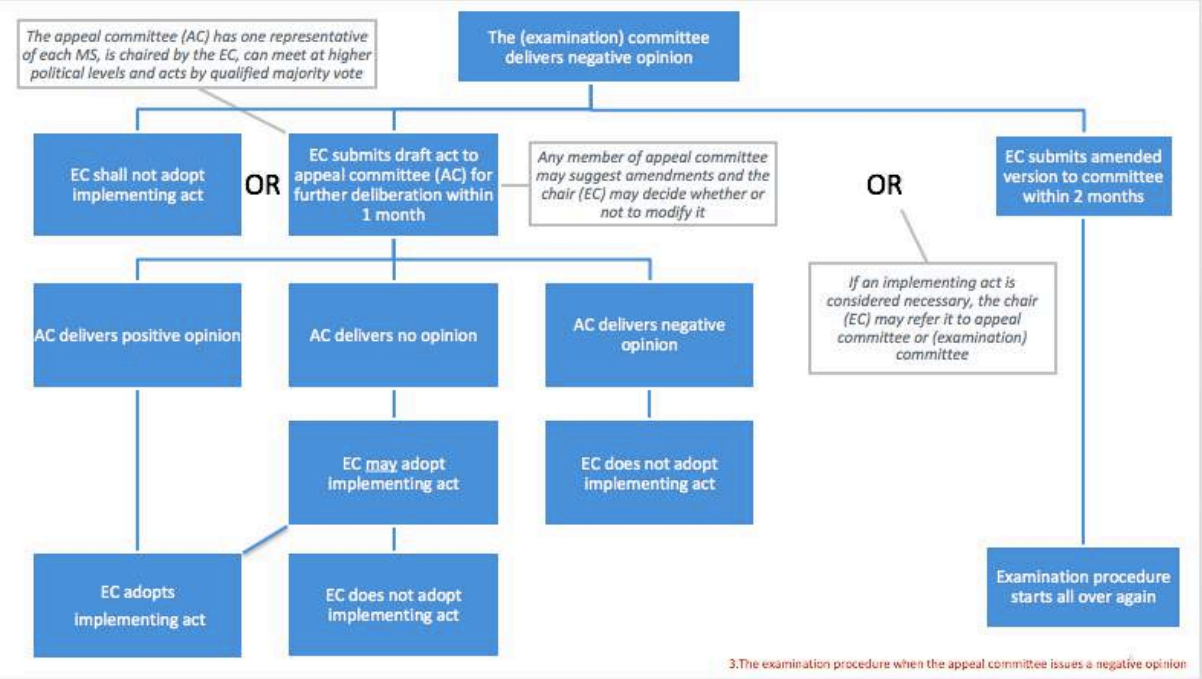
The IEEP have produced an excellent guide on the existing system which you can find here. The charts below are derived from that study and provide a useful schematic of the current system. These charts are helpful high-level maps of the pathway to travel, but they are not detailed travel plans, which are individual for each journey.

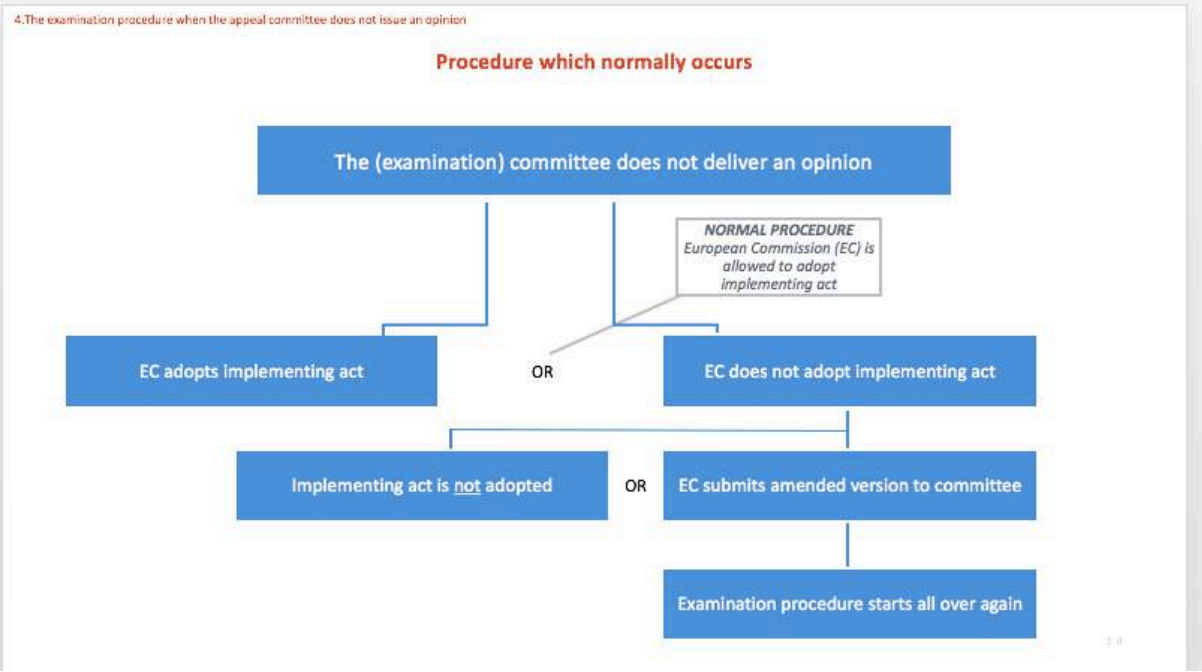
1. **Delegated Acts**



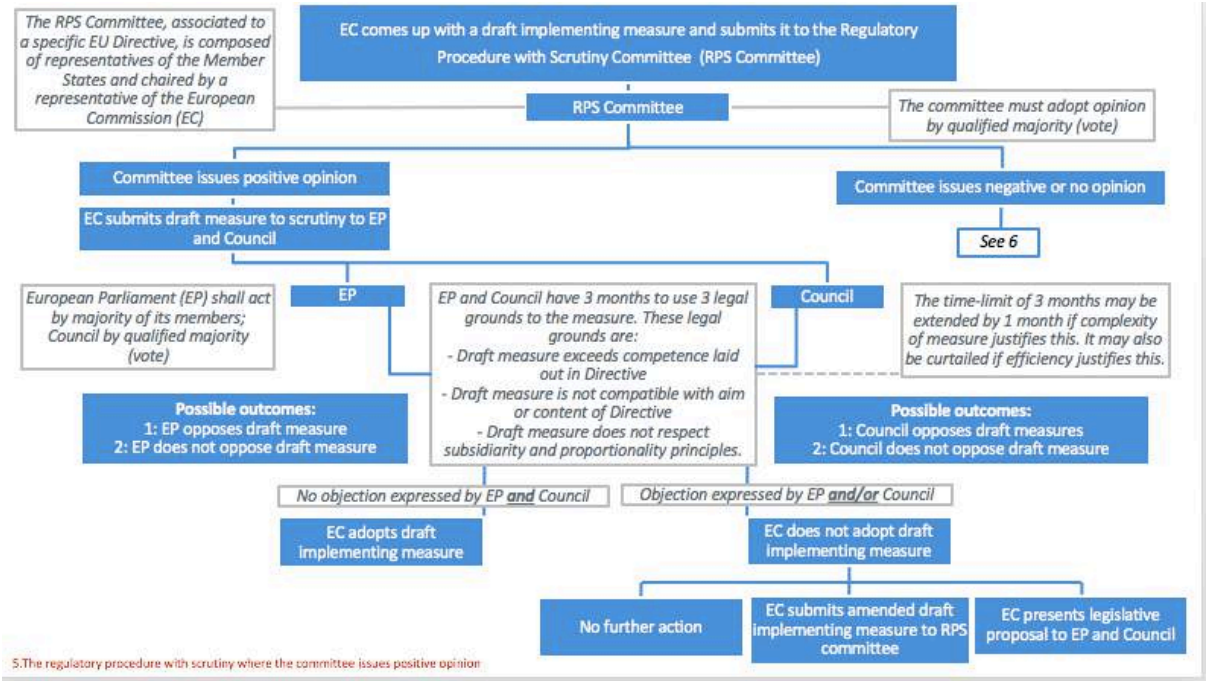

## 2. Implementing Acts

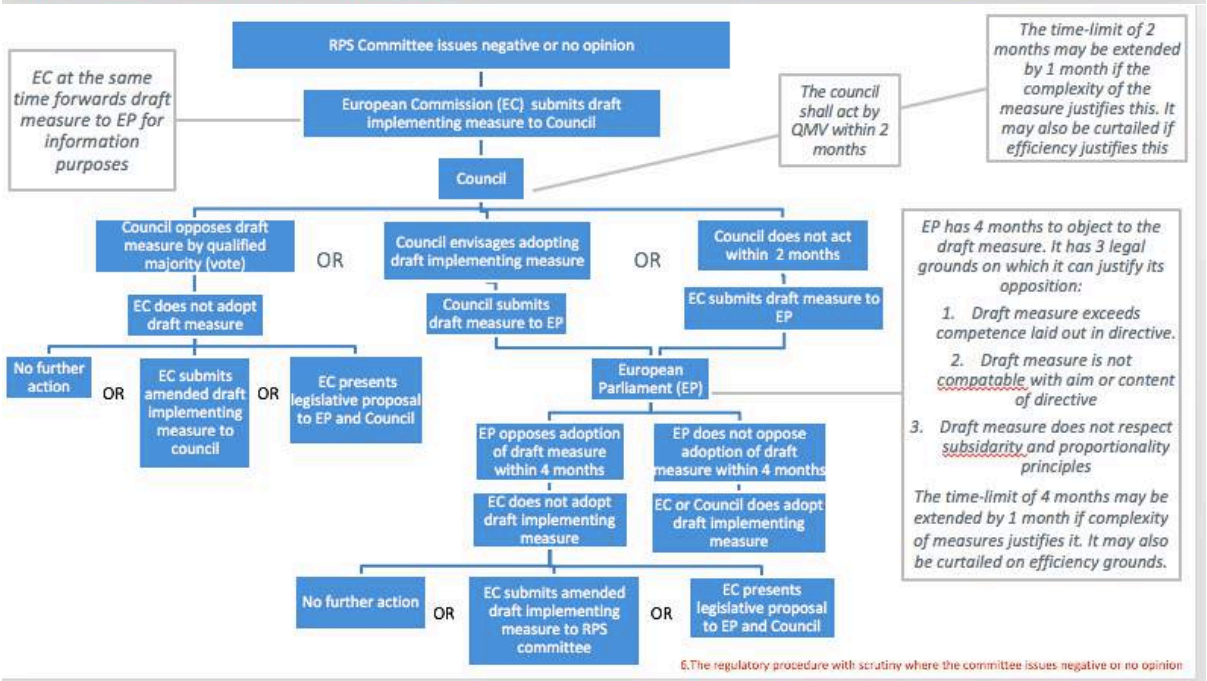



The appeal committee (AC) has one representative of each MS, is chaired by the EC, can meet at higher political levels and acts by qualified majority vote
The (examination) committee delivers negative opinion
EC shall not adopt implementing act
OR
EC submits draft act to appeal committee (AC) for further deliberation within 1 month
Any member of appeal committee may suggest amendments and the chair (EC) may decide whether or not to modify it
OR
EC submits amended version to committee within 2 months
If an implementing act is considered necessary, the chair (EC) may refer it to appeal committee or (examination) committee
AC delivers positive opinion
AC delivers no opinion
AC delivers negative opinion
EC may adopt implementing act
EC does not adopt implementing act
EC adopts implementing act
EC does not adopt implementing act
Examination procedure starts all over again
3.The examination procedure when the appeal committee issues a negative opinion


4.The examination procedure when the appeal committee does not issue an opinion
Procedure which normally occurs
The (examination) committee does not deliver an opinion
NORMAL PROCEDURE
European Commission (EC) is allowed to adopt implementing act
EC adopts implementing act
OR
EC does not adopt implementing act
Implementing act is not adopted
OR
EC submits amended version to committee
Examination procedure starts all over again

### 3. Regulatory Procedure with Scrutiny




The Financial Service legislation use a slightly different system under the **Lamfalussy system.**

**Tracking the Proposals**

**Public**

For the public, there is no public source of draft measures prepared by the Commission that the public can examine. Unlike ordinary legislation, where you can look up proposals and where they are via EUR-lex there is no similar database for delegated legislation.

You can embark on a journey of discovery and search the Commission's comitology database for proposed implementing acts and RPS measures. But, so poor is it's ease of use that asking a friendly experienced cyber hacker would be advisable. And, if the Commission forget to transfer the documents to the Parliament, you'll still be none the wiser as to what proposals are lurking around.

Fortunately, the EFTA States in February 2016 launched their own database of EU delegated legislative proposals. As the EFTA agreement does not cover all areas, such as fisheries, it covers most, but not all, proposals. It is a very clear database.

**European Parliament and Council**
Today the Commission notify the Member States and the European Parliament of their proposals via a functional email box, or for implementing acts, via a database.

The functional email box has limitations. Whilst many of the measures are technical, some are sensitive, and sometimes the Commission Services have shown themselves unable to operate the system. The system operates on a basis of trust with the Commission sending the correct files to the Council and the Parliament by way of functional email boxes. Sometimes the Commission have not done this.

For example, as recently as December 2014, the Environment Committee started an objection to a "delegated act entitled Commission delegated Regulation (EU) No …/..of of 12.12.2013 amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as regards the definition of 'engineered nanomaterials'. The delegated Regulation adapts the existing definition of 'engineered nanomaterials' in Regulation (EU) No 1169/2011 to Recommendation 2011/696/EU on the definition of nanomaterial adopted by the Commission on 18 October 2011."

The objection from the Parliament centred on (1) substantive and (2) procedural grounds. In this case, the European Commission published the act before the period of objection from the Parliament or Council had expired. The Commission acknowledged their error, citing a clerical error and a high volumes of procedures. So, whilst the act was published on 19 December 2014, the error was spotted, and a notice published in the Official Journal that the notice of 19 December was null and void. The Parliament were notified on 19 December of the error.

This case is not isolated. In 2000, the Environment Committee stumbled upon the systematic non-transmission of proposals from the Commission to the European Parliament for many proposals across a few Commission departments.

That said, sometimes delays have happened inside the European Parliament re-allocating the dossier to the correct Parliamentary Committee.

**Leaks**
Today, this does not mean the draft measures do not leak. Well sourced interests will gain access to the documents, but the public won't. The European Parliament in practice is left to being informed by well informed "observers" about "problematic proposals" coming down the pipeline.

**Impact Assessments**
Delegated legislation that has a "serious impact" is meant to have an impact assessment. This is a good way for members of the public to see what proposals are in the pipeline.

Measures that have a significant impact are already meant to have an accompanying road map. However, it is interesting to observe that even today many delegated legislative proposals the Commission put forward, that have significant first order, let alone second or third order impacts, still have no Road Maps. Without the Commission Services policing themselves to flag significant impacts with their own proposals, it is unlikely that politically or economically sensitive proposals

will be weeded out or flagged for political sign before adoption. And, as nearly 99% of EU delegated or implementing acts go through untouched by the influence of the Parliament or Member Stares, the only way to weed out weak proposals is the inter-service consultation phase. I'll touch on that in tomorrow's blog.

**Follow Up**

Tomorrow, I will look at some case studies to show how difficult it is for the Parliament and Council to challenge the Commission. In fact, I'd go so far that this power of control over the Commission verges on to hypothetical. For example, the Commission have never withdrawn an implementing act challenged by the Parliament.

Second, I'll detail how the new Better Regulation Agreement changes the mechanics of the current system (which it does for delegated acts) and how the Commission's unilateral commitments on Better Regulation and delegated legislation (public consultation on draft measures) will positively impact open law making.

## 2. How to control the Commission when law making – delegated legislation – Part 2 – The Benefits of Better Regulation

24th March 2016 by Aaron

**Better Regulation and Delegated Legislation**

On the expectation that few people (in or outside the Commission) read the rules about how the Commission operate and prepare laws ( and the same rules they fortunately publish), I wanted to provide a brief summary of how the new Commission Better Regulation rules impact delegated legislation.

The Commission has two sets of commitments on Better Regulation that need to be read in conjunction with each other. First, there is the Inter-Institutional Agreement, and second there are the Commission's self commitments are laid out in two documents:

- The Better Regulation Guidelines (here)
- Better Regulation "Toolbox" (here)

These commitments will apply in addition to the Inter-Institutional Agreement. I have written on some of those changes on the Agreement here.

The self commitments are worth reading as an unusual example of clear and coherent drafting from the Commission services. One can only hope that lucidity of the Guidelines and the Toolbox are such that Commission officials cannot say they did understand the new rules, and use ignorance as a reason for not applying them.

Taken together, the new rules will, if the Commission can apply them on the Services, be positive for open and better law making overall. And, for delegated legislation they will be a radical and welcome move to bring the EU into the sunshine of the 21st century.

**Reason for these changes**

They have come about for two main reasons.

First, Vice-President Timmermans made explicit personal commitments to overhaul the Commission's delegated law making process in his confirmation hearings.

Second, as ENDS reported on 21 March 2016, it is a by-product of the EU-US talks under TTIP. The US system of law making is more transparent than the EU system, and the EU have opted to drag the EU system into the light of the 21st century.
The challenge will be for the Commission Services to respect these guidelines. After so long drafting and passing delegated legislation with little or no political oversight from the Commissioners, their Cabinets, or the Secretary-General policing the guidelines, it will be hard to break old habits. As I have written before European Parliament and Member State scrutiny is at times theoretical, and the public seem to be a bystander to be ignored.

**Policing**
The Secretary-General and the Cabinet of V-P Timmerman's will be left to police these new rules. I suspect that they will be kept busy for the first 12-18 months as they break in colleagues in the Services.

**Why these changes are helpful**

It is a strange constant at how often important delegated legislative measures are pushed by some Commission Services without any consideration of President Juncker's Political Guidelines or the Commission's internal guidelines. I have been surprised to discover some Services are unaware that some delegated legislation need Impact Assessments, or that Road Maps are needed for measures for political validation rom the Commissioner. It helps explain why sometimes important draft delegated legislative proposals do not even exist in the Commission's internal database that is mean to track all legislative work. For the latter, I guess it is hard to ask questions about a proposal in inter-service consultation if it officially the draft delegated measure does not exist.

**Key provisions**

The self commitments are helpful in that clarifies the rules for (1) political validation, (2) public scrutiny, (3) and the use of impact assessments, and (4) road maps for delegated implementing acts.

**Road Maps and Validation**

For the lack of reference, the Guidelines are worth citing in full.

Box 2. Scoping, political validation and inter service work (See Page 8)

- Major initiatives must be accompanied by a Roadmap and entered into Agenda Planning as soon as preparatory work starts – at least 12 months prior to adoption by the College. They must be validated by the lead Commissioner, relevant Vice- President and the First Vice-President before being accepted to be included into the Commissions' planning. The political validation must be understood as giving the green light to proceed with further preparatory work. It should not be interpreted as a decision on a particular initiative or course of action that prejudges the outcome of any impact assessment process, stakeholder consultation or later political discussion in the College.
- Roadmaps explain what the Commission is considering. A Roadmap describes the problem to be tackled and the objectives to be achieved. It sets out why EU action may be needed and its value added. The policy options being considered are outlined. The Roadmap also justifies the absence of an impact assessment. It also announces the details of the stakeholder consultation strategy (see later chapter). A (different) Roadmap is also prepared for each evaluation and Fitness Check. This specifies the scope of the evaluation and presents the evaluation questions to be answered.
- An Inception Impact Assessment is a Roadmap for initiatives subject to an IA that sets out in greater detail the description of the problem, issues related to subsidiarity, the policy objectives and options as well as the likely impacts of each option.
- All Roadmaps and Inception Impact Assessments are published by the Secretariat General on the Commission's website8 so that stakeholders are informed and can provide initial feedback (including data and information they may possess) on all aspects of the intended initiative and impact assessment."

Evaluations, impact assessments, stakeholder consultations, policy proposals and implementation plans must be prepared collectively by the services9 within an interservice group. It is important that all services with an interest participate actively in the interservice work from the outset, particularly those DGs with specific expertise (e.g. competitiveness, SME impacts, social impacts, environmental impacts and scientific/analytical) (See Page 7 Guidelines).

**Before Going Anywhere**

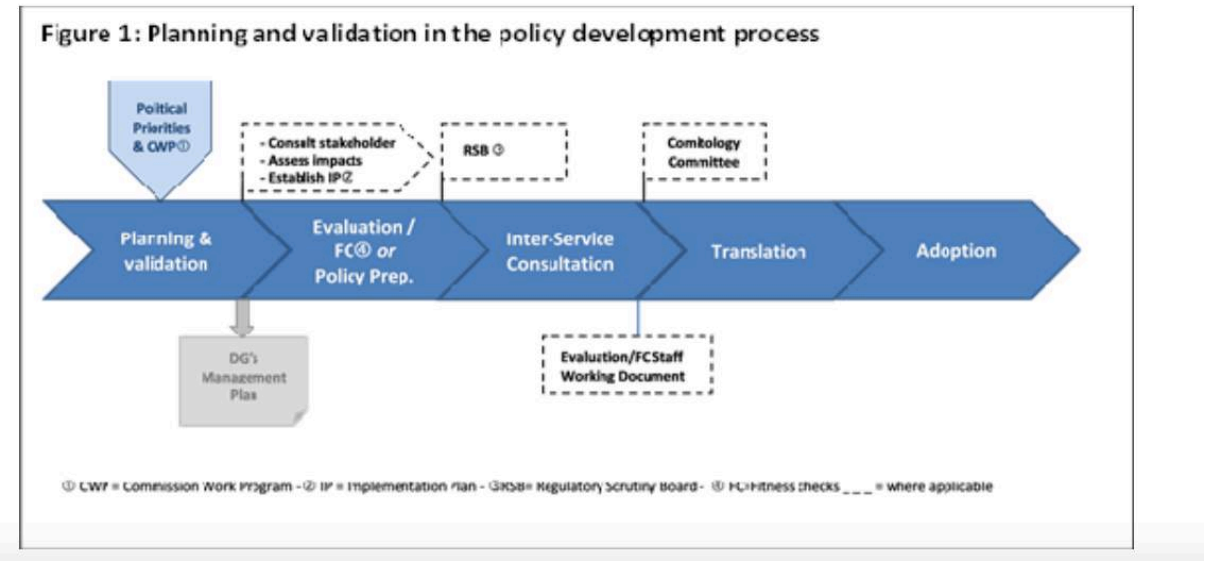
The Guidelines (page 11) make clear that no work at all can continue unless:

Key requirements

- Work may only start and the necessary resources attributed if an initiative has received political validation at the appropriate level and a valid entry exists in Agenda Planning, where applicable (cf. point 3 below).
- "Major" new initiatives have to be accompanied by a Roadmap or Inception IA and require political validation from the lead Commissioner, Vice-President and First Vice President.
- A valid agenda planning entry is needed in order to launch an interservice consultation.

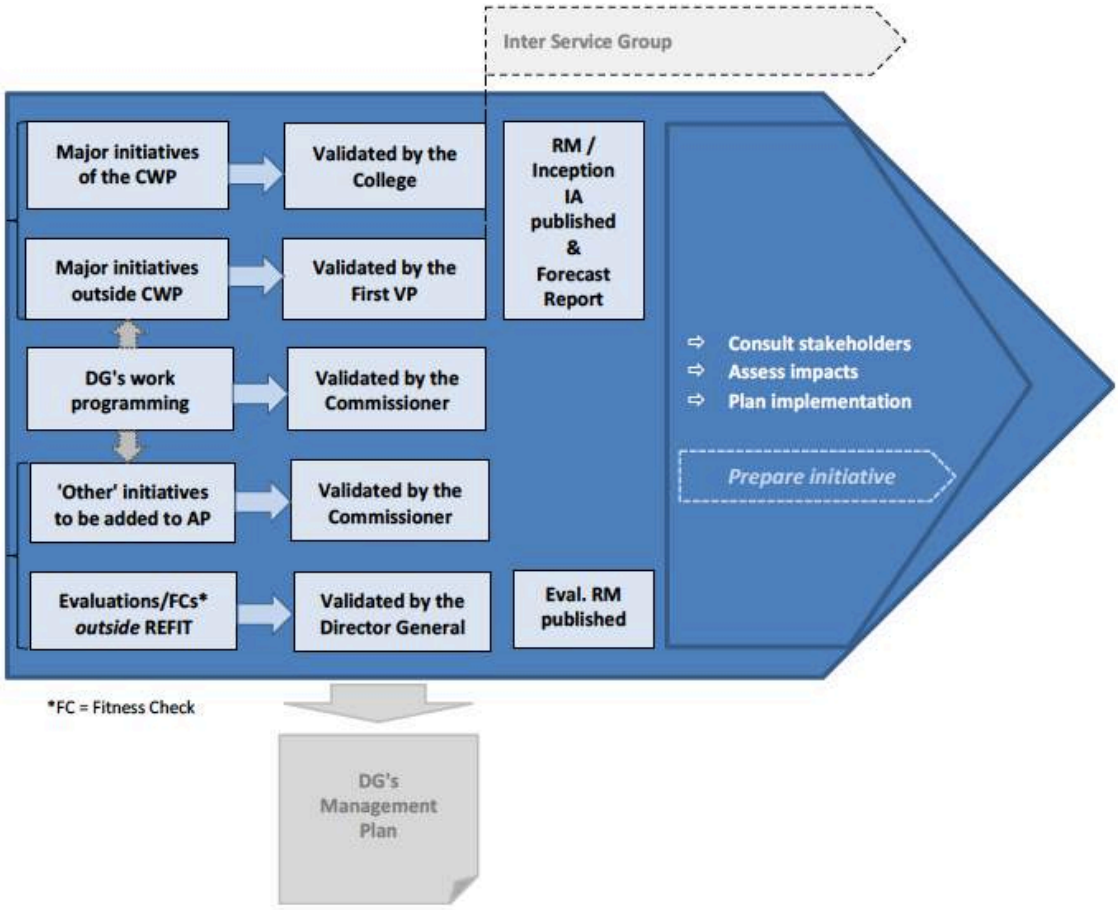
This graphic is helpful in explaining the steps (See Guidelines page 11)

**Work may start and the necessary resources may be attributed only if political validation has been obtained from the appropriate level.**




See Page 12 Guidelines

**Figure 2: Prioritisation and political validation levels**




See Guidelines page 13

**Delegated Legislation is Covered**
Let's be clear, delegated legislation can be subject to "validation", and if it "has significant impact" must be.

As the Guidelines state: " All 'major initiatives' need to be entered into Agenda Planning at the latest 12 months before their planned adoption date and be accompanied by a Roadmap16 or an Inception Impact Assessment. The implementing instructions identify certain types of acts as being per definition 'major'. However, any other Commission initiative that is sensitive or important should also be considered as 'major'. It is the responsibility of each DG to consider carefully aspects such as the political importance and sensitivity, the magnitude of the expected impacts; importance for other policy areas and prior knowledge about divergent or sensitive stakeholder views (see Page 13 Guidelines)".

And, in case there is any confusion, the Guidelines provide a clear chart to make clear that delegated legislation having significant impacts require validation, and the subsequent steps that such measures needed.

| Different initiatives and validation requirements | | | | |
|---|---|---|---|---|
| | **Major initiatives** | **'Other' initiatives** | | **DG internal work plan** |
| **Which acts?** | • Initiatives included in the CWP<br>• REFIT items<br>• New legislative proposals<br>• Recommendations for the negotiation of international agreements and proposals for their conclusion<br>• Policy communications<br>• Delegated and implementing acts having significant impacts<br>• Financing decisions having significant impacts<br>• Other Commission initiatives that are sensitive or important | • Delegated and implementing acts not having significant impacts<br>• Commission reports except for Evaluations or Fitness Checks | Non-major evaluations and Fitness Checks | • Commission decisions of administrative and routine nature<br>• Intermediate legislative acts<br>• Implementing decisions under International Treaties<br>• Financing decision of a routine nature<br>• Information notes for the Commission<br>• Decisions granting delegated powers (empowerment and delegations)<br>• Infringement, competition and state aid cases, trade defence cases, enforcement action under international trade rules<br>• Emergency procedures (duly justified)<br>• Any other initiative |
| **AP entry?** | Mandatory | Mandatory | Mandatory | Not required |
| **Roadmap/ Inception IA needed?** | Mandatory, signed off by the Commissioner(s). For initiatives that will undergo impact assessment, the Roadmap should be presented in the form of an Inception IA. | Not required | Mandatory, signed off by the Director General | Not required |
| **Political validation by** | Commissioner(s), VP(s) and the First VP, in close cooperation with President's Cabinet | Commissioner | Director General through the Management Plan endorsement | Commissioner |
| **ISG required** | Yes (Important/sensitive cases chaired by SG) | No | Yes | No |
| **Conditions to launch ISC** | • Only if complete AP entry exists<br>• If impact assessment: positive opinion of the RSB<br>• Validation by the Commissioner(s), VP(s) and the First VP | • Only if complete AP entry exists<br>• Validation by Commissioner(s), VP(s) and the First VP | | • Validation by the Commissioner |

See: Page 14 Guidelines.

**What happens if officials don't comply with the rules?**
The Guidelines helpfully spell out to Commission Services that if they don't follow the new rules the draft proposal can be blocked:

"If preparatory work for a possibly important or sensitive initiative is carried out only at internal DG level and outside of Agenda Planning, the launch of the ISC may not be validated at political level, or the initiative may be blocked by any DG at the ISC stage, due to the lack of transparency and non-compliance with the implementing instructions." (see Page 15 Guidelines) .

**Public Consultation Timelines**

The Commission will introduce on or around 1st July 2016 a public screening and consultation process for draft delegated and implementing acts. I presume that RPS measures will be included in this new database.
This means that for draft delegated and implementing acts the public will be given 4 weeks to provide feedback.
For draft delegated acts this means the 4 week public consultation will start "after conclusion of the Inter- Service-Consultation in parallel with Member State experts.

For drafting implementing acts this means the 4 weeks public consultation will commence "after conclusion of the Inter- Service-Consultation and before the vote in the Comitology Committee".

This will give the Commission a final chance to check if they have overlooked an important first order impact, or second or third order impacts.

In addition, the Commission will publish a version of their Agenda Planning on the database that lists upcoming delegated legislative measures coming on stream.

Of course, there will be exceptions to the the need for publicity. The Guideless provide a table replicated below of those cases.

*Exceptions to the 4-week public consultation on Delegated/Implementing Acts*[89]*:*

| Type | Reason | Examples |
|---|---|---|
| No (or limited) margin of discretion | Lack of policy alternatives | Acts implementing an international standards into EU law without any (or limited) discretion.<br>Corrigenda |
| Drafts have been prepared by an EU agency or body and have been subject to full public consultation before being submitted to the Commission and for which the Commission does not have the intention to significantly modify them | Extensive consultation on the draft text has already taken place in a dedicated framework | Acts based on regulatory technical standards submitted by the European Banking Authority or by European Securities and Markets Authority |
| Urgency / emergency measures | Time limitations do not allow additional consultation period | Acts under the urgency procedure or other urgent acts, e.g. temporary exceptional support measures in the agricultural field, urgent/emergency measures addressing threats to public, animal or plant health. |
| Budgetary procedures and | Lack of policy | Decisions on work |

[89] The table refers to delegated and implementing acts. This does not prejudge in any way the choice of instrument; certain types of acts such as those linked to budgetary procedures and programme management or individual authorisation decisions, can, by their nature, only be implementing acts.

| Type | Reason | Examples |
|---|---|---|
| measures, programme management decisions | alternatives / implementation of agreements already decided on | programmes and selection and award decisions |
| Individual authorisation decisions / acts / decisions based on the assessment of compliance with legal requirements | Lack of significant impact, routine acts | Marketing authorisations in the pharmaceutical field or comparable authorisations, inclusions, amendments in the PDO&PGI register, (de) classification of control bodies |
| Temporary risk management decisions | Lack of policy alternatives / no significant direct impacts / no deviation from the advice of risk assessors | Temporary food safety measures |
| Based on scientific opinions from an agency or scientific committee on which a public consultation has already taken place where the Commission follows the agency findings | Extensive consultation on the substance has already taken place in a dedicated framework | Areas in which agencies such as EFSA have given a scientific advise |

See Page 67-68 Guidelines.

**Timing for consultation**

The Guidelines provide a timetable for the standard public consultations.

| Mandatory timeframes for consultation and feedback | | |
|---|---|---|
| ***Mandatory open, internet-based public consultation:*** | ***How long?*** | ***When?*** |
| • Initiatives with impact assessments<br>• Evaluations<br>• Fitness Checks | Minimum 12 weeks[107] | Decision on case-by-case basis |
| • Green Papers | | After adoption by the Commission |
| ***Stakeholders must be enabled to give feedback on:*** | ***How long?*** | ***When?*** |
| • Roadmaps for Evaluations and Fitness checks | 4 weeks | After publication |
| • Roadmaps, Inception Impact Assessments | Indication to be provided | After publication |
| • Draft Delegated Acts[108] | 4 weeks | After conclusion of the Inter-Service-Consultation in parallel with Member State experts. |
| • Draft Implementing Acts[109] | 4 weeks | After conclusion of the Inter-Service-Consultation and before the vote in the Comitology Committee |
| • Legislative or policy proposals adopted by the College and, where applicable, the accompanying impact assessments | 8 weeks | After adoption by the Commission |

See Page 77 Guidelines.

**Toolbox**

The Guidelines are accompanied by a more detailed Toolbox. This provides 59 tools for Commission Services to use in their work and complying with Better Regulation. There will be little margin for error given how clear and comprehensive these rules are.

The Toolbox provides some helpful clarification on a number of points.

The Commission leads will have to provide a justification on why a draft delegated measure does not have a major impact. At the moment, the Services just need to tick a book saying this is the case and provide no reason or reasoning why this is so. The Toolbox states “DGs should not start work without having political validation by the responsible Commissioner. At the latest 3 months before the planned adoption, the initiative has to be introduced in Agenda Planning. For delegated acts and implementing acts an appropriate justification why they do not have significant impacts and are thus ‘not major’ has to be provided.” (page 10 Toolbox).

In relation to risk management decisions, nuanced criteria may limit the application of some Impact Assessment rules

## 3. The Environment Committee Keeping Control Of the Commission – Success in the Scrutiny of Delegated Legislation

23rd March 2016 by Aaron

**Environment Committee Scrutiny of Delegated Legislation 2015-2016**

I have chosen the Environment Committee as it is the Committee I know best and it is still the, or one of the most, active legislative Committees in the European Parliament. It is, by some distance, still the most experienced legislative committee in the European Parliament in the last 20 years. It is also likely to be most experienced of all the Committees in exercising that vital Parliamentary power of control and oversight of the Commission in the exercise of delegated law making.

I have looked at the work of the Environment Committee, Public Health and Food Safety in their scrutiny of delegated legislation proposals from the European Commission from January 2015 to today.

**Method.**

I have reviewed the Committee's excellent Newsletter to track challenges and followed their success or not in the Committee through the Committee Minutes and then the full Parliament through the invaluable EU Vote Watch. There may be gaps.

As votes in Committee are not systematically tracked at the individual level unless there is a roll call vote, which is exceptional – it is hard to know how individual MEPs voted. The only way to do so is by looking at the group co-sponsors and conversations with people more closely involved with specific votes.

**Insights.**

- The winning coalition in Committee tends to be: Social Democrats, Radical Left, Greens, and Europe of Freedom and Direct Democracy, and all or part of ALDE. All groups refuse to work on joint objections with Europe of Nations and Freedom, but they normally support the winning coalition.
- The ECR and EPP often support the Commission, although sometimes they join the winning coalition.
- Individual groups bringing challenges tend not to be successful.
- The winning Committee coalition tends to be replicated the in the full Parliament.
- Reaching a simple majority in plenary is far easier to do than securing an absolute majority (376 MEPs) but that high hurdle not stopped resolutions in 2015 being adopted.
- The resolutions and the debates on them tend to be focus on compliance with spirit and letter of the enabling law, rather than the technical of scientific merits of the specific issue. Listening to and reading the Resolutions is like reading litigation pleads on procedural points. There may well be a political challenge going on, but sometimes it is hard to work out what that is. MEPs are often doing what Parliamentarians world over do, they are looking to preserve their hard fought powers.
- Since September 2015 there appears to be an increase in the challenges from the Environment Committee, and most of these challenges are successful.
- This increase in MEPs activity in the vital role of Parliamentary oversight of delegated law making could be because the Environment Committee now has less legislation to work on

under the Juncker Commission, or the Commission Services have become even more pro-industry in their drafting of draft measures. I think it is a combination of both.

- There is not a long time for interests to organize from a successful vote in the Committee to the vote of the full Parliament. By the time many interests are organized, voting lists have been prepared in advance. Concerns about draft measures can usually be picked up from the floor of the Environment Committee way in advance.

**Environment Committee 2015**

1. **Subject: Exemption for cadmium in illumination and display lighting applications**

Measure: Delegated act
Objectors: Bas Eickhout, Keith Taylor (Greens/ALE), Matthias Groote, Daciana Octavia Sârbu, Pavel Poc, Seb Dance, Susanne Melior, Jytte Guteland (S&D Group), Kateřina Konečná (GUE/NGL Group)
Plenary Committee Vote: 20 May 2015
Adopted by 618 for, 33 against, 28 abstentions
Majority needed: 376
EU Vote Watch link

4. **Subject: comitology objection on the removal of certain flavouring substances from the authorised Union list**

Measure: RPS
Objectors: Sommer (EPP), Gardini (EPP)
Environment Committee 6 May 2015 (discuss), Vote 26 May 2015
Rejected: 28 for, 31 against, 0 abstention

3. **Subject: objection to the draft measure concerning the maximum residue level for the pesticide sulfoxaflor (bees).**

Measure: Regulatory Procedure with Scrutiny (RPS )
Objection by: Sylvie Godin (ENF)
Committee vote: 13 October 2015
Rejected by: 18 for, 31 against

4. **Subject: Authourisation of the uses of DEHP**

Measure: Implementing act
Objection by: Poc (S&D), Konečná (GUE), Eickhout (Greens/EFA)
Committee vote: 10 November 2015
Adopted by: 58 for, 5 against, 0 abstention
Plenary Vote: 25 November 2015
Adopted by 603 for, 86 against, 5 abstentions
Majority needed: simple majority 345
EU Vote Watch link

5. **Subject: list of invasive alien species**

Measure: Implementing act
Objection by: Pock (S&D), Sommer (EPP)
Committee vote: 1 December 2015

Adopted by: 51 for, 16 against, 1 abstention
Plenary vote: 16 December 2015
Adopted by: Normal method – show of hands

**2016**

6. **Subject: Objection pursuant to Rule 105: processed cereal- based food and baby food**

Measure: Delegated act
Objection by: Keith Taylor (Greens)
Committee vote: 14 January 2016
Adopted: 35 for, 28 against
Plenary vote: 20 January 2016
Adopted by: 393 votes for, 305 against, 12 abstentions
Majority needed: 376
Vote watch link

7. **Subject: Authorisation of GM maize NK603 x T25 and 2 others**

Measure: Implementing act
Objection by: 1. Staes (Greens /EFA), Balas (S&D), (GUE/NGL), Evi (EFDD), 2.Goddyn (ENF)
Committee Vote: 1 December 2015
Adopted by 40 votes for, 26 against, 3 abstentions
Plenary vote: 16 December 2015
Adopted: 403 for, 238 against, 50 abstentions
Majority needed: 321
See vote watch link

8. **Subject: Infant follow on formula**

Measure: Delegated act
Objection by: Keith Taylor (Greens/EFA)
Committee vote: 14 January 2016
Rejected by for: 17; against: 46; abstentions: 0

9. **Subject: Extension of the approval period of the active substance glyphosate**

Measure: Implementing act
Objectors: Pavel Poc (S&D), Bas Eickhout (Verts/ALE), Piernicola Pedicini (EFDD),Mark Demesmaeker (ECR), Sirpa Pietikäinen (PPE), Frédérique Ries (ALDE), Kateřina Konečná (GUE/NGL)
Committee vote: 22 March 2016
Committee adopted: 38 votes to 6 and 18 abstentions.
Plenary vote: 11-14 April

10. **Subject: Mandatory indication of the country of origin or place of provenance for certain foods vote**

Measure: Implementing act
Objection by: Glenis Willmott (S&D), Julie Girling (ECR),Anneli Jäätteenmäki (ALDE), Lynn Boylan (GUE/NGL), Michèle Rivasi (Verts/ALE), Piernicola Pedicini (EFDD), Matteo Salvini (ENF)
Environment Committee: 22 March 2016
Adopted: for 44 votes, against 18.
Plenary vote: April / May 2016

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## 4. Delegated legislation – the pre-adoption phase

20th April 2016 by Aaron

The "Inter institutional Agreement Between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making" was adopted on 13 April 2016. It is now in force and new Commission proposals should be following it. Below is the signing event in Strasbourg.

The Agreement will have an important impact across many areas of EU law making. I have reservations that Commission Services will follow the letter and the spirit transparency provisions of the Agreement, but I hope to be proven wrong.

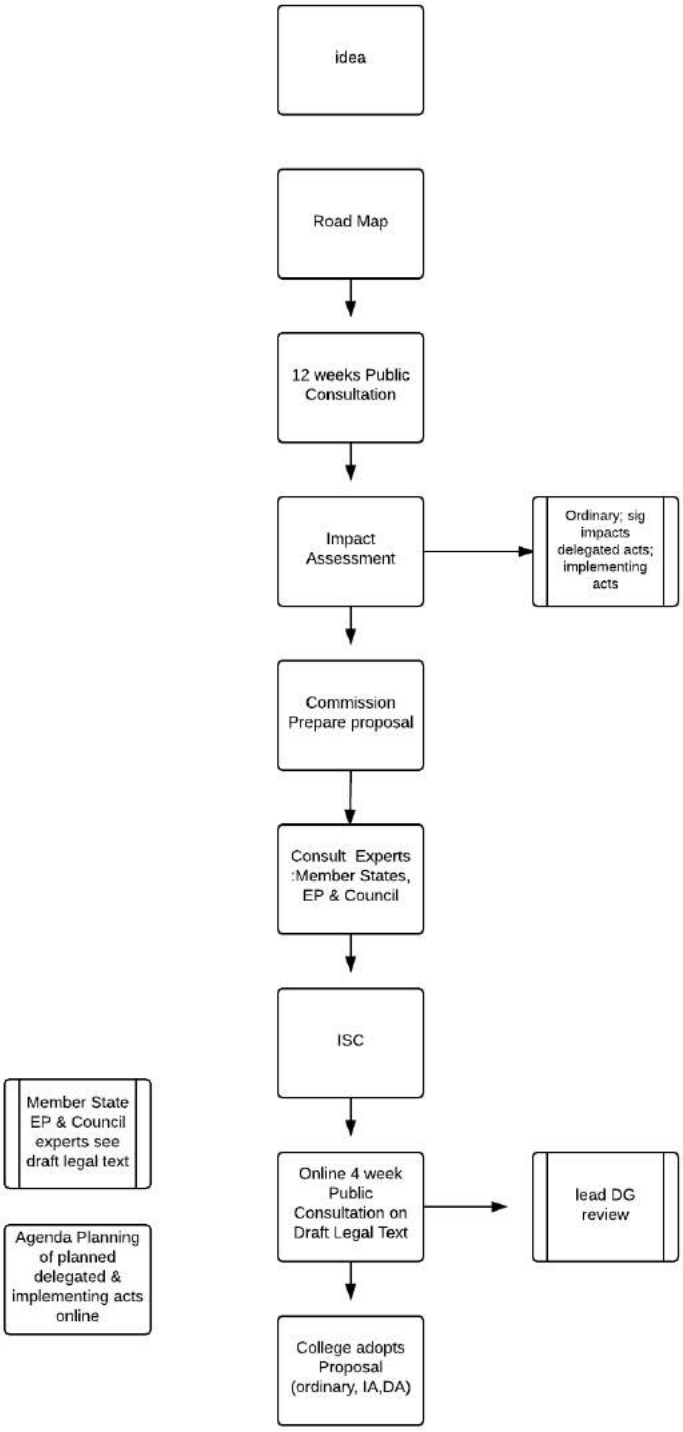
One of the most important changes will be in the pre-Commission adoption area of Delegated Legislation, in particular on how delegated acts are adopted.

Here I consider what those changes will be by cross-reference to the Agreement and the Commission's Guidelines and the Toolbox. When one of the Institutions publish a new process chart for this pre-approval stage for delegated legislation, I will post it. The Agreement needs to be read in tandem with Guidelines and Toolbox as the later are commitments the Commission have made on themselves, and so some operational mechanics fall outside the scope of the Agreement. The Institutional Agreement deals with changes to Delegated and Implementing acts in Section V (para 28-31) and the Annex of the Agreement.

The main changes are:

- Member State experts, along with European Parliament and Council experts, will be involved in the early preparatory phases of developing a delegated act. This will happen by way of meetings.
- Member State experts, presumably along with European Parliament and Council experts, will also see the draft legal text of the Delegated Act, before it posted on a new web portal.
- A new web portal will be established where the public will get to see the draft legal text following the Inter-Service Consultation.
- Delegated acts will have their own stand alone register. But, for the meantime, implementing acts will for a while use the existing comitology web platform.
- Only delegated acts with a significant impact will be accompanied by an impact assessment.

I have tried to summarise this pre-adoption phase for delegated acts with significant impacts below. This is a work in progress, and all errors remain mine! As soon as I see something better, I'll post it.




This chart can only be broadly correct. First, the fine print of how the new system will be work is being worked out, even the IT system to operate it needs to be set up. Second, there are always

exceptions to the general rule, and in all likelihood a separate process chart for each the pre-proposal phase for significant and non-significant delegated acts and implementing acts should be prepared.

**Stakeholder Feedback Built In – A Final Quality Check?**

The introduction of feedback for draft delegated and implementing acts is arguably the most significant contribution to open law making from the Agreement. This will involve two components, first, the listing of Agenda Planning proposals being considered, and second, stakeholders will be given 4 weeks to provide feedback on the drafts.

These important provisions should come on stream around 1st July 2016.

There are exceptions to this general rule (see below pages 67-68 of the Guidelines).

***Exceptions to the 4-week public consultation on Delegated/Implementing Acts[89]:***

| Type | Reason | Examples |
|---|---|---|
| No (or limited) margin of discretion | Lack of policy alternatives | Acts implementing an international standards into EU law without any (or limited) discretion.<br>Corrigenda |
| Drafts have been prepared by an EU agency or body and have been subject to full public consultation before being submitted to the Commission and for which the Commission does not have the intention to significantly modify them | Extensive consultation on the draft text has already taken place in a dedicated framework | Acts based on regulatory technical standards submitted by the European Banking Authority or by European Securities and Markets Authority |
| Urgency / emergency measures | Time limitations do not allow additional consultation period | Acts under the urgency procedure or other urgent acts, e.g. temporary exceptional support measures in the agricultural field, urgent/emergency measures addressing threats to public, animal or plant health. |
| Budgetary procedures and | Lack of policy | Decisions on work |

| Type | Reason | Examples |
|---|---|---|
| measures, programme management decisions | alternatives / implementation of agreements already decided on | programmes and selection and award decisions |
| Individual authorisation decisions / acts / decisions based on the assessment of compliance with legal requirements | Lack of significant impact, routine acts | Marketing authorisations in the pharmaceutical field or comparable authorisations, inclusions, amendments in the PDO&PGI register, (de) classification of control bodies |
| Temporary risk management decisions | Lack of policy alternatives / no significant direct impacts / no deviation from the advice of risk assessors | Temporary food safety measures |
| Based on scientific opinions from an agency or scientific committee on which a public consultation has already taken place where the Commission follows the agency findings | Extensive consultation on the substance has already taken place in a dedicated framework | Areas in which agencies such as EFSA have given a scientific advise |
| Other duly justified reasons, eg.:<br>• Involving business secrets or security threats<br>• Influence on markets | Public consultation not possible or not appropriate, eg. due to legal restrictions or practical constraints. | Acts with confidential content (such as in the aviation safety or space area, Galileo)<br>Acts relating to the common organisation of the markets in agricultural products, measures relating to aid to certain Member States<br>Authorisations to Member States relating to own resource calculations |

**Commission Adoption**

Depending on the measure at stake, different internal Commission Procedures for sign off will be used. This checklist on page 14 of the Guidelines provides a helpful summary.

| Different initiatives and validation requirements | | | | |
|---|---|---|---|---|
| | **Major initiatives** | **'Other' initiatives** | | **DG internal work plan** |
| **Which acts?** | • Initiatives included in the CWP<br>• REFIT items<br>• New legislative proposals<br>• Recommendations for the negotiation of international agreements and proposals for their conclusion<br>• Policy communications<br>• Delegated and implementing acts having significant impacts<br>• Financing decisions having significant impacts<br>• Other Commission initiatives that are sensitive or important | • Delegated and implementing acts not having significant impacts<br>• Commission reports except for Evaluations or Fitness Checks | Non-major evaluations and Fitness Checks | • Commission decisions of administrative and routine nature<br>• Intermediate legislative acts<br>• Implementing decisions under International Treaties<br>• Financing decision of a routine nature<br>• Information notes for the Commission<br>• Decisions granting delegated powers (empowerment and delegations)<br>• Infringement, competition and state aid cases, trade defence cases, enforcement action under international trade rules<br>• Emergency procedures (duly justified)<br>• Any other initiative |
| **AP entry?** | Mandatory | Mandatory | Mandatory | Not required |
| **Roadmap/ Inception IA needed?** | Mandatory, signed off by the Commissioner(s). For initiatives that will undergo impact assessment, the Roadmap should be presented in the form of an Inception IA. | Not required | Mandatory, signed off by the Director General | Not required |
| **Political validation by** | Commissioner(s), VP(s) and the First VP, in close cooperation with President's Cabinet | Commissioner | Director General through the Management Plan endorsement | Commissioner |
| **ISG required** | Yes (Important/sensitive cases chaired by SG) | No | Yes | No |
| **Conditions to launch ISC** | • Only if complete AP entry exists<br>• If impact assessment: positive opinion of the RSB<br>• Validation by the Commissioner(s), VP(s) and the First VP | • Only if complete AP entry exists<br>• Validation by Commissioner(s), VP(s) and the First VP | | • Validation by the Commissioner |

This is helpful to look at. Many initiatives for delegated legislation (delegated acts and implementing acts) are not internally flagged as having significant impacts, even when it is clear that they do. This can mean that many of the Commission's screening controls can in practice be by-passed. This means that important proposals can land up on the desk for inter-service consultation and then adopted by the College of the Commissioners without any serious review, discussion and quality control.

## 5. What to do if the Commission's delegated legislation proposal is against you?

16th May 2016 by Aaron

**Provisional Draft**

I have had the good fortune to advise NGOs and industry as a lobbyist. I have often been asked what can be done when the Commission is about to make a proposal that is against their interests.

**2 Minutes to Midnight**

I am often asked this question just before, and usually just after, the Commission has made the proposal.

If you really want to change the Commission's long term thinking you need to change their thinking. That takes a long term perspective and feeding in fresh thinking and solutions at the Brussels and Member State level. I have found it the surest way of bringing about positive proposals from the Commission. But, perhaps because it takes a few years before you can measure your success, most organisations, NGOs and companies do not go down this path.

**Delegated legislation**

I am most interested in what happens if the Commission is going to table a piece of delegated legislation that is against your interests.

The truth is that if the Commission are about to, or have just tabled tabled, a proposal for delegated legislation that is against your interests, you are in a bad place. The Commission usually get what they want, and the chances of changing their mind or having their proposal blocked are slim.

Whilst the chances to block the Commission are slim, they are not impossible, and I'll share some thoughts on securing what you may want.

The odds that the European Parliament or Member States will step in and block the Commission's delegated legislation proposal are less than 1%. For ordinary legislation, the Commission have a tougher ride, and whilst only a few ordinary legislative proposals fall, important elements of their original legislative package can be altered.

**First, read this**

Usually, I'd advise two immediate steps:

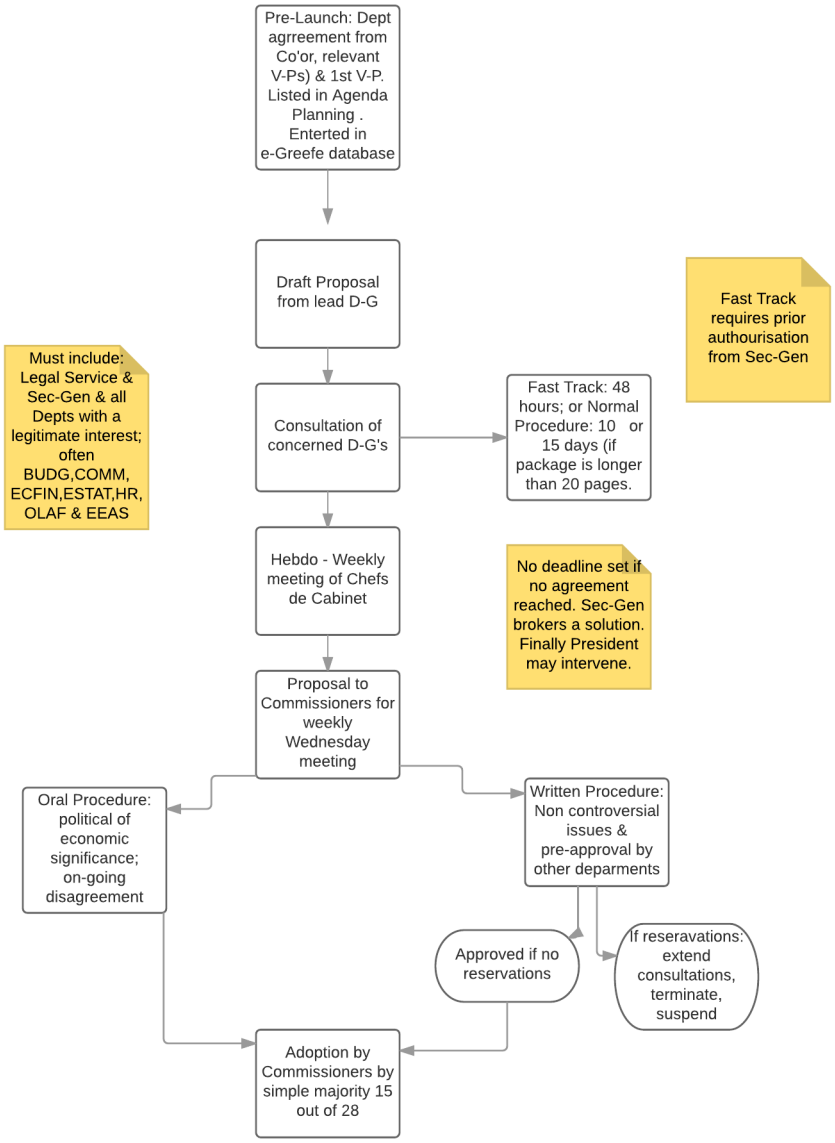
First, you should read Daniel Guegen & Vicky Marissen's Handbook on EU secondary legislation. You should aslso read Guegen's excellent book "The Orphacol Saga" (available here). If after reading that, you are not in despair about what you need to reverse things, and you are serious enough to realise that just praying that things will change (they may, but don't usually don't) you may find some helpful suggestions below.

**A Warning**

What I recommend is not for the feint hearted. It requires speaking to a lot of people, usually early on the process, to secure the changes you want. The toughest part is that what is important for you is usually not that important important to the European officials, national civil servants and politicians you will need to support you. What drives them to act will usually be factors separate than your own. You will need to change your story and case to most resonate with the people you are speaking with.

**Step 1 Inter- Service Consultation**

Please see my earlier blog on influencing Inter-Service Consultation here.




The greatest challenge for most organisations, NGOs and trade associations is twofold.
First, having an agreed position which they can speedily deploy. Inter-Service Consultation will last 2 /3 weeks, 3 or 48 hours. Many organisations have a hard time getting internal sign off that quickly.

Second, the people dealing with the adoption of the proposal are 4 groups of people: 1. Commission officials, 2. Cabinet leads on the file, 3. Heads of Cabinet, and 4. Commissioners. Given this audience it is remarkable how often organisations deploy long (more than 2 pages) technical briefings. I have found it helpful to appeal to their professional background, which is usually generalists, lawyers, or political players, and speak to those points. On the occasions the issue is scientific or technical making the issue make sense to a normal person rather than a scientific/technical expert is key. It is remarkable how often people want to display their intricate knowledge of their doctoral thesis, usually in a field which makes quantum physics seem simple, and loose the Cabinet lead. It is always useful to remember that this is all about persuading people to take up your position /agenda and not to loose them.

Third, sometimes proposals may have advanced to the final adoption phase without going through the internal procedures. I have seen proposals that were about to be adopted that had not gone through inter-service consultation or been validated by the 1st Vice President. If you find a procedural anomaly, it is worth highlighting that at the very start. Good civil servants never like procedures being ignored or broken.

**Step 2 – After the proposal is put forward**

If the Commission table a piece of delegated legislation you do not support you are now climbing up a very steep hill.

You will need to work with the European Parliament,  or the Member States, or both, to block the Commission's proposal.

The European Parliament are more active at blocking Commission proposals compared to the Member States.

In the last European Parliament EP), the EP blocked 4 Regulatory Procedure with Scrutiny proposals, and 1 Delegated Act. The EP have not been able to force the Commission to withdraw an Implementing Act proposal.

The Council have more reticence in challenging the Commission's proposal.

I will later edit this blog and add examples where the Council have intervened to block a Commission's delegated measure.

The first question you need to ask is: What process is the delegated legislative proposal being adopted under. Is it:

1. A Delegated Act
2. An Implementing Act
3. Regulatory Procedure with Scrutiny

I'll explore each option below.

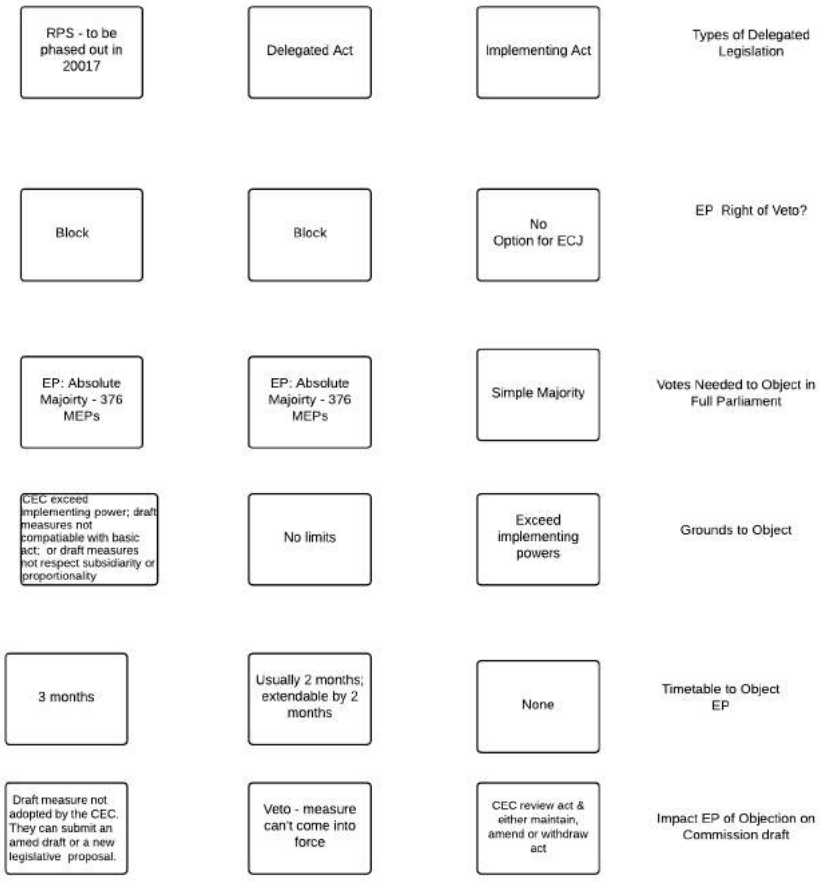
These charts are broad brush maps. They provide you with an idea of the journey, but the actual maps will be specific for each case, and far more granular. These maps for example do not detail

the mechanics of how a European Parliament Committees or Council Working Working challenge a delegated measure.

**Overview**

Below is a summary for how the EP and the Member States can intervene and the impact of their intervention.

**Overview of the EP**



**Overview of the Member States**

To be added

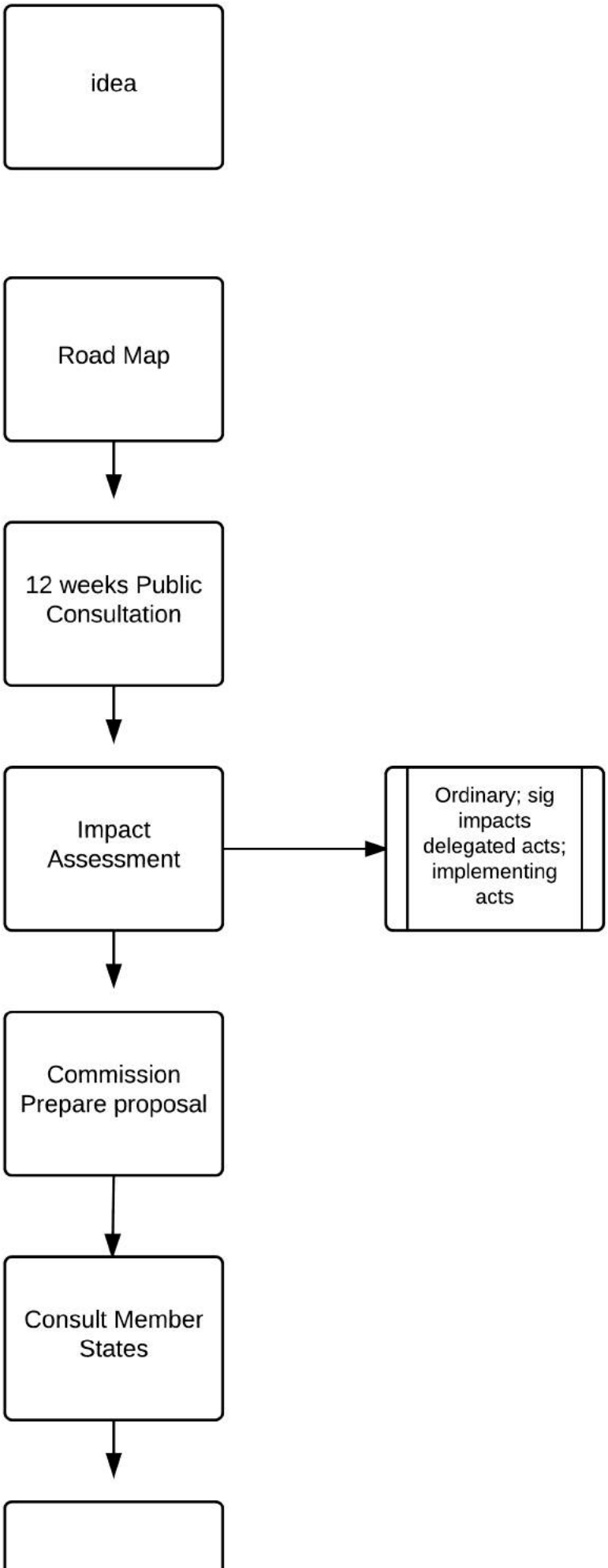
**Better Law Making Agreement**
As I have written before (see here), the Better Making Agreement has established important changes to how the Commission adopt delegated legislation. This secretive law making process will be opened up from 1st July 2016.

Please see a process chart below indicating some of those changes.

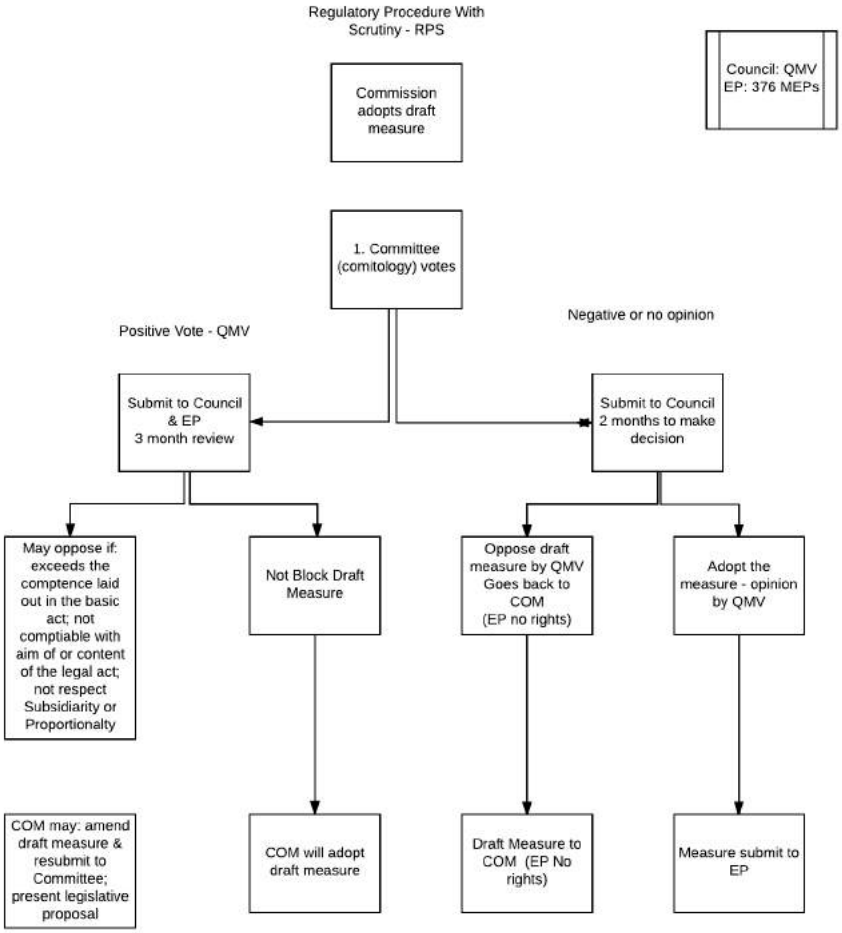
**Process in Charts and Case Studies**

You will find below process charts for all three processes.

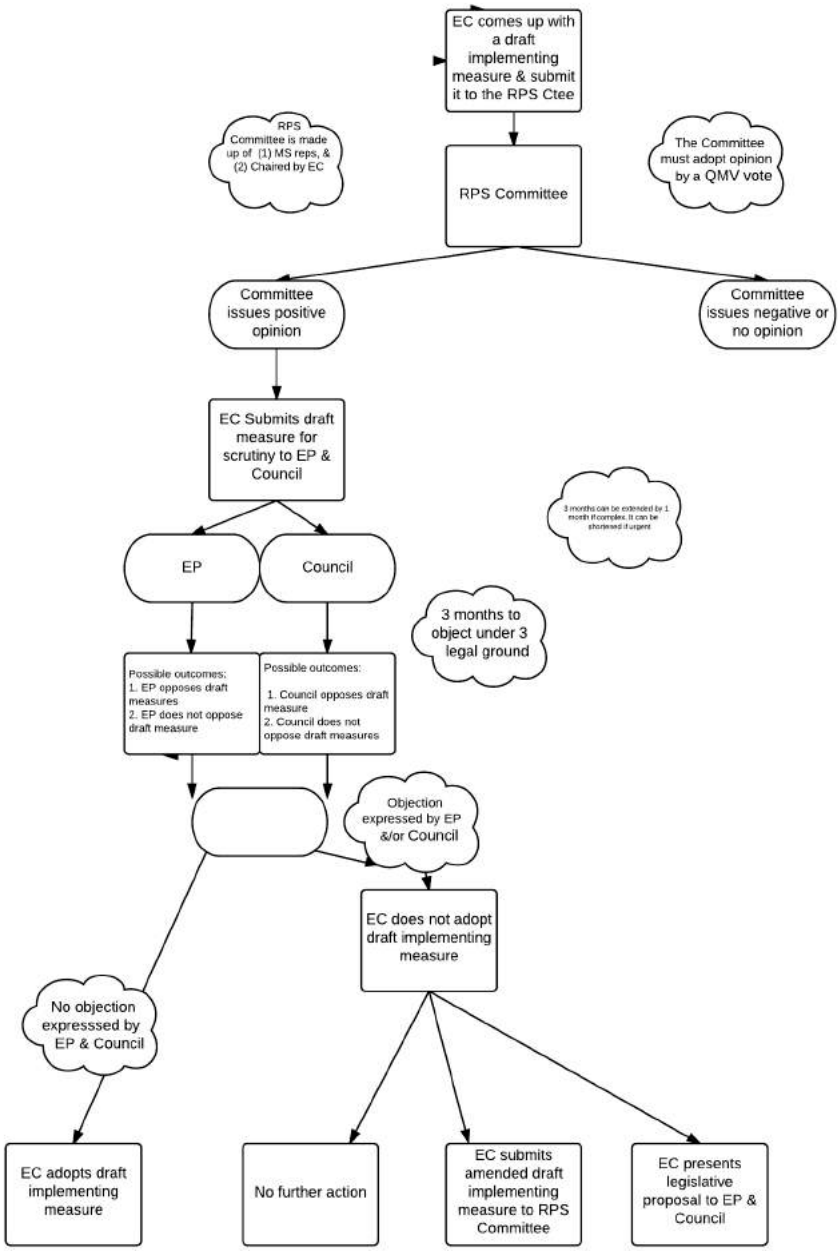
I have written before on how the European Parliament has exercised their right of scrutiny for delegated legislation (see here). The European Parliament appear to be most diligent in exercising their right of scrutiny in 2016.
I will also supplement this with case studies of when Member States have successfully challenged the Commission.


idea
Road Map
12 weeks Public Consultation
Impact Assessment
Ordinary; sig impacts delegated acts; implementing acts
Commission Prepare proposal
Consult Member States

**RPS**

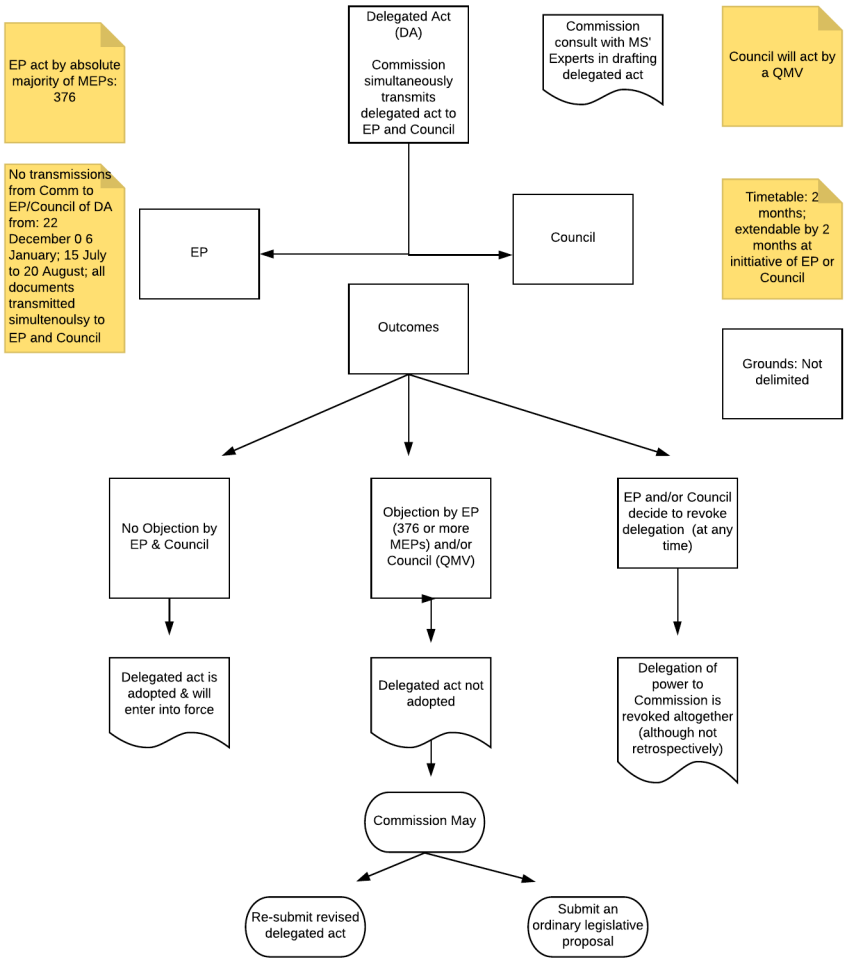



Case Study Insert by MS




**Delegated Act**

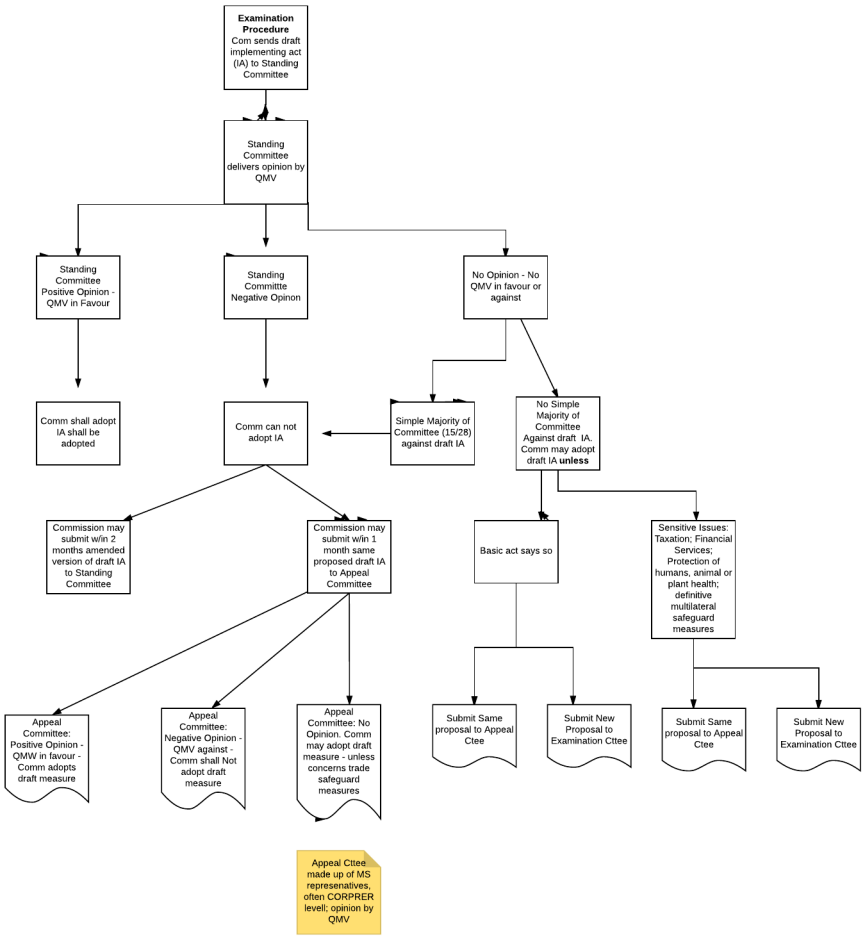
Process chart




See Case Study by MS.

**Implementing Act**

Case Study by Member State.




**What if No Opinion**

The challenge comes if the Standing Committee cannot secure a Qualified Majority Vote for or against the draft implementing act. Sometimes, in particular on sensitive issues, like GMOs or pesticides, there is a 'No-Opinion' result.

It is clear that the Commission consider that they have a considerable margin of discretion for the Commission on what to do if there is a 'no opinion' or a 'negative opinion'.

It is important to realise that going to the Appeal Committee should be seen as an exception to the general rule. Indeed, there is no obligation on the Commission to go to the Appeal Committee. Instead, the Commission will prefer to submit an amended proposal to the Standing Committee than proceed to the Appeal Committee.

There does not appear to be a time limit on how long the Commission can find a draft that is acceptable to the committee. But, if the Commission go to the Appeal Committee and they reach no agreement in two months, no opinion is deemed to be agreed.

Exceptionally, if the draft goes to the Appeal Committee the Commission Chair has a wide margin for negotiation. Until the Appeal Committee delivers an opinion, any member state can suggest amendments and the Commission can present any amendments to the draft.

Interestingly, whilst the Appeal Committee delivers their result by QMV, the Commission do not have call a formal vote. Rather, the Commission can determine that the Committee has come to a positive opinion by consensus. A Member State can object to this.
If the Appeal Committee come to a "negative opinion", the Commission cannot adopt the draft implementing act. But, if the Appeal Committee come to "no opinion" the Commission "may"adopt. It is clear that the Commission do not have to adopt the draft implementing act. Indeed, on sensitive issues, there appears to be a rule of practice not to adopt it. Instead, rather than forcing the issue, the rule of practice is to seek a "consensus" at the Examination Committee phase.

**Ordinary Legislation**
You'll see that if the Commission is blocked it can either re-table an amended proposal or bring forward an ordinary legislative proposal.

Many people seem to fear the latter option. But, sometimes it is the only way to remedy the situation. If the original legislation has, in your view, built in defects, the only way to remedy those defects is to get the Commission to acknowledge this and for them to table an ordinary legislative proposal.

If the Commission don't want to re-open the original law, you can force them to the table if the EP or Council block their proposed measure.

It is important to note that delegated legislation is singularly curtailed in the changes it can make. It cannot be used to remedy "essential elements" of the parent legislation. The only way to remedy built in defects in the parent legislation is through a new piece of legislation introduced by way of the ordinary legislative process.

**European Court of Justice**
Even if the Commission gets their delegated proposal adopted, there is the possibility that a Member State (or Norway), the European Parliament, or the Council could go to European Court of Justice to quash the adopted measure.

This has happened. In Case 14/06, the Commission granted an exemption for Deca-BDE under the RoHS Directive. Denmark and others challenged the granting of the exemption. The European Court ruled that "it is sufficient to state that the contested decision, which is equivalent to a general exemption for the use of DecaBDE in electrical and electronic equipment, was adopted when the conditions laid down by the Community legislature in Article 5(1) of Directive 2002/95 had not been met and runs counter to the objective pursued by that legislature of establishing the principle of the prohibition of the components referred to in that directive." The exemption was revoked.
This is a final option when all other pathways have been closed.

## 6. Can a lobbyist block secondary legislation?

2nd April 2018 by Aaron

One of the greatest professional challenges any lobbyist will face is to stop a piece of secondary legislation being adopted.

If the European Commission has tabled a piece of secondary legislation you oppose your chances of getting the European Parliament or Council to block it are slim.

Your chances are slim. The best thing you can ever do is invest your time and resources up front and get the Commission to table the proposal you want. If they don't, you are going to be playing catch up.

NGOs stand a better chance of getting the European Parliament to take up the challenge. They focus on a few sensitive issues, such as GMOs, chemicals, pesticides or children's health.

Every time I have faced this challenge I have resorted to my trusty comitology bible from PACT, process charts and guidebooks.

**Case Studies**

I have written some more detailed post on specific challenges:

Glyphosate

Endocrine Disruptor Criteria
Environment Committee's challenges
Triton

Having dealt with many of these cases, you'll find Member States reluctant to take up the issue. Officials will tell you that even if they could persuade the Minister to take up the issue, they are not going to supplant their judgment over that of any independent scientific expert.

I am not saying it is a theoretical possibility, but I am saying that your chances are at best remote.

It is important to remind your client how difficult this will be. This is not a time for false hopes.

**Veto or disapproval**

If the measure you are contesting is an implementing measure, MEPs and the Council can voice disapproval. They can't block it. If the measure is a delegated act or RPS, the European Parliament can block it.

**Voting**

The system makes it very hard for the Commission's proposal to be blocked.

For the European Parliament, you need 376 votes or more to stop it. Getting an absolute majority of members to vote in support of one issue is never easy.

For the Council, you'll need a Qualified Majority against the Commission's proposal. Not impossible, but it is rare.

So, the basic learning is to make sure the Commission put's the right proposal out the door.

To be fair, you really need to be focused on the design of the original legislation. If it says you can't get an exemption for the reason you want an exemption, your cause is lost before you have even begun. It's just too late.

**Jump over hurdles**

You are going to have to jump over some very high procedural hurdles.

In the European Parliament, you are going to have to:

1. Find someone to support you
2. Get it past the lead Committee, and if passed
3. Get 376 votes in support of the challenge – see this piece on Canadian Oil Sands challenge

**What arguments work**

In my 20 odd years, I have noticed some trends on why secondary legislation gets blocked.

- A substantive error of law
- Procedural errors
- Ignored something obvious that should have been taken into account

Most of the successful challenges are around public health issues.

**Politics does not work**

I am sure that one day, the European Parliament or Council will intervene for other reasons.

I don't think that there will be enough Member States or MEPs who will start second guessing regulatory scientists.

There are many MEPs and Member States who will intervene for NGOs or industry to support their cause. That is is not in doubt. Politics will always step in.

What is more important is whether there will be an absolute majority of MEPs and a Qualified Majority of Member States for you – that threshold is very high.

The high number of the hurdle of political reality you can't ignore.

**If all else fails – goes to Court**

If you can't get enough votes to block, you can always see if the Court (see Denmark v Commission) will step in.

## 7. A 5 year legislative slumber set to hit Brussels

26th February 2019 by Aaron

Once every 5 years, the European Commission is forced to slow up passing new laws. They have no choice. The European elections puts them into a short legislative coma.

The deep sleep is fleeting. The Commission won't formally transmit any delegated acts or final draft RPS measures to the European Parliament and the Council from 15 March 2019.

They can start work again soon after the new European Parliament starts work. The Commission will be able to start transmitting again from:

- 10 July 2019 for final draft RPS measures
- 18 July for delegated acts

For implementing acts, the Commission can continue the flow of draft and final implementing acts.

The 'legislative thaw' likely covers hundreds of RPS measures and delegated acts.

This general rule not to transmit during Parliament's recess has exceptions. The most important of those exceptions being measures that need to be passed to deal with Brexit. There we can expect a lot of unexpected measures.

It's not too bad for the Commission. The new Parliament will be in rush. Many new MEPs won't realise for a few years that one of their main roles is scrutinising secondary legislation. It's hard and lonely work. Most MEPs don't like it.

The Council are extra adverse at their job of scrutinising secondary legislation. They seem more focused on the empty gestures of pretending that RPS measures are not delegated acts.

## Maps and case studies

1. The 109 Step Journey
2. Controlling the Commission's use of delegated acts – successful challenges
3. Case Study: Environment Committee Comitology Review 2019 – year to date
4. Case Study: REACH authorisations & the European Parliament – updated
5. Case Study:  OEL
6. Case Study: A flight plan for a long flight – a case study of the waste directive
7. Case Study:  A flight plan for a delegated act – RoHS
8. Case Study: Find the right map – dealing with chemical law making – 10th ATP
9. Case Study : A flight plan for ATP – 6th ATP and Formaldehyde
10. Case Study: Lessons in Comitology – Challenges in relation to chemicals
11. Case Study: A new road map for CLP ATP – the shift to delegated acts
12. Case study : Can you get a classification re-looked at?
13. Case study: Challenging a REACH ban challenge
14. How to adopt a proposal – a case study – Single Use Plastics

# 1. A 109 Step Journey

**7th April 2019 by Aaron**

**The Map is not the Territory**

Parrish writes " All are models or maps that simplify some complex territory in order to guide you through it.  Just because maps and models are flawed is not an excuse to ignore them. Maps are useful to the extent they are explanatory and predictive" (Great Mental Models, page 40).
When you work to influence public policy or lawmaking,  you are treading along a well-worn path. Whether you use them or not, there are detailed maps, that will make your journey more successful.

**Basic Maps**

The basic maps are:

- Better Regulation Guidelines and Toolbox

- Guidelines for the Services of the Commission on Delegated acts and Implementing acts
- EP Rules of Procedure
- Council Rules of Procedure

**The map is not reality**

Often, it is useful to use a map of the map. I find process charts and checklists make the journey easier.

The map is not the territory. The model is not reality. The London Underground Map is useful for passengers. It's not the same map used by the drivers.
You need to check the map against reality. Events can intervene. Sometimes you'll be work to find a way to by-pass established pathways, and then you may work make sure the usual process is followed.

**How Many Maps**

As I spend most of my time working on the decisions of Agencies, I personally use a series of well-worn maps. Operationally, this is around 50 maps, which I have chunked down into process charts and case studies.
I update the maps in light of developments. The decisions and votes in the Council,
EP, Commission, and regulatory agencies, mean the maps need to be re-looked at regularly, and updated in light of events..
Using the maps takes out the guesswork from the journey. They are not perfect representations of your journey, but using them makes your journey a lot easier. Especially if you have never taken that journey before.

**Chunking down every step in the journey of a law**

Step

1. European Council's Road Map European – **Council**
2. Commission's Political Priorities – **Commission**
3. Setting the Commission's Work Programme – **Commission**
4. Mid-August preparation – **Commission**
5. College retreat end August – **Commission**
6. State of the Union 9 September – **Commission**
7. Work Programme late October – **Commission**
8. Joint Declaration – **COM/EP/Council**
9. Can new ideas come into W-P – **Commission**
10. Political Validation timetable – **Commission**
11. Political Valaditiation of Major Initiatives – **Commission**
12. Political Validation of non-major initiatives – **Commission**
13. Tracking new initiatives – **Commission**

14. Road Maps – what & when – **Commission**
15. Inception IA – what when – **Commission**
16. Interservice Group – **Commission**
17. Stakeholder Public Consultation – **Commission**
18. Review of Stakeholder Consultation – **Commission**
19. Draft Impact Assessment – **Commission**
20. Key questions of the Impact Assessment **– Commission**
21. Role of RSB – **Commission**
22. Why you can't lobby the RSB – **Commission**
23. Revision of IA – **Commission**
24. Draft proposal – **Commission**
25. Validation to launch Inter-Service Consultation – **Commission**
26. Who decides on ISC – Services – **Commission**
27. Who decides on ISC – Political – **Commission**
28. How long is ISC – **Commission**
29. What if no agreement at ISC – **Commission**
30. College adopts – **Commission**
31. How does the College Vote – **Commission**
32. Who sets the College's agenda – **Commission**
33. When does the College meet – **Commission**
34. Commission Proposal – **Commission**
35. Commission Press Release – **Commission**
36. Stakeholder public consultation on a proposal – **Commission**
37. Proposal transmitted to EP – **EP**
38. Proposal transmitted to Council – **Council**
39. Proposal allocated to Committee EP
40. Role of lead and associated committee – **EP**
41. Proposal allocated to Rapporteur – **EP**
42. Role of Rapporteur – EP
43. Can the Rapporteur be ignored – **EP**
44. Shadow Rapporteurs appointed – **EP**
45. Role of Group Secretariat – **EP**
46. Role of Committee Secretariat – **EP**
47. Role of Political Advisers – **EP**
48. Committee Draft Report 1st Reading – **EP**
49. How long can a report be – **EP**
50. How to submit an amendment – **EP**
51. Committee Deadline for Amendments – **EP**
52. Are EP amendments subject to IA? – **EP**
53. What happens if you are late – **EP**
54. Committee Debate 1st Reading – **EP**
55. Recording votes in Committee – **EP**
56. How the Groups prepare their positions – **EP**
57. When do the Groups prepare their voting lists – **EP**
58. Do national groups prepare their own lists – **EP**
59. Role of Group coordinator – **EP**
60. Role of National coordinator – **EP**
61. The link between national party & EP group – **EP**
62. Voting lists from a national government – **EP**
63. The role and power of the Committee Chair – **EP**
64. Committee 1st reading – **EP**

65. Voting rules in Committee **– EP**
66. Plenary Deadline for Amendments 1st reading – **EP**
67. Plenary Debate 1st reading – **EP**
68. Plenary Vote 1st Reading – **EP**
69. Recording votes in Plenary – **EP**
70. Groups voting lists in plenary – **EP**
71. National group voting lists in plenary – **EP**
72. Trilogue mandate by Committee – **EP**
73. Trilogue mandate by Plenary – **EP**
74. Commission Opinion on EP 1st Reading – **EP**
75. Role of Commission in supporting EP – **Commission**
76. Commission role in tabling compromise text – **Commission**
77. Commission role in supporting Council – **Commission**
78. The mandate of Commission Services in negotiations – **Commission**
79. Inter-Service Consultation during talks – **Commission**
80. Commission role in tabling compromise text – **Commission**
81. Discussions Working Party – **Council**
82. Working Party develop 'General approach' – **Council**
83. COREPER adopt a 'General approach' – **Council**
84. Council adopt 'Conclusions'/ Political Agreement – **Council**
85. Role of Presidency – **Council**
86. Role of Council Secretariat – **Council**
87. Voting Rules & a Consensus Approach – **Council**
88. Political Agreement – **Council**
89. Common Position – **Council**
90. Commission Opinion on Common Position – **Commission**
91. Common Position Received – **EP**
92. Can the Political Agreement be changed – **All**
93. Committee Debate 2nd Reading – **EP**
94. Committee Draft Recommendation 2nd Reading – **EP**
95. Committee Deadline for Amendments – **EP**
96. Committee Vote 2nd Reading – **EP**
97. Plenary Deadline for Amendments 2nd Reading – **EP**
98. Plenary Debate 2nd Reading – **EP**
99. Plenary Vote 2nd Reading – **EP**
100. What can and can't be tabled at 2nd reading – **EP**
101. Commission Opinion on EP 2nd Reading – **Commission**
102. Conciliation Press Release – **All**
103. Conciliation Joint Text – **All**
104. EP Conciliation Report 3rd Reading – **EP**
105. Plenary Debate 3rd Reading **– EP**
106. Translation
107. Final Legislative Act
108. Can the text be changed?
109. Signing ceremony

## 2. Case Study: Controlling the Commission's Use of Delegated Acts

**10th March 2019 by Aaron**

Most of the legislation the EU adopts each year is secondary legislation.

You can find a good breakdown of the EU's legislative output for 2018 and 2017, here.
I have taken an unhealthy interest in how the European Parliament and Council perform their role of oversight for 20 years plus. I realized that most people focused on ordinary legislation and walked by ordinary legislation. I found this strange. Many important decisions were pushed through when people were looking away.

Overzealous Commission may, after all, stray from the narrow confines given to them by the Council and European Parliament under the legislation. It's good to have a governance system in place that calls officials to account and veto secondary legislation.

The veto should not be easy to exercise. In practice, it is very hard. Indeed, it can seem theoretical. Whether you are dealing with Regulatory Procedure with Scrutiny (RPS) measure, a Delegated Act, or an Implementing Act, it is tough to block the Commission

The hope that the General Omnibus Regulation adapting RPS (COM(2016) 799) would end RPS, and switch it neatly over to Delegated Acts, is an aspiration for the next Commission and Parliament. Over a hundred pieces of legislation with RPS still remain on the book. The main reason for the stalled progress is that the Member States do not trust the Commission to take on board their views and feedback on proposals. It's like the people who negotiated the text for Article 290 and 291 of the Treaty were unaware of the political vagaries of passing legislation.

I have been involved in cases for all sides to exercise the veto of EU secondary legislation. I have worked to get a challenge through (successfully and unsuccessfully), stop a challenge (successfully and unsuccessfully). It is not easy to get done. Unsurprisingly, few people are really that interested in vetoing an apparently technical and arcane proposal. The truth is that most MEPs and Ministers are not interested. As you can see in the case study below, there is a very short timeline to engineer political interest to get your issue raised, adopted by the Committee, and then, securing 376 or more MEPs in the plenary. You need to reframe and simplify your issue.

As an aside, even if you don't succeed, you can always go to the European Court, or get a Member State to champion the issue for you.

It's not easy to veto delegated acts. In an excellent paper (link), Michael Kaeding looks at cases where the EP or Council stopped the Commission. The paper deserves to be read. The instances of successful vetoes for delegated acts by the EP is around 6% and by the Council less than 1%.

**Success leaves clues**

I think success leaves clues, so it is useful to look at the successful cases – both in the EP and the Council.

**EP**

The European Parliament blocked 6 delegated acts:

Definition of "engineered nanomaterials"(ENVI)
cadmium in illumination and display lightning(ENVI);
ethyl alcohol of agricultural origin(AGRI);
processed cereal-based food and baby food(ENVI);

packaged retail and insurance-based investment products(ECON);
high-risk third countries with strategic deficiencies (ECON/LIBE)
There were 27 unsuccessful veto attempts. 11 falling at the plenary, and 16 at the Committee.

**Council**

The Council objected in 3 cases:

Galileo(2013)
format for research and development expenditure data(2014)
anti-money laundering and countering terrorist financing(2019)
Looking at the 3 cases, what drove the challenge in each case is a special case.

**Case Study**

cadmium in illumination and display lightning– RoHS – EP Block
20 May 2015: objection to a delegated act adopted. Vote: 618 for, 33 against, 28 abstained. Votes required to pass: 376
13 May 2015: Motion for a Resolution by Environment Committee adopted
30 January 2015: Commission adopts draft measure
25 August 2014: Expert Group support proposal

**Case Study – Council**

anti-money laundering and countering terrorist financing(2019) – Council Block
7 March 2019: Justice and Home Affairs (JHA) Council object (28 Member States)

6 March 2019: COREPER back position to object

13 March 2019: Deadline for EP and Council to object

13 February 2019: Delegated Act adopted

**Process Charts**

EP DA

## 3. Case Study: Environment Committee Comitology Review 2019 – year to date

**16th March 2019 by Aaron**

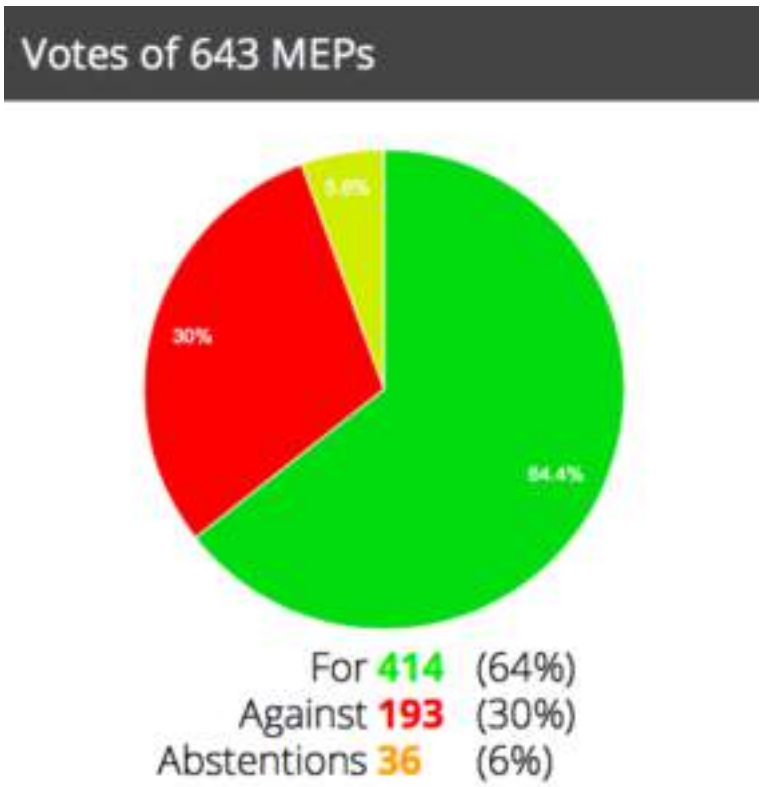
Between 18 February to 23 August the European Commission plans to adopt over 200 pieces of secondary legislation, including:

- RPS Measures: 67
- Delegated Acts: 140
- Implementing Acts: 6

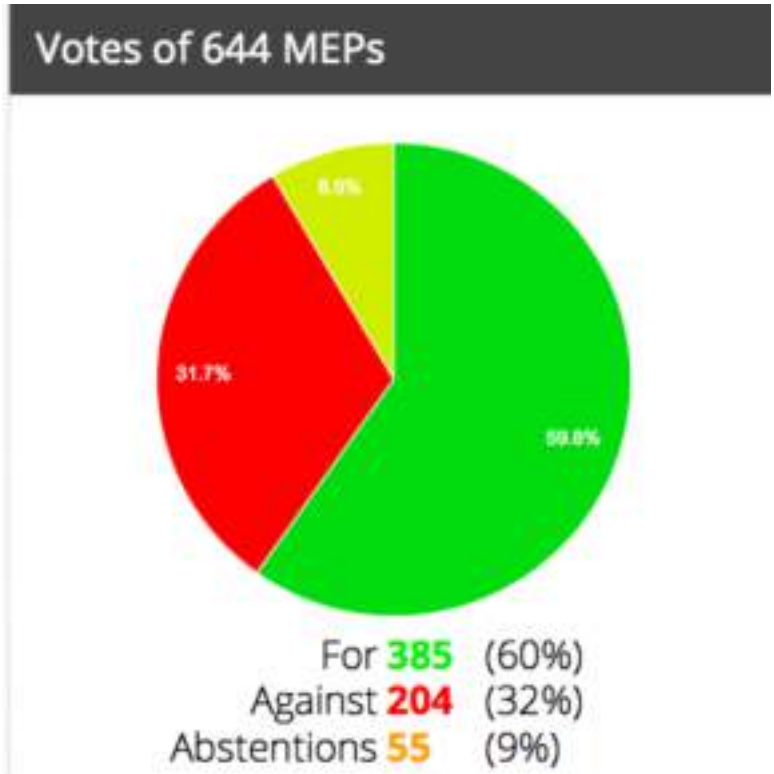
Many of these proposals will fall to the new Environment Committee to review.
The Environment Committee is experienced in scrutinizing the output of secondary legislation from the Commission.
A review of 2019 (to date) provides a good indicator of what gets challenged.
I'll update this in light of any new votes.

**Observations**

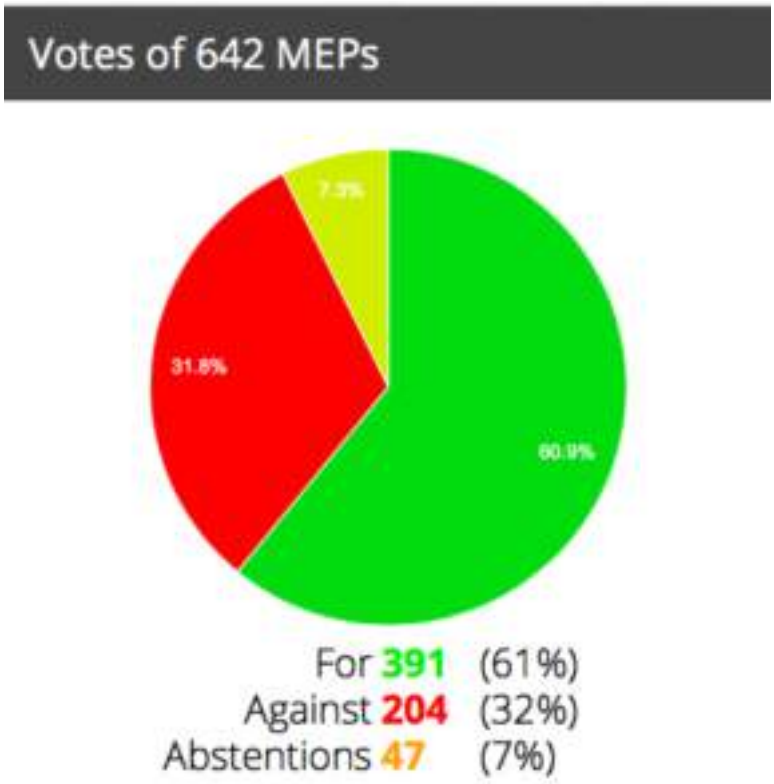
The Environment Committee acts in a bi-partisan way across the political groups when tabling objections.
The full Parliament has backed the challenges with healthy majorities.
The focus of objections is on GMOs. Granting of authorizations for active substances and chemicals have been challenged.
At the start of this Parliament there was a reluctance to welcome the EFDD joining any motions. They now sign on to most challenges.
**Meeting of 7 January 2019 ( draft agenda) (minutes)**
No Objections
**Meeting of 14 January (draft agenda) (minutes)**
No Objections
**Meeting of 21 January 2019 (draft agenda) (minutes)**
Objections tabled:
Objection pursuant to Rule 106: genetically modified oilseed rapes Ms8, Rf3 and Ms8 × Rf3 (link)
Committee: Adopted
Vote: In favour: 30, against: 15, abstentions: 2
Vote in Plenary: 31 January 2019: Adopted
Vote: In favour: 414 votes, against: 193, Abstentions: 36
Vote Watch link



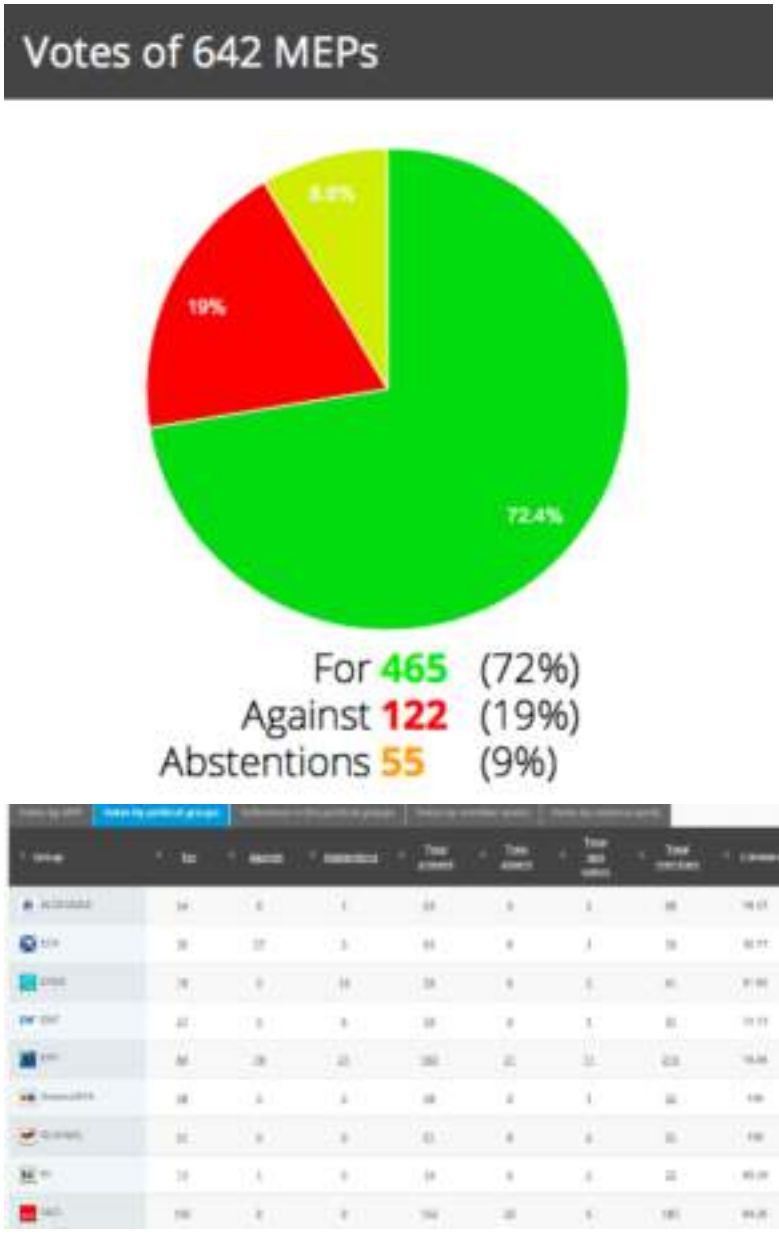

Objection pursuant to Rule 106: genetically modified maize 5307 (SYN-Ø53Ø7-1) (link)
Committee: Adopted
Vote: In favour: 32, against: 16, Abstentions: 0
Vote in Plenary 31 January 2019 – Adopted
Vote: In favour:385, against: 204 against, abstentions 55
Vote Watch Link




Objection pursuant to Rule 106: genetically modified maize MON 87403 (MON-874Ø3-1) (link)
Committee: Adopted
Vote: In favour: 33, against: 15, abstentions: 0
Vote in Plenary: 31 January 2019 – Adopted
Vote: In favour: 391, against: 204, abstentions: 47
Vote Watch Link




Objection pursuant to Rule 106: genetically modified cotton GHB614 × LLCotton25 × MON 15985(link)
Committee: Adopted
Vote: In favour: 37, against: 9, abstentions: 4
Vote in Plenary 31 January 2019 – Adopted
Vote: In favour: 465, against: 122, abstention: 55
Vote Watch Link




**Meeting of 22 January 2019 (draft agenda) (minutes)**
No Objections
**Meeting of 29 January 2019 (draft agenda) (minutes)**
No Objections
**Meeting of 7 February 2019 (draft agenda) (minutes)**
No Objections
**Meeting of 14 February 2019 (draft agenda)(minutes)**
No Objections
Meeting of 20 February (draft agenda) (minutes)
Objections
Objection pursuant to Rule 106: genetically modified maize 4114 (DP-ØØ4114-3) (link) – Adopted
Vote: In favour: 38, against: 20, abstentions: 1
Vote in Plenary: 13 March 2019 – Adopted
Vote: In favour: 442, against: 160 , abstentions: 20
Objection pursuant to Rule 106: genetically modified maize MON 87411 – Adopted
Vote: In favour: 40, against: 18, abstentions: 1

Vote in Plenary: 13 March 2019
Vote: In favour: 435 votes, against: 156, abstentions: 30
Objection pursuant to Rule 106: genetically modified maize Bt11 × MIR162 × 1507 × GA21 and sub-combinations Bt11 × MIR162 × 1507, MIR162 × 1507 × GA21 and MIR162 × 1507 – Adopted
Vote: In favour: 40, against: 18, abstentions: 1
Vote in Plenary: 13 March 2019
In favour: 431 votes, against: 157 , abstentions: 30
Objection pursuant to Rule 106: Active substances including thiacloprid – Adopted
Vote: In favour: 37, against: 21, abstentions: 1
Vote in Plenary: 13 March 2019
Votes: In favour: 421, against: 177, abstentions: 20
Objection pursuant to Rule 106: maximum residue levels for several substances including clothianidin- Adopted
Vote: in favour: 49, against: 8, abstentions: 2
Vote in Plenary: 13 March 2019
In favour: votes, against: , abstentions: (not yet reported)
**Meeting of 11 March (draft agenda) (minutes)**
No Objections

## 4. Case Study: REACH authorisations & the European Parliament – updated

**21st March 2019 by Aaron**

Updated after the Votes in European Parliament's Plenary on 27 March.
Nearly all discussions on securing an authorisation for a chemical under REACH ignore the role of the European Parliament.
That's a mistake.
If you ignore them, you may see an agitated Parliament exercises their scrutiny powers when the draft implementing act is sent up to them for oversight.
The Council tend to waive them through.
To date, five challenges to REACH authorisations have succeeded.

**2015**

Objection: DEHP (link)
Committee vote: 10 November 2015
Adopted by: 58 for, 5 against, 0 abstention
Plenary Vote: 25 November 2015
Adopted by 603 for, 86 against, 5 abstentions

**2018**

Ormezzano on sodium chromate (link)
Committee Vote: 20 November 2018
Adopted by: 24; against: 0; abstentions: 17.
Plenary Vote: Adopted by a show of hands

**2019**

**DEZA – DEHP**
14 March 2019
Committee Vote: 39 in favour, 2 against and 1 abstention
Plenary – 27 March 2019
Vote: For: 545, Against: 50, Abstentions: 24

**Grupa Azoty – DEHP**
14 March 2014
Committee Vote: 42 in favour, 0 against and 1 abstention
Plenary: 27 March 2019
Vote: Carried by a show of hands

**Lanxess – chromium trioxide**
21 March 2019
Vote: In favour: 20, against 16,abstenstions: 3
Plenary Vote: 27 March 2019
Vote: For: 309, Against: 286, abstenstensions: 24

If the Commission chooses to ignore the European Parliament, the Parliament can take them to the European Court.
It is unclear if the first two challenges led to any changes by ECHA or the Commission.
Yet, since case T 837/16, Sweden v. Commission, that concerned the challenging of the authorisation of lead paint, firms need to be more aware.
If such a legal action succeeds, the Court can void the authorisation.
There are lessons to be learned.

**Endocrine Challenge Debate on 28 September**

**<u>21st September 2017</u> by Aaron**
You can watch the debate and vote here.

The Environment Committee voted this morning:

- 36 in favor
- 26 against
- 0 abstention
- Total voters 62 out of 69 members.
-

My hunch – but there is no automatic roll call vote – is this vote is split down Party lines. S&D, Greens, GUE/ Nordic Left, on one side, EPP and ECR on another. The Liberals are split down the middle, with Red Liberals backing the S&D block, and Black Liberals backing the EPP.
The EFN would tend to vote for the motion and EFDD would vote against.

That is 52% of the members backing the vote. If translated to the vote Wednesday in Strasbourg, it would just get over the 50.1% threshold, and 367 votes.

The full Parliament tends to take a more deferential line to the Commission than the Environment Committee, so it is going to be a close thing.

Here is a copy of the Endocrine PPP comitology challenge published today (Thursday 21 September).

Let's see how the Environment Committee deal with it on 28 September at around 10:30 am.

It needs a simple majority to pass the Environment Committee, and if it does, it then goes to the full Parliament, where it will need 367 votes or more to block the measure.

If it does, the Commission can withdraw and re-table a new proposal, or withdraw and submit a co-decision proposal.

European Parliament
2014-2019

{ENVI}Committee on the Environment, Public Health and Food Safety

<NoDocSe>2017/0000(RPS)</NoDocSe>

<Date>{21/09/2017}21.9.2017</Date>

<TitreType>DRAFT MOTION FOR A RESOLUTION</TitreType>

<TitreRecueil>pursuant to Rule 106(2), (3) and (4)(c) of the Rules of Procedure</TitreRecueil>

<Titre>on the draft Commission regulation amending Annex II to Regulation (EC) 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties</Titre>

<DocRef>(D048947 – 2017/0000(RPS))</DocRef>

<Commission>{ENVI}Committee on the Environment, Public Health and Food Safety</Commission>

Members responsible: <Depute>Jytte Guteland, Bas Eickhout</Depute>

**B8-0000/2017**

**European Parliament resolution on the draft Commission regulation amending Annex II to Regulation (EC) 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties**

**(D048947/06 – 2017/0000 (RPS))**

*The European Parliament*,

– having regard to the draft Commission regulation amending Annex II to Regulation (EC) 1107/2009 by setting out scientific criteria for the determination of endocrine disrupting properties (D048947/06) (“draft regulation”),

– having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC[1], and in particular Article 4(1), Article 78(1)(a), the second paragraph of point 3.6.5. of Annex II and point 3.8.2 of Annex II thereof,
– having regard to the judgment of the General Court of 16 December 2015[2], and in particular paragraphs 71 and 72 thereof,
– having regard to the European Parliament resolution of 8 June 2016 on endocrine disruptors: state of play following the judgment of the General Court of the European Union of 16 December 2015[3],
– having regard to the Communication by the Commission on endocrine disruptors and the draft Commission acts setting out scientific criteria for their determination in the context of the EU legislation on plant protection products and biocidal products of 15 June 2016[4],
– having regard to the Summary Report of the Standing Committee on Plants, Animals, Food and Feed held in Brussels on 28 February 2017,

– having regard to European Parliament resolution of 14 March 2013 on the protection of public health from endocrine disrupters[5],
– having regard to the Commission roadmap of June 2014 entitled "Defining criteria for identifying Endocrine Disruptors in the context of the implementation of the Plant Protection Product Regulation and Biocidal Products Regulation",

– having regard to the General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' ("Seventh Environment Action Programme"), and in particular the third subparagraph of point 50 thereof[6],
– having regard to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[7],
– having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products[8], and in particular Article 15 thereof,
– having regard to the Guidance by the European Food Safety Authority on the "Submission of scientific peer-reviewed open literature for the approval of pesticide active substances under Regulation (EC) No 1107/2009"[9],
– having regard to President of the European Commission Jean-Claude Juncker's State of the Union Address of 13 September 2017,

– having regard to the second draft Guidance document of 17 July 2012 for the implementation of the hazard-based criteria to identify endocrine disruptors (EDs) in the context of Regulations (EC) No 1107/2009 and (EU) No 528/2012, developed by the European Food Safety Authority, the European Chemicals Agency, and the Joint Research Centre ("draft guidance");

– having regard to Article 5a(3)(b) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[10],
– having regard to the motion for a resolution of the Committee on the Environment, Public Health and Food Safety,

– having regard to Rule 106(2), (3) and (4)(c) of its Rules of Procedure,

3. whereas in accordance with point 3.8.2. of Annex II of Regulation (EC) No 1107/2009, an active substance is only to be approved if it is not considered to have endocrine disrupting properties that may cause adverse effect in non-target organisms, unless the exposure of non-target organisms to that active substance under realistic proposed conditions of use is negligible ("cut-off criterion" for the environment);
4. whereas in accordance with the second paragraph of point 3.6.5. of Annex II of Regulation (EC) No 1107/2009, the Commission is to present to the Standing Committee on the Food Chain and Animal Health a draft of the measures concerning specific scientific criteria for the determination of endocrine disrupting properties by 14 December 2013;
5. whereas the Standing Committee delivered a positive opinion on the draft regulation on 4 July 2017, with three Member States voting against, and four Member States abstaining;
6. whereas the last paragraph of the draft regulation stipulates that "if the intended plant protection mode of action of the active substance being assessed, consists of controlling target organisms other than vertebrates via their endocrine systems, the effects on organisms of the same taxonomic phylum as the targeted one, shall not be considered for the identification of the substance as having endocrine disrupting properties with respect to non-target organisms";

7. whereas the General Court in its judgment in case T-521/14 clearly stated that «la spécification des critères scientifiques pour la détermination des propriétés perturbant le système endocrinien ne peut se faire que de manière objective, au regard de données scientifiques relatives audit système, indépendamment de toute autre considération, en particulier économique»[11](paragraph 71);
8. whereas it is not scientific to exclude a substance with an intended endocrine mode of action from the identification of being an endocrine disrupter for non-target organisms;
9. whereas the draft regulation can therefore not be considered to be based on objective science linked to the endocrine system, as required by the Court; whereas the Commission hereby exceeds its implementing powers;
10. whereas the actual intention of this last paragraph is clearly spelled out in the summary report of the Standing Committee on Plants, Animals, Food and Feed held in Brussels on 28 February 2017 which states that "furthermore, the rationale behind the provision on active substances with an intended endocrine mode of action (below called growth regulators (GR)) was explained. … The provision on GR allows that the cut-off criteria will not be applied to substances with an intended endocrine mode of action …";
11. whereas it is thus clear that the actual intention of this last paragraph is to effectively create a derogation from the cut-off criterion laid down point 3.8.2 of Annex II of Regulation (EC) No 1107/2009;
12. whereas it is apparent from recitals 6 to 10 as well as from Article 1(3) of Regulation (EC) No 1107/2009 that the legislature, when addressing the complex issue of setting the rules on approving active substances, had to strike a delicate balance between the different and potentially conflicting objectives, i.e. agricultural production and the internal market, on the one hand, and the protection of health and the environment, on the other;
13. whereas the General Court stated the following in the judgment referred to above: «Dans ce contexte, il importe de relever que, en adoptant le règlement n° 528/2012, le législateur a procédé à une mise en balance de l'objectif d'amélioration du marché intérieur et de celui de la préservation de la santé humaine, de la santé animale et de l'environnement, que la Commission se doit de respecter et ne saurait remettre en cause…. Or, dans le cadre de la mise en œuvre des pouvoirs qui lui sont délégués par le législateur, la Commission ne saurait remettre en cause cet équilibre, ce que cette institution a d'ailleurs en substance admis lors de l'audience.»[12] (paragraph 72);
14. whereas this was echoed by the European Parliament in its resolution of 8 June 2016 which stresses that "the General Court ruled that the specification of scientific criteria can only be carried out in an objective manner on the basis of scientific data related to the endocrine system, independently of any other consideration, in particular economic ones, and that the Commission is not entitled to change the regulatory balance laid down in a basic act via the application of powers delegated to it pursuant to Article 290 [of the Treaty on the Functioning of the European Union (TFEU)];
15. whereas the same limitations of power apply for the Commission in the context of an implementing act under the regulatory procedure with scrutiny;
16. whereas according to the Commission communication of 15 June 2016, "the issue faced by the Commission in this exercise is to establish criteria to determine what is or is not an endocrine disruptor for the purposes of plant protection products and biocidal products – not to decide how to regulate these substances. The regulatory consequences have already been set by the legislator in the legislation on plant protection products (2009) and biocidal products (2012).";
17. whereas the cut-off criterion laid down in point 3.8.2 of Annex II of Regulation (EC) No 1107/2009 constitutes an essential element of the Regulation;

18. whereas according to long-standing case law, the adoption of regulatory elements that are essential to a given matter is reserved to the EU legislature and may not be delegated to the Commission;
19. whereas according to Commission President Juncker in his State of the Union Address 2017, the rule of law is one of three principles that must always anchor our Union; whereas Commission President Juncker furthermore elaborated in this context that "Accepting and respecting a final judgement is what it means to be part of a Union based on the rule of law. Member States gave final jurisdiction to the European Court of Justice. The judgements of the Court have to be respected by all. To undermine them, or to undermine the independence of national courts, is to strip citizens of their fundamental rights. The rule of law is not optional in the European Union. It is a must.";
20. whereas the Commission has thus exceeded its implementing powers by modifying an essential regulatory element of Regulation (EC) No 1107/2009, contrary to the recognition of its limits of power in the court hearing in case T-521-14, contrary to its assertions in the Commission communication of 15 June 2016 and contrary to the fundamental Union principle of the rule of law evoked by Commission President Juncker;
21. whereas the fact that the Commission exceeded its implementing powers is further corroborated by the statement in the summary report of the Standing Committee on Plants, Animals, Food and Feed held in Brussels on 28 February 2017 that the new clause would be added in a new paragraph, separate from "the commandments" and separate from the principles of assessment so that it is no longer part of the criteria;
22. whereas even if the developments in scientific and technical knowledge were to provide valid grounds for introducing a derogation as regards the approval conditions of substances with an intended endocrine mode of action, such a derogation could only be created through a legislative procedure to amend Regulation (EC) No 1107/2009 in accordance with Article 294 TFEU;
23. whereas according to the Seventh Environment Action Programme, "the Union will further develop and implement approaches to address … safety concerns related to endocrine disruptors in all relevant Union legislation. In particular, the Union will develop harmonised hazard-based criteria for the identification of endocrine disruptors";
24. whereas according to the Commission roadmap, based on calls by the European Parliament
25. and the Council, and reconfirmed by both co-legislators in the Seventh Environment Action Programme, the Commission should establish *horizontal* hazard-based scientific criteria to identify endocrine disrupters so as to enable their application in the wider legislation covering the regulation of endocrine disrupters in different regulatory settings;
26. whereas the criteria in the draft regulation are however not fit for horizontal application in all relevant Union legislation due to at least two failures:
27. failure to include a category of *suspected* endocrine disrupters,
28. failure to include read-across in the operative part of the data to be considered[13],
29. and therefore not compatible with the aim and content of the Seventh Environment Action Programme;
30. whereas the failure to include a category of suspected endocrine disrupters means that no action can be taken against such substances, unless a complementary proposal is made to lay down criteria for them,
31. whereas it would have been very relevant to include a category of *suspected* endocrine disrupters so as to be able to achieve adequate protection against such substances in other sectors, e.g. for cosmetics, which include a ban on substances that are *suspected* of being carcinogenic, mutagenic or toxic to reproduction ("CMR substances"), particularly since the Regulation (EC) No 1223/2009 contains an obligation for the Commission to review that Regulation with regard to substances with endocrine-disrupting properties at the latest on 11 January 2015;

32. whereas the failure to include a category of suspected endocrine disrupters furthermore means that the draft regulation is not consistent with the existing classification system for CMR substances as laid down in Regulation (EC) No 1272/2008, which includes a classification of suspected CMR substances;
33. whereas the failure to include read-across in the operative part means that in case the criteria of the draft regulation were to be applied in other areas, each substance would need to be tested on its own and no test data from related chemicals could be used, so that in the absence of substance-specific test data on adverse effects, a substance could not be determined to be an endocrine disrupter, which would therefore reward lack of testing with non-action, and would require unnecessary animal testing to be carried out;
34. whereas the failure to explicitly include read-across as part of the consideration of all available data is not consistent with the existing classification system for CMR substances as laid down in Regulation (EC) No 1272/2008, which explicitly includes read-across;
35. whereas one key element in the draft regulation in order to determine whether a substance is an endocrine disrupter is the endocrine mode of action (the second "commandment"); whereas the draft regulation equates "endocrine mode of action" with "alters the function (s) of the endocrine system" to align it with the definition by the World Health Organisation referred to in recital 2 of the draft regulation;
36. whereas the draft guidance gives a different definition for mode of action: "A biologically plausible sequence of key events leading to an observed effect supported by robust experimental observations and mechanistic data. A mode of action describes key cytological and biochemical events – that is, those that are both measurable and necessary to the observed effect – in a logical framework".
37. whereas the guidance thus provides a far more demanding definition for the key term "mode of action" compared to that which is set out in the second commandment of the criteria, and so unduly raises the bar for identifying endocrine disrupters;
38. whereas the reference to existing guidance on literature data to be used in point (1)(1)(b) of the draft regulation establishes a hierarchy, which gives preference to data generated in accordance with internationally agreed study protocols over other scientific data, yet such study protocols are only available for certain endpoints to test endocrine disrupters, so that there is a serious risk that independent data alone are not considered enough for determining a substance as an endocrine disrupter;
39. Opposes adoption of the draft Commission regulation;
40. Considers that the draft Commission regulation exceeds the implementing powers provided for in Regulation (EC) No 1107/2009;

3. Calls on the Commission to withdraw the draft regulation and submit a new one to the committee;
4. Calls on the Commission to modify the draft regulation by deleting its last paragraph;
5. Calls on the Commission to ensure that the guidance for the implementation of the hazard-based criteria to identify endocrine disruptors (EDs) in the context of Regulations (EC) No 1107/2009 and (EU) No 528/2012 is fully in line with the scientific criteria to determine endocrine-disrupting properties, including the weight of evidence approach of Regulation (EC) No 1272/2008;
6. Calls on the Commission to ensure that the same guidance clarifies that there is no hierarchy between scientific data generated in accordance with internationally agreed study protocols and other scientific data;
7. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

[1] OJ L 309, 24.11.2009, p. 1.
[2] Judgment of the Court of Justice of 16 December 2015, T-521/14, *Sweden v. Commission*, ECLI:EU:T:2015:976.
[3] P8_TA(2016)0270.
[4] COM(2016) 0350.
[5] P7_TA(2013)0091.
[6] OJ L 354, 28.12.2013, p. 171.
[7] OJ L 353, 31.12.2008, p. 1.
[8] OJ L 342, 22.12.2009, p. 59.
[9] DOI: 10.2903/j.efsa.2011.2092, EFSA Journal 2011;9(2):2092.
[11] Since the court case T-521/14 exists only in French and Swedish, the English version of the text is provided by the translation services of the European Parliament: 'the specification of scientific criteria for the determination of endocrine-disrupting properties may only be performed objectively, in the light of scientific data relating to that system, independently of all other considerations, in particular economic ones'.
[12] Since the court case T-521/14 exists only in French and Swedish, the English version of the text is provided by the translation services of the European Parliament: 'In this context, it is important to note that, when adopting Regulation No 528/2012, the legislature weighed up the objective of improving the internal market and that of protecting human health, animal health and the environment, arriving at conclusions which the Commission must respect and cannot call into question…. In the context of the exercise of the powers delegated to it by the legislator, the Commission cannot call that balance into question, a fact which, moreover, that institution has in essence accepted during the hearing.'
[13] Read-across involves the use of relevant information from analogous substance(s) to predict properties for the'target' substance(s) under consideration [see "Read-across assessment Framework", ECHA, 2017, https://echa.europa.eu/documents/10162/13628/raaf_en.pdf]
Categories ComitologyPost navigation

**European Parliament Reject Commission's Endocrine Proposal – how they voted**



4th October 2017 by Aaron

At around 12:30 this afternoon the European Parliament rejected the Commission's proposal on Endocrine Criteria for Pesticides.

- For: 389
- Against: 235
- Abstain: 70

The final text adopted is here.

You can watch the final vote below.

**How they Voted**

**Summary**

**By Political Group**

**By Member States**

**For 389 +**

**ALDE** : Arthuis, Auštrevičius, van Baalen, Bearder, Becerra Basterrechea, Bilbao Barandica, Calvet Chambon, Cavada, Cornillet, Deprez, Federley, Gerbrandy, Griesbeck, Harkin, Huitema, in 't Veld, Jäätteenmäki, Jakovčić, Ježek, Kallas , Løkkegaard, Marinho e Pinto, Michel, van Miltenburg, Mlinar, Nart, Nieuwenhuizen, Paet, Pagazaurtundua Ruiz, Petersen, Punset, Radoš, Ries, Riquet, Rochefort, Rohde, Schaake, Selimovic, Curb, Torvalds, Tremosa i Balcells, Vajgl, Vautmans, Verhofstadt, Renate Weber, Wierinck, Wikström

**ECR** : Belder, van Dalen, Demesmaeker, Dohrmann, Karlsson, Marias, Messerschmidt, Ruohonen-Lerner, Škripek, Stevens, Theocharous, Van Bossuyt, Vistisen, Zīle, Žitňanská

**EFDD**: Adinolfi, Agea, Help, Beghin, Bergeron, Borrelli, Castaldo, Corrao, D'Amato, D'Ornano, Evi, Ferrara, Iwaszkiewicz, Moi, Montel, Paksas, Pedicini, Philippot, Tamburrano, Valli, Zullo

**ENF:** Annemans, Arnautu, Bay, Picture, Boutonnet, Briois, Elissen Ferrand, Goddyn, de Graaff, Jalkh, Jamet, Kappel, Lebreton, Lechevalier, Loiseau, Martin Dominique, Marusik, Mayer Georg, Mélin, Monot, Obermayr, Pretzell, Rebega, Schaffhauser , Stuger, Troszczynski, Vilimsky, Zijlstra

**GUE / NGL**: Albiol Guzmán, Anderson Martina, Benito Ziluaga, Björk, Carthy, Chountis, Couso, Eck, Ernst, Flanagan, Forenza, González Peñas, Hadjigeorgiou, Hazekamp, de Jong, Juaristi Abaunz, Kari, Kohlíček, Konečná, Kouloglou, Kuneva Kyllönen, Le Hyaric, Lopez Bermejo, Losing, Maltese, Maštálka, Matias, Michels, Mineur, Ní Riada, Omarjee, Papadimoulis, pepper Lopes Sakorafa, Sanchez Caldentey, Scholz, Senra Rodriguez Spinelli, Sylikiotis, Torres Martinez, Urbán Crespo, Vallina Vergiat, Viegas, Vieu

**NI** : Balczó, Chauprade, Epitideios, Fountoulis, Gollnisch, James, Korwin-Mikke, Morvai Papadakis

Konstantinos, Synadinos, Voigt, Zarianopoulos
**PPE** : Andrikienė Arimont, Bach, Bendtsen, House, Faria, Metsola Peter, Pietikäinen Reding, Rolin, Tolić, Zammit Dimech
**S & D:**Anderson Lucy, Andrieu, Androulakis, Arena, Assis, Balas, Bayet, Benifei, Beňová, Berès, Bettini, Blanco López, Bonafè, Borzan, Boştinaru, Brannen, Briano, Bullmann, Cabezón Ruiz, Caputo, Childers, Chinnici, Christensen, Cofferati , Corbett, Costa, Dalli, dance, Danti, Delvaux, Denanot, Palmeira, Ertug, Fajon, Fernández, Fleckenstein, friend, GARDIAZÁBAL Rubial, Gasbarra, Gebhardt, covetousness, Geringer de Oedenberg, Gill Neena, Giuffrida, Gomes, Grammatikakis, Graswander - Hainz, Griffin, Gualtieri, Guerrero Salom, Guillaume, Good country, Gutiérrez Prieto, Hedh, Hoffmann, Honeyball, Howarth, Ivan, Jaakonsaari, Jáuregui Atondo, Jongerius, Kadenbach, Kaili, Kammerevert, Kaufmann, Keller Jan, Khan, Kirton-Darling , Kofod, Kohn, Koster, Krehl, Kumpula-Natri, Kyenge, Kyrkos, Long, Cap, Lietz, López López Aguilar, Ludvigsson, McAvan, Mami Kins, Maňka, Mansfield Court,Martin David Martin Edouard Maurel, Mavrides, Mayer Alex, Melior, Mizzi, Moisa, Molnár, Moraes, Nekov, Neuser, Niedermüller, Nilsson, Noichl, Panzeri, Paolucci, Papadakis Demetris, Pargneaux, Peillon, Picierno, Picula, Piri, Pirinski, Pittella, Poc, Business, Post, Preuß, Regner, Revault d'Allonnes Bonnefoy, Liliana Rodrigues, Maria João Rodrigues, Rodríguez-Piñero Fernández, Rodust, Rozière Sant dos Santos, Sârbu, Sassoli, Schaldemose, Schlein, Schuster , Sehnalová, Serrão Santos, Silva Pereira, Simon Peter, Simon Siôn, Sippel, Smolková, sisters, Stihler, Tang, Ţapardel, Tarabella, Thomas, Toia, Ujhelyi, Ulvskog, Valenciano, Van Brempt, Vaughan, Viotti, Ward, Weidenholzer, von Weizsacker, Werner, Westphal, Wolken, Zala, Zanon, Zoffoli, ZorrinhoNekov, Neuser, Niedermüller, Nilsson, Noichl, Panzeri, Paolucci, Demetris Papadakis, Pargneaux, Peillon, Picierno, Picula, Piri, Pirinski, Pittella, Poc, Business, Post, Preuß, Regner, Revault d'Allonnes Bonnefoy, Liliana Rodrigues, Rodrigues Maria João, Rodríguez-Piñero Fernández, Rodust, Rozière Sant dos Santos, Sârbu, Sassoli, Schaldemose, Schlein, Schuster, Sehnalová, Serrão Santos, Silva Pereira, Simon Peter, Simon Siôn, Sippel, Smolková, sisters, Stihler, Tang, Ţapardel, Tarabella, Thomas, Toia, Ujhelyi, Ulvskog, Valenciano, Van Brempt, Vaughan, Viotti, Ward, Weidenholzer, von Weizsacker, Werner, Westphal, Wolken, Zala, Zanon, Zoffoli, ZorrinhoNekov, Neuser, Niedermüller, Nilsson, Noichl, Panzeri, Paolucci, Demetris Papadakis, Pargneaux, Peillon, Picierno, Picula, Piri, Pirinski, Pittella, Poc, Business, Post, Preuß, Regner, Revault d'Allonnes Bonnefoy, Liliana Rodrigues, Rodrigues Maria João, Rodríguez-Piñero Fernández, Rodust, Rozière Sant dos Santos, Sârbu, Sassoli, Schaldemose, Schlein, Schuster, Sehnalová, Serrão Santos, Silva Pereira, Simon Peter, Simon Siôn, Sippel, Smolková, sisters, Stihler, Tang, Ţapardel, Tarabella, Thomas, Toia, Ujhelyi, Ulvskog, Valenciano, Van Brempt, Vaughan, Viotti, Ward, Weidenholzer, von Weizsacker, Werner, Westphal, Wolken, Zala, Zanon, Zoffoli, ZorrinhoRevault Allonnes Bonnefoy, Liliana Rodrigues, Rodrigues Maria João, Rodríguez-Piñero Fernández Rodust, Rozière Sant, dos Santos, Sarbu, Sassoli, Schaldemose, Schlein, Schuster Sehnalová, Serrão Santos Silva Pereira, Simon Peter, Simon Siôn , Sippel Smolková, Soru, Stihler, Tang Ţapardel, Tarabella, Thomas Toia, Ujhelyi, Ulvskog Valenciano, Van Brempt, Vaughan, Viotti, Ward, Weidenholzer, von Weizsäcker, Werner Westphal, Wolken, Zala Zanonato, Zoffoli , ZorrinhoRevault Allonnes Bonnefoy, Liliana Rodrigues, Rodrigues Maria João, Rodríguez-Piñero Fernández Rodust, Rozière Sant, dos Santos, Sarbu, Sassoli, Schaldemose, Schlein, Schuster Sehnalová, Serrão Santos Silva Pereira, Simon Peter, Simon Siôn , Sippel Smolková, Soru, Stihler, Tang Ţapardel, Tarabella, Thomas Toia, Ujhelyi, Ulvskog Valenciano, Van Brempt, Vaughan, Viotti, Ward, Weidenholzer, von Weizsäcker, Werner Westphal, Wolken, Zala Zanonato, Zoffoli , Zorrinhovon Weizsacker, Werner, Westphal, Wölken, Zala, Zanonato, Zoffoli, Zorrinhovon Weizsacker, Werner, Westphal, Wölken, Zala, Zanonato, Zoffoli, Zorrinho
Verts / ALE: affronté, Albrecht, Andersson, Auken, Bove, Buchner, Bütikofer, Cramer, Dalunde, Dellinger, Durand, Eickhout, Engstrom, Evans, Giegold, Harms, mansion Ling, Hautala, Heubuch, Hudghton, Jadot, Joly, Keller Ska Lambert, Lambert, Lochbihler, Lunacek, Marcellesi, Meszerics, Reda, Reimon, Reintke, Rivasi, Sargentini, Scott Cato, Škrlec, Smith, Solé, Šoltés, Staes, Tarand, Taylor, Trüpel, tower, Urtasun, Valero, Vana, Ždanoka

**Against**
**235 -**
**ALDE** Ali, Diaconu, Giménez Barbat, Grigule-Peters, Hyusmenova, Kyuchyuk, Lambsdorff, Mazuronis, Meissner, Mihaylova, Müller, Nicolai, Takkula, Väyrynen
**ECR:** Ashworth, Barek, Dalton, Dzhambazki, fitness, Flack, Fox , Gericke, Halla-Aho, Hannan, Henkel, vertical, Lucke, McClarkin, Macovei, Matthews, Nicholson, Procter Sernagiotto, Starbatty, Wicker, Swinburne, Tannock, Tošenovskı, Trebesius, Ujazdowski, garden
**EFDD:** Agnew
**ENF:** Bizzotto, Borghezio Fontana, Salvini
**NI:** Dodds, Woolfe
**PPE**: Adaktusson, Ademov, Alliot-Marie, Ayuso, Balz, Belet, Bocskor, Böge, Bogovič, Boni, Brok, Buda, Buşoi, Buzek, van de Camp, Caspary, del Castillo Vera, Cesa, Cicu, Cirio, Clune, Collin-Langen, Corazza Bildt, Csáky, Danjean, Dantin, Dati, Delahaye, Deli, Deß, Deutsch, Díaz de Mera García Consuegra, Dorfmann, Ehler, Engel, Erdős, Estaràs Ferragut, Fisas Ayxelà, Fjellner, Florenz, Gahler, Gál, Gambús, Gardini, Gieseke, González Pons, de Grandes Pascual, Gräßle, Grossetête, Gyürk, Hayes, Herranz García, Hetman, Hökmark, Hölvényi, Hortefeux, Hübner, Iturgaiz, Jahr, Jazłowiecka, Jiménez-Becerril Barrio, Joulaud, Juvin, Kalinowski, Kalniete, Kariņš, Kelam, Kelly, Koch, Kósa, Kovatchev, Kozłowska-Rajewicz, Kudrycka, Kuhn, Kukan, Lamassoure, de Lange, Langen, Lavrilleux, Lenaers, Lewandowski, Liese, Lins, Lope Fontagné, López-Istúriz White, Łukacijewska, McAllister, McGuinness, Maletić, Malinov, Mann, Marinescu, Martusciello, Matera, Mato, Maullu, Mikolášik, Millán Mon, Morano, Morin-Chartier, Mureşan, Muselier, Mussolini, Nagy, Niebler, Niedermayer, Novakov, Olbrycht, Pabriks, Patriciello, Petir, Pieper, Pitera, Plura, Polčák, Ponga, Pospíšil, Preda, Proust, Quisthoudt-Rowohl, Radtke, Ribeiro, Rosati, Saïfi, Salafranca Sánchez-Neyra, Salini, Sander, Sarvamaa, Saudargas, Schöpflin, Schreijer-Pierik, Schulze, Schwab, Siekierski, Sógor, Šojdrová, Sommer, Štefanec, Štětina, Stolojan, Šuica, Šulin, Svoboda, Szájer, Szejnfeld, Thun und Hohenstein, Tőkés, Ţurcanu, Urutchev, Vaidere, Valcárcel Siso, Vălean, Vandenkendelaere, Verheyen, Virkkunen, Voss, Wałęsa, Weber Manfred, Wenta, Wieland, Winkler Hermann, Winkler Iuliu, Záborská, Zdechovský, Zdrojewski, Zeller, Zovko, Zver, Zwiefka
**S & D** : Balčytis, Blinkevičiūt, crystal, Dăncilă, Frunzulică, García Pérez Gierek Grapini, Kouroumbashev, Lauristin, Liberadzki, Łybacka, Nica Pascual, Paul, King, Stanishev Zemke
**Abstained**
**70**
**ALDE** : Charanzová, Dlabajová, Goerens, Telicka, Uspaskich
**ECR:** Czarnecki, Urchin, Fotyga, Gosiewska, Hoc, herb, Karski Kłosowski, Krasnodębski, Krupa, Kuźmiuk, Legutko, Ożóg Piech, Piotrowski Tomaševski, Tomašić Wisniewska , Złotowski
**EFDD** Aker, Arnott, Batten, Bullock, Carver, Coburn, (The Earl of) Dartmouth, Etheridge, Finch, Nathan Gill, Hook, Lundgren, O'Flynn, Parker Payne, Reid, Winberg
**ENF** Atkinson, Zanni
**NI:** Saryusz-Wolski
**PPE:** Becker, Cadec, Christoforou, Fernandes, Karas, Kefalogiannis, Kyrtsos, Melo Radev, Rübig, Schmidt, Spyraki, Ungureanu-Vozemberg Vrionidi, Zagorakis
**S & D**: Aguilera García, Ayala Sender, Bresso, Cozzolino, De Castro, De Monte, Gentile, Morgano, Mosca, Szanyi
V**erts/AL**E: Ropė
Interestingly the percentage split for and against is similar to the same vote in Environment Committee on 28 September.

## 5. Case Study: Why lobbyists need a flight plan – a case study of OEL

19th June 2019 by Aaron

Pilots have flight plans. Before they go into the air , they go through a checklist and review their flight plan. When they are in the air, they'll adjust their journey, depending on weather conditions and turbulence. Their final journey won't be exactly the same one they planned for. They know from the start that they'll make adjustments during the journey.

A good pilot knows that if they just jumped in and took off without a journey plan, the chances of landing safely, if at all, are slim.

When you prepare for the journey, you see how long it is going to be, and what you need to bring along. If you don't know the journey, you may be caught out, and think the journey is a short one, but then forced to land or crash in the sea when you discover it is a lot longer than you had planned for.

When embarking on a legislative or policy file, I find it useful to know the journey's map. I've taken to looking at similar journeys taken by others to get a good idea of the map. It helps see what preparations are needed, and if possible, improve on the journey plan. I know from the start that adjustments will be needed during the journey. The voyage won't be smooth.

**Case Study**

A case study is the adoption of occupational exposure legislation.

In 2016, the Commission started the process to amend Directive 2004/37 on the protection of workers from the risk related to exposure to carcinogens or mutagens at work.

Below, I have chunked down the key steps by date.

It could as well be represented by a process chart and a journal record of the legislative journey.

What you'll notice from it, is that the voyage is not a short one – more than 3 years. There are several important steps in the journey, from political validation, scientific deliberation, review by the social partners (which is unique to OELs), the adoption by the Commission, and legislative adoption by the Council and the European Parliament.

The journey is broken down into several important chunks or steps. If you miss one important step, you're likely to land up in the wrong place, or in the right place at the wrong time, or simply crash.

**Stages in the Journey**

1. Commissioner Marianne Thyssen backs 3rd CMD – 23 May 2016
2. SCOEL informed of new list of substances to be evaluated – 12 September 2016
3. SCOEL Recommendation adopted by SCOEL – 30 June 2016 [ 8 hour 0.3 ppm]
4. Working Party on Chemicals (WPC) (a sub group of ACSH) – 15-16 June 2016

5. Advisory Committee on Safety and Health at Work( ACSH) – 9 September 2016 (link)
6. SCOEL Recommendation on Formaldehyde published – 6 March 2017 (link)
7. Joint Declaration of on the EU's legislative priorities for 2017-2018 – 14 December 2017 (link)
8. Road Map launched Public 4 week feedback opens – 27 November 2017 (link)
9. Road Map Public feedback closes 4 submissions – 25 December 2017 (link)
10. Draft impact assessment report submitted to the RSB – 30 January 2018 (link)
11. Regulatory Scrutiny Board positive opinion – 23 February 2018
12. Regulatory Scrutiny Board opinion with changes incorporated – 30 January 2018 (link).
13. Services Draft proposal – February 2018
14. Inter-Service Consultation – March 2018
15. Commission proposal adopted – 5 April 2018 (link) (Press Release link)
16. Post proposal feedback opens – 5 April 2018
17. Post proposal feedback closes – 4 June 2018
18. European Parliament Employment and Social Affairs Committee draft report – 29 June 2018 (link)
19. Economic and Social Committee Opinion – 19 September 2018 (link)
20. Amendments tabled in committee 24 September 2018 (link)
21. Vote in Committee – 20 November 2018 (link)
22. Committee decision to open inter-institutional negotiations with report – 20 November 2018 (link)
23. Committee report tabled for plenary, 1st reading/single reading – 23 November 2018 (link)
24. Coreper letter confirming inter-institutional agreement 15/02/2019 (link)
25. Approval in committee of the text agreed at 1st reading inter-institutional negotiations – 19 February 2019 (link)
26. Text adopted by Parliament, 1st reading/single reading – 27 March 2019 (link)
27. COREPER agree – 15 May 2019
28. General Affairs Council adopt – 21 May 2019 (link)
29. Final Act – 5 June 2019 (link)
30. Next Steps – publish in Official Journal

## 6. Case Study: A flight plan for a long flight – a case study of the waste directive

20th June 2019 by Aaron

"The race is not to the swift … but time and chance happen to them all" Ecclesiastes 9:11
As you set off on your legislative journey, things may come out of no-where and delay you. The adoption of Directive (EU) 2018/851 on waste was not swift or certain. Unexpected political disruptions sidelined the proposal, to see it's resuscitation back to life several months later. Lobbying is not for the faint-hearted. You need patience and resources.

A lot of key decisions are made early on from the idea development to the adoption of the proposal.

This update to existing waste legislation was 6 years in the making.

An interesting case study as we move from Commission to the next. The waste proposal was one of the first victims of 'political discontinuity'. It will be interesting to see if the new Commission feels the same zeal not to be bound by the political legacy of the current Commission.

I've added as much of the sequencing of meetings and decisions as I could glean from official sources and my notebooks. I've done so because it gives a good idea of the toing and froing between the EP, Council, and Commission. It also shows that the political masters oversight and final sign off on any decision (from Ambassadors at COREPER to Environment Ministers).

Some of the key events I can't add. I don't know when the file received political validation in 2012, nor when the real decision to drop it (although I do know who removed it). I don't know when the informal trilogues between the Rapporteur, Council Presidency and Commission occurred. These off the books meetings, vital to securing a political agreement, are known only to a few.

You'll see from this, there are many steps in the long journey. If you stumble early on, it's going to be hard to get back on track. You'll need to be well prepared before the journey has even started.

**The Revision of the Waste Framework Directive – Directive (EU) 2018/851 – A long Journey**

1. 16 April 2012: Impact Assessment Steering Group established (DG ENV, SG, ECFIN, ENTR, CLIMA, JRC, and ESTAT) – Preparatory Work
2. 23 October 2012: European Commission 2013 Work Programme (item 40) (link)
3. February 2013: First interviews with key stakeholders
4. 4 June 2013: Public Consultation opens (links)
5. 10 September 2013: Public Consultation closes (15 weeks)
6. 23 January 2014: First Impact Assessment sent to Impact Assessment Board (link)
7. 21February 2014: Impact Assessment Board issue first Opinion
8. 3 March 2014: Impact Assessment Board 2nd Impact Assessment submitted (link)
9. 8 April 2014: Impact Assessment Board (former RSB) final opinion (link)
10. April 2014: Proposal drafted
11. May 2014 Interservice Consultation

12. 27 June: Jean-Claude Juncker has been nominated by the European Council as President-designate of the European Commission.
13. 2 July 2014: Original Proposal adopted
14. 2 July 2014: Proposal submitted to European Parliament and Council
15. 16 July 2014: EP confirm Jean-Claude Juncker
16. 14 November 2014: Environment Council debate (link)
17. 10 December 2014: European Economic and Social Committee adopt Opinion (link)
18. 12 December 2014: Committee of Regions adopt Opinion (link)
19. 16 December 2014: New Work Programme withdraw indicated
20. 22 January 2015: Commission inform Environment Committee proposal to be withdrawn
21. 7 March 2015: Proposal Withdrawn by new Commission (link)
22. 28 May 2015: Public Consultation on the Circular Economy opens (link)
23. 4 June 2015: Targeted public consultation with the Member States opens
24. 11 June 2015: List of planned Initiatives
25. 20 August 2015: Public Consultation on the Circular Economy closes
26. 29 August 2015: Member State expert discuss expected proposal
27. 3 September 2015: Targeted public consultation with the Member States closes
28. 2 December 2015: College of Commissioner adopt new Legislative proposal published (link)
29. 7 December 2015: Council Working Party on the Environment experts discuss the proposal
30. 14 December 2015: Committee referral announced in Parliament
31. 21 December 2015: Environment Committee discuss the new proposal
32. 22 December 2015: Simona Bonafè (S&D, Italy) confirmed as Rapporteur
33. 15 January 2016: Council Working Party on Environment discuss the proposal
34. 27 January 2016: Council Working Party on Environment discuss the proposal
35. 23 February 2016: Council Working Party on Environment discuss the proposal
36. 4 March 2016: Exchange in Environment Council (link)
37. 9 March 2016: Council Working Party on Environment discuss the proposal
38. 12 April 2016: Council Working Party on Environment discuss the proposal
39. 4 May 2016: Council Working Party on Environment discuss the proposal
40. 23 May 2016: Council Working Party on Environment discuss the proposal
41. 9 June 2016: Council Working Party on Environment discuss the proposal
42. 15 June 2016: Environment Committee discuss the draft report by Rapporteur
43. 1 July 2016: Council Working Party on Environment discuss the proposal
44. 19 July 2016: Council Working Party on Environment discuss the proposal
45. 10 August 2016: 1169 Amendments to the draft report tabled
46. 15 September 2016: Council Working Party on Environment discuss the proposal
47. 27 September 2016: Council Working Party on Environment discuss the proposal
48. 29 September 2016: Environment Committee discuss amendments to draft report
49. 14 November 2016: Council Working Party on Environment discuss the proposal
50. 1 December 2016: Council Working Party on Environment discuss the proposal
51. 19 December 2016: Environment Council discuss the proposal
52. 12 January 2017: Council Working Party on Environment discuss the proposal
53. 24 January 2017: Vote in Environment committee (link)
54. 31 January 2017: Council Working Party on Environment discuss the proposal
55. 7 February 2017: Council Working Party on Environment discuss the proposal
56. 9 February 2017: Committee report tabled for plenary (link)
57. 13 February 2017: Council Working Party on Environment discuss the proposal
58. 20 February 2017: Council Working Party on Environment discuss the proposal
59. 7 March 2017: Council Working Party on Environment discuss the proposal
60. 14 March 2017: Debate in Parliament (link) adopt negotiating a position for trilogues
61. 24 March 2017: Council Working Party on Environment discuss proposal

62. 3 April 2017: Council Working Party on Environment discuss the proposal
63. 4 May 2017: Council Working Party on Environment discuss the proposal
64. 19 May 2017: COREPER back negotiating a position
65. 30 May 2017: First trilogue
66. 31 May 2017: COREPER discuss the proposal
67. 8 June 2017: Environment Committee updated on trilogue
68. 19 June 2017: Environment Council discuss proposal and trilogue (link)
69. 21 June 2017: COREPER discuss the proposal
70. 26 June 2017: Second trilogue
71. 11 July 2017: Environment Committee updated on trilogue
72. 17 July 2017: Council Working Party on Environment discuss the proposal
73. 4 September 2017: Council Working Party on Environment discuss the trilogues
74. 12 September 2017: Council Working Party on Environment discuss the trilogues
75. 26 September 2017: Third trilogue
76. 27 September 2017: COREPER discuss the proposal
77. 28 September 2017: Environment Committee updated on the trilogue
78. 5 October 2017: Council Working Party on Environment discuss the trilogue
79. 18 October 2017: COREPER discuss the proposal
80. 25 October 2017: Fourth trilogue
81. 27 October 2017: COREPER debriefed on Fourth trilogue
82. 6 November 2017: Environment Committee debriefed on Fourth trilogue
83. 10 November 2017: Council Working Party on Environment discuss the trilogue
84. 16 November 2017: Council Working Party on Environment discuss the trilogues
85. 22 November 2017: COREPER discuss the proposal
86. 27 November 2017: Fifth trilogue
87. 29 November 2017: COREPER debriefed on triologue
88. 30 November: Council Working Party on Environment discuss the trilogue
89. 8 December 2017: Council Working Party on Environment discuss the trilogue
90. 13 December 2017: COREPER discuss the proposal
91. 17 December 2017: Sixth trilogue
92. 18 December 2017: European Parliament and Council reach Provisional Agreement reached
93. 11 January 2018: Environment Committee debriefed on the trilogues
94. 23 February 2018: COREPER letter confirming interinstitutional agreement
95. 27 February 2018: Approval in Environment committee of the text agreed at 1st reading interinstitutional negotiations (link)
96. February-May: Text revision by legal linguist
97. 16 April 2018: European Parliament plenary debate on Agreement
98. 18 April 2018: European Parliament plenary back Agreement
99. 16 May 2018: COREPER back Agreement
100. 22 May 2018: Act adopted by Council (Education, Youth, Culture and Sport Council _after Parliament's 1st reading (A point) (link)
101. 30 May 2018: Final act signed
102. 14 June 2018: Final act published in the Official Journal
103. 4 July 2018: Enters into force

## 7. Case Study: A flight plan for a delegated act - RoHS

20th June 2019 by Aaron

I am drafting some short case studies on the steps of the journey a piece of legislation goes through from beginning to end. It's useful to have a good map of the journey.

This example looks at the exemptions given under the RoHS Directive. It's a piece of legislation I know well. It's an example of a regular delegated act, where there was no challenge. Later on, I'll give those examples.

First, you'll see this process is not fast. It took four years from submission to official confirmation. if you add in the time to prepare the technical case for the continued exemption – exemptions are the exception and not the rule after all – it's about five years of work.

Second, there are a number of steps you need to walk before you get to where you want to be. If you misstep, by keeping your eye off the ball, or providing the incorrect information early on, you are unlikely to get to the end of the journey.

Third, you cross different terrains. First, you deal with a technical and data-heavy review at the beginning, which then moves into a process review, and finally political oversight. You need to be able to deal with all the terrains.

Finally, you'll see that Member States' expert groups can support the Commission through both face to face meetings and through written procedures.

**A Case Study**

Commission Delegated Directive (EU) 2019/171 of 16 November 2018 amending, for the purposes of adapting to scientific and technical progress, Annex III to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for cadmium and its compounds in electrical contacts

1. 8 June 2011: Directive 2011/65/EU, RoHS
2. 29 December 2014: Oeko-Institut Study starts
3. 21 January 2015: 2 applications for renewal of exemption
4. 15 July 2015: New Delegated Act Planned
5. 21 August 2015 – 16 October 2015: 8-week public consultation (link)
6. 25 August 2015: Commission launch technical study to evaluate exemption requests
7. 7 June 2016: Oeko-Institut Study Published (link)
8. 27 April until 18 May 2017: Written Procedure feedback from Member States' Expert Group
9. 15 February 2018: Public Feedback Start (link)– 3 submissions
10. 20 February 2018: WTO WBT Notification opens
11. 15 March 2018: Public Feedback ends
12. 21 April 2018: WTO WBT Notification closes
13. 16 November 2018: Delegated Act adopted (link)
14. 16 November 2018: EP deadline for lodging objections from date of receipt (link)
15. 19 November 2019: 2 month Scrutiny Period Starts for Council (date of notification) (link)
16. 17 December 2018: CORPRER – support intention not to raise objections (link)

17. 8 January 2018: General Affairs Council- Confirm Intention not to raise objections (link)
18. 16 January 2019: 2-month deadline for European Parliament lodging objections ends
19. 19 January 2019: Deadline for EP to object ends
20. 21 January 2019: Deadline for Council to object ends
21. 05 February 2019: Publication in Official Journal
22. 25 February 2019: Entered into force

## 8. Case Study: Find the right map – dealing with chemical law making – 10th ATP

**9th December 2018 by Aaron**

As a lobbyist your job is going to be full of variety.

Given that variety, it helps to have the right 'map' to guide you through your journey.

EU law making is not fast. It is full of opportunities to intervene and make your case.

During your journey, you'll need a detailed paper or electronic road map.


Sometimes, you are going to need country and city specific maps.

You'll need to make sure that the map that you are using is up to date.

Today, you can use GPS. Sometimes it is up to date, but it may not tell you when a motorway is out of action.

**Maps are not usually transferable**

Today, I spend a lot of time on chemical legislation and policy. . I deal a lot with substances being added to the CLP's Annex and REACH.
With time, you get to learn the process, steps, and issues you can and can't raise. You get to understand the map and best routes to take and as importantly avoid.

Yet, I have worked in other areas, like fisheries, where the map is totally different.

Lobbyists working in fiance use a very different map.

For me, there would be no point in blindly re-using the map I used in fisheries in chemicals. I'd at best get lost very quickly, and more likely far worse.

**Case Study – CLP 10th ATP**

I like case studies. It is the inner lawyer lurking in me. You can learn a lot looking at the precedents. No all cases go the same, and exceptions happen. Yet, the case below, provides a good example of the usual process and timescale, for updating the ATP.

The case here is the 10th ATP. I choose this for no better reason than it was tabled and adopted under this Commission.

To date, no CLP ATP updates have gone through the 'Better Regulation' 4 week public consultation. There is no evidence of the 10th ATP going through the Better Regulation public consultation. My own view is that they should.

Unfortunately, in the case study below, the dates for inter-service consultation for the adoption of the proposal are not listed. The Commission keep this part of the process, arguably the most important, away from public view.

**Key Dates**

1. CARACAL – list of substances for possible inclusion for which the European Chemicals Agency (ECHA) has adopted opinion in 2015 (or earlier) was circulated for feedback and comments to by 8 April 2016 ***24 February 2016***

2. CARACAL informed of 10th ATP ***23 March 2016***

3. REACH Regulatory Committee informal discussion on 10th ATP **7 July 2016**

4. Commission submits Draft Measure to WTO ***15 September 2016***

5. WTO Consultation on 10th ATP closed ***21 October 2016***

6. Member State experts (REACH Regulatory Committee) approve update to ATP ***26 October 2016***

26 Member States in favour, 2 against

7. Commission ask delegations to express objections possible opposition to draft measure ***11 November 2016***

8. Deadline for delegations to express possible opposition to draft measure ***12 December 2016***

9. No objection Permanent Representatives Committee (COREPER) ***13 January 2017***

10. Council confirm (link) no objection ***23 January 2017***

11. Deadline for EP & Council to object ***10 February 2017***

EP & Council no objection

12. Adopted 5 May 2017 – Commission Regulation (EU) 2017/776 ***5 May 2017***
13. Entry into Force ***25 May 2017***
14. Apply from ***1 December 2018***

## 9. Case Study : A flight plan for ATP – 6th ATP and Formaldehyde

23rd June 2019 by Aaron

A chemical lobbyist will spend a lot of their time dealing with updates to the ATP.

I've taken the timeline for one substance – Formaldehyde – that was part of the 6$^{th}$ATP.
I've detailed the long journey as I think it is a good case study for these reasons:

First, it is a regular classification update. The schedule and transposition of the RAC's file are like this for 99% of classifications.

Second, you'll see that a lot of the process, both scientific and legislative adoption, is done by way of written procedure. If you think everything is done in face to face Committee meetings, you are living in the pre-internet era. The adoption of decisions by way written procedure is normal.

Third, for most cases, there is little to no interest in challenging the opinion of the RAC from the Commission, EP, or the Member States.

Note:

1. all the steps below are on the public record.
2. Not all the exact dates can be sourced.
3. The ATP was adopted by way of Regulatory Procedure with Scrutiny. In July 2019 it will become a Delegated Act.

**Updating classifications – the 6$^{th}$ATP & Formaldehyde**

1. 4 March 2011: REACH Registration Dossier published
2. 10 June 2008: Registration of CLH intention by France
3. 30 September 2010: Dossier submitted by France to RAC for accordance check
4. 28 September 2011: Final submission by France – proposal Carc. IA
5. 30 March 2013: Deadline for the adoption of an opinion
6. 31 October 2011: Start of public consultation
7. 15 December 2011: Deadline for comments
8. 11-14 September 2012: Discussion in RAC of first draft opinion (link)
9. 30 November 2012: 2$^{nd}$discussion on draft opinion and adoption of RAC Opinion (link)(link)
10. RAC Opinion by a simple majority. One minority opinion (link)

11. 7 December 2012: RAC adopts opinions (link)
12. 29 April 2013: Legal deadline for Opinion
13. Q1 2013: ECHA transmit updated classification to European Commission
14. Q1 2013: Draft Submitted for Inter-Service Consultation (Services)
15. Note: Now a 4 week Public Consultation of Draft for public consultation
16. 21 February 2013: REACH Committee discuss ATP
17. 1 March 2013: Commission submits draft 6thATP
18. 13-14 March 2013: CARACAL discusses draft ATP.
19. 18 March 2013: Deadline for written comments from CARACAL
20. March last week: Inter-Service Consultation
21. 19 June 2013: REACH Committee discuss draft ATP. No vote.
22. November 2013: CARACAL discusses draft ATP.
23. 11 November 2013: Written procedure launched
24. 2 December 2013: COM suspend written procedure of 11 November. Vote on 17/12/13
25. 3 December 2013: Deadline for written procedure
26. 17 December 2013: Vote in REACH Regulatory Committee – approves
27. 13 January 2014 Draft measure transmitted to Council and EP for scrutiny – 3 months (link)
28. 14 April 2014: Deadline for Council and EP to raise objections. None raised.
29. 6 June 2014: Commission Regulation published in Official Journal (link)
30. 26 June 2014: Entered into force

## 10. Case Study: Lessons in Comitology – Challenges in relation to chemicals

**28th June 2019 by Aaron**

Just before the new European Parliament starts work, it's a good time to look at the successful challenges to secondary legislation dealing with chemicals by the European Parliament.

I have looked at five successful challenges in the last Parliament: four REACH Authorisations and one RoHS exemption.

The Council did not raise any objections on secondary legislation about chemical substances.

**Some General Observations**

Reading the objections they focus on:

- A substantive error of law
- Procedural errors
- Ignored something obvious that should have been taken into account

Most of the successful challenges, in general, are around public health issues.

In the main, they mirror the three grounds to challenge a RPS draft: 1. excess of implementing powers, 2. Violation of the aim or content of the legislation, and 3. violation of subsidiarity or proportionality.

It is not easy to mount a successful challenge. The challenge has to be launched quickly after the Commission transfers the text to the European Parliament. It is clear that challenges are not launched on a whim. They are not vexatious.

The challenges secure cross Party support, although the challenges are launched by the Greens and S&D. The size of support in the environment committee and in the full Parliament is often considerable.

If you want to challenge a measure, you are going to have to jump over some very high procedural hurdles.

In the European Parliament, you are going to have to:

1. Find someone to support you
2. Get it past the lead Committee (environment for chemicals), and if passed
3. Get 376 votes for RPS and Delegated acts or majority for implementing acts. To see how hard this threshold see this piece on Canadian Oil Sands challenge

**Specific Observations**

First, the challenges are specific, well reasoned and detailed.

Second, they often highlight the availability of substitutes.

Third, they ask for a more narrow authorisation rather than a simply scrapping it. Indeed, in some, they acknowledge that need for some uses but draw a line about broad or generic derogations.

Finally, one person is behind every successful challenge.

**Case Studies**

1. **27 March 2019: Objection pursuant to Rule 106: Certain uses of bis(2-ethylhexyl) phthalate (DEHP) (DEZA a.s.)**

Measure: Implementing act

Objection by: Poc (S&D), Konečná (GUE), Eickhout (Greens/EFA)

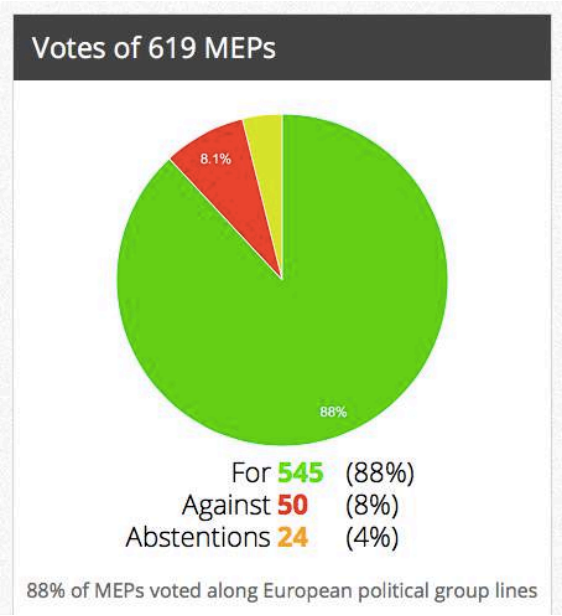
Committee vote: 14 March 2019

Adopted: 39 in favour, 2 against and 1 abstention

Plenary Vote: 27 March 2019

Adopted: For: 545, Against: 50, Abstentions: 24

Vote Watch Link




Votes by MEP | **Votes by political groups** | Defections in the political groups | Votes by member states | Votes by national party

| Group | For | Against | Abstentions | Total present | Total absent | Total non voters | Total members | Cohesion |
|---|---|---|---|---|---|---|---|---|
| ALDE/ADLE | 53 | 3 | 2 | 58 | 0 | 10 | 68 | 87.07 |
| ECR | 39 | 20 | 3 | 62 | 0 | 13 | 75 | 44.35 |
| EFDD | 22 | 0 | 15 | 37 | 0 | 4 | 41 | 39.19 |
| ENF | 29 | 0 | 1 | 30 | 0 | 7 | 37 | 95 |
| EPP | 150 | 22 | 2 | 174 | 0 | 43 | 217 | 79.31 |
| Greens/EFA | 47 | 0 | 0 | 47 | 0 | 5 | 52 | 100 |
| GUE-NGL | 38 | 0 | 0 | 38 | 0 | 14 | 52 | 100 |
| NI | 10 | 3 | 1 | 14 | 0 | 8 | 22 | 57.14 |
| S&D | 157 | 2 | 0 | 159 | 0 | 27 | 186 | 98.11 |

EP objection authorisation DEHP DEZA 27 March 2019

**2. 27 March 2019: Objection pursuant to Rule 106: Certain uses of bis(2-ethylhexyl) phthalate (DEHP) (Grupa Azoty)**
Measure: Implementing act

Objection by: Poc (S&D), Konečná (GUE), Eickhout (Greens/EFA)

Committee vote: 14 March 2019

Adopted: 42 in favour, 0 against and 1 abstention

Plenary Vote: 27 March 2019

Adopted: Carried by a show of hands

EP objection authorisation DEHP Grupa 27 March 2019

**3. 27 March 2019: Objection pursuant to Rule 106: Certain uses of chromium trioxide**

Measure: Implementing act

Objection by: Eickhout (Greens/EFA)

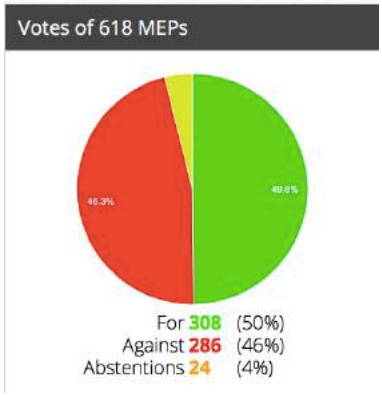
Committee vote: 21 March 2019

Adopted: for: 20, against 16, abstentions 3

Plenary Vote: 27 March 2019

Adopted: For: 309, Against: 286, Abstentions: 24

Vote Watch Link



Votes by MEP | **Votes by political groups** | Defections in the political groups | Votes by member states | Votes by national party

| Group | For | Against | Abstentions | Total present | Total absent | Total non voters | Total members | Cohesion |
|---|---|---|---|---|---|---|---|---|
| ALDE/ADLE | 34 | 21 | 0 | 55 | 0 | 13 | 68 | 42.73 |
| ECR | 5 | 55 | 2 | 62 | 0 | 13 | 75 | 83.06 |
| EFDD | 21 | 2 | 14 | 37 | 0 | 4 | 41 | 35.14 |
| ENF | 29 | 1 | 0 | 30 | 0 | 7 | 37 | 95 |
| EPP | 10 | 163 | 3 | 176 | 0 | 41 | 217 | 88.92 |
| Greens/EFA | 47 | 0 | 0 | 47 | 0 | 5 | 52 | 100 |
| GUE-NGL | 36 | 0 | 3 | 39 | 0 | 13 | 52 | 88.46 |
| NI | 8 | 6 | 0 | 14 | 0 | 8 | 22 | 35.71 |
| S&D | 119 | 38 | 2 | 159 | 0 | 27 | 186 | 62.26 |

EP objection Lanxess chromium trioxide 27 March 2019

**4. 29 November 2018: Authorisation for certain uses of sodium dichromate (link)**

Measure: Implementing act

Objection by: Eickhout (Greens), Poc (S&D), Federley (ALDE)

Committee Vote: 20 November 2018

Adopted by: 24; against: 0; abstentions: 17.

Plenary Vote: Adopted by a show of hands

EP resolution objection Ormezzano 29 Nov 2018

**5. 25 November 2015**: **Authorisation for uses of bis(2-ethylhexhyl) phthalate (DEHP)**

Measure: Implementing act

Objection by: Poc (S&D)

Committee vote: 10 November 2015

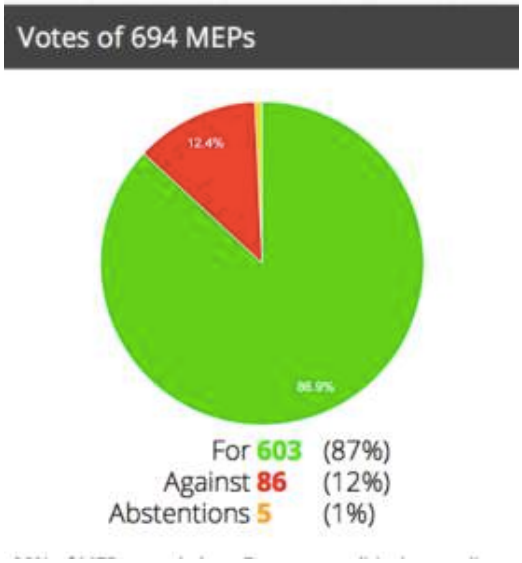
Adopted by: 58 for, 5 against, 0 abstention

Plenary Vote: 25 November 2015

Adopted: For 603 for, against 86, abstentions 5

Majority needed: simple majority 345

EU Vote Watch link




[EP objection authorisation DEHP 25 Nov 2015]

**20 May 2015: Exemption for cadmium in illumination and display lighting applications**
Measure: Delegated act

Objectors: Eickhout, Taylor (Greens/ALE), Groote, Sârbu, Poc, Dance, Melior, Guteland (S&D Group), Konečná (GUE)

Committee Vote: 13 May 2015

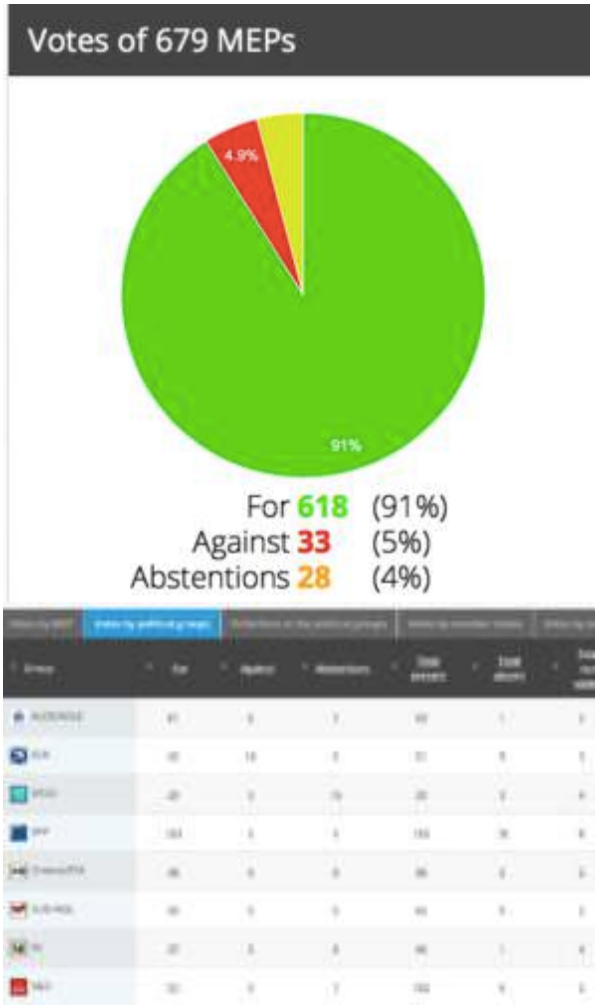
Adopted: unclear

Plenary Committee Vote: 20 May 2015

Adopted by 618 for, 33 against, 28 abstentions

Majority needed: 376

EU Vote Watch link




exemption for cadmium in illumination and display lighting applications 20 May 2015
Categories ComitologyPost navigation

The New Fisheries Committee – the names I have so far
Environment Committee – some of the early names
Leave a comment
Comment

## 11. Case Study: A new road map for CLP ATP – the shift to delegated acts

30th June 2019 by Aaron

The updates of the CLP's ATP will soon shift from RPS to Delegated Acts. REACH will still sit under RPS and be supported by the REACH Committee. CARACAL will become the 'Expert Group' dealing with delegated acts.

The Commission submitted proposal a proposal to manage the transition on 28 June 2019.

I've tried to put it into a process chart (see below).

For ongoing files, in particular, the 14th ATP, a follow-up consultation of the expert group will happen.

On 18 July 2019, documents will be transmitted to the European Parliament after the end of the recess period.
The new regime will enter into force on 26 July 2019.
You can track the adoption of delegated acts via this useful link.

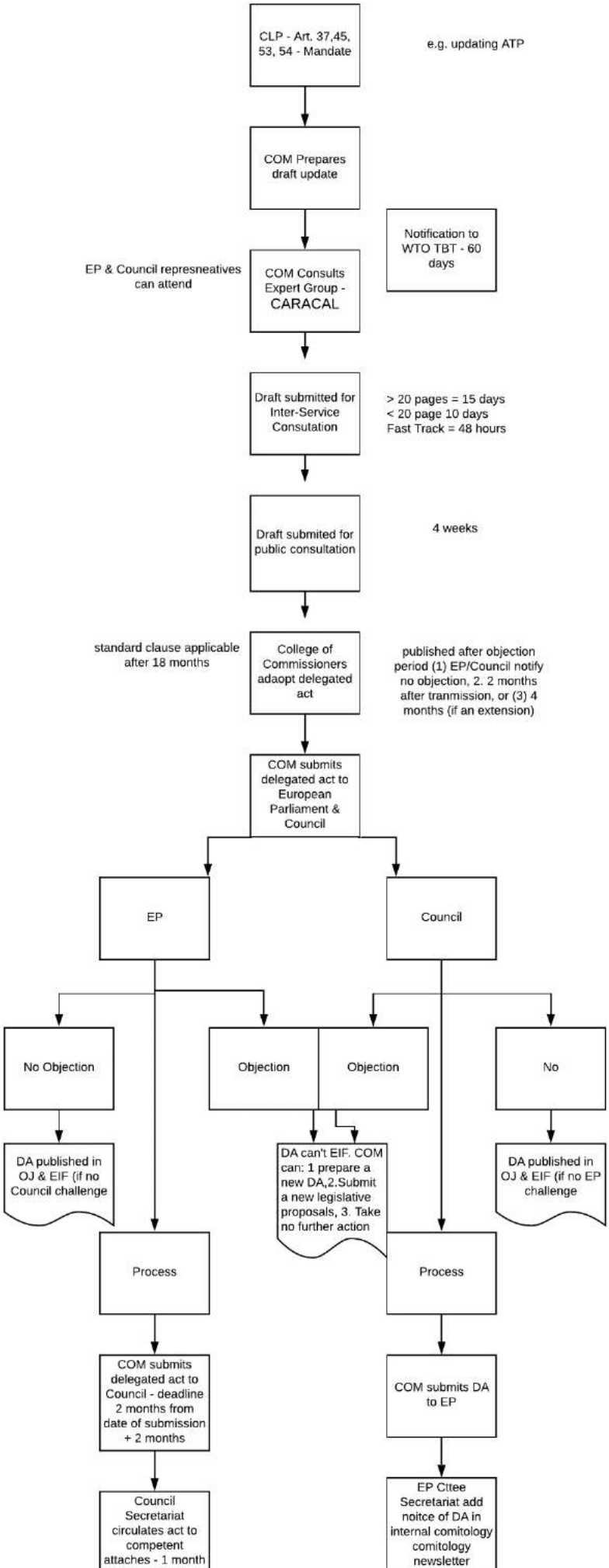
**Points of contention**

The Commission notes "Under the delegated acts procedure, the Commission's preparation of draft texts under CLP will continue as before. They will be subject to publication by the Commission under the public feedback mechanism (unless they concern harmonised classification and labelling, as the public consultation takes place at the level of ECHA). They will also be discussed with Member States and stakeholders at the CARACAL meeting" (page 4).

This seems to be at odds with their current practice. For the 14th ATP, the Commission launched a public consultation (link) on 1 1 January 2019 that closed on 8 February 2019. It received 489 submissions.
The reason for this change is that on draft implementing acts, there is a 4-week feedback period.

If an Agency has already done this and the Commission is simply following the recommendations of the Agency, then the COM does not have to repeat the 4-week feedback.

The same applies to draft delegated acts. For delegated acts, the lead Directorate-General must discuss the draft legal text with other Directorate-Generals before the adoption by the College.


CLP - Art. 37,45, 53, 54 - Mandate
e.g. updating ATP
COM Prepares draft update
Notification to WTO TBT - 60 days
EP & Council represneatives can attend
COM Consults Expert Group - CARACAL
Draft submitted for Inter-Service Consutation
> 20 pages = 15 days
< 20 page 10 days
Fast Track = 48 hours
Draft submited for public consultation
4 weeks
standard clause applicable after 18 months
College of Commissioners adaopt delegated act
published after objection period (1) EP/Council notify no objection, 2. 2 months after tranmission, or (3) 4 months (if an extension)
COM submits delegated act to European Parliament & Council
EP
Council
No Objection
Objection
Objection
No
DA published in OJ & EIF (if no Council challenge
DA can't EIF. COM can: 1 prepare a new DA,2.Submit a new legislative proposals, 3. Take no further action
DA published in OJ & EIF (if no EP challenge
Process
Process
COM submits delegated act to Council - deadline 2 months from date of submission + 2 months
COM submits DA to EP
Council Secretariat circulates act to competent attaches - 1 month
EP Cttee Secretariat add noitce of DA in internal comitology comitology newsletter

## 12. Case study : Can you get a classification re-looked at?

2nd July 2019 by Aaron

From time to time, you may disagree with your substance classification. You want the classification to be re-looked at.

The EU system is very accommodating. It is designed for these eventualities. After all, given the inherent problem of knowledge, vital information may have been overlooked during the classification.

Officials are loath to second guess scientific experts. They are less keen to second guess the opinions of a regulatory agency set up to give advice on the science. And, when it comes to a chemical, nearly all officials will not try and second guess the science. The aversion amongst politicians to second guess regulatory science is even higher.

This aversion gene is not present in French politicians. They are happy to second guess and over-rule ECHA or EFSA when they don't agree.

REACH provides a useful mechanism in Article 77(3)(c). The option has been used 17 times to look at SHVC identification, toys, OELs, and re-looking at classifications. In re-looking at classifications, it's been used four times for two substances.

**Reasons**

The reasons for re-opening are similar. They are about the consideration of relevant and new scientific information. The Commission has raised the following reasons:

- see whether any new of relevant studies
- evaluate the information on toxicity to reproduction submitted during the public consultation on carcinogenicity and take into account also information submitted by Eurometaux in December 2011
- No Qualified Majority Vote in REACH Committee because "study reports had not been available and could not be taken into account by RAC at that time

**Observations**

In the four cases, the Commission asked ECHA to re-open.

In all the cases, the RAC re-confirmed their existing position.

These re-opening cases happened several years ago. Reading the minutes of the Regulatory Committees, there is a clear reluctance to admit 'new' science after decisions have been taken. It's seen as an ill-disguised ploy to drag out the decision-making process.

It is hard to imagine that relevant new scientific evidence will come to light that would lead to the RAC to change their opinion. But, it is not impossible. It is clear from these cases, that vital and relevant scientific evidence may come to light, even after the RAC has come to an opinion, that leads the Commission to ask ECHA to re-open the opinion. It is clear that this 'new science' will have to be convincing to get the Commission to move and even more so to get the RAC to come to a new opinion.

If the Commission is not persuaded, the option exists for a Member State to launch a new classification based on the new science.

**Case 1: Substance: Epoxiconazole toxicity to reproduction**

17 March 2010: First RAC Opinion (link)
10 December: Request from Commission to ECHA (link)
17 January 2011: Mandate from ECHA Executive Director to RAC (link)
11 March 2011: RAC Opinion (link). Re-confirms opinion.
23 February 2012: No Qualified Majority Vote in REACH Committee

Reason: The absence of a qualified majority was due to a number of additional studies that have recently been made available by industry to the Commission. Several of these studies had been noted already by RAC when it adopted its first opinion, but the study reports had not been available and could not be taken into account by RAC at that time."

25 April 2012: Mandate from ECHA Executive Director to Chair of RAC.
28 November 2012: RAC Opinion. Re-confirms opinion.
2 October 2013: included in 5th ATP (link)

**Case 2: Substance: Gallium arsenide in relation to Carcinogenicity**
25 May 2010: First RAC Opinion (link)
10 December 2010: Request from European Commission to ECHA (link)

18 February 2011: Mandate from ECHA Executive Director to RAC (link).
Reason: to "see whether any new of relevant studies."

1 December 2011: RAC Opinion. Re-confirms opinion (link).
2 October 2013: included in 5th ATP (link)

**Case 3: Epoxiconazole**
17 March 2010: First RAC Opinion (link)
10 December 2010: Request from European Commission to ECHA (link)
17 January 2011: Mandate from ECHA Executive Director to RAC
Reason: "whether it is possible that the results of the planned, currently ongoing or planned studies that have been discussed with Regulatory authorities under the regulatory evaluation and approval regime … could be relevant for deciding on the appropriate classification of the substance …"

11 March 2011: RAC Opinion. Re-confirms opinion (link).
2 October 2013: included in 5th ATP (link)

**Case 4: Substance: Gallium arsenide in relation to toxicity to reproduction**

25 May 2010: First RAC Opinion (link)
Undated: Request from the European Commission to ECHA

21 December 2011(revised 17 April 2012): Mandate from ECHA Executive Director to RAC (link)(link).
Reason(s): " verify whether the information submitted with regard to toxicity to reproduction contains elements relevant for classification purposes that were not already examined by RAC when it adopted its opinion of 25 May 2010" and "On 23 December 2011, Eurometaux submitted additional information highlighting that the data were not submitted during the public consultation in 2011 as it was limited to carcinogenicity:

23 July 2013: RAC Opinion. Re-confirms opinion (link).

**Reference**
ECHA website (link)
Note: ECHA Framework for Dealing with Requests for opinions according to Article 77(3)(c) of the REACH Regulation (link)

## 13. Case study: Challenging a REACH ban challenge falls – but closer than many thought

**21st March 2017 by Aaron**
This morning the European Parliament Environment Committee voted on Julie Girling's (UK/ECR) challenge against the listing for authorisation of Triton X-100 under REACH.

The vote was closer than many expected: For 23, Against 34, 1 abstention.

It is the closest any challenge has got to date. I recall a challenge against the phase out of lead in crystal by Swarovksi glass many years ago. It came to nothing.

Challenges usually succeed when a cross party group of MEPs from the S&D, Greens, radical left, and Liberals work together (often with the far right). But, to be fair, challenges are very rare, and successful challenges even rarer. We are talking about cases happening at the margins.

The EPP have a rule not to support challenges to authorisation listings under REACH.

I don't think there was a roll call vote for today's vote. If there is I will update this blog.

This case was peculiar. The reason for the challenge was more with a view to influence the Commission for a longer grant for continued permitted use of an otherwise phased out substance. Julie Girling, a respected British Conservative MEP, who serves as the liaison with ECHA supported the challenge. This was not a frontal challenge against a substance being listed.

I will have to wait longer until the Environment Committee, who lead on REACH matters, launch a successful challenge against a REACH authorisation listing. However, as these are implementing acts, the Commission does not have to follow the EP.

Time will tell if the tactic works and the Commission grant a longer period for continued use after the official phase out. To date, the longest so far is 12 years. That can be renewed.

**Is there an alternative?**

Coming in this stage is a last resort. There must be an alternative? I think there is. I was chatting with one of Europe's leading experts on chemical regulation. I asked them how a substance, vilified by many NGOs and many politicians, had walked away from microscopic independent scientific review.

The answer was the substance had lots of world-class scientific studies and data, going back decades, that they handed over.

They brought in world-class scientific experts to present the science clearly and answer all and any questions clearly, humbly, and helpfully.

They stuck to the science, did not verve off message and talk about socio-economic impacts, and played the game as it was meant to be, and not how most people do.

After many hundreds of pages later one of the most disliked substances of the 20th century walked away.

Many may find it strange for a political consultant to suggest such a staid and scientific approach. I think you should keep the "dark arts" for the very few times when they are needed. That's usually when, for exceptional reasons, things go wrong.

For 99% of the time, I just hope the science is followed, and the rules of the game are followed to the letter. Lobbyists and politicians are not very good at deciding at what science is.

I hope more people go for the dull approach.

## 14.How to adopt a proposal – a case study – Single Use Plastics

23rd July 2018 by Aaron

This European Commission has a limited mandate on the environment front.

If you look at Commission Vella's 'Mission Letter' (1st November 2014) there is no hint of new legislative action. Indeed, the original intent of this Commission was to withdraw a number of legacy proposals from President Barroso, including the circular economy and waste legislation (link). Strangely, the Commission landed up re-tabling them.
Indeed, the Commission appears to view that the most practical means for them to avoid too ambitious environmental legislation being adopted is not to table it in the first place. Given the political record of the European Parliament and Environment Council this is a rational position. Indeed, apart from withdrawing or requiring unanimity, there is little else the Commission can do.

It is likely that the Commission never wanted to table a proposal on the plastics. A unique confluence of events led them to it. A public debate on plastic pollution instigated by BBC screen Blue Planet by Sir David Attenborough in October 2017, Member State action, among other things, led to it being tabled.

Yet, when the political tides led the Commission to act, they pushed it through the funnel of the Better Regulation (link), including two visits to the Regulatory Scrutiny Board on 5 March 2018 and 6 April 2018 (link).
The sequencing of events though is of more interest to see how proposals can evolve and land up being adopted.

**Regulating Plastics – A timescale**

- 13 September 2017: State of the Union (link) and letter of intent that mentions "ncluding: a strategy on plastics working towards all plastic packaging on the EU market being recyclable by 2030" (Draft Work Programme)
- 24 October 2017: Work programme published 24 October 2017 (link) mention of 'this includes a strategy on plastics use, reuse and recycling – (non – legislative, Q4 2017)
- 9 November 2017: Commission ask ECHA to start look at REACH Restriction on micro plastics
- 15 December 2017: Public consultation on Inception Impact Assessment Reducing marine litter: action on single use plastics and fishing gear (link) ending 12 January 2018
- 16 January 2018: Communication 'A European Strategy for Plastics in a Circular Economy' (link) including:

    - start the process to restrict the intentional addition of micro plastics to products via REACH
    - Actions to reduce single- use plastics: analytical work, including the launch of a public consultation, to determine the scope of a legislative initiative on single – use plastics
- 17 January 2018: ECHA notification (link)
- 5 March 2018: Regulatory Scrutiny Board – Negative Opinion on Reducing Marine Litter
- 6 April: Regulatory Scrutiny Board – Positive Opinion (with reservations) – Reducing Marine Litter
- 22 May 2018: College of Commissioner adopt 'Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment' (link)
- 28 May 2018: Proposal for a Directive on reduction of the impact of certain plastic products on the environment (link) (press release)
- 28 May 2018: Public Consultation on proposal until 24 July 2018 (link)
- 11 January 2019: ECHA plan to submit REACH Annex XV Dossier / Restriction Dossier
- Second Quarter 2018: Political Agreement

# Links

1. Values Work – Why Not Use Them
2. EFTA Opens Up the EU's Secret Law Making to the Public
3. How to control the European Commission when law making – Delegated legislation – Part 1
4. The Environment Committee Keeping Control of the Commission – Success in the Scrutiny of Delegated Legislation
5. How to control the Commission when law making – delegated legislation – Part 2 – The Benefits of Better Regulation
6. Delegated Legislation – the pre-adoption phase
7. What to do if the Commission's delegated legislation proposal is against you?
8. Lobbying ISC
9. 5 Lessons on Political Campaigning
10. Why better regulation works – good on timelines
11. A Sure Thing – How to get the Commission to table a new law
12. A checklist for getting the right law
13. All you need to know how to influence the EU in one easy chart
14. How the EU adopts a proposal
15. REACH ban challenge falls – but closer than many thought
16. How does the European Commission prepare and adopt the Annual Work Programme
17. Better Regulation and Ordinary Legislation in one easy chart
18. EU Better Regulation in 10 easy charts and checklists
19. Endocrine Challenge Debate on 28 September
20. European Parliament Reject Commission's Endocrine Proposal – how they voted
21. Politics, Process, Policy and Campaigning – 4 vital skills you need to win
22. 21 ways to lose a campaign

23. Inter-service consultation – the basics
24. 21 Simple Things You Can Do To Persuade The European Parliament – The Basics
25. Why lobbyists need to leave the Regulatory Scrutiny Board alone
26. 21 things you need in your lobby plan
27. 21 ways to frame the agenda of the next European Commission
28. Everything you wanted to know about trilogues, but were afraid to ask
29. Can a lobbyist block secondary legislation?
30. Why timing is everything for a lobbyist
31. Better Regulation – A Primer
32. Having Your Own Canary in the Legislative Mine
33. 5 useful techniques for producing winning campaign ideas
34. If you don't like the law, the read this- using review clauses
35. How to ignore your Commissioner
36. Why timing is everything in lobbying – setting the Commission's Work Programme
37. How to adopt a proposal – a case study – Single Use Plastics
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41. What to do if you have only 4 weeks to turn things around?
42. What does good public policy look like
43. Checklist for the policy memo
44. Find the right map – dealing with chemical law making – 10th ATP
45. Getting your issue taken up in Brussels – 7 Key Questions You Need to Answer Before You Start – Case study of Single Use Plastics
46. A Simple Test to Know If Your Lobbying Efforts Will Come to Anything – a lobby plan

47. When to make an Impact Assessment public
48. A 5-year legislative slumber set to hit Brussels – transmission dates for DA
49. Controlling the Commission's Use of Delegated Acts – success stories
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51. REACH authorisations & the European Parliament – updated
52. Why lobbyists need to use maps – 109 steps
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54. Some Useful Checklists for Public Policy Writing
55. A 10 point checklist before you start your campaign journey
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