

# TRACKING EU LEGISLATION

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Malgré des allégations selon lesquelles la législation est imposée "toute faite" par la Commission Européenne aux États membres réticents, celle-ci résulte en fait d'un processus législatif formel incluant des propositions, des discussions et des négociations. Le présent article se penche sur la façon de suivre ce processus en se basant sur l'exemple de la *Directive sur la responsabilité environnementale (2004/35/CE)*, qui trouve son origine dans la *COM (2002) 17*, elle-même présentée en réponse à une demande de 1994 du Parlement Européen à la Commission. Au moyen de plusieurs sources, dont le service *PreLex* de la Commission et l'*Observatoire Législatif du Parlement Européen*, l'article indique où trouver de la documentation pertinente et comment l'interpréter.

Niettegenstaande het eerder ongenoegen van bepaalde lidstaten dat de Europese wetgeving uitsluitend op conto van de Europese Commissie geschiedt, bestaat er een gans wetgevingsproces van voorstellen, discussiëren en onderhandelen. Het artikel doorloopt deze proces aan de hand van de *Milieuaansprakelijkheidsrichtlijn (2004/35/EC)* die teruggaat tot een COM-document uit *COM (2002) 17* en in 1994 ook een antwoord staafde van de Commissie op een vraag van het Europees Parlement. Via een aantal bronnen zoals *PreLex* van de Europese Commissie en het *Legislative Observatory* van het Europees Parlement, wordt aangegeven waar relevante informatie kan gevonden worden en hoe er adequaat gebruik van te maken.

Despite UK tabloid assertions to the contrary, European legislation is not "foisted" on the Member States and it does not spring fully-formed from the collective head of the European Commission.

The creation of EU law is a long process but it is not, as it is often described, a maze and there are excellent tools available that make it possible to track material over several years.

This presentation will examine how legislation, in the first example the *Environmental Liability Directive (2004/35/EC)* is created, looking at its origins and how it changes during the adoption process.

As it is generally accepted that the European Commission brings forward all proposed legislation, we should presumably be looking at its document *COM (2002) 17* final as the start of the process that led to *Directive 2004/35/EC* (fig. 1).

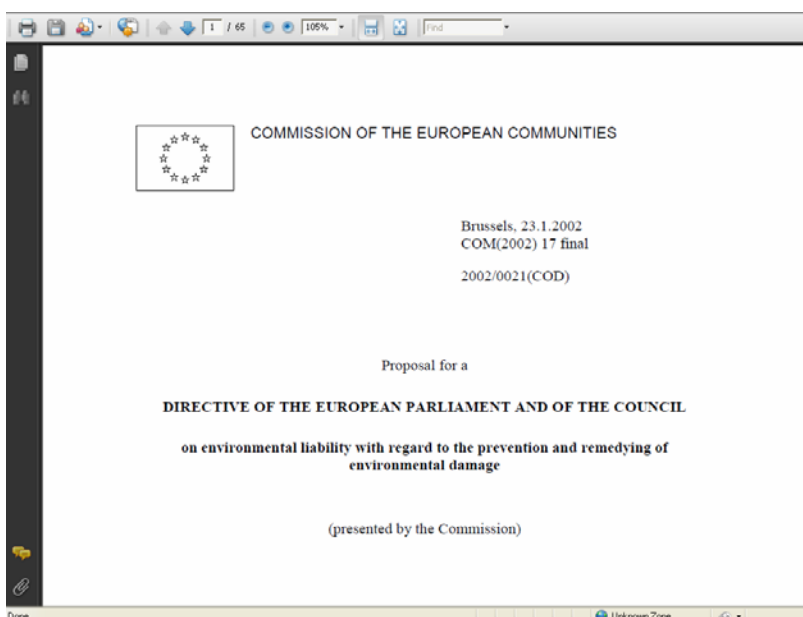


Fig. 1: COM (2002) 17.

However, we would be wrong.

The "final" in the document's reference indicates that this is the version of the proposal accepted by the Commission for transmission to the European Parliament and Council for their consideration. Previous versions will have been discussed at length with experts both from within the Commission's own directorates and from the Member States.

In fact, the genesis of this Directive goes back much further. The European Parliament adopted a Resolution asking the Commission for legislation in this field in 1994 - so long ago that the relevant *Official Journal* is not available online so we can't examine the text.

What we can see is the first result of that request, the February 2000 *White Paper on Environmental Liability* (COM (2000) 66 final) (Fig. 2).

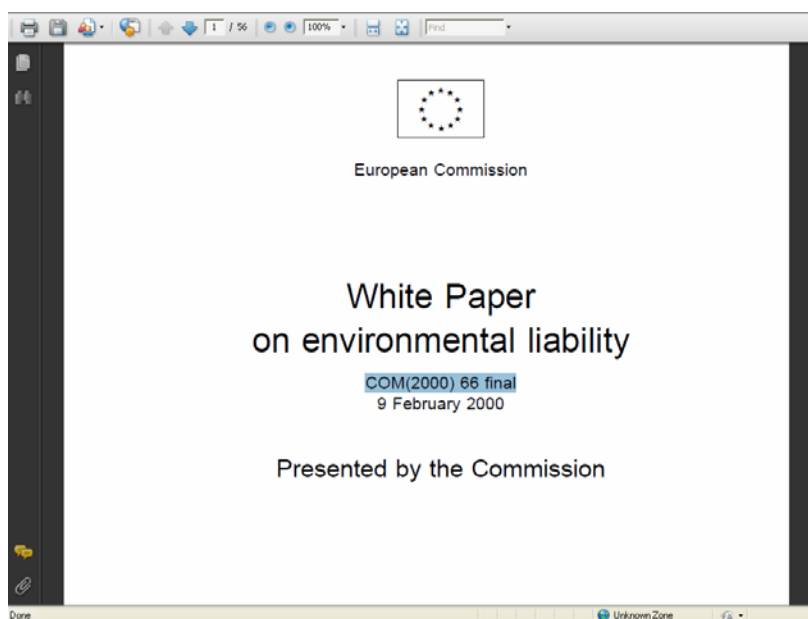


Fig. 2: White Paper on Environmental Liability (COM (2000) 66 final).

From this we can see that:

*"The White Paper concludes that the most appropriate option would be a framework directive providing for strict liability for damage caused by EC-regulated dangerous activities, with defences, covering both traditional and environmental damage, and fault-based liability for damage to biodiversity caused by non-dangerous activities. The details of such a directive should be further elaborated in the light of consultations. The EU institutions and interested parties are invited to discuss the White Paper and to submit comments by 1 July 2000."*

Which brings us back to COM (2002) 17 and the proposal for a *Directive of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage*.

We already know that that went on to become Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage, but let us go back to January 2002 when the Commission adopted its proposal. Where would we have looked for details of its consideration by the other EU bodies?

Let's start with the *European Parliament's Legislative Observatory* (sometimes referred to as *Oei!*)<sup>1</sup>. (Fig. 3)



Fig. 3: European Parliament's Legislative Observatory.

As we already know the Commission document (COMdoc) reference, we can use that option in the "Reference" column, selecting "Commission document" and entering the details on the page displayed (fig. 4):

Fig. 4: European Parliament’s Legislative Observatory – Search by COMdoc reference.

Searching for those details takes us to (fig. 5):

Fig. 5: European Parliament’s Legislative Observatory – Results.

Clicking the link "COD/2002/0021" takes us to this page with details of the process and associated documentation (fig. 6):

The information here reflects the current status of the procedure

Identification	
Reference	<b>COD/2002/0021</b>
Title	<b>Environment: liability with regard to the prevention and remedying of environmental damage</b>
Legal Basis	EC 175-p1 ; EP 050
Dossier of the committee	CODE/5/20613
Subject(s)	3.70.16 law and environment, liability
Stage reached	<b>Procedure completed</b>

Stages		Documents: references					
Stages		Source reference					
		Source reference	Equivalent references	Votes and amendments	Joint resolution	of document	
Commission/Council: initial legislative document		EC	<a href="#">COM(2002)0017</a>	C5-0088/2002			23/01/2002
EP: draft report by the committee responsible		EP	PE316 215				13/06/2002
Economic and Social Committee: opinion, report		ESC	<a href="#">CES0868/2002</a>				17/07/2002
EP: draft report by the committee responsible		EP	PE316 215/REV				07/11/2002
EP: decision of the committee responsible, 1st reading/single reading							29/04/2003
EP: tabled legislative report, 1st reading or single reading		EP	<a href="#">A5-0145/2003</a>				29/04/2003
EP: position, 1st reading or single reading		EP	<a href="#">T5-0211/2003</a>				14/05/2003
Council: statement on common position		CSL	<a href="#">11548/2003</a>				25/07/2003
Council position		CSL	<a href="#">10933/5/2003</a>	C5-0445/2003			18/09/2003
Commission: communication on the common position		EC	<a href="#">SEC(2003)1027</a>				19/09/2003

Fig. 6: European Parliament’s Legislative Observatory – details of the process and associated documentation.

This may look confusing at first sight, but it makes sense when you consider the normal route that legislation takes through the EU adoptive process:

- The proposal is sent to the European Parliament and the Council for consideration. The Parliament gives the document to one or more of its Committees for a detailed report to be prepared (if more than one Committee is involved then one takes the lead role).
- That report, usually putting forward detailed amendments to the proposal, has to be accepted by the Committee before it goes for First Reading by the full, plenary, session of Parliament.
- At the same time, the Council will be working towards a Common Position on the proposal.
- If the subject of the proposal falls within their remit, the Economic and Social Committee (ESC) and/or the Committee of the Regions (CoR) will be invited to comment, but as their suggestions have no legal power, we can safely, at this stage, ignore them.

Returning to the "Procedure" page in the *Observatory*... (see fig. 6)

We can now see that the left-hand column is a record of these various stages with, under the heading "source reference", live links to the text of the documents concerned.

Here is the rest of that page, taking us all the way to the "Final legislative act", *Directive 2004/35/EC* (fig. 7):

common position	EU	<a href="#">SEC(2003)1027</a>			19/09/2003	
EP: draft report by the committee responsible	EP	PE332.617			03/11/2003	
EP: decision of the committee responsible, 2nd reading					02/12/2003	
EP: tabled legislative report, 2nd reading	EP	<a href="#">A5-0461/2003</a>			02/12/2003	
EP: position, 2nd reading	EP	<a href="#">T5-0575/2003</a>			17/12/2003	C
Commission: opinion on the EP position at second reading	EC	<a href="#">COM(2004)0055</a>	C5-0044/2004		26/01/2004	
EP: tabled legislative report, 3rd reading	EP	<a href="#">A5-0139/2004</a>			19/02/2004	
EP/Council: Conciliation committee, results					23/02/2004	
EP/Council: joint text	CSL/EP	3622/2004	<a href="#">C5-0079/2004</a>		10/03/2004	
EP: draft report by the delegation to the Conciliation Committee	EP	PE287.640			11/03/2004	
EP: legislative resolution, 3rd reading	EP	<a href="#">T5-0233/2004</a>			31/03/2004	C
Final legislative act	EU	<a href="#">32004L0035</a>			21/04/2004	L

Agents			
European Parliament			
Committee	Rapporteur / Co-rapporteurs	Previous	Political group
EP Delegation to Conciliation Committee (responsible)	Manders Toine		ELDR
European Commission and Council of the Union			
European Commission DG	Environment	Transmission date: 19/02/2002	
Council of the Union	Justice and Home Affairs (JHA)	meeting: 2574	
Previous Councils			

Links to other sources	
European Commission	<a href="#">PreLex</a>

Fig. 7: European Parliament's Legislative Observatory – details of the process and associated documentation.

Looking at the bottom of the page, below the heading "Agents", you will see that the member of the European Parliament (MEP) responsible for guiding the proposal through the final stage (the Conciliation Committee) was Toine Manders.

The *Observatory* always gives the name of the "Rapporteur" with regard to any given proposal and this can be useful information for those wishing to make their views known about ongoing proposals.

Take for example *COM (2008) 665 final - a proposal for a Directive of the European Parliament and of the Council amending, as regards pharmacovigilance, Directive 2001/83/EC on the Community code relating to medicinal products for human use*.

From the *Observatory* page on fig. 8, we can see that the Lead Committee in this instance is the Environment, Food Safety and Public Health Committee and the MEP charged with preparing the report on the proposal for that Committee (the Rapporteur) is Linda Mcavan.

Agents			
European Parliament			
Committee	Rapporteur / Co-rapporteurs	Previous	Political group
Environment, Public Health and Food Safety (responsible)	Mcavan Linda		S&D
Industry, Research and Energy (opinion)	Rivasi Michèle		Verts/ALE
Internal Market and Consumer Protection (opinion)	Turmes Claude		Verts/ALE
European Commission and Council of the Union			
European Commission DG	Health and Consumers	Transmission date: 10/12/2008	
Council of the Union	Employment, Social Policy, Health and Consumer Affairs	meeting: 2980	of: 30/11/2009

Fig. 8: European Parliament's Legislative Observatory – details of COM (2008) 665 final.

Like most MEPs she has a website from which, in this case, we can learn something more about her work as Rapporteur on the proposal we are following (Fig. 9):

The screenshot shows the website of Linda McAvan MEP. The header includes her name and the slogan "Working in Europe for Everyone in Yorkshire and the Humber". A search bar and the European Union flag are visible. The main content area features a news article dated 29th April 2010, titled "Linda Leads Fight for Patient Rights on Drugs Side Effects". The article text discusses the EU's Committee on the Environment, Public Health and Food Safety's vote to back proposals for new drug safety warnings and patient reporting mechanisms. It mentions that currently, almost 200,000 people die every year in the EU due to adverse drug reactions, and that the new rules would require additional safety monitoring for new products. The article also notes that clinical trials can only give a good indication of a drug's safety, and that empowering patients to report side effects is crucial. The article concludes with a quote from Linda: "From now on, members of the public will be able to keep a much closer watch over the safety of their medicines. Patients have the right to a greater degree of transparency, so that they can trust the medicines they take, and so that they can become more involved in their treatment."

Fig. 9: Website of Linda McAvan.

Returning to the *Observatory* record, it is also worth noting that the European Parliament usually gives some indication of future plans for a proposal, which can be useful given the length of time that the adoption process takes and the periods when apparently nothing is being done (usually when negotiations are going on behind the scenes between the Parliament and the Council of Ministers).

The dates given are subject to the vagaries of the political timetable and can be changed, but they still offer useful guidance as to when to look for progress on a particular proposal.

In the case of *COM (2008) 655*, we can see, under the heading "Forecasts", that the plenary session of Parliament is expected to give a reading to its Committee's report on 21 September 2010 and the Parliament expects the Council of Ministers to have reached political agreement by 6 December 2010 (Fig. 10):

Stages						
Stages	Documents: references					Dates of publication in Official Journal
	Source reference	Equivalent references	Votes and amendments	Joint resolution	of document	
Commission/Council: initial legislative document	EC	<a href="#">COM(2008)0665</a>	08-0514/2008			10/12/2008
Document annexed to the procedure	EC	<a href="#">SEC(2008)2670</a>				10/12/2008
Document annexed to the procedure	EC	<a href="#">SEC(2008)2671</a>				10/12/2008
Document annexed to the procedure	EDPS	JOC_2009/C/229/04				22/04/2009 <a href="#">C 229 23.09.2009, p. 0019</a>
Economic and Social Committee: opinion, report	ESC	<a href="#">CES1024/2009</a>				10/06/2009
EP: draft report by the committee responsible	EP	<a href="#">PE430_927</a>				17/12/2009
EP: decision of the committee responsible, 1st reading/single reading						27/04/2010
EP: tabled legislative report, 1st reading or single reading	EP	<a href="#">A7-0159/2010</a>				02/06/2010

Forecasts	
21/09/2010	EP plenary sitting (indicative date)
06/12/2010	Council: political agreement on position expected

Agents				
European Parliament				
Committee	Rapporteur / Co-rapporteurs	Previous	Political group	Appointed
Environment, Public Health and Food Safety (responsible)	Mcavay Linda		S&D	10/09/2009
Industry, Research and Energy (opinion)	Rivasi Michèle		Verts/ALE	16/09/2009
Internal Market and Consumer Protection (opinion)	Turmes Claude		Verts/ALE	28/09/2009

European Commission and Council of the Union			
European Commission DG	Health and Consumers	Transmission date:	10/12/2008
Council of the Union	Employment, Social Policy, Health and Consumer Affairs	meeting: 2980	of: 30/11/2009

Links to other sources	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">PreLex</a>

Fig. 10: European Parliament's Legislative Observatory – details of COM (2008) 665 final.

One other point to look for on the above page: the "Links to other sources" and particularly to *PreLex*.

*PreLex* is the European Commission's version of the Parliament's Observatory, in that it offers a database of proposals, with indications as to their progress through the system. Any record in the Observatory will have a link to *PreLex*, taking you directly to the *PreLex* dossier for that item.

Clicking on the *PreLex* link in the above instance, therefore, brings up the following (Fig. 11):

The screenshot shows the PreLex website interface. At the top, it says 'This site is a part of Europa' and 'Monitoring of the decision-making process between Institutions'. The main heading is 'COM (2008) 665' with the reference '2008/0260/COO'. Below this is a timeline from 10-12-2008 to 01-12-2009. A section titled 'Events:' lists various milestones:
 

- 13-12-2008: Adoption by Commission
- 10-12-2008: Supplementary
- 12-12-2008: Transmission to Council
- 17-12-2008: Transmission to EP
- 17-12-2008: Opinion of the European Data Protection Supervisor
- 22-04-2009: Adoption by Council
- 19-06-2009: ESC opinion
- 07-10-2009: Knowledge of Regions opinion
- 01-12-2009: Adoption by Council
- 07-12-2009: J.C.

 On the right side, there are details for '16-12-2008' under 'Adoption by Commission', including 'Legal base: Commission - Transl CE art 95', 'Procedures: Commission - Cooperation procedure', and 'Type of file: Commission - Proposal for a Directive'.

Fig. 11: PreLex.

From which it can be seen that, whereas the *Observatory* naturally follows progress from the Parliament's perspective, in *PreLex* the Commission is concerned with the wider picture including, for example, more information about the activities of the Council.

Not shown in that example, but of considerable interest, are the links given to any press releases about a particular proposal, as in the example given below where, under the heading "Adoption by Commission", the reference "IP/2008/1433" alerts us to the fact that a press release accompanied the adoption of the proposal (Fig. 12):

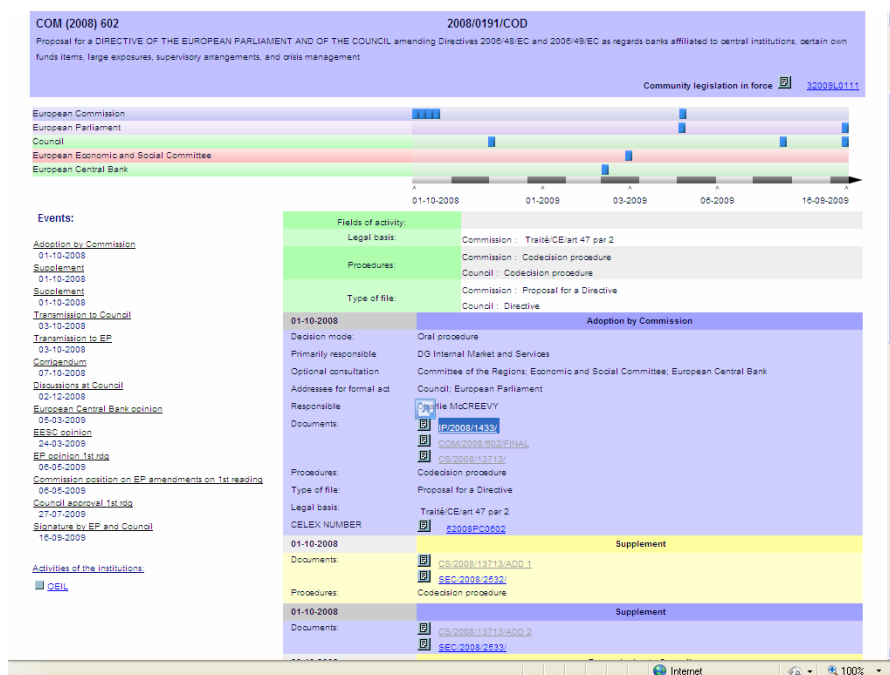


Fig. 12: Prelex – Press releases.

As can be seen from this excerpt, the press release gives a readable summary of the proposal (Fig. 13):



Fig. 13: Prelex – An example of press release.

## PreLex or Observatory?

The two databases each have their uses and detailed examination of a particular piece of proposed legislation usually means taking advantage of the strengths of both. Each will ultimately lead to the Directive, Regulation or Decision that results from the various stages examined here.

So, to return to the example with which we began, the request from the Parliament in 1994 led, 10 years later to (fig. 14):

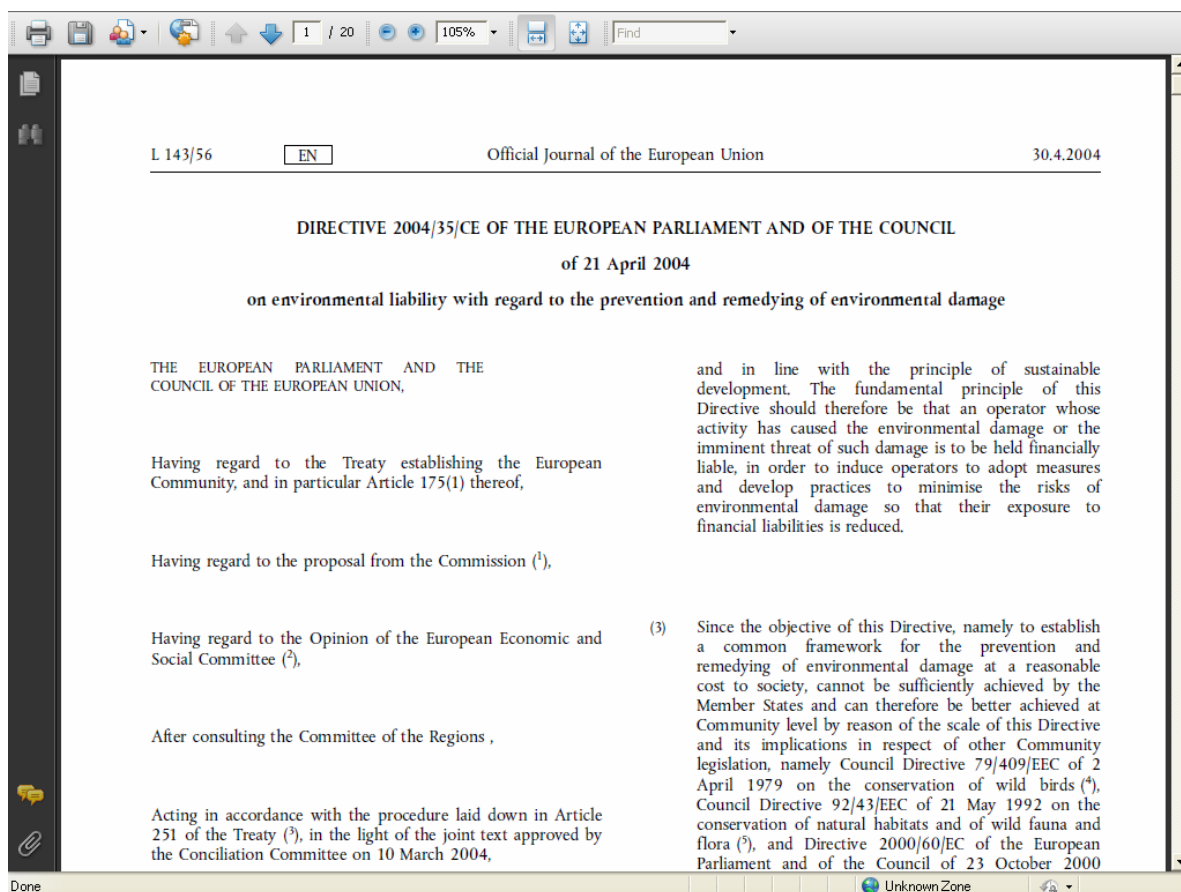


Fig. 14: Official Journal of the European Union.

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## Note

<sup>1</sup> European Parliament. *The Legislative Observatory – Procedure Tracking: search* [online]. <<http://www.europarl.europa.eu/oeil/search.jsp>> (consulted on 20 October 2010).