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.

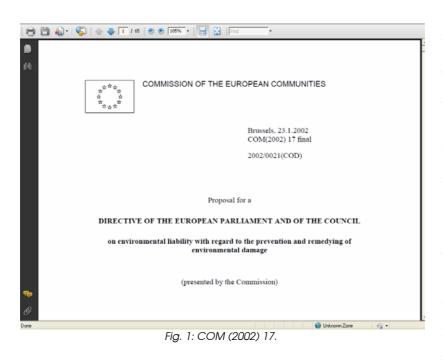
• Niettegenstaande het eerder ongenoegen van bepaalde lidstaten dat de Europese wetgeving uitsluitend op conto van de Europese Commissie gescheven wordt, bestaat er een gans wetgevingsprocessus van voorstellen, discussiëren en onderhandelen. Het artikel doorloopt deze processus aan de hand van de *Milieuaansprakelijkheids-richtlijn (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.

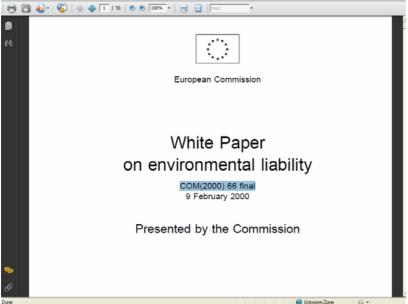
As it is generally accepted that the European Commission brings forward all proposed legislation, we should presumably be looking at its document *COM (2002)* 17 final as the start of the process that led to *Directive* 2004/35/EC (fig. 1).



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).



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 nondangerous 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."

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

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 *Oeil*)¹. (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):

by Commission document reference	-			
Select a document type :	COM document	(COM)	🚩 (mandatory)	
Enter a reference :	COM Acronym (read only)	2002 Year (mandatory)	17 Number (mandatory)	
				🗙 Reset 🔎 Search

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

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

by Commission document reference	See list of codes
	See reference model
1 result(s) found for: COM(2002)17	Print
1 COD/2002/0021 Environment: liability with regard to the prevention and remedying of environmental damage **** > EP Delegation to Conciliation Committee > Manders Toine (ELDR) codecision procedure, 3rd COM(2002)0017 > Manders Toine (ELDR)	
	木 Тор
Download options	📇 Print
Format : 💿 🔞 🔿 🔌 🔿 📲 Download the procedures: Selected All	
	Disclaimer Version 3.31

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):

Identification							
Reference	COD/2	2002/0021					
Title	Enviro	nment: liability with	regard to the prevention	on and remed	dying of envi	ronmental damag	je
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	Proced	lure completed					
Stages							
			Documents: refe	erences			
Stages	S	ource reference	Equivalent references	Votes and a	imendments	Joint resolution	of documen
Commission/Council: initial legislative document	EC	COM(2002)0017	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	CES0868/2002					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	A5-0145/2003					29/04/2003
EP: position, 1st reading or single reading	EP	T5-0211/2003					14/05/2003
Council: statement on common position	CSL	11548/2003					25/07/2003
Council position	CSL	10933/5/2003	C5-0445/2003				18/09/2003
Commission: communication on the common position	EC	SEC(2003)1027					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	SEC(2003)1027				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	A5-0461/2003				02/12/2003	
EP: position, 2nd reading		EP	T5-0575/2003				17/12/2003	<u>c (</u>
Commission: opinion on the EP position at second reading		EC	COM(2004)0055	C5-0044/2004			26/01/2004	
EP: tabled legislative report, 3rd reading		EP	A5-0139/2004				19/02/2004	
EP/Council: Conciliation committee, results							23/02/2004	
EP/Council: joint text		CSL/EP	3622/2004	C5-0079/2004			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	T5-0233/2004				31/03/2004	<u>c ·</u>
Final legislative act		EU	32004L0035				21/04/2004	L
Agents								
European Parliament								
Committee			Rapporteur	/ Co-rapporteurs	Previous		Political group	
EP Delegation to Conciliation Committee (responsible)		Manders	Toine			ELI	DR	
European Commission and Council of th	e Un	ion						
European Commission DG		Environm	ent			Transmiss	ion date: 19/02/2002	
Council of the Union Previous Councils 		Justice a	nd Home Affairs (JH	HA)		meeting: 2	574	c
Links to other sources								
Links to other sources European Commission <u>PreLex</u>								

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	Previou	s	Political group		Appointed
Environment, Public Health and Food Safe (responsible)	ty	Mcavan 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 o	f the	Union					
European Commission DG		Health and Consumers		Transn	nission date: 10/12/2008		
Council of the Union		Employment, Social Policy, Health and Consumer Affairs		meeting	g: 2980	of: 30/1	1/2009

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):

Linda McAvan MEP Working in Europe for Everyone in Yorkshire and the Humber	•
Home Page About Linda McAvan News Special Reports How does the EU work? About Yorkshire & Humber Contact	
29th April 2010: Linda Leads Fight for Patient Rights on Drugs Side Effects	
Linda McAvan recently led EU moves to put the public at the forefront of drug safety monitoring.	
The EU's Committee on the Environment, Public Health and Food Safety voted to back proposals put forward by Linda to ensure that new drugs carry extra safety warnings and ask people to report harmful drug side effects that may have been missed in clinical trials.	
Currently, almost 200,000 people die every vær in the EU because of adverse drug reactions. Even minor side effects that era more common can be debilitating. Although lengtly dinical trials on humans have to be conducted under strict criteria before any drug is licensed, it is impossible to replicate every scenario to babolutely guarantes sefety. Drugs can react to all manner of other substances or other drugs a patient is taking, individual patients may react to any given drug in a unique way, and side effects may only become apparent over many værs.	
Most people know about Thalidomide in the late 1950s and early 1960s, but there have been more recent cases such as with the drug Vioxx, a painkiller, which was withdrawn in 2004.	
The new rules would mean that patients prescribed entirely new products would be told in the package leaflet that the medicine is subject to "additional safety monitoring". A new European symbol will be devised to make it easy for people to spot the new products, together with contact details for the MRA (the Medicines and Healthcare Products Regulatory Agency), which will record any adverse reactions and share them with other European countries via a common database.	
"Clinical trials can only ever give a good indication that a particular drug is safe. But by empowering people to report side effects, and extending this ability across the 500 million people of the EU, we massively increase the chances of side effects being picked up and acted upon," ays Linda.	
The proposals also mean that much more information on medicines safety would be made available to the public through a dedicated weakler. Information on reported aids effects will be fed back to patients, with details to be included on the leaflets that accompany drugs, along with information on how people can report side effects.	
"From now an, 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 tous the medicines they take, and so that they can become more involved in their treatment."	
-ends-	
Editors Notes: The Committee vote also called for other changes to the drug safety monitoring system:	
Transparency The recommendations of the advisory body on drugs licensing would be given more weight by	
ione	🖓 • 🔍 100% •

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				Documents: refe	rences				Dates
Stages		s	ource reference	Equivalent references	Votes and a	amendments	Joint resolution	of document	of publication in Official Journal
Commission/Council: initial legislative locument		EC	COM(2008)0665	C6-0514/2008				10/12/2008	
ocument annexed to the procedure		EC	SEC(2008)2670					10/12/2008	
locument annexed to the procedure		EC	SEC(2008)2671					10/12/2008	
locument annexed to the procedure		EDPS	JOC_2009/C/229/04					22/04/2009	C 229 23.09.2009, p. 0019
conomic and Social Committee: opinion, eport		ESC	CE\$1024/2009					10/06/2009	
P: draft report by the committee esponsible		EP	PE430.927					17/12/2009	
P: decision of the committee esponsible, 1st reading/single reading								27/04/2010	
P: tabled legislative report, 1st reading r single reading		EP	A7-0159/2010					02/06/2010	
Forecasts									
21/09/2010		EP ple	nary sitting (indicative	date)					
06/12/2010		Counc	il: political agreement o	n nosition expected					
				n poetion expected					
Agents		1							
Agents Suropean Parliament Committee			Rapporteur			Previous	Po	litical group	Appointed
uropean Parliament	ty	Mcava	Rapporteur /	/ Co-rapporteurs		Previous	Pc S&D	lítical group	Appointed 10/09/2009
uropean Parliament Committee invironment, Public Health and Food Safe						Previous			
uropean Parliament Committee invironment, Public Health and Food Safe responsible)		Rivasi	in Linda			Previous	S&D		10/09/2009
inviropean Parliament Committee invironment, Public Health and Food Safe responsible) ndustry, Research and Energy (opinion) nternal Market and Consumer Protection	,	Rivasi Turme	in Linda Michèle			Previous	S&D Verts/ALE		10/09/2009
uropean Parliament Committee nvironment, Public Health and Food Safe responsible) ndustry, Research and Energy (opinion) ndustry, Research and Consumer Protection opinion)	,	Rivasi Turme Union	in Linda Michèle				S&D Verts/ALE		10/09/2009
uropean Parliament Committee invironment, Public Health and Food Safe responsible) ndustry, Research and Energy (opinion) nternal Market and Consumer Protectior opinion) uropean Commission and Council (,	Rivasi Turme Union Health	in Linda Michèle s Claude and Consumers		irs	1	S&D Verts/ALE Verts/ALE	10/12/2008	10/09/2009
uropean Parliament Committee nvironment, Public Health and Food Safe responsible) ndustry, Research and Energy (opinion) nternal Market and Consumer Protection opinion) uropean Commission and Council of uropean Commission DG	of the	Rivasi Turme Union Health	in Linda Michèle s Claude and Consumers	Co-rapporteurs	irs	1	S&D Verts/ALE Verts/ALE	10/12/2008	10/09/2009 16/09/2009 28/09/2009
Inviropean Parliament Committee invironment, Public Health and Food Safe responsible) ndustry, Research and Energy (opinion) ndustry, Research and Consumer Protection opinion) urropean Commission and Council of uropean Commission DG iouncil of the Union	of the	Rivasi Turme Union Health	in Linda Michèle s Claude and Consumers	Co-rapporteurs	irs	1	S&D Verts/ALE Verts/ALE	10/12/2008	10/09/2009 16/09/2009 28/09/2009

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):

Prelex "	nitoring of the decision	o-making	process b	etween in	stitutions		English (en)	~
LICES?								
e European Commission > Pretex								
k tone page Search > Standard > Advanced	Description of the database	Payers						
Detel Print								_
COM (2008) 665		200	18/0260/COD	5				
HOUSEN NOT & DIRECTIVE OF THE EUROPEAN PARLIA	VENT AND OF THE COUNCIL are	anding store	ante unarrie o	Nisilande, Die	alie 2001/82/EC on	the Community so	dia relating to medicina	
roducts for human use								
rocean Commission								
sunal		1.1						
ropean Economic and Social Committee								
mmittee of the Regional		1 million 100		-		_		1
				4		+		*
		10-12-2008		03-2009	06-2026	08-2009	01-12-200	19
Events:	Fields of activity							
Retire by Centroleten	Leget basis		Commission :	Trathi CElart B	8			
10-12-2006	Propedures		Commission : I	Codecision pro	oedure			
0.12-2008	Type of file		Commission : i	Proposal for a l				_
colement	10-12-2008				Adoption by Commis	noise.		
o 12-2008 anaminahan is Council	Decision mode:	Oral proces	5UR					
7-12-2008	Primarily responsible	Enterprise	and Industry D0	į.				
anamission to EP (7-12-2000	Optional consultation	Committee	of the Regions					
cinion of the European Data Protection Supervisor	Addressee for formal act	Council: Ex	ropean Parlia	ners.				
22-04-2008	Mandatory consultation	European 3	Em & Son Co	anime				
acuteions at Council	Responsible	Ourter VER	RHEUDEN					
ESC epinien	Documents							
ro-do-2009 primitiae of Regions pointon			08 17502					
27-10-2009	Procedures	Codecision						
acualens at Council	Type of file:	Proposal to	e chective					
	Legal basis	Transide	A1 94					
21-12-2009 <u>5.</u> 21-12-2009	CELEX NUMBER		DAPCORA					

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):

funds items, large exposures, supervisory arrangements, a	nd crisis management							
					Com	munity legislation in	force 🖪	32009L0111
European Commission		111						
European Parliament								
Council European Economic and Social Committee								
European Economic and Social Committee European Central Bank								
oropean demar bank		-			<u> </u>		_	
		01-10-2008		01-2009	03-2009	08-2009		16-09-2009
Events:	Fields of activity:							
Adoption by Commission	Legal basis:		Commission	Traité/CE/art 47	oar 2			
01-10-2008 Supplement	Procedures:			Codecision proce decision procedure	jure			
01-10-2008 Supplement 01-10-2008	Type of file:			Proposal for a Dir	active			
ransmission to Council	01-10-2008		Council : Dir		loption by Comn	nission		
03-10-2008 Transmission to EP	Decision mode:	Oral proce	dure		,,			
03-10-2008	Primarily responsible	DG Intern	al Market and	Services				
<u>Corrigendum</u> 07-10-2008	Optional consultation	Committe	e of the Regio	ins; Economic and 1	Social Committee	a; European Central B	Bank	
Discussions at Council 02-12-2008	Addressee for formal act	Coundil; E	European Parli	iament				
European Central Bank opinion	Responsible	opprie M	OCREEVY					
05-03-2009 ESC opinion	Documents:		08/1433/					
24-03-2009								
EP opinion 1st rdg 05-05-2009								
commission position on EP amendments on 1st reading	Procedures:		n procedure					
06-05-2009 Council approval 1st rdg	Type of file:	Proposal f	or a Directive					
27-07-2009	Legal basis:	Traité/CE	/art 47 par 2					
Signature by EP and Council 18-09-2009	CELEX NUMBER	E <u>52</u>	008PC0602					
16-09-2009	01-10-2008				Supplemen	t		
Activities of the institutions:	Documents:	E2						
		E SEC	2008/2532/					
DEIL	Procedures:	Codecisio	n procedure					
	01-10-2008				Supplemen	t		
	Documents:	E cs/2						

Fig. 12: Prelex – Press releases.

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

Commi	ssior	ı pro	pos	es r	evis	ion	of b	ank	caj	pita	l req	luire	eme	ntsı	rule	s to	rein	fore	ce fi	nan	cial st	ability				
Reference:	IP/0	8/143	3 D	ate:	01/1	0/200	08																			
HTML: EN	FR	DE	DA	ES	NL	іт	sw	PT	FI	EL	CS	ET	ни	LT	LV	мт	PL	sĸ	SL	BG	RO					
PDF: EN	FR	DE	DA	ES	NL	IT	sw	PT	FI	EL	CS	ET	ни	LT	LV	МТ	PL	sĸ	SL	BG	RO					
DOC: EN	FR	DE	DA	ES	NL	IT	sw	PT	FI	EL	CS	ET	HU	LT	LV	МТ	PL	SK	SL	BG	RO					
																									IP/0	8/1433
																							Brus	sels, 1	st Octob	er 2008
ommiss	sion	pro	pos	es r	evi	sior	ı of	bar	ık c	api	tal ı	requ	uire	mer	nts	rule	s to	o rei	info	rce	finan	cial st	ability	,		
e MEMO/0	8/599																									
e financia nks will b	al sys be res	tem, i tricte	reduc ed in l	ce ris lendi	sk ex ing b	iposi ieyoi	ure a nd a i	nd in certa	npro in li	ve s mit t	uper o an	visio y one	on of e par	bank ty, w	s tha hile i	nt ope natio	erate nal s	in m uper	iore viso	than ry au	one EU ithoritie	country s will h	ave a b	the n etter c	ew rule overvie	s, w of
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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):

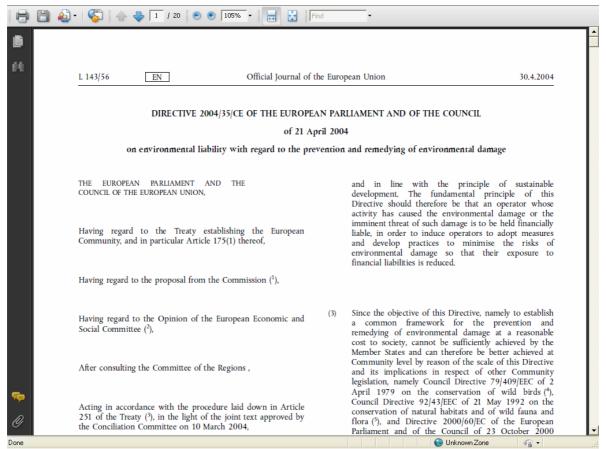


Fig. 14: Official Journal of the European Union.

Paul Clarke EU Editorial Services Ltd 22 Castle Rise South Cave Brough HU15 2ET United Kingdom paul@eueditorial.karoo.co.uk http://www.eia.org.uk

October 2010

Note

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