

Coping With Developments At EC

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It's important to know how to get things done in EC. Here's a guide that shows process not the official!

Many otherwise competent managers and professional administrators appear confused and frustrated when dealing with legislative and other developments at the EC level. Since these developments are likely to have an increasing impact upon the way businesses are run in all Member States, and even some outside the EC, it may be helpful to provide some guidance on how things work at the EC level, and thus some indications as to how the processes may perhaps be influenced. In a limited space, there must inevitably be simplifications and omissions. Since these processes are in constant evolution, with accompanying organizational and staffing changes, it would be inappropriate to provide lists of legislative initiatives, programs and responsible staff. Nor is it the intention to provide guidance on the legal technicalities of the EC institutions, and relationships between them. These relationships were modified by the Single European Act of 1987, and may again be affected by the Maastricht Treaty. Various detailed guides are published, which the interested reader may consult.

GENERAL

In the first 1951 Paris Treaty, which established the European Coal and Steel Community, provisions were made for creating various Community institutions, — a "High Authority" (which later became the Commission), a Consultative Committee, a "Common Assembly" (the European Parliament), a special Council of Ministers, and a Court of

Justice (not to be confused with the Court of Human Rights in Strasbourg). These institutions basically still remain, although some inter-relationships have changed. Both in the legislative process, and for the various EC programs, the institutions with which most readers are likely to have contact is the Commission.

The Commission's Service

There are three European Communities, the Coal & Steel Community, the Atomic Energy Community, and the Economic Community (often known as "the common market"). These were created by different treaties, but the Commission of the European Communities has rather functional responsibilities for all three. Before the Commission (i.e. the college of individual Commissioners, with their personal staffs or "cabinets" who may change every four years) and its Secretariat-General, the work is divided up among the services of the Commission, staffed mainly by permanent EC civil servants, and organized in Directorates-General. There were 24 in 1987, referred to as DG, followed by a common element, plus a few separate services (e.g. the Legal Service, offices (e.g. the Internal Office) and Task Forces, as well as the Joint Research Centre (e.g. at Ispra). Most of the Commission's services are located in Brussels, and the remainder (apart from the Joint Research Centre) in Luxembourg.

COMMUNITY LEGISLATION

Legislation of EC Level

It should be remembered that, in general, all EC legislation is finally enacted by the "Council of Ministers" (i.e. the ministers of the elected governments of the Member States,

sitting together in Council meetings. Legislation in some areas and conditions requires unanimity, in others a "qualified majority." While national ministers make up the Council (depends on the area of legislation being considered (e.g. economic affairs, or R&D or agriculture, etc.), and the presidency of the Council rotates every six months among Member States.

The two main types of legislative measures are the Council Regulation, and the Council Directive. Whereas a Regulation has direct application at national level in all Member States, a Directive requires that Member States adopt or adapt legislation at national level to meet specified criteria, within a specified period. In each case, the measure will be based upon a proposal/draft Council Regulation, or Directive, which has been prepared by the Commission, and presented to the Council.

The Council generally has to take account of "opinion" on such draft legislation formulated by the European Parliament, and the Economic and Social Committee (ESC). At the same time that the proposal is presented to the Council, it will also go to the two other institutions. Other measures that may have legislative impact are Council Directives, and Council Decisions (which are the means of authorizing budgetary expenditure, and hence individual EC programs, as well as the operations of the "financial funds). In certain limited fields (e.g. competition policy and some aspects of trade policy), the Commission may issue Decisions, or Recommendations, but these are subject to right of appeal to the European Court of Justice.

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The Legislative Process

All EC draft legislation is first prepared by the Commission's services, either in its role of guardian of the treaties, or responding to new political requirements (e.g. in the environmental field). This means that an individual in the responsible service, often an Principle Administrator level, has the task of preparing an early unofficial draft document, setting out the justifications for the legislation, the aims, and detailed provisions. He or she will generally have some knowledge of the current situation in several Member States, possibly reinforced by a study commissioned externally. Since nobody likes to waste time and effort on "non-events," he or she will hope to avoid provisions which would have no chance of being agreed later by the Council. This early draft will be shown to colleagues in the same DG, to the Head of Division and to the Director, probably being modified at each stage. During this period, the contents are still informally "draft."

In certain areas, the Commission may employ a permanent or ad hoc consultative committee of national experts (not necessarily civil servants) to advise their services. They may be shown an "internal document" draft at a fairly early stage. Following, however, the draft will become subject to consultation of other DGs with a clear interest, and especially the Legal Service. It will be sent to the services' own Director General, with a draft covering letter for him to sign, addressed to the other DGs and Services concerned, who will then have the opportunity to make comments, suggesting alternative drafting, etc. Only when this inter-service consultation procedure has been completed for which the relevant Commission's Cabinet may perhaps be involved, will the suitably modified draft be sent formally to the Secretary General, who is responsible for placing it on the agenda of a collegial meeting of the Commission.

Before that meeting, the draft will be discussed by a meeting of the Head of Cabinet of all the Commission's, it is usually here that any outstanding disagreements between the Services are ironed out. If agree-

ment cannot be reached, it would generally go to the Commission for collegial discussion. As and when the Commission approves the draft, it will be translated into all the EC languages, presented to the Council, the Parliament, and the ESC, and be published in the Official Journal of the EC.

The Commission's proposal then begins its passage through specialized committees of the Parliament and the ESC, and the relevant Working Group of the Council. At each meeting, a representative of the Commission will be present to answer questions, and to indicate the likely acceptability of suggested amendments. The respective committees then present a report and draft opinion to the Parliament and ESC, which may then deliberate, and finally present their formal "opinions" to the Council (which are published), proposing amendments where considered necessary.

The Commission and Council take into account such suggestions and comments, but are not bound to accept proposed amendments. The Commission is much more concerned by changes put forward by the Council's own Working Group (generally made up of civil servants from each Member State, perhaps supported by representatives from the Brussels office of each Government Representative, or Ambassador to the EC). It is felt that any intense political "bargaining" takes place. The next step is for the amended draft to go to the Committee of Member Representatives (COREPER), who may be able to suggest "political" compromises if the positions are not too far apart, and forward to the Council of Ministers' level.

If the Council is unable to reach agreement under the relevant voting rules, the situation then becomes more complex. Beyond the scope of this short guide to explain, it should be noted that, from the time that the Commission's proposal is published in the CE, it is unlikely to take less than three months before Council agreement. Where legislation is complex or politically controversial (i.e. where national interests are differently af-

fected), this period may extend into years.

In general, it may be observed that the earlier the date of a draft legislative proposal, the more "fluid" it is, and the less difficult it is agreed without upsetting agreements already made (although there is then no guarantee that the text will not be altered subsequently in the political bargaining process). Once a proposal has reached the public domain, and been published in the CE, the less likely it is that influence can be brought to bear on the Commission. It is then the turn of the national authorities, the Parliament and the ESC.

Contact With the Commission and Its Services

The Commission publishes a directory of its services at very infrequent intervals, often only in French, and these are usually at least partially out-of-date by the time they appear. But the organization is not secret, and many people in Brussels outside the Commission know their way around. Some private publishers produce a "Who's Who" guide to individuals, but again these titles may change. A word of warning about office addresses: due to the renovation of the main Beaudouin building at the end of 1991, many services have been transferred to offices in new locations, some of them near the outskirts of Brussels. Although many individual officials have been able to retain their old telephone numbers, this has not been possible in some locations, and an automatic call transfer system only operates for a limited period. By briefly visiting Brussels, it is worthwhile checking on the latest location of the people it is hoped to see, how far they are apart, and any parking or public transport facilities.

While individual officials naturally cannot always be available to answer calls or see visitors, the impression is that most make a real effort to provide information or help to outsiders, especially if given warning of a planned visit, and the nature of the query. Most officials can manage in either English or French, if not both, as well as their mother tongue. No interpretation is

provided within the services. Of course, inquiries are not very well-coordinated where officials are in the stress of plotting important legislative items through the Parliament and Council. The same considerations apply for some weeks after the deadline for receipt of applications for program support. Not only is this an extremely busy period, but officials may want attempts to influence the selection process.

COMMUNITY PROGRAMS

Programs and Activities

There are at least three main sources of activities, and not only to "members." Contrary to what many think is no central unit in Brussels whose only function is to create more programs. If there were, it might have avoided the duplication that sometimes exists (e.g., there are two R&D programs, one in the environmental field, the other in economics, run by different units within the Commission's services). Lists of activities are prepared from time to time, and published in guides and data bases.

Program Specifications

The details of each program or scheme are published in the OJ, including what type of activities are eligible for support (sometimes with additional criteria to facilitate selection between applications which meet the basic specifications), what kind of bodies or individuals may apply, whether applications should be made directly and to whom, what details need to be given in application forms, maximum levels of support available, and the timetable for submissions. It must be remembered that these details have probably been the subject of low-by-low discussions in the various advisory bodies, committees and working groups at the European Parliament and the Council of Ministers. This means that, by the time they are published, there is usually very little scope for flexible interpretation as to how support activities that lie outside the specifications, however innovative they may appear. But there is sometimes more flexibility in "pilot schemes," which are intended to try out new

approaches.

Expression of Interest, Lists of Experts, etc.

Applying the "principle of subsidiarity," EC programs tend to focus on transnational activities involving more than one Member State. Efforts are made to involve smaller firms and organizations, which may not have existing links with similar bodies in other Member States. Thus, in some research programs, the Commission publishes in the OJ an invitation to submit expressions of interest in certain fields, prior to publishing a formal call for research proposals. It can then, if necessary, perform a "match-maker" function, putting bodies in touch with a view to forming transnational groupings, so as to achieve a "critical mass" of R&D resources to tackle certain tasks.

In other programs, the Commission may support the use of advisory experts or consultants to help applicant bodies with specified tasks. In such cases, it may publish an invitation to be considered for inclusion in an approved list. Its notification does not imply the acceptance of the invitation and subsequent applications guarantee that any financial support will later be received under the relevant program. But there are clearly advantages if a body is already known to the Commission's services.

The Selection System

EC programs usually have a validity period of a fixed period of years, before the end of which their effectiveness and continuing relevance is reviewed. A Program Advisory Committee, consisting of nominated representatives of each Member State and the Commission, oversees the management of the program. The names of members of such advisory committees are in the public domain. In addition, for the more technical research programs, the Commission makes use of outside-experts to advise on the scientific merit of proposals submitted. If new names are kept confidential, it is more possible to call for proposals are published at least once per year, sometimes at different times for separate sub-programs.

Because the political process of

achieving Council approval for a new or revised program is usually long, it happens that approval for a program scheduled to start in a specified year may not take place until well into that year. This means that, if the budgetary allocation for the first year is to be committed in time, the timetable will be under pressure, and the published deadline for receipt of applications may allow little time for preparation of projects, especially where transnational groupings are involved. This is made worse by the holiday period occurring towards the end of the year. Thus, some preliminary preparation of projects, its anticipation of a new multiannual program approval, is recommended.

Information about programs "in the pipeline," but not yet approved by the Council of Ministers, may be extracted from the OJ, where all program proposals are published at the same time as they are submitted by the Commission to the Council, the European Parliament, and the Economic and Social Committee. Personal contacts in these organizations may be able to indicate what progress is being made, whether major changes to the draft proposals are likely, and when a Council decision may perhaps be made.

If an application is received after the specified deadline, it is bound to be rejected, unless its merits lie in the task of the responsible service in the Commission to undertake a preliminary analysis of all applications received by the specified date, eliminating any that do not meet the published specifications, and sometimes obtaining additional information about borderline cases, getting clarifications if necessary. When the service has completed this "first cut," producing a list of qualified projects, then, for research programs, outside experts in the specific technologies are likely to be used to help the service to prepare a list of recommended projects.

Thereafter, once or more meetings of the relevant Program Advisory Committee will be held. It is in effect the case, the allocated budget is insufficient to fund all qualified and recommended projects, it is at these meetings that the critical

selection for support is made. It is here that any published additional criteria (e.g., "preference will be given to...") will assume importance. Taking into account all such advice, the final selection is made by the Commission. This whole process will certainly last several weeks, if not months.

When the final selection has been made, all applicants are informed of their success or failure. Lists of successful applications will not necessarily be published, but not for some programs. With successful applicants, the responsible service offers logistical regulations. If an applicant should be unsuccessful, there is nothing to prevent him contacting the responsible official, not to complain, but to seek advice on the reasons for rejection. If it is purely for reasons of insufficient budget, he may be advised to apply again after a subsequent call, and perhaps to improve certain aspects of his project presentation.

It is evident that applicants should pay close attention to all the details of published specifications, and ensure not only that they are met, but that their conformity with any additional criteria is clear from the submission. It may be useful to find out who is the relevant national member of the Program Advisory Committee, and try to ensure that he or she is at least aware of the applicant's competence, so that the application can be supported with confidence in Committee discussions.

KEEPING YOURSELF INFORMED

Sources of Information

In addition to the responsible

Commission service, and formal publications in the CE, various other sources of information about EC legislations and programs are available, many of these provided by the EC. Every European country has at least one Information Office staffed by Commission employees. Within EC Member States, there are now more than 200 "Euro-Info-Centres" set up under the aegis of ECX XII to facilitate the access of smaller firms to EC information and programs. These provide both advice and documents. EC XII (Luxembourg) publish "Innovation and Technology Transfer Newsletter" and have recently launched an "Electronic Bulletin" version on desktops. A number of programs run their own dedicated publications, (e.g. BRISBURN newsletter), and the ECXO Unit in Luxembourg provides access to various data bases, including TED (Tenders Electronic Daily), which includes calls for proposals.

There is an official outlet in most European countries for the documents published by the Office for Official Publications of the EC, in Luxembourg (details shown on the back cover of such publications). In addition, there are some excellent free handbooks published by the EC Commission, such as ECX XII's "EC Research Funding - a Guide for Applicants." For some research programs, such as ESPRI and BRITILLUM, an "open day" is held for potentially interested bodies, during a week in which contractors are assembled for technical meetings.

Various European associations covering specific interests make efforts to keep their members inform-

ed about EC programs and/or calls that are likely to be of relevance to their membership. At the national, regional or local level, information may be available through ministries, chambers of commerce, consociation-interest trade or other associations.

Although some effort and cost may be involved in drawing upon these various sources, there is generally no lack of willingness by officials to provide information about legislation, programs and institutions. For firms or organizations that require a more individual service, the use of consultants is acceptable. Some have specialized in "European Affairs" with offices close to the Commission, and may offer a "tailor-made" information service, or even help in preparing applications for EC funding. Other consultants may monitor EC developments closely in order to advise firms on appropriate strategies and actions, but prefer to avoid a "representative" role before the Commission.

If the concern is less with information and more with helping to shape current developments, then there are professional lobbyists. Influencing the EC legislative process is obviously a delicate matter, and considerable lobbying may provide an adverse reaction in any local (although parliamentarian) context, but probably well used in such a procedure. But bringing to bear appropriate skills, experience and contacts may produce useful results.

To commentators for those rightly concerned to assess the likely impact of future legislation on their business, or to take advantage of EC programs and initiatives, it is not too difficult to find out and understand what is going on in Brussels.