

Process and Participation in the European Parliament: the F-Gas Directive

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The European Parliament is seen as an important means to redress the democratic deficit within the European Union governing framework, but to achieve this it needs to demonstrate its ability to add value to the decision-making process. Using the Fluorinated Gas Directive as a case study, it is argued that the Parliament's intermediate role in policy formulation challenges its ability to do so given the many technically focused decisions it is called on to make. An information deficit is confirmed, while also noting that the decision-base consists of only a very few individuals, exposing the institutional knowledge base to loss and ultimately loss of effectiveness, and weakening its ability to confer democratic legitimacy on the EU.

I. INTRODUCTION

The European Parliament (EP) is seen to provide an important function in redressing the democratic deficit within the European Union governing framework. However, its ability to fulfil that function has been questioned. Certainly, low turnout in the 2004 elections (45.7% of voters) indicates a lack of public engagement and mobilisation by the EP, while its "talking-shop" tag indicates a perceived irrelevancy within the wider EU decision-making process. The value the EP adds to the European Union's decision-making process therefore needs to be identified to advance its claims of addressing the democratic deficit.

Many of the matters the EP is asked to consider are technical in nature so its role can be seen, at least in part, as legitimising technocratic outputs generated by the European Commission (EC). This paper seeks to identify how the EP deals with technical matters and contributes to the decision-making process and so places the EU's democratic legitimacy. It uses a case study following the progression of a proposed Directive through the EP process to its First Reading to identify the actors participating in the process and the institutional arrangements that shape the contribution they make.

II. TECHNOCRACY IN A DEMOCRATIC PROCESS

The EU was initially conceptualised in technocratic terms. Jean Monnet gave a pivotal role to experts in making supranational public policy prefiguring a system of "enfranchise" whereby networks of interest groups, organised labour and firms affected

by European policy would gradually be involved in public policy making (Radaelli 1999, cited in Reck 2003: 30). This system includes provision for formalised consultation with defined interests through the Economic and Social Committee (EESC) established in 1957, and the Committee of the Regions (COR) established in 1993, whose members are appointed by member country governments. This approach presumes rational analysis and scientific examination of facts will bring about unanimous consensus on policy solutions, privileging technological knowledge.

This view contrasts with the historical democratisation of the EP which places conditions of political conflict and ideological debates to the fore. The EP was also constituted as a consultative body. Originally populated by Member Country appointees, it has since become both more democratic, with direct elections since 1979, and powerful, especially following the introduction of joint decision-making procedures with the Council. Codecision is now the normal decision-making procedure in 43 areas of types of action in the EU. Between the Maastricht Treaty to September 2003, some 435 codecision procedures have resulted in legislative acts covering environment, food safety, consumer protection, and intellectual property. The EP's influence is apparent as only a quarter of these dossiers were concluded at first reading, indicating a Parliamentary influence in resolving the remainder (50% at Second Reading, 25% at Conciliation) (EPP-ED Group 2003).

However, the frequency of EP interventions alone does not indicate what value it brings to the legislative process given its intermediate role within the legislative process. Little or no modification of Commission proposals could be read as either "rubber-stamping", or confirming that the Commission has prepared its proposals thoroughly, and addressed all interests. Conversely, substantial modification of Commission proposals can be alternatively viewed as correcting fundamental political misjudgements by the Commission, or inefficient "tinkering" by a legislature serving only to impede the process. And subsequent acceptance or rejection by the Council of EP amendments may reflect more member country national interests than wider European ones.

Alternatively, evaluation can be undertaken in terms of democratic input and output legitimacy (Scharpf 1999: 268). Input legitimacy concerns democratic decision-making through citizen and interest group participation, ensuring different values are recognised in the decision-making process. Output legitimacy concerns general efficiency and effectiveness in dealing with problems, a technocratic source of legitimacy. Both are necessary to obtain legitimacy.

Arguably this input/output-legitimacy framework is less applicable to the EP with its intermediate role in the legislative process. The Commission has ready access to technical information. Sbragia (Sbragia 2000: 299) suggests its ability to monopolize the initiation of legislation, the effectiveness with which it does so and its influence would be far less if it were not at the cross roads of information flows in Europe. It routinely consults widely with civil society across Europe, as well as drawing on expertise from member countries. Further, its position in the legislative process requires the Commission to be cognizant of member country concerns and the need to achieve qualified majority support by the Council to succeed.

At the same time, legislators face the challenge of increasingly complex and technical nature of issues that they are being called upon to address. Particularly in the environmental policy arena, cause and effect are not immediately or easily observable; nor are second order effects of intervention readily apparent (Lafferty & Meadowcroft, 1996: 4-7). This privileges technocratic solutions provided by the few who understand this complexity, while reducing wider participation. Paradoxically there is also explicit awareness of the need for public participation in the environmental arena in order to get local ownership of the problems and solutions. In these policy arenas, MEPs are called on to consider technically grounded Proposals from the Commission, requiring both information to underpin decisions and understanding of that information in order to select among policy options. But the need for the EP in such arenas can be questioned. Majone (Majone 1989) suggests policy areas differ in their need for legitimation. He considers a non-democratic legitimacy exists where a normative consensus on outcomes combines with a low political salience in technically dominated policy arenas such as the environment.

Rather, it is suggested a more valid assessment of the value the EP requires evaluating the quality of the decision-making process itself and how it wields its democratic function. Haus and others (Haus; Heinelt, and Stewart 2004) introduce an intermediate legitimising step, process legitimacy, to Scharpf's framework. Process-legitimacy requires the decision-making process itself to be transparent and accountable. It also recognises the importance of institutions in shaping policy outcomes – that “institutions matter” – by determining who can participate, and the quality of that participation. Evaluating the EP's process-legitimacy requires knowing who participates in the decision-making process; the MEPs and those who advise them in order to provide accountability.

Kaufman (Kaufman 1991: 125) provides a model for understanding decision-making that examines ‘micro’ context of how individuals make choices and decisions as well as how at the ‘macro’ level agencies and organisations interact, select options and make decisions (Parsons 1995: 371). The starting point for understanding decision-making in Kaufman's model is the decision-maker's personal attributes, including their psychological make-up and values. But public policy decision-makers are also part of larger organisations, the make-up of which always impact on how decisions are made as they provide the context within which judgements are made. Kaufman suggests there are two further layers to understanding decision-making, the political and interest environments; the relationships with other actors and processes. Finally, an ‘events environment’ of broader events outside the control of decision-makers envelopes this intense interaction.

Accordingly, this study seeks to identify who participates in the decision-making process within the EP using elements of Kaufman's model and the institutional constraints and opportunities for participation. Personal attributes of MEPs are not addressed directly, but instead are inferred from participation in the decision-making process, while wider contextual settings are mapped.

In order to identify the actors within the EP system, committee meetings and plenary full and part sessions of the European Parliament in Brussels, as well as EPP-ED Group preparatory meetings were observed in February – April 2004. Additionally, several MEPs and officials from the EP's Environment, Public Health and Consumer

Safety (ENVI) Secretariat and the European Commission, and subnational member country government representatives were interviewed. Additionally ancillary reports, amendments and voting lists prepared for the ENVI Committee were analysed.

The progress of the *Proposal for a Regulation of the European Parliament and of the Council on Certain Fluorinated Greenhouse Gases* (the “F-Gas Directive”)¹ was also tracked from its submission to the European Parliament in late 2003 to its First Reading in April 2004. The F-Gas Directive was used as a case-study, primarily because it’s essentially technical nature had little political salience. Rather, there was broad agreement that the proposed Directive was necessary.

The remainder of the paper describes the organisational context within which the Directive was considered, before examining individual MEP participation in the process. Finally the impact of the wider, ‘events environment’, specifically the European Parliamentary elections are considered.

III. THE POLITICAL AND ORGANISATIONAL CONTEXT: EUROPEAN PARLIAMENT

The European Parliament is the only democratically elected actor within the EU institution. The EP is officially structured on multi-country Groups² of MEPs with political affinity, as opposed to national delegations. The size of the Groups determines resources allocated to them for administrative and technical support, as well as the ability to decide positions of responsibilities. Its work utilises a committee system which reports to a monthly Plenary for final decision-taking. Appointments to positions of responsibility such as rapporteurs, which in turn determine the bias of any resulting Report, are made through a bidding system, with each Group allocated points according to size (Corbett; Jacobs, and Shackleton 2003., 2003).

The division of responsibilities between the committees is laid down in Annex VI to the Rules of Procedures. Different Committees have different significance – in part determined by the size and whether codecision applies or not. The Environment, Public Health and Consumer Policy Committee (ENVI) is one of the most powerful in this respect. It has 60 members, with the same number of substitutes, and considers on average over 60 Reports a year, of which three-quarters require codecision. Reports on Commission proposals or on own-initiative investigations are written by a Rapporteur, in discussion and negotiation with shadow-rapporteurs from the other Groups, supported by the EP’s DG II Committee secretariats.

Within any decision system, information access and availability determines which values and technical information are able to be included in the decision-making process. This information need is particularly acute when considering proposals of technical complexity to ensure effective and efficient policy outcomes.

¹ COM(2003)492 – C5-0397/03 – 2003/0189(COD)

² Groups mentioned in this paper: Group of the European People’s Party and European Democrats (EPP-ED); Group of the Party of European Socialists (SPE); Group of the Greens/European Free Alliance (VERT-ALE); Group of the European Liberal, Democrat and Reform Party (ELDR); Confederal Group of the European United Left/Nordic Green Left (GUE-NGL).

Theoretically, MEPs are provided information upon which to base decisions by Parliament's Directorate-General for Research (DG IV). It is tasked to provide two types of specialist briefings:

- “long-term research”, providing in-depth studies, often prepared externally; and
- “short-term” briefings, prepared by the Directorate, which provides published documents and notes largely on request from individual MEPs and committees (Corbett, *et al.*, 2003).

The Scientific and Technological Options Assessment (STOA) is responsible for predicting possible impacts of science and technology. This is overseen at a political level by the STOA Panel, composed of one nominated member from each of the permanent committees. Its research agenda has been political in focus and somewhat controversial, even leading to claims of corruption by some members (EU Reporter, 2004). As well, there are criticisms both within and without the Panel that its reports are variable in quality, and very slow to respond to critical issues.

Overall, access and availability of information upon which to base informed and robust policy decisions is seen by some observers and members as a significant weakness in the EP. The system is very much set up for the old-style, pre-Codecision and smaller Parliament. Consequently information services are under-resourced, leading to a general paucity of information from within the system upon which to base decisions. This has led to dissatisfaction by MEPs with the formal information supply (Reck, 2003). One response has been to develop *ad hoc* solutions within the system; ENVI on an experimental basis in 2003 contracted the European Academies' Science Advisory Council (EASAC) for the provision of technical-scientific advice in the area of Environment Public Health and Food Safety.

The alternative is for MEPS and officials to seek and to rely on externally sourced information. In contrast to the shortage within the EP, a significant but predisposed information supply exists outside the formal information provision with industry and interest group lobbyists. The EP hosts a significant lobby presence; listing some 4,900 accredited lobbyists to the EP on its website. There is also a strong lobbyist attendance at committee and part-plenary meetings when significant issues are being discussed, sometimes significantly out-numbering MEPs present. Accreditation resulted from concerns regarding unscrupulous access and lobbying within Parliament by lobbyists (Reck, 2003). Some claim whole Reports have been farmed out to favoured NGOs (eg *The Sprout*, 2003) and anecdotes abound of MEPs proposing verbatim lobbyist amendments. Not all lobbying, by its nature, is obvious, but manifestations include visits to MEPs and officials, emails, and mailings, as well as articles and opinion-pieces in Brussels-watcher magazines and newspapers circulated widely within the Parliament. Ginger groups, informal workshops and meetings hosted or attended by MEPs are also part of the political culture. These all indicate an information deficit within the EP and consequent demand for alternatives each likely to provide only partial analysis.

IV. THE POLITICAL CONTEXT: THE F-GAS DIRECTIVE

The F-Gas Directive is a consequence of previous EU initiatives to address global climate change and was drafted to address a previous omission and form part of a suite of Directives to meet EU commitments to the Kyoto Protocol on Global Climate Change. It is intended to limit use of synthetic fluorinated gases (F-gases) commonly used as refrigerants, especially in automobile air-conditioning units (MACs). These gases have high Greenhouse warming characteristics contributing to global warming. They have wide uses, primarily as substitutes for more damaging Chlorofluorocarbons (CFCs) that deplete the Ozone Layer. Although most ozone depleting substances, such as CFCs, also have high Greenhouse Warming Potentials (GWPs), they are explicitly excluded from the Framework Convention on Climate Change/Kyoto Protocol and therefore are also excluded from the proposed European F-Gas Directive. Rather, ozone depleting substances are treated under a separate Directive.

Climate change and global warming were largely ignored issues in the 1980s when the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer were negotiated. Subsequently, climate change has developed as a significant international environmental policy issue. This resulted in the United Nations Framework Convention on Climate Change (1993) and subsequent Kyoto Protocol, which calls upon First World countries to reduce carbon-dioxide equivalent emissions to 1990 levels by 2008. Accordingly, the uses of the F-gases, which have much lower ozone-depleting potentials than the substances they replaced, have come under scrutiny as significant greenhouse gases.

The European Union has been a Party to the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer since 1988. Synthetic ozone-depleting gases have been regulated at the European Union level since 1994³ when production of certain gases was phased out. Regulation was expanded to cover use, sale, recovery, recycling and reclamation and destruction of these gases, together with inclusion of further gases in 2000⁴.

The EU approved the United Nations Framework Convention on Climate Change in 1993⁵ as have all member states. Further, the EU's Sixth Environmental Action Programme (EC, 2001) identifies climate change as a priority for action. It recognises the European Community is committed to achieving an 8% reduction in greenhouse gas emissions within the 2008 – 2012 first commitment period compared to 1990 levels, an overall reduction of 336 million tonnes of carbon dioxide equivalent. It also recognises that in the longer-term global emissions of greenhouse gases will need to be reduced by approximately 70% compared to 1990 levels. The need for the EU to regulate F-gases therefore stems from its objective to meet its commitments to reduce Greenhouse gas emissions as part of its Kyoto Protocol commitments.

³ Regulation (EC) No 3093/1994 phases out production of CFCs, other fully halogenated CFCs, halons, carbon tetrachloride, 1,1,1-trichloroethane and HBFCs.

⁴ Regulation (EC) No 2037/2000 replaced Reg No 3093/1994 and applied to production, importation, exportation, placing on the market, use, recovery, recycling, and reclamation of gases covered by that Regulation, as well as methyl bromide, HBFCs, and HCFCs, as well as reporting on those substances, importation, exportation, placing on the market and use of products and equipment containing those substances.

⁵ Decision 94/69/EC, OJ L 33, 7.2.1994, p.11.

1. The Proposal

The F-Gas Directive was developed by the Commission's DG Environment in 2002-3 and submitted to the EP in August 2003 (see table 1). Its significant elements were:

- the legal basis for the Regulation
- a quota system whereby car manufacturers would have freedom to choose refrigerant within a sinking lid GWP-potential quota, leading to total reduction by 2009
- monitoring, management and recycling of F-gases.

The Commission had commissioned several comprehensive studies to underpin the Proposal's development (see: ECCP 2001; Harnisch and Schwarz 2003) and consulted with the automobile and chemical manufacturers, and civil society as part of that process. An important step in its development was the 'MAC Summit' convened by DG Environment in February 2003 where automobile and refrigerant manufacturers discussed alternative MAC solutions.

The Proposal was submitted to the EP in August 2003 for codecision. Consistent with standing orders, it was referred to the ENVI Committee for consideration, and to the Industry Trade and Research Committee (ITRE) for an opinion. It was also referred by the Council to the European Economic and Social Committee (EESC) as required under Article 95 TEC.

The Proposal was endorsed by Parliament (First Reading) on 31 March 2004, subject to certain amendments designed:

- to delete the new quota system proposed by the Commission for use of fluorinated gases in air-conditioning systems in new cars;
- to start to phase out fluorinated gases in air-conditioning systems in new models of car from January 2011 - two years later than proposed by the Commission;
- to reduce the global warming potential limit for gases to 50, which would rule out air-conditioning systems using HFC-152a;
- to take all measures which are technically and economically feasible to prevent and minimise emissions of fluorinated gases;
- to widen the scope of the regulation to include measures on the recovery and placing on the market of such gases, the use of products and equipment containing them and the reporting of data on these gases; and
- to introduce a number of amendments concerning inspections for any leakage of such gases.

Finally, Parliament confirmed Article 95 of the EC Treaty as the legal basis (EU PreLex, 2004).

Procedures were interrupted at this stage with the European Parliamentary elections in June 2004. The new Parliament will need to negotiate the amendments through a Second Reading.

Table 1: F-Gas Directive Chronology

Date	Activity	Associated Report
10-11 February 2003	MAC Summit, Brussels Commission Conference "Options to Reduce Greenhouse Gas Emissions due to Mobile Air Conditioning"	Proceedings on website

11 August 2003	Commission submits proposal to European Parliament	COM(2003) 0492 – 2003/0189(COD)
1 September 2003	President of Parliament refers proposal to ENVI; and ITRE for Opinion	C5-0397/2003
9 September 2004	Council decides to consult EESC (Art. 95, TEC)	
25 September 2003	ENVI appoints Robert Goodwill Rapporteur	
2 October 2003	ITRE appoints David Bowe Draftsman	
1 December 2003	ITRE considers draft opinion	
13 January 2004	ITRE considers draft opinion	
27 January 2004	ITRE adopts opinion (38:0; 5 abstentions)	PE 337.407/DEF
17 February 2004	ENVI considers Rapporteur's Report	PE 337.064
25 February 2004	ENVI adopts amendments	
31 March 2004	EP approves with amendments (1st Reading)	

2. European Parliament's Involvement

The European Parliament's Environment, Public Health and Consumer Safety Committee (ENVI) under the chairmanship of Caroline Jackson MEP (EPP-ED) was responsible for reporting on the F-Gas Directive. The Rapporteur position was not contested and Robert Goodwill MEP (EPP-ED) was appointed Rapporteur. He sought it as he considered he understood chemicals issues from reporting on several previous proposals. He viewed himself as representing industry interests within a largely 'green' Committee, and worked fairly closely with Berndt Lange MEP (SPE) the Socialist Group's Shadow Rapporteur. Unlike some rapporteurs, Goodwill was largely responsible for organising and drafting the Report himself and had little direct contact with DG II ENVI Secretariat staff. Similarly, he had little contact with the EPP-ED Group Secretariat, which was in any case under-resourced to assist other than to prepare Group voting lists.

Two main points of contention within the Committee emerged:

- Legal basis for the Regulation; and
- phase-out mechanism.

The Commission had predicated the Proposal on Article 95 EC, as a measure for ensuring economic harmonisation:

this proposal is designed to ensure that the internal market is protected through the harmonisation of requirements on monitoring, containment and marketing and use of fluorinated gases (p. 6, COM proposal).

However, this legal basis was contested, led by the VERTS-ALE Group, who argued it was an environmental measure and more properly based on Article 175 EC.

The different legal bases have different implications, both in consultation requirements and in subsequent transposition by member states. Article 95 EC is an economic harmonisation measure and requires adoption of minimum standards set out in the Regulation by Member States. In contrast, Article 175 EC addressing environmental protection allows Member States to take greater action, permitting any Member State to maintain, or to put in place, stronger measures if it wishes. It cannot oblige Member States to dismantle their efforts to reduce or eliminate F-gases if these are more stringent than the Regulation.

The VERTS-ALE argued that it was in fact an environmental protection measure as the overall objective of the proposal is to make a significant contribution towards the European Community's Kyoto Protocol target. Given this overall objective, they considered the measure should therefore be rooted in environmental law and have Article 175 EC as its legal basis. They considered Article 95 EC as the legal basis would be more likely to discourage and prevent Member States from adopting more stringent controls on F-gases.

Both Articles require the Committee on EESC to be consulted, but only Article 175 also requires the Committee of the Regions (COR) to be consulted. Clearly the choice of legal base determines the extent of formal consultation and formal institutional boundaries. In response to debate over the legal basis, Chairman Jackson requested advice from EP's Committee on Legal Affairs and the Internal Market. It considered the matter on 4 March and unanimously agreed that settled case law of the ECJ showed

that the choice of the legal basis does not depend on the discretion of the Community legislature but must be based on objective elements which are amenable to judicial control. These elements are, in particular, the aim and the content of the legal act⁶. In practice, the Court bases its findings essentially on the recitals stated in the preamble (Gargani, 2004).

The Committee therefore agreed Article 95 was the appropriate legal basis for the Proposal. However, this still left room for change should the recitals be subsequently amended to reflect a primarily environmental purpose.

The central contention point in the Proposal was the use of a market-driven quota system to phase out use of F-gases in MACs (Article 10 – *Quota*). This was intended to provide automobile manufacturers flexibility – they could use any F-gas, provided they did not exceed an annually reducing total GWP quota. Greenpeace had supported the Commission's original stance of establishing a quota system. However, at this stage, the quota initiative was attacked on two fronts; from industry and environmentalists for quite different reasons. The resulting coalition of industry and environmental interests ultimately lead to its replacement by a phase-out by type.

While not raised at the MAC Summit, it subsequently emerged that different automobile manufacturers have their own timetables for introducing alternative MAC systems, governed in part by design and roll-out of new models. These are step-functional, as MACs are an integral part of the under-bonnet engineering design, and not amenable to an incremental phase-out and component substitution. Rather, they would introduce new systems as an integral part of a new model. Commercial marketing imperatives may also be involved, reflecting different manufacturers' export markets and market position. (For example, CO₂ systems are more efficient in cooler, temperate than tropical climates.) Accordingly, the industry lobbied for a phase-out by automobile model type, but with a longer phase-out period than that proposed by the Commission. This was supported by most Groups to some extent.

⁶ See, *inter alia*, ECJ, case C-42/97, Parliament v Council, para. 36. PE 343.487 2/2 AD\527287EN.doc

On the other hand, the environmentalist approach, proposed by the VERTS-ALE MEPs, was that non-HFC systems were already developed; hydrocarbons were already being used, and CO₂ systems would be available from 2006. Rather than a quota system, they, too, supported a type phase-out, but with a far earlier phase-out date.

The result was a range of policy variables for MEPs to consider, centred on the grounds for phasing out the F-Gases, whether to promote a particular gas, or move against one (HFC-134a), and the date by which the phase-out would be completed. ITRE opinion had tacitly accepted the quota – making no recommendations for change. In his report, ENVI Rapporteur Goodwill rejected it and introduced phase-out based on automobile type. He explained that it was common-sense and was what the industry wanted.

3. Information and decision making

The main challenge facing MEPs was weighing up the array of technical arguments over the feasibility and impacts of phase-out dates and the different technologies. In interviews, MEPs, their Assistants, and Secretariat staff, as well as Commission officials, all candidly recognised they were generalists with little technical knowledge on many of the issues they were dealing with, and that they relied on lobbyists as an essential source of information.

As a generalisation, most interviewees assumed that others in the policy-making mix had better access to information than they did. There was a general assumption by everyone else that MEPs were kept well-informed by their national governments; the extent of this is debatable. Goodwill spoke of the value of the British public service in providing information, and how he “would have to have very good reasons to vote in opposition to British Government policy” – while noting that as a Conservative (and hence Opposition) he was not privy to all information. German MEPs on the other hand complained of being largely forgotten by their Party and by their Land and Federal Governments – “I have to keep reminding them back in Germany that we exist”, said one. Consequently, many ENVI members struggled with the choice between quota and type. One MEP in Committee expressed the difficulty by suggesting he toss a coin to decide – and appeared to gain considerable empathy from his colleagues across Groups for it.

DG IV did not provide any reports, and STOA was in no position to respond. ENVI however contracted a briefing from EASAC as part of its agreement with it (EASAC, 2003), receiving it in November 2003. It, like the earlier Commission reports, focused on review focuses on the scientific merits of the proposal and in particular on the likelihood that the measures proposed will deliver the improvements required. It does not deal with economic or industrial aspects of the proposal (p1).

Significantly, scientific merits of the proposal were never at issue within the Committee, rather it was the means for addressing these scientific aspects that were in contention.

The extent of lobbying can only be guessed at, but several MEPs on ENVI came from car or chemical manufacturing towns, suggesting they would have had electoral

interests at the least. Rapporteur Goodwill in discussion told of how he took SPE Shadow Rapporteur Lange on factory tours in the UK. MEPs interviewed were candid in recognising some colleagues were well-known as conduits for lobby amendments; one said he preferred receiving draft amendments rather than briefing papers from lobbyists. DG II Secretariat staff also noted identical wording of amendments proposed by industry and by the MEPs, noting that this was commonplace.

An example is provided by the European Fluorocarbons Technical Committee (EFCTC) representing the five European fluorocarbon gas producers. As a stakeholder, it had already been consulted during the Commission’s drafting of the Proposal and had provided a position paper in 2000 (ECCP 2001). The EFCTC Comments on the Proposal for a Regulation of the European Parliament and of the Council on Certain Fluorinated Greenhouse Gases (EFCTC, 2003) stake out its position. These appear to have been taken up as amendments by six of the 20 MEPs who made amendments, in some cases nearly word for word in the ENVI Report (Table 2). EFCTC’s general position was also reflected in the ITRE Report.

Table 2: Comparison of EFCTC's position paper and MEP Corbey’s proposed amendment to Article 6 - Reporting. Words in the EFCTC amendment but omitted in AM 166; and words introduced into AM166 are in **bold**.

<p>EFCTC September 2003 (Pp 8-9)</p>	<p>NEW The competent authorities shall review annually [EVERY 2 YEARS?] a representative sample of the records referred to in Article 3, for each of the categories indicated in Article 3 para 5 and report to the Commission emissions estimated in accordance with the methodologies laid out in the IPCC Guidelines for National Inventories and the IPCC Guidance Notes for Good Practice in Emissions Inventories. The format of the report shall be established in accordance with the procedure referred to in Article 12(2) within one year of the entry into force of this Regulation.”</p>
<p>Corbey (AM 166) Article 6, paragraph 1 a (new)</p>	<p>(1a) The competent Member State authorities shall review every 2 years a representative sample of the records referred to in Article 3 (6), for each of the categories indicated in Article 3 (2) b to d and report to the Commission estimated emissions. The format of the report shall be established in accordance with the procedure referred to in Article 12(2) within one year of the entry into force of this Regulation.</p>

4. Consultation – at the margins

The European Economic and Social Committee delivered its opinion on 28 January 2004. It recognised the continuing and urgent need to reduce global greenhouse gas emissions and therefore approved the Commission's proposal which covers refrigeration, air conditioning, medical and specialty applications. However, the Committee considered that some definitions were missing; that it should be made clear what is meant by 'operator/owner' of stationary systems; that it would be preferable for the hazards and benefits in refrigeration and air conditioning to be the subject of future legislative action; that the role and responsibility of the consumer is critical; and, finally, that other uses of fluorinated gases, for example, in heavy goods vehicles, should be included in later proposals when the necessary data become available (EU PreLex, 2004).

The major issues for the EP were not recognised by the EESC. Importantly, there was no indication that the EESC opinion was recognised, let alone taken into account, at any stage by the EP. This is not perhaps surprising at one level – its opinion is

considered by the Council, not the EP. A senior EP official when asked about the EESC said that it “remained below the radar”. As a mode for informing decision-making at the EP, it was irrelevant.

5. Proposed amendments and voting

ENVI considered the Rapporteur’s Report and ITRE Opinion (which had been adopted 38 votes for, none against, and 5 abstentions) at its meeting of 17 February 2004 and adopted its amendments at its meeting of 25 February. Members and substitutes proposed and voted on 349 amendments to the Commission’s proposal. These amendments came from twenty members (including 5 substitutes), with additional amendments coming from the Rapporteur, Robert Goodwill, and Parliament’s ITRE Committee.

Of the amendments, groupings are identifiable: the three UEN MEPs (Nobilia *et al.*) and one PPE-ED MEP (Nistico) proposed identical amendments. Bowe’s mirrored ITRE amendments, reflecting his role as draftsman for the ITRE Report. Accordingly this reduced the number of substantively different amendments to less than 300. Many of these were also consequential, only required to ensure consistency.

Table 3: Number of amendments by proponent.

Proponent	Group	Number of amendments	Proportion of all amendments (%)
Lucas, Isler Béguin	VERT	60	17.0
Bowe	PSE	37	10.6
Sandberg-Fries	PSE	35	10.0
ITRE Committee	–	34	9.7
Rapporteur (Goodwill)	(PPE)	33	9.5
Corbey	PSE	22	6.3
Korhola	PPE	22	6.3
Nistico	PPE	21	6.0
Nobilia, Muscardini, Mussa	UEN	20	5.7
Flemming	PPE	20	5.7
Davies	ELDR	13	3.7
Lange	PSE	8	2.3
Khadraoui	PSE	5	1.4
Callanan	PPE	4	1.1

Voting alliances crossed Group boundaries, which may reflect in part looser whipping within the PPE Group:

- Corbey (PSE) & Korhola (PPE) sponsored two amendments together
- Nobilia *et al* (UEN) & Nistico (PPE) sponsored 20 identical amendments
- Korhola (PPE) & Lucas and Isler Béguin (VERTS) both sponsored identical amendments to tighten the Article 10 quota phase-out timetable.

Also, there were cross-Committee relationships, with four active MEPs also substitutes on ITRE, and one, Bowe, the Draftsman for the ITRE Opinion on the ENVI Rapporteur’s Draft Report. Three, Bowe, Lucas, Corbey (as substitute) voted on the ITRE opinion and again on the Report.

Numbers of amendments provide a crude form of assessment: it does not take into account the quality of the amendments – many were linguistic, minor or consequential

changes to ensure consistency. Also political backing is important; most VERTS/ALE amendments were either lost in Committee outright or passed on a vote by very small majorities so that they will likely be lost in a later plenary vote.

Also, it could be expected that the Rapporteur would have included his PPE-ED Group's concerns in his Report. Additionally, the Rapporteur had a good relationship with the PSE shadow Rapporteur (Lange), and given the clear understanding that agreement from both of these large Groups is a prerequisite for Parliament to adopt a position, it can also be expected to reflect PSE position. In fact this was demonstrated in the committee meeting, where broad agreement between the two was apparent. However, it is suggested input from the Groups' members was likely to be limited, judging by the small attendance at relevant part of Fraction meetings leading up to the part-plenary. The data do indicate only a small number of MEPs are actively associated with and can therefore be presumed to understand the issues underlying a proposal.

As a result of the vote, the Article 95 legal basis of the Proposal was reasserted, and Goodwill's automobile type, replaced the Commission's quota system MAC coolants phase-out, with a longer period, until 2011. Voting for the latter indicated uncertainty among MEPs, the amendment introducing it was supported 26:23 votes.

The final outcome of the Plenary was supported by at least some of the industry; In a press release (31 March 2004) EFCTC stated:

The reasonable approach of the rapporteur Robert Goodwill played a key role in reaching a consensus among the different parliamentary groups.

This contrasts with environmental NGOs' view that the Draft:

fails to tackle the growing emissions of these extremely potent greenhouse gases and, subsequently, does not further EU policy on climate change mitigation. It does not recognise the existence and the availability of climatefriendly alternatives and hinders Member States from implementing more effective measures. The only exception is in the section on Mobile Air Conditioning, which the rapporteur (Mr Robert Goodwill) has attempted to weaken considerably (MIPIGGs, 2004).

V. THE EVENTS ENVIRONMENT: PARLIAMENTARY ELECTIONS

Decision-making is undertaken within a wider situative context independent of the decision-making process and actors. The F-Gas Directive was considered at the end of the 5th Term Parliament, and the European Parliament held elections in June 2004, before the Draft could be considered by the Council. An important feature of the elections was its increased the EP's size and representation to accommodate from 1 May 2004 enlargement when 10 countries acceded to the EU. The number of MEPs increased from 626 to 730. As well, the total number of MEPs from 13 of the 15 countries were reduced (Germany and Luxembourg remained constant). This inevitably resulted in a dilution of "old-hands" in the 6th Term Parliament.

A comparison of ENVI membership shows 40% of 5th Term members were reappointed to the committee, though only a quarter of members and substitutes were

reappointed. Both members and substitutes are included, as some substitutes play an active role in committee meetings and proposed amendments. The Committee coordinators were also replaced; two were members of the previous ENVI committee, the other two are from Accession states.

Table 4: Loss of Parliamentary technical knowledge - MEPs not returned to 6th Term ENVI Committee who had proposed amendments to the F-gas Directive.

MEPs	Group
Lucas, Isler Béguin	VERT
Bowe	PSE
Sandberg-Fries	PSE
Rapporteur (Goodwill)	(PPE)
Corbey	PSE
Korhola	PPE
Nisticeo	PPE
Nobilia , Muscardini, Mussa	UEN
Flemming	PPE
Davies	ELDR
Lange	PSE
Khadraoui	PSE
Callanan	PPE

The most important impact on the F-Gas Directive was the loss of many of the MEPs who had been involved up to the First Reading. Of the 16 MEPs who moved amendments, 7 returned to ENVI. Absent included the Rapporteur and the ITRE Draftsman, as well as one ENVI vice-president (Table 4). This represents a considerable institutional knowledge loss to the Parliament – and lost investment by lobbyists – which may be felt at Second Reading or conciliation stage. A more subtle consequence of the election was the opportunity it provided for Groups to rotate committee positions. Accordingly, in the 6th Session, the EPP relinquished chairmanship of ENVI to the SPE. The ability to set and maintain committee agendas has therefore changed.

6. Individuals

A feature of the EP involvement with the Directive is the small number of MEPs involved. This is consistent with the Committee's overall activities; some members were generally recognised as carrying the Committee. An analysis of the Reports considered by ENVI Committee from 1999 to the end of 2003 shows that six rapporteurs handled 25% of Reports, while 16 rapporteurs (each responsible for 6 or more reports) between them handled half of all reports (Table 5). This does not necessarily indicate individuals' work-load, as some Reports are administrative, requiring little attention (for example many of the chairman's Reports), while others require significant effort. Also, MEPs also have positions on other committees and delegations.

Despite the size of the EU, key decisions were made by a very small number of people who were, for the main part, reliant on external sources of information upon which to base them. Specialised technical information came from a few MEPs who are recognised as in-house experts, the Commission to some degree, and significantly from lobbyists. Thus MEPs such as the EPP-ED's Goodwill, and the SP's Lange provided much of the technical guidance on Reports affecting industry. There was

also little discussion observed in Group and Fraction meetings, rather explanation and clarification of voting, which in turn was guided by the Group shadow rapporteurs.

Table 5: Number of Reports considered by ENVI between 1999-2004 by Rapporteur.

Rapporteur	Number of Reports
Jackson	16
Paulsen	13
Nistico	12
Blokland	10
Hulthen	9
Florenz	
Lange	8
Trakatellis	7
De Roo	6
Gonzalez Alvarez	
Grosstete	
Korhola	
Lannoye	
Myller	
Redondo Jimenez	
Sjostedt	
Lienemann	5
Maaten	
Moreira da Silva	
Roth-Behrendt	
Schnellhardt	
Schorling	
38 MEPs	2-4
12 MEPs	1
Total reports	274

The small numbers involved can be seen as a necessary response to the sheer numbers of Reports considered by ENVI, providing a process-efficient means for both committee and individuals MEPs to consider the reports before it. It is also efficient for lobbyists who consequently only have to focus effort on a few people.

VI. IMPLICATIONS

The Draft Directive was shaped and significantly altered by a constellation of informal and formal determinants operating within the Institutions. This in turn has implications for the robustness of the decision-making process and its continuity of direction. This also has implications for the EP's process-legitimacy.

The EP's decision-making is quite opaque, with many formal, informal meetings and pre-meetings held at all levels between members of and between: Group fractions, Groups, Committees, Commission and to a lesser extent the Council. The lack of any Government or Opposition means that the system is flexible and most deals are compromises and agreements made outside formal systems. Deals are made from within Groups and Committees, through to Conciliation between EP and the Council. This deal-making was underlined with one Committee chairman appealing before a vote for latitude from the Committee to provide bargaining chips at Conciliation.

The choice of actors and their scope to act were determined by a combination of formal and informal determinants operating within the EP's institutional context.

Formal determinants were important in determining participation in the decision-making process. Codecision meant that the EP had real power to modify the Directive which it exercised. Lobbyists were prepared to invest effort in shaping decisions.

Within the EP institution, an early decision to direct the report to ENVI and to seek an opinion from ITRE framed the initiative as an environmental issue with economic implications, rather than the other way round. (Grant; Matthews, and Newell 2000). This reflected the division of responsibilities between the committees as laid down in Annex VI to the rules of procedures. According to that Annex, ENVI is responsible for climate change. Both are important committees, but ENVI has a long-standing reputation for being “green” (see Kaika and Page 2003), reflecting to some degree the self-selecting membership of committees (Goodwill, *pers. com.*).

While consistent with the Commission’s approach, this led to ongoing debate whether the legal basis of the proposal was Article 95 or 175 of the TEC, which may not have happened within the ITRE arena. The legal basis has wider implications, both in the scope of consultation (with COR) and in latitude in transposition into national law by member states.

Both Articles require the Council, as final legislator, to consult with the Economic and Social Committee (EESC) before taking action. However, Article 175 would have required it to consult also with the Committee of the Regions (COR). No consideration was given within the EP to EESC, which was considered “largely off the radar screen” in this and other decisions. This underlines the critical distinction between consultation and codecision that defines the significance of agency participation.

The Group delineation of MEPs also meant that a collaborative rather than antagonistic approach is needed for Parliament to agree; at a second reading the EP approves, rejects or amends a Council common position taken on a first reading by an absolute majority of Members. The composition of Parliament is such that agreement between the two largest Groups, the EPP-ED and the PSE, is necessary to achieve this.

The membership of both MEP and administrator groups favours generalists over specialists. As well, membership of EP committees are largely self-selecting, such that some MEPs observed conservative group ENVI members were more likely to be sympathetic to VERTS positions. Within this, the committee system, combined with the Rapporteur/shadow-Rapporteur management of reports requires only very few people (perhaps only one or two from each Group) to have any in-depth understanding of a particular policy initiative. The ENVI Chairman passed an aside at the February 2004 meeting that only two people present understood the paper under consideration. Attendance observed at the political EPP-ED Group preparatory meeting for Committee and Plenary sessions was very low, with Group MEPs subsequently following their Rapporteur or Shadow in Plenary and Committee voting. While this could be considered administratively efficient, it also places power, and the targets for focusing lobby effort, with only a few people.

Additionally the small numbers of MEPs actively involved in the Directive raises wider questions about the overall robustness of the institution. Parliament is

ultimately dependent upon a few people for its technical knowledge and understanding, and who will over time leave so that institutional knowledge is lost. For example, the Rapporteur Goodwill, who did not stand for re-election, and Shadow Lange who was not returned, took much of the Committee's, and Parliament's, knowledge on fluorinated gases with them.

EP arrangements to inform decision-makers were important. STOA was seen as politically handicapped, its supervisory Panel embroiled in controversy over choice of topics for investigation. At the same time, the EP's own Information Directorate, DGIV, was seen by MEPs as unable to respond in a timely manner and was consequently disregarded as an information source. ENVI's own commissioned research addressed wider issues surrounding the need for intervention, but did not identify or provide information on tradeoffs between policy options, the vital stuff of politics. Instead, decision-makers and administrators alike used and encouraged informal sources of information. Lobbyists from across the spectrum were appreciated as providing information, and were to some degree cultivated. While perhaps providing an output-efficient outcome, the lobbyists' information was not able to be validated or rigorously screened. Committee or plenary sessions are inimical for technical debate or tradeoffs.

Wider institutional rules for EP elections and committee composition may prove to be significant in determining the future of the Proposed Directive. The high turnover of ENVI committee members resulting from the June 2004 election and change of chairman, combined with the loss of the Report's Rapporteur and the ITRE draftsman mean a significant loss of institutional knowledge on this topic (and others) within the EP. This also represents a loss of investment to lobbyists. This may have implications when the Proposal is read a second time.

VII. CONCLUSIONS

The EP clearly has an important role and position within the EU and codecision is generally recognised as an effective means for it to influence policy outputs. The outcome effectiveness of those interventions is however less clear as a constellation of determinants structures the arena determining who can participate in that process and the information they can bring to it.

A combination of systemic processes restricts who can participate although individuals once within the system can be important. The EP is largely a generalist composition, which is normal for representative councils, and appropriate given the wide range of matters to be considered. However, the information through formal channels available to these decision-makers and their support staff is sparse, reducing ability to challenge and validate different ideas and data. This is critical given the technical complexity of the issues they are required to address.

The rapporteur system and the range of issues considered also mean that there is little opportunity for ideas to be tested publicly – a shortfall underscored by the need for partial information provided by lobbyists to be scrutinised. Ultimately, policy direction on technical issues can be influenced by very few people within the EP, many of whom are able to work in several arenas. This is an efficient approach given the knowledge investment required to participate and the workload of committees and MEPs, but one that ultimately compromises the process-legitimacy of the institution.

This thinness is underlined by the loss of institutional knowledge as a result of broader events in the event environment, such as the recent elections.

But more fundamentally, the EP is in a difficult position given its intermediate role within the EU decision-making process. This position means it is asked to respond to quite technical matters for which any polity is not well equipped, rather than initiating and focusing debate on the more significant broad policy outcomes. Neither input nor output legitimacy are well served as a result suggesting the democratic-legitimacy of the European Parliament still has scope to develop.

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