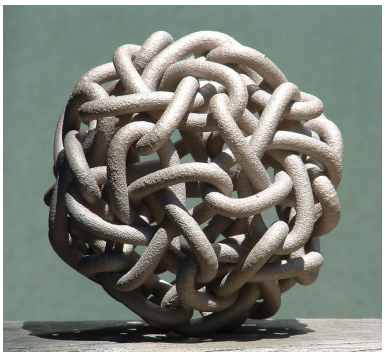
Tobacco Products Directive – what next?

written by Clive Bates | 31 August 2013



Complicated? The Ordinary Legislative Procedure

We are approaching make or break time of the revision of the Tobacco Products Directive – the 'first reading' of the proposal is coming up. Here's my take on the process.

What is the overall process? The TPD is following the 'Ordinary Legislative Procedure'. This is a process whereby the European Commission makes a proposal and then the European Parliament (elected MEPs) and European Council (representatives of 28 member state governments) go through a process of amending the Commission proposal and reaching agreement with each other. By the end of the process, Parliament and Council must agree or it doesn't pass. The process has three stages in which views are batted back and forth between the two institutions:

- **First reading:** The Commission submits the legislative proposal to the Council and the European Parliament (EP). Both institutions conduct the first reading – which is without time-limits – and if the Council approves the EP's position at first reading, the legislative act is adopted. *We are approaching this stage.*

- **Second reading:** If the Council rejects the EP's position, it adopts its own position at first reading and submits it to the EP for a second

reading. If the EP approves this position, the legislative act is adopted. In the event of rejection, the dossier may be resumed only on the basis of a new proposal from the Commission. If the EP proposes amendments to the Council's position, the Council's second reading is conducted. If all the amendments are approved, the act is adopted; in the event of rejection, the Conciliation Committee is convened.

- **Conciliation and third reading:** The representatives of the EP, the Council and the Commission have six weeks to reach an agreement and approve the joint text.

This is a simplification – informal negotiation between the readings goes on to try to reach agreement, understand red-lines etc. Want to know more? The formal process is set out in Article 294 of the Treaty on Functioning of the European Union and in this very detailed guide aimed at those directly involved.

What has happened so far? The Commission made its proposal for a revised Tobacco Products Directive on 19 December 2012. On behalf of the European Parliament, the Environment, Public Health and Food Safety (ENVI) committee, led by its chosen *rapporteur,* British socialist Linda McAvan MEP, has scrutinised the Commission proposal. This culminated in a vote in the ENVI committee on 10 July (accompanied by protests from vapers). The outcome of that vote is the report of the ENVI committee, which though dated 24 July has only just been published on the web on Friday 30 August. The report is in the form of a series of amendments to the original Commission proposal that the ENVI committee has voted for. It is also presented with opinions of other committees, many of which take a different view to ENVI on some crucial matters. Meanwhile, the European Council has not been idle… to signal its intent, it has agreed a '*general approach*', or its own views of what amendments should be made to the Commission's proposal. The *general approach* is an informal position designed to move its members towards agreement and to signal its intent so that the European Parliament can start to look for areas of common ground with the Council. The Council adopts its formal position at its first reading later in the year (probably 10th December- see below).

So to summarise, there are now three texts in play: the Commission proposal; the ENVI committee report; and the Council general approach.

What will happen next? The next important stage is that the report of the ENVI committee is debated and voted on by the European Parliament plenary (ie. all MEPs, not just those on the ENVI committee). This is the **first reading** referred to above. The plenary will take the ENVI report as its starting point and consider what, if any, amendments it wants. It is possible for MEPs to put down amendments to the ENVI report for voting in the plenary – but each amendment needs 40 signatures or the backing of a political group, so it takes some organisation and time to get amendments down. The ENVI report is full of incoherent policy and law so amendments will be critical if it is to have a positive impact on health.

When will first reading in the European Parliament happen? Updated 5 Sept. As of today (5 September) the TPD plenary debate and vote is scheduled for consideration in the week of 8 October in Strasbourg, France. It was important that the date was put back from September to October. We wrote to the Conference of Presidents to explain why. There is a chance that the *rapportuer* will try to add it to the agenda at the last minute on 9 September. It is a gesture likely to fail.

After that? After the first reading in the EP, it's back to the Council. The EP will emerge from the forthcoming plenary with its position – its preferred version of the directive – with which it can then start discussions with the European Council. The TPD is considered by a 'configuration' of the European Council called the Employment, Social Policy, Health and Consumer Affairs Council. 'Configuration' means it is still acting with the full authority of member state governments, but they typically send appropriate ministers (eg health) instead of prime ministers or presidents. The calendar for the Council meetings in its various configurations is here. This Council configuration meets informally and regularly as an officials working group but formally with ministers present on two occasions in the remainder of 2013 – 15 October and 9-10 December. The agenda for the rest of this year (ie. the Council meetings under the Lithuanian presidency) shows the tobacco directive tentatively scheduled for discussion on **10 December** (see 'any other business' on p.44). That would be the Council's first reading…

- The Council could agree with everything the EP decided at its first reading at that point (voting on a qualified majority basis) and the directive would become law.

- Much more likely is that Council will not entirely agree the EP position. So they will use the time between the EP plenary (updated: currently scheduled on 8 October) and Council first reading (currently scheduled on 10 December) to try to negotiate common ground between the EP and Council. The Council could then adopt its own position at first reading and submit this back to the EP, hoping that they have done enough negotiation for the EP to clear the Council position at the EP's second reading, which could happen early in 2014. The EP currently has six plenary sessions scheduled for 2014, before the European elections 22-25 May 2014.
- If EP doesn't agree with Council's position at an EP second reading, it goes back to the Council for its second reading. If still no agreement it goes into the conciliation stage with up to six weeks to find agreement. Given the May 2014 election, they will want to schedule the EP second reading no later than February I guess. [see detailed process] There may be other things that shape the agenda at the end of a parliamentary term too… if anyone has insights let me know.

What about scrutiny in the UK? The UK parliament reserves the right to scrutinise the positions the UK government takes in many European Union negotiations, and House of Commons European Scrutiny Committee and House of Lords EU Sub-Committee F do this for the TPD. There's been a storm over the Minister for Public Health, currently Anna Soubry MP, sidestepping the Commons European scrutiny reserve when she participated in the forming of the Council General Approach on 21 June. This committee was clearly incensed and has said it will return to the issue. I have written to the Chairman Bill Cash with concerns about the incoherence of the directive. Note that the Committee can't veto a government position, but it can call for full Commons debate (more). The UK government would be reluctant to change its mind following Anna Soubry's unscrutinised endorsement of the Council General Approach, but it's not impossible – particularly if there is a debate, or if those charged with supporting business finally wake up and realise the health department is about to snuff out a pro-health disruptive sunrise industry in a thicket of pointless red tape.

Legal action to follow? *Almost certainly*. There's a lot of posturing politicians lined up behind damaging and poorly judged proposals, and they may well get through the Ordinary Legislative Procedure and be passed into law as a new

directive. But the EU legislature cannot just do what it likes. The treaties limit the powers of the EU and require conformity with important principles such as non-discrimination, proportionality, adequate legal base etc. I'm working on a full posting on this, but for now I would direct you to the legal opinion provided by Sir Francis Jacobs QC for ECITA, and the legally orientated briefing by TVECA. The JURI committee opinion found that regulation of e-cigarettes as medicines was without proper legal foundation and proposed a much better amendment (no 65 in its opinion along with 13-15 in the recitals and 74 to create an annex). For snus, JURI also included a sensible amendment for traditional use (no 62, with 29 for the recital) – probably the most we will get.

Conclusion and action. Everything to play for, nothing to lose – keep pressing MPs and MEPs, especially EPP members if you are outside the UK. No pressure is too great – but remember always keep it *personalised, polite and on the point*. Every politician has grown weary of mass form letter mailings, foaming ranters and conspiracy theorists. Also *every* MEP is now involved – many have been relying on ENVI colleagues to do the work so far. From now on, their involvement, and their responsibility, is just as important as any ENVI committee member. So keep up the letters to MPs and MEPs (use ***write to them)*** and consider writing to Anna Soubry (while you still can).

Note: Many readers are more expert than me on the machinations of the EU – please add insights or corrections in comments or email me directly. Ill update as developments unfold.

Q&A. If you have a question about any of this or anything to do with the TPD, don't keep it to yourself – many others are likely to have the same question… put it down in the comments and I'll try to get you an answer…