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Decision-making in the council of the European Union. The role of committees.

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10 Environment

In contrast to the field of Agriculture, which is a classic area of redistributive policy, the Environment field is predominantly governed through regulatory instruments. The European dimension of Environmental policy was formally recognised in 1986 through the adoption of the Single European Act. However, Environmental policy measures had been adopted by the EU institutions already since the early 1970s. Given the lack of an explicit legal base for EU Environmental policy, these early measures were often couched as instruments to remove non-trade barriers to the internal market (Lenschow 2005: 306-307). Compared to Agriculture, EU Environmental policy can be classified as moderately integrated (Nugent 2006: 388). As can be discerned from Table 6.1, Environmental policy is characterised by a considerable degree of legislative activity. The relatively large amount of legislation adopted in Environment together with the fact that the co-decision procedure grants the EP equal powers next to the Council, has elevated membership in the Environment committee to one of the most prestigious posts in Parliament.

Environment ministers usually meet twice during a Presidency, once in the middle and once at the end of the half-year period. The deputy permanent representatives in Coreper I prepare the meetings of Environment ministers. Deputy permanent representatives in turn rely largely on the preparatory work of a single working party, the Working Party on the Environment. In terms of the number of working parties and their composition, the Environment formation is thus the extreme opposite of the Agriculture formation. A single working party discusses all issues related to internal environmental policy. The members of the working party are usually officials seconded from national environment ministries to the permanent representations in Brussels. Depending on the proposal discussed, different specialists from the ministries might assist the working party members, but the discussions are lead by the officials posted to the permanent representations.

For the within-sector comparison of Council decision-making in the Environment policy field, I chose two Directives. The Ambient Air Directive aims to decrease air pollution through the establishment of monitoring mechanisms and the setting of common quality standards. The Batteries Directive regulates the contents of batteries and their recycling. After an early agreement with the EP, the Council

directly adopted the Ambient Air Directive in its first reading. In contrast, the Batteries Directive was only adopted in third reading after the Council reached a compromise with the EP in the conciliation committee. Thus, in the case of the Batteries Directive, the study focuses on the adoption of the Council's common position. Both cases allowed for an adoption of the Council decision by qualified majority voting. De facto, Coreper I reached the agreement on the Ambient Air Directive. In contrast, only ministers were able to agree on a compromise in the case of the common position for the Batteries Directive.

10.1 Ambient Air Directive

10.1.1 Background and proposal content

The Ambient Air Directive was the fourth daughter Directive of the Air Quality Framework Directive¹. Each of the four daughter Directives deals with certain types of pollutants in ambient air. The Directive investigated in this study regulates the concentration and measurement of heavy metals and polycyclic aromatic hydrocarbons (PAHs)² in ambient air. The regulated heavy metals include arsenic, cadmium, mercury and nickel. The main justification for the introduction of this proposal was health concerns. According to the Commission proposal, all of the regulated pollutants are known to have adverse effects on human health and exposure to them should therefore be as low as possible³. In contrast to the suggestions in the Framework Directive and the provisions in earlier daughter Directives, the proposal for the fourth daughter Directive did not suggest binding limit values for heavy metal concentrations. Instead, the proposal only suggested non-binding target values for the concentration of PAHs. According to the official position of the Commission, cost-effective means to attain concentration levels that would not have negative effects on

¹ Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management. 21 November 1996, OJ L296, pp. 55-63.

² PAHs are organic pollutants primarily formed by incomplete burning of carbon-containing materials like wood, coal, diesel, fat, or tobacco (further information can be found online, for example at: <http://dhfs.wisconsin.gov/eh/ChemFS/fs/PAH.htm> [consulted on 24 August 2007]).

³ Commission (2003): Proposal for a Directive of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. 16 July 2003, COM/2003/423, p. 3.

human health did simply not exist⁴. Although the proposal did not contain any binding air quality standards for the regulated pollutants, the Commission proposed relatively extensive monitoring and reporting requirements. Overall, the Commission proposal contained the following innovations⁵:

- The introduction of target values for the air concentration of PAHs.
- The introduction of a requirement for Member States to monitor the air concentration levels of all regulated pollutants as well as the deposition rates of all regulated pollutants except nickel.
- The introduction of mandatory monitoring of all regulated pollutants except mercury at fixed sites if concentration levels are above certain assessment thresholds. This provision also determined the minimum number of sampling points according to the population size of the agglomeration.
- The introduction of background monitoring of the air concentration levels of all regulated pollutants at a limited number of sites even where the assessment thresholds are not exceeded. This requirement included the requirement to monitor the deposition rates of all regulated pollutants except nickel. The provision also determined the minimum number of sampling points per square kilometre of Member State territory.
- The requirement for Member States to inform the Commission about any violations of assessment thresholds or a target value and about the measures undertaken to reduce the concentration of the pollutant.
- The requirement for Member States to regularly inform the public as well as environmental and consumer organisations about ambient air concentrations and deposition rates of the regulated pollutants.
- The requirement for the Commission to report on the implementation of the Directive by 2008 at the latest and to propose amendments if further improvements regarding the concentration levels seem feasible.

⁴ Commission (2003): Proposal for a Directive of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. 16 July 2003, COM/2003/423, p. 21.

⁵ Commission (2003): Proposal for a Directive of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. 16 July 2003, COM/2003/423.

Of course, most aspects of the proposal were questioned during Council negotiations by one or the other delegation, but many delegations concurred that the modest goals set out to actually prevent and reduce the regulated air pollutants did not justify the extensive monitoring and reporting requirements contained in the proposal.

10.1.2 Negotiation process

The Council adopted the Ambient Air Directive relatively swiftly, about 16 months after the introduction of the proposal by the Commission. More remarkably, the actual negotiation process took less than four months (see Table 10.1). The bulk of the negotiations within the Council and even between the Council and the EP were conducted at working party level (see Figure 10.1). The Working Party on the Environment met seven times to discuss the dossier. Coreper I got involved only towards the end of the negotiation process to solve the last outstanding issues and to ratify the final agreement with the Parliament. The ministerial level was not involved in negotiations at all. The ministers adopted the Directive only formally several months later, after the compromise text had been screened and corrected by the Council's legal-linguistic experts.

Table 10.1 Ambient Air Directive: Main decision-making events

<i>Date</i>	<i>Collective actor</i>	<i>Event</i>
16-07-2003	Commission	Adoption of proposal
17-07-2003	Commission	Transmission to Council and EP
09-09-2003	EP committee	Appointment of rapporteur
26-11-2003	EP committee	Discussion of draft report
17/18-12-2003	WP	First reading of proposal
13-01-2004	WP	Discussion of WP report and Presidency proposal
21-01-2004	EP committee	Adoption of report
03-02-2004	WP	Discussion of WP report
16-02-2004	WP	Discussion of WP report and Presidency proposal
04-03-2004	WP	Discussion of WP report
09-03-2004	EP plenary	Policy debate
11-03-2004	Trilogue	Negotiations with EP and Commission
11-03-2004	WP	Discussion of WP report and trilogue report
15-03-2004	Trilogue	Negotiations with EP and Commission
19-03-2004	Coreper I (II-item)	Discussion of WP report and trilogue report
22-03-2004	WP	Discussion of Commission proposal for recitals
31-03-2004	Coreper I (I-item)	De facto adoption of Directive
20-04-2004	EP	Adoption of opinion
20-04-2004	Commission	Agreement on EP amendments
10-11-2004	Coreper I (I-item)	Inclusion of Directive in A-item list
15-11-2004	Education, Youth, and Culture Council (A-item)	Formal adoption of Directive

Notes: EP = European Parliament, Coreper = Committee of Permanent Representatives, WP = Working party.

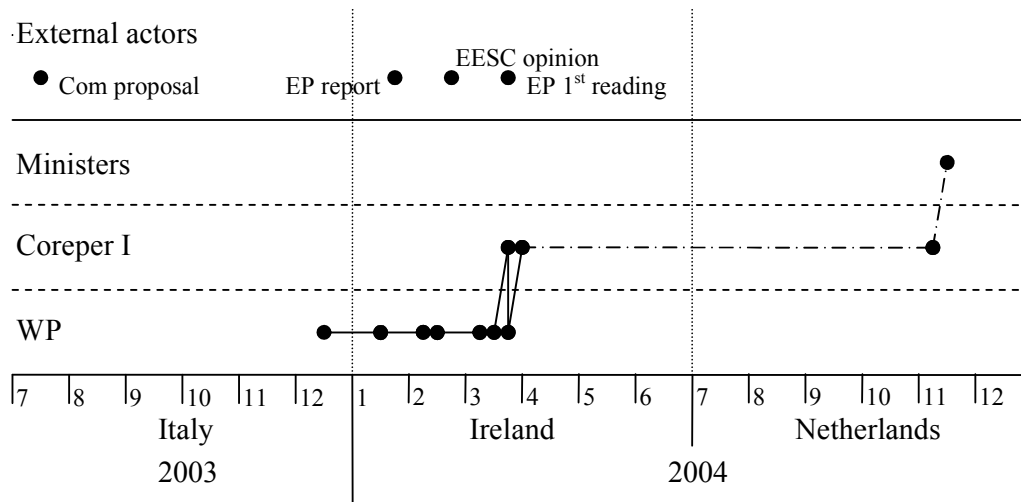
The Commission adopted the proposal on 16 June 2003 and transmitted it to the Parliament and the Council a day later. The Environment committee of the EP appointed the Austrian Johan Kronberger, an independent, as its rapporteur soon after the summer break. In contrast, the Italian Presidency of the Council did not put the proposal on the agenda of the Environment working party until the end of its term in December. Thus, the rapporteur presented his draft report in the EP committee on 26 November, about three weeks before negotiations in the Council eventually started. The rapporteur suggested far-reaching modifications of the Commission proposal. In particular, the draft report suggested the introduction of limit values for all pollutants except mercury.

The Working Party on Environment had a thorough first reading of the Commission proposal during a one-and-a-half day meeting on 17 and 18 December. Although the Italians insisted on chairing the meeting, the Irish delegation was already directing the discussions behind the scenes. Ireland was to take over the Presidency from Italy at the beginning of the year 2004. Already before the first working party meeting, the Irish delegation had discussed the proposal with most delegations in bilateral talks. Thus, the incoming Presidency was very well informed about the problems and positions of the other Member States. The Irish official also had had early contacts with the EP's rapporteur. Given that these consultations did not indicate any insurmountable obstacles for reaching a timely agreement, the Irish delegation decided already at this stage to aim at a first reading agreement with the Parliament⁶. During the first working party meeting, many delegations questioned the usefulness of heavy monitoring requirements in the absence of explicit obligations to assure high air quality. At the same time, several delegations considered binding limit values as proposed in the EP rapporteur's draft report as too stringent⁷. As a compromise solution, the Irish delegation suggested to introduce non-binding target values not only for PAHs, but also for arsenic, cadmium and nickel.

⁶ Interview D.

⁷ Council (2004): Report of the meeting on 17 and 18 December 2003 of the Working Party on Environment. 22 December 2003, 16290/03, p. 1.

Figure 10.1 Ambient Air Directive: Negotiation process



Note: Coreper = Committee of Permanent Representatives, WP = Working Party.
Source: Data based on an analysis of Council documents.

The working party discussed the compromise proposal during its next meeting on 13 January 2004. Ireland now formally chaired the meeting. The working party members accepted the inclusion of the provision for target values. The working party also agreed to the Dutch suggestion to distinguish lower and upper assessment thresholds. For concentration levels below the lower assessment threshold, modelling and estimation techniques are sufficient for the assessment of air quality. For concentration levels between the lower and upper assessment threshold, a combination of measurement and modelling techniques may be used. The working party agreed to use the original assessment thresholds as values for the new target values. Thus, the new upper assessment thresholds for the different types of heavy metals were 30 to 50 percent lower than the original thresholds. The result of the reduction of the assessment threshold was that more areas qualified for the mandatory measurement at fixed sites. However, other changes to the proposal reduced the monitoring requirements. The working party agreed to lower the number of sampling points required for the fixed measurement of heavy metals. The requirements for rural background monitoring were also reduced from one measurement station per 50,000 km² to one measurement station per 75,000 km².

The EP committee adopted the report of its rapporteur with some minor amendments on 21 January. The EP committee supported the introduction of limit values, but only by a very small majority of two votes. Some Member States in the

Council also favoured stricter standards. At the working party meeting on 3 February, Denmark reiterated its demand for binding limit instead of non-binding target values. For certain types of heavy metals, Austria, Germany and Sweden supported this demand. Other delegations still regarded the measurement requirements too demanding. Spain, Portugal and Finland complained that the required number of measurement points for rural background monitoring was too high. Several delegations (ES, DK, EL, FR, IT, PT) also demanded a lower minimum requirement for the number of sampling points for fixed measurement.

After the meeting, the Presidency distributed a new draft provision. This new proposal further reduced the sampling points required when the upper assessment threshold for arsenic, cadmium and nickel concentrations was exceeded⁸. The chair of the working party also invited delegations to submit written contributions with text suggestions that would meet their most pressing concerns. At the same time, the Presidency announced that it was “exploring the possibilities of working towards a first reading agreement with the EP” and urged delegations to scrutinise the current draft of the proposal carefully with a view to quickly conclude the negotiations⁹.

As a result of the discussions during the meeting on 16 February, the Presidency provided an overall compromise package¹⁰. This package confirmed the approach based on target rather than limit values. The draft also included another reduction of the sampling points required for the measurement of heavy metals above the assessment threshold as suggested by the Presidency’s earlier draft. In addition, the text further lowered the number of sampling points for background measurement to one site per 100,000 km² and introduced the possibility of joint measurement by Member States. The Presidency also proposed to limit the measurement of deposition rates to background sampling only. The Presidency declared that it intended to reach an agreement on the dossier in the half-day meeting on 4 March and to devote the meeting on 22 March to consider the EP’s first reading amendments. At this time, the plenary vote on the committee report of the EP was scheduled for 9 March.

⁸ Council (2004): Meeting document: Presidency proposal. 12 February 2004, DS 81/04.

⁹ Council (2004): Report of the meeting on 3 February 2004 of the Working Party on Environment. 6 February 2004, 6016/04, p. 2.

¹⁰ Council (2004): Report of the meeting on 16 February 2004 of the Working Party on Environment. 21 February 2004, 6549/04.

Indeed, the delegations accepted large parts of the Presidency compromise proposal in the meeting on 4 March¹¹. However, the Member States accepted the monitoring provision only after the requirements for the fixed measurement of PAHs were even further reduced. The proposal prescribed the number of required measurement sampling points according to the size of the population in an agglomeration zone. The larger the population in a certain area, the more measurement points would have to be installed. To reduce the measurement requirements, the working party agreed to merge two of the original eight population size categories and to apply the sampling point number originally required of the category with the lower population size to the newly merged category. This reduction was a compromise, given that several delegations (DE, ES, FI, PT, UK) had demanded to reduce the number of population size categories by half.

The EP discussed the Commission proposal and the committee report on 9 March. On the request of the rapporteur, the EP decided to postpone its vote on the dossier to its last plenary session in the legislative term in order to allow for a possible first reading agreement with the Council. The different party groups in the EP mainly differed on the introduction of limit values. The rapporteur as well as representatives of the green and socialist party groups defended the call for limit values, but a speaker of the conservative party group argued against it. The conservative speaker agreed with the position of the Commission that limit values would impose disproportional costs on industry. The sincerity of the position of the socialist party group seems also questionable. The socialist shadow rapporteur stressed that the committee's position was, among other things, a negotiation position and that he aimed for target values as the final result of negotiations with the Council.

The Presidency and the Commission met with the EP rapporteur and his shadow rapporteurs first in the morning of 11 March, although the Council had not agreed on a position on several points yet. The working party meeting on 4 March had left several issues unresolved, although they were of rather minor significance. The Presidency appealed to delegations to "make as much effort as possible to lift scrutiny reservations and resolve other outstanding issues with a review to agreeing to a

¹¹ Council (2004): Report of the meeting on 4 March 2004 of the Working Party on Environment. 8 March 2004, 7087/04.

Council position that can be fully supported by all delegations”¹². In the trilogue meeting on 11 March, the rapporteur signalled that the EP could accept a solution based on target values. However, the rapporteur insisted that the date for attaining the target values should be set to 2010 and that the Commission would be required to consider the introduction of limit values in its implementation review at that time. The Council had agreed to the year 2014 as the date for attaining the target values. The rapporteur also demanded the inclusion of two further EP amendments, a provision to cease the deposition of mercury within 20 years and a provision to measure the emissions of gaseous mercury in ambient air and mercury deposition.

The Presidency informed the working party about the trilogue meeting in a meeting in the afternoon of the same day¹³. As a response to the EP’s demands, the working party agreed to make specific references to both the possibility of introducing limit values and ‘to further action in relation to mercury’ in the report and review requirements of the Commission. The delegations also agreed to introduce additional recitals on the dangers of mercury and on the planned Commission strategy to protect human health and the environment from the effects of mercury. As a compromise, the working party accepted the Presidency’s proposal to lower the date for achieving the target values to 2012. This date was halfway between the Council’s and the EP’s position. Even at a time when agreement with the EP seemed close, several points in the proposal were still under discussion within the Council itself. Several Member States still had objections. Thus, the Presidency urged delegations again to try to accept the compromise proposal. France, Italy and Finland were still demanding an even lower number of background sampling points. The Italian delegation was also not satisfied with the wording calling on Member States to take all necessary measures to ensure that concentration levels do not exceed the target values. The Council text qualified this statement by referring to measures “not entailing

¹² Council (2004): Report of the meeting on 4 March 2004 of the Working Party on Environment. 8 March 2004, 7087/04, p. 2.

¹³ Council (2004): Report of the meeting on 11 March 2004 of the Working Party on Environment and the trilogue meeting on 15 March 2004. 16 March 2004, 7398/04.

disproportionate costs”. However, the Italian delegation preferred the formulation “save where not achievable through proportionate measures”¹⁴.

At the second trilogue meeting just four days later on 15 March, the rapporteur made clear that the new suggestions by the working party were not completely acceptable to the EP. In a written response¹⁵, the EP indicated that the date for attaining the target values of 2012 was acceptable. As part of an overall compromise agreement, the EP was also willing to accept the Council’s text revisions concerning mercury. However, the EP demanded a stronger reference to a possible introduction of limit values after the Commission review as part of such a deal. In order to possibly lift the remaining reservations of Member States on the Council’s text and to give the Presidency a new mandate for continued negotiations with the EP, the chair of the working party decided to refer the dossier to Coreper I. The Presidency stressed that this meeting would be a final attempt to find an acceptable solution for a first reading agreement. The Presidency also asked Coreper to instruct the working party to finalise the recitals in the light of agreement on the articles.

In the meeting on 19 March, Coreper members lifted all footnotes in the Council text without major changes to the dossier. In response to the EP demands, the deputy permanent representatives slightly modified the references to considering the introduction of limit values after the Commission review. Although a final agreement with the EP had not been reached yet, the working party already examined the recitals of the Directive in its meeting on 22 March. Without a further trilogue meeting, the EP subsequently agreed to the new Council proposal. Coreper adopted the agreement on 31 March without discussion and mandated the Presidency to inform the Parliament that the Council would be in a position to accept the proposal as amended by the EP if the EP’s amendments included the provisions agreed between the two institutions. The EP plenary adopted the compromise amendments supported by the rapporteur as well as the socialist, liberal and conservative party groups in its meeting on 20 April. On 11 November, Coreper decided without discussion to include the item

¹⁴ Italy wanted to ensure that the commitment imposed by target values was as weak as possible, but the insistence on this formulation rather than the formulation in the Council text is most likely due to a mistranslation by non-native English speakers (Interview D).

¹⁵ Council (2004): Addendum to the report of the meeting on 11 March 2004 of the Working Party on Environment and the trilogue meeting on 15 March 2004. 17 March 2004, 7398/04 ADD 1.

on the agenda of the Education, Youth and Culture Council meeting, in which the Directive was formally adopted as an A-item on 15 November.

10.2 Batteries Directive

10.2.1 Background and proposal content

The Commission proposal for a Directive on batteries had two major goals¹⁶. The first goal was to further reduce the pollution of the environment by introducing collection and recycling rates for all batteries put on the EU market. Additional risk management measures for batteries containing hazardous substances accompanied these general provisions. The second goal was to improve the functioning of the internal market by harmonising product requirements. The Directive repealed an earlier, far less ambitious Directive which was confined to the treatment of batteries containing substantial amounts of hazardous substances, such as mercury, cadmium and lead¹⁷. The previous Directive prohibited the marketing of batteries containing mercury from 1 January 2000, required that the batteries covered by the Directive should be collected separately and that Member States should develop four-yearly programmes aimed at reducing the heavy metal content of batteries and the share of heavy metal in the waste stream. A later amendment of the original Directive also required that the label of these batteries should indicate their separate collection and their heavy metal content¹⁸.

The Commission argued that the measures in force were not sufficient to ensure high collection and recycling rates, because the original Directive did not prescribe

¹⁶ Commission (2003): Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators. 21 November 2003, COM/2003/723.

¹⁷ Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. 26 March 1991, OJ L78, pp. 38-41; as amended by Commission Directive 93/86/EEC adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substance. 23 October 1993, OJ L264, pp. 51-52; and by Commission Directive 98/101/EC adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substance. 5 January 1999, OJ L1, pp. 1-2.

¹⁸ Commission Directive 93/86/EEC adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substance. 23 October 1993, OJ L264, pp. 51-52.

“measurable and verifiable instruments”¹⁹ to control the disposal of batteries. Furthermore, the Directive did not apply to all battery types, but covered only batteries containing a certain amount of dangerous substances. The Sixth Community Environment Action Programme described the prevention and recycling of waste as one of the primary environmental objectives for the years 2002 to 2012. In line with these objectives, the Commission proposed to introduce the following measures:

- A requirement for Member States to set up efficient collections schemes covering all portable batteries, not only those including dangerous substances.
- A uniform minimum collection target for portable batteries calculated on the basis of grams per inhabitant.
- An additional collection target of 80 percent of the quantity spent annually for portable nickel-cadmium (NiCad) batteries.
- A monitoring and reporting requirement for Member States regarding the quantities of NiCad batteries in the municipal solid waste stream.
- A legal obligation for producers of industrial and automotive batteries to take these batteries back after their use.
- The prohibition of the land-filling and incineration of industrial and automotive batteries.
- A general recycling requirement for all collected batteries to create a closed-loop system
- A requirement to set up recycling facilities offering the best available recycling techniques.
- Harmonised minimum recycling efficiency levels for different types of batteries.
- Provisions requiring Member States to support research and development in new recycling technologies for batteries.
- Provisions establishing the responsibility of producers for financing the collection and recycling of spent batteries, including historic waste generated before the entry into force of the new Directive

¹⁹ Commission (2003): Proposal for a Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators. 21 November 2003, COM/2003/723, p. 6.

- A requirement for Member States to inform consumers about the dangers of the substances used in batteries, the collection and recycling schemes as well as their role in those schemes.
- A requirement for Member States to send an implementation report to the Commission every three years.
- A requirement for the Commission to review and report on the implementation of the Directive after receiving the Member State reports and to possibly suggest amendments.
- A requirement for Member States to lay down penalties for the infringement of the Directive and to inform the Commission about these measures.

According to the Commission, extending the scope of the Directive to all batteries promoted not only environmental goals but also benefited the proper functioning of the internal market. So far, national collection and recycling schemes had differed in their scope, some covering all batteries and others only those covered by the earlier Directive. Requiring all Member States to adopt schemes to cover all kinds of batteries would establish a level playing field. Setting common product requirements, such as marketing restrictions or labelling obligations would also reduce barriers to trade. Thus, the proposal was based on a dual legal basis. The proposal suggested to harmonise product requirements based on the 'Internal Market' legal basis of Article 95 TEC and to harmonise measures designed to reduce the generation and to increase the recycling of batteries based on the 'Environment' legal basis of Article 175 TEC. The Commission proposal did not include bans of any types of batteries, although bans of batteries with adverse effects on the environment were clearly an option. As in the case of the Ambient Air Directive, the proposal suggested relatively modest policy change in this respect. Indeed, the issue of introducing a ban on NiCad batteries turned out to be the major division during negotiations in the Council and the Parliament.

10.2.2 Negotiation process

The Council made no attempts to reach an agreement on the Batteries Directive with Parliament in first reading. The adoption of the first Council decision took about four months longer than in the case of the Ambient Air Directive (see Table 10.2). The actual negotiations on the Batteries Directive took about seven months. This time period is also considerably longer than the four months of negotiations on the

Ambient Air Directive. In the case of the Batteries Directive, the Working Party on the Environment discussed the proposal eleven times (see Figure 10.2). Coreper I was strongly involved in the negotiation process, too. The deputy permanent representatives discussed parts of the dossier during four meetings. Interestingly, Coreper I referred the dossier back to the working party several times for further discussions before it forwarded the dossier to ministers. But eventually, Environment ministers had to resolve the last outstanding issues and come to a final agreement.

Negotiations in the Council started seven months after the adoption and transmission of the Commission proposal on 24 November 2003. The Irish Presidency had apparently set other priorities during the first half of 2004. Thus, the first consideration of the dossier by the working party took place only at the end of the Irish Presidency on 8 June 2004. This initial discussion took place on request of the Dutch delegation. The Netherlands were the successor in the Presidency chair and had asked the Irish delegation for a deliberation on the proposal. Like in the case of the Ambient Air Directive, proceedings in the Parliament had been quicker than in the Council. In fact, the EP had adopted its first reading amendments already on 20 April. The Commission had accepted several of these amendments completely or in parts.

Two major changes proposed by the EP concerned a total ban of batteries including more than a certain amount of lead and cadmium, and a change of the measurement of the collection targets from grams per inhabitant to proportions of annual sales. Especially the ban on NiCad batteries was a highly salient issue and prompted one of the largest lobbying efforts the Parliament had seen in recent years. The battery-producing industry went so far as to produce a comic-strip that painted a very bleak picture of the world after a ban on NiCad batteries. The lobbyists distributed the comic strip at the entrance points to the plenary room just before the EP voted on the amendments to the Batteries Directive. In the view of one observer, many Members of the EP regarded the comic-strip as an unrealistic and almost ridiculous exaggeration of the negative consequences of a ban on NiCad batteries. As a result, the comic strip had a rather counter-productive effect on the voting behaviour in Parliament²⁰. In the end, the cadmium ban amendment was adopted with the support of the socialist, liberal and green party groups. The conservative party groups opposed a ban. In any case, the Commission rejected both the amendment calling for

²⁰ Interview H.

a NiCad ban and the amendment calling for the measurement of collection targets as a proportion of annual sales.

Table 10.2 Batteries Directive: Main decision-making events

<i>Date</i>	<i>Collective Actor</i>	<i>Event</i>
24-11-2003	Commission	Adoption of proposal
24-11-2003	Commission	Transmission to Council and EP
27-11-2003	EP committee	Rapporteur appointment
16-02-2004	EP committee	Discussion of draft report
06-04-2004	EP committee	Adoption of report
20-04-2004	EP plenary	Adoption of opinion
20-04-2004	Commission	Partial agreement with EP amendments
08-06-2004	WP	First reading of proposal
02-07-2004	WP	Discussion of WP report
05/08-09-2004	WP	Visit of Dutch battery recycling facilities
07-10-2004	WP	Discussion of WP report and draft impact assessment
21-10-2004	WP	Discussion of WP report, draft impact assessment, and Presidency proposal
10-11-2004	WP	Discussion of WP report and draft impact assessment
18-11-2004	WP	Discussion of WP report, draft impact assessment, and Presidency proposal
24-11-2004	Coreper I (II-item)	Discussion of WP report and draft impact assessment
25-11-2004	WP	Discussion of WP report
01-12-2004	Coreper I (II-item)	Discussion of WP report
03-12-2004	WP	Discussion of WP report and Presidency proposal
07-12-2004	WP	Discussion of WP report and Presidency proposal
08-12-2004	Coreper I (II-item)	Discussion of WP report and Presidency proposal
09-12-2004	WP	Discussion of WP report and Presidency proposal
13-12-2004	Coreper I (II-item)	Discussion of WP report and Presidency proposal
20-12-2004	Environment Council (B-item)	Political agreement on common position
13-01-2005	WP	Discussion of Presidency proposal on recitals
15-07-2005	Coreper I (I-item)	Inclusion of common position in A-item list
18-07-2005	Agriculture and Fisheries Council (A-item)	Formal adoption of common position

Notes: EP = European Parliament, Coreper = Committee of Permanent Representatives, WP = Working party.

In the working party meeting on 8 June, delegations considered the original proposal as well as the amendments suggested by the Parliament. In the only meeting chaired by the outgoing Irish Presidency, Member States gave their initial comments on the dossier. Four contested issues became apparent during the discussions: the dual legal basis, the size of collection targets, restrictions on the use of cadmium and, related to the last point, the requirements for the monitoring of NiCad batteries in the municipal waste stream²¹. After this meeting, the Council Secretariat drafted a new text, which

²¹ Council (2004): Report of the meeting on 8 June 2004 of the Working Party on Environment. 22 June 2004, 10743/04, p. 1.

incorporated the EP amendments accepted by the Commission. This text formed the basis for subsequent discussions in the Council under the chairmanship of the Dutch Presidency. The Dutch had made the Directive a priority and aimed for an informal agreement on the Council's common position at the meeting of Environment ministers at the end of their Presidency on 20 December²².

The second meeting of the working party took place on 2 July. The Dutch Presidency was initially concerned that Member States with little or no experience in the recycling of batteries, particularly the newly acceded Member States, would oppose the proposal simply because they feared that building up the necessary collection and recycling infrastructure would be too complicated and too costly²³. Thus, rather than starting with a detailed discussion of the proposal paragraph by paragraph, the Dutch Presidency prepared discussion papers on the methods for monitoring the collection targets and on the restriction of cadmium in batteries²⁴. In the papers, the Presidency outlined the pro and cons of several policy options regarding the two issues and asked for a detailed discussion by Member States. As part of this discussion, several Member States presented their national systems for measuring collection rates. Many delegations (AT, BE, DE, FI, SE, LT, LV) sided with the view of the EP and spoke in favour of measuring targets in terms of percentages of annual battery sales, but several other delegations (CZ, IE, UK) agreed with the Commission to set up targets in terms of grams per inhabitant. Regarding the restrictions on the use of cadmium, many delegations were in favour of an eventual phase out of cadmium (AT, BE, CZ, DE, DK, ES, FI, IT, NL, PT, SE), although not necessarily in the way proposed by the EP. Other delegations opposed a ban (FR, IE, PL, UK) and sided with the Commission, which had suggested a closed loop system for NiCad batteries²⁵. As part of the Presidency's effort to take inexperienced Member States the 'fear' of the presumably difficult and costly task of establishing collection

²² Council (2004): Dutch Presidency: Provisional agendas for Council meetings prepared by Coreper (Part 1). 30 June 2004, 11014/04, p. 25.

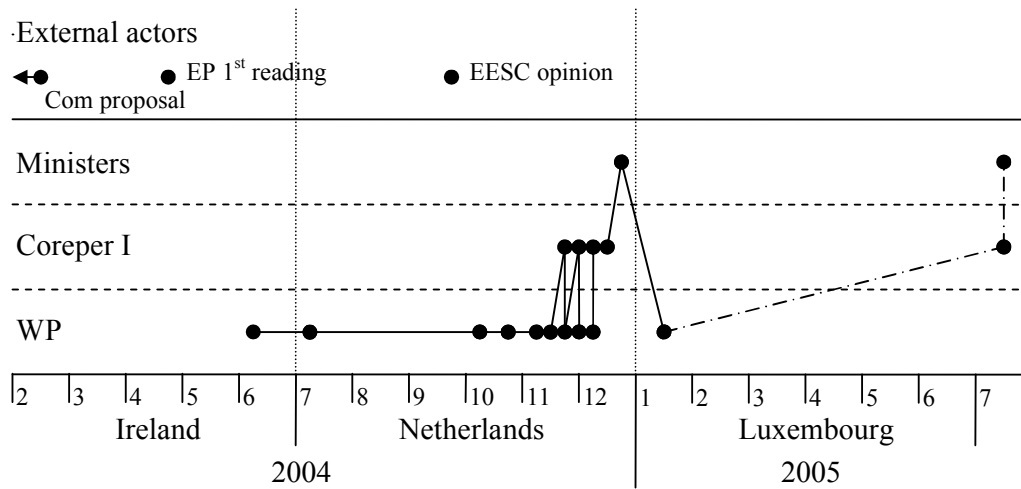
²³ Interview G.

²⁴ Council (2004): Report of the meeting on 2 July 2004 of the Working Party on Environment. 24 September 2004, 12728/04, pp. 2-3.

²⁵ Council (2004): Report of the meeting on 2 July 2004 of the Working Party on Environment. 24 September 2004, 12728/04, pp. 2-3; and Council (2004): Report of the meetings on 7 and 21 October 2004 of the Working Party on Environment. 4 November 2004, 14228/04, p. 8.

and recycling schemes, the Dutch delegation invited the working party members for a study trip to the Netherlands. During this four-day trip from 5 to 8 September, the working party members visited several Dutch battery recycling facilities.

Figure 10.2 Batteries Directive: Negotiation process



Note: Coreper = Committee of Permanent Representatives, WP = Working Party.
 Source: Data based on an analysis of Council documents.

Parallel to the debates on the Batteries Directive in the Working Party on Environment, the Working Party on Competitiveness and Growth discussed the use of impact assessments to evaluate the substantive effects of Council amendments. The Competitiveness Council of 17 and 18 May 2004 had called for the development of such impact assessments as part of inter-institutional efforts to improve EU law-making²⁶. Based on a recommendation of the Competitiveness Working Party in its high-level composition, Coreper decided on 23 June to ask the Presidency to suggest a pilot project for such an assessment. The Presidency selected the proposal for the Batteries Directive for the pilot project²⁷. The Competitiveness Working Party approved this choice at its meeting on 16 July and Coreper confirmed it on 20 July. The Coreper decision charged the Working Party on Environment to identify one or

²⁶ Council (2004): Outcome of proceedings of the Competitiveness Council on 17 and 18 May 2004: Council conclusions. 10 June 2004, 9995/04, pp. 6-8.

²⁷ Council (2004): Presidency note: Pilot project for impact assessments of Council amendments. 16 July 2004, 11464/04.

more amendments to be subjected to an impact assessment and to carry out the assessment²⁸.

Based on the discussions during the first two meetings, the chair of the Working Party on Environment decided to suggest a change in the measurement of the collection targets to percentage of annual sales rather than grams per inhabitant. The Presidency also proposed a partial Cadmium ban, limited to portable batteries and allowing a transition period for cordless power tools. This change implied the abolishment of the requirements to monitor NiCad batteries in the municipal waste stream, which many delegations had regarded to be too burdensome. The Presidency recommended the amendments related to the partial Cadmium ban as suitable candidates for the impact assessment and prepared a draft impact assessment for discussion by the working party at its first meeting after the summer break on 7 October. The Presidency took the position that the amendments would have a positive environmental impact and that the very small negative economic effects on industry and consumers would be far outweighed by savings in terms of collection and monitoring costs²⁹. The working party agreed with the selection of the proposed amendments for the impact assessment and had an initial exchange of views on the draft impact assessment on 7 October.

During the meetings of 7 and 21 October, the working party examined the proposal in more detail. By the time of the first meeting, many delegations had prepared detailed written comments on individual articles and paragraphs. Regarding the collection rate, the Dutch Presidency had originally proposed a target for portable batteries of 30 percent by weight of annual sales. This target was to be achieved within four years. An unspecified but higher target was supposed to be realised after another six years. As a response to discussions at the meeting on 7 October, the Presidency proposed a modified compromise. The chairman suggested a rate of 60 percent to be achieved after twelve years. But to take account of differences in the collection capacity of existing systems in Member States, the compromise suggested setting linearly increasing targets for each year to reach that collection rate. This

²⁸ Council (2004): Report of the meeting on 2 July 2004 of the Working Party on Environment. 24 September 2004, 12728/04, p. 3.

²⁹ Council (2004): Presidency note: Discussion paper for impact assessment of Council amendments. 24 September 2004, 12731/04.

compromise was supposed to alleviate concerns about the achievability of the four year target voiced by Member States with very low current collection rates.

During the meetings on 10 and 18 November, the Presidency proposed some new compromise provisions³⁰. The first substantial change suggested by the chairman concerned the definition of a producer. Several delegations (AT, BE, ES, LU) had requested a clarification of the original provision. In their view, the Commission's definition did not allow for a clear identification of a producer at all stages of the supply chain, which was necessary to implement the principle of producer responsibility. The Presidency's amendment catered to this demand. At the meeting on 18 November, the working party also considered a revised version of the draft impact assessment produced by the Presidency. Several delegations (BE, DK, DE, ES, AT, SE) could accept the assessment that the partial cadmium ban would have positive environmental and net-economic effects without any larger negative social consequences. In contrast, other Member States (CZ, EL, FR, IE, IT, LV, PT, UK) had doubts about the extent of the positive environmental impact of the partial cadmium ban and stressed the need to have a closer look at the social and economic impact. Despite these contradicting views about the result of the impact assessment, no delegation objected to forwarding the draft impact assessment to Coreper for further discussions.

In the light of ongoing disagreement among Member States about possible restrictions on the use of cadmium and on the assessment of the impacts of a partial ban, the Presidency decided to ask Coreper for further directions on the issue. The Presidency outlined four possible options: the first option concerned a partial ban as suggested by the Presidency and supported by a number of delegations (BE, DK, ES, CY, NL, AT, SI, FI, SE). The second option proposed also a partial ban, but with a longer transition period for cordless power tools. The third option suggested a partial ban with a review requirement for the exclusion of cordless power tools after four years. Several delegations (CZ, DE, IE, IT, PT, SK) were in favour of either option two or three. However, Denmark, Finland and Sweden indicated that option three was unacceptable to them. France, Poland and the UK opposed any cadmium ban on the grounds that the environmental benefits did not clearly outweigh the social and

³⁰ Council (2004): Meeting document for the meeting on 18 November 2004 of the Working Party on Environment: Presidency suggestions for amendments. 16 November 2004, DS 765/04.

economic costs. At this time, several delegations (CY, LV, LT, MT, HU) were still undecided. The fourth option referred to the original proposal text of a closed loop system for NiCad batteries. Only the Commission still favoured this option.

Coreper I discussed the possibility of a partial cadmium ban at its meeting on 24 November. At the beginning, the discussion revolved around the impact assessment of the ban. Soon, the impossibility of reaching a consensus on this issue became apparent. After about ten minutes of fruitless debate, the chair of Coreper decided to put the impact assessment aside and to continue the discussions in the standard mode of Coreper negotiations³¹. Several delegations changed their positions during the meeting. Only France kept supporting the original Commission proposal for a closed loop system for NiCad batteries. Thus, the original provision in the Commission proposal was not a viable option any more. However, no agreement could be reached on the precise form the partial cadmium ban should take.

The delegations were also not able to resolve several other obstacles in the next meeting of the working party on 25 November. Thus, the Presidency decided to ask Coreper for guidance on the remaining issues as well. Disagreement continued on the definition of industrial and portable batteries. The precise definition of these terms was of considerable importance, as they affected the scope of the partial cadmium ban, the collection regimes, the prohibition on land-filling batteries, and the rules on producer responsibility. The Presidency suggested including a recital with examples to aid the legal interpretation of the definitions. A new Presidency draft suggested a collection target of 20 percent after six years, 35 percent after nine years and 60 percent after twelve years. The size of the collection rates were at this moment only acceptable to a small number of delegations (BE, EE, NL, SK, SE). Some delegations (CY, CZ, EL, LV, MT, PL) requested a transitional period for Member States with specific national difficulties. Rather than allowing for extended transition periods, the UK suggested to adopt collection targets that could actually be met by all Member States in good time. Finally, regarding the recycling of waste batteries, some Member States (EL, IT, PT, UK) rejected the 100 percent recycling target for industrial and automotive batteries. A number of delegations (EL, IT, LV, SK, UK) also doubted the practicality and proportionality of the recycling rates suggested for other battery

³¹ Interviews F and G.

types. The Commission replied that higher collection and recycling standards belonged to the fundamental goals underlying the introduction of the proposal.

The next meeting of the working party took place two days later on 3 December. In this meeting, the working party followed up on the discussions in Coreper on 24 November and 1 December. With regard to the partial cadmium ban, the chair of Coreper had concluded that the working party should identify a “bridge” between option 1, a partial ban with a four year transition period for cordless power tools as proposed by the Presidency, and option 3, a partial ban with an exemption for cordless power tools to be reviewed by the Commission after four years³². The chair of the Working Party provided six alternative provisions that could constitute such a bridge, three providing for the initial inclusion of cordless power tools in the ban and three providing for their initial exclusion. Within these two groups, alternatives varied according to the procedure through which a decision on the future status of cordless power tools after the initial four years would be made. These options included the Comitology, consultation and co-decision procedure. With regard to the definitions of battery types, the Presidency provided several new draft recitals explaining the distinction between portable batteries on the one hand and automotive and industrial batteries on the other hand. The new recitals also included substantive examples for the different types³³.

As a result of the deliberations during the working party meeting, the Presidency suggested a global compromise package. This package was discussed by the working party on 7 December and by Coreper a day later on 8 December. The Presidency pointed out that the goal was to reach an agreement on the proposal at the meeting of Environment ministers on 20 December³⁴. With regard to the partial cadmium ban, the compromise package included an exemption for cordless power tools that would only end after four years if the EU institution made an explicit amendment towards this end through the co-decision procedure. This compromise proposal was a far-reaching concession by the Dutch Presidency. The Presidency

³² Council (2004): Meeting document for the meeting on 3 December 2004 of the Working Party on Environment: Presidency discussion document. 30 November 2004, DS 811/04.

³³ Council (2004): Meeting document for the meeting on 3 December 2004 of the Working Party on Environment: Presidency suggestions for new recitals. 30 November 2004, DS 813/04.

³⁴ Council (2004): Presidency note. 6 December 2004, 15537/04.

accommodated proponents of a moderate restriction on cadmium batteries because it anticipated that subsequent negotiations with the Parliament would move the final policy outcome closer towards a stricter cadmium ban again³⁵. However, many delegations (AT, BE, DK, ES, FI, HU, LT, PL, SE, SI) regarded this form of the cadmium ban as too modest; and proponents of lax restrictions (DE, EL, FR, LV, UK) still considered it to be too far-reaching. Germany opposed the inclusion of a review clause and France still rejected any form of a cadmium ban, largely as a result of the severe lobbying of a large French battery producing company³⁶.

Regarding the collection targets, the Presidency now proposed goals of 20 percent to be reached after six years and 40 percent to be reached after nine years. This proposal was also a relatively large concession to the more reluctant Member States, as many delegations (AT, BE, DE, DK, EE, ES, FR, IE, NL, SE, SK) had signalled that they could accept the earlier suggested collection target of 60 percent after twelve years, too. However, particularly the new Member States (CZ, CY, EL, LT, MT, PL) requested transitional arrangements. The United Kingdom, Hungary, and Latvia requested that targets should be set at such a low level that all Member States would actually be able to meet them. The transposition deadline was also of relevance in this respect. Many delegations (CY, CZ, FR, IE, IT, LV, MT, PL, SI, UK) requested 30 months time to transpose the Directive, rather than 18 months as suggested in the Commission proposal. The Presidency's compromise solution included a 24 month transposition period. The collection target of 40 percent of last year's sales was approximately equivalent to the 160 gram per inhabitant target of the original Commission proposal. As the Presidency pointed out, this target would have had to be achieved after five and a half years according to the Commission proposal. In contrast, the Presidency's compromise solution provided Member States with an additional three and a half years to reach the target.

Besides these main points, a number of other issues were still open at this point. In fact, the Presidency note to the working party and Coreper outlining the compromise solution lists twelve "other issues" not included in the compromise³⁷. The Member States only found agreement on one important issue: the definition of

³⁵ Interview G.

³⁶ Interview H.

³⁷ Council (2004): Presidency note. 6 December 2004, 15537/04, pp. 7-8.

different battery types. The delegations accepted the Presidency proposal to define portable batteries as the default category and to list examples of the different types of batteries in the recitals. The working party discussed the dossier again on 9 December. As a result of the discussions in Coreper, the Presidency suggested to reduce the second collection target from 40 to 35 percent. But in order to accommodate the supporters of high collection rates, the Presidency also suggested setting a third target of 50 percent to be achieved after twelve years. Besides this main issue, the working party also dealt again with many minor points. Overall, eight of the twelve ‘other issues’ could be resolved during the working party and Coreper meetings on 7, 8, and 9 December. However, with the exception of the definitions of battery types, all the major issues remained contested.

In the last Coreper meeting on 13 December, the deputy permanent representatives resolved most outstanding minor issues³⁸. Notably, delegations accepted the suggested compromise to set the transposition deadline after 24 months. With regard to the three main issues, the positions of Member States consolidated around different options. One group of Member States (AT, BE, DK, EE, ES, FI, LT, SE, SI, SK) clearly favoured a ban including cordless power tools with a transition period that could be extended by the Commission through the Comitology procedure. Another group of Member States (CY, CZ, DE, EL, FR, HU, IE, IT, LV, MT, PL, PT, UK) demanded the exclusion of cordless power tools, but could accept a review of the exception after a certain time period by the Commission. This Commission review could then be followed by a new co-decision proposal to include cordless power tools in the ban. Regarding the collection targets, all delegations accepted the 20 percent target to be achieved after six years. With respect to the second collection target to be achieved after nine years, some delegations (CY, CZ, DE, FR, LV, MT, PL, SK) favoured a 40 percent target. Another group (EL, HU, IT, LT, PT, SI, UK) could not accept more than 35 percent. Regarding the final target after twelve years, several delegations (AT, BE, DK, EE, ES, FI, FR, NL, SE, SK) preferred a target of 60 percent, while a number of delegations (DE, HU, IE, LT, PL) supported a target of 50 percent. The remaining delegations did not support a third target at all. Finally, the positions on the recycling targets remained virtually the same. Several delegations

³⁸ Council (2004): Presidency note. 14 December 2004, 15995/04.

(EL, ES, HU, IT, LV, PT, UK) were still opposed to the general recycling target of 55 percent.

The Environment ministers discussed these issues on 20 December. The discussions on the proposal were quite time-consuming. The partial cadmium ban proved to be the most contentious issue. A compromise proposal by the German Environment minister Jürgen Trittin finally bridged the division between the two camps in the Council³⁹. After lengthy negotiations, Trittin suggested that the exclusion of cordless power tools might be acceptable to the proponents of an extensive ban if the provision on the Commission review included a statement that the review should be conducted “with a view to the prohibition of cadmium in batteries and accumulators”⁴⁰. Most Member States could indeed agree to this proposal. Only Ireland was unhappy about the “closed” nature of the Commission review and abstained from the vote. In contrast, several other delegations (AT, DK, EE, ES, FI, LT, SE, SL) were unhappy about the common position because the ban on cadmium did not go far enough in their views. In a joint statement, they called on the Commission to promptly review the Directive with a view to prohibit the use of cadmium in batteries⁴¹. Belgium even abstained from the vote because it was not satisfied with the low level of environmental ambition defined in the Council’s common position.

Some delegations were discontent with the Council’s common position for other reasons. Italy and Greece abstained as well, but mainly because they considered the collection and recycling targets as unrealistically high. The collection targets had eventually been set to 25 percent after six years and 45 percent after ten years. The final target values were thus located between the most preferred target values of the two main groups of Member States. With respect to the recycling target for non-heavy metal batteries, the final outcome was a target of 50 percent, slightly lower than the 55 percent originally proposed by the Commission and sustained by the Presidency.

³⁹ Interview F.

⁴⁰ Council (2005): Draft minutes of the 2632nd meeting of the Council of the European Union (Environment), held in Brussels on 20 December 2004. 25 February 2005, 16275/04 Rev. 1.

⁴¹ Council (2005): Draft minutes of the 2632nd meeting of the Council of the European Union (Environment), held in Brussels on 20 December 2004. 25 February 2005, 16275/04 Rev. 1, p. 16.

Although ministers had reached a political agreement, the working party had to discuss the dossier once more to finalise the recitals. This meeting took place on 13 January 2005, under the chairmanship of the new Luxembourgian Presidency. The Council formally adopted the common position more than half a year later at the beginning of the British Presidency. Without discussion, Coreper decided on 15 July to include the common position as an A-item on the agenda of the Agriculture and Fisheries Council. The Agriculture ministers adopted the common position without deliberation on 18 July. The final version of the Batteries Directive was eventually signed by the Presidents of the Parliament and the Council on 6 September 2006, after extensive negotiations between the two institutions in second and third reading of the co-decision procedure had taken place. Interestingly, the EP demands did not alter the outcome on the three issues most contentious in Council negotiations. The provisions on the partial cadmium ban and on the targets for the collection and the recycling of batteries remained the same as in the Council's common position. Due to a change in the position of the liberal party group, the EP did not re-introduce its amendment regarding a total cadmium ban in the second reading.

10.3 Comparative analysis

10.3.1 Negotiation process

The two decision-making processes show several commonalities. The Commission proposal suggested rather moderate changes in both instances, at least with regard to provisions that imposed costs on European industries. In the case of the Ambient Air Directive, the Commission proposal did not include any air quality goals at all. The Council soon amended the proposal to include at least non-binding target values for the concentration of all air pollutants. The Parliament even promoted the introduction of binding limit values. Similarly, the original Commission proposal for the Batteries Directive did not include a ban on cadmium in batteries. In contrast, the Parliament suggested a total ban on NiCad batteries. The Council could not agree on a total ban, although such a ban was favoured by a large number of Member States. In any case, the Council's common position of a partial ban on cadmium in batteries was still going further than what the Commission had originally proposed.

According to EU officials, the relatively moderate Commission proposals are a result of a constant tension between the views of different directorates general (DG)

within the Commission⁴². The goals of DG Environment, which was primarily responsible for drafting the dossiers, to promote stricter regulation protecting the environment are often opposed by the industry-friendly DGs Internal Market and Enterprise and Industry. These DGs regard the protection of the interests of European industries as their primary objectives. However, DG Environment is usually also aware of the prevailing preferences in the other institutions. Thus, DG Environment has less incentive to resist the watering-down of its draft proposal during the Commission's internal decision-making process if it expects that the Parliament and the Council will 'correct' the changes imposed by the demands of the other DGs. This finding also illustrates the importance of committees in the Council and the EP for counter-acting the agenda setting power potentially conferred to the Commission by its exclusive right to initiate Community legislation. The committee system equips the Council with the capacity to make informed changes to Commission proposals that are not in the common interest of the Council members.

Noteworthy also is that discussions in the Council started only several months after the introduction of the proposals. The Commission transmitted the proposal for the Ambient Air Directive during the first month of the Italian Presidency in July 2003, but the first discussion did not take place until the middle of December. The incoming Irish Presidency *de facto* led these discussions already. The Commission transmitted the proposal for the Batteries Directive at the end of November 2003, also during the Italian Presidency. However, neither the Italian nor the subsequent Irish Presidency put the dossier on the agenda. On request of the incoming Dutch Presidency, the working party discussed the proposal only once during the last month of the Irish Presidency. Both the lack of discussions during certain Presidencies and the requests by incoming Presidencies to discuss a dossier already during one of the last working party meetings under the current Presidency point to the latitude Presidencies have to decide about the start of negotiations on a dossier and about how much attention a dossier receives. While the Ambient Air Directive was clearly a

⁴² Interviews H and C.

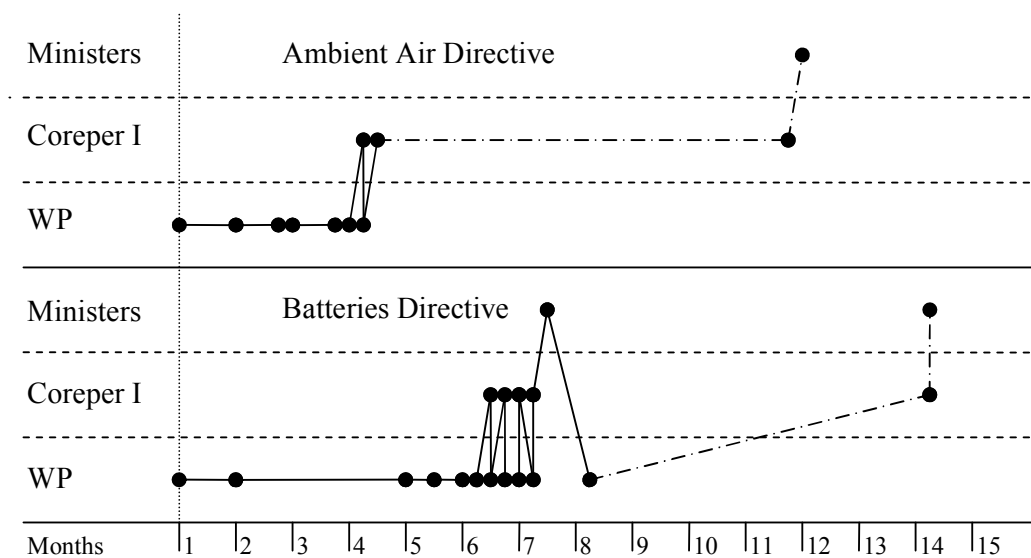
priority for the Irish Presidency, the Batteries Directive was not⁴³. The latter was only taken up by the Dutch Presidency, which already envisaged a political agreement on the Batteries Directive for the end of its term before the term had even started⁴⁴.

The decision-making processes also showed similarities in the timing of meetings of different Council bodies. In both instances, the Council body to first deal with the dossier was the working party. In contrast to the procedure in the Agriculture formation, where the SCA decides first about how a dossier is dealt with, Coreper does not concern itself with such matters. The Presidency decides when and by which working party a dossier is discussed. The initial deliberation process was also quite similar. The working party first discussed each dossier a number of times. In contrast to Agriculture, the Presidency did not move the dossiers up to higher Council levels relatively early in the process to give general guidance on some particularly contested issues. The Presidency referred the dossiers to Coreper only towards the end of the negotiation process to reach an actual agreement on specific topics. The difference in the timing of moving the proposal up to Coreper as shown in Figure 10.3 is largely due to the summer break at the beginning of the Dutch Presidency. From mid July to mid September, only few meetings take place in Brussels.

⁴³ The indicative agendas of Council meetings under the Irish Presidency forecasted a political agreement on the Ambient Air Directive by the end of the Presidency at the latest; the provisional agendas do not mention the Batteries Directive. See Council (2003): Irish Presidency: Provisional agendas for Council meetings prepared by Coreper (Part 1). 16 December 2003, 16175/03.

⁴⁴ Council (2004): Dutch Presidency: Provisional agendas for Council meetings prepared by Coreper (Part 1). 30 June 2004, 11014/04, p. 25.

Figure 10.3 Environment: Comparison of negotiation processes



Note: Coreper = Committee of Permanent Representatives, WP = Working Party.

Source: Data based on an analysis of Council documents.

However, Figure 10.3 also indicates that the remaining process differed quite remarkably. The deputy permanent representatives essentially reached an agreement on the Ambient Air Directive already during the first Coreper meeting. The subsequent working party meeting dealt with the finalisation of the recitals and the second Coreper meeting ratified the agreement with the European Parliament. In contrast, Coreper was more actively involved in the decision-making process on the Batteries Directive. The deputy permanent representatives discussed the proposal on four occasions. After the first three meetings, Coreper sent the dossier back to the working party for further discussions. Only the fourth and final Coreper meeting before the Environment Council succeeded to reduce the number of open issues to a manageable number. Once again, the working party fixed the recitals after the actual agreement had been reached, but this time the agreement was only reached by ministers themselves.

10.3.2 Decision-making levels

Table 10.3 tabulates the types of negotiation outcomes against the decision-making level in the Council for the two cases. Two facts are interesting. First, no clear pattern regarding the division of labour among the different committee levels can be discerned. Like in the Agriculture cases, the metaphor of the Council structure as a

‘filtering system’ is only partly reflected in the data. In the case of the Ambient Air Directive, the number of issues decided by Coreper I is not that much smaller than the number of issues decided in the working party. In the case of the Batteries Directive, Coreper I decided even more issues than the working party. Although ministers decided indeed a smaller number of issues than either Coreper or the working party, the proportion of ministerial decisions still amounts to almost twenty percent of the total number. Thus, in terms of the proportion of issues decided at a certain level, the Council hierarchy did not work very effectively as a filter in these two cases.

Table 10.3 Environment: Types of negotiation outcomes by Council level

<i>Type of Outcome</i>	<i>Ambient Air Directive</i>				<i>Batteries Directive</i>			
	<i>WP</i>	<i>Coreper I</i>	<i>Ministers</i>	<i>Total</i>	<i>WP</i>	<i>Coreper I</i>	<i>Ministers</i>	<i>Total</i>
Proposal	5	4	0	9	6	12	2	20
Amendment	6	1	0	7	6	5	1	12
Compromise	4	5	0	9	4	6	6	16
Total	15	10	0	25	16	23	9	48

Note: Coreper = Committee of Permanent Representatives, WP = Working Party.

Source: Data based on an analysis of Council documents. See the appendix to this chapter for more detailed information on the individual issues.

Practitioners often argue that the working party deals only with the technical details of a dossier whereas Coreper and particularly the ministers decide the important issues. This argument leads to the consideration of issue salience as the first potential explanatory factor. The case studies indicate that the salience of an issue plays an important role for explaining Council decision-making, but it only gives a partial explanation. In the case of the Batteries Directive, ministers discussed only very salient issues that imposed substantial adjustment costs on either battery producers or national administrations. Of course, the introduction of binding limit values for air concentration in the case of the Ambient Air Directive would have had very costly consequences on certain industries as well. But the Member States that favoured this option came nowhere near to a qualified majority or even a blocking minority. In fact, Denmark was the only Member State that consistently favoured limit values for all regulated pollutants. Thus, although the nature of the thresholds set for the monitoring of air pollutants strongly affected certain types of industries, it did not make it on the ministers’ agenda for the simple reason that there was a near-consensus on the larger benefits of non-binding target values. A similar reasoning applies to most other issues in the Ambient Air Directive. Individual or groups of Member States demanded adjustments of the Commission proposal, but because most of these demands were in

one way or another just aimed to reduce the burden on national administrations, other Member States had no reason to oppose them.

In contrast, a strong division existed in the Council between a large group of Member States favouring an extensive or even a total ban of NiCad batteries and an equally large group of Member States opposing such a ban. A similar division was apparent on the issues of collection and recycling targets. Mainly Member States with experience in battery recycling pleaded for a more extensive ban on cadmium in batteries and higher collection and recycling targets. The strong lobbying of the battery producing industry resulted in some Member States opposing a cadmium ban, even if they generally favoured a more ambitious collection and recycling system. The position of Germany is one such example. Taken individually, the salience of an issue is unlikely to be sufficient for an issue to be discussed by ministers. If Member States agree on a certain course of action, no reason exists to discuss an issue at higher levels of the Council, even if the issue is very salient. Thus, the Environment case studies support the earlier finding that issue salience affects committee decision-making only if Member States disagree on the most preferable policy option.

The Environment cases also exhibit some weak evidence corroborating the hypothesised effect of qualified majority voting. If qualified majority voting is allowed, the positions of Member States that are not backed by a blocking minority can simply be ignored. In the case of the Batteries Directive, ministers discussed only issues that were contested by a large number of Member States. Similarly, in the case of the Ambient Air Directive, Coreper discussed mostly issues that involved several Member States demanding changes. Only the Battery Directive issues discussed by Coreper also included a number of demands raised by individual or a couple of Member States.

The involvement of the EP did not seem to have a major effect on the Council level at which a decision was taken. In the case of the Batteries Directive, the text on which the Council based its negotiations included already the EP amendments accepted by the Commission. In addition, several players in the Council who favoured a cadmium ban and high collection and recycling targets counted on the environmentally friendly attitudes of the EP to move the final outcome closer to their positions in later rounds of the co-decision procedure. Therefore, the EP opinion might have had an indirect influence on the content of the Council decision, but an impact on the Council level at which the decision has been taken is not apparent. In

the case of the Ambient Air Directive, the Irish Presidency exploited the fact that the Parliament had its last plenary meeting of the legislative term in April 2004 to induce “a sense of urgency”⁴⁵ into Council negotiations. In order to reach an early agreement with the Parliament, Council negotiations had to proceed swiftly. Under normal circumstances, attempts to reach an early agreement with the EP are likely to protract Council negotiations. In the case of the Ambient Air Directive, the existence of a deadline for such an agreement might have actually helped to speed up negotiations in the Council. The deadline might have also increased the chances that an issue was decided at lower levels in the Council, but there is no direct evidence for such an effect.

What role did uncertainty about the consequences of legal provisions play? Interestingly, some indications exist that the effect of uncertainty operates in fact contrary to expectations. The cadmium ban in the Batteries Directive exemplifies this point. The Council chose the amendment for a partial ban on NiCad Batteries as a pilot study for impact assessments exactly because the environmental and economic consequences of such a ban were highly uncertain. However, lacking an agreed methodology and relevant data, the working party could not agree on a consensual evaluation of the cost and benefits of a ban. In fact, the impact assessment concluded that, “since it is impossible to quantify the impacts of the various options with more precision, let alone to put a monetary value on it, the final decision on whether the environmental benefits of any particular option justify the economic and social costs must remain a political decision”. Thus, uncertainty was actually a major reason why ministers discussed the cadmium ban, although political conflict and salience acted probably in concert with uncertainty in this instance.

Yet, other evidence also exists that support the original hypothesis. When pressed about why higher Council levels did not discuss other issues, an interviewee responded that certain points were simply too complex to be discussed by ministers. The issue of the precise definition of battery types is an example. The distinction between industrial and portable batteries crucially determined the scope of several provisions in the proposal, including the scope of the cadmium ban. Thus, the distinction between portable and industrial batteries was arguably just as important as the inclusion of cordless power tools in the ban. However, while ministers eventually

⁴⁵ Interview D.

needed to decide the issue of a ban of cordless power tools, the deputy permanent representative immediately resolved the disagreement about the definitions of battery types in the first meeting in which they discussed the issue.

A crucial difference between these two instances of decision-making was the existence of an information asymmetry between the members of different Council levels. However, the information asymmetry did not concern the practical consequences of the legal text, but rather the legal consequences of the wording in the text. In contrast to practical consequences, which cover remote environmental, social and economic developments caused by a piece of legislation, legal consequences refer to the types of situations covered by a provision and the rules prescribed to such generic situations. The legal consequences of individual provisions can be known with relative certainty if one is familiar with the content and structure of a proposal. Thus, after a brief by their working party experts, the deputy permanent representatives had a good idea about the legal consequences of changes to provisions like the definitions of battery types. The working party experts also sat directly beside their bosses in Coreper meetings and could give direct advice when needed. Although working party experts usually attend ministerial meetings as well, they sit at the back of the room without direct access to their superiors. In addition, the time of ministers is generally more limited than the time of Coreper members. Any briefs for ministers have to be even shorter than those for the members of Coreper. Thus, although Coreper members were just as uncertain about the practical consequences of changes to the definitions of battery types as the ministers, Coreper members were more aware of their legal consequences. In instances where committee members have an informational advantage, making a decision in Coreper is less risky than leaving the decision up to ministers. In the end, the deputy permanent representative would be blamed for an uninformed decision by his or her minister, at least when the minister's bad decision was just a result of ignorance about the legal details of the dossier.

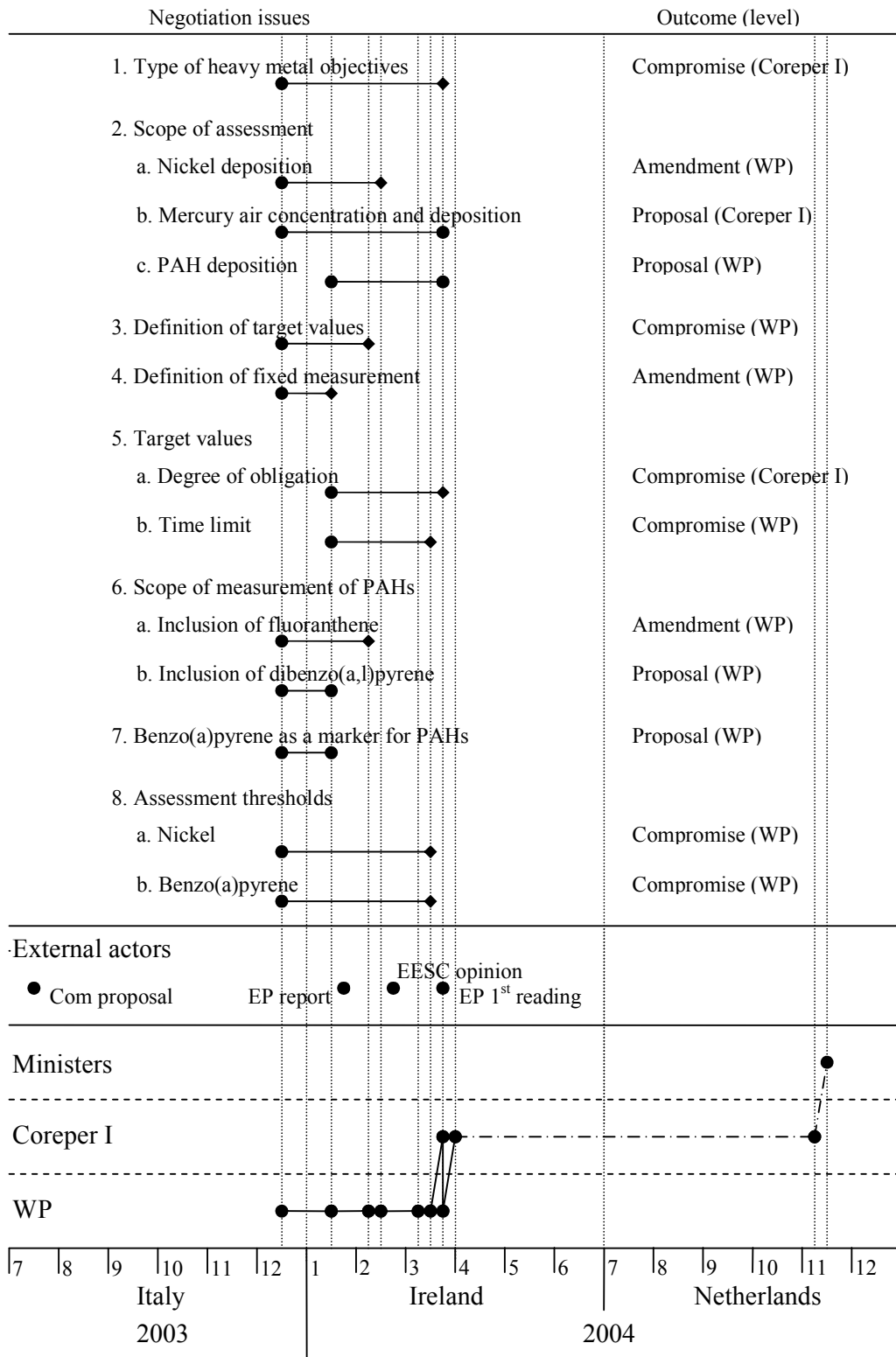
The case descriptions also point to the priorities of the Presidency as an important variable for explaining the decision-making level in the Council. In the case of the Ambient Air Directive, the effect of the EP involvement and the effect of the Presidency priority are hard to disentangle, basically because the Presidency used the prospect of an early agreement with the EP as an incentive for Member States to reach a timely decision. Nevertheless, the Presidency priority seems to be the main causal factor. The negotiations with the EP might have introduced additional points of

conflict which could only be decided at Coreper level. However, the decision to engage in negotiations with the EP in the first place is a result of the ambitions of the Irish Presidency to conclude the dossier during the first reading. Coreper discussed only those internal Council issues that were of rather minor significance and hardly conflictual. Thus, in the absence of Presidency impatience, the working party might have reached a decision on the dossier, albeit later in time and then in the form of a common position. The priorities of the Dutch Presidency also played a major role in the adoption of the common position on the Batteries Directive. In the month before the last meeting of Environment ministers during the Dutch Presidency, the Presidency used every weekly Coreper meeting to discuss the dossier. In addition, the working party discussed the file on four occasions. The impatience of the Presidency also explains the relatively large number of issues decided at Coreper level in the case of the Batteries Directive.

Considering the cases as a whole, Presidency priority seems to be the main factor explaining the involvement of Coreper in the case of the Ambient Air Directive, although this factor worked through the first reading negotiations with the Parliament. Quite a number of contested points were raised by Member States, but these points did not result in fundamental divisions between larger groups of Member States. Thus, the absence of preference divergence also played a role. The possibility of qualified majority voting might have helped to keep the level of conflict down as well, but the Ambient Air Directive case showed no clear evidence in favour or against this hypothesis. In the case of the Batteries Directive, the strong involvement of Coreper is probably also due to the priorities of the Dutch Presidency. However, the involvement of ministers was a result of issue salience in combination with preference divergence between larger groups of Member States. The pattern that ministers discussed only issues contested by groups of Member States large enough to be able to block a decision is consistent with the voting rule hypothesis. The absence of uncertainty about the legal consequences of provisions was also a precondition for ministerial discussions.

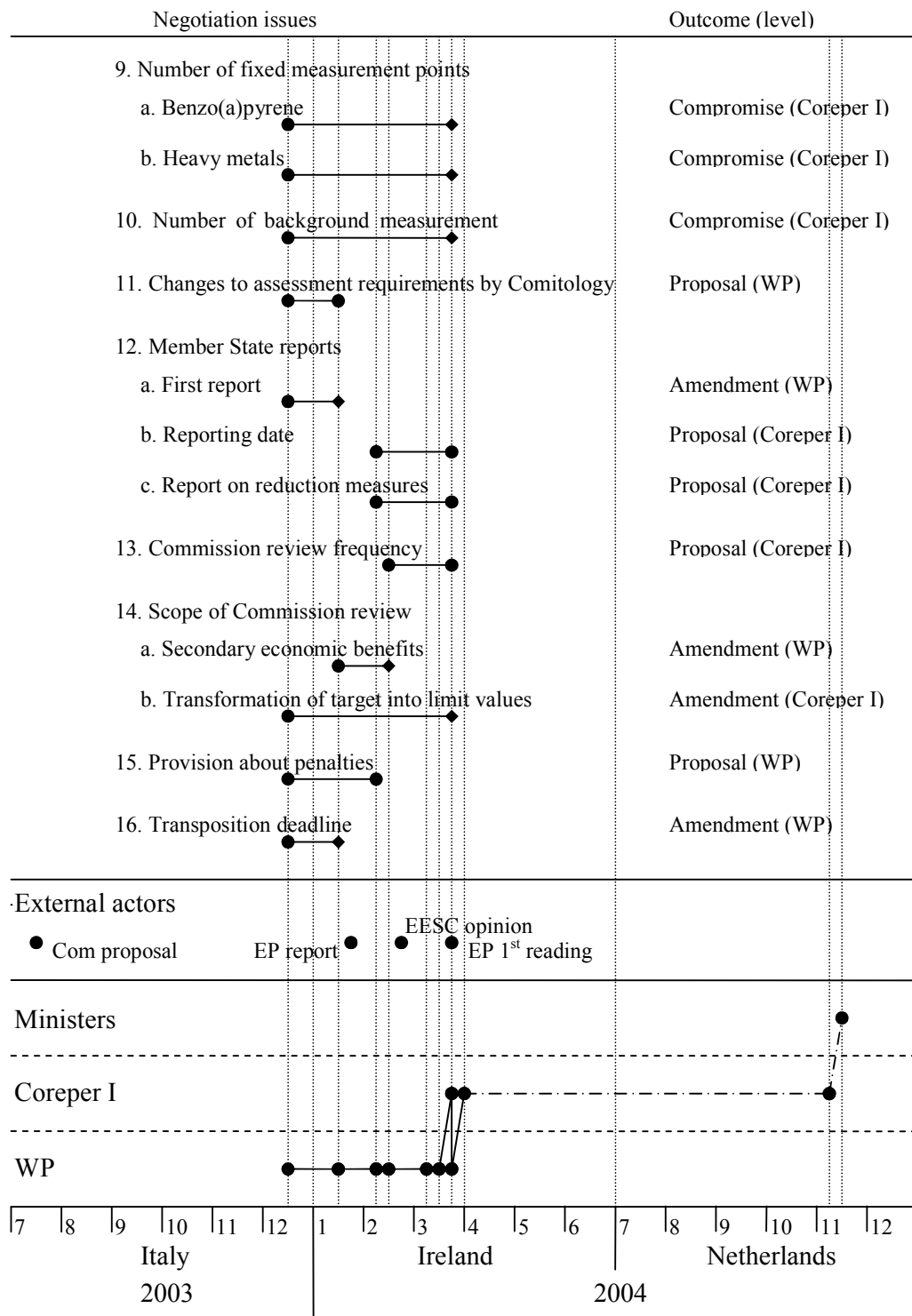
10.4 Appendix: Development of individual negotiation issues

Figure 10.4 Ambient Air Directive: Negotiation issues



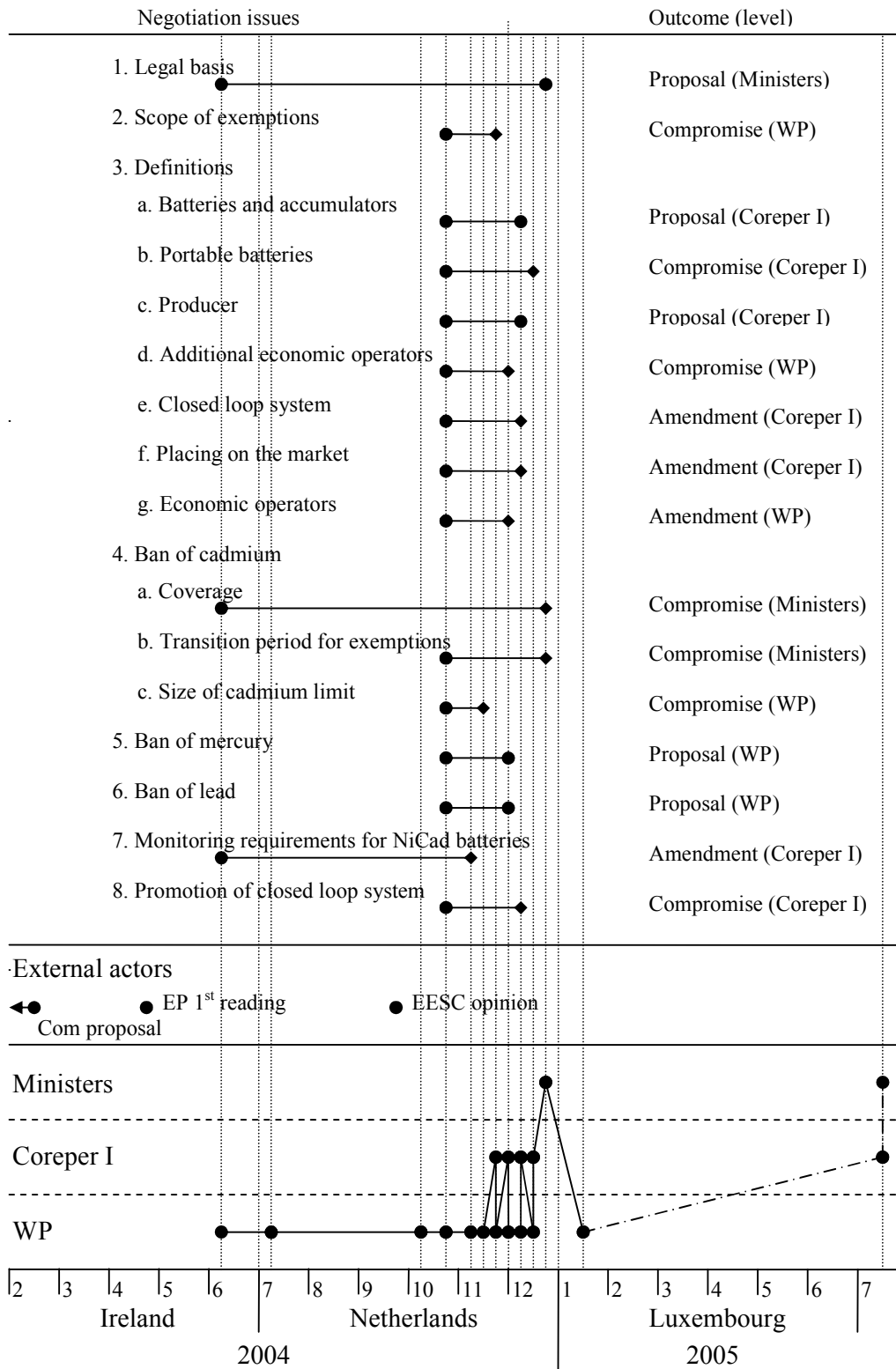
Note: See footnote 38 on page 151 for further information on this figure and its data sources.

Figure 10.4 Ambient Air Directive: Negotiation issues (continued)



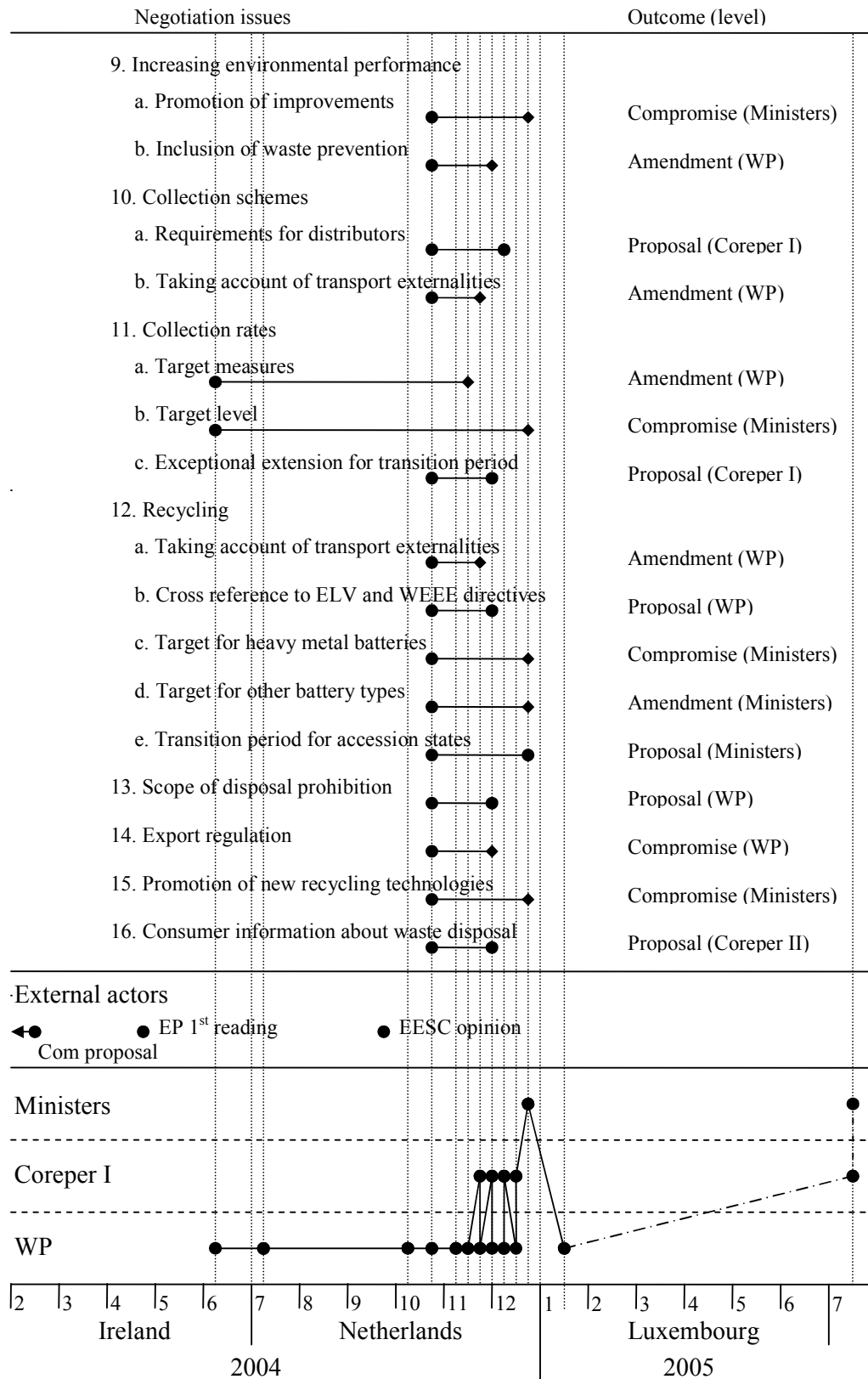
Note: See footnote 38 on page 151 for further information on this figure and its data sources.

Figure 10.5 Batteries Directive: Negotiation issues



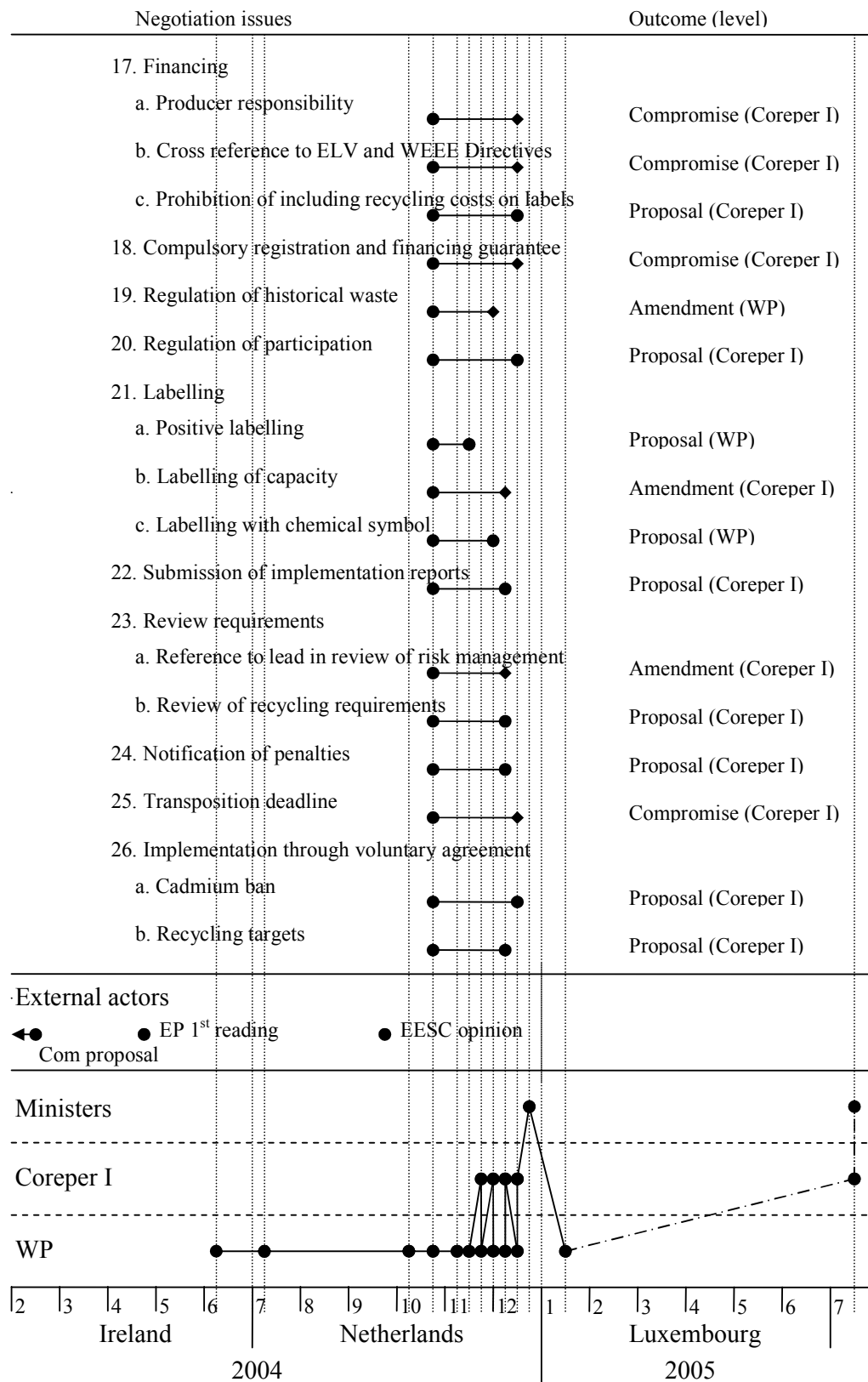
Note: See footnote 38 on page 151 for further information on this figure and its data sources.

Figure 10.5 Batteries Directive: Negotiation issues (continued)



Note: See footnote 38 on page 151 for further information on this figure and its data sources.

Figure 10.5 Batteries Directive: Negotiation issues (continued)



Note: See footnote 38 on page 151 for further information on this figure and its data sources.