

Real change takes time

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SDU
30 August 2018

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Case: financial regulation (I)

People say “we’ve wasted a crisis” – why?

- Ten years after financial crisis, we’ve fixed the house, but it’s still a wooden house (we got better at managing the risk!)
- This can be expected in fire-fighting mode; a crisis is the worst time to fundamentally change the system, as the fire-fighting reinforces existing power structures and social-economic models (tighten the screws rather than changing them)

Case: financial regulation (2)

...

- Financial regulation is still in silos: banks, markets, products
- Some baby steps are being taken on sustainable finance, but:
 - interpretation is too narrow (limited to environment, and excessive focus on climate change risk)
 - framed within the Commission's Capital Markets Union project: financial stability (FISMA) perspective, not more

Case: financial regulation (3)

- What is needed now is to start a long-term generational change of the role of finance in society (capital allocation, wealth, inequality, money creation) – but how?
- New momentum in 2019-2020?
 - Elections in major member states
 - New Parliament and Commission
 - Brexit
 - EU convention?
- Reviving the G20? (Trump, China)

Stereotypes business & NGOs

- NGOs have unlimited supporters and a lack of financial resources
- Business have limited supporters and indefinite financial resources
- NGOs are badly coordinated angry hippies
- Business representatives wear suits and lobby “the right”
- NGO representatives wear jeans, carry banners, and lobby “the left”

NGOs do have resources



NGOs are well coordinated



3/03/2017 11:35

UNITED AGAINST BAYER-MONSANTO DEAL: It's no secret that civil society organizations are working behind the scenes on how to cause trouble for the world's largest seed and pesticides firms, six of which are [at various stages of merging with each other](#). Their main target is Bayer and Monsanto, who are in discussions with the European Commission over a proposed merger. They even have a cool name for it — Baysanto. However it's not often that the minutes of their strategy meetings [are leaked](#), which happened this week. The NGOs' interest in EU competition law appears to be relatively new, with the minutes referring several times to the need for further legal advice. The reason for their interest? "Power concentration of corporates" and the "the social justice issues arising around increased market domination from an even smaller number of companies," according to two of the participants.

The meeting: At the end of last month, a group of NGOs met in Berlin to "discuss international campaign plans and opportunities regarding the three mega mergers in the seed and pesticide industry." The discussion began with a *tour de table*, during which 19 people gave updates on campaigning strategies, including how to involve activists in U.S. and "the south," specifically South Africa, through the African Center for Biodiversity.

Spiritual and anti-corporate activists: At the table were representatives from Oxfam, Friends of the Earth and Corporate Europe Observatory, as well as Misereor (the German catholic bishops' Organization for Development Cooperation), Bread for the World (representing German protestant churches) and Demeter (a company that certifies organic food products).

NGO advocacy is more than lobby



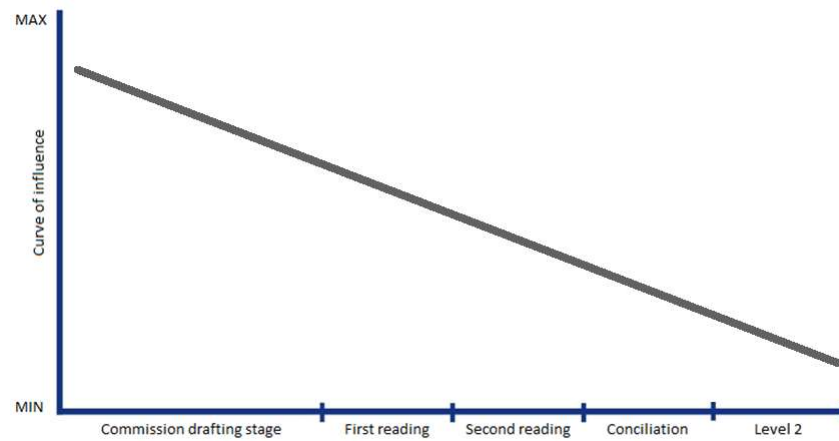
NGOs work with all MEPs



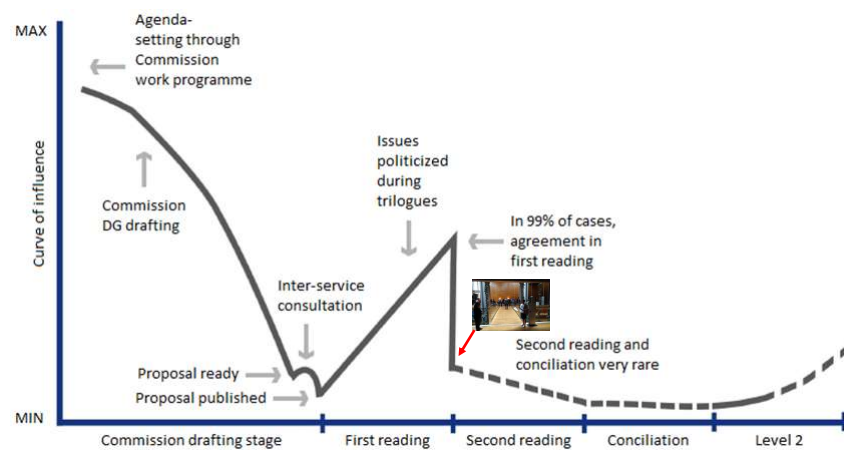
Lessons from business for NGOs

- Intervene earlier and upstream
- Have a long breath!
 - Align funding to long-term goals
 - Ensure staff continuity
- Avoid fights for visibility and funding – there is a greater common fight (cf. industry associations)
- Set the agenda

Set the agenda (1)



Curve of influence (post-Lisbon)



Adapted from Daniel Guéguen and Vicky Marissen, The new practical guide to the EU labyrinth (2015)

Set the agenda (2)

- NGOs most vulnerable to the dangers of agenda following
 - Instead of challenging the role of the financial sector in society, the post-crisis regulation of every aspect of the financial sector has reinforced its role in society
 - Campaigning for agri-based car fuel actually reinforces transport infrastructure based on fossil fuel combustion

Recent developments

Decision-making becomes more technical:

- Increased use of secondary legislation since Lisbon (2010)
- Focus on evidence-based policy-making (impact assessments, evaluations and consultations):
 - Better Regulation (2002/2015)
 - Better Law-Making (2016)
 - REFIT (2012)

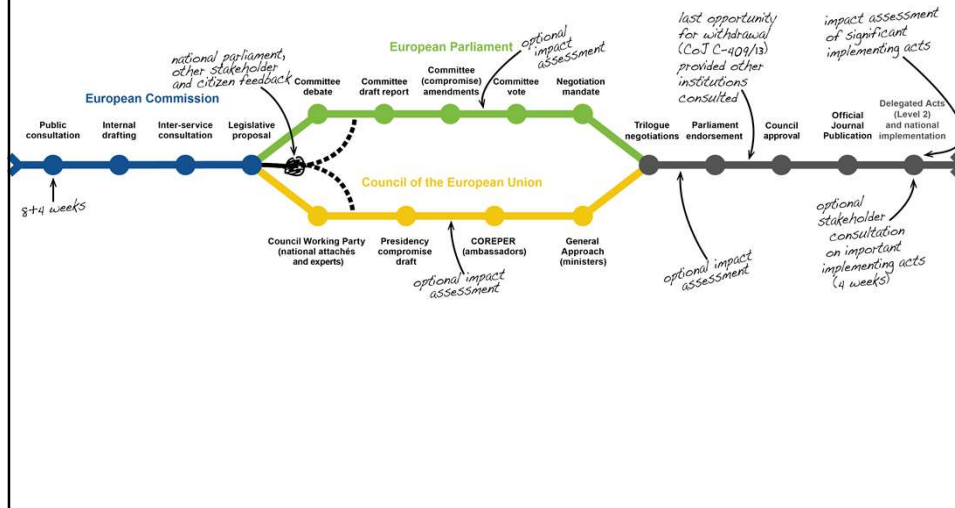
Recent developments (1)

- Coping with inflexible legislative process:
 - No more second readings (99%) post-2009
 - Increased relevance of delegated legislation since Lisbon Treaty
 - Reduced political decision-making at Level 1
 - Politicization of “Level 2” implementation process
 - Incentive for Commission to delegate to itself
 - Increased Commission power leads to increased relevance of consultations in pre-legislative and post-legislative phase

Recent developments (2)

- Better Regulation agenda (2015):
 - Aims to address shortcomings by creating additional opportunities to influence legislation, but most changes only help insiders
 - Longer “public consultations” before proposal
 - Introduces U.S.-style post-proposal consultations for industry and national parliaments though not “accepted” by EP and Council
 - Increased focus on impact assessments during legislative phase (new lobby tools!)
 - Additional consultations during implementation process

Recent developments (2)



Recent developments (3)

- **Inter-Institutional Agreement on Better Law-Making (2016):**
 - Codified Commission's commitment to longer consultations
 - Rejected post-proposal consultations (but Commission still runs them)
 - Restated EP and Council commitment to do impact assessments on significant amendments (EP c. 30 per year, takes 3-4 months, mostly done by external contractors when substantial – 6+ months)
 - Ongoing negotiations on “political delineation” of Level 1 v Level 2 and Implementing v Regulatory Technical Standards

Recent developments (4)

- Revised REFIT programme (2012):
 - Evaluations and “Fitness Checks”
 - Commission annual work programme announces REFIT checks and repeals
 - Creation of REFIT Platform (2015) and “lighten your load” website

Consequences – Trilogues

- Curve of influence: relatively high influence during trilogues before years of calm
- Either last opportunity to win what you failed to achieve before (at Commission level!)
- ...or damage control as opponents try the same!
- Careful about political decisions delegated to Level 2, dressed up as technical issues, calibrations, etc. (e.g. maximum speed, level of speculation, amount of pesticides allowed)
- The legal form of delegation matters (Reg/Dir/ITS/RTS) and is subject to political horse-trading
- Relatively easy to monitor but lots of work to follow-up, as individualised strategic messaging rather than blunt communications to everyone

Consequences – Level 2

- Lobbying doesn't stop when the legislative proposal is adopted
- Lots of things to win and lose at Level 2
- Engage with technical authorities (ESAs in finance) along with the Commission as they prepare delegated rules, just as you would with the European Commission in a normal legislative procedure

Consequences – Consultations

- Don't forget to include impact assessments in the pre-legislative lobby:
 - Increased reliance on evidence means the definition of the problem drivers, intervention logic and parameters become more important
 - By successfully steering the impact assessment framework, you are making your consultation responses more effective
- Certainly in the case of industry, ensure you are in dialogue with Commission policy staff and national officials on the relevant expert group
- REFIT (Platform) is mainly an opportunity to influence Commission Work Programme

Thank you

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