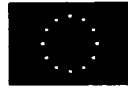


EUROPEAN PARLIAMENT



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BRIEFING  
ON  
COMMITOLOGY

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice
- 2 The Commission
- 3 The Court of Auditors, ESC and COR
- 4 Differentiated integration
- 5 The common foreign and security policy
- 6 The role of the national parliaments
- 7 The hierarchy of Community acts
- 8 Codecision procedure
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- 13 Social policy
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- 20 Legal personality and the Union's foreign representation
- 21 Commitology

**BRIEFING  
ON  
COMMITOLOGY**

1. Summary

'Commitology' may be defined as a process for adopting measures to implement legislative acts. In this process measures are adopted by the Commission, assisted by a committee of experts from the Member States.

The commitology process was devised when the Council began delegating executive powers to the Commission. It was first introduced in 1962 to implement a series of Council regulations organizing the market in agricultural products and has continued to be used in the CAP sphere. The number of such committees has grown considerably since then.

The Single European Act added a third indent to Article 145 of the EEC Treaty, which reads: 'the Council shall ... confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council ...'.

On 13 July 1987 the Council used this text as the basis for adopting what is known as the *Commitology decision*, laying down the procedures for the exercise of implementing powers conferred on the Commission. It was in fact the first legal act to be adopted under the Single European Act's provisions.

The decision sets out three procedures in which the Commission is assisted by a committee, composed of representatives of the Member States and chaired by a Commission representative. While under the first procedure the committee is purely advisory, in the second and third (each of which has two variants) the committee has the power to send the issue back to the Council.

In January 1995 the 'Modus vivendi' agreed between Parliament, the Council and the Commission on the subject of commitology states that Parliament must be fully informed of any measures under the commitology procedure when the basic legislation is adopted by codecision (under Article 189b of the EC Treaty).

Indeed, the Modus vivendi is one of the sources of the Conference agenda, since its third paragraph says, 'the three institutions note that the question of the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty, when the adoption of such measures is entrusted to the Commission, will be examined in the course of the revision of the Treaties planned for 1996, at the request of the European Parliament, the Commission and several Member States. The Reflection Group will be invited to examine the question.'

## 2. Parliament's resolution of 17 May 1995

Paragraph 32(ii) of the resolution says 'existing "commitology" procedures should be simplified. General responsibility for implementing measures should be devolved to the Commission (which may use an Advisory Committee to help in the formulation of the measure, but not type 2 or type 3 Committees, which would be abolished). The Council and Parliament should be informed of the measures proposed and should each have the opportunity to reject the Commission's decision and to call either for new implementing measures or for full legislative procedures.'

On the budgetary aspect, in late 1994 during the 1995 budget procedure Parliament adopted an amendment to place in the reserve the appropriations for the budget lines intended to finance the various committees. The total sum involved was around ECU 17.5 m, to cover the operating expenses of about 430 regulatory, management and advisory committees, apart from the committees set up under specific research programmes. However, the funds were released after information on their operation was received from the Commission.

## 3. Commission report of 10 May 1995

In paragraphs 51 and 52 the Commission says 'since the codecision procedure was written into the Treaty, Parliament has felt that the Council should no longer have the sole power to delegate or intervene in the task of implementing measures adopted under the codecision procedure, but that Parliament should also be involved. It was because of this disagreement with the Council that, for the first time, Parliament rejected a proposal at third reading - the proposal for a directive on voice telephony. To avoid further cases of stalemate,' the Commission continues, 'on 20 December 1994 the institutions agreed a *modus vivendi* which will apply until the matter is reviewed at the 1996 Intergovernmental Conference.'

The Commission has never proposed the type 3(b) committee procedure in the above 1987 decision, considering it 'illogical since it can lead to a situation in which no decision is taken. With this reservation, the Commission believes that the implementing procedures operate satisfactorily and present no major obstacles to actual implementation'. They also have the advantage of 'more closely involving national government departments; these bear most of the responsibility for applying Community measures in practice.'

## 4. Council report of 20 April 1995

On this subject the Council confines itself to commenting (on page 13) that application of the codecision procedure introduced by the Maastricht Treaty has been complicated by 'the linkage which was initially established with other matters (including committee procedure and amounts deemed necessary) which has held up the adoption of several texts.'

## 5. Position of the Member States

(a) Spain: the March 1995 document, *the 1996 Intergovernmental Conference. Starting-points for a discussion*, points out that the Commission and Parliament have put forward new proposals on the codecision procedure and that ways must

be found of enabling Parliament to take part in the committee procedure or commitology, which also needs to be simplified.

(b) Austria: in its *Guidelines on probable subjects at the 1996 IGC* published in June 1995 the Austrian Government comes out in favour of extending Parliament's legislative and control powers. To this end, it goes on, ways of simplifying legislative and commitology procedures must be discussed.

(c) Netherlands: the government's Fourth Memorandum on institutional reform of the European Union, submitted to the Dutch parliament on 12 July 1995, deals with a number of matters to do with the Union's principles and legislative procedures and the need for institutional balance. On commitology the Memorandum simply says that the Dutch Government favours a constructive approach to the matter, and points out that the need for efficiency and democracy in Community decision-making means organizing the committees in a simpler and more open way.

## 6. The Reflection Group

(a) At its meeting of 24-25 July 1995 Group tackled the subject of commitology in conjunction with the hierarchy of Community acts. Some representatives thought that these subjects raised the issue of institutional balance but that there was no need to change it because Article 189 EC was sufficiently clear and flexibility was essential. Others took the view that more power should be delegated to the Commission but that Parliament and the Council should maintain a power of control and review over Commission decisions. In this scheme of things, some Group representatives underlined the linkage between the hierarchy of acts and implementing powers: the issue of delegating power to the Commission needed to be simplified, to avoid the subject of commitology.

At the same meeting one view was that implementing acts should be better framed to avoid overburdening the legislative process, while keeping an eye on the Commission and clearly defining the transfer of powers. It was unacceptable to Parliament for control to be exercised by the Council on its own: the two institutions should be on an equal footing.

Another view argued for revising commitology (the powers for implementing Community law) by increasing the delegations in the Commission's favour, under the political control of the Council and Parliament.

(b) The interim report drawn up by the chairman of the Reflection Group on the 1996 IGC highlights the two main lines of thought that have emerged in its deliberations:

(i) the first wants the present committee system to be scrapped, because it already seems too confused and complicated, and would be hard to adapt to any further round of Community enlargement;

(ii) the second, however, believes the 1987 commitology decision should be upheld and points out that the Council must not be regarded as a 'Chamber of States' but as the Union's central institution, endowed with legislative and executive powers which it must preserve in order to comply with the letter and the spirit of the constituent Treaty. Accordingly, say members of the Group taking this view, to scrap commitology and transfer the implementing powers to the Commission would be to endanger the institutional balance as it is designed at present.

In the face of these two opposing views a middle way would seem to be required. Some members of the Group think it could take the form of action to simplify commitology. This would involve replacing the present procedures with a single procedure, under which, as they see it, the Commission would be responsible for deciding on suitable implementing measures, under the scrutiny of the Council and Parliament and after consulting the national experts, by applying the normal legislative procedures. One member of the Reflection Group proposes that the opposition of three Member States in the Council should be enough to prevent an implementing measure from going ahead.

## 7. Other views

As far as recent legal comment is concerned, Kieran Bradley in *Commitology and the law: through a glass, darkly* (Common Market Law Review 1992, p. 693) argues that since the third indent was added to Article 145 of the EEC Treaty delegation to the Commission, which used to be optional and could be subject to conditions, has become obligatory and the reserve in favour of the Council is now subject to conditions. Adding the third indent implies a major step towards a new definition of the separation of powers between the Community institutions, concentrating the bulk of implementing power in the Commission.

Koen Lenaerts, a judge with the Community's Court of First Instance, writes in *Regulating the regulatory process: delegation of powers in the European Community* (European Law Review, February 1995) that Court of Justice case law accepts the delegation of powers in so far as the balance of power inherent in the constitutional structure of the Community remains unchanged. Maintaining that balance is essential to preserve democratic legitimacy.

Justus Lipsius, in *The 1996 IGC* (European Law Review No 3, June 1995), thinks the Treaty should clearly establish that the procedures for implementing legislative acts form part of the Commission's powers and may not be reserved for the Council. Hence the commitology decision of 13 July 1987 should be simplified, mainly by scrapping Procedure 3, and converted into a protocol annexed to the Treaty. Parliament should be informed of any implementing measures adopted on this basis, but it should not be involved in any way in the procedure by which such measures are adopted.

With a view to the 1996 Intergovernmental Conference the International European Movement has set up an Initiative Committee chaired by Professor Jean-Victor Louis. The Movement's Secretary-General, Mr Dastoli, said on 5 July 1995 that commitology was one of the main issues that still needed to be clarified.

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