



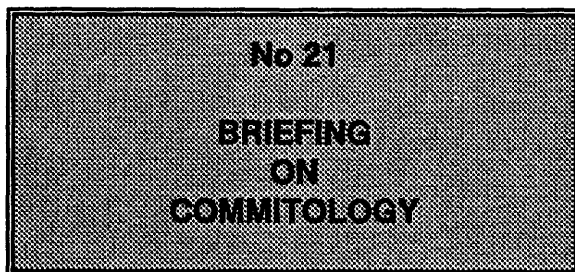
SECRETARIAT WORKING PARTY

TASK-FORCE
ON THE
" INTERGOVERNMENTAL CONFERENCE "

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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
9. CJHA
10. European citizenship
11. WEU, security and defence
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26. Europol
27. The IGC and the Schengen Convention
28. Combating fraud
29. Energy
30. Tourism and the IGC
31. Economic and social cohesion
32. European environment policy and the IGC
33. The common agricultural policy and the IGC
34. Civil protection
35. Ending sex discrimination
36. Enlargement of the EU
- 36a. Accession of the CEECs - agricultural aspects
37. Employment and the IGC
38. The IGC and Economic and Monetary Union
39. Asylum and immigration policy
40. Social exclusion and the IGC
41. Children and the IGC
42. Fight against drugs and the IGC
43. The IGC and the fight against racism
44. Youth and the IGC

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.

The 'Modus vivendi' of 20 December 1994 concluded between Parliament, the Council and the Commission on the subject of commitology theoretically requires Parliament to 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. European Parliament

Paragraph 32(ii) of Parliament's resolution of 17 May 1995 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.'

Parliament's resolution of 13 March 1996 states that the IGC should simplify the existing maze of commitology procedures by transferring overall responsibility for implementing measures to the Commission (which can enlist the help of an advisory committee in devising such measures but not type 2 and 3 committees, which should be abolished). The Council and Parliament should be notified of the measures proposed and should each have the option of rejecting the Commission proposal and calling for new implementing measures or the initiation of a full legislative procedure (paragraph 21.6 of the resolution).

In the Institutional Affairs Committee's initial working document of 12 September 1996 by Mr Bourlanges and Mr De Giovanni on the modus vivendi concerning the implementing measures for acts, the co-rapporteurs take the view that:

- the most satisfactory solution would be to replace the 'modus vivendi' by a completely new system for three reasons, firstly it does not put Parliament and the Council on a completely equal footing, secondly it was originally designed as a temporary solution and finally it has not been scrupulously respected, primarily because the arrangements required to manage the complex system have not always been put into place, particularly by the Commission;
- pending radical reform of the system, a number of improvements might be proposed: reduction in the number of advisory committees under the 1987 decision, greater transparency, forwarding of all implementing measures to Parliament.

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 very rarely 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.

Austria is generally in favour of reform and simplification of commitology.

(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

In its report of 5 December 1995, the Reflection Group discusses committee in paragraphs 127-8, pointing out that the issue was identified by the interinstitutional *modus vivendi* of 20 December 1994 as one to be dealt with by the Conference.

The various positions that have emerged are as follows:

- those in favour of a hierarchy of acts resolve the issue by assigning full power to the Commission, subject to control by the Council and the European Parliament;
- those opposed to granting executive power to the Commission because they believe it would disturb the balance between the institutions are willing to consider simplified procedures which would not undermine the Council's executive functions;
- a compromise proposal provides for a single procedure under which it would be up to the Commission, in consultation with national experts, to decide on implementing measures under the supervision of the Council and Parliament, which could cancel the measures and request the application of normal legislative procedures. At least one member of the Reflection Group has pointed out that opposition by a minority of States should be sufficient to reject any implementing measure.

In any case, a large majority in the Group is in favour of simplifying the present committee procedure, which is already complicated and confused and will not survive beyond the next enlargement. The need to improve the quality of the rules adopted under these procedures was also emphasized.

In any event, revision of the 1987 Decision on committee procedure does not require reform of the treaty and therefore consideration must be given to the improvements which can be introduced before the Conference. In this context, one member has suggested the idea of introducing a standard set of internal rules of procedure to apply to all committees.

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.

Claude Blumann, in 'The European Parliament and commitology - a complication for the Intergovernmental Conference (quarterly European Law Review, January-March 1996) says that it is important to find a comprehensive solution to the commitology issue. In other words, there is no question of a specific solution for acts adopted under the codecision procedure. The interim solution provided by the *modus vivendi* must be replaced as soon as possible.

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