

Comitology in the EU decision-making process

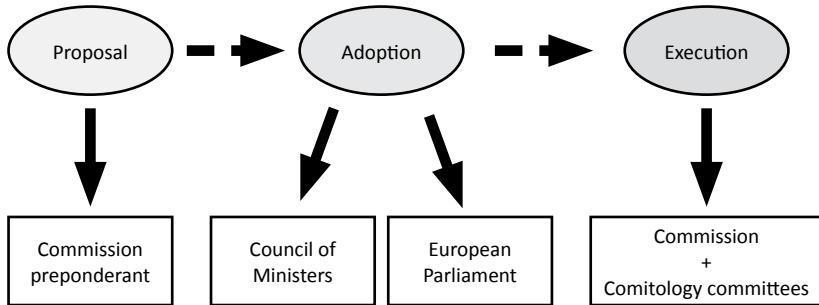
Although it may seem a bit academic, it's worth briefly recalling where comitology fits into the EU three-stage decision-making process:

- The proposal stage when the Commission has the most influence as it is the only body that can propose legislation;
- The adoption stage: once a legislative proposal has been voted on by the College of Commissioners, it is submitted for adoption either in the Council of Ministers (consultation procedure) or in the Council and the European Parliament (codecision procedure);
- The execution stage: most of the Union's legislative acts are framework laws delegating the Commission a whole series of technical implementing measures. Comitology covers all these implementing measures.

Comitology thus corresponds to a kind of secondary, derived or delegated legislation. In France, they would be called "décrets d'application".

Regulations adopted "in comitology":

- Must be applied immediately throughout the EU, as distinct from directives whose application can be put back in time and even tailored from one member state to another;
- Have nothing to do with the transposition of European directives at the national level. The concern here we are talking about new rules directly applicable in the EU of 27 member states



The first comitology measures date back to 1962

The paragraphs below are extracts from a conference of Mr Paolo Ponzano, the Principal Administrator on 'institutional matters' in the Commission's Secretariat General.

"Since the 1960s, the Commission has adopted over 80,000 measures via comitology. In 2006, 12,000 implementing regulations were still in force!

The first comitology committees (called management committees) were set up in 1962 following the adoption by the Council of Ministers of the first basic agricultural regulations (cereals and meat in particular).

The system of management committees allowed the Commission to quickly take urgent agricultural management measures as long as a qualified majority of the representatives of member states did not oppose the Commission's proposal. In the case of disagreement, the Council of Ministers took over the dossier and could amend it with a qualified majority.

The system of committees has been gradually extended to other areas (customs union management, trade policy, transport, the Single Market etc.). The regulatory committee was conceived, obliging the Commission to bring together a qualified majority of representatives of member states on its project, failing which the matter is referred to the Council."

This slightly modified system is still in force but it is only a secondary part of comitology as the most important part (the quasi-legislative acts or delegated acts) now involves the European Parliament following the July 2006 reform.

Comitology: an essential tool in the functioning of the Union

The rise of comitology is related to the European Single Market, which, along with the reform of the institutions (the Single Act of 1987), was the second main priority of the Delors II Commission.

What is it all about? When Jacques Delors became President of the Commission in 1985, the EEC (European Economic Community) was in a bad state with the institutions blocked by the excessive recourse to votes by unanimity.

From his two backers, Germany and France, who had close relations, Delors received a twin mandate: firstly to reform the institutions with four key measures:

- Returning, as indicated above, to qualified majority voting;
- Involving the Parliament in the legislative power up until then devolved exclusively to the Council (through putting in place the cooperation procedure which prepared the ground for codecision);
- Granting the Commission sole right of legislative initiative;
- Delegating by the Council of Ministers of the power of execution to the Commission

The second part of the mandate was to bring about the Single Market. The two parts are closely linked since the Single Act is the instrument that makes the creation of the Single Market possible. By Single Market, we mean the free movement of goods, people, services and capital within the borders of the EEC.

To achieve that, over 300 directives will be worked on and about 270 adopted. This is a fantastic legislative work in progress which industrial sectors have been very closely involved in via their European professional associations.

It goes without saying that these 300 directives covered a considerable number of issues. One example is the totally disparate food laws from one member state to another.

To standardise packaging rules, weight ranges, composition, labelling, use of additives, health claims etc. requires lots of directives, which must be accompanied by technical rules. This was the role assigned to comitology.

The essential nature of comitology is obvious today because, with the EU diluted into 27 member states, Community directives are becoming less precise. The directives are frameworks (or rather framework directives) setting out some general principles and leaving it to implementing measures - i.e. comitology - to resolve the technical details. The word "detail" is completely inappropriate because beneath these "details" are hidden key issues in terms of the economy, production, consumption, health, prices etc.

The more precise the directives were, the less important comitology was. The more the directives have become imprecise, the more comitology has become essential.

Today, without comitology, the EU would quite simply be at a standstill. Where does the political level stop and the administrative start?

It is important to know that member states also adopt implementing regulations complementing their national legislation via technical provisions.

The issue is always about knowing who controls these implementing decrees. Where is the border between the legislative and administrative side of things? Looking at it closely, each member state of the EU has its own system:

- In France, under the Vth Republic, the implementing decrees are in the hands of the government, which can - according to the political opportunity - speed up their publication, delay it or never publish them. In France, over 200 laws have been voted on between 1981 and 2007 that are legally in force but are not applicable in practice because they lack implementing decrees! The French Parliament plays a particularly minor role in the adoption of implementing decrees: it checks on their adoption, checks if they correspond to the spirit of law and publishes its possible criticisms without any other consequence..
- The situation is the opposite in the United Kingdom where delegated bills are submitted to the Parliament which can approve them or reject them (right of veto) but not amend them. Three specialised parliamentary committees have been created for this purpose: the Joint Committee on Statutory Instruments, which brings together MPs from the House of Commons and the House of Lords; the House of Lords Committee on

the Merits of Statutory Instruments and the House of Commons Standing Committee on Statutory Instruments. It is to be noted that one of the three committees is common to the two houses.

- In Germany, the system is very regionalised with a strong approval role reserved for the Bundestag for federal dossiers (defence, immigration, justice etc.). For regionalised policies (taxation, education, police, health, environment, industry, pensions etc.), this approval role belongs to the Bundesrat and the Parliaments of the Länder. At any time, the Bundesrat or the regional parliaments can take over.

These three examples show that the power of execution is strictly managed at national level either by the government or by the parliament or parliaments. In addition, the administration is never free to act as it likes.

With regard to the European Union, the issue is about knowing where to put the cursor. In our opinion, the system has become totally out of balance because the implementing measures have come to +/- 2,500 per year while only about fifty directives have been adopted during the same period!

In other words, comitology represents 98% of the regulatory activity of the Union in a year. And this 98% is the Commission's competence, insufficiently overseen, in our view, by the Council of Ministers and the European Parliament.

Comitology: power delegated to the Commission by the Council

Who controls comitology? This question does not need much analysis. It is the Commission, as Article 202 of the Treaty indicates: "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."

In the spirit of the drafters of the Single Act of 1987, implementing measures are a full part of the powers of the Council of Ministers, the main legislative body, but for reasons of convenience it delegates the power to implement to the Commission, which is regarded as being in a better position to have complex and often subordinate technical measures adopted rapidly.

Comitology worked in this way until the reform of July 2006, with two main types of committee: the management committees (which manage the agricultural markets in particular) and the regulatory committees (which

regulate technical measures related to the Single Market).

The two types of committee are made up of national civil servants (one for each of the 27 member states) just like the expert groups from the Council but there is a considerable difference between these two structures:

- The groups of experts are chaired by the national civil servant of the country of the six-monthly EU presidency;
- By contrast, the comitology committees, whose composition is often the same, are chaired by a civil servant from the Commission (with rank of Director or Head of Unit).

This shows that, for comitology, the Commission is in the lead.

Management committees the member states always say “Yes” to the Commission

The management committees were hugely important at the time of the Common Agriculture Policy. The pace of work of the working groups of COPA-COGECA (the trade union of European farmers) was set by the management committees at a time when I was the Secretary General. And the main part of COPA’s lobbying was done via these same management committees. Export refunds, weekly tenders, storage, export certificates etc.,... most of the regulations concerning the income of the farmer, processor or trader went via the management committee.

The Commission proposal was followed by the committee vote. For the management committee to oppose a proposal, it must generate a qualified majority. There is a small problem as that never happens!

What do you mean never! Yes, never. For years, 20 management committees (crops, pork, wine, sugar, tobacco, bananas etc.), some of which meet every week, have been called on to take decisions on +/- 1,500 Commission draft regulations EVERY YEAR without ever rejecting a single one!

To be precise, in recent years, the management committee for the common organization of agriculture markets did on one occasion oppose the Commission. On 15 October 2009 it opposed a Commission proposal on levies for production in the sugar sector, but this is an exception rather than the rule.

Why does such a situation arise? Why do member states give the Commission total freedom to adopt a considerable number of regulations? The explanation

is simple and is very much open to criticism. The farming community is as closed a community as there is. Everyone knows everyone and news travels very quickly. As soon as a draft regulation that has to be submitted to the management committee is announced, the agricultural world stirs, questions the ministries, lays siege to the Commission and everyone negotiates in the corridors BEFORE THE MEETING. When the meeting begins, it is generally enough to take note of the consensus around the table.

So it is not about a lack of control by member states but about old lobbying practices which are still going on.

The regulatory committees: when they say “No”, the Council takes things back in hand ... up to a point!

As we have seen before, the procedure for regulatory committees is markedly different from the procedure for management committees. For management committees, the absence of an opinion means agreement and you need a qualified majority against a measure to reject it. Here, you need a qualified majority in favour of a measure to adopt it. So it is a lot more binding.

The number of cases when the regulatory committee (there are 83 of them in all) has opposed a Commission proposal is very limited. On average there are seven of these cases per year out of some 1,500 votes.

Let's focus on the seven cases where the Commission has been in the minority. In this scenario, the Council of Ministers takes things back in hand. That's what is called the “call back right”. The Council says to the Commission: “We delegated a power to you. You have failed to execute it. We will take over.”

The Council therefore takes over, facing 4 possible scenarios:

- The Council of Ministers disavows its regulatory committee and adopts the initial draft regulation by qualified majority; the Commission may also decide to amend its initial proposal to take account of the political message expressed by the regulatory committee;
- The Council of Ministers, which has three months to express its view, allows the deadline to pass. The Commission's proposal is adopted.
- The Council of Ministers expresses its opposition to the Commission's proposal and intends to amend it. This option is possible but it requires the unanimity of the 27 member states

- The Council of Ministers rejects the Commission's proposal by a qualified majority, confirming the position expressed by its regulatory committee.

Let's stick with the third option for a moment: the Commission is defeated by the regulatory committee and refuses to hear the political message that it expresses. It therefore sticks to its initial proposal. If the Council of Ministers wants to amend it, it can do so, but must get all 27 member states to agree to that.

Here we have an unacceptable drift in the institutions where the Council must be unanimous to have its way over the Commission. The same is true when the Council wants to impose an amendment on the Commission for the codecision procedure.

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Let's sum this up in a nutshell:

- 98% of EU regulations are decided via comitology;
- Comitology is controlled by the Commission, which chairs the management and regulatory committees.
- To impose on the Commission an amendment to a draft regulation in comitology, the Council of Ministers must decide UNANIMOUSLY with all 27 member states!
- Up until the July 2006 reform, the European Parliament, one of the two legislators of the EU, was totally excluded from the major power represented by comitology.