

Commitology

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Commitology

The term ‘commitology’ designates a Community practice in the area of relations between the Council and the Commission concerning executive power. In the words of the Treaty establishing the European Community (EC), the Council confers 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 subject the exercise of these powers to certain procedures. In certain cases, it reserves the right to exercise the implementing powers directly (Article 202).

In order to monitor the use made by the Commission of these implementing powers delegated to it, the Council has set up a large number of committees consisting of representatives and/or experts from the Member States. Commission decisions taken for the implementation of these rules laid down by the Council are subject to consultation with or approval of these committees.

Commitology began to develop in the 1960s, with the implementation of Council regulations on the organisation of agricultural markets. Since then, the growing development and diversification of these committees has made it difficult to keep track of just how many of them there are: according to Commission and European Parliament figures, there were 207 committees in 1980, 310 in 1986, 424 in 1994 and 488 in 1998. As there are so many committees, it is vital that their operation is simplified.

Procedures

Council Decision 1999/468/EC of 28 June 1999 (a new ‘commitology decision’ repealing Decision 87/373/EEC) laid down the procedures for the exercise of the implementing powers conferred on the Commission. They are:

- advisory procedure;
- management procedure;
- regulatory procedure;
- safeguard procedure.

The criteria set out below determine which of the above procedures is to be followed for the adoption of implementing measures:

- management measures (such as those relating to the application of the common agricultural policy and the common fisheries policy or to the implementation of programmes with substantial budgetary implications) should be adopted under the management procedure;
- measures of general scope designed to apply essential provisions of basic instruments (including measures concerning the protection of the health or safety of humans, animals or plants) as well as measures designed to adapt or update certain non-essential provisions of a basic instrument, should be adopted under the regulatory procedure;
- the advisory procedure should be followed in any case in which it is considered to be the most appropriate.

The development of the committee system

Following the Declaration on the implementing powers of the Commission, annexed to the 1986 Single European Act, Council Decision 87/373/EEC of 13 July 1987 laid down procedures for the exercise of the

implementing powers conferred on the Commission. The implementation of the Decision was criticised, both by the Commission and the European Parliament, who disagreed with the Council on the intervention of certain committees.

Recourse to committees posed particular problems with regard to the implementation of the budget (cf. Court of Justice judgment of 24 October 1989, Case 16/88, *Commission v Council* [1989] ECR 3457). The Commission implements the budget on its own responsibility (Article 274 of the EC Treaty), but the autonomous exercise of this power brings with it a risk of interference, particularly by regulatory committees. The Commission recalled its commitment to the advisory committee procedure in a declaration on commitology annexed to the Interinstitutional Agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedures.

Similarly, the implementation of acts adopted under the codecision procedure, whereby legislative power is shared between the Council and the European Parliament, has caused some difficulties. On 20 December 1994, the three institutions concluded a *modus vivendi* designed to keep the European Parliament informed of the work of the committees. The European Parliament must receive, at the same time and under the same conditions as the committee, the draft implementing act submitted by the Commission. The Commission must inform the parliamentary committees concerned of the implications of the procedure. The Council may adopt the implementing act only after it has informed the European Parliament and, if Parliament rejects it, after it has taken due account of Parliament's point of view.

The Treaty of Amsterdam of 2 October 1997 includes a declaration, adopted by the Intergovernmental Conference, inviting the Commission to submit to the Council, by the end of 1998 at the latest, a proposal amending the Decision of 13 July 1987 (Declaration No 31). The Council, preferring to replace that Decision with a new one, adopted Decision 1999/468/EC of 28 June 1999, which sought to:

- define the criteria governing the choice of the committee procedure;
- simplify the procedures for the exercise of implementing powers and ensure greater involvement of the European Parliament in those cases where the basic instrument conferring implementing powers was adopted under the codecision procedure,
- improve information to the European Parliament;
- improve information to the public about committee procedures.

In practice, the involvement of committees appears to be a useful instrument which allows the Member State representatives to participate in the implementation of acts adopted by the Council, whilst – largely – avoiding the intervention of the Council.

Council Decision 1999/468/EC confers on the European Parliament the power to intervene in cases where it considers that the implementing powers have been exceeded. It also provides for the European Parliament to be fully informed regarding agendas, draft implementing measures arising from acts adopted under the codecision procedure and submitted to the committees, the results of votes, provisional summary records, records of attendance at committee meetings and draft implementing measures forwarded to the Council. An interinstitutional agreement on this matter was concluded by the European Parliament and the Commission (annexed to the European Parliament Resolution of 17 February 2000).

Nonetheless, the problems associated with 'commitology' were not entirely resolved by the new Council Decision. Criticism is levelled at its adverse effect on the institutional balance and the separation of powers, lack of transparency, excessive delays and unnecessary expenditure. The new system only partly satisfies the expectations of the European Parliament, which is calling for scrutiny by the legislative authority on an

equal footing. However, as the Parliament states in its Resolution, the Council Decision represents a real step forward compared with the previous situation.

List of committees

One innovation introduced by Decision 1999/468/EC is the publication in the *Official Journal of the European Communities* (to become the *Official Journal of the European Union* in 2003) of a list of all the committees responsible for assisting the Commission in the exercise of its implementing powers and of an annual report on the work of the committees from the year 2000.