

European Parliament Resolution on commitology (16 September 1998)

Caption: European Parliament Resolution of 16 September 1998 on the modification of the procedures for the exercise of implementing powers conferred on the Commission – ‘commitology’ (Council Decision of 13 July 1987).

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European Parliament Resolution on the modification of the procedures for the exercise of implementing powers conferred on the Commission — ‘commitology’ (Council Decision of 13 July 1987) (16 September 1998)

B4-0801/98

The European Parliament,

— having regard to the Amsterdam Treaty signed on 2 October 1997 and Declaration No 31 relating to the Council Decision of 13 July 1987 ⁽¹⁾,

— having regard to Council Decision 87/373/EEC of 13 July 1987 ⁽²⁾ laying down the procedures for the exercise of implementing powers conferred on the Commission,

— having regard to its resolution of 19 November 1997 ⁽³⁾ on the Amsterdam Treaty (CONF 4007/97 — C4-0538/97),

— having regard to its resolutions of 17 May 1995 ⁽⁴⁾, 13 March 1996 ⁽⁵⁾, 16 January 1997 ⁽⁶⁾, 13 March 1997 ⁽⁷⁾ and 11 June 1997 ⁽⁸⁾ on the intergovernmental conference and of 26 June 1997 ⁽⁹⁾ on the Amsterdam European Council of 16/17 June 1997,

— having regard to its resolution of 16 December 1993 on questions of commitology relating to the entry into force of the Maastricht Treaty ⁽¹⁰⁾;

— having regard to the *modus vivendi* of 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty ⁽¹¹⁾;

— having regard to the Plumb–Delors agreement of 1988 on procedures for informing the European Parliament and the Klepsch–Millan code of conduct of 12 July 1993 on the implementation of structural policies by the Commission ⁽¹²⁾;

— having regard to the hearings with the parliamentary committees, the Commission, the representatives of the Member States and the Council, held on 17 March and 28 April 1998,

— having regard to the numerous formal and informal contacts and meetings with the Commission over the last six months,

A. convinced that the changes made to the codecision procedure by the Amsterdam Treaty in Article 251 of the EC Treaty (formerly Article 189b), in particular the elimination of the third reading, which enabled the Council to resubmit its ‘common position’ to be put to the vote in plenary, unambiguously express the equality between the Parliament and the Council in the adoption of Community acts, under codecision,

B. whereas the Amsterdam Treaty has extended the field of application of the codecision procedure under Article 251 of the EC Treaty (formerly Article 189b) and this implies, in the absence of any changes to Article 202 of the EC Treaty (formerly Article 145 which refers only to acts adopted by Council and not to acts adopted jointly by Parliament and Council), that competence to delegate implementing powers to the Commission and control over executive activity must be shared equally by the legislative authority (the Parliament and the Council),

C. whereas the current system of ‘committees’, established by the decision of 13 July 1987, may gradually undermine the codecision procedure, restricting its scope to acts with a very general content, rendering the Union’s decision-making process increasingly opaque and making it difficult to exercise any democratic control,

D. whereas Articles 205 and 206 confer direct competence for implementing the budget on the Commission and give Parliament the power to hold the Commission to account for the exercise of this executive function through the discharge procedure,

E. whereas the need to simplify the current *modus operandi* of the ‘committees’ also corresponds to the principle of transparency, which has now been incorporated in the Treaty in Article 255 of the EC Treaty (formerly Article 191a), according to which the legislative authority (the EP and the Council) must reach decisions under the codecision procedure on the basis of general principles applicable to the right of access to the documents of the Union’s institutions,

F. whereas the issues arising from commitology in turn raise the problem of the definition and classification of acts; noting with regret that this issue has still not been properly tackled and that Declaration No 16 on the hierarchy of Community acts appended to the Treaty on European Union has had no practical consequences,

G. stressing that implementing measures should be understood as being, *inter alia*, all those measures which do not modify, supplement or update the essential aspects of basic legislation (including annexes) and that such legislation cannot be modified even when the Council avails itself of executive power,

H. convinced that all the ‘committees’ which existed prior to the decision of 13 July 1987 must be brought into line with the new procedures,

I. whereas the involvement of management committees in implementing external policy programmes for which there is a legal basis complicates procedures unnecessarily, thus circumscribing a clear definition of the Commission’s responsibility and severely hampering the parliamentary scrutiny of external policy programmes,

J. convinced that in order to prevent the kind of disputes on matters of principle and conflicts between the EU institutions which arose in the past and considerably slowed down the legislative process, a formal agreement must be reached between the Commission, the Council and the Parliament on defining and monitoring implementing rules,

1. Considers that in the process of modifying the current system of procedures for the exercise of implementing powers conferred on the Commission, priority should be given to:

a) guaranteeing full respect for the legislative procedure in order to prevent a legislative act (including the revision and updating of acts adopted under the codecision procedure and the amending of annexes, insofar as these are general in scope) from being adopted as an implementing measure outside the regular codecision procedure. Total compliance with the legislative procedure becomes increasingly important as the field of application of the codecision procedure is extended;

b) ensuring a balance between the institutions following the modification of the codecision procedure, so as to guarantee real equality between the Council and Parliament, both in establishing the delegation of implementing powers to the Commission and in the exercise of the power of control of the legislative authority (the Council and the Parliament) over an implementing measure;

c) defining the Commission’s degree of autonomy in implementing the provisions by assigning more specific powers, by specifying implementing provisions in the relevant legislation, whilst simultaneously ensuring that the legislative authority (the Parliament and the Council) do not intervene in implementing measures;

2. Considers, therefore, on the basis of the above guidelines, that the new decision and the resulting interinstitutional agreement should make provision for:

a) a distinction between substantive legislation and implementing provisions by better defining, in the basic

act, delegation with respect to the exercise of implementing powers, on the understanding that, as far as the Parliament is concerned, acts which modify, update or supplement the essential aspects of legislative provisions cannot be considered implementing measures;

b) a guarantee of real control by the Parliament over implementing rules, i.e. the Parliament's ability to intervene, within a specific deadline, with regard to the Commission's proposal for an implementing measure, so that it may, if appropriate, question its legitimacy, an abuse of delegated power or the content, i.e. the wrongful exercise of delegated power; in this event and if a representative number of Members of Parliament vote in favour, the Commission should withdraw or amend the proposed implementing measure or submit a legislative proposal in accordance with the provisions of the Treaty; the Commission should do likewise if the Council or its committee objects to an implementing measure;

c) the simplification of the committees and the ad hoc procedures, in particular the elimination of regulatory committees and the obligation for the institutions to harmonize, systematically and in line with the new provisions, all the existing implementing procedures (adopted before and after the 1987 decision). In any event, any proposal to reduce the number of committees, either by eliminating the variants or assigning topics on the basis of type of committee, would not be sufficient without giving the legislative authority (the Council and the Parliament) the opportunity to contest the legitimacy of the planned implementing measure;

d) the transparency of the implementing procedure, which entails

— the adoption of uniform internal rules of procedure for all the committees (in particular regarding their composition, incompatibilities in respect of their members, control of their operating costs and the publicising of their deliberations and decisions and, in particular, in the budgetary sector, setting strict timetables for decisions),

— respect for the Parliament's right to information irrespective of its role in the drawing up of the basic act, particularly in the budgetary sphere, where there must be arrangements appropriate to the exercise of its discharge authority;

e) the exclusion of any limitation of the Commission's power to commit expenditure by general or individual decisions taken on the sole responsibility of the Council so that the Commission can exercise its responsibilities for implementation of the budget, under the control of Parliament, the discharge authority. Recourse to committees in which the Council has the final say must therefore be excluded for all decisions relating to implementation of the budget;

3. Will consider the appropriateness of placing commitment funding in reserve in the 1999 budget if the modification of the Council Decision fails to take due account of Parliament's positions;

4. Reserves the right to express its views on the Commission proposal on the basis of the abovementioned principles; requests that in the next revision of the Treaties Article 202 (formerly Article 145) should be rewritten to take account of the modifications made to Article 251 (formerly Article 189b) by the Amsterdam Treaty, thus removing an ambiguity which could give rise to disputes in the future;

5. Instructs its President to negotiate with the Council and the Commission an interinstitutional agreement which conforms as far as possible with these recommendations; instructs the chairman of the Committee on Institutional Affairs and the rapporteur to take part in the negotiations;

6. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.

(1) OJ C 340, 10.11.1997, p. 137.

(2) OJ L 197, 18.7.1987, p. 33.

(3) OJ C 371, 8.12.1997, p. 99.

(4) OJ C 151, 19.6.1995, p. 56.

- (5) OJ C 96, 1.4.1996, p. 77.
- (6) OJ C 33, 3.2.1997, p. 66.
- (7) OJ C 115, 14.4.1997, p. 165.
- (8) OJ C 200, 30.6.1997, p. 70.
- (9) OJ C 222, 21.7.1997, p. 17.
- (10) OJ C 20, 24.1.1994, p. 176.
- (11) OJ C 102, 4.4.1996, p. 1.
- (12) OJ C 255, 20.9.1993, p. 19.