

The Comitology Reform of 2006

Increasing the Powers of the European Parliament Without Changing the Treaties

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History and background of the comitology system in the European Union – The continuing problem of the involvement of the European Parliament – The new comitology decision of the Council of Ministers: introduction of a comitology procedure concerning ‘quasi-legislative measures’ – Genesis of the 2006 reform: negotiations within the Council and with the Parliament – Accompanying political declarations – Evaluation: a substantial shift in the relations between the institutions in relation to law-making.

INTRODUCTION

The comitology system constitutes for many observers a dull and dark world within the decision-making of the European Union. There has however been some excitement in the world of comitology with the recent adoption of Council decision 2006/512/EC¹ introducing a new procedure that will enlarge the European Parliament’s rights considerably. The new ‘regulatory procedure with scrutiny’ will put the two legislators on an equal footing for the first time. The Parliament’s regular calls for an appropriate participation in the comitology procedures are answered at least for the moment. It remains to be seen however, whether this ‘institutional deal’ can provide for the long-awaited peace or whether – with the Constitutional Treaty in mind – it is only a cease-fire.

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¹ Council Decision 2006/512/EC of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, *OJ* [2006] 200/11, 22.7.2006. A consolidated version of the entire Comitology Decision 1999 as amended in 2006 was published in *OJ* [2006] C 255/4, 21.10.2006.

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Within the jungle of European Union legislation, comitology belongs to the relatively hidden and rather obscure areas of decision-making.² Some experts have gone so far as to compare the subject of comitology to a kind of ‘Da Vinci Code’ in European Law.³ The term itself has become an example, par excellence, of *Europeak*. It is indeed a rather complicated concept and practice, used to compensate the Council’s lack of capacity to implement all measures itself since the 1960s. For this reason, the Council began to delegate to the Commission and use committees to keep an eye on delegated legislation. These so-called comitology committees are composed of policy experts from the member states and are to give their opinion on the Commission’s proposed measure. The various types of committee procedures, originally intended to be of transitional nature, were streamlined in 1987.⁴ They were reduced to three types of procedures in the ‘Comitology Decision’ of 1999,⁵ now commonly referred to as ‘comitology’. The three procedures differ as to the weight accorded to the committee’s opinion. In the ‘advisory procedure’, the Commission only has the obligation to ‘take the utmost account of the opinion’ (Article 3). In the ‘management procedure’, in case of a negative opinion, the Council may change the Commission decision by qualified majority (Article 4). In the strictest procedure, the ‘regulatory procedure’, without approval of the Committee, a Commission proposal must be referred to the Council (Article 5).

Comitology procedures have become increasingly important over the years. An enormous amount of legislation is processed through this system involving not only technical issues such as waste management and important financial services rules (Lamfalussy Directives) but also sensitive topics such as the authorization of genetically modified organisms (GMOs) on the EU market. In 2005, the Commission adopted 2.654 measures while the 250 different committees delivered 2.582 opinions in total.⁶

² Hummer for example hinted to the fact, that no comprehensive monography on comitology had hitherto been published: W. Hummer, ‘Die “Komitologie” – das “unbekannte Wesen” – Reform und zukünftige Entwicklung der “delegierten Rechtsetzung” durch die Europäische Kommission’, in Köck et al., *Europarecht im Zeitalter der Globalisierung, Festschrift für Peter Fischer* (2004) p. 123.

³ See the speech of the Austrian Chancellor Wolfgang Schüssel at the press conference after the European Council in Brussels in June 2006. Comitology seems to invite people to describe it in picturesque ways. E.g., the former chairman of the EP constitutional committee, B. De Giovanni said in 1999: ‘La comitatologia è un inferno’, cited in H. Tichy, ‘Der neue Komitologiebeschluss’, *Zeitschrift für Rechtsvergleichung* (2000) p. 134.

⁴ 87/373/EEC: Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, *OJ* [1987] L 197/33, 18.7.1987.

⁵ 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, *OJ* [1999] L 184/23, 17.7.1999.

⁶ See Report from the Commission on the working of committees during 2005, COM(2006) 446 final, 9.8.2006.

This article will give an account of the comitology reform as adopted by the Council on 17 July 2006 and will shed light on some of the most controversial topics within the negotiation process.

THE CONTINUING PROBLEM OF THE INVOLVEMENT OF THE EUROPEAN PARLIAMENT

The delegation of legislative power to the Commission is a necessary and vital method of enacting Community measures. In certain areas of Community policies, the Union faces rapidly changing market circumstances and can only cope with them by passing adequate legislative rules at a sufficient speed. Traditional legislative procedures would simply work too slowly. As the Council was not willing to give the Commission *carte blanche*, it created a system of delegated powers to legislate subject to institutional constraints, in the form of the said committees that represent the member states' interests.⁷ This way, the member states can influence the creation of detailed norms, and the committees form an institutional check on the Commission's implementing activities.

The first comitology procedure dates back to 1962, when the Council introduced a management committee in Articles 25 and 26, Regulation 19/62 on the common organisation of the market in cereals.⁸ Although Article 211 EC Treaty (ex Article 155) has always provided for an authorization of the Council to delegate powers to the Commission, the early comitology procedures do not rely on that provision but have foreseen committees on an *ad hoc* basis.⁹ The Single European Act introduced a secure foundation for the delegation of powers in Article 202 EC Treaty in 1986.¹⁰ The third indent of Article 202 states that the Council can confer implementing powers on the Commission on the one hand and impose certain conditions on the exercise of these powers on the other hand. The Council may reserve the right to implement measures itself in specific cases as well. However, with that provision the delegation of powers to the Commission had become the rule and not the exception.

In 1987 the Council adopted the first Comitology decision, establishing the principles and rules to be followed.¹¹ It rationalized the committee structure and introduced in total seven different comitology procedures (the advisory, management and regulatory procedure with the latter two having two sub-variants each). Within that comitology system, the European Parliament was completely excluded.

⁷ See P. Craig and G. de Búrca, *EU Law*, 3rd edn. (2003) p. 150.

⁸ *OJ* [1962] 30/933, 20.4.1962.

⁹ For details see Hummer, *supra* n. 2, p. 124.

¹⁰ Craig and de Búrca, *supra* n. 7, p. 150.

¹¹ *Supra* n. 4.

Naturally, Parliament was more than unhappy with that fact and challenged the 1987 Decision, but the Court of Justice declared the application inadmissible.¹² This led to permanent disputes between the European Parliament and the Council.¹³ A first settlement was envisaged with a general bilateral inter-institutional agreement in 1988. This so-called ‘Plumb-Delors-Agreement’ provided for a procedure where the European Parliament would receive draft implementing measures at the same time as the relevant committee.¹⁴ However, Parliament claimed that the procedure never worked properly.

This situation changed fundamentally with the adoption of the Treaty of Maastricht in 1992 and the introduction of the co-decision procedure. From that time on, the European Parliament considered itself a real co-legislator and demanded to be brought on an equal footing with the Council also in comitology. Being one part of the legislative branch, it only seemed natural to Parliament that it would, together with the Council, control the Commission when the implementing measures stem from basic legal acts that were adopted under the co-decision procedure. The Council, however, did not see any necessity to increase Parliament’s role in comitology, which provoked further institutional clashes. The European Parliament was ready to use its potential as co-legislator to delay and even reject co-decision legislative acts in order to put pressure on the Council.¹⁵ Finally, another inter-institutional agreement was adopted. The so-called ‘Modus Vivendi’¹⁶ agreed upon in 1994 trilaterally (Commission, Parliament and Council) enhanced considerably the Parliament’s information rights, thus constituting a first step towards the institutionalisation of Parliament in comitology.

The struggles however persisted and the Modus Vivendi fell short of providing a definitive solution. Two years later, in 1996, another inter-institutional agreement was concluded. This Samland-Williamson-Agreement¹⁷ finally demonstrated how Parliament had learned to bargain for the extension of its rights by using its budgetary powers. The strategy of blocking funds for comitology committees was

¹² Case C-302/87, *European Parliament v. Council*, [1988] ECR, p. 5615.

¹³ For a description of the longlasting conflict see: W. Hummer, ‘Die Beteiligung des Europäischen Parlaments an der “Komitologie”’, in *Festschrift Seidl-Hohenveldern* (1998). Compare also K. St Clair Bradley, ‘The European Parliament and comitology: on the road to nowhere’, *European Law Journal* (1997) p. 230-254.

¹⁴ See D. Kietz and A. Maurer, *The European Parliament in Treaty Reform*, Working Paper FG 1, 2006/02, Jan. 2006, Stiftung Wissenschaft und Politik Berlin, available at <www.swp-berlin.org/de/common/get_document.php?id=1555>, visited on 09/08/2006, p. 11.

¹⁵ *Ibid.*, p. 12.

¹⁶ Modus vivendi of 20 Dec. 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 Art. 189b of the EC Treaty, *OJ* [1996] C 102/1, 4.4.1996.

¹⁷ Resolution on the draft general budget of the European Communities for the financial year 1997 – Section III – Commission, *OJ* [1996] C 347/125, 18.11.1996, see general remark no. 72.

used at that time as well as during the recent negotiations that led to the Comitology Decision of 2006. There is no doubt that the Parliament has developed a powerful means of pressure against the Council and the Commission through its budgetary rights.

The European Parliament's longstanding demand to be put on an equal footing with the Council by changing Article 202 of the Community Treaty did not cease in the years after. In its resolutions before the Amsterdam Intergovernmental Conference (IGC), the European Parliament urged the Commission and the member states to find an acceptable solution and to amend the 1987 Comitology Decision accordingly.¹⁸ Despite the fact that most member states were in favour of simplifying the existing Decision, the IGC did not tackle the problem but annexed a declaration to the Amsterdam Treaty obliging the Commission to propose a revision of the 1987 Decision in 1998 at the latest. This disappointed Parliament greatly, which then started to threaten the Council and the Commission outright to block the comitology funding in the 1999 budget if the modified decision would not take due account of Parliament's positions.¹⁹

In 1998, the Commission tabled its proposal on a revised comitology procedure that led to the adoption of the second Comitology Decision.²⁰ The 1999 Decision repealed the first Comitology Decision of 1987 and offered Parliament a basic form of parliamentary scrutiny in the implementation of co-decision acts (via an *ultra-vires* check) together with a confirmation of most of the information rights agreed upon in the Interinstitutional Agreements and more transparent procedures.²¹ Although the European Parliament did not get equal rights, the amended Decision reflected, for the first time, the shift in the institutional balance due to the introduction of the co-decision procedure with the Treaty of Maastricht. The new Decision did not only reduce the number of committees to three and establish criteria for their application, but also reduced the Council's influence.²² Within the regulatory procedure, the Council's ability to reject an implementing measure by simple majority was changed to a qualified majority, strengthening the Commission.²³ Indeed the Council subsequently failed to ob-

¹⁸ See 'Intergovernmental Conference, Briefing No. 21 on Comitology', first update: 17th March 1997, available at <www.europarl.europa.eu/igc1996/fiches/fiche21_en.htm>, visited on 10/08/2006.

¹⁹ See Kietz and Maurer, *supra* n. 14, p. 14.

²⁰ 1999/468/EC, *supra* n. 5.

²¹ See European Parliament resolution on the agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, *OJ* [2000] C 339/269, 29.11.2000.

²² See Kietz and Maurer, *supra* n. 14, p. 15.

²³ If in the regulatory procedure the committee does not agree with the measures proposed, the Commission must submit to the Council a proposal relating to the measures to be taken, which may be vetoed by the Council by qualified majority (Art. 5).

tain the necessary majority and to block measures in a number of highly sensitive cases such as the approval of GMOs. Nevertheless, the Council kept a privileged role in the regulatory procedure, while the European Parliament only had the right to challenge measures by way of a non-binding resolution in case the implementing powers provided for in the basic instrument were exceeded (Article 8).

Despite the fact that the Treaty of Nice in 2001 extended the scope of the co-decision procedure to cover in total 43 areas under the first pillar, nothing changed in comitology. However, in 2002, the Commission put forward a legislative proposal for revision of the Second Comitology Decision.²⁴ The proposal, which was amended after consultation with Parliament, aimed at placing the two branches of the legislature on an equal footing.²⁵ The draft envisaged the joint supervision of the Commission's implementation powers by Council and Parliament as well as the reduction of the comitology committees to two types: proposals for measures of a general scope would be subjected to a revised regulatory procedure whereas proposals for administrative and procedural measures would only be subjected to an advisory procedure. According to this draft, the Commission would have had the final say on implementing measures even if both other institutions had sustained objections against them. During the negotiations of the new Decision of 2006, it became obvious that the member states in particular had a problem with those last two provisions.

In the meantime, the Constitutional Treaty was signed and negotiations on the draft comitology decision were suspended.

The Constitutional Treaty²⁶ strengthens Parliament's role further and provides for co-decision to be the ordinary legislative procedure. It also introduces the new terms 'European Laws' as an equivalent to regulations and 'Framework Laws' as an equivalent to directives. What is essential for comitology however is Article I-36 giving the right to the Council *and* the European Parliament to object to all measures under delegation and to revoke the delegation to the Commission at any time. In other words, the entry into force of the Constitutional Treaty would have been and would be the 'culmination of the Parliament's pursuit of scrutiny rights in comitology'.²⁷ This has however been thwarted at least for the moment by the negative referenda in the Netherlands and in France.

²⁴ Proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, COM(2002) 719 final.

²⁵ Amended proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (presented by the Commission in accordance with Art. 250(2) of the EC Treaty), COM(2004) 324 final.

²⁶ *OJ* [2004] C 310/1, 16.12.2004.

²⁷ See Kietz and Maurer, *supra* n. 14, p. 16.

The question of a role for Parliament in the adoption of implementing measures became virulent when the 'Financial Services Action Plan'²⁸ was implemented.²⁹ It was clear from the beginning that the co-decision procedure might not be swift enough to enable the European Union to react to changes in the financial markets. Therefore it seemed advisable to delegate the power to enact implementing measures to the Commission whereby only basic principles should be regulated in the basic legal acts themselves. Parliament reiterated its basic doubts and could only agree to the delegation to the Commission if the information system for Parliament would be improved and a revision of the delegation could take place after a certain period of time. A unique system of delegation was constructed, called the 'Lamfalussy'-procedure, which was integrated in the directives on the financial markets.³⁰ The introduction of 'sunset clauses' stating that the provisions on comitology lose effect at a certain time³¹ increased the necessity to find a solution to the old debate between the three institutions on Parliament's participation in the comitology procedures.

When it became clear that the Constitutional Treaty would not enter into force for a considerable period of time, Parliament resumed its 'delaying tactics' under the co-decision procedure to force the Council to resume negotiations on a comitology reform. Under the British Presidency during the second half of 2005, the Council negotiated the principles of the new reform. The Austrian Presidency was able to reach a political agreement on the third comitology decision in June 2006 after very complicated and complex negotiations with the member states and Parliament.

THE NEW COMITOLGY DECISION

After long months of negotiating within the Council and between Council and Parliament, the Austrian Presidency succeeded in producing a final solution on the comitology reform in June 2006. The deal can be seen as a major breakthrough for the European Parliament, as it puts the two co-legislators almost on equal footing, at least in a certain category of delegated legislation.

At the core of the reform is a new, fourth procedure, the 'regulatory procedure with scrutiny'. It only applies to certain measures which in some way amend the

²⁸ COM (1999) 232 of 11 May 1999.

²⁹ For the following compare K. Schmolke, 'Die Einbeziehung des Komitologieverfahrens in den Lamfalussy-Prozess – Zur Forderung des Europäischen Parlaments nach mehr Entscheidungsteilhabe', *Europarecht* (2006) p. 432-448.

³⁰ Directives No. 2003/6/EC on market abuse, No. 2004/39/EC on markets in financial instruments, No. 2003/71/EC on the prospectus, and No. 2004/109/EC on the harmonisation of transparency requirements

³¹ See, e.g., Art. 24(4) of Directive 2003/71/EC on the prospectus.

basic legislation involved. Normally the delegated authority does not have the power to amend basic legislation which is why this power only applies to non essential or ‘quasi-legislative’ provisions; the essential elements are reserved for the legislator and cannot be delegated. For the application of the new procedure two basic conditions have to be met. First, the original legislative act must have been adopted under co-decision. Second, the delegated legislation must concern ‘measures of a general scope designed to amend non-essential elements’ of the basic act. On this account, administrative and purely executive measures are excluded. When these conditions are not met, the three other existing comitology procedures (the advisory, management and ‘normal’ regulatory procedure) may remain applicable.

Technically, the new procedure is inserted in the 1999 Decision by adding Article 5a. In comparison to the normal regulatory procedure, Parliament has the opportunity to object to a proposed measure under this procedure. There are basically two scenarios:

- The regulatory committee with scrutiny gives a *positive* opinion (by qualified majority) on the Commission proposal.³² In that case the proposal is submitted to Council and Parliament which can both object to the measure (the Council by a qualified majority and the Parliament by a majority of its members) within a period of three months.

On what grounds may the Council and the Parliament object? The crucial provision (Article 5a(3)(b)) reads:

The European Parliament, acting by a majority of its component members, or the Council, acting by qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality.

If there is no opposition, the Commission can adopt the measure; if either of the two institutions objects, the Commission has three possibilities: a) make a new (and modified) proposal, b) make a legislative proposal under the legislative procedure or c) drop the proposal.

- In case the regulatory committee with scrutiny gives a *negative* or *no* opinion, the following procedure is foreseen.³³ The proposal is submitted to the Council (for decision) and sent to Parliament for information at the same time. Should the

³² See *supra* n. 1, Art. 5a (3).

³³ *Ibid.*, Art. 5a (4).

Council object to the measure within two months, the Commission has no possibility to adopt the measure, but only disposes of the three possibilities mentioned above. However, if the Council approves the proposal or at least does not oppose to it, the Parliament's right of scrutiny comes into play. In that case, Parliament has four months to oppose the proposal, counting from the time Parliament has received the proposal for information. Again, Parliament's opposition must be justified by the indication that the Commission exceeds the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality.

In contrast to the Commission legislative proposal of 2002, the Commission does not have the right to adopt an implementing measure if any of the two institutions opposes it. Thus, Parliament can always prevent the adoption of an implementing act, provided that the objection is legally justified. These two features seem to provide the most significant differences to the normal regulatory procedure.

Since the new procedure can cause certain delays in relation to the adoption of implementing measures, Article 5a(6) provides for an urgency procedure. The basic legal act can provide that the time-limits set in the paragraphs 3, 4 and 5 can be shortened to one month in exceptional cases. In addition, the Commission can, under certain conditions, uphold a measure provisionally even in the event of an objection by either part of the legislator.

GENESIS OF THE REFORM 2006

After the failed referenda in the Netherlands and in France, the political quarrels between the Council and the European Parliament re-emerged in full strength. With the Constitutional Treaty, which would have given Parliament a full-fledged blocking right and the power to revoke any delegation of powers, a distant prospect, Parliament decided to take up again its struggle against the institutional 'imbalance' in comitology.

Through the blocking of two single market directives, namely the Capital Requirements Directive³⁴ and the Eighth Company Law Directive,³⁵ Parliament obliged the Council to resume negotiations on the comitology reform. For this reason, it was clear that the 'Friends of the Presidency' group, which was established under the British Presidency for the purpose of discussing the Commission's

³⁴ Directive 2006/49/EC of 14 June 2006, *OJ* [2006] L 177/201, 30.6.2006.

³⁵ Directive 2006/43/EC of 17 May 2006, *OJ* [2006] L 157/87, 9.6.2006.

proposal, had to find a solution on a horizontal basis. While negotiations became very intensive during the Austrian Presidency, the basic framework of a revised Council Decision emerged already under the British Presidency.

Member states agreed at a very early stage that in contrast to the Commission's proposal the comitology reform should be limited and not involve the existing comitology procedures. The amended Decision should only create a new procedure for 'quasi-legislative' implementing measures where the basic instrument was adopted under Article 251 EC Treaty. The definition of the term 'quasi-legislative' should be legally binding, whereas the criteria for the other measures in Article 2 of the Decision would continue to be of non-binding nature. It was also quite obvious from the very beginning that the Commission should not be able to adopt any measure if either of the institutions objects to it. In addition, the majority of member states favoured that the new procedure would only apply to basic instruments adopted after the date of entry into force of the revised decision and not retroactively. Finally, the proposal of the Commission to completely abolish management committees was not approved by the member states.

As a consequence there was not much left of the Commission's originally proposed new comitology procedure. The Presidency could – in close co-operation with the Commission – eventually reach a compromise solution acceptable for both Council and Parliament. The agreement that has been reached is accompanied by a number of important political statements. They include a statement by all three institutions declaring the end of any institutional battles in this field, a so-called 'cease-fire' declaration, which also contains a 'priority list' of existing legislative acts which will have to be adapted quickly to the new procedure. There is a statement by the Commission on transparency measures to be adopted in order to ensure that Parliament is informed accordingly as well. Let us now first present the different stages and problems of the negotiations.

IS IT COMPATIBLE WITH ARTICLE 202 EC TO GIVE THE EUROPEAN PARLIAMENT SUBSTANTIAL RIGHTS?

In the beginning of the negotiations, the question as to whether a role of the European Parliament in comitology is compatible with Article 202 EC Treaty had to be answered. Article 202 provides that the *Council shall confer on the Commission powers for the implementation of the rules which the Council lays down*. The Council may also impose requirements as to the exercise of the powers conferred on the Commission, which was done by the Comitology Decision of 1999. The Treaty however does not provide for the European Parliament to participate in the drawing up and adoption of implementing measures.

The Council Legal Service produced an opinion on the possibility and limits of a comitology reform which set the basic framework for the negotiations both within the Council and between Council and Parliament.³⁶ While the European Parliament argues that ‘the Council’ in Article 202 is to be interpreted as ‘the Council and the Parliament’, the Council claims this to be contrary to the logic of the Treaty. If the authors of the Treaty had wanted this particular provision to cover the co-decision procedure, they would have had the occasion of doing so: but neither at the IGC of Amsterdam nor that of Nice, Article 202 was amended. For this reason, Parliament simply is not to exercise any implementing powers, even if they stem from an act adopted under co-decision. According to Parliament, this situation constitutes a major imbalance as the essential feature of co-decision, namely parity between the Council and Parliament, was not respected.

The fact that the Treaty does not contain any definition of ‘executive powers’ or ‘implementing rules’ further complicated the problem. The case law of the Court of Justice has only made clear that implementing measures may not concern essential aspects of the basic act.³⁷ As a result, the co-legislators need to determine case-by-case in the basic legislative act the extent and scope of the implementing power conferred on the Commission. Seen from that perspective, it is in the hands of both legislators to ‘co-decide’ what they are willing to leave to the Commission and what they prefer to legislate themselves. The Parliament’s argument was that once an implementing power is conferred on the Commission, this is done once and for all and it will never get the chance to re-obtain any influence.

The opinion of the Council Legal Service led to the following parameters of any reform:

- It is not possible for Parliament to participate in executive functions. Whereas the Council can act in its capacity as legislator or as executive organ,³⁸ Parliament can only act as legislator.³⁹ Even the extension of the applicability of the co-decision procedure does not alter this restriction.⁴⁰
- Therefore a participation of Parliament could only be envisaged, if it were construed as a right of supervening scrutiny.⁴¹
- Any such scrutiny is only justified, if the competences of the legislators are involved, i.e., the measure could have been adopted by the co-legislators

³⁶ The opinion of the Council Legal Service is not a public document.

³⁷ See Case C-25/70 *Köster* [1970] *ECR* p. 1161.

³⁸ See, e.g., the explicit possibility for the Council to retain the power of adopting implementing measures in Art. 202 EC Treaty.

³⁹ See Arts. 7, 189 and 192 EC Treaty.

⁴⁰ See Case C-378/00, *Morello v. Commission* [2003] *ECR*, p. I-00937.

⁴¹ Compare Art. 8 of the Comitology Decision 1999, *supra* n. 5.

themselves. Then the compatibility of the implementing measure with the basic legal act could be checked.

- This particular nature of the right of scrutiny of Parliament entails that only measures that are susceptible of being adopted can be scrutinised. Thus a referral of all proposed measures, irrespective of a vote in the committee,⁴² would not be compatible with Article 202 EC.

From the aforementioned, it becomes clear that the reform had to find a solution to the difficult political question of how to proceed on the one hand with a very restrictive legal basis and on the other hand a very far-going Constitutional Treaty that – even though it might never come into force – concedes important powers to Parliament. The magic word to resolve the dilemma was the term ‘quasi-legislative’. This term, which was developed in the Friends of the Presidency group, stands for a category of rules that concern or amend non-essential elements of a basic act.

The category is based on practice and the case-law of the Court of Justice, according to which an annex to a Directive may be revised in form of technical implementing measures by the Commission.⁴³ As those measures could also have been adopted by the legislator, the Treaty is not opposed to have them scrutinized by Parliament. This proved to be the key to compromise.

NEGOTIATIONS LEADING TO THE COMITOLGY REFORM

Negotiations within the Council

After the group ‘Friends of the Presidency – comitology’ was set up by Coreper in September, the British presidency organized five meetings until the end of its presidency. During the UK presidency it was agreed to restrict the reform exclusively to the demands of Parliament.⁴⁴ In the preliminary discussions, both the UK and the Austrian presidencies had to cope with strong resistance among a substantial number of member states, who regarded any participation of Parlia-

⁴² As proposed initially by the Commission, see Art. 5a(4) of the Commission proposal, *supra* n. 24.

⁴³ Judgment of the Court (Grand Chamber) of 12 July 2005. – The Queen, on the application of: Alliance for Natural Health and Nutri-Link Ltd v Secretary of State for Health (C-154/04) and The Queen, on the application of: National Association of Health Stores and Health Food Manufacturers Ltd v Secretary of State for Health and National Assembly for Wales (C-155/04).

⁴⁴ The only exception was the adjustment of the definition of qualified majority by adding the reference to Art. 205(4) EC Treaty, which was added with the enlargement of the European Union of 2004.

ment either not possible or not desirable (or both).⁴⁵ The technical ministries in particular feared an unnecessary complication of the comitology system. After the positive opinion of the Council Legal Service was made available to delegations in the beginning of February 2006, the possibility of a reform was not doubted any more. Some delegations, however, still favoured a rather marginal role for Parliament. The first discussions in the group concentrated on the definition of ‘quasi-legislative measures’ and on the question of which proposals should be transmitted to Parliament (so-called ‘trigger mechanism’). The presidency tabled text proposals first for a definition and then for a new procedure.

Definition of ‘quasi-legislative measures’

In line with the character of the possible participation of Parliament in the comitology procedure as a legislative scrutiny, a definition had to be found, which ruled out pure executive measures. It is, however, not very easy to find a definition of quasi-legislative measure, given the fact that the concept as such seems to be a hybrid. Measures are either of an executive or of a legislative nature. Article I-36 of the Constitutional Treaty contained a description of measures falling under the new procedure, this definition, however does not correspond to the notion ‘quasi-legislative’, but goes far beyond.⁴⁶ Article I-36 had to be taken into account politically as a constant point of reference for Parliament, at the same time, it had to be made clear which elements could not be taken aboard.

It was essential to delimitate the definition in three aspects:

- From pure legislative measures, which have to be enacted in accordance with Article 251 EC Treaty.⁴⁷ Therefore the definition refers to measures that amend ‘non-essential’ elements of the basic legal act.
- From pure executive measures, in which Parliament cannot have a right of scrutiny, because such a right would not be in line with the character of Parliament as a pure legislative body. It was agreed to include the notion of measures of ‘general scope’ in the definition. For example, individual decisions as the authorization of GMOs would not be covered.⁴⁸

⁴⁵ It was referred to a ‘maximalist group’ and a ‘minimalist group’, see M. van der Plas, ‘Rol Europees Parlement fors toegenomen door aanpassing Comitologie-besluit’ [Role of the European Parliament significantly enhanced by the revision of the Comitology decision] in *Sociaal Economische Wetgeving* (2007) p. 410.

⁴⁶ Art. I-36 (1) CT: ‘European laws and framework laws may delegate to the Commission the power to adopt delegated European regulations to supplement or amend certain non-essential elements of the law or framework law.’

⁴⁷ See ruling of the ECJ in the *Köster* case, *supra* n. 37.

⁴⁸ In accordance with Regulation (EC) No. 1829/2003 on genetically modified food and feed, *OJ* [2003] L 268/1, 18.10.2003.

- Politically it had to be made clear that the new procedure can only be invoked, if in fact quasi-legislative measures are to be enacted. Otherwise it could be the case that Parliament could insist on introducing the new procedure in every new basic legal act, thereby rendering the ‘old’ regulatory procedure useless. Thus it was decided to make the new definition legally binding for the legislators.⁴⁹

Lengthy discussions centred on whether only measures that amend a non-essential element of the basic act should fall under the new procedure, or also measures that supplement such elements. Most delegations held the view, however, that the latter goes beyond the notion of quasi-legislative, because elements of the basic legal act could also be supplemented by executive measures. Only if the supplement touches upon the essence of the element concerned, could it be regarded as being covered.

Procedure

Some delegations held the view that only proposals to which the comitology committee objected should be transmitted to Parliament. The rationale behind this position was that only in those cases, political problems seem to exist and consequently only then a scrutiny by Parliament seems necessary. Given the fact that only a few measures are voted down in the committees⁵⁰ this would have meant that Parliament receives only a fraction of proposed measures. This scenario would have been unacceptable to Parliament. The opinion of the Council Legal Service changed the tone of the debate. In accordance with the latter’s reasoning only a measure which is ‘capable of being adopted’ could be subjected to legislative scrutiny. That means that all measures, which were approved by the committees or where the committees did not attain a majority either for or against the proposal, would be transmitted to Parliament for scrutiny. On the other hand, measures which were voted down in the comitology committee could, consequently, not be sent to the European Parliament, because the Commission cannot adopt the measure. It was acknowledged however that such a solution would also be difficult for Parliament to accept. It was agreed to mirror the current regulatory procedure⁵¹ and to foresee that the Parliament would receive also the latter measures after a formal filter by the Council, i.e., after the Council in its executive capacity in-

⁴⁹ In contrast to the definitions contained in Art. 2 Comitology decision 1999, *supra* n. 5.

⁵⁰ In 2005 less than 0,5% of the proposed measures did not obtain a positive vote, *see* report of the Commission on the workings of committees in 2005, *supra* n. 6, p. 6. In 2005, Council received 11 measures.

⁵¹ Art. 5(6) Comitology Decision 1999.

tends to overrule a negative vote of the committee by adopting the Commission proposal.

Negotiations with the European Parliament

After a first draft for a new procedure was discussed in the group, it was decided to present the draft to Parliament as a presidency text. Not all delegations could yet agree to the text, but indicated that for their future positions reactions of Parliament would be useful. This first draft was discussed at a first meeting on political level on 15 March 2006 in Strasbourg between the Austrian State Secretary in the Ministry for Foreign Affairs, Hans Winkler, and the rapporteurs of Parliament, Joseph Daul and Richard Corbett. In the following months, five meetings took place between the Austrian presidency⁵² and parliament on a political level and *de facto* weekly meetings on working level. The following points proved to be the most difficult.

Definition

Parliament agreed on covering quasi-legislative measures only. Doubts were raised, however, whether the definition as proposed by the presidency might not be too restrictive. Members of the Committee for Economic and Monetary Affairs (ECON Committee) attached great importance to the implications any definition would have on the Lamfalussy-Directives. In some of those directives, only very general principles are stated in the basic legal act, which have to be supplemented by the necessary details through comitology. Thus, the ECON Committee insisted on including the notion of 'supplement' ('compléter'⁵³) in the definition. The Council pointed out that an unqualified reference to 'compléter' would however go far beyond the concept of quasi-legislative measures. It was however agreed that the Lamfalussy directives were the source of the present negotiations to a certain extent and consequently should be covered largely by the new procedure. Since certain supplements to elements of the basic legal acts can also be regarded as amendments (when the substance of the element is altered through the supplement), it was agreed to explicitly retain that possibility in the definition. The following definition found favour by all sides concerned:

Where a basic instrument, adopted in accordance with the procedure referred to in Art. 251 EC, provides for the adoption of measures of general scope designed

⁵² Representing the Council *vis-à-vis* Parliament in accordance with Art. 26 of the Rules of Procedure of the Council, *OJ* [2004] L 106/22, 15.4.2004.

⁵³ The negotiations within the Council were held in English and French (without translation) on the basis of text proposals drafted in French. The negotiations between Council and Parliament were conducted in French.

to amend non-essential elements of that instrument, inter alia, by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.⁵⁴

Scope of the right of scrutiny

In the first proposal submitted to Parliament it was foreseen that the legislators can object to a proposed measure if the Commission exceeded its competences⁵⁵ or if the proposed measure is not compatible with the basic legal act.⁵⁶ Since the scrutiny is that of a legislator, some member states considered that the scope of the right of scrutiny had to be limited. Parliament (as well as some member states) preferred not to qualify the scope of right of scrutiny at all, pointing to the fact that the blocking right of the Council in Article 5 of the Comitology decision 1999 is also not legally restricted. To make clear that the compatibility check goes beyond the current Article 8, which only gives Parliament the right to oppose if the Commission exceeds its delegated powers, and leads in fact to a far-reaching right of scrutiny of the substance of the measure proposed, it was agreed to further specify the compatibility requirements. The legislators were first only given the right to object to a measure if – in their opinion – the proposed measure is not compatible with either the aim or the content of the basic legal act.⁵⁷ If the Commission holds a different opinion, it cannot adopt the measure but is obliged to challenge any objection in Court. In addition to the criteria of exceeding competences and of compatibility, Parliament wanted to include the principles of subsidiarity and proportionality. This was acceptable to the Council. In particular, the addition of the principle of subsidiarity seems superfluous, as the basic legal act had been subjected to a subsidiarity check already.⁵⁸

⁵⁴ Art. 2(2) of the Comitology decision as amended by Decision 2006/512/EC, *supra* n. 1.

⁵⁵ Cf. Art. 8 of Comitology decision 1999.

⁵⁶ Some member states wanted to restrict the scope of the right of scrutiny to Art. 8 Comitology Decision 1999. This would have been already a progress compared to the current situation, because an objection in accordance with Art. 8 would not hinder the Commission from nevertheless adopting the measure. The member states preferring a restrictive scope also accepted a blocking right of Parliament. The restricted impact of a motion by Parliament in accordance with Art. 8 explains the reluctance of Parliament to use that possibility. In 2005, only two measures out of 2637 adopted by regulatory committees were challenged, cf. Report of the Commission of the working of committees in 2005, *supra* n. 6, p. 4.

⁵⁷ During the negotiations the following example was used to illustrate the scope of the compatibility check: If the Commission proposes a certain threshold limiting the possibility of adding certain substances to food because of health reasons, either legislator could object to the measure because he thinks that the threshold should be lower in order to fulfil the aim of the basic act, i.e., the protection of health.

⁵⁸ Protocol No. 30 to the EC Treaty (added by the Treaty of Amsterdam 1997).

To summarize, Parliament has received a far-reaching right of scrutiny, but has to justify any opposition by legal arguments. An opposition for political reasons, for instance in order to achieve compromises in other issues, is not possible.⁵⁹

Deadlines

The Council pointed out from the very beginning that the involvement of Parliament should not affect the efficiency and rapidity of the comitology system. Therefore deadlines were discussed of one or two months in which the Parliament could object to a measure. Such deadlines were rejected by the European Parliament, because its rules of procedure and mode of functioning make quicker decisions rather impossible. It was pointed out by Parliament that any proposal first has to be referred to a Committee before it can be voted upon in Plenary. The parliamentary month is divided in four different sections: committee week, political groups week, 'white week' (presence of MEPs in the constituencies) and plenary week. Given that scheme and translation requirements, it is hardly feasible to obtain a vote after one or two months following the transmission of a proposal. Within the Council this argumentation was finally accepted and a three months deadline was agreed upon for cases where the comitology committees issue a positive opinion (Article 5a(3)). Another solution had to be found for cases in which the committee rejects a proposal or finds no majority (Article 5a(4)). If first the Council has to decide on the measure (in its executive capacity)⁶⁰ within three months and afterwards Parliament has to exercise its right of scrutiny within three months, the whole procedure would last six months.⁶¹ Finally the presidency compromise proposal was accepted, which provides for an overall deadline of four months from the time of submission of the rejected measure to the Council, whereby the Council has to decide within two months. Parliament receives the proposal simultaneously with the Council and can start its deliberations even in the absence of a final vote of the Council. Thus, Parliament has enough time to study the proposal, but the overall deadline is still reasonable. It is clear, however, that Parliament can only vote on a measure after the Council votes. If the Council envisages to change the proposal by unanimity,⁶² it would be wise for the Council to consult Parliament at an early stage in order not to risk an objection. In order to

⁵⁹ It remains to be seen, to which extent any of the legislators will camouflage political agendas by legal arguments. It has to be emphasized, however, that the formulation agreed upon renders it possible to challenge an objection at the European Court of Justice.

⁶⁰ See *supra*, p. 78

⁶¹ A shorter time period for the Council was rejected by member states, they insisted on equal time periods for both bodies.

⁶² Art. 250(1) EC Treaty, which is applicable to comitology measures (arg: 'proposal').

retain a certain flexibility, it was agreed to foresee the possibility of shortening the deadline or for extending it by one month in Article 5a(5) in cases expressed in Article 5a(3) and Article 5a(4).

Observers in the comitology committees

In order to be able to identify politically precarious matters in time, Parliament insisted on the possibility of Parliamentary observers to participate in the meetings of comitology committees, in particular in the field of financial services, where complex and extensive measures are prepared. This demand was *a limine* rejected by Commission and Council, because these committees are clearly executive bodies and parliamentary participation is not compatible with the role of the Parliament as a legislator. It was pointed out by the Presidency that the problem at hand is not so much the question of being present at committee meetings but more the problem of being properly informed in order to identify political problems well in advance. Therefore an improved information system might achieve the same aim as the observer system. The Commission agreed to improve the general information system and committed itself to a number of measures.⁶³ These include a privileged access to the Commission register and in the area of financial services, *inter alia*, the possibility of European Parliament committees to question chairpersons of comitology committees.

Call-back right

At the end of negotiations, the question as to whether a delegation of power to the Commission can be revoked by the legislators proved to be very sensitive. The representatives of Parliament referred to Article I-36(2)(a) of the Constitutional Treaty, which provides for the possibility to withdraw a delegation of powers from the Commission and demanded a similar right in the current reform. For some MEPs such a right was seen as a *conditio sine qua non* for their consent to the new procedure.⁶⁴ The concern expressed by Parliamentarians was that the circumstances which render a delegation desirable might change after a certain period of time and therefore it should be possible to react to such changes. Council and Commission rejected the demand, arguing that such a call-back right is not feasible on the basis of the current treaties. It would infringe upon the right of initiative of the Commission, because it would amount to a change of the basic legal

⁶³ Improved Art. 7(3) of the Comitology decision and Declaration A of the Commission on Art. 7(3), published in *OJ* [2006] C 171/21, 22.7.2006.

⁶⁴ See press release of MEPs Radwan and Nassauer on 5 May 2006: 'Comitology should not diminish the rights of the European Parliament', <www.epp-ed.eu/press/showPR.asp?PRControlDocTypeID=1&PRControlID=4826&PRContentID=8719&PRContentLg=de>.

act, which can only be done on the basis of a proposal of the Commission. In the Constitutional Treaty this call-back right would be enshrined in primary law, i.e., on the same level as the right of initiative of the Commission. In short, according to the Commission and the Council, such a right needs to be stated in the Treaties themselves and cannot be enacted by a Council decision. As a compromise, the Presidency proposed to emphasize the possibility to include revision clauses in basic legal acts. Thus, the appropriateness of a delegation would be reviewed after a certain time, yet the right of initiative of the Commission remained untouched. This solution was acceptable to Parliament.

NEGOTIATIONS ON ACCOMPANYING POLITICAL DECLARATIONS

It was agreed to attach a number of political declarations to the new comitology decision, as happened in 1999.⁶⁵ In these declarations, the institutions agree to behave in certain ways when applying the new procedure. In this context, not only questions concerning the relations between Council, Parliament and Commission had to be addressed, but also other issues raised by Denmark in the course of negotiations. In the beginning, Denmark preferred an overall reform of comitology, in particular in relation to the majority requirements. In the course of negotiations, Denmark accepted a limited reform but requested some commitments from the Commission.

Common declaration of the three institutions

A common declaration by all three institutions deals with the following issues.⁶⁶

The first is the applicability of the new procedure to already existing legal acts. It was made clear by the Council Legal Service that an automatic retroactive applicability of the new procedure⁶⁷ was not possible, but that each basic legal act would have to be amended. First estimates of the Commission showed that approximately 150 existing basic legal acts contain quasi-legislative measures. In order not to lose too much time for the new procedure to be applicable, most member states preferred an application *pro futuro*; in addition, a very limited number of existing acts should be amended.⁶⁸ Parliament consented to exclude an automatic retroactivity. Not surprisingly Parliament did prefer a complete screen-

⁶⁵ Declarations to Decision 1999/458/EC of the Council, *OJ* [1999] C 203/1, 28.6.1999.

⁶⁶ *OJ* [2006] C 255/1, 21.10.2006.

⁶⁷ For example, by integrating the new procedure to Art. 5 Comitology decision 1999. Then the Commission would have had to decide in each individual case, if it proposes a measure in accordance with the regulatory procedure or with the regulatory procedure with scrutiny.

⁶⁸ The four Lamfalussy directives and legal acts containing sunset clauses.

ing of the existing *acquis communautaire* as it was done after the adoption of the Comitology Decision in 1999.⁶⁹ It would be difficult for Parliament's negotiators to achieve political support among Parliament if certain political sensitive areas were not covered by the reform. The Austrian Presidency suggested to agree on a *pro futuro* application and at the same time to establish a 'reasonable' list of acts urgently to be adapted. This idea encountered some resistance on the one hand among member states who feared that the list might be too long and on the other hand among Parliament, where fears arose that the list might be too short. A list of 25 acts was in the end acceptable to all partners, including in particular politically sensitive acts.⁷⁰ The applicability *pro futuro* was established as a basic rule; existing legal acts need to be revised in order to fall under the new decision. In relation to the 25 urgent acts the three institutions agree to adapt those acts as speedily as possible (first-reading agreement).

Another issue led to the so-called '*Ceasefire declaration*'. It has to be recalled that the blocking of two directives and of the funds for existing comitology committees as well as the insertion of sunset clauses in a variety of legal acts stood at the cradle of comitology reform. All actors involved shared the intention to put an end to the quarrels between Council and European Parliament on comitology. The so-called sunset clauses proved to be a formidable obstacle. The practise of inserting sunset clauses was accepted by the Council reluctantly in the past given the absence of a new comitology decision. With the new decision, the removal of existing sunset clauses and the absence of sunset clauses in future legal acts became a *conditio sine qua non* for the Council. Such a general position was unacceptable to Parliament. In certain cases, sunset clauses can be useful and in the interest of both Council and Parliament.⁷¹ The Parliament negotiators informed the Presidency that some MEPs interpreted the wish of the Council as an undue restriction of the rights of Parliament.⁷² In the end, the parties agreed on a state-

⁶⁹ Para. 2 of the Declarations 1999, *supra* n. 65.

⁷⁰ In addition to the Lamfalussy directives and acts with sunset clauses especially acts of the environmental area. It flows from the binding character of the definition that only those provisions of basic acts are revised which foresee the adoption of quasi-legislative measures. In relation to the GMO regulation for instance, only the provisions dealing with the enactments of rules on information or on requests for authorizations (Art. 14 and 17 of Regulation (EC) 1829/2003), but not the provisions on the power of the Commission to issue an individual authorization (Art. 7) will be amended. The Commission adopted drafts aimed at adapting the acts in the list on 22 Dec. 2006 (Doc. COM(2006) 900 final – Doc. COM(2006) 926 final).

⁷¹ Reference was also made to the communication of the Commission on the simplification of environmental legislation, Doc. COM(2005) 535 final of 25 Oct. 2005, where the Commission acknowledged that sunset clauses could be a means of achieving *better regulation* (p. 7).

⁷² This seemed to be a very dramatic exclamation. Any political commitment is aimed at restricting options of the person emitting such a statement, otherwise it would be useless.

ment that 'the principles of good legislation require that implementing powers be conferred on the Commission without time limit.' A caveat was added that the commitment is without prejudice to the rights of the legislators as enshrined in the treaties. Secondly, as the sunset clauses were also directed at guaranteeing a review of the delegation of power to the Commission, an alternative was suggested. The same aim could be achieved by review clauses, which request the Commission to submit a report on the practicality of the delegation. If the Commission deems it appropriate, it can put forward a proposal either to revise or to abrogate the delegation.⁷³

Declarations following requests by Denmark

During the British presidency Denmark had raised concerns on the majority requirements in the regulatory procedure, where a qualified majority is needed in the comitology committee in order to block the adoption on an implementing measure. Denmark preferred to return to the situation before 1999, in which a simple majority was sufficient to veto a Commission proposal.⁷⁴ In Denmark, in particular decisions by the Commission on the authorization of GMOs were heavily criticised because they had also been taken in cases where a simple majority against the authorization was found in the competent regulatory committee. Already the change of the majority requirement in 1999 met with some resistance and the Commission had to issue a declaration that it would respect simple majorities as far as possible (the so-called 'Aerosol' declaration).⁷⁵ After bilateral discussions with Denmark and corresponding discussions between the Danish government and the Danish Parliament, it was agreed to extend the Aerosol declaration of 1999 explicitly to the new procedure.⁷⁶ In addition, the Commission committed itself to improve the risk assessment for GMO authorizations. Furthermore, if a general reform of the comitology system would be undertaken in the future the question of majority requirements could be discussed. The two latter declarations had been entered in the minutes of the Committee of Permanent Representatives (Coreper).

ADOPTION OF THE NEW DECISION

On 8 June 2006, Coreper formally agreed to the presidency proposal and requested, in accordance with Article 202, third indent, EC Treaty an opinion by

⁷³ Though the Commission recognized a possible role of sunset clauses in environmental legislation, it voiced a clear preference for revision clauses over sunset clauses, in particular for reasons of legal certainty, *see* report of the Commission, *supra* n. 71.

⁷⁴ On the changes between the 1987 Comitology Decision and the 1999 Decision *see* Tichy, *supra* n. 3, p. 138-139.

⁷⁵ Para. 3 of the Declarations 1999, *supra* n. 65; *see also* Tichy, *supra* n. 3, p. 139.

⁷⁶ Declaration B, *supra* n. 63.

Parliament, after general political agreement on the procedure as such had been reached between the Austrian State Secretary Winkler and Parliament rapporteurs Daul and Corbett in May 2006. On 15 June 2006, State Secretary Winkler and MEPs Daul and Corbett reached agreement on the political declarations, which were adopted by the Council on 27 June 2006. On 6 July 2006, Parliament debated the texts of the new decision and the declarations. It was pointed out that the compromise reached means a decisive step forward for Parliament, but also that Parliament now has to prove that it is capable of adapting its mode of functioning to the new task. Parliament agreed formally to the text.⁷⁷ The Council formally adopted the new decision on 18 July 2006 (as an 'A'-point'). It was published in the *Official Journal* on 22 July 2006,⁷⁸ entering into force on 23 July.

EVALUATION OF THE REFORM

The new comitology procedure means a substantial shift in the relations between the institutions when it comes to law-making. It will therefore have a significant impact on the governance system of the Union.⁷⁹ The Reform means undoubtedly a major step forward for Parliament. It is probably the most significant step possible for Parliament short of treaty change. Given the constant extension of co-decision in the law-making procedure, a corresponding extension of Parliament's rights in relation to 'quasi-legislative' measures seems logical. The inclusion of Parliament increases the democratic legitimacy of 'quasi legislative' measures and thus contributes to a better acceptance of European legislation by citizens. On the other hand, it might be more interesting for lobbyists to approach members of Parliament with the aim of getting them to vote against a measure the lobby opposes. Such lobbying activity is far more complicated when dealing with national administrations.

The reform involves Parliament significantly in the comitology system for the first time and thus puts, at least for the time being, an end to a struggle which lasted for decades.⁸⁰ It can be hoped that the inter-institutional atmosphere will improve as a consequence. A true *quid pro quo* was achieved. Parliament received a role in comitology and Commission and Council have the commitment of Parliament that no solutions outside the new comitology regime will be sought. In that context the renunciation of sunset clauses is very important.

The new decision makes the inclusion of comitology provisions in basic acts more acceptable to co-legislators politically and will render it easier for Parliament

⁷⁷ Legislative Resolution P6_TA-PROV(2006)0310 of 6 July 2006.

⁷⁸ *Supra* n. 1.

⁷⁹ See also T. Christiansen and B. Vaccari, 'The 2006 Reform of Comitology: Problem solved or dispute postponed?', in: *EIPASCOPE* Vol. 2006, No. 3, p. 7.

⁸⁰ *Supra* n. 13.

to agree to comitology provisions unconditionally. This increases the quality of European law-making considerably. It is true that the new comitology procedure is more complicated than the three procedures foreseen in the 1999 Decision, but the new procedure is still far more efficient and swift than the co-decision procedure in accordance with Article 251 EC Treaty.⁸¹

Parliament has gained a great deal and rightly so. Now Parliament has to adapt its internal rules of procedure to the new challenges.⁸² The improved information system that the Commission will put into effect will force Parliament to find a way to deal with this increased information flow in an efficient manner. The interplay between committees and plenary will have to be adapted in order to make it possible for Parliament actively to pursue its tasks in a co-operative and efficient manner.

It remains to be seen if the current reform will remove comitology from *all* political heat. A *modus vivendi* will surely develop between the three institutions. The life span of the reform will end with the entry into force of the Constitutional Treaty. The rights contained in Article I-36 Constitutional Treaty remain the real aim of Parliament.



⁸¹ It could be expected that Parliament, had the reform failed, would have rejected any comitology provisions and insisted on the adoption of implementing rules in accordance with Art. 251 EC Treaty.

⁸² MEP Richard Corbett has already tabled a proposal for amending Art. 81 of Parliament's Rules of Procedure, *see* Doc. A6-0415/2006.