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REFORMING COMITOLOGY

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1 JULY 2003

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

REFORMING COMITOLOGY

Doc 15878/02 Proposed Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission

Abstract

Comitology is concerned with the control, by the Member States and the European Parliament, of the implementation by the Commission of EU legislation. EU legislation frequently gives the Commission power to make subordinate regulations or take other action, overseen by committees made up of representatives of the Member States. Many important decisions are made in comitology committees, of which there are three types:

1. Advisory committees—here the Commission has most power. They only have to take account of the committee's views.

2. Management committees—here the Council/the Member States can block the Commission.

3. Regulatory committees—here the Council has most power, as the Commission has to secure the support of a qualified majority of Member States.

The Commission has proposed some major changes:

1. Advisory committees—the Commission would give itself more power, by taking away the right of the European Parliament to rule on the *vires* of proposals.

2. Management committees—this type of committee would be abolished for matters passed by co-decision of the Council and the European Parliament (which, under the Convention on the Future of Europe's draft Treaty for the EU, would become the norm).

3. Regulatory committees—the European Parliament would be given more power, but the Commission would be able to override the Parliament and the Council/the Member States.

The Convention on the Future of Europe's draft constitutional Treaty touches upon comitology, and proposes a "hierarchy of laws", the impact of which is also considered in this Report.

CHAPTER 1: INTRODUCTION

1. The European Commission recently published a proposal to reform the system of "comitology" as an interim measure prior to a more fundamental revision in the new constitutional treaty which now seems certain to emerge from the forthcoming Inter-Governmental Conference. "Comitology" refers to the system of committees involved in the detailed implementation at European level of EU legislation. The Commission proposes an amendment to the Council Decision of 1999[1] which established the current comitology system.

2. The purpose of this Report[2] is fourfold:

- As scrutiny of a major Commission proposal;
- As part of the commitment made in the Committee's recent *Review of Scrutiny* Report[3] to scrutinise documents relating to important comitology decisions more closely;
- As follow-up to the Committee's Report on comitology in 1999,[4] which was the product of a detailed inquiry into the comitology proposals which eventually became the 1999 Decision;[5] and
- As scrutiny of the proposals for a new constitutional treaty from the Convention on the Future of Europe.

3. This Report is split into three sections. Firstly, we explain what comitology is, with a brief history and an outline of the current system. Next, we examine the current Commission proposal. Finally, we look at draft Article I-36 of the Convention's proposed constitutional treaty which deals with implementing powers.[6]

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1 Dec. 99/468, [1999] OJ l184/23.

2 The scrutiny was conducted by Sub-Committee E (Law and Institutions). The membership of the Sub-Committee is set out in Appendix 1.

3 *Review of Scrutiny of European Legislation* (1st Report, Session 2002-03, HL Paper 15).

4 *Delegation of Powers to the Commission: Reforming Comitology* (3rd Report, Session 1998-99, HL Paper 23).

5 Greater follow-up of previous inquiries and Reports is another aim of the scrutiny review.

6 See CONV 724/1/03 REV 1, at pp 28-29.

CHAPTER 2: WHAT IS COMITOLOGY?

4. "Comitology" is established Community shorthand for the work of committees, made up of representatives of Member States and chaired by the Commission, whose function it is to implement Community laws and Community policies. The work includes:

- taking decisions on the detail of the implementation of Community laws;
- taking decisions for the furtherance of Community policies (*eg* how much to spend on what etc.);
- the adaptation or updating of Community legislation in order to take account of technical developments.

Origins

5. The origins of the word "comitology" are in dispute (indeed, it cannot be found in any ordinary English dictionary). C. Northcote Parkinson coined the phrase "the science of comitology", by which he meant the study of committees and how they operate.[7] It has been suggested, however, that "comitology", in the European Union context, derives more from the word "comity" than from the word "committee".[8] Whatever may be its origin, it has become an example, par excellence, of Euro-speak.

6. What is not in dispute is the Treaty origin of the Council's power to delegate to the Commission the function of implementing measures. Article 202 TEC (which was modified by the Single European Act in 1986), says that—

> "To ensure that the objectives set out in the Treaty are attained, the Council shall, in accordance with the provisions of this Treaty:
>
> [. . .]
>
> —confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament."

7. Although the Treaty makes no mention of comitology or committees (indeed, prior to amendments to Article 202 in the Single European Act, the legality of the comitology procedures was challenged before the European Court of Justice[9]), a Framework Decision establishing the rules and procedures to be followed was adopted by the Council in 1987.[10] This Decision rationalised what, up until then, was a quite disparate committee structure.

The 1999 Decision

8. Following a Declaration attached to the Amsterdam Treaty calling for a new comitology Decision, the 1987 Decision was replaced in 1999.[11] This streamlined the comitology structure by reducing the types of committee to three: advisory, management and regulatory, each of which is chaired by a Commission representative. The choice of which procedure to use is laid down in the "basic instrument".[12]

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7 *Parkinson's Law*, 1958, Chapter on "Directors and Councils", p. 31, first paragraph.

8 See the explanation offered by Baroness Park of Monmouth in HL Deb. 11 November 1997, col. 118: "It appears to be a Brussels-created word deriving from the word "comity" in the phrase "comity of nations"".

9 Case 25/70, *Koster* [1970] ECR 1161.

10 Dec. 87/373, [1987] OJ L 197/33.

11 See above, fn. 1.

12 In this context, the "basic instrument" refers to the primary EU legislation relating to the particular policy area in question (*eg* a Regulation on control of fish quotas might specify that the management procedure is to be used).

Comitology Procedures under the 1999 Decision

1. Advisory committee—as its name suggests, this committee is essentially advisory. Member States are often represented by experts in the particular field, who together deliver an opinion on a Commission draft of the proposed implementing measure. Although the Commission is required to "take the utmost account of the opinion delivered by the committee",[13] it is under no obligation to abide by it.

2. Management committee—in management committees Member States are usually represented by civil servants, who again deliver an opinion on the Commission's draft within an agreed time limit. However, a management committee has the power to block the Commission's proposal if a qualified majority (as laid down in Article 205(2) of the Treaty) so vote. In such cases the Commission must notify the Council immediately, and may defer the application of the measures for a period authorised by the basic instrument, but which cannot be longer than three months. The Council may, by qualified majority, take a different decision. In practice such "unfavourable opinions" are rare, mainly because the Commission is often willing to adapt its proposals during the course of the committee meeting—with the committee then voting on the adapted proposal. A management committee is frequently used in relation to the application of the common agricultural and common fisheries policies.

3. Regulatory committee—depending on the importance of the proposals, a regulatory committee is generally composed of a higher grade of civil servant than a management committee. Measures of general scope designed to apply essential provisions should be adopted by a regulatory committee. Given the greater degree of importance of the measures considered by these committees, the Commission has to gain a qualified majority on the committee if the proposal is to be adopted. If it can not muster that majority, the Commission must immediately submit to the Council a proposal relating to the measures to be taken, and must inform the European Parliament. If the European Parliament considers the measure *ultra vires* (*ie* it exceeds the implementing powers provided for in the basic instrument), and if the basic instrument was subject to co-decision (as laid down in Article 251 of the Treaty), the Commission must inform the Council of the position. The Council may then act by qualified majority on the proposal, taking account of the view of the European Parliament where appropriate. If the Council rejects the proposal by a qualified majority, the Commission must either submit an amended proposal to the Council, or re-submit its original proposal or present a legislative proposal. In practice, the Commission is very unlikely to re-submit the proposal. If it proposes primary legislation, the European Parliament will then get a voice in the passage of the legislation.

9. It is this 1999 Decision, setting up the above three procedures, which the Commission is now proposing to amend. Before looking at the current proposals, it is worth examining the justification for having a system of comitology.

Why have comitology?

10. In virtually every country with a legislative system it has been necessary for the legislature (in the case of the EU, the Council of Ministers and the European Parliament) to delegate the detailed implementation of legislation, usually to an executive body (the Commission). In the EU, there are certain areas of Community policy which are highly regulated, and require numerous, detailed regulations, often needing to be passed quickly to cope with changing circumstances. It would be impractical for the Council to have to determine these—the legislative process would grind to a halt. The system of comitology thus eases the work load of the Council.

11. Comitology allows Member States an input into the implementation of measures at Community level. It is common to think that Member States only disagree on points of general principle. Frequently, however, Member States agree on general strategy, but differ on the detailed application of it. Comitology allows a forum for resolving those differences.

12. Further, significant decisions are often determined in comitology committees, making the assent of Member States vital. Comitology adds legitimacy to the implementation process. Many decisions which may appear to be nothing more than technical details, in fact have a substantial impact on producers, traders, users and consumers. Without the input of the Member States representing such stakeholders, confidence in the implementation process would undoubtedly suffer.

[13] See above, fn. 1, Article 3.

13. So the system of comitology acts as a check on the Commission, whilst at the same time allowing national interests to have a say in implementing measures. What is more, the Council (as legislature) has supervision over the execution of legislative measures it has passed.

The Committee's 1999 Report

14. The Committee's 1999 Report on comitology[14] identified four factors of comitology as it then stood. At least three of them still apply.

(i) First, it said comitology was important. The sheer number of subject areas requiring implementing measures necessarily made this so. With the addition of new policy areas in the Amsterdam and Nice Treaties, comitology became and remains even more important.

(ii) Secondly, comitology was contentious. The European Parliament had no input at all under the arrangements pre 1999. Under the 1999 Decision its input is limited to determining the *vires* of measures whose basic instrument was made by co-decision.

(iii) Thirdly, comitology was complex. Although the 1999 Decision reduced the number of processes, the system of comitology is still baffling and bewildering to outsiders.

(iv) Lastly, comitology was opaque. Information about the committees was scarce, and no definitive list existed of committees, their functions, activities and membership. This state of affairs has improved since 1999. Such a list is included in an annual report from the Commission on the working of the committees (there were 247 comitology committees in 2001). Nevertheless, our *Review of Scrutiny* Report stated:

> "The legislation passed under comitology procedures may or may not be good legislation but the fact that so much can be made in such a way, unseen and unscrutinised, clearly in our view contributes to a lack of accountability in the European Union."[15]

[14] See above, fn. 4.

[15] See above, fn. 3, at para. 88.

CHAPTER 3: THE COMMISSION PROPOSAL

15. The Commission's proposed Decision would amend the present comitology arrangements mainly by giving the European Parliament greater supervisory powers over certain subordinate legislation. It is important to note that the proposal is to amend the 1999 Decision, not wholly to rewrite it. Furthermore, the proposal is only intended to be an interim measure pending a more substantial revision of delegated legislation in the expected constitutional treaty (see the next Chapter).

White Paper on European Governance

16. The spur for reform came in the Commission's White Paper on European Governance.[16] In this, the Commission referred *inter alia* to the need to reform the comitology procedures in the light of the growth of co-decision:

> "This adjustment of the responsibility of the Institutions, giving control of executive competence to the two legislative bodies and reconsidering the existing regulatory and management committees touches the delicate question of the balance of power between the Institutions. It should lead to modifying Treaty Article 202 which permits the Council alone to impose certain requirements on the way the Commission exercises its executive role. That Article has become outdated given the co-decision procedure which puts the Council and the European Parliament on an equal footing with regard to the adoption of legislation in many areas. Consequently, the Council and the European Parliament should have an equal role in supervising the way in which the Commission exercises its executive role. The Commission intends to launch a reflection on this topic in view of the next Inter-Governmental Conference."[17]

17. The reason for the Commission tabling a proposal now, as an interim measure, was given in the Commission's Explanatory Memorandum attached to the proposal:

> "However, given the relatively long period which will elapse before the new treaty comes into force, Council Decision 1999/468 on "comitology" needs to be amended now as it does not take account of the European Parliament's position as a co-legislator."[18]

Co-decision

18. The primary purpose of the proposal, therefore, is to increase the role of the European Parliament in the implementation of legislation decided by co-decision. Co-decision, which originated in the Maastricht Treaty, has increased to cover new policy areas by successive Treaty amendments. Co-decision allows the Parliament a formal role as legislator alongside the Council and, since the Amsterdam Treaty, has given the Parliament a definitive veto. Co-decision applies to over 40 policy areas, including the single market, freedom of movement, equal pay and the environment. It does not apply to Second (Common Foreign and Security Policy) or Third (Police and Judicial Co-operation in Criminal Matters) Pillar measures.

Article 2a: Criteria for determining whether advisory or regulatory procedure should apply

19. Under the 1999 Decision, the choice of which procedure to use is left to the discretion of the legislating institution, subject to the broad guidelines laid down in Article 2. The Commission proposes a new "Article 2a", which would apply more rigorous criteria for determining which procedure should be used for co-decided legislation. The advisory procedure would apply "whenever the executive measures have an individual scope or concern the procedural arrangements for implementing basic instruments." The regulatory procedure would apply "whenever the executive measures are designed to widely implement the essential aspects of the basic instrument or adapt certain other aspects of it."

20. It is significant that the proposed new Article 2a will apply only to the choice of procedures for adopting "executive measures" in those cases where the basic instrument is adopted by co-decision. Article 2 of the 1999 Decision will remain, but whether as a general or, in practice, a residual rule (given the expected growth of co-decision[19]) has yet to be seen. It is also noteworthy that the proposal does not define "executive measures" for these purposes. The question arises as to whether the expression has the same or a narrower meaning than "implementing measures" in Article 2.

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[16] European Governance: a White Paper. COM (2001) 428 final 25.7.2001.

[17] See above, fn. 16, at p. 31.

[18] COM (2002) 719 final, at p. 2.

[19] See paragraph 42 below.

21. Another consequence of Article 2a would be that management committees could no longer be used for comitology where the basic instrument had been adopted by co-decision. The intention is clearly stated in recital 8, though no justification is given other than that the management procedure "is no longer applicable". When the basic instrument is adopted by co-decision, implementing legislation formerly decided through management committee procedures would be dealt with by regulatory or advisory committee procedures. In the case of an advisory committee, given the non-binding nature of an advisory committee's opinion, as opposed to the veto open to a management committee, the check on the Commission would be reduced. This potential extension of the Commission's powers has been a matter of concern for the House of Commons European Scrutiny Committee.[20]

Article 5a: the two stage procedure

22. The second major change, proposed as a new Article 5a, is to subject co-decided implementing measures allocated to regulatory committees to a two stage procedure—an executive phase and a supervisory (or control) phase. The executive phase would involve a Commission draft being placed before the regulatory committee, which would then issue an opinion by qualified majority. If the opinion were favourable, the Commission would prepare a final draft, and the proposal would move on to the supervisory phase. If the committee's opinion were unfavourable, or if no opinion were delivered, there would be a period of one month's further consultation, following which the Commission would prepare a final draft, which might or might not incorporate amendments to take account of the committee's position. An example of the new two stage procedure (produced by the Commission) is reproduced in.

23. In the supervisory phase, the Commission would submit the final draft to the Council and the European Parliament. If, within one month (which could be extended by another month if the Council or Parliament so requested), no objection were made, the Commission would then adopt the instrument. If the Council (by qualified majority) or the Parliament (by absolute majority) objected, the Commission would have two options. They could either adopt the instrument, possibly amending it to take account of the objections; or they could present a proposal for primary legislation.

24. **This new regulatory procedure is to be welcomed in so far as it greatly increases the role of the European Parliament in comitology decisions**. This is consistent with the Committee's 1999 Report, where we stated:

> "The Committee recognises that the role of the European Parliament in bringing the Council and Commission to account is an important democratic safeguard. We have always been sympathetic to the Parliament's wish to be more involved in the comitology process. The ability of the Parliament to scrutinise legislation is an important feature of the Community's democratic structure. There is a case for greater involvement on the part of the Parliament in relation to delegated legislation, so long as this is consistent with maintaining the institutional balance and does not jeopardise speedy and effective law-making where this is necessary."[21]

25. Placing the European Parliament on an equal footing with the Council in implementing co-decided legislation is logical and justified. It means that the two arms of the legislature would have a say on the substance of the draft and would be able to raise politically sensitive questions. It is perhaps noteworthy that this proposal subtly shifts the nature of comitology from being input by Member States into implementing measures, to being control by the legislative bodies of the execution of their legislation.

26. **However, whilst the Committee welcomes the increased role for the European Parliament, it condemns one consequence of the amendments, namely, that the Commission can adopt its proposal regardless of objections by the Council and by the Parliament**. The Commission may "amend its draft to take account of the objections", but would be under no compulsion to do so—even if both the Council and the Parliament had unanimously rejected it. There seems little point in having a supervisory phase if the supervisory bodies can be thus overridden. This approach might, in theory, be consistent with the notion of a separation of "executive" and "legislative" powers and functions and with the viewpoint that the Commission has principal responsibility for the execution of EU laws, but there must be a question as to whether the tenuous supervision granted to the Council and Parliament is politically or democratically acceptable. **On the face of it, these proposals do not seem consistent with the resolution of the "democratic deficit"**.

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[20] 12th Report, Session 2002-03, HC 63-xii, at para. 4.13.

[21] See above, fn. 4, at para. 145.

27. The new Article 5a would also have a considerable impact on the position of the Council in the regulatory procedure. The Commission believes that at present there is a "risk of an impasse when adopting the measures in question in cases where the Council cannot put together a qualified majority, strong opposition to the Commission's proposal emerges and the European Parliament has no say in the outcome."[22] The Commission's solution is to remove the power of the Council to reject proposals that have failed to be approved by the comitology committee; under the new proposals the Council can, in these cases, be overridden by the Commission. **This is a significant change**, but one barely mentioned in the Commission's Explanatory Memorandum or in the recitals to the draft Decision.

Article 8: Deleted

28. A third change is the deletion of Article 8. Article 8 allows the European Parliament to adopt a resolution stating that draft implementing measures adopted under Article 251 of the Treaty (the co-decision procedure) exceed the implementing powers provided for in the basic instrument (*ie* that the measures would be *ultra vires*). The Commission is then obliged to re-examine the draft measures. The deletion of Article 8 with regard to regulatory committees is perfectly understandable and justifiable: the Parliament will in future be able to determine the substance of comitology decisions as well as just their *vires*. What, though of advisory committees (management committees would no longer be used for co-decided legislation)? It would appear that the European Parliament would lose its power to comment on the *vires* of measures adopted by advisory committees. **Although such resolutions are rare (indeed, none were made in 2001), the elimination of this long-stop in the advisory procedure needs justifying, and the lack of comment on it is baffling and unsatisfactory**.

The European Parliament's view

29. In a Report delivered on 29 April,[23] the Constitutional Affairs Committee of the European Parliament considered the Commission's draft.[24] In addition to tidying-up amendments, the Committee proposed an amendment re-instating the Parliament's power to comment on the *vires* of proposals submitted to advisory committees. The Committee's Report noted that the criteria for determining whether a matter should go to an advisory committee or to a regulatory committee was open to differing interpretations; therefore, it was important for the Parliament to have an input into both.

30. The Constitutional Affairs Committee also proposed an amendment to the new Article 5a, the effect of which would be to oblige the Commission to take into account objections expressed by the Council or European Parliament to draft implementing measures adopted under the regulatory procedure. Instead of the Commission "possibly" amending its draft, the proposed amendment to Article 5a would require the Commission either to amend its draft to take account of the objections or else to "withdraw its draft altogether." **This amendment is commendable and we strongly support it**.

Implications for Parliamentary scrutiny

31. Should this Comitology proposal be enacted, there could be an impact on this Committee's scrutiny procedures. The proposal would require every co-decision-derived implementing measure subject to the regulatory procedure to be transmitted from the Commission to the Council and the European Parliament. The publication of such measures would arguably engage the Select Committee's Scrutiny Reserve Resolution and require deposit of the document, triggering scrutiny. The Select Committee has not sought to scrutinise all comitology measures, but only those which are legally, politically or practically important.[25] The implications of the present proposal for our scrutiny process will need to be considered.

The Government's view

32. Whilst agreeing that comitology is in need of attention, the Government says, in its Explanatory Memorandum,[26] that it:

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[22] See above, fn. 18, at p. 4.

[23] All bar one of the Report's proposed amendments were adopted by the European Parliament at its sitting of Tuesday 13 May 2003 (PE 331.498, at pp. 80-86).

[24] A5-0218/2003.

[25] See above, fn. 3, para. 89.

[26] 15878/02.

"will be giving careful consideration as to whether these amendments upset the balance of the 1999 Decision, and whether they require change to the Treaties (Article 202)."[27]

33. Although the Minister is not entirely clear on what "upsetting the balance of the 1999 Decision" means, he earlier expressed concern at the proposed reduction of implementing procedures for co-decided legislation to advisory procedure and regulatory procedure. The Minister has said that when faced with the choice between the stark alternatives of the advisory and regulatory procedures, the European Parliament "has had a tendency to favour the lighter *advisory procedure*, which keeps the final say over implementation away from the Member States."[28]

[27] See above, fn. 26, at para. 16.

[28] See above, fn. 26, at para. 9.

CHAPTER 4: COMITOLOGY AND THE CONVENTION ON THE FUTURE OF EUROPE

34. The Convention on the Future of Europe has, *inter alia*, been examining the issue of comitology. The issue has been touched upon in three separate documents: the report of the Working Group IX on Simplification; the first draft Article 28 on Implementing Powers; and, in the second draft Constitution, draft Article I-36, which is an amended version of the previous Article 28.

Working Group IX on Simplification

35. The Working Group on Simplification recommended a hierarchy of laws,[29] something which was proposed at the time of the Maastricht Treaty, but to which Member States were then hostile. The Group proposed three levels:

(i) Legislative Acts—"acts adopted on the basis of the Treaty and containing essential elements in a given field";

(ii) Delegated Acts—"these acts would flesh out the detail or amend certain elements of a legislative act, under some form of authorisation defined by the legislator"; and

(iii) Implementing Acts—"acts implementing legislative acts, 'delegated legislation' or acts provided for in the Treaty itself".[30]

36. The third category, implementing acts, is intended to cover those measures which when taken by the Union would normally be taken by the Commission with or without a comitology procedure or exceptionally by the Council. The new category of delegated acts is also intended to cover acts to be taken by the Commission, but subject to some form of control mechanism (such as a right of call back, a period of tacit approval or a 'sunset clause'[31]). It would appear that the proposed new category would cover measures which at present would be dealt with under comitology procedures.

37. What effect a distinction between delegated acts and implementing acts would have on the nature and volume of matters subject to comitology is not clear. It is noteworthy that the Working Group envisaged that the introduction of the new category of delegated acts would lead to a simplification of the comitology procedures (possibly by amendment or abolition of the regulatory committee procedure), but the Group's report did not delve any deeper into the issue of comitology, and took the view that any analysis of Article 202 was beyond its remit.

Draft Article 28: Implementing Acts

38. In the Praesidium's first draft of Article 28,[32] they sought "a clarification of Article 202 TEC, which currently governs implementing powers, exercised at Union level."[33] The paragraphs which relate to comitology are 2, 3 and 4:

> "2. Where uniform conditions for the implementation of the Union's binding acts are needed, those acts may confer implementing powers on the Commission or in specific cases and in the cases provided for in Article [CFSP], on the Council.
>
> 3. Implementing acts of the Union may be subject to control mechanisms which shall be consonant with principles and rules laid down in advance by the European Parliament and Council in accordance with the legislative procedure.
>
> 4. Implementing acts of the Union shall take the form of European implementing regulations or European implementing decisions."

39. Whilst paragraph 2 may be essentially the status quo, namely that implementing acts are delegated to the Commission but can exceptionally be effected by the Council, the same cannot be said of paragraph 3. The reference to "control mechanisms" (which presumably relates to comitology committees) says these should be "consonant with principles and rules laid down in advance by the European Parliament and the Council in accordance with the legislative procedure." This would establish in the Treaty the right of the European Parliament to have a voice in comitology procedures

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[29] CONV 424/02.

[30] See above, fn. 29, at p. 9.

[31] A sunset clause is a clause under which the measure automatically terminates at the end of a fixed period unless it is formally reviewed.

[32] For more analysis of this Article, see our Report *The Future of Europe: Constitutional Treaty—Draft Articles 24-33* (12th Report, Session 2002-03, HL Paper 71), at pp 15-17.

[33] CONV 571/02, at p. 4.

(or at least those adopted under the "legislative procedure", which refers to co-decision). **The Committee welcomes this proposal**.

Second Draft Article I-36: Implementing Acts

40. The second draft Article on implementing acts, published following amendments submitted by Convention members on the original, repeated the first draft Article 28, but with one amendment to paragraph 3. That will now read:

> "3. The law shall lay down in advance rules and general principles for the mechanisms for control by Member States over implementing acts of the Union."[34]

41. Two changes are notable here. First, the "mechanisms for control" would be exercised by the Member States. This, the Praesidium explains, is to stipulate that control is exercised in this area by Member States.[35] Presumably, the amendment indicates a continuation of the comitology structure. Second, the rules and principles would be laid down in advance by "the law". Reference to the European Parliament and the Council has been deleted. We assume "the law" refers to a Decision similar to the 1999 Decision, which will provide for set procedures to be followed in implementing measures.

Comitology and Co-decision

42. Under Article I-33, co-decision is proposed to become the primary procedure for adopting primary European legislation.[36] Given that agriculture and fisheries are matters which are projected to be decided by co-decision, and given that they comprise the bulk of the work of management committees, the management procedure looks likely to be effectively killed off if, as the Commission proposes, it should no longer be used for co-decision-derived implementing measures.

Recommendation

43. The Committee considers that the Commission's proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission raises important questions to which the attention of the House should be drawn, and makes this Report to the House **for information**.

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[34] CONV 797/1/03 REV 1, at p. 30.

[35] See above, fn. 34, at p. 92.

[36] See above, paragraph 18, for a brief explanation of co-decision. The number of policy areas subject to co-decision would double, should the Convention's draft Treaty become law.

APPENDIX 1

Sub-Committee E (Law and Institutions)

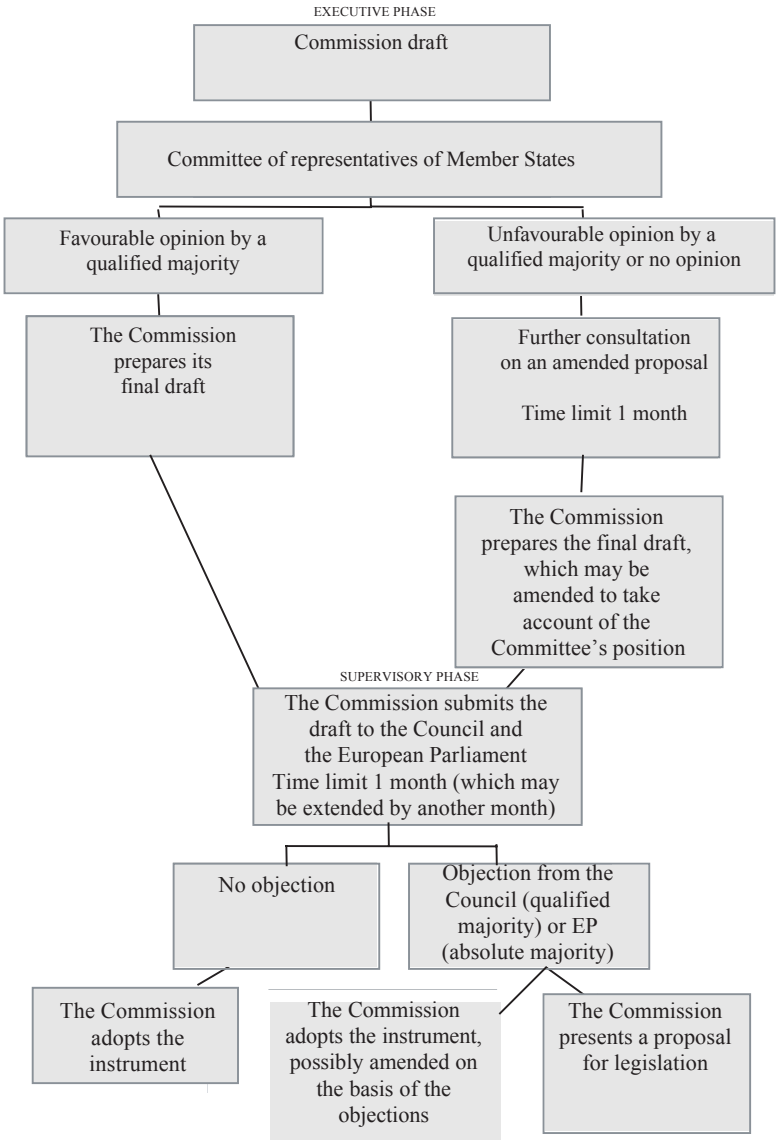
The members of Sub-Committee E are:

Lord Brennan
Lord Fraser of Carmyllie
Lord Grabiner
Lord Henley
Lord Lester of Herne Hill
Lord Mayhew of Twysden
Lord Neill of Bladen
Lord Plant of Highfield
Lord Scott of Foscote (Chairman)
Baroness Thomas of Walliswood
Lord Thomson of Monifieth

APPENDIX 2

Revised regulatory procedure

Prior to the procedure, the legislative phase (basic instrument adopted under the co-decision procedure)



Subsequently, it is possible for an application to be made to the Court of Justice to have the measure struck down