



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION
on the working of committees during 2004

{SEC(2005) 1420}

1. GENERAL COMMENTS REGARDING THE COMITOLOGY SYSTEM

The present report covers the activities of comitology committees during the year 2004. It contains an introductory section, a horizontal overview of committees' activities and an Annex with detailed statistics on the individual comitology committees, organised according to the different departments of the Commission.¹ The Annex also provides textual comments on changes regarding the number of committees and on extraordinary events related to specific draft measures, such as unfavourable opinions, EP resolutions resulting from the exercise of its right of scrutiny (see also point 1.2 below) and referrals to the Council (see also point 1.3 below).

1.1 Comitology committees and their institutional context

a) The function of comitology committees in the institutional architecture

The purpose of the comitology committees is to assist the Commission in exercising the implementing powers conferred upon it by the legislator, i.e. the Council and the European Parliament. The comitology committees share three essential features.

First, they are created by the legislator (the Council and the European Parliament) in accordance with the "legislative" procedures in force at the time of adoption of the basic instrument under which they are established, since the Maastricht Treaty, namely the codecision procedure. Hence, the legal basis of the comitology committees is enshrined in a so-called "basic instrument".

Second, their structure and working methods are in several respects standardised. A representative of the Commission chairs each committee, which consists of Member State representatives; these are the only "members" of the committees. The committees intervene within the framework of the procedures set out in the basic legislative instrument, in compliance with the Council's comitology decision, Decision 1999/468/EC.²

Third, the committees deliver opinions on draft implementing measures submitted to them by the Commission pursuant to the basic legislative instrument and intervene within the framework of the advisory procedure, the management procedure or the regulatory procedure provided for that purpose.

Pursuant to Article 2 of Council Decision 1999/468/EC, the management procedure should be reserved for management measures such as those relating to the application of the common agricultural and common fisheries policy or to the implementation of programmes with substantial budgetary implications (Article 2(a)). The regulatory procedure is prescribed in the case of measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants and in updating the "technical" elements of a basic instrument (Article 2(b)). The advisory procedure is applied wherever it is considered to be the most appropriate.

¹ The Annex is presented as a separate Commission staff working paper.

² OJ L 184, 17.07.1999, p. 23.

Under the management (Article 4(2) of Council Decision 1999/468/EC) and the regulatory procedure (Article 5(2) of Council Decision 1999/468/EC) a *qualified majority* of the votes of the committee members, as defined in Article 205(2) of the Treaty, has to be obtained in order to deliver an opinion (positive or negative).³ Since the entry into force of the last amendment of the EC Treaty on 1 November 2004,⁴ the new regime defined in Article 205(2) has applied. It provides for a “double majority”, of a) at least 232 of a total of 321 votes, as well as b) a majority of the (25) Member States, to reach the qualified majority.

As to the additional criteria set out in Article 205(4), giving any member of the Council the option to ask for verification whether the Member States voting in favour of an act represent 62% of the EU population, the Commission concludes that it does not apply in the context of the comitology procedures, since reference is made in Council Decision 1999/468/EC only to Article 205(2).

There are other committees and groups of experts set up by the Commission itself to assist it in exercising its *right of initiative* or in exercising monitoring, coordination or cooperation tasks with the Member States. These consultative bodies (they number several hundred) are not the subject of this report and have to be distinguished from comitology committees.

b) Comitology and transparency: the register and repository for comitology documents

As an important transparency element, Article 7 of Decision 1999/468/EC, and Council and Commission statements relating to that provision (notably statements No 4 and 5), put in place measures designed to *improve the transparency* of the working of the comitology committees.

Article 7(5) of Decision 1999/468/EC provides that the Commission has to publish a register giving the *references of all documents sent to the European Parliament under comitology procedures*. This register has been in operation since December 2003.⁵

According to its statement (No 5) on Council Decision 1999/468/EC, the Commission added a *repository* to the register as an *additional transparency measure*, making many documents communicated to the European Parliament directly available to the public in accordance with Regulation (EC) No 1049/2001 of the Parliament and of the Council regarding public access to the institutions’ documents,⁶ which came into effect on 3 December 2001. The function of the register is to indicate the *existence* of a document, whereas the repository contains the document in a downloadable format.

The ordinary mandatory transmission of documents defines the content of the register and repository. There are:

- agendas, summary records and voting results of all committee meetings,

³ For an opinion under the advisory procedure, a simple majority, as defined by the Treaty, is sufficient.

⁴ As amended by the Act of Accession of the ten new Member states, OJ L 236 of 23.9.2003, p. 33.

⁵ See the Internet address: http://europa.eu.int/comm/secretariat_general/regcomito/registre.cfm?CL=en. The register covers documents as of the beginning of 2003.

⁶ OJ L 145, 31.05.2001, p. 43.

- draft implementing measures “submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 251 of the Treaty” (the codecision procedure; see Article 7(3) of Council Decision 1999/468/EC).

Beyond the ordinary transmissions listed above, the register and repository contains documents sent by the Commission departments to the European Parliament at its specific request or under special arrangements:

- Specific draft measures which, although not subject to the codecision procedure, are of particular importance to the European Parliament are sent for information, at the request of the parliamentary committee responsible, based on the Commission’s commitment in the Bilateral Agreement with the European Parliament on procedures for implementing Council Decision 1999/468/EC of June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (see point No 2 of the Agreement).⁷
- Minutes of committee meetings may be requested by the European Parliament.⁸
- Other accompanying documents such as working papers, non-papers or information material, originating from Commission departments, the Member States and/or third parties, are currently sent by the departments, on a non-mandatory basis.⁹

All documents are uploaded on a decentralised basis by the Commission departments responsible for managing the comitology committees and then transmitted centrally by the Secretariat-General of the Commission to a central point in the European Parliament, from where they are dispatched to the different parliamentary committees. References of documents may not appear if they are regarded as “sensitive” within the meaning of Article 9 of Regulation (EC) No 1049/2001.

The “Transparency” Regulation (EC) No 1049/2001 protects the decision-making process of the EU institutions, of which the comitology procedures are part, under Article 4(3). The Commission has meanwhile decided how it intends to take advantage of this legal protection: draft implementing measures should normally become publicly accessible *after the vote in a committee has taken place*¹⁰. Only in the case of the exceptions defined in Article 4(1) and (2) of Regulation (EC) No 1049/2001 (i.e. matters of security or commercial interests) should direct access be delayed until the final adoption of the measures by the College. After final adoption, the measures are accessible via the common databases and registers of the Commission (minutes of Commission meetings, see Register of Commission Documents).

1.2 The European Parliament’s right of scrutiny

The Commission is obliged to inform the European Parliament about the work of the committees and to send it all draft implementing measures pursuant to a basic instrument adopted under Article 251 of the Treaty (legal acts adopted in conformity with the codecision

⁷ OJ L 256/19 of 10.10.2000.

⁸ See point No 2 of the Agreement.

⁹ Existing practices may continue after the register becomes operational; it remains at the discretion of each department to decide which accompanying documents they want to send to the European Parliament. However, the present Operational Instructions for uploading in the register and the repository apply to such documents in the same manner as to mandatory transmissions.

¹⁰ The committee voting can take place in a regular committee meeting or by written procedure, in accordance with the Rules of Procedure of the committee.

procedure), so that the European Parliament can exercise its right of scrutiny enshrined in Article 8 of Decision 1999/468/EC.

In February 2000, the European Parliament and the Commission concluded an *Agreement on procedures for implementing Council Decision 1999/468/EC*, designed specifically to regulate the procedures for implementing the obligations incumbent on the Commission.¹¹

Except in emergencies, the agreement stipulates a period of one month from receipt of a “definitive” draft implementing measure¹² under a legal act adopted through codecision to allow the European Parliament, where appropriate, to adopt a resolution (in plenary session), pursuant to Article 8 of Council Decision 1999/468/EC, if it considers that the draft measure exceeds the implementing powers enshrined in the basic instrument.¹³

In practice, the Commission departments upload the draft implementing measure in the register at the same time as they send it to the Member States in preparation for a committee meeting. If a vote is to be held by written procedure (without holding a committee meeting), according to a Committee's *Rules of Procedure*, the same applies. Once the vote has taken place, the Commission department – since mid-2004 – is instructed to fill out a voting sheet, which indicates the overall result of the vote on the specific draft implementing measure. The department also indicates whether the draft implementing measure was amended as a result of its examination by the committee, or not.

If the draft implementing measure is amended, it will be uploaded a second time, together with the voting sheet, into the register and sent to the European Parliament. Thus Parliament and the public, which will normally be granted direct access to the draft measure at this stage of the comitology procedure, are clearly informed of the “definitive” draft of the implementing measure. If the draft implementing measure is unchanged, only the voting sheet is uploaded and transmitted to the European Parliament. The initially uploaded version of the draft implementing measure is then considered as being the final draft.

It is worth noting that during 2004, as in 2003, there were no cases reported where the European Parliament felt the need to adopt a resolution based on Article 8 of Council Decision 1999/468/EC.

Without formally resorting to that provision, the European Parliament adopted a resolution¹⁴ concerning one Draft Commission Regulation¹⁵ in the field of *animal nutrition* to ask the Commission to revise the scope of the draft measure, which in its views exceeded the powers delegated to the Commission by the legislature. The draft was modified in accordance with

¹¹ OJ L 256, 10.10.2000, p. 19. The agreement replaces certain earlier agreements: the Plumb/Delors Agreement of 1988, the Samland/Williamson Agreement of 1996 and the “modus vivendi” of 1994.

¹² The drafts are first sent before the committee meeting and, if they are substantially amended during the meeting, again afterwards.

¹³ This basic instrument must itself have been adopted under the codecision procedure (Article 251 of the Treaty) by the Council and the European Parliament.

¹⁴ Resolution N° 43/2004 adopted on 28/10/2004 (OJ C174E of 14/7/2005, p. 63).

¹⁵ Draft Commission Regulation amending Annex IV to Regulation (EC) n° 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies, submitted to the Standing Committee for the Food Chain and Animal Welfare on 12 October 2004.

the recommendations of the Parliament before being submitted to the Committee for vote and then adopted by the Commission¹⁶.

1.3 Referrals to the Council

There were a total of 17 cases of referrals to the Council reported in 2004. Pursuant to Council Decision 1999/468/EC, draft measures must be referred to the Council when the Commission fails to obtain the necessary majority for an opinion *confirming* the draft implementing measure under the *regulatory procedure* or faces an *opposing* qualified majority under the management procedure. The total of 17 referrals in 2004 occurred in three policy sectors: Environment (12), Health and Consumer Protection (4) and Taxation and Customs Union. Although the total figure represents only some 0,5 % of the total number of implementing measures adopted by the Commission under the management and regulatory procedures, it is the highest figure in absolute terms since the beginning of regular reporting in 2000 (with a high concentration in the Environment sector). Whilst the work of the committees is characterised in general by a high degree of consensus, it may be that the increased number of delegations in the committees (25 Member States since enlargement) sometimes makes it more difficult now to obtain the necessary qualified majority to deliver a favourable opinion (at least in one policy sector). Another reason could be the sensitive nature of implementing measures in the environment field (concerning, for instance, GMO products).

1.4 Wider developments

The Commission's proposal for a revised regulatory procedure¹⁷ for executive measures having a general scope or adapting certain other aspects of basic acts adopted under the codecision procedure (Article 251 of the Treaty) is still under examination in the Council.

This proposed new procedure places the European Parliament and the Council on an equal footing in supervising the Commission's exercise of implementing powers. On 2 September 2003, the European Parliament broadly endorsed the Commission's proposal,¹⁸ while suggesting a very limited number of technical amendments. On 22 April 2004, the Commission issued an amended proposal¹⁹ to take on board the bulk of the European Parliament's amendments, and further clarify the new procedure. The executive powers of the Commission would be reorganised by the *Treaty establishing a Constitution for Europe*.²⁰ The Constitution introduces the instrument of "delegated" regulations to be adopted by the Commission and designed to supplement or amend certain "non-essential" elements of European laws under the control of the Parliament and the Council, which may revoke the delegation itself or object to a specific draft regulation; these delegated regulations are to be distinguished from the mere implementing acts that the Commission will adopt under the

¹⁶ Commission Regulation (EC) No 1292/2005 amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards animal nutrition (OJ L 205 of 6/8/2005, p.3).

¹⁷ 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, adopted 11.12.2002).

¹⁸ Resolution adopted on 2 September 2003 (P5-TA(2003)0352), based on the report of R. Corbett.

¹⁹ COM (2004) 324 final, dated 22.4.2004.

²⁰ Draft Treaty establishing a Constitution for Europe, submitted to the European Council meeting in Thessaloniki, 20.6.2003, Articles I-35 and I-36.

control of the Member States.²¹ The declaration by the Heads of State or Government at the European Council meeting in June 2005 on the ratification process of the Constitution provides for a period of reflection until mid-2006.

The integration of the ten new Member States in the work of the comitology committees – following the *enlargement of the European Union* on 1 May 2004 – took place without any significant problems. Until the accession date, they enjoyed *active observer status*, which they were granted by the Commission Decision of 25 February 2003²² (and which applied from the day after the Accession Treaty was signed on 16 April 2003).²³ Under this arrangement, representatives of the acceding states were invited to most comitology committees; they had the opportunity of expressing their views on the issues discussed in the meetings but no right to take part in the voting on draft implementing measures. From accession, there was no difference in the rights and obligations of “old” and “new” Member States.

In December 2004, the accession negotiations with Bulgaria and Romania were concluded and on 25 April 2005 the Accession Treaty was signed. Similarly to the approach described above for the ten new Member States during the period preceding accession, Bulgaria and Romania have been granted active observer status as from 26 April 2005 and may participate in committee meetings.²⁴

For Turkey and Croatia as the remaining candidate countries, participation continued to be organised on the basis of the “Communication from the Commission to the Council on the participation of candidate countries in Community programmes, agencies and committees”²⁵ and the “Communication from the Commission to the Council and Parliament on preparing for the participation of the Western Balkan countries in Community programmes and agencies”.²⁶

2. HORIZONTAL OVERVIEW OF ACTIVITIES

2.1 Number of committees and types of procedures

It is important to distinguish between the comitology committees, on the one hand, and other entities, in particular “expert groups” created by the Commission itself, on the other hand. The latter are concerned with preparing and carrying out policies, whereas the comitology committees are involved in the context of implementing legislative acts. The present report focuses exclusively on comitology committees. The number of comitology committees has been calculated by sector of activity (Table I) as at 31.12.2004. The figures for the previous year (status as at 31.12.2003) are given for comparison.

²¹ The consolidated version of the draft Treaty establishing a Constitution for Europe has been published in the Official Journal, C 310 of 16.12.2004, p. 1-465.

²² Commission Document C(2003)341.

²³ TOWARDS THE ENLARGED UNION, Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries (9.10.2002), COM(2002) 700 final, see point 3.3 (p. 25).

²⁴ Decision of the Commission of 23 March 2005 - C(2005)874 (Article 7).

²⁵ COM (1999) 710 final, adopted 20.12.1999.

²⁶ COM (2003) 748 final, adopted 03.12.2003.

TABLE I – TOTAL NUMBER OF COMMITTEES

Policy Sector	2003	2004
Enterprise (ENTR)	33	30
Employment and Social Affairs (EMPL)	8	6
Agriculture (AGRI)	30	30
Transport/Energy/Trans-European Networks (TREN)	45	40
Environment (ENV)	35	35
Research (RTD)	2	3
Information Society (INFSO)	13	10
Fisheries (FISH)	3	3
Internal Market (MARKT)	12	11
Regional Policy (REGIO)	2	2
Taxation and Customs Union (TAXUD)	9	10
Education and Culture (EAC)	7	9
Health and Consumer Protection (SANCO)	13	13
Justice and Home Affairs (JAI)	7	10
External Relations (RELEX)	3	3
Trade (TRADE)	13	11
Enlargement (ELARG)	2	2
Europe Aid (AIDCO)*	8	9
Humanitarian Aid (ECHO)	1	1
Statistics (ESTAT)	7	7
Budget (BUDG)	2	2
Anti-Fraud Office (OLAF)	1	1
TOTAL	256	248

* The figures for AIDCO do not include the European Development Fund (EDF) committee, which is not subject to comitology procedures.

The figures indicate the relative importance of comitology procedures in the activities in the different policy sectors. Transport/Energy (40), Environment (35), Agriculture (30) and Enterprise (30) continue to have the largest number of committees. With 136 out of a total of 248 committees, these policy sectors alone account for more than half of the committees. The Commission's efforts to minimise the growth in the number of committees have produced results. It has even reduced the number of existing committees, as at the end of 2004, compared with 2003. Whilst the legislator has established new committees in some policy areas where activity has increased (for example Justice and Home Affairs, and Education and Culture), in other policy sectors the number has decreased with the reorganisation of the legal framework (see in particular Transport and Energy). Detailed information on the creation, abolition and mergers of committees is given in the annotations to the table for each policy sector in the Annex.

The comitology committees can be classified according to the type of procedure under which they operate (advisory procedure, management procedure, regulatory procedure, and safeguard procedure – see Table II). The year 2004 is the first year in which the “alignment regulations” applied in full,²⁷ so that the different *variants* according to the 1987 comitology procedures (IIa and IIb, IIIa and IIIb) do not apply any more. Since certain committees apply multiple procedures (ranging from the advisory procedure to the regulatory procedure, plus the safeguard procedure), they have been singled out from the committees operating according to a single procedure.

TABLE II – NUMBER OF COMMITTEES BY PROCEDURE (2004)

	Type of procedure				Committees operating under several procedures
	Advisory	Management	Regulatory	Safeguard	
ENTR	6	5	16	-	3
EMPL	1	-	2	-	3
AGRI	-	24	4	-	3
TREN	7	2	24	-	7
ENV	3	5	23	-	4
RTD	-	2	-	-	1

²⁷ Council Regulations (EC) No 806/2003 (OJ L 122, 16.05.2003, p. 1) and No 807/2003 (OJ L 122, 16.05.2003, p. 36) of 14.4.2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority/unanimity), Council Regulation (EC) No 1105/2003 (OJ L 158, 27.06.2003, p. 3) of 26.5.2003 amending Regulation (EC) No 1260/1999 laying down general provisions on the Structural Funds (assent procedure) and Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1) of 29.9.2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (codecision).

INFSO	-	3	3	-	4
FISH	-	1	-	-	2
MARKT	2	2	7	-	-
REGIO	-	1	-	-	1
TAXUD	1	4	3	-	2
EAC	1	-	-	-	8
SANCO	2	-	6	-	5
JAI	4	-	1	-	5
RELEX	1	1	-	-	1
TRADE	2	3	1	2	3
ELARG	-	1	-	1	-
AIDCO	-	7	2	-	-
ECHO	-	-	-	-	1
ESTAT	-	4	1	-	2
BUDG	1	-	1	-	-
OLAF	-	-	1	-	-
TOTAL	31	64	95	3	55

The figures indicate that about 40% of the committees (95 out of 248) work exclusively under the regulatory procedure, followed by a smaller number of committees working exclusively under the management procedure (64). The breakdown by policy sector shows that the use of the three types of procedures varies from policy sector to policy sector. However, in some of the policy sectors, a clear predominance of one of the procedures is noted: for instance, the Transport/Energy and Environment sectors work with a large number of committees functioning under the regulatory procedure, whereas Agriculture works with a large number of committees functioning under the management procedure.

2.2 Number of meetings

The number of committees is not the only indicator of activity at comitology level. The *number of meetings* held in 2004 reflects the intensity of work in general, at sector level and in individual committees (Table III).

TABLE III – NUMBER OF MEETINGS

	2003	2004		2003	2004
ENTR	59	54	EAC	23	28
EMPL	17	10	SANCO	101	111
AGRI	322	344	JAI	21	26
TREN	44	51	RELEX	5	5
ENV	54	64	TRADE	32	21
RTD	50	58	ELARG	8	6
INFSO	31	31	AIDCO	35	38
FISH	25	22	ECHO	10	11
MARKT	38	40	ESTAT	17	15
REGIO	12	11	BUDG	6	6
TAXUD	113	108	OLAF	1	2

As in 2003, Agriculture leads the field (with 344 meetings), since managing the different agricultural markets requires frequent meetings. It is followed by Health and Consumer Protection (with 111 meetings) and Taxation and Customs Union (with 108 meetings) and a group of other sectors, like Enterprise, Research and Environment, where the number of meetings is in the range from 54 to 64 meetings.

2.3 Number of opinions and implementing measures

Like previous reports, the present report gives global figures on the formal *opinions* delivered by the committees²⁸ and the subsequent *implementing measures* (= legal acts, administrative and financing decisions) adopted by the Commission. These figures describe the concrete “output” of the committees (Table IV). The total number of *opinions* delivered by the committees in 2004 was 2 777 (compared to 2 981 in 2003); the number of implementing measures adopted by the Commission was 2 625 (compared to 2 768 in 2003).

²⁸ Including favourable and unfavourable opinions, following a formal vote in the case of regulatory, management and advisory procedures.

TABLE IV – NUMBER OF OPINIONS AND IMPLEMENTING MEASURES (2004)

	Opinions	Implementing measures		Opinions	Implementing measures
ENTR	89	59	EAC	128	115
EMPL	6	0	SANCO	370	352
AGRI	1 279	1 279	JAI	53	31
TREN	38	36	RELEX	2	2
ENV	42	40	TRADE	45	44
RTD	185	185	ELARG	90	89
INFSO	35	34	AIDCO	183	182
FISH	29	26	ECHO	52	52
MARKT	13	12	ESTAT	51	12
REGIO	29	26	BUDG	2	2
TAXUD	55	47	OLAF	1	0

The large number of *implementing measures* adopted in certain policy sectors – Agriculture (1 279), Health and Consumer Protection (352), Research (185), EuropAid (182) and Education and Culture (115) – again reflects the intensity of work delegated to the Commission in these areas via the comitology procedures.²⁹

²⁹ However, it has to be noted that the sheer number of instruments adopted as such does not indicate the political, economic or financial importance of the decisions taken.