



COMMISSION OF THE EUROPEAN COMMUNITIES

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REPORT FROM THE COMMISSION
on the working of committees during 2005

{SEC(2006) 1065}

1. GENERAL COMMENTS REGARDING THE COMITOLOGY SYSTEM

The present report covers the activities of comitology committees during 2005. It contains an introductory section, a horizontal overview of committees' activities and an Annex with detailed statistics regarding 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 exceptional events relating to specific draft measures, such as unfavourable opinions, EP resolutions resulting from the exercise of its right of scrutiny (see point 1.2 below) and referrals to the Council (see point 1.3 below). The negotiations in the Council (and with the European Parliament and the Commission) on a revision of Council Decision 1999/468/EC should be formally concluded in the weeks following the adoption of the present report (see point 1.5 below). A detailed reporting on the results will follow in the next annual report (covering the year 2006).

1.1 Comitology committees and their institutional context

a) The institutional function of comitology committees

The purpose of comitology committees is to assist the Commission in exercising the implementing powers conferred upon it by the legislator, i.e. the Council acting alone, or with the European Parliament under the codecision procedure. Comitology committees share three essential features.

First, since the Maastricht Treaty they have been 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, namely the codecision procedure. Hence, the legal basis of the comitology committees is enshrined in a "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 representatives². 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.³

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.

Comitology committees should be distinguished from other committees and groups of experts set up by the Commission to assist it in exercising its *right of initiative* or in carrying out

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

² It is the Member States that are legally "members" of the committees and exercising the voting rights, not the persons representing them.

³ OJ L 184, 17.7.1999, p. 23.

monitoring, coordination or cooperation tasks with the Member States. These consultative bodies (they are about 1 300 of them) are not covered by this report⁴.

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

Article 7 of Decision 1999/468/EC, and Council and Commission statements relating to that provision (notably statements Nos 4 and 5), introduce measures designed to *improve the transparency* of how comitology committees work.

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 European Parliament and of the Council regarding public access to the institutions' documents,⁶ which came into effect on 3 December 2001. The register indicates the *existence* of a document and its key reference information, whereas the repository contains the document in downloadable format.

Article 4(3) of the "Transparency" Regulation 1049/2001) protects the decision-making process of the EU institutions, of which the comitology procedures are part. On 17 February 2005, the Commission decided how it intends to apply this legal protection, to the extent that draft implementing measures should normally become publicly accessible *after a committee has voted on them*.⁷ Only where "specific interests", as defined in Article 4(1) and (2) of Regulation (EC) No 1049/2001, are concerned (i.e. matters of security or commercial interests) should direct access be delayed until final adoption of the measures by the Commission.⁸ After final adoption, the measures are accessible via the common databases and registers of the Commission (see Minutes of the Commission **meetings** in the Register of Commission documents⁹).

As an accompanying measure to the reform of Council Decision 1999/468/EC (see point 1.5 below) the Commission is currently studying further improvements to the register to give the European Parliament more transparent and coherent access to the documents contained in the repository.

1.2 The European Parliament's right of scrutiny

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

⁴ The Commission has established a *Register of Expert Groups*, accessible via the EUROPA server: http://ec.europa.eu/secretariat_general/regexp/

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

⁶ OJ L 145, 31.05.2001, p. 43.

⁷ The vote can take place in a regular committee meeting or by written procedure, in accordance with the Rules of Procedure of the committee.

⁸ Or even refused for reasons of confidentiality.

⁹ http://europa.eu.int/comm/secretariat_general/regdoc/registre.cfm?CL=en

Parliament can exercise its right of scrutiny as 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.¹⁰

Except in emergencies, the agreement stipulates a period of one month from receipt of a “definitive” draft implementing measure¹¹ 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, where it considers that the draft measure exceeds the implementing powers enshrined in the basic instrument.¹²

In practice, and in accordance with point 1 of the above-mentioned Agreement, the Commission departments upload the draft implementing measure into the register at the same time as they send it to the Member States in preparation of a committee meeting. If a vote is launched by written procedure, without a committee meeting being held in accordance with the *Rules of Procedure* of a committee, the same applies. Once the vote has taken place, the Commission departments – since mid-2004 – are instructed to complete a voting form, which indicates the global result of the vote in respect of the specific draft implementing measure. They also indicate whether the draft implementing measure has been amended as a result of its examination by the committee or not.

If the draft implementing measure has been amended, it will be uploaded a second time into the register, together with the voting form, and sent to the European Parliament. Thus, the European Parliament and the public (which will normally be granted direct access to the draft measure at this stage of the comitology procedure) receive an unequivocal message indicating what is the “definitive” draft of the implementing measure within the meaning of point 6 of the above-mentioned Agreement. If the draft implementing measure remained unchanged, only the voting form is uploaded and transmitted to the European Parliament. The version of the draft implementing measure initially uploaded is then considered to be the final draft.

a) Resolutions adopted by the European Parliament in 2005

In 2005, the European Parliament adopted two resolutions¹³ in which it claimed that the Commission exceeded the implementing powers conferred on it when adopting specific implementing measures. Both resolutions concerned the *Environment sector* and in particular *Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS Directive)* in the field of *waste policy* (see detailed references in the Annex to this report, in the chapter regarding statistics for Environment).

¹⁰ 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.

¹¹ The drafts are first sent before the committee meeting and, if they are substantially amended during the meeting, again afterwards.

¹² This basic instrument must itself have been adopted under the codecision procedure (Article 251 of the Treaty) between the Council and the European Parliament.

¹³ The first on 12 April 2005 (B6-0218/2005) and the second on 6 July 2005 (B6-0392/2005).

The Commission responded to the first resolution of 12 April 2005 (B6-0218/2005) that, in its view, justification for granting exemptions from the requirements established by the RoHS Directive was outside the scope of the European Parliament's right of scrutiny on whether it exceeded its implementing powers. After re-examining the work underpinning the draft decision and studying the available information (a study, stakeholder consultation and discussions in the Technical Adaptation Committee), the Commission concluded that adoption of the draft measure was in accordance with the provisions of the RoHS Directive.

The second resolution adopted on 6 July 2005 (B6-0392/2005) related to the draft Council Decision, adopted by the Commission on 5 June 2005, amending for the purpose of adapting to technical progress the Annex to the RoHS Directive to exempt *DecaBDE*, a hazardous substance of the family of polybrominated diphenyl ethers (PBDE), from the restrictions on use under Article 4(1) of the RoHS Directive.¹⁴ Although not quoting Article 8 of Council Decision 1999/468/EC in its resolution, but rather Article 5(5) of the Decision, the European Parliament considered that the Commission had exceeded its implementing powers, because, in its view, a legislative proposal adopted in conformity with the codecision procedure would have been needed for the above measure. Since a qualified majority was not reached in the Council the original draft Decision was finally adopted by the Commission on 13 October 2005 despite the Parliament's resolution, which led to the European Parliament bringing an action before the European Court of Justice against the Commission to declare the Commission Decision invalid (case C-14/06; see point 1.4 below). The Commission did not justify the adoption of the Decision towards the Parliament as the Parliament's resolution was addressed to the Council (to whom the case was referred at the time). The Commission defends its position before the Court and is waiting for Court's ruling.

b) Review of transmissions to the European Parliament

In the first resolution, adopted on 12 April 2005, the European Parliament also called on the Commission to undertake a careful *review of all transmissions of draft implementing measures* since the register went into production in December 2003. The Commission reported the result of its review to the European Parliament in a communication dated 20 July 2005. In certain well-defined policy sectors, a limited number of anomalies had occurred (50 draft measures in absolute terms) It must be noted that during the year 2005 more than 2 000 draft measures were adopted; this means that the cases where irregularities were registered amounted to about 1% of all cases within a year.). It appeared that the errors made were linked to the application of the so-called *Alignment Regulations*,¹⁵ with which about 140 basic acts were brought into line with Council Decision 1999/468/EC. Indeed, since the entry into force in particular of Regulation (EC) No 1882/2003 on 20 November 2003, a certain number of legal acts had come under the codecision procedure and all related draft implementing measures had therefore to be transmitted forthwith to the EP under the right of scrutiny.¹⁶

¹⁴ OJ L 271, 15.10.2005, p. 48. The original draft Commission Decision had not been approved by the Waste Committee on 19 April 2005; the implementing measure was subsequently referred to the Council.

¹⁵ In particular, Council 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).

¹⁶ This chain of events, whereby the basic legal acts are henceforth considered to come under codecision, could have been a possible source of negligence in the sense that the departments responsible might

In all the cases of the anomalies detected, the Commission proposed an “ex-post” control to the European Parliament, which gave the parliamentary committees concerned the possibility of examining the implementing measures in question. The Commission also offered to repeal any measure the European Parliament so requested and did so with regard to Commission Decision 2005/63/EC of 24 January 2005 amending Annex II to Directive 2000/53/EC on end-of-life vehicles (ELV Decision).¹⁷ In addition, the Commission implemented reinforced internal control mechanisms within its administrative procedures to avoid similar problems in future.

1.3 Referrals to the Council

A total of 11 cases of referrals to the Council were reported in 2005.

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.

These 11 referrals in 2005 occurred in four policy sectors: Health and Consumer Protection (5), Environment (4), Europe Aid (1) and Statistics (1).

The figure represents a small percentage of less than 0.5 % of the total number of implementing measures adopted by the Commission under the management or regulatory procedure (2 637).¹⁸

The total figure for 2005 is - in absolute terms - less than in 2004 (when there were 14 referrals to the Council). It is worth noting that 6 of the 10 referrals in 2005 were draft Commission decisions regarding the authorisation to place genetically modified products on the market (in the sectors of Health and Consumer Protection and Environment). This high concentration of referrals in the policy field of genetically modified organisms (GMOs) can be explained by the divided views of the Member States on the standards to apply to the scientific evaluation of new products (see specific remarks in the Annex to this Report, in the chapters regarding statistics for Health and Consumer Protection and Environment).

1.4 Case-law¹⁹

a) Judgment of 25 October 2005 (“FETA” cheese)

In its judgment of 25 October 2005²⁰ on joined cases C-465/02 and C-466/02, *Germany and Denmark* as applicants (supported by France and the United Kingdom) *versus the Commission* (supported by Greece), the European Court of Justice (ECJ) dismissed the action

have overlooked the new obligation to transmit draft measures for those basic legal acts which have been aligned in their policy sectors by the above “omnibus” Alignment Regulation.

¹⁷ OJ L 25 of 28 January 2005, p. 73. Legal Act repealing the ELV Decision: 2005/437/EC, OJ 152 of 15.06.05 p. 18; Legal Act readopting the ELV Decision: 2005/438/EC, OJ 152 of 15.06.05 p.19

¹⁸ 2 654 implementing measures in total (see comments on Table II) minus 17 implementing measures which were adopted under the Advisory procedure.

¹⁹ From 2005 on, all judgments pronounced by the ECJ and new actions brought before the Court within the reporting year will be reported.

²⁰ Not yet published in the Court Reports; see notice in OJ C 86 of 8.4.2006, p. 1.

against the validity of Commission Regulation (EC) No 1829/2002 of 14 October 2002²¹ amending the Annex to Regulation (EC) No 1107/96 with regard to the name “FETA”. The Commission thus duly registered the name “FETA” as a protected designation of origin under Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (the basic legal act).²²

One of the arguments brought by the German Government was that there had been infringement of the rules of procedure of the regulatory committee, as established pursuant to Article 15 of the basic legal act. The documents, which were to be examined at the meeting of the regulatory committee on 20 November 2001, had not been notified to the German Government 14 days prior to that meeting; nor were they notified in German.

Since the committee had not adopted its own rules of procedure at the time of that meeting, the Court examined the relevant provisions of the *Standard Rules of Procedure*, adopted by the Commission on 31 January 2001,²³ instead. Article 3(1) of these Standard Rules of Procedure provides that the Chairman must invite delegations to the meeting and send other related documents no later than 14 calendar days before the date of the meeting.

However, whilst it was common ground that the German Government did not receive the documents in German, and later than the required 14 calendar days,²⁴ the Court applied established case-law to the situation to the effect that a procedural irregularity of this nature could entail annulment of the Commission’s act ultimately adopted only if, were it not for that irregularity, the procedure could have led to a different result.²⁵ This was not the case in the present litigation because at the meeting in question the members of the committee were only asked to submit their comments on the results of a Commission questionnaire, whereas the draft regulation of the Commission was examined only subsequently at its meeting in May 2002.²⁶

b) Action by the European Parliament against the Commission (“DecaBDE”)

On 11 January 2006, the European Parliament brought action against the Commission before the ECJ claiming annulment of Commission Decision 2005/717/EC of 13 October 2005 (see point 1.2 a) above). The European Parliament claims that the Commission has failed to comply with the conditions laid down in the RoHS Directive for exempting DecaBDE in a specific application from the ban contained in that Directive and has therefore exceeded its implementing powers. In the view of the European Parliament, the Commission had also committed a manifest error in assessing the scientific evidence, had failed to abide by the precautionary principle and, by extending the exemption to all the polymeric applications of DecaBDE, without exception, was in breach of the principle of proportionality.²⁷ The Commission contests the arguments put forward. The case is pending before the European Court of Justice.

²¹ OJ L 277 of 15.10.2002, p. 10.

²² OJ L 99 of 17.4.2003, p. 1.

²³ OJ C 38 of 6.2.2001, p. 3.

²⁴ On 9 November 2001, see point 35 of the judgment.

²⁵ See point 37 of the judgment.

²⁶ See point 38 of the judgment.

²⁷ See notice in OJ C 86 of 8.4.2006, p. 11.

1.5 Wider developments

a) Reform of the current Comitology system

The Commission's proposal for a revised regulatory procedure²⁸ set out to place the European Parliament and the Council on an equal footing when supervising the exercise of some of the implementing powers conferred on the Commission by the European Parliament and the Council under the codecision procedure (Article 251 of the Treaty). The implementing measures concerned are those adapting or widely implementing codecision acts.

Under Article 202 of the EC Treaty, consultation of the European Parliament and unanimity are required within the Council to revise the Comitology Decision (1999/468/EC). The UK Presidency of the Council (second half of 2005) set up a "Friends of the Presidency" group in September 2005 to discuss this proposed reform. This group met regularly under both the UK and the following Austrian Presidency of the Council (first half of 2006).

The European Parliament mandated two of its Members, Joseph Daul (FR/PPE, Chair of the Conference of Committee Chairmen) and Richard Corbett (UK/PSE, rapporteur on comitology in the Constitutional Affairs Committee (AFCO)) to conduct political talks with the Council Presidency and the Commission.

As a result of these negotiations, the three institutions reached an agreement at the end of the Austrian Presidency to modify Council Decision 1999/468/EC so as to introduce a new "regulatory procedure with scrutiny". This new procedure will apply to implementing measures of a general scope which amend non-essential elements of basic legal acts adopted under codecision. The European Parliament obtains a right of veto on the substance of such implementing measures and therefore greatly improves its control powers over the implementing powers conferred on the Commission by comitology procedures.

b) Enlargement

On 25 April 2005, the Accession Treaty with Bulgaria and Romania was signed. Similar to the approach for the ten new Member States during the period preceding their accession in May 2004, Bulgaria and Romania have been granted *active observer status* as from 26 April 2005 and may participate in committee meetings.²⁹ For the remaining candidate countries Turkey and Croatia³⁰ and since December 2005 also the Former Yugoslav Republic of Macedonia, participation continues 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".³¹

²⁸ 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. This proposal was amended in April 2004 - COM (2004) 324 final, dated 22.4.2004 - to include the European Parliament's technical amendments (Resolution adopted on 2.9.2003 (P5-TA(2003)0352)).

²⁹ Commission Decision of 23 March 2005 - C(2005)874 (Article 7).

³⁰ Bulgaria and Romania have now the status of acceding countries.

³¹ COM (1999) 710 final, adopted 20.12.1999. See also 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" (COM (2003) 748 final, adopted 3.12.2003).

2. HORIZONTAL OVERVIEW OF ACTIVITIES

2.1 Number of committees

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. The latter are concerned with preparing and implementing policy, whereas the comitology committees are involved in the context of implementing legislative acts. This report focuses exclusively on comitology committees. The number of comitology committees has been calculated by sector of activity (Table I) as at 31.12.2005. The figures for the previous year (status as at 31.12.2004) are given for comparison.

TABLE I – TOTAL NUMBER OF COMMITTEES

Policy Sector	2004	2005
Enterprise (ENTR)	29*	32
Employment and Social Affairs (EMPL)	6	6
Agriculture (AGRI)	30	31
Transport/Energy/Trans-European Networks (TREN)	39	38
Environment (ENV)	35	32
Research (RTD)	3	3
Information Society (INFSO)	9*	10
Fisheries (FISH)	3	3
Internal Market (MARKT)	11	10
Regional Policy (REGIO)	2	2
Taxation and Customs Union (TAXUD)	10	10
Education and Culture (EAC)	9	7
Health and Consumer Protection (SANCO)	13	15
Justice, Liberty and Security (JLS)	10	13
External Relations (RELEX)	3	3
Trade (TRADE)	11	12
Enlargement (ELARG)	2	3
EuropeAid (AIDCO)	9	8
Humanitarian Aid (ECHO)	1	1
Statistics (ESTAT)	7	8
Budget (BUDG)	2	2
Anti-Fraud Office (OLAF)	1	1
TOTAL	245	250

**The number of committees for ENTR and INFSO in 2004 had to retroactively be reduced by 1, because configurations listed under these policy sectors belong to two committees in the policy sector RESEARCH.*

The figures indicate the relative importance of comitology procedures in the different policy sectors. *Transport/Energy* (38), *Enterprise* (32), *Environment* (32) and *Agriculture* (31) continue to have by far the largest number of committees. With 133 out of a total of 250 committees, these policy sectors alone account for more than half of the committees. The Commission's efforts in recent years to stabilise the number of committees has brought results. Whilst the overall number of committees at the end of 2005 is slightly higher than in 2004, it still meets the objective of the Commission to limit the number at around 250. While the legislator has established new committees in some policy areas with increased activities (for example, *Justice, Liberty and Security* and *Health and Consumer Protection*), in other policy sectors the number has decreased as a consequence of the restructuring of the legal framework. Certain increases or reductions in the number of committees in a given policy sector result from the transfer of responsibilities from one Commission department to another. Detailed reporting on the creation, abolition, transfer and merger of committees is given in the annotations to the table for each policy sector in the Annex.

2.2 Number of opinions and implementing measures

As in previous reports, the present report gives global figures on formal *opinions* delivered by the committees³² 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 II). The total number of *opinions* delivered by the committees in 2005 was 2.582 (compared with 2.777 in 2004); the number of implementing measures adopted by the Commission was 2.654 (compared with 2.625 in 2004).

³² Including favourable and unfavourable opinions, following a formal vote in the case of regulatory and management procedures. Cases of "no opinions" (or "absence of opinions"), i.e., where a formal vote took place but the necessary (qualified) majority was not reached, are not included in the figures.

TABLE II – NUMBER OF OPINIONS AND IMPLEMENTING MEASURES (2005)

	Opinions	Implementing measures		Opinions	Implementing measures
ENTR	69	55	EAC	56	55
EMPL	9	1	SANCO	303	303
AGRI	1.321	1.481	JLS	16	15
TREN	36	32	RELEX	2	2
ENV	50	47	TRADE	14	12
RTD	202	202	ELARG	83	83
INFSO	86	85	AIDCO	139	124
FISH	19	9	ECHO	50	50
MARKT	13	12	ESTAT	30	21
REGIO	12	12	BUDG	7	6
TAXUD	61	47	OLAF	2	0

The large number of *implementing measures* adopted in certain policy sectors - *Agriculture* (1.481), *Health and Consumer Protection* (303), *Research* (202), *EuropeAid* (124) and *Information Society* (85) - again reflect the intensity of work delegated to the Commission in these areas via the comitology procedures.³³ When compared with the previous year, a significant increase can be noted for *Information Society* (34 implementing measures in 2004), whereas a decrease can be noted in the sector of *Education and Culture* (55 implementing measures in 2005, compared with 115 in 2004).

Further horizontal tables are shown in the Annex (table III: number of committees by procedure and table IV: number of meetings).

³³ 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.