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COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION
ON THE WORKING OF COMMITTEES DURING 2006**

{SEC(2007) 1713}

In accordance with Article 7(4) of Council Decision 1999/468/EC of 28 June 1999, the Commission hereby presents the annual report on the working of committees for 2006. It contains general comments on the development of the comitology system, a horizontal overview of committees' activities and an Annex with detailed statistics regarding the individual comitology committees, arranged 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 and referrals to the Council.

1. GENERAL COMMENTS ON THE DEVELOPMENT OF THE COMITOLGY SYSTEM

1.1. Reform of the Comitology Procedure

Council Decision 2006/512/EC amending Council Decision 1999/468/EC was adopted on 17 July 2006.² It entered into force on 23 July 2006.

The amendment to Council Decision 1999/468/EC is intended to meet the longstanding requests by the European Parliament to improve its rights to scrutinise implementation of legislative acts adopted under the co-decision procedure. The amendment introduces a "regulatory procedure with scrutiny" (hereafter: "PRAC"). This new procedure is set out in a new Article 5a. It is added to the existing procedures (advisory, management, regulatory, safeguard).

1.1.1. Scope of the PRAC

The scope of the PRAC is defined in the new paragraph 2 added to Article 2. Two requirements have to be met: the basic legal act has to be adopted under the co-decision procedure and must confer powers on the Commission to adopt "*measures of general scope designed to amend non-essential elements of the basic legal act, inter alia by (...) supplementing the instrument by the addition of new non-essential elements*" (these implementing measures will be hereunder referred to as "quasi-legislative measures").

The quasi-legislative measures falling under the definition set out above are measures of general scope (as opposed to individual measures addressed to specifically designated operators/Member States) that:

- formally amend (an article or annex of) a co-decision basic act; for instance, measures of general scope to adapt technical annexes of a co-decision basic act to scientific progress would qualify as "quasi legislative" measures;

or

- supplement the co-decision basic act by creating a new set of rules (as opposed to merely applying criteria set out in the basic act); for instance, in the financial services area, the measures adding details to the information to be contained in prospectuses would also qualify.

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

² OJ L 200, 22.7.2006, p. 11. A consolidated version of the Comitology Decision is published in OJ C 255, 21.10.2006, p.4.

1.1.2. Procedure

The steps of the PRAC are defined in the new Article 5a. It gives both legislative arms, the European Parliament and the Council, a right of control over the substance of draft implementing measures. This right goes far beyond the European Parliament's existing "right of scrutiny" ("*droit de regard*") under Article 8, which is limited to checking that the Commission did not exceed the implementing powers conferred on it by the basic act (and provides for the adoption of a non-binding resolution by the European Parliament).

Like the current regulatory procedure, the new PRAC draws a distinction between two situations. When the committee delivers a favourable opinion, the Commission shall submit without delay the draft measures for scrutiny (control) by the European Parliament and the Council. If the European Parliament and the Council do not oppose the draft measure, the Commission adopts it after a three-month period expires (Article 5a (3) (d)). Within that period, the European Parliament (by a majority of its members) and/or the Council (by qualified majority) may oppose adoption of the draft measure on different types of grounds.

The Commission may then submit an amended draft of the measures to the committee or present a legislative proposal in accordance with the Treaty (Article 5a (3) (c)).

- If the committee gives an unfavourable opinion or no opinion, the Commission shall submit a proposal to the Council without delay and forward it to the European Parliament (Article 5a (4) (a)). Consequently, the Council has the "first say" - within a period of two months - on the envisaged measures. The Council can oppose the proposed measures or envisage adopting the measures by a qualified majority and in that case shall without delay submit the measures to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny (control) by the European Parliament.
- In the second stage the European Parliament has the right to oppose the proposed measure. If it does not oppose, the measures shall be adopted by the Council (if the Council envisaged adopting the measures) or by the Commission (if the Council did not react within the two-month period).

1.2. Implementation of the reform

1.2.1. Alignment

Alignment of existing basic acts with new Comitology procedures is a familiar exercise, as it has been carried out before for Council Decision 1999/468/EC. The four alignment regulations adopted in 2003³ amended all existing basic legal acts, one by one, but only their Comitology procedures, without any other changes to their substance. The alignment consisted then in eliminating the variants for each procedure (management, regulatory and safeguard). Consequently, they were purely automatic, which facilitated approval by the legislator.

³ Council Regulation (EC) No 806/2003 of 14 April 2003, Council Regulation (EC) No 807/2003 of 14 April 2003, Council Regulation (EC) No 1105/2003 of 26 May 2003 and Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003.

By contrast, the criteria set out above (see point 1.1.1 above) are mandatory. This means that whenever the conditions apply, the PRAC has to be foreseen. Otherwise the legal basic act adopted is illegal. Therefore, each case must be examined on its own merits to decide whether the conditions are fulfilled for the new procedure to apply.

In a joint statement⁴, the European Parliament, the Council and the Commission agreed on a list of basic legal acts that must be urgently brought into line with the PRAC. The 26 corresponding proposals for this priority alignment were adopted by the Commission on 22 December 2006.

All other basic legal acts adopted under the co-decision procedure which are not listed in the joint statement of July 2006 also have to be aligned. The Commission has committed to reviewing all existing legal acts and, whenever necessary, to make relevant proposals for their alignment before the end of 2007.

1.2.2. Revision of the bilateral agreement

The October 2000 bilateral (Commission/European Parliament) agreement on procedures for implementing the Comitology Decision has to be revised to be brought into line with the statement on transparency/updated register, the new regulatory procedure with scrutiny and, whenever possible, to streamline current arrangements. The revision of this agreement is foreseen before the end of 2007.

1.2.3. Comitology and transparency: the register and repository for comitology documents

In a statement regarding Article 7(3) of Council Decision 1999/468/EC (transparency statement)⁵, the Commission commits itself to improving the functions of the Comitology Register in order to help the European Parliament follow the different stages and timetable of each comitology procedure better and to distinguish between the various types of documents received.

Therefore, as an accompanying measure to the reform of Council Decision 1999/468/EC, the Commission is currently working on further improvements to the register to give the European Parliament and the general public more transparent and coherent access to the documents contained in the repository. The deployment of the upgrade is foreseen to take place in the beginning of 2008.

1.3. Development of Case Law

By its application brought on 5 March 2004, the Commission asked the Court to annul Article 17(2) of Regulation (EC) No 2152/2003 of the European Parliament and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus Regulation), in so far as it makes the adoption of implementing measures for the Forest Focus programme subject to the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC (Comitology Decision). According to the Commission, the implementing measures to be taken pursuant to the Forest Focus Regulation were management measures for an action programme. For the implementation of Community

⁴ OJ C 255, 21.10.2006, p. 1.

⁵ OJ C 171, 22.7.2006, p. 21.

programmes only the management procedure or, as appropriate, the consultative procedure is, in principle, applicable.

In its Judgment of 23 February 2006 (Case C-122/04 – Commission v. Council and Parliament), the Court underlined as a matter of principle that although the criteria laid down in Article 2 of the Comitology Decision are not binding, where the Community legislature departs from those criteria in the choice of a committee procedure, it must give reasons for its choice. However, in the present case, the Court considered that the choice of the Community legislature coincides with the criteria laid down in Article 2(b) of the Comitology Decision.

The Court stated in particular that the Council had justified grounds to reason that certain elements of the Forest Focus scheme could be qualified as essential and were not yet sufficiently developed by the Forest Focus Regulation in order to be considered as management measures relating to the implementation of programmes. Thus, the management procedure was found inappropriate. Therefore the choice of regulatory procedure was made in conformity with the Comitology Decision.

Consequently, the Commission's application was dismissed.

1.4. 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 were granted *active observer status* as from 26 April 2005 and were able to participate in committee meetings as active observers until both countries joined the European Union on 1 January 2007. For the remaining candidate countries Turkey and Croatia, 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".⁶

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 was calculated by sector of activity (Table I) as at 31.12.2006. The figures for the previous year (status as at 31.12.2005) are given for comparison.

⁶ 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).

TABLE I – TOTAL NUMBER OF COMMITTEES

Policy Sector	2005	2006
Enterprise and Industry (ENTR)	32	33
Employment, Social Affairs and Equal Opportunities (EMPL)	6	8
Agriculture and Rural Development (AGRI)	31	30
Transport and Energy (TREN)	38	36
Environment (ENV)	32	35
Research (RTD)	3	3
Information Society and Media (INFSO)	10	12
Fisheries and Maritime Affairs (FISH)	3	4
Internal Market (MARKT)	10	13
Regional Policy (REGIO)	2	3
Taxation and Customs Union (TAXUD)	10	10
Education and Culture (EAC)	7	12
Health and Consumer Protection (SANCO)	15	16
Justice, Liberty and Security (JLS)	13	15
External Relations (RELEX)	3	4
Trade (TRADE)	12	12
Enlargement (ELARG)	3	4
EuropeAid (AIDCO)	8	15
Humanitarian Aid (ECHO)	1	1
Statistics (ESTAT)	8	8
Budget (BUDG)	2	2
Anti-Fraud Office (OLAF)	1	1
TOTAL	250	277

2.2 Number of opinions and implementing measures

As in previous reports, this report gives global figures on formal *opinions* delivered by the committees⁷ 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 2006 was 2 933 (compared with 2 582 in 2005); the number of implementing measures adopted by the Commission was 2 862 (compared with 2 654 in 2005).

TABLE IV – NUMBER OF OPINIONS AND IMPLEMENTING MEASURES (2006)

	Opinions	Implementing measures		Opinions	Implementing measures
ENTR	74	10	EAC	61	61
EMPL	18	1	SANCO	340	328

⁷ 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.

AGRI	1 576	1 576	JLS	56	38
TREN	61	44	RELEX	2	4
ENV	55	42	TRADE	6	5
RTD	212	212	ELARG	74	75
INFSO	74	74	AIDCO	297	297
FISH	19	19	ECHO	45	45
MARKT	10	8	ESTAT	19	13
REGIO	9	2	BUDG	1	1
TAXUD	50	42	OLAF	2	4

The large number of *implementing measures* adopted in certain policy sectors – *Agriculture* (1 576), *Health and Consumer Protection* (328), *EuropeAid* (297), *Research* (212) and *Information Society* (73) – again reflects the intensity of work delegated to the Commission in these areas via the comitology procedures.⁸ When compared with the previous year, a significant increase can be noted for *EuropeAid* (124 implementing measures in 2005), whereas a decrease can be noted in the sector of *Enterprise and Industry* (10 implementing measures in 2006, compared with 55 in 2005) and of *Taxation and Customs Union* (7 implementing measures in 2006, compared with 47 in 2005).

⁸ It has to be noted that the sheer number of measures adopted as such does not indicate the political, economic or financial importance of the decisions taken.