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JOINT PARLIAMENTARY COMMITTEE

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REPORT

and

RESOLUTION

on

EC comitology and the EEA

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I INTRODUCTION

1. The proliferation of different types of committees performing different functions in the political process characterises contemporary governance at the national, sub-national (regional and local) and supranational (European) levels of government. The increasing role of committees can be seen as a response to the need for an ever-higher level of technical expertise, which stems from the growing complexity of regulating contemporary western societies. In multi-level governance systems such as federal political systems, committees also perform another function: they are mechanisms ensuring efficient co-ordination between the different levels of government.

2. The growing regulatory tasks of the European Community and the need for multi-level co-ordination explain why the committee system is so highly developed in the EC. Five different types of committees involved in different stages of the EC decision-making process can be identified:

- expert committees, which provide the Commission with external advice during the drawing up of proposals;
- institutions with consultative status such as the Economic and Social Committee (ESC) and the Committee of the Regions;
- working parties and the Committee of Permanent Representatives, which prepare the decisions of the Council of Ministers;
- standing committees of the European Parliament, through which the EP exercises its legislative powers;
- comitology committees, which assist the Commission in exercising the implementing functions delegated to it by the Council and the Parliament.

3. This report will focus on the comitology committees, which assist the Commission in the exercise of its executive powers. The EEA EFTA States are involved in the work of both expert committees and comitology committees, and representatives from the EFTA Consultative Committee take part in the work of the ESC. However, it is only through the comitology committees that the EEA EFTA States are involved in the EC's sphere of decision-making, where the Commission is competent to adopt an EC act. The other types of committees, to which the EEA EFTA States are associated, work within the decision-shaping sphere.

II EC COMITOLGY

4. The vast majority of measures with legal consequences in the European Community are not adopted by the principal legislative authorities (the Council and the European Parliament), but by the European Commission after the Council and, when applicable, the European Parliament have conferred implementation powers on it. In most cases the Commission cannot, however, adopt implementation measures before a so-called "comitology" committee, composed of civil servants of the Member States, has given its opinion on the Commission proposal. The comitology committees' legal weight can differ, depending on the implementation power delegated to the Commission.

5. Although among legal acts adopted by the Commission there are many minor or routine measures, decisions of significant political and economic importance are also taken according to comitology procedure.

III HISTORY OF EC COMITOLGY

6. Since the first comitology committees were established in the early 1960s, EC comitology has probably been the most fervently contested inter-institutional battleground between the Commission, Council and the European Parliament.

7. Many suggestions and proposals have been made to ensure that decisions of a legislative nature or with significant budgetary implications are made following the usual EC legislative process, i.e. proposed by the Commission and enacted by the Council either in co-decision, consultation or co-operation with the European Parliament. The line that separates routine implementing measures from those with legislative and budgetary implications is, however, rather blurred.

8. The European Court of Justice has in a series of decisions left it basically to the legislator to distribute the powers between the legislator and the executive.

9. Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC) currently regulates the use of comitology.

IV TYPES OF COMITOLGY COMMITTEES

10. The Comitology committees do not differ in their composition: all are composed of representatives of the Member States and chaired by a representative of the Commission. They differ, however, in the procedure which they apply and consequently in their legal powers. The choice of committee procedure is determined by criteria (of a non-binding nature) laid down in Council decision 1999/468/EC. The different procedures, advisory, management and regulatory, are outlined below.

Advisory procedure

11. When the advisory procedure is used, the Commission submits its draft measures to an "advisory committee", which delivers its opinion on the Commission's draft. The Commission must take "the utmost account" of the committee's opinion and shall inform the committee of how this has been done. The Commission is, however, not bound by the advisory committee's opinion.

12. The criteria for when the advisory procedure is to be followed are very broad and open-ended. Basically, the procedure can be used in all those cases, in which it is considered to be the most appropriate.

Management procedure

13. A committee that works according to the management procedure, delivers its opinion on the Commission's draft measures by a majority decision, as laid down in Article 205 (2) of the Treaty (in the same way as when the Council adopts decisions on a proposal from the Commission). The votes of the representatives of the Members States shall be weighted in the manner set out in the above-mentioned article.

14. After the committee has delivered its opinion, the Commission may adopt measures, which shall apply immediately. If these measures are, however, not in accordance with the opinion of the committee, the Commission must communicate them to the Council. In that case, the Council, acting by a qualified majority, may take a different decision within a certain time limit (determined in the authorising legislation). Within the same limit, the Commission may defer application of the measures.

15. The management procedure should be followed as regards management measures such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programmes with substantial budgetary implications.

Regulatory procedure

16. A "regulatory committee" delivers its opinion on the Commission's draft in the same way as in the management procedure.

17. If the committee's opinion is positive, the Commission may adopt the measure. If, however, the measures envisaged are not in accordance with the opinion of the committee, or if there is no opinion, the Commission shall submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

18. If the Council, within a specified time-limit, indicates by qualified majority that it opposes the Commission's proposal, the Commission shall re-examine it and may then either:

- submit an amended proposal to the Council;
- re-submit its proposal; or
- present a legislative proposal on the basis of the Treaty.

19. In cases where the Commission implements a legislation adopted on the basis of co-decision (Art. 251 of the EC Treaty), and the European Parliament considers that a Commission proposal exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.

20. The regulatory procedure is to be followed as regards "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, as well as measures designed to adapt or update certain non-essential provisions of a basic instrument."

V TRANSPARENCY OF EC COMITOLGY

21. The comitology committee system has given rise to questions about the democratic legitimacy of the EC policy process. Because most of the committees are not mentioned in the Treaties, their proliferation is sometimes seen as a deviation from the “constitutional” rules of the European Community. Committees are frequently seen as symbolising the “democratic deficit” and “bureaucratic and technocratic bias” of the EC system, since their members are not elected on a democratic basis and the meetings take place behind closed doors.

22. With the new comitology decision 1999/468/EC, information to the public on committee procedure has been substantially improved. The principles and conditions in relation to public access to documents applicable to the Commission now also apply to the committees. Moreover, a list of all comitology committees are published in the Official Journal and an Annual Report on the working of the committees is issued. Furthermore, the new decision provides that the European Parliament shall be informed by the Commission of committee proceedings by receiving agendas, draft measures submitted to the committees, results of voting and summary records of the meetings.

VI EC COMITOLGY AND THE EEA AGREEMENT

Sources of law

23. The EEA Agreement addresses the involvement of EFTA representatives in the comitology procedures in EEA relevant substance areas. More precisely, this involvement is governed by Article 100 of the EEA Agreement, complemented by a declaration by the European Community. The different variations of comitology procedures are all, without distinction, subject to the provisions of Article 100 EEA, be they advisory, management or regulatory.

24. Article 100 EEA reads as follows:

The EC Commission shall ensure experts of the EFTA States as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the EC Commission in the exercise of its executive powers. In this regard, when drawing up draft measures the EC Commission shall refer to experts of the EFTA States on the same basis as it refers to experts of the EC Member States.

In the cases where the Council of the European Communities is seized in accordance with the procedure applicable to the type of committee involved, the EC Commission shall transmit to the Council of the European Communities the views of the experts of the EFTA States.

25. Accompanying Article 100 EEA is the following declaration by the European Community on the participation of the EEA EFTA States' experts in EEA relevant EC Committees in application of Article 100 of the Agreement:

The Commission of the European Communities confirms that in the application of the principles laid down in Article 100, it is understood that each EFTA State will designate its own experts. Those experts will be involved on equal footing together with national experts from EC Member States in the work preparatory to the convening of the EC Committees relevant to the 'acquis' in question. The EC Commission will pursue consultations as long as deemed necessary, until the Commission submits its proposal at a formal meeting.¹

Practice

26. Pursuant to the provisions of Article 100 EEA, the EEA EFTA States have been invited to meetings of EEA relevant comitology committees. This practice is, furthermore, in line with the standard rules of procedures, which the Commission has elaborated for the committees (2001/C 38/03). The standard rules (Article 8) provide that representatives of third parties "are welcome to attend" committee meetings and must withdraw only when the committees move to a vote.

27. An examination of the practice as regards the participation by EEA EFTA experts in comitology procedures in the Community has revealed that in almost every case where participation has been requested, it has materialised. This practice has been in the form of full participation in comitology meetings, except for voting. In some cases the EEA EFTA experts have been requested to leave the meetings while the voting takes place, but in other cases they simply do not cast a vote.

28. Pursuant to Article 7 of the new Council Decision on comitology (1999/468/EC), the Commission has published a list of all committees, which assist it in the exercise of implementing powers (2000/C 225/02). No overview exists, however, over EEA relevant EC comitology committees, nor is a list of actual EEA EFTA participation in EC comitology committees available. Estimations made for the year 2000 reveal that representatives from the EEA EFTA States were invited, under Article 100 EEA, to take part in the work of approximately 120 committees.

29. Despite the well-established practice of EEA EFTA participation in EC comitology committees, cases have occurred where participation in committee work has been denied on the grounds that the EEA EFTA States' participation was only foreseen in the preparatory phase of the committee's work. In 1998, a request by the EEA EFTA States to participate in the Commission's advisory committee on State Aid met with a negative response, and in 2001, EEA EFTA representatives were barred from participation in the regulatory committee on the minimum level of training of seafarers. However, in both cases tentative solutions have been found.

¹ Included in the Final Act adopted by the plenipotentiaries of the signatory parties to the EEA Agreement on 2 May 1992, as item No 29 on the list of declarations of which the plenipotentiaries have taken note.

Added value for EEA EFTA States in EC comitology committee participation

30. For the EEA EFTA States, participation in EC comitology committees is a very important channel for exchange of views and information with experts in the EU Member States and in the Commission. Moreover, through committee participation, the EEA EFTA States obtain background knowledge about proposed measures and acquire a better understanding of the situation in the different EU Member States, in addition to being able to explain the situation in the EEA EFTA States.

31. Although EEA EFTA representatives in comitology committees do not enjoy voting rights, the detailed information received through committee discussions are valuable as a basis for considerations in the EEA EFTA States. New EEA relevant legal acts adopted by the Commission, through comitology procedure, must be incorporated into the EEA Agreement. Participation in the process leading up to the decisions therefore greatly facilitates implementation of the legal acts in the EEA EFTA States. Without involvement in the preparatory stages of the process, many decisions could take the EEA EFTA States by surprise, and a lack of understanding about the motive or background of the decisions could easily complicate implementation of the legal acts.

VII EEA EFTA PARTICIPATION IN OTHER EC COMMITTEES

32. Apart from participation in EEA relevant comitology committees (as covered by Article 100 EEA), EEA EFTA experts and representatives also take part in other committees, which have been set up within the EU to assist the Commission in carrying out its tasks. Articles 81, 99 and 101 of the EEA Agreement deal with the involvement in these committees. In total it is estimated that EEA EFTA experts and representatives were associated with the work of approximately 400 EC committees and working groups during the year 2000 (under Articles 81, 99, 100 and 101).

Expert committees

33. When preparing proposals for new Community legislation the Commission sometimes consults already existing EC committees consisting of experts from the Member States in order to get i.a. an indication of how the proposal would be received in capitals. The Commission is, however, under no obligation to carry out such consultations.

34. Article 99 EEA regulates this preparatory and decision-shaping phase of the EEA decision-making procedure. It provides that as soon as new legislation is being drawn up by the Commission in a field, which is governed by the EEA Agreement, the Commission is informally to seek advice from experts of the EEA EFTA States in the same way as it seeks the advice of Community experts.

Committees which assist the Commission in the management and development of programmes

35. Under the EEA Agreement, the EEA EFTA States participate in and contribute financially to a number of Community programmes, projects and other actions. As laid out in Article 81 (b) EEA, the programme participation also involves participation in the committees that are responsible for the development and management of the Community programmes.

EEA EFTA States participation in these committees, which are often comitology committees in the EC system, ensures the flow of information and is an important means to influence the development of policies in general and the programme in particular. The status of the EEA EFTA States in these committees shall take full account of their financial contribution, i.e. where EEA EFTA States participate fully in a programme, they shall also participate fully in the work of the programme committee – with the exception of voting rights.

Non-comitology committees

36. This category consists of EC committees, which are not covered by Articles 81 (b) and 100 EEA. These committees, which for EEA purposes are often referred to as non-comitology committees, are those which need not always be consulted during the preparation of Community acts. By Article 101 EEA, experts from EFTA States are to be associated with the work of these committees when this is called for by the good functioning of the EEA Agreement.

37. The non-comitology committees, which consist not only of representatives of the Member States but also of scientists, social partners representatives and other actors, are important fora for exchange of views on the creation and application of Community legislation. They play various roles both in the decision-shaping and the decision-making processes. Some EC committees fall in some aspects of their work under this category, while they also have tasks, which they fulfil in accordance with a comitology committee procedure.

38. Needless to say, many committees falling under Article 101 EEA are of great relevance to the EEA but EEA EFTA participation in such committees is not always granted. The committees in which EEA EFTA States participate are listed in Protocol 37 EEA, which can be extended to include any committees, which present similar characteristics.² The modalities of association to these committees are laid down in the respective annexes to the EEA Agreement.

² Currently the following committees are covered by Protocol 37 EEA: Scientific Committee for Food; Pharmaceutical Committee; Scientific Veterinary Committee; Committee on the Trans-European Transport Network; Administrative Commission on Social Security for Migrant Workers; Contact Committee on Money Laundering; Advisory Committee on Restrictive Practices and Dominant Positions; Advisory Committee on Concentrations; Co-ordinating Group on Mutual Recognition of Higher-Education Diplomas; Committee for Proprietary Medicinal Products; Committee for Veterinary Medicinal Products; Contact Committee on Television Broadcasting Activities; and the Working Party on the Protection of Individuals with regard to the Processing of Personal Data.

RESOLUTION

On EC comitology and the EEA

The Joint Parliamentary Committee of the European Economic Area:

- A. having regard to the EEA Agreement's Part VII, Chapter 2, concerning the decision-making procedure, in particular Article 100 on EEA EFTA participation in the committees which assist the EC Commission in the exercise of its executive powers,
 - B. noting the declaration by the Commission on the participation of the EEA EFTA States' experts in EEA relevant EC Committees in application of Article 100 of the Agreement,
 - C. noting the extensive participation by EEA EFTA representatives in EC comitology committees in EEA relevant substance areas, under Article 100 EEA,
 - D. noting the Commission's standard rules of procedures for EC comitology committees (2001/C 38/03), in particular Article 8 of these rules, which provides that representatives of third parties "are welcome to attend" committee meetings and must withdraw only when the committees move to a vote,
 - E. recalling its resolution on EFTA participation in EC programmes (adopted on at its 15th meeting of the EEA JPC on 27-28 November 2000),
 1. welcomes the EEA EFTA States' participation in a vast number of EC comitology committees, where the EEA EFTA representatives are granted full participation in the meetings, except for voting;
 2. believes that EEA EFTA participation in EC comitology committees greatly facilitates the implementation of EEA relevant legal acts adopted by the Commission through comitology procedure, as involvement in the comitology process leads to an increased understanding and knowledge in the EEA EFTA States about the proposed measures;
 3. urges the contracting parties to finalise a solution to allow full EEA EFTA participation in the Commission's Advisory Committee on State Aid and the Regulatory Committee on the minimum level of training of seafarers;
 4. welcomes Council Decision 1999/468/EC of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission, which greatly improves the transparency of committee work and simplifies the comitology procedure;
 5. calls on the EEA EFTA States to put together a list of EEA relevant EC comitology committees, under Article 100 EEA, including an overview of actual EEA EFTA participation in these committees, in order to increase the transparency of the EEA decision-making process.
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