

February 2010

## Comitology

In the majority of cases EU legislative acts are adopted by the European Parliament and the Council.

In some cases, a legislative act will provide that the Commission (or, in specific cases of foreign and security policy, the Council) can adopt measures ensuring harmonised implementation of specific elements of this act throughout the European Union (**implementing acts**).

The purpose of the authority for the Commission to adopt implementing acts is to facilitate the adoption of acts which have executive and operational character and do not require undergoing the whole legislative procedure. Implementing acts involve executive action by the Commission.

It is important to distinguish implementing acts from **delegated acts**. Delegated acts involve quasi-legislative action. Although in the past delegated acts were considered comitology acts, they are not any longer treated as such under the Lisbon Treaty (for more information see below).

### Comitology before the entry into force of the Lisbon Treaty

In order for Member States to keep control on the Commission when it developed and adopted implementing (or delegated) measures, the Commission had to consult on its proposal with a committee composed of Member States' representatives (this is where the term 'comitology' comes from). The influence of the committee on the final text of an implementing (or delegated) measure depended on the form chosen for the committee. In some cases the committee was only formally consulted, while in other cases its objection to the Commission's proposal could lead to the rejection of the proposal by the Council. In 2006, a new comitology procedure was introduced. The new procedure reinforced the powers of the Council and the European Parliament and allowed the European Parliament to reject the Commission's proposal. These comitology procedures are described in the Council Decision 1999/468/EC (the Comitology Decision)<sup>1</sup>.

### Comitology after the entry into force of the Lisbon Treaty

The Lisbon Treaty provides that implementing acts will be adopted by the Commission (or, in specific cases of foreign and security policy, the Council) to establish uniform conditions for implementing specific provisions of legally binding acts. However, the Treaty does not set out in detail all the rules that will govern implementing acts. These will be adopted by the European Parliament and the Council through the ordinary legislative procedure in the form of a regulation. The Commission's proposal for this regulation is expected to be presented in March this year.

Taking into account the time necessary for adopting such a regulation, the EU institutions seem to have reached an interim agreement to continue referring to specific articles of the existing comitology rules of the Comitology Decision in legal acts which are being adopted now and which include provision for certain issues to be dealt with through implementing acts.

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<sup>1</sup> Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p. 23, as amended.



It could be expected that, once a new regulation on implementing acts is adopted, these references to the existing Comitology Decision would be replaced by references to the new regulation. It is not yet clear how this issue will be approached. It is also not clear whether such a mechanism would be also applied in relation to existing legal acts adopted before Lisbon. All these issues remain to be decided by the EU institutions in the legislative process.

### **Delegated acts under the Lisbon Treaty**

In some cases the Commission is also authorised by a legislative act to adopt measures supplementing or amending certain non-essential elements of the legislative act (***delegated acts***).

Before the entry into force of the Lisbon Treaty, this type of act was adopted under the comitology procedure, which means that the Commission worked with regular committees composed of the Member States' representatives under the scrutiny of the European Parliament and the Council. However, given the quasi-legislative character of these measures, the Lisbon Treaty does not require the Commission to establish such committees for adopting these measures. From the Commission Communication COM(2009)673<sup>2</sup> it appears that the Commission has no intention to establish them either. Accordingly, delegated acts should no longer be considered comitology acts.

The Treaty provides that each legal act requesting adoption of some measures in the form of delegated acts should establish details concerning objectives, scope and duration of the delegation of power. The legislative acts which are being adopted now (including the EPBD) are the first ones to include these details. Therefore, their establishment involves more inter-institutional discussions and consequently takes more time. On the other hand, there seems to be a common understanding by the EU institutions that these first measures will not create precedent applicable to all other cases of delegated acts.

Existing legislative acts adopted before the entry into force of the Lisbon Treaty and requiring adoption of measures supplementing or amending certain non-essential elements of the legislative act will continue to refer to the Comitology Decision, until they are amended and brought under the new regime. However, it is not clear at this stage whether or how this will be done.

Marta Toporek  
ClientEarth  
email: mtoporek@clientearth.org  
Brussels, 26.02.2010

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<sup>2</sup> Communication of 9 December 2009 from the Commission to the European Parliament and the Council on Implementation of Article 290 of the Treaty on the Functioning of the European Union, COM(2009) 673 final.