

**60TH MEETING OF THE STATISTICAL PROGRAMME COMMITTEE**

**LUXEMBOURG  
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**Item 10 of the agenda**

*New comitology rules - "Comitology for Non-Jurists "*

## "COMITOLOGY FOR NON-JURISTS"

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The purpose of this document is to provide all useful and practical information, simply worded, which could provide guidance in the field of *comitology*.

The basic rules for this document can be found in the following legislation<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<sup>2</sup> – (hereinafter referred to as the "*Comitology Decision*") and the related declarations;
- Council Decision 2006/512/EC of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>3</sup> (hereinafter referred to as the "*new Comitology Decision*") and the related declarations;
- the agreement between the European Parliament and the Commission concerning the detailed rules for implementing Decision 1999/468/EC<sup>4</sup>;
- the standard rules of procedure adopted by the Commission on 31 January 2001<sup>5</sup> which serve as a reference for the rules of procedure adopted by the Committees of Eurostat<sup>6</sup>.

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### 1. WHAT DOES THE WORD "COMITOLOGY" REFER TO?

According to the Treaty establishing the European Community, it is in principle the responsibility of the Commission to enforce legislation at Community level. The legal acts adopted by the Council, either alone or jointly with the European Parliament under the co-decision procedure, may contain provisions conferring the power to implement the act in question on the Commission and defining the procedures for doing so.

These procedures are known in Community jargon as "comitology". This term describes a procedure correctly referred to as the "Committee procedure". It describes the Commission's obligation to consult a Committee, composed of Member State representatives, before implementing Community legislation.

The philosophy behind it is simple: the Council (or the EP and the Council) adopts a legal act, hereinafter referred to as "basic instrument", but must delegate the implementing details to the Commission. The implementing measures are then laid

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<sup>1</sup> They are annexed to this document.

<sup>2</sup> OJ L 184, 17.7.1999, p. 23.

<sup>3</sup> OJ L 200, 22.7.2006, p. 11.

<sup>4</sup> OJ L 256, 10.10.2000, p. 19.

<sup>5</sup> OJ C 38, 6.2.2001, p. 3.

<sup>6</sup> All the comitology committees of Eurostat adopted rules of procedure based on the standard text of the Commission.

down by Commission legislation<sup>7</sup>, with one precondition: the Commission has to consult a Committee composed of representatives of the Member States.

In this context, the Community legislature provides for the Commission to be assisted by a Committee in the exercise of its implementing powers, according to a procedure called “comitology” with well-defined deadlines and voting rules. In this case, the Committee must be consulted prior to the adoption by the Commission of an implementing measure.

The main task of the Committee is therefore to assist the Commission in the exercise of its powers to implement the basic instruments. Comitology, or more precisely comitology acts, must be considered an integral part of the European Community legislative procedure (*acquis communautaire*).

### **Comitology Committees in the field of statistics**

Eight comitology committees assist the Commission, and in particular Eurostat, in the exercise of its implementing powers which the legislature, i.e. the Council and the European Parliament, conferred on it in Community statistics legislation:

1. Standing Committee on Agricultural Statistics (SCAS),
2. Committee on the harmonisation of the compilation of gross national product at market prices (GNP Committee),
3. Statistical Programme Committee (SPC),
4. Committee on Statistical Confidentiality (Confidentiality Committee),
5. Committee on statistics relating to the trading of goods with non-member countries (Extrastat Committee),
6. Committee on the harmonisation of gross national income at market prices (GNI Committee),
7. Committee on statistics relating to the trading of goods between Member States (Intrastat Committee),
8. Balance of Payments Committee (BOP Committee).

These Committees have three essential characteristics in common.

*Firstly*, they were created by the legislature (the Council or the Council and the European Parliament),

*Secondly*, their structure and working methods are standardised in several respects. The Committees intervene under the procedure laid down in the basic instrument, in accordance with the comitology decision,

*Thirdly*, the Committees deliver opinions on the draft implementing measures that the Commission submits to them pursuant to the provisions of the basic instrument.

It should be remembered that other Committees and expert groups have been established to help the Commission exercise its right of initiative or carry out its tasks

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<sup>7</sup> Draft Commission regulation, decision, directive.

of monitoring, coordination and cooperation with the Member States. These advisory bodies must not be confused with the *Comitology Committees*.

In the field of Community statistics, the European Advisory Committee on Statistical Information in the Economic and Social Spheres (CEIES) and the Committee on Monetary, Financial and Balance of Payments Statistics (CMFB) are "non-comitology" Committees<sup>8</sup>.

## **2. COMPOSITION OF THE COMMITTEES**

The Committees are composed exclusively of Member State representatives as "members" (the members of a Committee are the Member States and not those representing them) and are chaired by the Commission representative.

However, mention should be made of the composition of the Statistical Programme Committee (hereinafter referred to as the SPC).

The SPC is composed of "*representatives of the statistical institutes of the Member States and chaired by a representative of the Commission (the Director-General of the Statistical Office of the European Communities)*"<sup>9</sup>.

NSI representatives may be replaced by officials from their institute or other national representatives and may be accompanied by experts or advisors.

The Director-General of Eurostat is not a "member" of the SPC. He may be replaced by a Director of Eurostat and may also be accompanied by experts or advisors.

However, in accordance with the general rules, each NSI head (or his substitute) represents his Member State (and not the NSI), and the Director-General of Eurostat (or his substitute) represents the Commission (and not Eurostat).

## **3. COMITOLGY PROCEDURES AND THE CRITERIA DETERMINING THE CHOICE OF PROCEDURE IN THE BASIC INSTRUMENTS**

The different types of procedures for consulting the Committee that can be specified in the basic instruments are predetermined in the Comitology Decision.

The basic instrument conferring implementing powers on the Commission for each specific field must also indicate the comitology procedure to be applied.

To date, the Committees working in the field of Community statistics have functioned according to three types of procedure:

- advisory procedure

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<sup>8</sup> The full list of Committees which assist Eurostat can be found in Annex 4 of this document.

<sup>9</sup> Article 1 of Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 181, 28.6.1989, p. 47).

- management procedure
- regulatory procedure.

Consideration should now be given to the applicability of the new procedure, called

- regulatory procedure with scrutiny.

The legislature chooses the procedure for a Committee in accordance with the type of implementing powers conferred on the Commission.

The Comitology Decision provides for **non-binding**<sup>10</sup> criteria to guide the choice between the three types of procedure for Commission proposals and subsequent discussions in the Council and the European Parliament.

On the other hand, the criteria for choosing the regulatory procedure with scrutiny are binding.

They are as follows:

- (a) The management procedure should apply, for example, to measures relating to the common agricultural and fisheries policies or to the implementation of programmes with substantial budgetary implications.
- (b) The regulatory procedure should be used for measures of general scope, applying the essential provisions of basic instruments or adapting/updating non-essential provisions of the same basic instruments. Measures for the protection of the health and safety of humans, animals or plants should also come under this procedure.
- (c) The regulatory procedure with scrutiny applies when a basic instrument adopted under the co-decision procedure provides for measures of general scope intended to amend non-essential elements of this instrument, by, for example, deleting some of them or supplementing them with the addition of new non-essential elements.
- (d) The advisory procedure becomes the "residual" procedure of general use, wherever it is considered the most appropriate.

All the statistical basic instruments are adopted *in co-decision*<sup>11</sup> and, consequently, each instrument will have to be reconsidered in the light of the new Comitology Decision. In order to determine whether the new regulatory procedure with scrutiny will apply, it should be verified whether the envisaged implementing measures are of general scope or concern non-essential elements of the basic instrument. The real criterion is whether these measures are of "quasi-legislative" nature, as are the measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 TEC,

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<sup>10</sup> As the criteria are non-binding and rather vague, they leave some leeway for interpretation in the light of experience in each field. Nevertheless, according to the case-law of the Court of Justice, the grounds for not applying a criterion must be stated.

<sup>11</sup> Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) constitutes the only exception.

inter alia by deleting some of those elements or by supplementing the instrument with the addition of new non-essential elements.

What is an essential element or not is a matter for political appreciation and should eventually be decided by the legislature itself. However, based on the current practice and subject to a more in-depth review, some indications can already be identified.

For instance, the main components of a statistical piece of legislation, such as the objective of the act, the key relevant concepts and the data sources to be used, may be considered as essential elements and therefore cannot be left to comitology. On the contrary, it may be argued that, for example, updating the characteristics listed in a basic instrument including its Annexes or changing the periodicity of data transmission may be regarded as measures of general scope amending non-essential elements of a basic instrument. Such measures would indeed need to be covered by the new regulatory procedure with scrutiny from now on. Finally, implementing measures such as the definition of common quality criteria or the data transmission format may still be adopted through the usual regulatory comitology procedure when these aspects are not directly addressed by the legislature in the basic instrument and it has been decided that they have to be defined by the Commission following a comitology procedure.

This type of measure appears in almost all the statistical basic instruments and, consequently, Eurostat considers that the new regulatory procedure with scrutiny is clearly applicable *in principle* to the statistical field.

#### **4. THE ROLE OF THE COMMITTEE IN EACH PROCEDURE**

Under the advisory procedure, the Commission takes the utmost account of the opinion delivered by the Committee, but the latter cannot prevent the Commission from adopting the measures it considers most appropriate.

Under the management procedure, only a negative opinion of the Committee can prevent the Commission from adopting the proposed implementing measures.

Under the regulatory procedure, not only a negative opinion of the Committee, but also absence of opinion can prevent the Commission from adopting the proposed implementing measures. This means that under the regulatory procedure, the Commission needs a favourable opinion. It is very important to note that, with this procedure, abstentions of the Member States have exactly the same effect as votes against the proposed measures.

Under the regulatory procedure with scrutiny, the Commission may adopt the proposed implementing measures only *after the expiry of the three-month period* following the referral to the European Parliament and the Council within which an objection to the adoption of the draft measures may be raised.

Furthermore, where there is a justified objection from an Institution, the Commission may not adopt the draft measures, even if the Committee issues a favourable opinion (the blocking power of the Parliament and the Council).

## 5. ORGANISATION AND FUNCTIONING OF THE COMMITTEES

The main rules concerning the organisation and functioning of the Committee are established in the rules of procedure adopted by each Eurostat Committee.

The Committees meet when convened by their Chairman or at the request of a simple majority of the Committee members.

The different Eurostat Committees generally meet several times a year. The Eurostat services send the invitation to the authorities of the Member States (Permanent Representations) and specify, among other things, the points and draft implementing measures on which a Committee opinion/vote is required.

The tasks of the Eurostat Committees are defined in each basic instrument of sectoral statistical legislation.

The Chairman draws up the agenda; he may also include any subject for discussion requested in writing by a Committee member<sup>12</sup>.

The agenda of the meeting clearly distinguishes between:

- the draft measures for which a Committee opinion is required according to a comitology procedure (comitology matters);
- other subjects to be examined by the Committee for the purpose of information only, an exchange of views or other reason (non-comitology matters).

The votes of the Committee members (acting as representatives of the Member States) may be delivered orally at meetings or in writing (without a Committee meeting being convened), in accordance with the rules of procedure of the Committee in question (see section 8).

As indicated above, the tasks incumbent upon the Committees can be divided into two main groups for which the role and responsibilities of the members likewise differ considerably. These tasks are the comitology matters on the one hand and the non-comitology matters on the other.

## 6. COMITOLGY MATTERS

The practical criteria that make it possible to identify a comitology matter are as follows:

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<sup>12</sup> This possibility is limited to matters that can be submitted to the Committee for the purpose of information or a simple exchange of views.

1. comitology matters, as we have already said, involve the existence of implementing powers conferred upon the Commission by a basic instrument;
2. the *measures* to be taken according to the comitology procedure can be only binding legal acts (draft regulation, decision, directive) of the Commission. Measures not in the form of a legal act of the Commission (such as reports, guidelines, etc.) cannot therefore be treated as *comitology matters*;
3. comitology matters commit the Commission, not just Eurostat. This means that the stages of the Community legislative procedure must be respected in their correct order: formal interservice consultation, Committee vote, the agreement of the Cabinet, respect of the European Parliament's right of scrutiny, launching the specific procedure with the General Secretariat, adoption by the Commission<sup>13</sup>, the supervisory powers of the European Parliament and of the Council, and publication of the legislative act in the Official Journal.

## 7. NON-COMITOLOGY MATTERS

Non-comitology matters are all those matters which are not comitology matters as defined above.

Non-comitology matters may be divided on the agenda of the Committee into *points for opinion*, *points for discussion* and *points for information*.

All new legislative proposals are generally submitted to the Committee for discussion at least once before the final adoption phase in the Commission.

Opinions of the Committee in this context are clearly non-comitology matters. Accordingly, no formal (weighted) votes are taken on them and the Committee's opinion (for or against) has no legal effect.

It must also be stressed that the Committee's opinions on non-comitology matters can also be gathered by written procedure.

Documents prepared by Eurostat in the form of guidelines, implementation documents, working papers, etc., which are not presented as Commission legal acts, are also non-comitology matters. They may be the basis for *agreements* between Eurostat and the national authorities sitting on the Committee; they may also be a preliminary stage prior to future comitology measures. In these cases, it should be taken into account that:

- *agreements* are concluded between Eurostat and the national authorities. In this context, the Committee is just a forum, but it has no authority to give, adopt or conclude any agreement on behalf of the national authorities, although it may give an opinion. The parties to agreements at national level are the national authorities;

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<sup>13</sup> Under the regulatory procedure with scrutiny, final adoption will take place only in the case of "non opposition" by the European Parliament and the Council, in other words after three months.



- only *Eurostat* is formally involved, not the *Commission*;
- *agreements* do not have a predetermined format and are not legally binding. This means, in particular, that there are no *formal* and *informal* agreements, or agreements more binding and less binding, but just *agreements*. It also means that no national authority may be forced or obliged by whosoever (and certainly not by the Committee) to adhere to an agreement, and that, even if they adhere, they may freely desist from the agreement at any time without legal consequence.

## 8. HOW IS THE OPINION OF THE COMMITTEE DELIVERED?

The votes of the Committee members (acting as representatives of the Member States) may be delivered orally at meetings or in writing (without a Committee meeting being convened), in accordance with the rules of procedure of the Committee in question. A Member State delegation may, where appropriate, represent one other Member State.

Under the advisory procedure, the Committee votes only where necessary, and if it does, a simple majority of the Member States applies.

Under the management and regulatory procedures, the Committee's opinion must be delivered by qualified majority.

The opinion is delivered by the majority specified in Article 205(2) of the EC Treaty. The votes of the representatives of the Member States within the Committee are weighted in the manner set out in this Article. The Chairman does not take part in the voting.

The votes of the members of the Committees are weighted as follows (per country):

Germany, France, Italy, United Kingdom	29 votes
Spain, Poland	27 votes
Netherlands	13 votes
Belgium, Greece, Portugal, Czech Republic, Hungary	12 votes
Austria, Sweden	10 votes
Denmark, Ireland, Finland, Lithuania, Slovakia	7 votes
Estonia, Cyprus, Latvia, Luxembourg, Slovenia	4 votes
Malta	3 votes

**Total number of votes** **321**

The qualified majority is reached when at least 232 votes out of the total of 321, cast by the majority of the Member States (at least 13 delegations), are "in favour". If no qualified majority is reached "in favour of" or "against" the proposed measures, the Committee is considered to have delivered "*no opinion*".

Furthermore, the new Comitology Decision has introduced an explicit reference to Article 205(4) of the EC Treaty, which makes the criterion of covering 62% of the EU population applicable to voting in the Comitology Committees<sup>14</sup>.

The "population" rule therefore applies henceforth to the Comitology Committees of Eurostat.

It should be borne in mind that this is a *verification* of the population, to be explicitly requested by a Committee member.

## 9. FOLLOW-UP TO CONSULTATION OF THE COMMITTEE

It should be underlined that the Commission is obliged to consult the Committee on comitology matters, but that the *Committee* has no decision-making powers. Its role is limited to delivering *opinions*. However, in the absence of support from the Committee, the Commission must submit the planned measures to the Council "as soon as possible" (except in the case of an advisory procedure). This means, in particular, that after the matter has been submitted to the vote in the Committee, and in the absence of the latter's support, the Commission may neither decide to withdraw the measures nor present a revised draft of the proposed measures to the Committee; on the contrary, in such cases, the submission to the Council/European Parliament of the same text is automatic and obligatory.

An important point to note is that the Commission, as chair of the Committee, has considerable scope for negotiation, and it may even withdraw the draft, which it may also amend at any time, provided that the Committee has not delivered its formal opinion.

Without prejudice to the European Parliament's right of scrutiny, in other words after a period of one month, measures which have received a favourable opinion from the Committee are then adopted by the Commission.

With regard to the regulatory procedure with scrutiny, it should be noted that this comprises two separate phases: *an executive phase* in which the Commission submits its draft measures to the Committee, and a *supervisory phase*, when the same draft is submitted to the Parliament and the Council. It is important to check that both stages are also followed in the other procedures.

The essential aspect of the supervisory phase is that, unlike the other comitology procedures, the Parliament and the Council are in principle on an equal footing, with one minor difference, namely when the Committee opinion is not in line with the draft measures envisaged by the Commission.

This procedure allows the European Parliament and the Council to carry out a check *prior* to the final adoption of the implementing measures by the Commission when the Committee has delivered either a favourable or an adverse opinion".

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<sup>14</sup> In accordance with this Article: "When a decision is to be adopted by the Council by a qualified majority, a member of the Council may request verification that the Member States constituting the qualified majority represent at least 62% of the total population of the Union. If that condition is shown not to have been met, the decision in question shall not be adopted."

## 10. FOLLOW-UP TO A FAVOURABLE OPINION UNDER THE REGULATORY PROCEDURE WITH SCRUTINY

Under the new regulatory procedure, the *supervision* of the European Parliament and of the Council goes beyond the simple "right of scrutiny" (see also section 12).

In fact, if the envisaged measures are in line with the Committee's opinion, the Commission cannot adopt the draft measures in question, but must have them checked *without delay* by the European Parliament and the Council.

Both Institutions have a *period of three months* from referral to oppose<sup>15</sup> the adoption of the draft by the Commission.

The only reasons to oppose adoption (if the Committee has delivered a favourable or adverse opinion) are as follows<sup>16</sup>:

- 1) when the draft measures exceed the implementing powers provided for in the basic instrument,
- 2) if the draft measures are incompatible with the aim or content of the basic instrument
- 3) or if they do not respect the principles of subsidiarity or proportionality.

If the European Parliament or the Council opposes the draft measures, they may not be adopted by the Commission. In this case, the Commission may submit the following to the Committee:

- amended draft measures
- or
- a legislative proposal in accordance with Article 285 of the EC Treaty (co-decision procedure).

If, within the time limit fixed, neither the European Parliament nor the Council voice their opposition, the draft measures are finally adopted by the Commission.

## 11. WHAT HAPPENS IF THE MEASURES ARE NOT APPROVED BY THE COMMITTEE?

In the case of:

- an **advisory procedure**, the submission of draft measures provided for in the basic instrument is not simply for information purposes: it is a real consultation along the same lines as for Management and Regulatory Committees. Although the Commission does not have to abide by an Advisory Committee's opinion, it must nevertheless take the utmost account of it and inform the Committee of the manner in which it has responded.

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<sup>15</sup> The European Parliament acts by a majority of its component members, whereas the Council acts by qualified majority.

<sup>16</sup> These are the only reasons which can justify the opposition of the European Parliament and/or the Council in the different phases of the regulatory procedure with scrutiny.

- a **management procedure**, if the Committee delivers an adverse opinion, the Commission submits the measures to the Council immediately. If the Council does not reach a decision within the deadline set in the basic instrument (which may under no circumstances exceed three months), the Commission adopts the proposed measures. Within the same deadline, the Council, acting by a qualified majority, may amend the text of the Commission.
- a **regulatory procedure**, the Commission may adopt implementing measures only if it gains the favourable opinion of the Committee. Failing this, in the absence of a favourable opinion or in the case of an adverse opinion, the Commission immediately submits a proposal concerning the measures to be taken to the Council and informs the European Parliament.

Within the deadline laid down in the basic instrument (which may under no circumstances exceed three months), the Council may, by qualified majority:

- adopt the Commission's proposal;
- oppose the Commission's proposal. In this case, the Commission re-examines<sup>17</sup> it with a view to:
  - submitting an amended proposal to the Council;
  - submitting its proposal to the Council again;
  - presenting a legislative proposal in accordance with Article 285 of the EC Treaty (co-decision procedure).
- amend the Commission's proposal by qualified majority if the Commission agrees, or unanimously should the Commission disagree;
- not reach a decision within the deadline set in the legal instrument concerned (which may under no circumstances exceed three months) and, in this case, the Commission adopts the proposed measures.
- Under a **regulatory procedure with scrutiny**, in the absence of a favourable opinion or if the Committee has delivered an adverse opinion, the Commission immediately submits a proposal to the Council concerning the measures to be taken, and at the same time forwards it to the European Parliament.

The Council takes a decision (for or against) on this proposal within a period of two months from referral, whereas the European Parliament may issue only an adverse opinion within four months from the date on which the proposal was sent to it by the Commission.

#### **a) Council**

- If the Council is against the proposed measures, they are not adopted. In this case, the Commission may submit the following to the Council:
  - an amended proposal

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<sup>17</sup> N.B. The Commission has no deadline within which to react.

or

- a legislative proposal in accordance with Article 285 of the EC Treaty (co-decision procedure).
- If the Council envisages adopting the proposed measures, it submits them to the European Parliament without delay.
- If the Council does not act, the Commission submits the measures to the European Parliament without delay.

#### **b) European Parliament**

- If the European Parliament opposes the proposed measures (see the reasons indicated in section 10), they will not be adopted. In this case, the Commission may submit the following to the Committee:
- amended draft measures

or

- a legislative proposal in accordance with Article 285 of the EC Treaty (co-decision procedure).
- If, upon expiry of the four-month deadline, the European Parliament has not opposed the proposed measures, they will be adopted by the Council or the Commission, as appropriate.

It should be borne in mind that a basic instrument can, in properly circumstantiated exceptional cases, make provision for deadlines to be extended where necessary by one additional month when this is justified by the complexity of the measures, or shortened for reasons of efficiency.

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#### **SPECIFIC CASE UNDER THE REGULATORY PROCEDURE WITH SCRUTINY**

If, on imperative grounds of urgency, the deadlines for the regulatory procedure with scrutiny cannot be abided by, a basic instrument can provide for a special procedure after the Committee vote:

- when the measures envisaged by the Commission are in accordance with the opinion of the Committee, they are adopted by the Commission and immediately implemented. The Commission communicate them to the European Parliament and the Council without delay.

The two Institutions have *one month* after notification to oppose<sup>18</sup> the measures adopted by the Commission (see the reasons indicated in Section 10).

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<sup>18</sup> The European Parliament acts by a majority of its component members, whereas the Council acts by qualified majority.

If the measures are opposed by the European Parliament or the Council, the Commission shall repeal them.

It may, however, keep these measures in force on a provisional basis if justified on the grounds of the protection of health, safety or the environment. In this case, the Commission submit the following to the Committee without delay:

- amended draft measures

or

- a legislative proposal in accordance with Article 285 of the EC Treaty (co-decision procedure).

The provisional measures remain in force until they are replaced by a definitive act.

## **12. THE RÔLE OF THE EUROPEAN PARLIAMENT IN COMITOLGY - THE "RIGHT OF SCRUTINY" OF THE EUROPEAN PARLIAMENT**

The Comitology Decision guarantees the European Parliament a *right of scrutiny* over the implementation of the basic instruments adopted by co-decision. The Parliament may express its disapproval of draft measures that in its opinion exceed the implementing powers conferred on the Commission.

Draft implementing measures pending adoption which have been submitted to the Committee in accordance with a basic instrument adopted under the co-decision procedure are, therefore, subject to a right of scrutiny by the European Parliament, which may indicate in a Resolution that the Commission is exceeding the implementing powers provided for in the basic instrument.

It should be stressed that only the implementation of basic instruments adopted under co-decision may be examined by Parliament.

It should also be noted that Parliament's right of scrutiny is strictly limited to determining whether the Commission is exceeding its implementing powers. Furthermore, it must not be forgotten that the European Parliament may decide that this is the case, even if the Committee has delivered a favourable opinion.

The European Parliament must have a one-month period within which to examine draft measures before formal adoption by the Commission. This deadline runs from the submission to the European Parliament of the *final draft* implementing measures, following the Committee's formal opinion.

In practice, after the vote of the Committee, the Commission sends the draft measures to the European Parliament. *The right of scrutiny* grants the latter a deadline of one month within which to oppose the measures if it considers that the Commission has overstepped its implementing powers. The Commission can formally adopt these measures only after the expiry of this deadline.

In the case of a European Parliament Resolution indicating that the Commission is exceeding its implementing powers, the Commission may:

- submit new draft measures to the Committee,

- continue with the adoption procedure, stating its reasons, or
- submit a proposal to the European Parliament and the Council in accordance with Article 285 of the EC Treaty (co-decision procedure).

Only under the regulatory procedure, if the measures do not correspond to the Committee's opinion and have therefore been submitted to the Council, may the European Parliament inform the Council that it considers that the proposal exceeds the implementing powers of the Commission laid down in the basic instrument.

As already described (section 10) in the new regulatory procedure, the *supervisory power* conferred on the European Parliament and the Council in relation to draft measures from the Commission goes beyond the simple "right of scrutiny". Furthermore, the idea behind this procedure is to allow the two branches of legislative authority to conduct a check prior to the adoption of such measures.

### **13. THE PRINCIPLE OF TRANSPARENCY**

The transparency of the work of the Committees vis-à-vis the European Parliament and the public is ensured by a number of provisions.

The Commission must inform the European Parliament regularly of the work of the Committees. The European Parliament's right to information is established for all the procedures (advisory, management and regulatory). In particular, the Parliament receives the following at the same time as the Member States:

- the meeting agendas,
- the drafts submitted to the Committees concerning implementing measures for the acts adopted under the procedure referred to in Article 251 of the Treaty,
- the outcome of the votes,
- the summary records of the meetings,
- the lists of authorities and bodies composed of the persons appointed by the Member States to represent them.

The Commission also informs Parliament of any submission to the Council of draft measures or proposals that have not received the support of the Committee.

*Transparency* also involves access for citizens to the Committees' documents. The Commission has set up a register of comitology, the objective being to make the full texts of non-confidential documents submitted to the European Parliament available to the public via Internet. The public has access to the Committees' documents, according to the same conditions and principles of confidentiality as those that apply

to Commission documents in general, and provided that resources remain available and that the Committees continue to function smoothly.

The register of comitology is an Internet tool available to the public<sup>19</sup>. It contains a register and a records repository for all the documents linked to the work of the Comitology Committees sent by the Commission to the European Parliament.

- The register contains *reference information* on all the documents concerning comitology submitted to the European Parliament (see above: agendas, drafts, etc.).
- As an additional transparency measure, the Commission has added a records repository to the register, giving the public direct access to numerous documents sent to the European Parliament, in application of Regulation (CE) No 1049/2001 of the European Parliament and of the Council regarding public access to institutional documents<sup>20</sup>.

The records repository contains *all the documents* concerning comitology submitted to the European Parliament (see above: agendas, drafts, etc.).

The register and the records repository cover only the period starting on 1 January 2003, although the European Parliament has been receiving documents concerning comitology since the entry into force of the Comitology Decision (July 1999).

Since 2002, the Commission has also been publishing an annual report on the Committees' work<sup>21</sup>.

With a view to the full implementation of Article 7(3), as amended by the new Comitology Decision, the Commission has undertaken<sup>22</sup> to adopt transparency measures which will ensure that the European Parliament is informed of draft implementing measures as and when they are submitted to the Committees. By improving the functions of the register, the Commission should allow the European Parliament to fully exercise its supervisory powers, in particular thanks to:

- the clear identification of the different documents subject to the same procedure;
- the indication of the stage in the procedure and the timetable;
- a clear distinction between the draft measures received by the Parliament at the same time as the Committee members in view of its right to information, and the final draft after the Committee's opinion has been submitted to the European Parliament.

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<sup>19</sup> [http://europa.eu.int/comm/secretariat\\_general/regcomito/registre.cfm?CL=en](http://europa.eu.int/comm/secretariat_general/regcomito/registre.cfm?CL=en)

<sup>20</sup> OJ L 145, 31.5.2001, p. 43.

<sup>21</sup> The first annual Commission report on the work of the Committees in 2000 was published in 2002 (OJ C 37 of 9.2.2002, p. 2).

<sup>22</sup> Part of the Commission declaration published in OJ C 171, 22.7.2006, p. 21.



#### **14. LANGUAGE ARRANGEMENTS**

The Commission will endeavour to make all the language versions of its proposals available as soon as possible under the regulatory procedure with scrutiny. In any event, the Commission intends to set in motion the running of time for limits only after the legislature has received the last language version.