

Comitology reform: setting the record straight

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Who decides on the details of how a national law or government's decision is implemented? This is not the job of ministers or members of parliament. Instead, the task is assigned to civil servants, working with experts and answering to ministers. The same has been true at European level since the 1960s, with the EU's version of the civil service – the European Commission – submitting technical decisions on how to execute acts to review by committees of representatives from the member states.

But over the decades, this implementation process – 'comitology' – became a prime target of critics. They argued that it was complex, it lacked transparency and it was not open to input from the only EU institution with a direct popular mandate – the European Parliament. The division of powers was such that, famously, a Commission decision on genetically modified organisms came into force across the EU even though only one member state had explicitly approved it.

Is this critique of comitology still justified, given the innovations made by the Lisbon Treaty, which came into effect in December 2009? Should detractors finally accept that there are inherent limitations to reform of comitology and that the system serves EU decision-making rather well?

All part of the process

The new rules seek to reduce complexity by distinguishing more clearly between the EU's legislative and executive arms. The Parliament and the Council of Ministers must now thoroughly detail the legal framework for the delegation of implementing powers to the Commission.

The procedure for supplementing or amending non-essential elements of laws through non-legislative acts – 'delegated acts' – is more streamlined and transparent, as the Commission's draft measure is now explicitly subjected only to the control of the legislators (that is, the Parliament and/or the Council), and not of committees.

Setting the technical or administrative conditions for legally binding EU acts – 'implementing acts' – remains intricate: the system includes new types of committees, a new taxonomy of issues and several mechanisms that can reverse decisions. Yet the underlying principle – that executive power belongs to the member states – is clearly reflected by the new rules, since committees of national representatives bear sole responsibility for checking the Commission's work.

Boosting legitimacy

To bolster comitology's legitimacy, the Parliament's role has been upgraded. The Parliament now has the same right as the Council to oppose delegated acts. This fosters institutional power-sharing and better reflects the political responsibilities assigned to each institution by the EU treaty.

However, the Council retains a *de facto* advantage over the Parliament, since its interests largely coincide with those of the member states in the comitology committees for implementing acts, where the Parliament has no binding say. Moreover, the Commission's influence has not been diluted: the Commission continues both to chair committees and to be the object of their scrutiny, and can decide autonomously on a large number of executive measures, such as delegated acts and advisory procedures for implementing acts. The reforms have, therefore, not fixed the problem of democratic legitimacy.

In fact, some recent initiatives suggest that the Commission is determined to take full advantage of its new prerogatives, by extending the use of delegated acts. For instance, in its proposed revision of the data-protection regime, there are a significant number of examples of the Commission reserving for itself the power to define major implementation details without the involvement of legislators.

Moreover, the new rules increase the potential for institutional conflict. Turf wars between the Parliament and the Council over the conditions of delegation can easily turn a juridical question into a political issue, negatively affecting the legislative process. How acts are classified has occasionally become the focus of intense negotiations; the recast of the directive on waste electrical and electronic equipment (WEEE) is an example.

Additionally, the Parliament can stimulate public debate on issues that the Commission would otherwise define as merely technical. There is, then, the potential for it to grandstand and to cause political stalemates.

So, is comitology reform a lost cause, given its democratic shortcomings, ambiguities and risk of inter-institutional conflicts? The answer has to be an emphatic 'No': the new comitology rules amount to a qualitative leap towards a more transparent, efficient and democratic system. And critics should be aware of the system's rationale and inherent limits.

Hard bargaining

Among these inherent limits are the complexity and technical nature of the issues dealt with by comitology. The process of decision-making inevitably involves hard bargaining and the outcomes will always reflect complex compromises. Trade-offs – such as legitimacy versus efficiency, simplicity versus legitimacy, or politicisation versus efficiency – are unavoidable.

More generally, complaints about the democratic character of comitology should consider that the system has encouraged constructive dialogue between the EU institutions and national representatives, a process that supports effective policy execution.

In addition, the implementation framework is decided by both the Council and the Parliament. Acts emerge not from thin air, but from a democratic and inclusive decision-making process.

The Lisbon Treaty has made comitology more streamlined and democratically legitimate. Calls for future reforms will have to take stock of the intrinsic constraints and intended purposes of the system.

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