"EL poliitikavaldkonnad ja komitoloogia"
P2EC.00.128

KOOSTAJA: TÜ Euroopa Kolledž

(sh. Viljar Veebel, Marika Linntam)

SISSEJUHATUS: Euroopa Liidu (Euroopa Ühenduste) pädevuste jaotumine erinevates poliitikavaldkondades

Käesolev kursus on jätkukursus sissejuhatavale kursusele Euroopa Liidu institutsioonidest. Kursuse eesmärgiks on avada oma olemuses Euroopa Liidu pädevusi ja poliitikavaldkondade jaotumist lähtuvalt Euroopa Liidu Nõukogu tööst.

Euroopa Liit saab endale kompetentsuse tulenevalt aluslepingutest ning teostab poliitikaid institutsioonide ja liikmesriikide koostöös vastavalt aluslepingutes kokkulepitud menetlusviisidele.

Pädevuste nimekirja (ehk kompetentside kataloogi) loomist on pidanud vajalikuks Saksamaa (jutuks olnud eesistumisperioodil kevadel 2007), käesoleval hetkel on kompetentside tegelikke piire võimalik hinnata aluslepingute ning Euroopa Parlamendi ning Euroopa Liidu Nõukogu kodukordi analüüsides.

EUROOPA LIIDU PÄDEVUSTE ALLIKAS

Euroopa Liit saab oma pädevused liikmesriikidelt ning need on sätestatud aluslepingutes. Kõik valdkonnad, milles liikmesriigid on reguleerimise pädevuse Ühendusele üle andnud, on aluslepingute artiklites määratletud üsna detailselt. Euroopa Liidu Nõukogul on õigus lepingute sisu ka vajadusel tõlgendada ning võtta ühehäälsuse alusel vastu

regulatsioone tulenevalt aluslepingute artiklite sätete mõttest olukordades, kus Euroopa Komisjon on teinud vastava ettepaneku ning Euroopa Parlament sellega nõustunud. Menetlusviisid on sätestatud samuti aluslepingutes ning määratletud valdkondade lõikes eraldi.

EL (EÜ) PÄDEVUSED (COMPETENCES OD THE EU)

Euroopa Liidu pädevused jaotuvad:

- Euroopa Liidu ainupädevusteks,
- Euroopa Liidu ja liikmesriikide jagatud ehk konkureerivateks pädevusteks või
- Euroopa Liidu toetava, koordineeriva või/ja vastastikku täiendavate meetmete valdkonnaks (ingl.k *open method of coordination*, OMC)

Euroopa Liidu ainupädevuste (ingl k. *exclusive powers of the EU*) allikaks on aluslepingud ning sellesse valdkonda kuuluvad teemad, nt: tolliliit, siseturg, eurotsooni rahapoliitika, väliskaubanduspoliitika.

Euroopa Liidu ja liikmesriikide ***jagatud pädevuste*** (ingl. k *areas of shared powers*) valdkonnas loodud regulatsioonid on liikmesriikidele kohustuslikud, samas on valdkondade arv loetletud. Sellesse valdkonda kuuluvad näiteks transport, energeetika, Schengen, teadusuuringud, tehnoloogia arendamine, tarbijakaitse, arengukoostöö.

Euroopa Liidu toetava, koordineeriva ja vastastikku täiendavate meetmete valdkonda (ingl k *areas of complementary competence*) kuuluvad poliitikavaldkonnad, mis on aluslepingute kohaselt liikmesriikide pädevuses, kuid milles on loodud võimalus parimate praktikate vahetamiseks või avatud koordinatsiooniks. Valdkonda kuuluvad näiteks turism, tööstus, sotsiaalpoliitika, haridus, noorsootöö.

COMPETENCES OF THE UNION

A distinction is made in defining the Union's exclusive powers, the powers shared between the Union and Member States, and the Union's powers that are complementary or coordinate to those of Member States.

Exclusive powers of the EU

In policy areas that are within the scope of the Union's exclusive competence, Member States may not implement any measures that might jeopardise the efficient attainment of Union-level objectives in those areas. These include common trade policy, protection of fish resources and monetary policy.

Areas of shared powers

In areas of shared powers, the EU's competence does not take complete precedence over the competence of Member States in the same areas. However, in areas of shared competence, any

provision laid down by the Union may limit the actions of Member States and they cannot implement measures that are not in accordance with the Union's provisions. All areas that do not belong to the category of the Union's exclusive powers can in principle be categorised as areas of shared competence.

Areas of complementary competence

In areas of complementary competence, such as development cooperation, action by the Union is limited to supporting, encouraging, and coordinating action taken by Member States. Therefore, Union-level action cannot completely supersede the competence of the Member States. In certain areas of complementary competence, Treaty provisions prohibit the harmonisation of the national laws of Member States. Such areas include academic education, vocational education, youth and culture. In certain other areas, such as economic and employment policy, Union institutions may introduce measures to coordinate the action of Member States.
Allikas: EU Presidency, Slovenia,
http://www.eu2008.si/en/About_the_EU/Competence_of_the_EU/index.html

EUROOPA LIIDU PÄDEVUSTE RAKENDUMINE

Euroopa Liidu pädevusi rakendavad ning valdkondade poliitikaid kujundavad Euroopa Liidu institutsioonid – Euroopa Komisjon, Euroopa Parlament ning Euroopa Liidu Nõukogu. Kohtu roll ilmneb peamiselt rikkumismenetlustes, Keskpank osaleb rahaliidu küsimuste reguleerimises, kindel hulk poliitikaid peavad olema kooskõlastatud ka Regioonide Komitee või Majandus- ja Sotsiaalkomiteega.

Õppematerjalide hulgas leiduv CEPS raport ***"The Ever-Changing Union An Introduction to the History, Institutions and Decision-Making Processes of the European Union"*** avab peatükkides 3 ja 4 nii menetlusviisid kui ka institutsioonide rollid.
Euroopa Ühenduse ja Euroopa Liidu aluslepingud avavad menetlusviiside ning poliitikavaldkondade reguleerimise tausta.

Juhan Lepassaare slaidid võtavad kokku menetlusviisid ning nõukogu koosseisud, samuti selgitavad, millised Euroopa Komisjoni peadirektoraadid ning millised Eesti ministeeriumid antud küsimustega seotud on.

Eraldi on allpool välja toodud Euroopa Liidu Nõukogu kui antud kursuse kontekstis keskse organi koosseisud ning töökorralduse peamised aspektid, mis toetavad esimeste õppetükkide omandamist.

EUROOPA LIIDU NÕUKOGU KOOSSEISUD

(allikas: Euroopa Liidu Nõukogu kodukord)

1. Üldasjad ja välissuhted[1]
2. Majandus- ja rahanduspoliitika[2]
3. Justiits- ja siseküsimused[3]
4. Tööhõive, sotsiaalpoliitika, tervishoid ja tarbijakaitseküsimused
5. Konkurentsivõime (siseturg, tööstus ja teadusuuringud)[4]
6. Transport, telekommunikatsioon ja energeetika
7. Põllumajandus ja kalandus
8. Keskkond
9. Haridus, noorsootöö ja kultuur[5]

Igal liikmesriigil on EÜ asutamislepingu artikli 203 kohaselt õigus otsustada, mil viisil ta on nõukogus esindatud.

Mitu ministrit võib osaleda täisliikmena sama koosseisuga nõukogu istungil, mille päevakorda ja töökorraldust on vastavalt muudetud.[6]

Üldasjade ja välissuhete nõukogu puhul esindab iga valitsust selle koosseisu eri istungitel asjaomase valitsuse valitud minister või riigisekretär.

[1] Kaasa arvatud Euroopa julgeoleku- ja kaitsepoliitika ning arengukoostöö.
[2] Kaasa arvatud eelarve.
[3] Kaasa arvatud kodanikukaitse.
[4] Kaasa arvatud turism.
[5] Kaasa arvatud audiovisuaalsektor.
[6]Vt järgmist märkust 1:
1) I lisa teise lõigu kohta
"Istungite päevakordi koostades rühmitab eesistujariik omavahel seotud päevakorrapunktid, et hõlbustada asjaomaste riikide esindajate osalemist, eelkõige siis, kui teatav nõukogu koosseis peab tegelema selgesti eristatavate teemakooslustega."

NÕUKOGU TÖÖ KORRALDAMINE
(allikas: Euroopa Liidu Nõukogu kodukord)

OREPER, KOMITEED JA TÖÖRÜHMAD

Artikli 19 lõige 10
COREPER, komiteed ja töörühmad

1. COREPER vastutab nõukogu töö ettevalmistamise ja talle nõukogu poolt pandud ülesannete täitmise eest. Ta tagab igal juhul Euroopa Liidu poliitika ja toimingute kooskõla ning kannab hoolt, et peetakse kinni järgmistest põhimõtetest ja eeskirjadest:
a) õiguspärasuse, subsidiaarsuse ja proportsionaalsuse põhimõte ning õigusaktide põhjendamise põhimõte;
b) liidu institutsioonide ja asutuste volituste kehtestamist käsitlevad eeskirjad;

c) eelarvesätted;
d) kodukorda, läbipaistvust ja õigusaktide väljatöötamise kvaliteeti käsitlevad eeskirjad.

2. Kui COREPER ei otsusta teisiti, vaatab ta eelnevalt läbi kõik nõukogu istungi päevakorrapunktid. COREPER püüab oma tasandil jõuda kokkuleppele, mis esitatakse nõukogule vastuvõtmiseks. Ta tagab, et nõukogule esitatakse asjakohased dokumendid ning esitab vajaduse korral nõukogule suuniseid, valikuvõimalusi või soovituslikke lahendusi. Eriolukorra puhul võib nõukogu ühehäälselt otsustada lahendada küsimus ilma sellise eelneva läbivaatuseta.

3. Eelnevalt kindlaksmääratud ettevalmistustöö või uuringute korraldamiseks võib COREPER moodustada komiteesid või töörühmi või anda nõusoleku nende moodustamiseks.
Peasekretariaat ajakohastab ja avaldab ettevalmistusorganite nimekirja. Nõukogu ettevalmistusorganitena võivad kokku tulla üksnes selles nimekirjas loetletud komiteed ja töörühmad.

4. COREPERi tööd juhib sõltuvalt päevakorrapunktist nõukogu eesistujariigina tegutseva liikmesriigi alaline esindaja või tema asetäitja. Kõnealuse liikmesriigi volitatud esindaja tegutseb ka asutamislepingutes ettenähtud eri komiteede eesistujana, kui nõukogu ei otsusta teisiti. Sama kehtib lõikes 3 nimetatud komiteede ja töörühmade kohta, kui COREPER ei otsusta teisiti.

5. Niisuguste nõukogu koosseisude istungite ettevalmistamiseks, mis tulevad kokku kord poolaastas ja kui istung toimub selle perioodi esimesel poolel, juhatab eelmisel poolaastal peetavate muude komiteede kui COREPERi ja töörühmade istungeid selle liikmesriigi volitatud esindaja, kelle ülesandeks on tegutseda vastavate nõukogu istungite eesistujana.

6. Kui poolaasta vältel arutatakse küsimusi sisuliselt, võib sel poolaastal eesistujana tegutseva liikmesriigi esindaja juhatada muude komiteede kui COREPERi ning töörühmade tööd järgneval poolaastal, kui arutatakse kõnealuseid küsimusi. Kaks asjaomast eesistujariiki lepivad omavahel kokku selle lõike tegelikus rakendamises.
Kui tegemist on erijuhtumiga, kus vaadatakse läbi teatava eelarveaasta ühenduse eelarvet, siis muude nõukogu ettevalmistusorganite kui COREPERi istungeid, kus valmistatakse ette eelarve läbivaatamist käsitlevaid nõukogu päevakorrapunkte, juhatab selle liikmesriigi esindaja, kes tegutseb nõukogu eesistujana selle aasta teisel poolaastal, mis eelneb kõnealusele eelarveaastale. Kokkuleppel teise eesistujariigiga kohaldatakse sama korda kõnealuste eelarveküsimustega tegelevate nõukogu istungite juhatamise suhtes. Asjaomased eesistujariigid konsulteerivad omavahel praktilise korralduse üle.

7. Edaspidi esitatavate sätete kohaselt võib COREPER vastu võtta järgmisi otsuseid menetlusküsimustes, tingimusel et nendega seotud küsimused on võetud päevakorraprojekti vähemalt kolm tööpäeva enne istungit; sellest tähtajast kõrvalekaldumine nõuab COREPERi ühehäälset otsust:[12]
a) otsus pidada nõukogu istung muus kohas peale Brüsseli või Luxembourgi (artikli 1 lõige 3);
b) luba esitada kohtumenetluses koopia või väljavõte nõukogu dokumendist (artikli 6 lõige 2);
c) otsus korraldada nõukogus avalik mõttevahetus (artikli 8 lõige 3);
d) otsus avalikustada hääletustulemused artikli 9 lõigetes 2 ja 3 sätestatud juhtudel;
e) otsus kasutada kirjalikku menetlust (artikli 12 lõige 1);
f) nõukogu protokolli kinnitamine või muutmine (artikli 13 lõiked 2 ja 3);
g) otsus avaldada või mitte avaldada tekst või õigusakt Euroopa Liidu Teatajas (artikli 17 lõiked 2, 3 ja 4);
h) otsus konsulteerida mõne institutsiooni või organiga;
i) otsus kehtestada institutsiooni või organiga konsulteerimise kohta tähtaeg või seda pikendada;
j) otsus pikendada EÜ asutamislepingu artikli 251 lõikes 7 osutatud tähtaegu;

k) institutsioonile või organile saadetava kirja sõnastuse heakskiitmine.

Artikkel 20
Eesistujariik ja arutelude korraldamine

1. Eesistujariik vastutab käesoleva kodukorra kohaldamise ning arutelude asjakohase korraldamise eest. Eelkõige tagab eesistujariik, et laienenud nõukogu töökorraldust käsitleva IV lisa sätted on täidetud.
Arutelude nõuetekohase läbiviimise tagamiseks võib nõukogu, kui ta ei otsusta teisiti, võtta mis tahes meetmeid, mida on vaja istungi aja parimaks võimalikuks kasutamiseks, eelkõige selleks, et:
a) piirata teatava küsimuse arutamisel istungiruumis viibivate delegatsiooni liikmete arvu ning otsustada, kas anda luba arutelude jälgimise ruumi avamiseks;
b) kehtestada päevakorrapunktide käsitlemise järjekord ja otsustada nendega seotud arutelude kestus;
c) korraldada konkreetsete päevakorrapunktide käsitlemise ajaline jaotus, eelkõige piirates osalejate sõnavõtuaega ja määrates nende sõnavõttude järjekorra;
d) paluda delegatsioonidelt, et nad esitaksid oma kirjalikud ettepanekud arutatava teksti muutmiseks teatavaks kuupäevaks, vajaduse korral koos lühiselgitusega;
e) paluda delegatsioonidel, kes on teatava päevakorrapunkti, teksti või tekstiosa suhtes samal või lähedasel seisukohal, valida enda hulgast üks, kes esitaks selle ühise seisukoha istungil või kirjalikult enne istungit.

2. Eesistujariiki abistab järgmise eesistujana tegutseva liikmesriigi esindaja, ilma et see piiraks artikli 19 lõigete 4–6 sätete kohaldamist, eesistujariigi volitusi ja üldist poliitilist vastutust. Eesistujariigi taotlusel ja tema juhendite järgi tegutsedes asendab järgmise eesistujana tegutseva liikmesriigi esindaja vajaduse korral eesistujat, võtab üle teatavad kohustused ja tagab nõukogu töö järjepidevuse.

Artikkel 21[13,14]
Komiteede ja töörühmade aruanded

Käesoleva kodukorra muudest sätetest olenemata korraldab eesistujariik eri komiteede ja töörühmade istungid nii, et nende aruanded on kättesaadavad enne seda COREPERi istungit, kus neid käsitletakse.
Kui asja kiireloomulisus ei nõua teisti, lükkab eesistujariik mõnele järgmisele COREPERi istungile edasi kõik artiklis 7 käsitletud seadusandlusega seotud päevakorrapunktid, mille arutamist ei ole komitee või töörühm lõpetanud vähemalt viis tööpäeva enne COREPERi istungit.

Artikkel 22
Õigusaktide väljatöötamise kvaliteet15

Selleks et abistada nõukogu nende õigusaktide väljatöötamise kvaliteedi tagamisel, mida ta vastu võtab, on õigusteenistuse ülesanne õigel ajal kontrollida ettepanekute ja eelnõude väljatöötamise kvaliteeti ning teha nõukogule ja tema organitele õigusaktide väljatöötamist käsitlevaid soovitusi 22. detsembri 1998. aasta institutsioonidevahelise kokkuleppe kohaselt.
Need, kes esitavad nõukogu tööga seotud tekste, peavad kogu õigusaktide menetlemise aja jooksul pöörama erilist tähelepanu õigusaktide väljatöötamise kvaliteedile.

Artikkel 23

Peasekretär ja peasekretariaat

1. Nõukogule on abiks peasekretariaat, mida juhatab peasekretär, keda abistab asepeasekretär, kes vastutab peasekretariaadi töö eest. Peasekretäri ja asepeasekretäri määrab nõukogu ametisse kvalifitseeritud häälteenamusega.

2. Nõukogu otsustab peasekretariaadi struktuuri.[16]
Peasekretär ja asepeasekretär võtavad nõukogu alluvuses kõik vajalikud meetmed, et kindlustada peasekretariaadi tõrgeteta töö.

3. Peasekretariaat on tihedalt ja pidevalt seotud nõukogu töö korraldamise, kooskõlastamise ja selle ühtsuse tagamisega ning aastaprogrammi rakendamisega. Peasekretariaat abistab eesistujariiki lahenduste leidmisel viimase vastutusel ja suuniste kohaselt.
Euroopa Liidu lepingu sätete kohaselt abistab peasekretär nõukogu ja eesistujariiki ühist välis- ja julgeolekupoliitikat käsitlevates küsimustes, kaasa arvatud eriesindajate töö kooskõlastamine.
Vajaduse korral võib peasekretär paluda, et eesistujariik kutsuks kokku komitee või töörühma eelkõige ühist välis- ja julgeolekupoliitikat käsitlevates küsimustes, või võtaks teatava punkti komitee või töörühma istungi päevakorda.
4. Peasekretär või asepeasekretär esitab nõukogu kulude eelarvestuse projekti nõukogule piisavalt aegsasti, et tagada finantssätetega ettenähtud tähtaegadest kinnipidamine.
5. Peasekretäril, keda abistab asepeasekretär, on täielik vastutus eelarve II osasse "Nõukogu" kirjendatud assigneeringute haldamise eest ning ta võtab kõik meetmed nimetatud assigneeringute nõuetekohase haldamise tagamiseks. Ta rakendab kõnealuseid assigneeringuid Euroopa ühenduste üldeelarve suhtes kohaldatava finantsmääruse asjakohaste sätete kohaselt.

In search for compromise between pragmatic considerations and democratic ideals: the EU comitology system

By Marika Linntam[1]

December 2008

Introduction

This study provides a simple overview of the EU's comitology process, by which the EU passes a large number of measures through committee-based procedures.

What is comitology? Most EU legislation is not enacted as secondary legislation by the Council and the European Parliament, but as delegated secondary legislation by comitology committees. Comitology refers to the often mystified process of committees of national officials working with the European Commission during the implementation of EU legislation at the European level. In other words, it is a system of Member States' control over the Commission when it is implementing policies, i.e. managing specific policies or programs.

While adopted legislative acts number hundreds every year (150 in 2006), comitology acts number well into the thousands annually; 2862 in 2006 and 2522 in 2007. Comitology committees consist of representatives of the Commission (chairman) and governments of each Member States. Their purpose is to validate proposals made by the Commission following different comitology procedures. Today, there are about 264 such comitology committees. They take a host of technical regulatory decisions that are too detailed and complex to merit the attention of a full legislative procedure and eventually take a lot less time than a co-decision procedure.

Since the 2006 major reform, there are five comitology procedures in place, including a new actor to the comitology structure: the European Parliament. While the so-called general alignment was concluded in early 2009, a ratification of the Lisbon Treaty would further affect the European institutional balance between the different stakeholders of comitology (Bergström, 2005; Egeberg et al., 2003; Rhinard, 2002; Shapiro, 2006; Vos, 1999).

The report is structured as follows: First, we briefly glance at the evolution of comitology at the European level. We identify four distinctive historical periods. Then, we explain the five procedures currently in place and provide some practical

[1] I would like to thank Dr Michael Kaeding (European Institute of Public Administration) for valuable input on large parts of this contribution. Furthermore, the usual disclaimer applies: all views expressed in this article are entirely personal.

data on comitology. Last but not least, we describe the background of the 2006 reform and its consequences for the comitology process to, then, conclude with some final remarks on the future of comitology after Lisbon.

1. The Evolution of the Comitology System – a historical overview:

In the 1950s no explicit provision was made for the creation of comitology committees. The Rome Treaty forsaw the delegation of powers to the Commission, but there was no specification of how such delegated powers would be used or controlled. This lack of clarity in the original treaty is part of the reason that comitology has become subject of institutional disputes in later years. Overall, three phases of distinctive historical periods can be identified: the first, from 1962 until 1986, which marks the beginning of the creation of comitology committees up to the first attempt of systematizing through a Council Decision that followed the Single European Act (SEA). The second phase, from 1987 until 1998, saw the implementation of the first Comitology Decision leading to the major 1999 reform. A third period lasted from the adoption of the 1999 Decision until the 2006 reform.

1.1. From 1962 to 1986 - the beginning of comitology committees

The first committees set up in the early 1960s by the Council had a simple advisory function. For measures related to agriculture Member States established different procedures in order to control the Commission's adoption of individual implementing acts. In 1962, Council Regulation No *19 on the progressive establishment of a common organisation of the market in cereals* created a common market for cereals. Article 25 of this measure foresaw the creation of a management committee, composed of representatives of Member States and chaired by the Commission.

This management procedure then soon became standard procedure for many other committees and was 'exported' to fields other than agriculture. In addition the so-called 'regulatory procedure', was created. In 1968, the Council adopted the Directive *regarding the harmonization of legislation on custom duties for third party goods transiting in the EC territory.* Its article 26 established a committee where, for the first time, the Member State representatives were to express their opinion on the draft measures submitted by the Commission through a formal vote.

In the following years the practice of creating committees to assist the Commission gained increasing importance . The use of these procedures rapidly expanded to further sectors besides the agriculture and customs duties. Once established, The number of committees have been growing without an explicit treaty framework. Criticism has been mainly pronounced by the European Parliament (EP). At the time of the creation of comitology, before direct elections (1979) and the introduction of legislative powers that came with the Single European Act (1985) and the Maastricht Treaty (1992), there had been no case for involving the EP in this process. However, with the rise of the EP in the institutional framework, the EP's involvement in comitology – or rather the lack of its involvement - soon became a pressing issue (Bradley, 1997).

1.2. From 1987 to 1998 - the implementation of the first Comitology Decision

The SEA provided an opportunity to change the relevant articles in the treaty. Completed on 17 December 1985, the new treaty contained a number of important provisions concerning the delegation of powers. On the institutional side, the SEA provided for an extension of executive powers to the European Commission and a reinforcement of the role of the EP. For comitology, this meant the insertion of a third indent in Art. 145 of the EC Treaty (now Article 202):

> *"The Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. These procedures must be consonant with principles and rules to be laid down in advance by the Council acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament."*

The new Article 145 happens to be the only treaty amendment concerning comitology to date. It creats an obligation for the Council to delegate the power of adopting implementing measures to the Commission and it gives formal recognition of comitology commitees.

This was soon followed in 1987 with the adoption of a Council Decision establishing the principles and rules required to regulate the delegation of powers. Based on the declaration annexed to the SEA, the IGC asked the Council "*to adopt before the act enters into force, the principles and rules on the basis of which the Commission's powers of implementation will be defined to ach case*". Adopted in July 1987 the Council Decision was the first example of systematization in the comitology system and an attempt to improve its efficiency. Overall, it introduced four standard procedures. The first three were the formalisation of the formulas used until then (advisory I; management IIa, IIb; and regulatory IIIa, IIIb) while the forth was applicable to safeguard clauses (IVa, IVb).

In the final text of the 1987 Council Decision kept much of the control over the Commission in the implementation phase. On 2 October 1987, the EP brought an action for annulment against the Council Decision. Claiming that the decision was incompatible with the spirit of the treaties and jeopardised the EP's right of control, since the Council itself could directly exercise its implementing powers. Stipulated in 1988, the so-called *Plumb Delors Agreement*, the European Commission agreed to forward draft implementing measures to the EP, as a follow-up to a promise already made during the debate for the adoption of the 1987 Decision. In fact, the main issue at stake was not the EP's will to control the Commission in the implementing phase but a more generic right to be informed of the existence of the proposed implementing measures, and to enjoy rights equal to those of the Council in the decision-making process. This explains in part the cooperative attitude of the Commission towards the EP's demands. In the years following the *Plumb Delors Agreement* several inter-institutional agreements were stipulated in order to temporarily solve the main sources of tension.

In 1993, the *Klepsch-Millan Agreement* increased the number documents that could be transmitted to the EP, particularly with regards to structural funds, Community support frameworks and operational programmes.

Another inter-institutional agreement (*Modus vivendi*) in 1994 provided the possibility to forward the draft implementing measure in areas governed by codecision to the EP. This agreement was further supplemented by an accord between the Commission and the EP in 1996, the so-called *Samland-Williamson Agreement*. This reinforced the right of the EP to be informed of the work of the committee and granted MEPs the right to attend management or regulatory committee meetings, provided that the Members of the committee unanimously approved their presence.

1.3. From 1999 to 2006 - from the adoption of the 1999 Decision until 2006

Against the background of a disappointing Treaty of Amsterdam in 1997, the Commission proposed a new Comitology system, which was adopted in 1999, including a number of important reforms. For a start, the total number of procedures was reduced from 7 to 4. Furthermore, the Commission committed itself to avoid going against a 'dominant position' within the committee, beyond being bound by the formal vote of Member States (aérosol clause). In 2006 the Council approved yet a new Comitology Decision, which introduced further powers to the EP. Responding to the failure of ratification of the Constituional Treaty, the EP managed to exert great pressure on the Member States. Threatening to block Lamfalussy acts and the 2006 budget for expenditure on comitology committees, Member States, eventually, accepted a limited reform related only to the "quasi-legislative" acts adopted under the co-decision procedure (Christiansen and Vaccari, 2006). The 2006 reform introduced a new criterion to define implementing measures, the so-called regulatory procedure with scrutiny and herewith further strengthened the role of the EP.

With regard to transparency, a newly introduced Art. 7 establishes two main actions: the EP is granted the right to be informed on the workings of the comitology committees on a regular basis, and consequently, more rights of information and access to documents are granted to the public. Therefore, the Commission commits itself to publishing a list of all committees assisting the Commission in its implementing powers within 6 months of the Decision's entry into force. In addition to this list, it is foreseen that a register and repository of documents transmitted to the EP is set up within the framework of its right to information. This implies the Commission's regular transmission of documents related to comitology committee meetings, such as agendas, voting results, list of participants, summary reports, and draft implementing measures when the basic act was adopted in codecision.

In addition, Article 8 of the Comitology Decision grants a right of scrutiny to the EP, which implies the possibility for the EP to adopt a resolution when it deems that the Commission exceeds its implementing powers when proposing a draft

implementing measure to the Committee, as soon as the correspondent legislative act has been adopted in codecision. Therefore, whilst the EP is granted the right to check the content of the measure, it is nevertheless obliged to limit its control to the legitimacy of the Commission in proposing an implementing measure, as opposed to exercising a political control on the measure itself.

Furthermore, the 1999 Decision introduced a number of criteria to guide the legislator with regard to choice of the appropriate comitology procedure. The management procedure is now formally associated with implementing measures in the field of agriculture or for the implementation of programmes with notable budgetary significance. The regulatory procedure is to be used in case of measures of a more general scope with a "legislative impact", particularly in cases of health and safety of persons, and when the basic act implies a possibility to adapt/update non-essential elements by an implementing measure. Finally, the advisory procedure is identified as the default procedure if the other criteria are not met (per default).

To conclude, it is evident that, since the establishment of the first comitology committees in the 1960s, the institutional system has evolved considerably. The tensions between the institutions concerning comitology reveal the search for a power-equilibrium, satisfying the different expectations and needs of three different institutions. Especially the EP has gained substantial rights of information, scrutiny and veto. With the 2006 reform the co-legislator stands for most cases on equal footing with the Council when dealing with comitology files (Christiansen and Vaccari, 2006). All in all, it was the inter-institutional tensions which have triggered considerable progress towards more transparency and democracy even if this is often seen to come at the expense of a more coherent and efficient system.

2. Five Different Comitology Procedures:

The 2006 amendment of Council Decision 1999/468 defines the criteria for the choice of committee procedures. There are five different comitology procedures currently in place: advisory, management, regulatory, regulatory with scrutiny and safeguard procedure.

2.1. Advisory procedure (Art. 3):

This method is used when the policy being regulated is not very politically sensitive. It is the last binding on the Commission and the quickest. Following draft measures by the Commission, the committee delivers its opinion within a certain time limit "if necessary by taking a vote" (simple majority). Each Member State has one vote. The Commission then must take the "utmost account of the opinion delivered" and inform the committee of the manner in which its opinion has been taken into account. Legally, the Commission is not obliged to follow the committee's opinion.

2.2. Management procedure (Art. 4):

This procedure is used for measures relating to the management of the Common Agricultural Policy, fisheries and the main EU funded programs. The management procedure is more binding on the Commission. In simple terms, the Commission must avoid a negative opinion of the committee (91 votes). First, the Commission transmits a draft implementing measure to a committee composed of government representatives for consideration. In case of agreement or no opinion, the measure will be adopted. In the case of disagreement– the committee votes by QMV (255 out of 345 votes) - then the matter is referred to the Council. The Council then can either confirm it or decide otherwise – whilst respecting a three month deadline. The Council takes decisions also by QMV and can have a different decision, but cannot reject the measure.

2.3. Regulatory procedure (Art. 5):

This procedure is used for measures relating to the protection of the health or safety of persons, animals and plants and for measures amending non-essential provisions of the basic legislative instruments. Member State representatives are to express their opinion on the draft measures submitted by the Commission through a formal vote. In case of a positive opinion, the Commission can adopt the measure. Where the response is negative, or in case of absence of an opinion, the measure is to be referred back to the Council which can react within a three months timeframe. Hence, the Commission may only adopt implementing measures if it obtains the approval of a qualified majority (QMV) of Member States as represented in the committee.

2.4. Regulatory procedure with scrutiny (Art. 5a)[2]:

This procedure is used when the implementing measures amend "non-essential" elements of primary legislation, e.g. an annex. It is applicable under two further requirements: First, the basic act needs to be adopted by codecision. Second, the

[2] Part 4 of this article gives a more in-depth analysis of this procedure.

mesure needs to be of general scope and considered as 'quasi-legislative'. Policy areas affected include environment, financial services, public health, and law enforcement cooperation. It is the most constraining procedure for the Commission. The European Parliament and the Council both have vetoes on Commission proposals, in case the committee's opinion is positive. In the case of a negative opinion, the Commission will refer to the Council and forward the proposed measure to the EP. The Council then will have 2 months to oppose the proposed measure, envisage adopting the measure or have no opinion. In the latter two cases, the Commission will submit the measure to the EP. The EP will then have four months, from the initial forwarding of the proposal, to either oppose or accept the draft measure. All in all, this procedure is lengthened considerably to allow for parliamentary scrutiny.

2.5. Safeguard procedure (Art. 6):

The safeguard procedure is used very seldom. Sometimes an urgent decision ("safeguard measure") is required. For example, safeguard measures were taken by the EU to block the export of British beef to the rest of the EU at the start of the 2007 foot and mouth disease outbreak. In such cases the Commission notifies the Council and the Member States of an urgent decision that it has taken without the explicit approval of the comitology committee. Any Member State, however, can refer the Commission's decision to the Council, which can then take a different decision or confirm, amend or revoke the Commission's decision by QMV.

3. Comitology in Practice

The comitology committees can be classified according to the type of procedure under which they operate (advisory, management, regulatory and safeguard procedure). The figures for 2006 indicate that about 33% of the committees (91 out of 277) work exclusively under the regulatory procedure, followed by a smaller number of committees working exclusively under the management procedure (78). The breakdown by policy sector shows that use of the three types of procedure varies from policy sector to policy sector. However, in some of the policy sectors, a clear dominance of one of the procedures can be noted: the Energy and Transport, Environment and Enterprise and Industry sectors, for instance, work with a large number of committees under the regulatory procedure, whereas Agriculture works with a large number of committees under the management procedure.

Table 1. Number of committees by procedure (2006)

	Type of procedure				**Committees operating under several procedures**
	Advisory	**Management**	**Regulatory**	**Safeguard**	
ENTR	6	6	15	0	7
EMPL	1	0	2	0	5
AGRI	0	22	4	0	4
TREN	5	2	16	0	13
ENV	0	4	25	0	6
RTD	0	2	0	0	1
INFSO	0	5	2	0	6
FISH	0	1	0	0	3
MARKT	1	2	10	0	0
REGIO	0	1	0	0	2
TAXUD	1	3	5	0	1
EAC	1	0	0	0	11
SANCO	2	8	0	0	6
JLS	4	1	4	0	6
RELEX	1	2	0	0	1
TRADE	3	3	3	1	2
ELARG	0	3	0	1	0
AIDCO	0	11	0	0	4
ECHO	0	0	0	0	1
ESTAT	0	3	3	0	2
BUDG	1	0	1	0	0
OLAF	0	0	1	0	0
Total	**26**	**79**	**91**	**2**	**81**

Source: European Commission (2007)

But the number of committees is not the only indicator of activity at comitology level. The number of meetings held in 2006 reflects the intensity of work in general, at sector level and in individual committees. As in 2006, Agriculture leads the field with 327 meetings, since managing the different agricultural markets requires

frequent meetings. Agriculture is followed by Health and Consumer Protection with 119 meetings and Taxation and Customs Union with 85 meetings.

Table 2. Number of meetings (2005, 2006)

	2005	2006		2005	2006
ENTR	48	41	**EAC**	12	17
EMPL	9	10	**SANCO**	114	119
AGRI	308	327	**JLS**	31	24
TREN	61	62	**RELEX**	2	4
ENV	59	67	**TRADE**	26	15
RTD	45	38	**ELARG**	10	11
INFSO	31	33	**AIDCO**	23	26
FISH	19	22	**ECHO**	10	7
MARKT	24	36	**ESTAT**	16	16
REGIO	8	10	**BUDG**	5	5
TAXUD	94	85	**OLAF**	3	2

Source: European Commission (2007)

Last but not least the numbers of implementing measures adopted by comitology in 2006 differ significantly. Whereas the field of agriculture represents more than 55% of the toal number of implementing measures (1576 out of 2862), the continuum ranges from important 12% in the field of Health and Consumer Protection represent (328) to 0,3% in the Internal Market sector (8). Based on the abovementioned numbers of meetings figure 3 displays the number of implementing measures delivered by the committees in 2007.

Figure 3. Number of implementing measures (2007)

	Implementing measures		**Implementing measures**
ENTR	269	**SANCO**	331
EMPL	14	**JLS**	23
AGRI	963	**RELEX**	4
TREN	39	**TRADE**	8
ENV	62	**ELARG**	83
RTD	57	**AIDCO**	388
INFSO	36	**ECHO**	37
MARE	29	**ESTAT**	18
MARKT	8	**BUDG**	3
REGIO	13	**OLAF**	0
TAXUD	63	**DIGIT**	1
EAC	73		

Source: European Commission (2008)

4. 2006 Reform of the Comitology System

Comitology reform of 2006, creating a new regulatory procedure with scrutiny (RPS) was an important step in the direction of reinforcing legitimacy of the comitology system. Giving the European Parliament a possibility to exercise democratic control in case of adoption of implementing acts with a quasi-legislative nature, it brought about a temporary cease-fire on the comitology battle field between the three main institutions[3].

4.1 Background of the reform

Being deeply rooted in the general discontent on part of the EP with the comitology system (which had been alleviated until 2006 only by very limited steps in increasing the EP involvement), it got its most direct impulse from the negative referendum results in France and in the Netherlands in the course of ratification of the Constitution for Europe in 2005. The latter would have increased the powers of the EP significantly with regard to comitology, and with regard to financial services in particular, putting it on an equal footing with the Council and giving it a general call-back right with regard to delegated acts adopted by the Commission[4]. As the reflection period over the Constitution started in 2005, following demands of the EP, a Commission proposal for comitology reform from 2002[5] was taken out of the closet.

The three institutions entered with fairly different views and ambitions into the negotiations. The EP was inclined to see it as a possibility of sliding in provisions of the Constitution by the back door, or at least getting a result as close to these as possible. The Council was naturally playing a more conservative role, being interested in keeping the system as close to the existing procedures, which were working considerably well. The Commission, on the other hand, had an interest in going for a deeper reform of the comitology procedures. This made it stand at least initially by its 2002 proposal, which among other elements included replacing the management procedure by advisory procedure in cases of implementation of basic acts adopted in co-decision. In order to avoid getting entangled in long interinstitutional debates, the EP decided to hurry up the reform, referring to a possibility of not renewing the Commission implementing powers for basic acts in which a sunset clause had been inserted[6] as well as freezing the funds for comitology committees in 2006.

---

[3] Even in spite of the cease-fire, tensions keep boiling and have been manifest also in the implementation of the 2006 decision.

[4] Both article I-36 (delegated acts) and I-37 (implementation acts) of the Constitution were, almost unchanged, incorporated into the Lisbon Treaty, ratification and entry into force of which is during the writing of this paper under a strong question mark after the negative results of the Irish referendum (the only, yet important difference being addition of condition of general scope to measures falling unde the category of delegated acts).

[5] COM(2002) 719, 11.12.02, 2002/0298(CNS), http://ec.europa.eu/governance/docs/comm_commito_en.pdf

[6] This concerned mostly financial sector instruments that had been adopted since 2002, many of the sunset clauses inserted in them being due in 2007.

In the end, the compromise reached under this pressure should not be underestimated. After discussions under the British and Austrian presidencies in 2005 and 2006, a satisfactory balance was reached between the interests of the three main stakeholders. The EP could be satisfied with getting a role as equal to that of the Council as possible under the existing Treaty[7], even if the result did not correspond exactly to article I-36 of the Constitution. The Council was content that the reform left untouched the three existing comitology procedures and was confined to increasing EP control over quasi-legislative acts. All the more, in a way, the creation of the new form of regulatory procedure also went in the direction of the long-term intentions of the Commission, which had long sought a de-coupling of quasi-legislative measures from the pure implementation measures, with the overall hope that, whilst allowing for a stronger control by the legislator over the quasi-legislative acts, the Commission could in the end gain more decision power for adoption of pure implementation measures[8].

4.2 Definition of measures to which the new procedure is to be applied

The definition of measures falling under RPS, binding, yet leaving however considerable room for interpretation, is largely inspired by article I-36 of the Constitution on delegated acts. It is inserted in article 2(2) of the comitology decision (underlining by the author of the present article):

> *Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.*

This definition is composed of three main conditions. The conditions are cumulative, meaning that they all have to be met for the RPS to be applicable in a concrete case.

4.2.1 Scope of RPS is limited to basic acts to which co-decision applies

First of these, and the least controversial, is that the *basic act has to be adopted in co-decision (in accordance with the procedure referred to in article 251 of the Treaty)*. Measures adopted under other procedures, where the Parliament is not acting as a co-legislator with the Council, do not give grounds for parliamentary control in the

[7] In the current treaty framework, article 202 gives an executive role only to the Council (the Council having double roles – executive and legislative), whereas the European Parliament is only given a legislative role and can thus only purely legislator control in the implementation phase (e.g. it could not adopt implementing measures itself as the Council can in certain circumstances).

[8] See also M.Shapiro „Comitologie: rétrospective et prospective apres la réforme de 2006", RDUE 3/2006

implementation phase. In principle, a formalistic approach could have been taken that only basic acts indeed adopted by Council and EP as co-legislators fall under this category. This condition has nevertheless been interpreted more widely in the course of alignment of existing acquis to the new comitology decision. It has thus been deemed to be met also for basic acts that have been adopted only by the Council (for example as a Council decision after consultation with the European Parliament), when this was the applicable procedure at the time of adoption of the basic act, on the condition that at the time of alignment it is co-decision that applies in the relevant area (if the same basic act would be adopted or modified today then co-decision would apply).

4.2.2 Only measures of general scope can be subject to RPS

Secondly, measures to be adopted have to be of a *general scope*. It is this "applicability to objectively determined situations" together with "entailment of immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner"[9] that makes them quasi-legislative.

This excludes individual measures which, even if they can sometimes be politically controversial like decisions authorising marketing of certain GMOs have proven, are still only aimed at regulating individual cases and do not directly affect the general public. Thus they are not of a quasi-legislative nature and do not need the same kind of attention by the legislator as acts of general scope.

It follows naturally that when the Commission is adopting criteria according to which later implementation decision would be taken (for example, on the basis of which either the Commission itself or the relevant authorities of Member States could take individual decisions), then adoption of these criteria should be under RPS. However, adoption of individual decisions according to these criteria (same as in case of criteria set forth by the legislator in the basic act), would be a pure implementation measure.

4.2.3 Requirement of formal amendment of certain (non-essential) elements of the basic act

Thirdly, these measures have to be designed to *amend* non-essential elements of the basic instrument in question, *inter alia by deleting some of those elements or by supplementing the instrument* by the addition of new non-essential elements. For instance, this can involve modification of non-essential elements of the basic act itself or one of its annexes. It ought to be pointed out that, as the criteria for

[9] ECJ judgement in joined cases 16/62 and 17/62 Confédération nationale des producteurs de fruits et légumes and Others vs Council (1962, ECR 471), see also case C-309/89 Codorniu (1989, ECR I-1853, para 18).

application of RPS are cumulative, in case of this kind of formal amendment also meeting the general scope criterion would have to be assessed. For instance, formal modification of an annex, which is mainly of an informative value (for instance, containing a list of implementation measures taken by the Member States or a list of individual measures taken by the Commission itself) and does not entail "immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner", would not satisfy the RPS criteria.

In order to assess whether a measure would supplement the basic act, the effect on the legislative framework created by the basic act should be kept in mind: if the measure were developing this legislative setting further, leaving a margin of appreciation to the Commission, it would constitute a quasi-legislative measure and RPS should be applied. As an example, in its Report on the working of committees during 2006, the Commission has stated that in the financial services area, the measures adding details to the information to be contained in prospectuses would qualify as supplementing the co-decision basic act by creating a new set of rules[10].

.

On the other hand, if the Commission acts only within the legislative framework and according to the conditions and criteria set forth by the legislator, this would not constitute supplementing the basic act.

As foreseen, only *non-essential* elements of the basic act can be subject to being thus amended. With regard to the current alignment process, it might be questioned whether this could be brought out as a separate criterion of the definition of quasi-legislative measures. However, the only legally sound option would be to part from the assumption that all essential elements have already been addressed in the basic act itself, as also foreseen in recital 7(a) of the Comitology decision[11], and not been left to the executive branch[12]. It is in fact an obligation for the legislator to weigh in each case, which elements are essential and would thus have to be regulated in the basic act itself, and which can be left to be defined or established by the Commission as non-essential elements. So there is no need to make this assessment when making the choice between different comitology procedures during the alignment process.

4.3 Applying the new procedure in practice

As for the direct practical impact of the 2006 reform[13], at the present stage it would be too early to evaluate this both in terms of procedural effectiveness as from the

[10] Report from the Commission on the working of committees during 2006, Brussels, 20.12.2007, COM(2007) 842 final.

[11] Recital 7(a) of the comitology decision reminds us that „The essential elements of a legislative act may only be amended by the legislator on the basis of the Treaty".

[12] This principle has been stated in the judgements of the European Court of Justice in cases 25/70 Köster (1970, ECR 1161, see para 6) and C-240/90 Germany vs Commission (1992 ECR I-5423, see para 37).

[13] For an overview of the new procedure, see the chart in annex.

point of view of the extent of substantial contribution of the Parliament. It remains to be seen how actively the latter would make use of its powers under RPS: whether it will be analysing in detail all the draft measures falling under RPS[14] or concentrate on the measures in sensitive areas like issues affecting public health and environment norms[15], as well as the financial services sector, for which it has previously shown most interest. Some practical aspects of the RPS can still be considered over the next few pages whilst waiting for the statistical and substantial data, which would allow drawing broader conclusions on the application of the 2006 reform.

4.3.1 Which acts fall under RPS after the 2006 reform?

Each basic act has to foresee explicitly under which comitology procedure, if any[16], measures for its implementation are to be taken. This means that in order to make RPS applicable for taking implementation measures under a specific basic act, a reference to this new procedure would have to be incorporated into this basic act first. For legal acts adopted after the entry into force of the 2006 comitology decision, there is without a question a legal obligation to refer to the RPS, provided that its criteria are met. Practice has already shown that this increases the importance of debates on the choice of committee procedure, which can continue until the conciliation phase of the legislative process, as shown for instance in case of the civil aviation security regulation[17].

As for the acquis in force, 2006 reform did not have any direct legal consequences[18]. However, it did not seem satisfactory to the European Parliament to have its newly won prerogatives only in force for acts adopted after the 2006 reform. Thus, as a corollary to the 2006 reform, a list of 26 basic acts was agreed upon, in relation to which the Commission engaged itself to present proposals for their alignment to the amended comitology decision[19]. This "priority alignment" concerned mostly acts in which the European Parliament took most interest – mainly Lamfalussy acts from the financial services sector, and other acts into which a sunset clause had been

[14] It brings us also to an interesting question of technical and scientific expertise, to which the EP, unlike Member States, does not have direct access to. Increasing parliamentary control could thus eventually turn into opening up new perspectives for interested lobby-groups.
[15] This has also been shown by the practice under article 8 of the Comitology decision, giving it a right of presenting reasoned resolutions to which EP has rarely had recourse. Some examples: EP resolution of 28.10.04 concerning TSEs (transmissible spongiform encephalopathies) and animal nutrition; EP resolutions of 12.04.05. and 06.07.05 concerning restriction of use of certain hazardous substance in electrical and electronic equipment.
[16] In specific and substantiated cases the Council may reserve the right to exercise implementing powers itself, as also specified in article 1 of the Comitology decision.
[17] Regulation 300/2008 of 11 March 2008 on common rules in the field of aviation security.
[18] European Parliament, the Council and the Commission statement (published in the OJ C 255/1 21.10.06) para 4 states that for the new procedure to be applicable to instruments adopted by codecision which are already in force, those instruments must be adjusted in accordance with the applicable procedures.
[19] Commission proposal COM(2006) 900.

inserted (several were from the field of environment, another subject of increasing interest of the EP). There was a general understanding, at least on the side of the Member States, that alignment would be limited to this list and that for the rest of the acquis such an exercise would not be undertaken.

Even before this priority alignment was completed towards the end of 2007, it become however clear that the alignment would go further. Developments in the comitology system have always been an indicator of changes in the institutional balance on a greater scale. In the present case, the Parliament, steadily advancing on the road to increasing powers and improved skills in the institutional power game, was successful in getting the Commission to commit itself to carrying out a full screening of the existing acquis and to presenting proposals for a general alignment[20]. Due to the amount of acts concerned, this was done in four alignment regulations, called "omnibus proposals"[21].

The omnibus method was chosen by the Commission no doubt in order to facilitate their handling. But this also helps keeping the examination strictly in the framework of the alignment exercise and avoiding temptations of opening the text of basic instruments in any other respect than adding a reference to RPS. This was the line also adopted by the two other institutions, otherwise the exercise would have become completely unwieldy. Three of the omnibuses contain alignment proposals for basic acts from various fields – from agriculture and environment to internal market and humanitarian aid. Only the basic acts in the JHA field have been dealt with separately, in the III omnibus, because of different procedures applicable in this area.

In order to ensure quick handling of the omnibus proposals, on the side of the European Parliament, the JURI committee is invested with this task. On the side of the Council, in January 2008 a mandate was agreed for the Friends of Presidency group, whose task it is to ensure horizontal co-ordination, consulting with the relevant Council working parties. This made it possible to conclude substantial work on the omnibuses by the end of 2008. Discussion on I and III omnibuses was

[20] A general alignment was also conducted after the 1999 reform: at the end of 2001 the Commission presented a package of four proposals ("alignment regulations" COM(2001) 789), covering more than 300 basic instruments. The "alignment regulations" were adopted in the course of 2003.

[21] Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny (part I: COM (2007) 741 covering 59 basic instruments; part II: COM (2007) 824 covering 47 basic instruments; part III: COM (2007) 822 covering 4 basic instruments; and part IV: COM (2008)71 covering 42 basic instruments). It is worth noting that the Parliament has called for a „fifth omnibus", making propositions for acts to be included. For more information on the Parliament's request for this „fifth omnibus", see report of 15.09.08 by MEP József Szájer A6-0345/2008, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2008-0345+0+DOC+PDF+V0//EN It is now the task of the Commission to make their evaluation and to decide whether it will be necessary to present an additional alignment proposal.

completed under the Slovenian presidency (adoption in the first reading in September 2008). As for the II and IV omnibuses, which included more controversial cases, an agreement has been reached during the French presidency.

4.3.2 Application of RPS criteria in practice: finding the way in the "grey zones"

Application of the RPS criteria to a concrete case can seem relatively easy. For example, in cases where the Commission is given powers to set criteria or guidelines, which are binding for all Member States when they in their turn adopt concrete implementation measures on ground, and which constitute additions to the legal framework created by the basic act. In these cases there is a clear and manifest need for control by the legislator over such quasi-legislative measures. The same would not, however, apply to non-binding guidelines, the only purpose of which is to serve as a reference for the Member States for taking their implementation measures. Such guidelines would not satisfy the criteria as they would not supplement the legal framework of the basic act and neither do they correspond to the ECJ definition of measures of general scope.

Among more difficult cases, from omnibus I the example of Directive 2005/36 on the recognition of professional qualifications can be referred to. This basic act contains article 61 conferring power to the Commission to grant derogations to a concrete Member State. Here the Parliament considered that RPS should apply, „taking into account that a general derogation for any Member State will constitute a measure of general scope (because of its effects on any interested party from any other Member State)"[22]. After interinstitutional discussions it was still concluded that ordinary regulatory procedure should apply in such cases as this concerns a measure addressing only one Member State without „entailment of immediate legal consequences in all Member States", even though the European Parliament did not wish to accept this argument and let itself only be convinced by an additional argument that another criteria was not matched, namely as "the derogations in question would implement (and not amend) the basic act".

Omnibus III gives a good selection of fairly clear-cut cases to which RPS applies. For instance, making substantial amendments to annexes[23], e.g. updating or technical

[22] See also the Report of the Legal Affairs committee of the European Parliament with recommendations to the Commission on the alignment of legal acts to the new Comitology Decision (2008/2096(INI)), A6-0345/2008, 15.09.2008, http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A6-2008-0345&language=EN#title2

[23] It should be noted that whereas most of the cases of annex amendment fulfil the criteria of RPS (for example, updating in order to take account of technical and scientific developments), this should still not be regarded as an automatic rule as also in such a case it has to be verified whether all criteria are met. For example, purely technical amendments to lists of measures in annexes could not be regarded as fulfilling RPS criteria.

adjustments of the forms, specimens of which appear in Annexes to the basic act[24] as well as modifying standard forms in annexes[25]. Other cases include for example adoption of additional rules for implementation of transfers[26] or adopting of a conciliation mechanism[27], which give a considerable margin of appreciation to the Commission.

Concerning application of criteria for the RPS, there exists so far no case-law of the European Court of Justice, so the legislators have to find their way through the grey zones without its guidance. Some general guidelines established by the ECJ in its comitology case-law before the 2006 reform are of little help in this regard. For example, in the LIFE and Forest Focus cases[28] the Court emphasized the non-binding nature of the three "traditional" comitology procedures, though reminding the institutions about the obligation to give reasons for the choice of the procedure in light of the indications given in article 2 of the Comitology decision. In the Common Market Fertilizers case[29] the Court reminded of another possibility: in case no explicit mention of use of a specific comitology procedure is made in the enabling article, the Commission can adopt measures without following comitology rules (for instance, it can convene 'a group of experts', which in practice may consist of same experts who are representatives in the comitology committees, without being bound by their opinion). This freedom of choice for the legislators, which applies to the three traditional comitology procedures (advisory, management and regulatory), could not however be exercised for the RPS due to its binding nature.

4.3.3 Timeframes: important aspect of practical consequences of recourse to the RPS

The importance of the creation of RPS as a form of extensive ex ante control by the legislator can certainly not be underestimated, as this is a great step towards legitimation of adoption of quasi-legislative measures by the executive on the EU level. Still there is one difficult issue to be settled in practice: the question of having recourse to shortened deadlines and to the urgency mechanism. As the procedure becomes longer and heavier, it will take goodwill from the part of the legislator to guarantee that the effectiveness of the comitology system will not be hampered down as a consequence of this important step and that the procedure for adoption of quasi-legislative measures would not start resembling the ordinary legislative procedure in practice.

---

[24] Article 74(2) of Council Regulation 44/2001 of 22.12.2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.
[25] Article 31 of Regulation 805/2004 of the EP and Council of 21.04.2004 creating a European Enforcement Order for uncontested claims.
[26] Ibid, article 19(5).
[27] Article 15(5) of Regulation 343/2003.
[28] C-378/00 "LIFE" (21.01.03) and case 122/04 Commission v European Parliament and the Council (Forest Focus).
[29] Case C-443/05 P Common Market Fertilizers SA v Commission

In the comitology decision the default deadlines for legislators to examine the draft measure falling under RPS have been set to three months in case of a positive opinion by the committee and to two plus two months in case of a negative or no opinion of the committee (these months are added to the time of consideration of the draft in the comitology committee). Because of its different working methods, especially its habit of deliberating in the timeframe of legislative procedure, already these standard deadlines foreseen for RPS are hard to manage for the European Parliament. In practice these deadlines are likely to become even longer, as the Commission and the EP have agreed that the former would, when transmitting draft implementation measures to the EP, take into account the latter's periods of recess - winter and summer holidays as well as European elections[30].

In order to ensure full effectiveness of the measures, or for the grounds of public safety, in addition to standard deadlines, also possibilities to shorten the deadlines or to have recourse to the urgency procedure are foreseen[31]. Because of the reasons described above, the EP has reason to be reluctant to give effect to these possibilities – seeking deletion of provisions on curtailed timelimits or the urgency procedure is highly on the agenda also in EP reports on the omnibus proposals[32]. Certainly, the need for recourse to these elements of flexibility in implementation of the RPS has to be carefully weighed case by case. The limits posed by the internal procedures of the Parliament should still not become a determining factor in deciding upon necessity of shortened time limits. In case the Parliament would make necessary adjustments to its internal procedures, this would help to ensure a truly balanced outcome, establishment of the RPS having increased legitimacy and democratic control in the implementation phase[33] without reducing the level of effectiveness beyond reasonable limit.

---

[30] Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC (OJ C 143/1 10.06.08). It should be noted that this however does not apply in cases where shorter timelines or urgency procedure has been foreseen in the basic act.

[31] According to article 5a(5)(b) of the comitology decision, time-limits can be either curtailed on the grounds of efficiency, or extended by an additional month, when justified by the complexity of the measures. Article 5a(6) of the Comitology decision envisages an urgency procedure, with a possibility for the Commission to take measures, which shall immediately be implemented, right after the delivering of a positive opinion of the committee. The Council and Parliament can exercise an ex post control in these cases. In event of their opposition, the measure shall be repealed, with a possibility of maintaining it provisionally if warranted on health protection, safety or environmental grounds.

[32] For example, EP report on the proposal for a regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny – Adaptation to the regulatory procedure with scrutiny – Part Four. 08.07.2008. A6-0301/2008.

[33] The European Parliament has sought itself a role in the implementation phase, for which there is little comparison in national decision-making systems. See also Hix, S (2000) „Parliamentary oversight of executive power: what role for the European Parliament in comitology" and Neuhold, Christine „Taming the „Trojan Horse" of Comitology?", European Integration online papers, underline the uniqueness of the

new prerogatives of the legislator on the EU level, whereas M. Shapiro refers to the United Kingdom as a rare case in which powers of the legislator are even broader.

5. Conclusion: The Future of the Comitology System

At its heart, comitology is a compromise between administrative efficiency and democratic accountability (Christiansen and Vaccari, 2006). The precise point where the balance is to be found is necessarily a political decision and has shifted over time. The comitology process has been opened gradually as the EU has come under increasing pressure to improve transparency and accountability (Türk, 2003;).

The new regulatory procedure with scrutiny reflects the inherent tension between efficiency and accountability and has moved comitology towards the latter (Schusterschitz and Kotz, 2007). Directly elected politicians will now be able to veto many politically sensitive decisions. The price paid for this greater accountability is the greatly increased time the new procedure will take to produce rules.

Whilst waiting for the additional elements for an evaluation of the 2006 reform, the eyes of the stakeholders are already also on the future of the comitology system. Even though there is still no clarity on the possible entry into force of the Lisbon Treaty, there are grounds for analysing the possible implications of its provisions on comitology, which are linked with broader visions of the main stakeholders in the comitology system.

In its very core, comitology is an embodiment of an endless balancing between the intergouvernmental and supranational methods of decision-making, trying to reconcile different visions and considerations. It reflects the system of plurality of stakeholders, with an important role given to the Commission as the supranational executive, whilst however respecting the need to guarantee flexible implementation by taking into account the specificities of Member States, who implement the common rules "on the ground". Continuous evolving of the comitology system is a mirror of more general developments in the EU decision-making system. This is also true of the deepening democratization process increasing the role of the European Parliament (Bradley, 1997), which manifests itself also in the changes to the comitology system foreseen in the Lisbon Treaty.

Sketching in a few lines the changes in the Lisbon Treaty, as the first element it should be underlined that it makes a distinction on primary law level between purely implementing measures and quasi-legislative acts, which it calls "delegated acts". For the delegated acts, the definition of which resembles to a large extent to that of the RPS measures, important procedural changes are foreseen in the Treaty of Lisbon[34]. Among them is a right of either of the legislators to revoke delegation of implementation powers to the Commission, i.e. the "call-back right"[35]. This would

[34] According to the new numerotation, the new article on delegated acts is numbered 290. See the codified version of the treaties, with the Treaty of Lisbon incorporated, OJ C 115, 09.05.2008, p 47 – 199, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF.

[35] Article 290 firstly outlines the definition of acts falling under its scope: a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend

need to gather majority of component members of the Parliament or qualified majority in the Council. For the Council this would mean weaker possibilities for blocking, because instead of blocking minority rule foreseen in the RPS, there would be a need to gather qualified majority against the act, which would make the procedure more similar to the current management procedure from the point of view of the Council. Although the adoption of a horizontal legal framework is not mentioned in the new Treaty, for reasons of clarity and legal security it would seem reasonable for the institutions to agree upon horizontal rules, so that they would not have to be negotiated separately for each basic act.

The Parliament has called for a new general alignment of the acquis to this new procedure for delegated acts[36]. However, by the time the Lisbon Treaty can enter in force, the existing acquis would already be aligned to RPS, which in substance gives the EP rights comparable to those it would have under the Lisbon Treaty provisions. Bearing this in mind, it would not be reasonable to proceed to a new time-consuming general alignment exercise, but rather align the existing acts on a case by case basis in course of the revision of the legal acts.

For the implementing acts the situation is clearer as the Lisbon Treaty foresees that the legislators would have to lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[37]. In principle, this has already been done by the current comitology decision, which will remain in force also after the entry into force of the new Treaty (except for the part concerning RPS). Even in case the Commission would present a proposal for a new regulation to be adopted by the co-legislators (the present comitology decision is adopted by the Council by unanimity), the system could remain almost the same as under the current comitology decision. One of the issues to be addressed in this case would be procedural implications of the explicit reference to Member States instead of Council as the authority exercising the control.

For the Council and Member States it would clearly be natural to favour a system as similar to the present one as possible. They have a legitimate interest to defend: keeping it is the Member States who ensure application of Community Law on the ground, so their possibility to influence the process and to be able to refuse drafts that pose a problem for a large number of Member States, is absolutely vital. The Parliament would most likely use all the means it disposes in order to maximize the increase of its powers under the new Treaty, which will further increase legitimisation of the comitology system. The Commission could play a balancing

---

certain non-essential elements of the legislative act. Article 290(2) stipulates that legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows: (a) the European Parliament or the Council may decide to revoke the delegation; (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

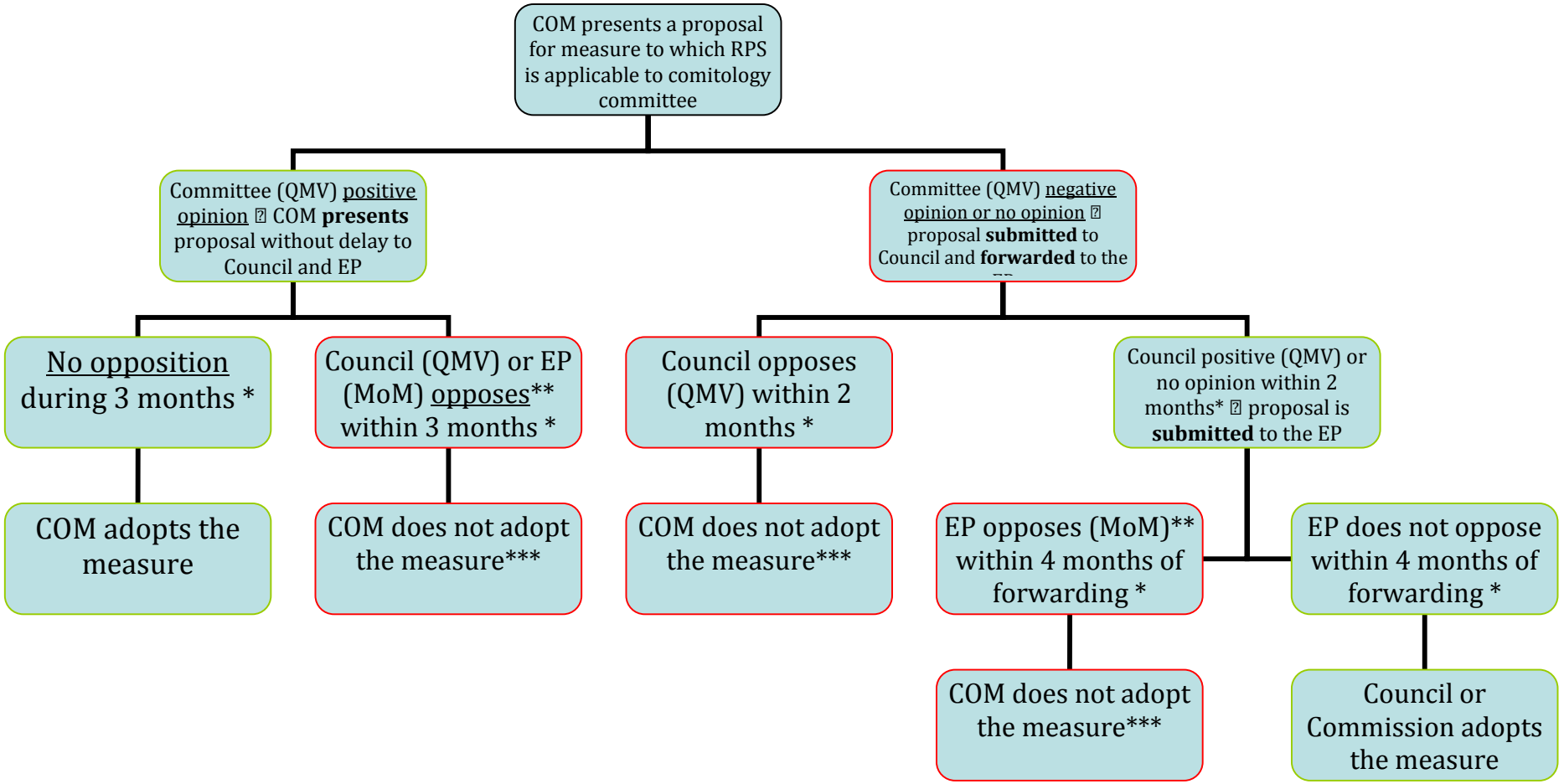
[36] Report of the Legal Affairs Committee, A6-0345/2008.

[37] Article 291(3) of the Treaty on the Functioning of the European Union (after renumbering according to the Lisbon Treaty).

role, but would naturally be aiming at being as little restrained by outside control as possible when taking implementation measures or adopting delegated acts.

Although it has been less outspoken about its vision than the Parliament, ithe Commission could be regarded as another potential winner if the Lisbon treaty were to enter into force. In addition to advantages that the new procedure could present for it, the latter is also hoping that broader legislative control for adoption of the delegated acts would in turn amount to wider use of delegation thus increasing its powers (Szapiro, 2006).

In conclusion, the 2006 reform has been an important step in increasing accountability and legitimacy of the comitology system. It does not however constitute a final set in the power game, which would be bound to continue soon, should the Lisbon Treaty enter into force. Ambitions of the institutions are intertwined here with considerations of efficiency, accountability and legal security and every step on this road needs to be carefully balanced, taking into account the important impact it is having on the supranational rule-making, which affects daily life of the citizens and entities of the Union.



* Timeframe can be modified in the basic act: extended by 1 month or curtailed (no specific limit). There is also a possibility for urgency procedure (art 5a(6)).
** A justification needs to be given: exceeding implementing powers, incompatibility with aim and content of basic act or not respecting principles of subsidiarity and proportionality (art 5a(3)(b)).
*** Commission may submit amended draft measure or present a legislative proposal.
MoM – EP is acting by a majority of its component members

Glossary:

Advisory procedure
one of the five Comitology procedures and is defined in the Comitology Decision 2006/512/EC as *default procedure* (Art. 3).

AM
abbreviation for **A**bsolute **M**ajority. AM is a voting system requiring that more than half of all member of a group (including those members not present or abstaining) vote in favour for a proposal in order for it to pass.

Comitology committees
established by the Council and chaired by the European Commission, Comitology Committees consist of experts from each Member State who are deciding about the technical details of implementing measures. The legal base of Comitology Committees can be found in Art. 202 EU, where the Council refers the implementing power to the European Commission. In this sense Comitology Committees support as well as control the Commission by executing this implementing power. A list of all Comitology Committees can be found at: http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en

Comitology Decision
Decision of the Council (legislative act), based on Art.202 and adopted by unanimity, which provides horizontal rules and procedures for the work of comitology committees.

Implementing act
act which implement a basic (legislative) instrument, adopted by the Commission, assisted by comitology committees.

Lamfalussy procedure
special comitology procedure used in the field of financial services.

Lisbon Treaty
also known as "Reform Treaty", was signed in Lisbon on 12 December 2007 and is due to ratification in 2008. The Treaty of Lisbon is the result of the so called "reflection period" that set in after the Constitutional Treaty failed to be ratified in 2005. The full text of the Treaty of Lisbon can be retrieved from:
http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf

Management procedure
one of the five Comitology procedures financial support programmes and agricultural markets (Art. 4)

´Omnibus proposals
term referring to the screening process of the Commission of the whole codecision *acquis*: 4 ´omnibus´ proposals have been adopted. They including approx. 220 legislative acts that are aligned to the new Comitology regulatory procedure with scrutiny.

PRAC
French abbreviation for ***p**rocédure **r**églementaire **a**vec **c**ontrôle* (→ regulatory procedure with scrutiny).

QMV
abbreviation for **Q**ualified-**M**ajority **V**oting.

´Quasi-legislative measure

measures to which the Regulatory Procedure with scrutiny applies, as set down in the Comitology Decision 2006/512/EC, Art. 5a. Quasi-legislative measures are all those measures that are changing the legal content of a basic legal act: thus, they are either *amendments* of regulations or directives (for instance, adaptation of technical annexes to scientific progress); or provisions that *supplement* the rules in the basic legal act.

Regulatory procedure with scrutiny

one of the five Comitology procedures which was introduced by the Comitology Decision 2006/512/EC. It is applicable to codecision files and for measures of general scope designed to amend non-essential elements of the basic act, by deleting some of those element or by supplementing them by the addition of non essential elements (Art.5 a).

Safeguard procedure

also known as Urgency Procedure, is one of the five Comitology procedures which grants the Commission a high degree of discretionary power. Before adapting a foreseen measure, the Commission only communicates it to the Member States without systematic consultation. However, the safeguard procedure is rarely used and only applies in cases of urgency (Art. 6).

Simple majority

a voting system that requires more than 50% of all ballots cast in order for a proposal to pass.

References:

Bergström, Carl. F. (2005) Comitology- Delegation of Powers in the European Union and
the Committee System, Oxford: Oxford University Press.
Bradley, Kieran (1997) The European Parliament and Comitology: On the Road to
Nowhere?, European Law Journal, 230- 54.
Christiansen, Thomas and Beatrice Vaccari (2006) The 2006 Reform of Comitology:
Problem Solved or Dispute Postponed?, Eipascope 3.
Egeberg, Morten et al. (2003) The Many Faces of EU Committee Governance, West
European Politics 26(3), 19- 40.
Rhinard, Mark (2002) The democratic legitimacy of the EU Committee System,
Governance 15(2), 185- 210.
Shapiro, Manuel (2006) Comitologie: rétrospective et prospective apres la réforme de
2006, Revue du Droit de l'Union Européenne 3/2006, p 545-586.
Schusterschitz, G. and S. Kotz (2007) The Comitology Reform of 2006. Increasing the
Powers of the European Parliament without Changing the Treaties, European
Constitutional Law Review 3, 68- 90.
Türk, Alexander (2003) 'Transparency and Comitology', in Christoph Demmke and
Christian Engel (eds), Continuity and Change in the European Integration
Process. Maastricht: EIPA, pp. 175- 198.
Vos, Ellen (1999) Institutional Frameworks of Community Health and Safety Legislation.
Committees, Agencies and Private Bodies, Oxford: Oxford University Press.

Recent case-law of the European Court of Justice:

C-378/00 Commission v Parliament and Council (LIFE), 21.01.2003, Rec.2003,p.I-937

C-122/04 Commission v European Parliament and the Council (Forest Focus), 23.02.2006, Rec.2006,p.I-2001

Case C-443/05 P Common Market Fertilizers SA v Commission, 13.09.2007, Rec.2007,p.I-7209

Cases C-14/06 and C-295/06 European Parliament v Commission (DecaBDE), 01.04.2008