

COMITOLOGY

New power for the assembly

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At EU level, legislation (directives, regulations) is adopted by the Council of Ministers in a consultation procedure or by the Council of Ministers and the European Parliament together in co-decision. This 'visible' power - annually producing approximately 30 to 40 pieces of Community legislation under co-decision - is just the tip of the iceberg.

A second tier of EU legislation, so-called 'derived' legislation, takes the form of implementation measures adopted by

not exist. Therefore, comitology was a procedure in the hands of the Commission and the Council of Ministers. The European Parliament was not involved.

■ In 1992, with the Maastricht Treaty, the European Parliament became a co-legislator. MEPs were, however still cut off from any power with regard to implementation measures. Comitology really became a thorn in the European Parliament's side.

■ To respond to the European Parliament's growing concerns, a marginal reform of comitology was agreed upon in 1999. On that occasion, the European

THE REFORM OF COMITOLOGY DID, HOWEVER, TAKE PLACE IN 2006 ALBEIT IN A MORE OPAQUE AND INDIRECT WAY WITH THE ADOPTION OF DECISION 2006/512.

The 2006 reform leads to two major changes and one important consequence.

The first major change consists in the splitting up of implementation measures into two categories: quasi-legislative measures and implementation measures *stricto sensu*. Quasi-legislative measures are a new intermediate category of acts keeping the middle between pure implementation measures and legislation. A screening/alignment process (see below) will define which measures will be quasi-legislative and which are classical execution measures *stricto sensu*.

The second change is the introduction of a new procedure called "regulatory procedure with scrutiny" that will be applied when regulatory committees deal with quasi-legislative measures.

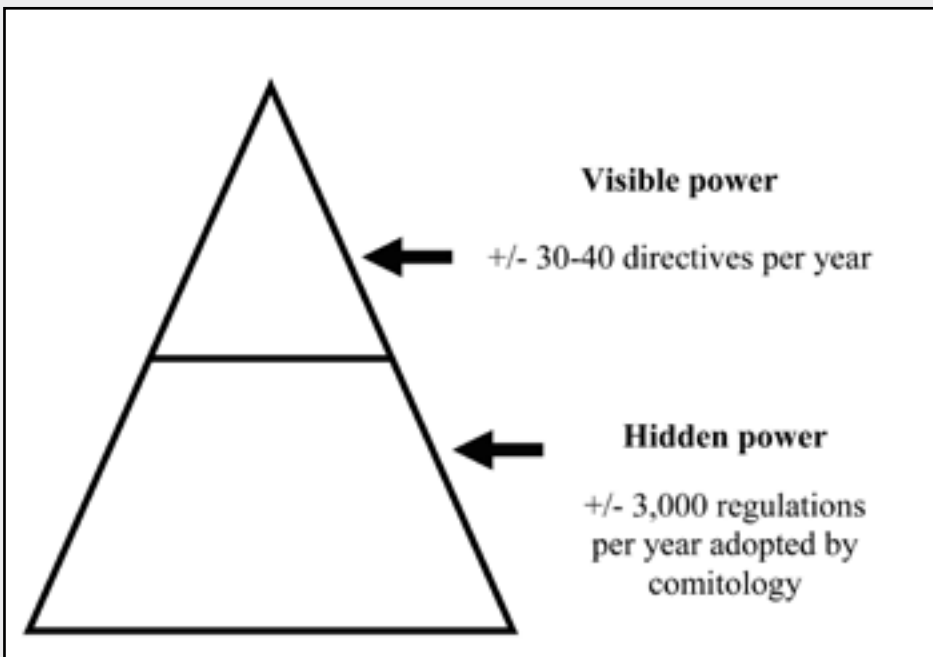
The new procedure provides a veto right for both the Council of Ministers and European Parliament. The European Parliament can only veto with an absolute majority of its members; the Council can only veto with qualified majority. Both the European Parliament and the Council of Ministers must justify their veto.

A crucial consequence of this new comitology, is the so-called alignment or screening. An estimated 200-250 directives and regulations will be screened and amended through a co-decision process to redefine the perimeter of implementing measures and to differentiate between quasi-legislative measures and implementation measures *stricto sensu*. A selection of 26 legal acts is currently being screened, a process that is nearing its end.

CURRENT STATE OF PLAY

Although the priority screening of the 26 predefined legal acts started at the end of 2006, the revision process is still not concluded 20 months later. This clearly shows the slowness of the entire procedure.

The slow-down is mainly due to a diverging approach between the Parliament and the Council. The Parliament



comitology. Over 3,000 implementation measures are adopted annually.

This simple comparison clearly shows the growing importance of implementation measures and comitology.

A SUBSTANTIAL ROLE

■ Comitology was created in 1987, allowing the Council of Ministers to delegate the adoption of implementation measures to the Commission. With the Single Act, the European Communities were in need of a swift procedure for implementation.

■ In 1987, the European Parliament's powers were limited and co-decision did

Parliament was attributed an information right as well as a limited right to express its opinion on implementation measures.

■ The Commission did not respect the information right either by not informing the Parliament altogether or by informing it extremely late of implementing measures. The 1999 concessions to the European Parliament were in any case insufficient inciting it to continue its campaign for a more substantial reform of comitology.

■ Under pressure from the Parliament, the draft Constitutional Treaty foresaw a major reform of comitology. However, as we all know, the Constitutional Treaty died following two negative referenda in France and the Netherlands.

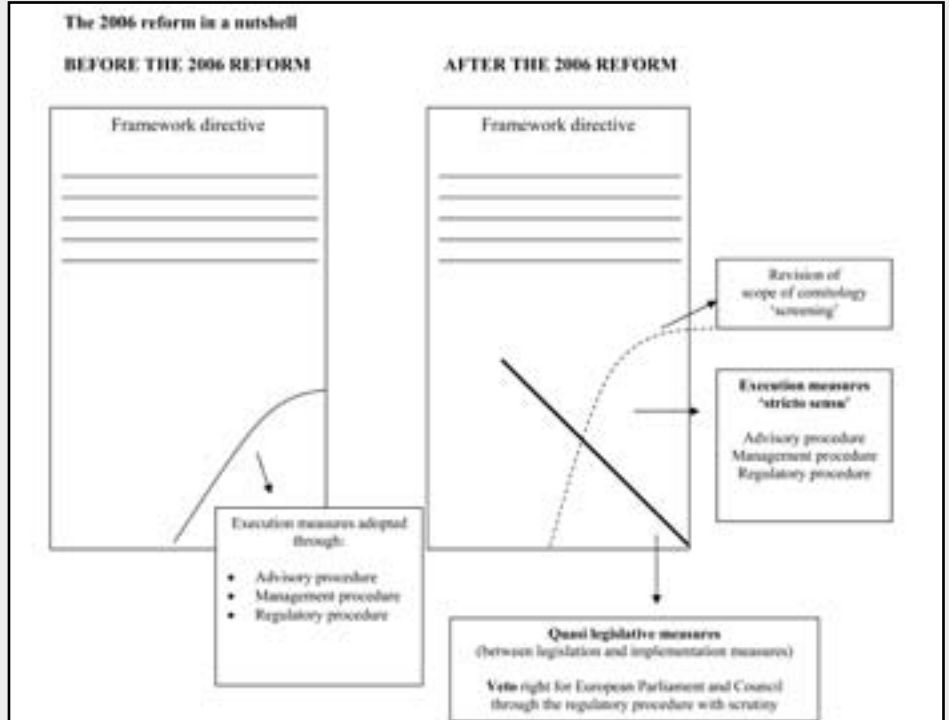
deals with the screening of the various legal acts on a case-by-case basis, processing them first in parliamentary committees and then in the plenary session. The Council, however adopts an “omnibus” approach, meaning that approval on the revision of all 26 acts is awaited. The Parliament is in the meantime unable to exercise its newly obtained veto right.

As this priority alignment is being finalised, the Commission has published an additional list of legal acts for general alignment (COM (2007) 740 final). The listing consists of approximately 200 texts requiring screening. At the end of 2007, the Commission published the first proposals for revision in the context of this general alignment. When the entire screening process will be finalised is a big question mark. The impact of the new Lisbon Treaty on the screening is another issue and may well further delay the process altogether.

IMPACT ON PUBLIC AFFAIRS

Whether one welcomes the new comitology or not, one thing is sure: the European Parliament becomes an unmistakable actor when it comes to implementation measures. This has some serious repercussions in terms of public affairs (PA) practices.

Anticipation will first of all become the guiding principle for any PA action with regard to comitology. Upstream monitoring and lobbying is the only viable option, not only with regard to Commission and Council but most certainly also with regard



to the European Parliament. Waiting for a potential veto or counting on one, could very well be an illusion as the institutional actors involved will negotiate and compromise ahead of the actual start of the regulatory procedure with scrutiny.

Contacts and cooperation between industry and NGOs in transversal alliances will be more imperative than ever given the Parliament’s growing role in technical matters and its natural reciprocity to NGOs.

Finally, the new comitology will have important consequences in terms of communication. The need to explain complex, technical concepts and arguments

to politicians is a challenge in itself and will require effort and particular attention on behalf of all PA practitioners. Although the changes to comitology are substantial, the new Lisbon Treaty will – once ratified – further increase the power of the European Parliament when it comes to implementation. The Parliament (and Council) will be able to not only restrict the delegation in terms of time, but will also be able to revoke the delegation of implementing power altogether. ■

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