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Comitology between Political Decision-Making and Technocratic Governance: Regulating GMOs in the European Union



Thomas Christiansen* and Josine Polak**

The EU's comitology system is generally considered to be an effective mechanism for facilitating efficient policy implementation while at the same time ensuring a degree of Member State control over the process. However, if this assessment is applicable to most areas of routine decision-making, the regulation of GMO authorisations by the European Commission, which also falls under comitology, presents a markedly different picture. The article shows the particular problems that occur in this field, outlining the involvement of a number of different actors (comitology committees, Council, European Commission and the European Food Safety Authority (EFSA) and their interaction in what has become a complex and protracted policy process. The article identifies a number of key issues – the reliance of the Commission on EFSA's scientific expertise, the weakness of political accountability due to divisions among the Member States, the difficulties of the European Commission to achieve compliance with European and international rules – and discusses the impact that these have on the legitimacy, efficiency and effectiveness of policy-making in this area. The article concludes that, due to the problems arising from the particular arrangement of interests and procedures in this area, the operation of comitology in the regulation of GMOs is highly problematic.

Introduction¹

Technological advance has led to important changes in many areas, and in the process has created new challenges for the regulatory activity of public bodies. One area that has caused particular controversy has been that of genetic modifications to organisms. Genetically-modified organisms (GMOs) have been introduced in a range of foodstuffs and animal feeds, leading to debates about the balance between the benefits and the risks associated with this technology. Across the world, authorities have had to make choices concerning the regulation of GMOs, be it about permissions for industrial trials, the cultivation of GMO crops, or the authorisation of trade in GMO products.

In Europe, the challenges related to the regulation of GMOs are met within the decision-making process of the EU. A number of legislative acts have established a regulatory framework for the authorisation of cultivation, import, use and sale of GMOs and their placing on the market as food or food ingredients. Within this framework, powers to decide on individual applications from market operators are delegated to the European Commission, which in turn is working with both Member State representatives through comitology committees and scientific experts, especially through the European Food Safety Authority (EFSA).

This article looks at the operation of comitology in the area of GMO authorisations. This area is interesting, given that in the regulation of GMOs comitology constitutes a forum for the deliberation of a highly politicised issue, on which the Member States are often deeply divided. At the same time, it is a highly technical issue, and comitology provides for detailed procedures of administrative and technocratic governance in the European Union. We seek to illustrate the difficult issues arising in this context: in delegating powers concerning the authorisation of GMOs to the European Commission, the EU's legislative institutions have not only passed on technical decisions to the EU's executive and scientific experts. To a large extent, this delegation of powers also implies that de facto it is the European Commission that has the final say on the shape of EU policy regarding GMOs, as Member States are divided among themselves and therefore not able to muster the qualified majority in Council that would be required to block the Commission's proposed authorisations. The Commission, in turn, relies heavily in its decision-making on the scientific opinions provided by the experts in EFSA.



Even such a brief summary of the state of play regarding GMO regulation in the EU highlights two points: first, this is a very complex area of EU regulatory governance in which predictions about policy-outcomes are hazardous; and, second, there is a very peculiar balance between technocratic governance and political decision-making. This article seeks to contribute to a better understanding of the relationship between technical expertise and political decision-making in this particular field, and thereby to illuminate the functioning of comitology in a crucial area of EU regulatory governance.

In order to do so, we first elaborate briefly in the following section the functioning of the comitology system in general, before then discussing the regulatory framework for the authorisation of GMOs and the respective involvement of the European Commission, Member States' representatives and

scientific experts in more detail. We illustrate the decision-making process of GMO authorisations by looking at one individual case in more detail. We then analyse this situation by examining a number of key issues arising from the discussion: firstly, the demands concerning risk regulation that the EU decision-making procedure has to address; secondly, the degree of political control that is being exercised over European officials and scientific experts to whom powers have been delegated in the GMO area; and thirdly, the challenges concerning legitimacy and effectiveness of GMO regulatory activity that arise from this situation. By way of conclusion, we assess the state of play of GMO regulation against the background of the preceding analysis, and look ahead to the future challenges in this area.

Comitology in Practice: The Case of GMOs

Before looking in greater detail at the specific area of GMO authorisation in the EU, we first need to take a brief look at the nature of comitology more generally. The development of this system of implementing committees has been the

focus of a growing body of literature² which has established the historical trajectory and key issues involved. Comitology was an ad hoc solution in the 1960s to assist with the implementation of the Common Agricultural Policy (CAP). The delegation of powers to the Commission and the supervision of the Commission's use of these powers through committees composed of Member States' representatives was considered a convenient mechanism to satisfy both the search for greater efficiency and the desire by Member States to maintain a degree of control over the process.

Since then, comitology has gone through a number of reforms aimed at making procedures more systematic and transparent, but above all to allow the European Parliament, as co-legislator in most of EU law, a degree of oversight about the way implementing committees work. With the most recent reform of the Comitology Decision in 2006, introduc-

ing a new 'regulatory procedure with scrutiny', the Parliament now has the power to veto implementing acts proposed by the Commission under this procedure.

The comitology system has expanded significantly over time. It now encompasses approximately 264 committees³ and the European Commission is adopting on average more than 2500 implementing acts that have first gone through comitology. Despite the administrative burdens associated with this process, the system appears to function smoothly, with the Commission able to adopt more than 99 per cent of the implementing measures submitted to committees. Given how few cases are being referred to the Council under the management and regulatory procedures, the comitology system appears to satisfy its dual role of providing efficiency and ensuring a degree of Member State control over the process of implementation.⁴

However, while this is the general picture of comitology that is reflected both in the official reports issued annually by the Commission and by the academic literature on the subject, we are interested here in what happens in the fraction of cases where the Commission is at least initially blocked from implementing the proposed measures – which is the area of authorising GMO products. More specifically, we intend to look at the functioning of the system concerning the authorisation of GMOs to be placed on the market under Regulation 1829/2003/EC on genetically modified food and feed.

Rapid technological changes within the field of GMOs require decisions on this issue to be taken swiftly and efficiently, and the comitology system – designed with precisely the intention of speeding up EU decision-making on technical issues – is in theory well suited to deal with this issue. However, what may be observed within this area is that the relevant regulatory committee involved – the Standing Committee on the Food Chain and Animal Health (SCFAH),⁵ Section on 'Genetically Modified Food and Feed and Environmental Risk' – is consistently unable to deliver opinions on the Commission's draft decisions regarding authorisation of GMOs to be placed on the market. As a matter of fact, an examination of the relevant voting records suggests that the committee did not manage to deliver an opinion on any of the fifteen draft decisions for authorisation submitted by the Commission since the establishment of this committee in 2002,⁶ either because the required qualified majority could not be achieved or due to a lack of any vote taken before the expiry of the proscribed time period. The reason for this state of affairs is not so much that the Member States as a whole disagree with the Commission on this issue, but rather that there are divisions among the Member States which make it virtually impossible to achieve a qualified majority either in favour or against the authorisation of GMO foods.

Under the regulatory procedure that is being applied in these cases, the absence of an opinion either way means that dossiers regarding the authorisation of GMOs under this Regulation are referred to the Council. This in turn implies a prolongation of a procedure that, as mentioned before, was originally designed to enhance the efficiency of EU decision-making. However, swift decision-making is then compro-

mised further as the divisions on this issue also proliferate within the Council itself.⁷ Opinions on the matter of GMOs are not only fairly evenly divided among the Member States, but are also politically charged, with most actors set in rather entrenched positions on this matter. As a result, the Council is not in a position to overrule the European Commission (something that would again require a qualified majority) which means that ultimately the decisional responsibility regarding authorisation reverts back to the Commission. At the end of the day, therefore, it is the European Commission which is finally taking the decision on application authorising GMOs to be placed on the market,⁸ even though these are never endorsed by a qualified majority of the Member States.

This state of affairs raises serious questions about the accountability of EU governance; to put it bluntly, it implies that the more controversial implementation in a given area of EU decision-making is, the more likely it is, in the end, that regulatory decisions are taken by the European Commission – an unelected body that actually relies heavily on the advice it receives from a decentralized agency such as EFSA in coming to its own decisions. Before exploring in greater depth the wider implications of this state of affairs, the following section will briefly illustrate the actual process of implementation in the case of one particular application for the authorisation of a new, genetically-modified maize with the official name 'MON863'.

The MON863 'story' started in July 2002, when Monsanto Europe S.A. filed an application with the relevant authority in Germany requesting authorisation to place on the market its genetically modified maize line MON863. The respective German authority then conducted an assessment study on its safety⁹ and presented an initial assessment report – indicating that additional assessment was needed – to the Commission's Directorate-General of Health and Consumer Protection (DG SANCO) in April 2003.¹⁰ The Commission subsequently circulated the report amongst the relevant competent authorities of all Member States, following which they communicated their comments on this report to the Commission.

As a matter of fact, several Member States raised objections regarding a potential authorisation in this case. The subsequent informal conciliation phase resulted in deadlock as several Member States maintained objections, and the Commission consequently requested a risk assessment opinion from EFSA. Following the conclusion of this risk assessment study, EFSA's GMO Panel came in April 2004 to the conclusion that MON863 was safe.¹¹ However, the subsequent circulation by the German authority of an evaluation report questioning some aspects of a study carried out by Monsanto for the authorisation of MON863¹² compelled the Commission to refer the case to the EFSA again so that it could conduct a retrospective evaluation of the data derived from the study. This evaluation resulted in a re-confirmation that "the placing on the market of MON 863 maize is unlikely to have an adverse effect on human and animal health or the environment in the context of its proposed use."¹³ Based on these consecutive positive scientific opinions from EFSA, the Commission then submitted in May

2005 its draft decision to authorise the placing on the market of MON863 to the SCFCAH for discussion and voting.¹⁴

However, as suggested above, the vote in the SCFCAH did not deliver a qualified majority either in favour or against the draft¹⁵ and the matter was now referred to the Environment Council. The subsequent lack of a qualified majority either for or against the authorisation in Council in October 2005 meant that the matter now returned to the Commission, allowing it to adopt its original proposal after all.¹⁶ In January 2006, despite a further critical report on the safety of MON863,¹⁷ written parliamentary questions regarding the alleged shortcomings of the Monsanto study referred to earlier,¹⁸ a simple majority of Member States in the Environment Council being against authorisation,¹⁹ and a negative public attitude towards GMOs in general,²⁰ the Commission nevertheless went on to adopt Decision 2006/68/EC authorising the placing on the market of foods and food ingredients derived from MON863.²¹

GMO Authorisation: The Challenge for Comitology

The way in which the authorisation process unfolded in this case stirred up a broader debate that focused on the virtues of science-based regulation as well as on the merits of the comitology regulatory procedure within the specific area of GMO regulation. It demonstrated that, while the comitology procedures seem to work extremely well for routine decision-making, there might be problems in those rare cases like GMO authorisation where the issue is politicised and Member States' positions are divided. The following section examines more closely the key issues at stake: the challenges to risk regulation under conditions of relative uncertainty; the degree of political control that is being exercised over technocrats and scientific experts; the relationship between the European Commission and a scientific advisory body such as EFSA; and more generally the legitimacy and effectiveness of regulatory mechanisms in an area such as this.

The Role of Experts regarding the Regulation of 'Uncertain Risks'

One of the focal points in this context concerns the high degree of reliance on scientific expertise within this particular area of risk regulation. The significant role of such expertise derives not only from the nature of the subject-matter, but also from the legislative framework itself. EU legislation stipulates that Commission decisions regarding authorisation "have to be based on risk assessment"²² and has clearly defined the subject of GMO regulation as "an expert scientific issue... kept separate from socio-ethical issues".²³

However, the reliance of those charged with the responsibility for risk management, the European Commission, on those responsible for risk assessment, the scientific GMO Panel at the EFSA, is further magnified: although the Commission is formally only expected to "[take] into account the opinion of the [EFSA]";²⁴ it has turned out in practice to be virtually impossible for it to deviate from this opinion. The justifications for diverging from such an opinion "must

be of a scientific level at least commensurate with that of the opinion in question",²⁵ and the Commission simply does not command the resources to provide the strong scientific basis for an objection that would be legally required. Thus, it comes as no surprise that in every single case where a GMO authorisation was at stake, the Commission proposed to approve the placing on the market of the GMO product in line with the EFSA's opinion. As a matter of fact, this state of affairs serves as an apt illustration of the de facto centre-stage position that EFSA has in this regulatory process.

The need for scientific expertise in the regulation of GMO authorisations therefore clearly leaves the European authorities with a dilemma: on the one hand, the Commission cannot but rely on the expertise of EFSA, but doing so does raise questions about the legitimacy of decisions which ultimately have to be taken by institutions that are politically accountable. A critical issue therefore is the relationship between political decision-makers and scientific experts.

The European Commission and EFSA in the Regulatory Process

In the EU, the use of scientific expertise in the regulation of GMOs depends on the direction which Commission and Member States' representatives have given to decision-making in this policy-area. As pointed out previously, however, both the comitology committee (SCFCAH) and the Council have consistently been unable to achieve a qualified majority regarding draft decisions for GMO authorisation. This has meant that decisional responsibility has always reverted back to the European Commission. In effect, neither the re-presentatives in the comitology committee nor the Ministers in the Council have been able to indicate the direction that member states wish to take in this process. Even if written parliamentary questions regarding the authorisation of MON863 triggered a debate on risk assessment standards and the role of the EFSA with the responsible Commissioner Kyprianou,²⁶ the perception must be that Member States are actually too internally divided to provide political leadership on this issue. De facto, decisions have been made by 'unelected bureaucrats', following advice from independent scientists. Not only risk assessment, but also risk management, has been conducted outside the political arena.

The resulting 'political deficit' regarding GMO authorisations may be considered problematic for two reasons. Firstly, the effect of it is that the Commission has de facto been endowed with the responsibility for adopting decisions that, without exception, approve the placing on the market of GMOs notwithstanding the political disagreements among the Member States in the Council and even the resistance to such authorisations by a (simple) majority of the national delegations in some cases (e.g. MON863). Although the Commission has declared that it would refrain from going against a "predominant position" in the Council on matters of sensitivity,²⁷ the obligation in the Comitology Decision that "the proposed implementing act shall be adopted by the Commission"²⁸ makes it quite difficult, if not legally impossible, for the Commission to abandon its draft proposals to authorise. However, given the political nature of this uncertain and highly-sensitive area of governance, the

limited degree to which the Member States are able to lend direction to the process and, in contrast to that, the influence exerted by technocrats and scientists – even if legally justified – may certainly be considered contentious.

The limited effectiveness of political control is also problematic because of the Commission's performance as a risk manager vis-à-vis EFSA. The establishment of EFSA as a non-majoritarian agency was very much driven by the recognition of the widely accepted need to separate risk assessment and risk management; something which was



done by explicitly denying the EFSA any regulatory powers. Indeed, the Commission strongly emphasised that "risk management must be left to an institutional framework with full political accountability" and insisted that "the drafting and making of legislation will remain the responsibility of the Commission, the Parliament and the Council".

However, in practice the Commission's decisions have largely confirmed the opinions given by the EFSA.²⁹ This suggests that not the Commission, but rather EFSA itself may in a sense be seen as the de facto risk manager. In the context of the regulation of uncertain risks,³⁰ where risk assessment standards are subject to debate, the limited influence of those political institutions that are ultimately in charge of decision-making, may be seen as detrimental to the legitimacy of EU policy in this area.

Member State Responses to EU-Level Implementing Decisions

Taken together, these observations may lead to the consideration that there may well be a need to re-examine the legitimacy potential of the existing procedure for the regu-

lation of GMOs: in a situation where sensitive, value-laden choices about the authorisation of GMOs are not only based on scientific advice, but where final decisions are indirectly made by an unelected body, concerns regarding the extent to which the current procedure makes it possible to hold decision-makers to account may be considered very well justified.

On top of this, as already mentioned, the Commission's decisions granting authorisation have to confront often substantial opposition not only from a majority of Member States, but indeed also large sections of the wider public in Europe. A number of Member States have invoked safeguard clauses seeking to ban the placing on the market of certain GMOs for which EU authorisation was granted, a development that may be considered as an indication that the current practice of dealing with GMO regulations may not be the most effective mechanism to make policy in the face of divided opinions from Member States

EU legislation stipulates that for a national safeguard measure to be justified, it must be based on "new or additional evidence" which was not taken into account for the original risk assessment for the respective GMO product, and which would necessitate a review of the original scientific opinion of the EFSA.³¹ The validity of the evidence submitted by the Member State is, upon request by the Commission, assessed by the EFSA, which has without exception concluded that the information produced would not challenge its own prior risk assessment. Following up on such opinions, the Commission then submitted proposals requesting the respective Member States to repeal their provisional safeguard measures. However, it has been difficult to actually enforce the lifting of such national bans: the SCFCAH comitology committee has been unable to deliver an opinion on such proposals and the Council has – in the large majority of cases – indicated its opposition to the forced lifting of national bans.³²

The repeated rejections by the Council of the proposed Commission measures has created difficulties: firstly, as political disagreements in the Council prevent the Commission from adopting proposals that are required by both EU legislation and by international law, the EU is in constant violation of both. Secondly, this also puts the Commission in an impossible position: as the EFSA has consistently re-confirmed the safety of GMOs, the Commission could only act by re-submitting time and again the same (or slightly amended) proposal requesting a Member State to lift its ban, only to see it subsequently being rejected by the Ministers in the Council.

The protracted nature of this process and its outcomes is perhaps most aptly illustrated by the Commission's attempts to force Austria, one the staunchest opponent of the authorisation of genetically modified crops, to open its market for the genetically modified maize line MON810. The first Commission proposal requesting Austria to repeal its national safeguard measures regarding this GMO product was submitted to SCFCAH in November 2004. However, as the committee could not give an opinion on this proposal, the draft decision was referred to the Council, which, acting by

qualified majority, in its turn rejected the proposal. Following a re-confirmation by the EFSA of the safety of MON810, the Commission submitted a second draft decision to the Council requesting Austria to repeal its safeguard measures. Upon the rejection of this proposal by the Ministers in December 2006 and another reconfirmation of the EFSA that the GMO was “unlikely to have adverse effects on human and animal health in the context of its proposed uses”, the Commission again re-submitted its draft decision to the Council. However, at the Council meeting in March 2009 over twenty Member States voted against the Commission’s proposal, and thereby defeated the Commission’s attempt to lift Austria’s ban for the third time, after a process that has already lasted for more than four years at the moment of writing.³³

At the same Council meeting in March, the majority of Ministers backed another national ban introduced by Austria, and a safeguard measure notified by Hungary which the Commission had sought to get lifted for the second time. Proposals lifting national bans imposed by Greece and France have – given the absence of an Opinion in the SCFCAH – also been referred to the Council this spring. In case of further negative votes in the Council, the Commission might feel that it has no choice but to take the ‘recalcitrant’ Member States to the ECJ in order to find a solution to a very protracted issue. The Commission has done so once in the past, when the Court of First Instance, and then the European Court of Justice, upheld the Commission’s decision requesting Austria to lift its general ban on genetic engineering.³⁴

However, if anything could be derived from this discussion, it is that the Member States’ preparedness to accept each others’ explicit will on this sensitive issue prevails against their legal obligation to ensure the smooth functioning of the internal market and their compliance with international trade rules. Clearly, this broadly shared opposition amongst Member States to the enforced lifting of national bans puts in question the workability of the comitology system. This is an interesting addition to the earlier observation regarding the problems arising from the divergence of Member States’ positions regarding the authorisation of GMOs. In any case, in the light of this problem one may conclude that the effectiveness of the comitology system falls somewhat short of the expectations that one may have in it, both based on theoretical notions of its functioning and on the empirical record of its performance in any other area than GMOs.

Comitology and the Regulation of GMOs: Not a Good Match?

This analysis of the (mal)functioning of comitology procedures has focused on the particular area of GMO authorisations. As we indicated at the outset, this is not a typical case – in fact, it is an entirely exceptional field in which the ‘normal’ assumptions about comitology do not seem to apply. In any other arena, the relation between Commission and Member States representatives in comitology committees works very smoothly, with practically no referrals to the Council and a cooperative, problem solving attitude dominating the proceedings. Authors have characterised the nature of this relationship as ‘deliberative supranationalism’ and have even gone as far as seeing the evidence here for the ‘fusion’ of national and European administrative systems.

When it comes to GMO authorisations, however, we have seen how this cooperative relationship breaks down, leaving decision-making to be dominated by EU-level scientific experts and technocrats in EFSA and Commission. This means that through the comitology procedure the Commission regularly takes decisions which go against a large number of Member State positions (and against a good share of public opinion). Individual Member States then impose unilateral bans in response to Commission authorisations, and the Commission’s desire to get such bans lifted then results in protracted procedural delays and ultimately a situation of an uneven application of policy in the Union.

Given that comitology was initially designed as a mechanism to achieve an efficient implementation of policies, and that it has helped, on the whole, to engender a close and cooperative working relationship between national administrations and Member States, the way in which comitology has (not) worked in the area of GMO authorisation points to the failure of delegation in this field. The comitology procedure in this particular area can be seen to suffer both from a legitimacy deficit (due to the weak political accountability of decision-making) and an efficiency deficit (due to the inability of the Commission to overcome non-compliance by the Member States).

At the heart of the problem is the fact that Member States have delegated to the Commission (and de facto to EFSA) a power to take decisions which a number of them are unwilling to accept. The delegation of such implementing decisions to the European Commission, and the reliance on independent scientific expertise, appears to be highly problematic in an area of regulating uncertain risks such as GMO authorisation where Member States have been unable to take a clear decision either in favour or against the authorisation of GMOs in the basic acts of EU legislation.

NOTES

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- ** Josine Polak, Junior Lecturer, Department of Political Science, Maastricht University.
- ¹ The authors are grateful for research assistance and valuable comments received from Johanna Miriam Oettel. The usual disclaimer applies.
- ² See e.g. R. Pedler and G. Schaefer (eds) *Shaping European Law and Policy: The Role of Committees and Comitology in the Political Process* (Maastricht: EIPA, 1996); T. Christiansen, J. Oettel and B. Vaccari (eds) *21st Century Comitology: Implementing Committees in the Enlarged European Union* (Maastricht: EIPA, 2009); T. Christiansen & T. Larsson *The Role of Committees in the EU Policy-Process* (Cheltenham: Edward Elgar, 2007); H. Hofmann and A. Türk, *EU Administrative Governance* (Cheltenham, Edward Elgar, 2006).
- ³ European Commission (February 2008) List of Comitology Committees, online on http://ec.europa.eu/transparency/regcomitology/docs/comitology_committees_en.pdf.
- ⁴ European Commission (2005/2006/2007/2008) Report from the Commission on the Working of Committees during 2004/2005/2006/2007 (Brussels: Commission of the European Communities).
- ⁵ The SCFCAH was established by Art. 30 of Directive 2001/18 EC on the deliberate release into the environment of genetically modified organisms.
- ⁶ Figure is derived from the Comitology Register of the European Commission, online on <http://ec.europa.eu/transparency/regcomitology/recherche.cfm?CL=en> (for data until 1 April 2008) and http://ec.europa.eu/transparency/regcomitology/index_en.htm (for documents after 1 April 2008). The SCFCAH did deliver favourable opinions in eleven cases, but these did not concern authorisation Decisions.
- ⁷ Conclusion based on information provided on EurLex.
- ⁸ Conclusion based on data retrieved from EurLex. Since the establishment of the SCFCAH, the Commission has authorised the placing on the market of a number of genetically modified products. Authorisation via a Commission Decision occurred following either a negative opinion of the SCFCAH and the subsequent lack of a Council opinion, or no opinion being delivered by both the SCFCAH and the Council.
- ⁹ Commission Decision 2006/68/EC of 13th January 2006 on the placing on the market of foods and food ingredients derived from genetically modified maize line MON 863 as novel foods or novel food ingredients under Regulation (EC) No 258/97 of the European Parliament and of the Council, online on http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2006/l_034/l_03420060207en00260028.pdf. The application was made under Regulation (EC) 258/97 concerning novel food and food ingredients, the precursor of Regulation (EC) 1829/2003 on genetically modified food and feed. Under the 'old' Regulation, an applicant had to file its application with the national competent authority of the Member State where the GMO was to be placed on the market in the first instance.
- ¹⁰ Ibid.
- ¹¹ Opinion of the Scientific Panel on Genetically Modified Organisms on a request from the Commission related to the safety of foods and food ingredients derived from insect-protected genetically modified maize MON 863 and MON 853 x MON 810, *The EFSA Journal* (2004) 50, 1-25, online on http://www.efsa.europa.eu/en/science/gmo/gmo_opinions/383.html.
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21st Century Comitology: Implementing Committees in the Enlarged European Union

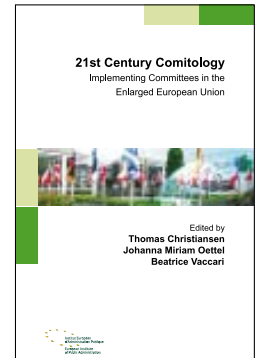
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21st Century Comitology brings together an international group of experts, from scientific scholars to policy makers, who provide an up-to-date and comprehensive account of comitology today. The book looks at comitology – the system of committees working with the European Commission to implement EU legislation – from a range of different perspectives; examining the theoretical foundations, the past evolution, the current practice and the future challenges of the system.

Individual chapters are devoted to recent developments in key sectors (such as financial services regulation or the authorisation of genetically modified organisms), whilst other authors address the respective roles of the European Parliament and the European Court of Justice in developing the rules of the system. A major theme of the book is recent changes to comitology; with authors addressing the outcome of the 2006 legislative reform, the debates about comitology in the context of the current round of Treaty reform, and the impact that enlargement with the arrival of 12 new Member States has had on the system. With respect to comitology reform, the book also contains contributions from insiders providing accounts from the perspective of the Parliament, Council and Commission.



Quality Development in the Field of Justice

Patrick Staes and Nick Thijs

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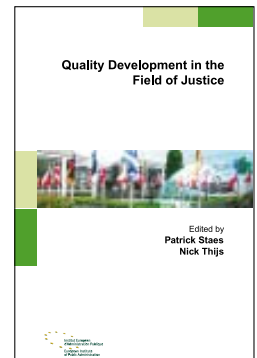
The public sector has to cope with a lot of challenges and respond to the many new needs and demands of modern society. Consequently the public sector is frequently the object of major reforms. These reforms and modernisation initiatives are characterised by a multiple focus on 'citizen and user orientation', 'efficiency and effectiveness', 'transparency', 'quality care', 'benchmarking', 'result orientation' and 'accountability'. As with all sectors of the public service, the judiciary and judicial authorities face the challenges and pressures and are subject to wide-ranging reforms.

The key question in this respect is: How can the basic requirements of a legal system, such as equal justice for all and the independence and autonomy of the courts in administering justice be combined with effectiveness, efficiency and quality? Questions raised in this publication include: Can quality models such as the Common Assessment framework (CAF) be used in this context, or does the specific nature of justice demand an alternative approach? How do organizations in the field of justice deal with their 'citizen/customers'? How do they deal with efficiency and effectiveness and what are the initiatives they take to improve quality?

As a study of the Common Assessment Framework (CAF) and its application in the judicial sector, this publication is divided into two parts:

- The first part provides a comprehensive introduction to quality management in general; touching upon its evolution, the different models used, and a more specific explanation of CAF and how it is used in the public sector. As well as the history and context of the model, the practical side is looked at in detail – from implementation to results, improvement actions and performance measurement.
- The second part puts flesh on the theoretical bones of the first: Judicial institutions from different European countries introduce Good Practices for improving quality in the field of justice. Among them are the Courts of Denmark, the Court of Appeal in Western Sweden, the Bolzano Public Prosecutor's Office in Italy, the work done by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, and the Belgian, Finnish and Dutch approaches to the judiciary.

This publication is an attempt to contribute to the debate on quality management in the field in justice, based upon experiences in the public sector field by the editors, and by gathering interesting cases from all over Europe, in the hope it will provide inspiration.



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The European Parliament and Comitology: PRAC in Practice



Alan Hardacre* and Mario Damen**

The history of comitology – the system of committees in charge of controlling the Commission's implementing powers – has often been characterised by institutional tensions.¹ The crux of these tensions is the role of the European Parliament (EP) and its quest to be granted powers equal to those of the Council. Over time these tensions have been resolved through a series of inter-institutional agreements and Comitology Decisions, essentially giving the Parliament incremental increases in power. The latest step, which came in 2006, was the modification of the Comitology Decision of 1999² and the introduction of the new Regulatory Procedure with Scrutiny (RPS), also known in English by its French acronym – Procédure de Réglementation avec Contrôle (PRAC). This is unlikely to be the last word because it still fails to grant the Parliament an equal footing and because the Treaty of Lisbon promises more change. However, the new procedure has been in use for over two years and evaluating the early experiences of the European Parliament with RPS is now possible. This article offers a preliminary assessment of how the RPS is working in practice, highlighting the unforeseen developments that have arisen in the course of its implementation and answering some of the questions that were posed regarding the way the RPS would work in the Parliament.

Introduction

The importance of comitology continues to grow as Community legislation increasingly delegates powers to the European Commission. When the first comitology committees were created in the 1960s it was to deal with purely technical implementing measures, mainly in the domain of agriculture. Despite this exclusively technical delegation to the Commission, the Council insisted upon the creation of comitology committees as a mechanism of oversight. Over time as the European project has expanded, both in depth and breadth, the need for comitology committees has increased such that they now form an essential part of the EU system. The majority of comitology activity continues to be found in the agricultural field, hence outside the scope of co decision and of the implications of this new RPS procedure. Should the Treaty of Lisbon come into force, and agriculture move into co decision, then almost 90% of delegation to comitology will occur via codecision. This increased volume of delegation poses a significant number of questions, notably about the oversight of the Commission by the co-legislators before adopting implementing

measures. Over time a series of attempts have been made to address the issues surrounding delegation, trying to balance transparency, efficiency and accountability. The latest of these attempts came with the modification of the 1999 Comitology Decision in 2006, which granted the European Parliament an important new power by adding the Regulatory Procedure with Scrutiny to the existing comitology procedures. This additional procedure, Article 5a of the modified 1999 Comitology Decision, was an explicit response to a number of the Parliament's claims concerning its involvement in the delegation of powers to the Commission. Notably the new procedure grants the Parliament powers over comitology that more accurately reflect its powers in codecision, effectively increasing democratic control over comitology decisions. This is not only an important symbolic and political gain for the Parliament; in practical terms this also substantially increases the power given to the Parliament, as it has gained a right of 'ex post' veto on implementing measures of general scope that amend a legal act adopted under co decision. This right of veto goes

far beyond the previous powers of the Parliament and can be characterised as the third right that the Parliament has been granted in its quest for oversight of comitology.

The first was the right of information (Article 7 of the 1999 Comitology Decision) and the second the right of scrutiny,³ which includes the right to pass a non-binding resolution if the Parliament considers that the Commission has gone beyond its implementing powers (Article 8 of the 1999 Comitology Decision).

Given the ever-increasing importance of comitology in European Union decision-making, the question of democratic legitimacy has become very important, especially for the Parliament. From obscure beginnings in the field of agricultural markets in the 1960s, the comitology system has been expanded to cover an increasing number of policy areas, such that in 2007 there were 264 Committees and 2,522 implementing measures.⁴ It is not simply the number of committees, and the vast output of the system, however, that are of importance but also the substance of these implementing measures as they are no longer the simple technical agricultural measures from the 1960s. The Commission

itself recognises this fact when it states that “the sheer number of measures adopted as such gives no indication of the political, economic or financial importance of decisions taken”.⁵

For these very reasons, notably the inherent importance of the decisions taken, and given its co-legislative powers, the Parliament has been trying to increase its limited powers in this domain beyond those of being informed and the right to pass a non-binding resolution. Whilst the Parliament has been very welcoming of the increasing powers of information, most recently through an upgraded ‘Comitology Register’,⁶ it only used its right of scrutiny on six occasions between 1999 and 2005, thus highlighting the weakness of its real powers over implementing measures.⁷ The thrust of the new Article 5a procedure is to give the Parliament the power of veto in the area of so-called quasi-legislative measures – those measures that are considered to be of a near-legislative importance, but that remain non-essential and can therefore be delegated to the Commission. The aim was to create a situation where the process of comitology would be seen as being more democratic, in the sense that whenever the co-legislators give up legislative powers in the interest of greater flexibility, speed of decision-making and need for technical expertise, they do so in the knowledge that they retain a power of veto over what is being adopted by the Commission.

When the new procedure came into force in 2006 it was expected that it would take a number of years before any form of evaluation could take place. It is, however, possible to draw a preliminary evaluation now since the RPS procedure has already been used several times, although often

in somewhat different ways to those originally foreseen. The RPS procedure on paper, despite the intention to simplify and increase transparency and public understanding of comitology, is rather convoluted. The new procedure can be – and indeed, legally must be – used when three conditions are fulfilled: firstly that the act is a co decision act; secondly the measures are of general scope; and finally that only non-essential elements are concerned. This exercise needs to be done on a case-by-case basis. Once the procedure has been included in secondary legislation the next stage is for the Commission to submit its draft implementing measure to the comitology committee, which should adopt an opinion. At this point there are two possible outcomes:

1. In the case of a positive opinion⁸ of the comitology committee the Commission forwards the measure to both Council and Parliament who then have up to three months to oppose to the measure. If there is no opposition from either party the Commission can adopt the measure after

the three month period has lapsed. In the case of opposition “the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft

The sheer number of measures adopted as such gives no indication of the political, economic or financial importance of decisions taken

by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality”.⁹ If opposition, based on these three criteria, is found, then the Commission must either re-submit a draft measure to the committee or present a legislative proposal. The co-legislators therefore have the same three criteria on which to base their opposition. It should be made clear that this does not grant them the right to oppose a draft measure because they are generally not satisfied with (a part of) its content, but they can only oppose on the basis of these criteria. It is also important to note that no provisions were put into the Decision to either allow for adoption of an implementing measure within the three month period, or to amend the content in case of opposition. Therefore if they agree they simply have to let the time period lapse or if either party opposes a single line in the implementing measure they have to oppose the entire measure.

2. In the case of a negative opinion¹⁰ or the absence of an opinion on the part of the comitology committee, the Parliament does not maintain its status of equality with the Council. The measure goes first to the Council, which has three options: (a) It can oppose the measure in which case the Commission can modify the proposal and re-submit to the Council; (b) It envisages adoption, in which case it forwards the measure to the Parliament; (c) The Council takes no decision, in which case the Commission forwards the measure to the Parliament. If the measure is forwarded, the Parliament enjoys the same three criteria outlined above to

make an objection.

When RPS was introduced in 2006 it raised a significant number of issues.¹¹ In this contribution, we would like to concentrate on three questions which are addressed in the following section. Firstly, some observers from the Commission and Council feared that Parliament would be tempted to use the new power too often, thus frustrating the smooth implementation of legislation. Has this happened? Secondly, some commentators and practitioners would also like Parliament to have the power to explicitly approve draft measures, but this is currently not foreseen in the Comitology Decision. Others would even want to go further and give Parliament a real right of amendment on comitology draft measures, which is certainly not intended by the Comitology Decision. This raises the question of what possibilities Parliament does have when it intends to approve or amend a draft measure. Finally, fears were raised that Parliament would be lacking the necessary expertise to deal with technical draft measures and would rely solely, or too heavily, on lobbyists. So has this situation actually arisen and how has Parliament dealt with this aspect of comitology?

PRAC in Practice in the European Parliament

1. How often does the European Parliament oppose an RPS draft measure?

One of the reasons why the Commission and Member States were never keen on giving a veto right to Parliament on implementing measures, was their fear that Parliament would be tempted to (ab)use the new power too often, thus frustrating the smooth implementation of legislation. Although the veto right has now been given to the Parliament, it is still limited to the three criteria of exceeding implementing powers, not being in line with the aim or content of the basic act, or not respecting subsidiarity or proportionality. If we look at the first experiences with the RPS procedure, nothing seems to indicate that Parliament will abuse its power and frustrate the implementation of legislation. Interestingly the first use of the RPS veto came from the Council in July 2008 when it objected¹² to six draft measures that had previously been agreed by the comitology committee. What is interesting about this case is that the objection was based on a horizontal issue that had no relation with the content of the individual draft measures, namely the desire by Member States not to use correlation tables.¹³ In the Parliament, up until March 2009, there has only been one case of a Resolution objecting to a draft measure that has been adopted. This concerned a draft measure for the Capital Requirements Directive (CRD) that was opposed by the plenary in December 2008, on the proposal of the parliamentary committee for economic and monetary affairs (ECON).¹⁴ It is no surprise that the ECON Committee should have been the first to veto a draft implementing measure, since this parliamentary committee has always been particularly active in the oversight of draft implementing measures, and

was at the basis of the reform of comitology. It is also interesting to note which of the three criteria for objection were used in the two aforementioned cases. Both Council and Parliament argued that the Commission had exceeded its implementing powers. Council deemed that an obligation for correlation tables belongs in a basic act and not in a draft measure. In the CRD case, the draft measure amended certain annexes of the Capital Requirements Directive, whereas the Commission had shortly before presented a proposal to review the CRD directive itself. Parliament felt that it could not approve of a specific draft measure just before a more fundamental review under co decision. Apart from this, two more attempts were made to pass an objecting Resolution, but both failed in the vote in parliamentary committee. Both cases occurred in the parliamentary committee for environmental affairs (ENVI). The first case was on the use of the biocide 'diffeneacoum' and the second concerned eco-design of household lamps.

Overall practice shows that Parliament has not often objected to an RPS measure, which begs the question of why? We can think of at least four possible answers. A first answer could be that there have not been enough opportunities to do so, as the RPS procedure has only very recently been introduced into legislation. A second answer could be that although opportunities were there, the Parliament as a whole is yet to fully grasp the potential of the RPS procedure. Over time, increased experience might lead to a more frequent use of the RPS procedure, although this would not automatically lead to more objections. Thirdly it may be that the presented draft measures were simply not controversial and therefore not contested. Finally, as the above examples show, even if a draft Resolution for objection is presented, it will not necessarily be adopted. One should consider that a

In reality, Parliament is very unlikely to want to object to the vast majority of implementing measures

vote in a parliamentary committee is taken by simple majority of the Members present, whereas the vote in plenary on such objections is taken by

the majority of Parliament's component Members (absolute majority). An absolute majority in plenary should never be taken for granted given that such sessions are rarely attended by all MEPs. This can be seen as another 'safety valve' on the use of the RPS power by Parliament. When voting, a failure to obtain a majority means that not all Members supported the objection. This may be because they did not agree with the grounds for objection, but sometimes Members may also withhold support because they do not want to get the blame for blocking a draft measure for only one particular aspect. In such cases, a right of amendment could have presented a different picture.

2. What alternatives does the Parliament have to opposing a draft measure?

The RPS procedure is meant as a control mechanism for Parliament after an implementing measure has been approved (or rejected) by a comitology committee. Hence it is an ex-post veto possibility that should only be used if

necessary. In reality, Parliament is very unlikely to want to object to the vast majority of implementing measures. The normal procedure in these cases is simply to do nothing and let the time go by until the deadline lapses, at which point the Commission can adopt the draft measure. Where measures are not controversial, and not initially contested by the Parliament, the Commission has sometimes expressed the desire that Parliament approves the draft measure concerned without waiting the full three months. It should be noted that the RPS procedure, and Rule 81 of the Parliament's Rules of Procedure,¹⁵ foresee no explicit legal possibility for such an approval. Nevertheless, nothing would appear to prevent Parliament from approving a draft measure, a practice which the Council has already adopted on a regular and almost systematic basis. In a few cases the Commission has explicitly asked the parliamentary committee concerned to approve a draft measure before the three month deadline. Until now it has been up to the parliamentary committee concerned to decide how to deal with such a request, but it is not unlikely that the Parliament could create some horizontal rules on this in the future if Commission demands continue. In some cases committees have indicated that at a given stage no objection had been made, which could be read as an informal approval, but can only be legally formal once the deadline has lapsed, given that Members have the right to object until the deadline passes. So, thus far, it has been up to the Commission services to decide whether they take the risk of adopting the draft measure before the deadline.

There is, however, another interesting practice that seems to be developing and is not visible in the adopted acts of Parliament, but which may indicate how Parliament will use its powers under the RPS procedure. In two cases parliamentary committees drafted objecting Resolutions that were withdrawn even before the vote in the parliamentary committee, after the Commission indicated that the modifications required by Parliament would be taken into account in a subsequent revision of the implementing measures. These cases occurred in the parliamentary committees for environmental affairs (on the use of animal testing) and for transport and tourism (on the use of seatbelts for children in aeroplanes). The intentions of the Commission were made in letters to the parliamentary committee concerned, after which the draft Resolution was removed from the agenda. This practice is particularly interesting, as it means the threat of a veto can lead to specific modifications, albeit in a future revision of the draft measure. In this way Parliament

The RPS procedure is evolving in quite some unforeseen ways

has a sort of 'de facto right of amendment', or a soft right of amendment. On the other hand, the concrete effect of this practice is yet to be evaluated, as Parliament runs the risk that promises from the Commission are not kept and may even be forgotten if the time between revisions of implementing measures is relatively long, or new Commissioners or new Members of Parliament are in charge. In such cases it may be up to the Parliament Secretariat to play the role of institutional memory.

3. Who influences Parliament's decision to oppose a draft measure?

Given that comitology is such a specialised and technical domain, and that the Parliament (and thus MEPs) lacks technical resources, it was originally feared that the introduction of the RPS procedure would open the door to intensive lobbying of comitology measures through the EP. Many practitioners and external commentators questioned whether the Parliament would simply have to rely on external sources of information, such as lobbyists, to generate its positions on implementing measures. The way the Parliament has built its internal structures to deal with RPS has resulted in the committee secretariats becoming the most important in-house filters and sources of expertise. Committee secretariats, however, mainly have a role of facilitation and transfer of information, not a direct role in influencing Members' decisions to oppose a draft measure, which would not suit their politically neutral position. The secretariat can play a role in providing Members with expertise, but it cannot be expected that these experts gain significant in-depth knowledge of the vast range of issues dealt with in draft measures. Expertise may be based on (scientific) external research, but here it should be noted that a three-month deadline does not allow for extensive in-depth external research. Given these constraints on the role of secretariats and external research, it becomes clear why fears were raised about MEPs relying too heavily on lobbyists when taking their decisions to object to a particular measure. The role of lobbyists in Brussels-based decision-making is subject to extensive research and analysis, although mostly in the realm of legislation, not implementing measures. For our analysis of the lobbying of comitology we would like to concentrate on one particular aspect. Lobby organisations normally try to 'sell' their point of view not only to the European Parliament, but to all other political actors involved in the decision-making process. This means that the same lobbyists have normally



EU Parliament

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already been talking to the experts of national governments represented in the comitology committees and to the Commission officials drafting the implementing measures, before they come to knock on the door of Parliament. In fact, all actors can be influenced by lobbyists and it is their own decision to decide to what extent they take on board the views of lobbyists. This very phenomenon can be illustrated by an example from the transport committee of Parliament when it discussed a draft measure on the use of so-called 'loop belts' for children in airplanes. Although safety tests conducted in the 1990s had shown the potential danger of these belts to children's health, the competent comitology committee had never amended the applicable rules. When this issue was discussed in the Parliamentary committee it was suspected that no amendment had been made due to pressure from the airlines on the Council and Commission, because they did not want to spend money on extra seats for children, and rather preferring them to sit on an adult's lap even if this situation was potentially dangerous. This short example highlights the fact that lobbying in the realm of implementing measures is not limited to the Parliament, and early experiences with the RPS procedure suggest that there has been no significant increase in lobbying of the Parliament as originally feared. The Parliament has been soliciting more input from technical experts, but there has been no deluge of lobbying on comitology issues.

Members of Parliament are politicians and they will judge draft measures from a political perspective. This perspective may be influenced by suggestions from lobbyists, journalists, experts, scientists or any particular group of people. Members of Parliament will, however, always look at how the particular issue may fit with their personal views, the views of their political party or of the voters they represent, or from the point of view of the parliamentary committee of which they are a Member as far as there is a feeling of consensus there. Seen in this light it is no wonder that Members of Green political parties express themselves on environmental issues as much in comitology as they do in co decision. Members of the parliamentary committee on civil liberties and justice (LIBE) were at the origin of another case that highlights a further unforeseen aspect of the RPS procedure. This is the case of the rejection of 'body scanners'¹⁶ as a device to screen passengers at airports. The use of body scanners was one small part of a draft measure on aviation security. This draft measure was, according to Rule 81 of Parliament's rules of procedure, referred to the transport committee. In the meantime, however, Members of the LIBE committee got hold of the issue and presented to the plenary a 'normal' parliamentary Resolution under Rule 108, criticising the use of body scanners, which was adopted. This kind of Resolution has no legally binding effect on the Commission, whereas a Rule 81 Resolution does. Yet, as the issue had raised significant media reaction and hence political

responses in several Member States, the responsible Commissioner withdrew the draft measure. In this way we have a second case of a withdrawn draft measure, but this time not on the basis of the formal RPS procedure. What this example shows in particular, is that this decision was not based on the influence of a secretariat, lobbyist, or other group, but on the sensitivity of Members involved in civil liberties matters concerning those liberties and privacy issues. This highlights the fact that lobbyists, or the secretariat, can bring matters to the attention of a Member of Parliament, but at the end of the day it is the Member's political choice whether to proceed with an objection.

Conclusions: Theory and Practice of PRAC

The three preceding sections demonstrate that the RPS procedure is evolving in quite some unforeseen ways, allowing some preliminary conclusions to be drawn on the differences between the theory and practise of this new comitology procedure. Even after only two years of experience with RPS a number of patterns have developed in the negotiation and use of the procedure – patterns that can be expected to continue. For this reason, and also because the new comitology provisions which would be introduced by the Lisbon Treaty are very similar to the current RPS provisions, the findings in this article are of particular practical importance for the future practice of comitology. This preliminary evaluation has not only answered a series of questions that the new procedure has raised since 2006, but also highlighted a number of unexpected developments about how the new procedure is working in practice.

In terms of usage of the new procedure, we noted the surprising fact that the Council was first to use its veto, and not the Parliament. The Parliament has been moderate in the number of objections it has tried to raise, although it is not clear to what extent this is due to the fact that the vast majority of RPS measures are still to come in the future; to Members not yet being familiar enough with the new procedure and its full potential; to the non-controversial nature of the draft measures; or because it is not easy to find a voting majority for resolutions. Summing up on how often Parliament opposes an RPS draft measure, we can conclude that the

Council once rejected a set of six draft measures and that Parliament once rejected one draft measure.¹⁷ Furthermore, Parliament started four more procedures to object, two of which were voted down in the parliamentary committee concerned, and two

others were withdrawn before the vote after promises made by the Commission. Looking at which of the three criteria for rejection were used by Parliament, we noted that the only Rule 81 resolution adopted on proposal of the ECON committee alleged that the Commission had exceeded its implementing powers. Different criteria were used for the other cases. In the case of household lamps the measure

Early experiences with the RPS procedure suggest that there has been no significant increase in lobbying of the Parliament as originally feared

was considered disproportionate, as it would lead to a ban on a product, a measure it was deemed more appropriate to decide under co-decision. In the three other cases (biocide 'diffeneacoum', children's seatbelts and animal testing) the draft measures were thought to be not compatible with the aim or content of the basic acts, the main purpose of which was the promotion of safety, life and/or the environment. It is in this area of attempting to oppose a draft implementing measure that a series of unexpected developments have arisen. The most interesting of these, certainly for the future, is the notion of the Parliament being able to threaten an RPS Resolution to extract a de facto right of amendment – although we are yet to see if the promises made through this development are actually kept. Finally, we also noted that

the European Parliament has not become, as initially feared, a Trojan horse for lobbying interests and that the pattern of lobbying of implementing measures has changed little in the last couple of years.

Given the increasing insertion of RPS into legislation, a full understanding – by all actors – of how they can use the procedure and how it works in reality will be essential. In this sense there is a form of information advantage for those who grasp the full consequences, intended and other, of how the RPS is working in reality. It is hoped that this article has provided a first insight into what may become a more and more researched and lobbied area of EU decision-making.

NOTES

* Alan Hardacre, Lecturer, European Institute of Public Administration. The authors would like to thank Christian Maurin, Prof. Thomas Christiansen and Dr Michael Kaeding for their insightful advice and comments. Any remaining errors are of course the sole responsibility of the authors.

** Mario Damen, Administrator, European Parliament Transport Committee; the opinions expressed in the article are those of the author alone and not of the Institution.

¹ Alfé M. 'Institutional Tensions in the Evolution of the Comitology System' in: Christiansen T. Oettel J. & Vaccari B. (Eds.) 21st Century Comitology: The Role of Implementing Committees in the Wider European Union (forthcoming).

² Council Decision 2006/512/EC amending Decision 1999/468 EC laying down the procedures for the exercise of implementing powers conferred on the Commission.

³ The Right of Scrutiny is more commonly, and more accurately, known under its French name 'Droit de Regard'.

⁴ Report from the Commission on the Working of Committees During 2007, Commission COM(2008) 844 final.

⁵ Report from the Commission on the Working of Committees During 2007, Commission COM(2008) 844 final, page 6.

⁶ <http://ec.europa.eu/transparency/regcomitology/registre.cfm?CL=en>

⁷ For more information on these Resolutions see Lintner P. & Vaccari B. 'The European Parliaments Right of Scrutiny under Comitology: A Legal David but a Political Goliath?' in: T. Christiansen, J. Oettel & B. Vaccari (Eds.) 21st Century Comitology: The Role of Implementing Committees in the Wider European Union (2009, European Institute of Administration, Maastricht).

⁸ A positive opinion of the committee requires a Qualified Majority Vote in favour, therefore at least 255 votes.

⁹ Article 5a of Council Decision 2006/512/EC amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission.

¹⁰ Negative opinions from comitology committees are very rare. In 2007 there were only 17 referrals (representing 0.7% of the total implementing measures), in 2006 5 (0.2%) and in 2005 11 (0.5%). These figures are often quoted to highlight the success and consensual operation of comitology.

¹¹ Christiansen T. & Vaccari B. "The 2006 Reform of Comitology: Problem Solved or Dispute Postponed?" EIPASCOPE 2006/3.

¹² Minutes of JAI Council of 24-25 July 2008, p. 35-36 http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/102007.pdf

¹³ Correlation tables indicate how individual articles of a European legislative act are transposed into national law. Such tables are helpful for the Commission but not always wanted by Member States.

¹⁴ The opposing Resolution was adopted in the European Parliament plenary of 16 December 2008 under number P6_TA-PROV(2008)0607 which can be found on the Parliament's website www.europarl.europa.eu

¹⁵ To cope with the new RPS procedure, the Parliament also amended the article on implementing provisions in its internal rules of procedure. The amended Rule 81 describes the procedure to follow from the reception of a draft measure to the adoption of a Resolution objecting to a draft measure.

¹⁶ The Resolution was passed on the 23 October 2008 by 361 votes for, 16 against and 181 abstentions, under the number P6_TA-PROV(2008)0521 which can be found on the Parliament's website www.europarl.europa.eu

¹⁷ Situation as of end of March 2009.

The Role of National Parliaments in European Decision-Making



Theo Jans* and Sonia Piedrafito**

National parliaments can be considered as victims of the European integration process. National parliaments ceded legislative powers to the EU and often lost leverage over their national executive branch, which continued to play a central role in EU decision-making. Different domestic parliamentary scrutiny systems have been established to enhance parliamentary involvement and control over EU affairs. In 2006 the Barroso Commission provided an additional impetus for parliaments to get involved, by offering to transmit its policy proposals directly to national parliaments with an open invitation to comment on them. The Lisbon Treaty foresees the possibility that national parliaments carry out subsidiarity checks on policy proposals. This paper argues that the different national and European provisions for parliamentary involvement do not amount to much. However, if we consider the combined effect of the different avenues in a dynamic perspective, they might jointly trigger a reassertion of national parliamentary influence in the European policy process.

Introduction

Holding governments accountable and ensuring a meaningful scrutiny and significant control over the executive branch is a challenge for many parliaments. The difficulty is enhanced when national parliaments seek to have an impact on policy activities occurring at European level. The role of national parliaments in the European integration process has received a lot of scholarly and political attention since the mid 90's and has become closely linked to the debate on the EU's democratic deficit and its legitimacy problems.

The consequences of deepening integration have not all been positive for parliamentary assemblies. In fact, early assessments portrayed national parliaments as 'losers' or 'victims' of the European integration process. The erosion of parliamentary control over the executive branch is coined as the 'deparliamentarisation' thesis. In the European context, 'deparliamentarisation' is linked to three issues which are described below: reduced national policy autonomy; a shift in the domestic executive-legislative balance; and information asymmetries.

The transfer of competences and policy-making to European institutions reduced the legislative remit of national parliaments, which is often confined to the transposition of European legislation. National parliaments in particular experienced a double marginalisation: their domestic powers were curtailed as a result of policy transfers to the EU; and it is particularly difficult to contribute to the policy level where the transferred prerogatives are handled. National executives also experienced a reduction of their policy autonomy as a result of integration and the effects of regulatory competition, but as central actors at the European bargaining table, they have secured a continued and pivotal role in (European) policy-making.

The domestic executive-legislative balance has also been influenced by European integration. There is the above-mentioned structural disadvantage whereby national legislatures have no representation in the EU and national executives have direct access to European decision-making. The technocratic nature of European policy-making further strengthens the executive branch and

its bureaucrats vis-à-vis the national parliaments. Moreover, the determination of national positions on European affairs requires extensive administrative coordination across policy levels (e.g. in federal systems) and across agencies and ministries. National parliaments are often poorly equipped to monitor and participate in these important domestic coordination efforts.¹

The executive predominance in European affairs fuels important information asymmetries that put national parliaments at an additional disadvantage. National parliaments do not have the same direct access to information and processing capacity as national executives in relation to European affairs. The information deficit can further enable the executive branch to operate without much parliamentary oversight. The 'deparliamentalisation' thesis paints a bleak picture of the many challenges that the European institutional architecture sets for national parliaments. However, national parliaments have not passively resigned to a role of idle bystanders. National parliaments have gradually fought back and have tried to reassert their scrutiny and oversight capabilities in relation to European affairs.

All EU-27 national parliaments have a European Affairs Committee (EAC) and many sectoral standing committees also tackle EU policies. Every national parliament has put in place scrutiny procedures to review EU documents and to hold national executives accountable. The scope and the intensity of parliamentary scrutiny vary significantly across parliaments, but it has at least raised awareness and secured a stable and continued attention for EU affairs in the assemblies. National parliaments have also sought to act collectively, mainly through the creation in 1989 of the Conference of Community and European Affairs Committees (COSAC).² COSAC convenes twice a year in the Member State holding the Presidency of the Council of the EU and brings together members of European affairs committees and a delegation of the European Parliament. COSAC provides a forum for the exchange of information and best practices on parliamentary involvement in the EU. The COSAC biannual meeting conclusions are published in the Official Journal and are addressed to the European institutions. The political impact of COSAC has been limited but the increased exchange of information and the analysis of new windows of opportunity for national parliaments have prepared the ground for more influential COSAC actions.³

In addition to national parliaments noting the increasing impact of European policy-making on their key legislative functions, the European institutions have also gradually acknowledged the need to bring national parliaments back into the European policy process. Declaration 13 annexed to the Maastricht Treaty was the first, albeit timid, step towards recognising the role of national parliaments, followed by a Protocol on the role of national parliaments in the European Union annexed to the Treaty of Amster-

dam, all of which has eventually culminated in a direct role for national parliaments under the form of an 'early warning' system provided in the Lisbon Treaty. In parallel with the planned innovations in the Lisbon Treaty, the European Commission decided, as of September 2006, to transmit all new proposals and consultation papers directly to the national parliaments inviting them to react and to engage in a dialogue on its proposals. The different national provisions for parliamentary scrutiny combined with the various treaty changes and political initiatives at the European level all seem to point towards a genuine window of opportunity for a more significant involvement of national parliaments in EU policy-making.

The dependency of national parliaments on government information has been reduced

In the first part of this article, we will review the main features of parliamentary scrutiny of EU documents and decisions

across Member States, and will examine the impact of the 2006 Barroso initiative. The second part of the article will analyse to what extent the Lisbon Treaty might contribute towards reinforcing the role of national parliaments in EU governance in the future.

Parliamentary Scrutiny of EU Documents and Decisions

The German Bundesrat was the first national parliament to set up a European affairs committee (EAC) in 1957. The Belgian Chamber of Representatives and the Italian Senate created their EACs in 1962 and 1968 respectively. The parliaments of the first accession countries; Denmark, the United Kingdom and Ireland, due in part to more Eurosceptical electorates and traditionally strong parliaments, quickly established EACs to scrutinise European affairs.⁴ Today all national parliaments have a European affairs committee (altogether 36 EACs) and a system to scrutinise European documents and policies. Although there is a clear convergence in the parliamentary scrutiny of EU documents and decisions, there is still a lot of diversity in how national parliaments approach EU affairs. Elements of variation and convergence can be discerned along the following issues:

- a. Time frame and access to information
- b. European Affairs Committees and the organisation of scrutiny
- c. Systems of parliamentary scrutiny

The Time Frame and Access to Information

There has been a gradual effort to redress the information gap on EU affairs between national parliaments and the executives. Declaration 13 of the Maastricht Treaty (1992) foresaw in the non-binding commitment that "the governments of the Member States *will ensure, inter alia*, that national Parliaments receive Commission proposals for legislation in good time for information or possible examination". The Protocol on the role of national parliaments in the European Union enforced in 1999 offered a binding arrangement and broadened the scope of the Commission documents to be forwarded to national parliaments to include consultation documents, but it also weakened the provisions of Declara-

tion 13 by stipulating that “Commission proposals for legislation... shall be made available in good time so that the government of each Member State *may ensure* that its own national parliament receives them as appropriate”. The Protocol still left it to national governments to transmit legislative documents to their parliaments as they saw fit. Furthermore, the protocol established a minimum period of six weeks between the communication of a legislative proposal and its inclusion on a Council agenda for decision in order to grant national parliaments time to scrutinise the proposal.

In 2006 the Barroso Commission announced that it would, even without treaty obligations, transmit all new proposals and consultation papers directly to the national parliaments, inviting them to react so as to improve policy formulation.⁵ The Lisbon Treaty formalises the current practice of direct transmission to national parliaments. The new PNP broadens the list of documents for direct transmission (e.g. Council minutes and agendas, annual legislative programme and other instruments of legislative planning, etc.) and extends the period between publication of a proposal (in all official languages) and placement on a Council agenda for decision from six to eight weeks.

The dependency of national parliaments on government information has clearly been reduced. All national parliaments (will) receive all documents directly from the European institutions and they have a minimum of six weeks (following the Lisbon Treaty, eight weeks) to organise their scrutiny. Many parliaments have indicated that the time frame is still rather short for a thorough review of legislative documents.⁶ Time constraints push parliaments to be selective in the documents that are scrutinised and to intensify their involvement in the preparatory stages through close monitoring of consultation documents and impact assessments. The tendency to have early first reading agreements in codecision procedures is an additional reason for national parliaments to act quickly in order to have an impact on the European inter-institutional bargaining process.

European Affairs Committees and the Organisation of Scrutiny

There are many differences in the way national parliaments organise the scrutiny of EU documents and decisions in accordance with their national constitutional and legal provisions. Variation exists regarding the mechanisms to sift through the documents, the involvement of the sectoral committees, the frequency of European affairs committee (EAC) meetings and the participation of MEPs and civil society. The frequency of the meetings and the resources available are becoming increasingly important due to the growing volume of documents that are transmitted to



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national legislatures. In most parliaments the EAC is the main forum for dealing with European issues, with varying levels of cooperation with Sectoral Standing Committees (SSCs). In some parliaments, for instance in Finland or Italy, the SSCs are responsible for the scrutiny of European issues in their specific policy areas. Both models have their advantages and disadvantages. EACs may lack the sectoral and domain-specific expertise, although this is often compensated through the input of SSCs. Putting sectoral committees in charge of scrutiny has the benefit of mainstreaming European concerns across parliament, but the SSC may lack the European institutional expertise or global vision on EU affairs.⁷

The participation of members of the European Parliament can positively contribute to the tasks of the national legislatures. In most of the national parliaments, MEPs may take part in the EAC's regular meetings. In Belgium, the Federal Advisory Committee on European Affairs is composed of members of both national chambers and eight MEPs. In the German Bundestag 15 MEPs are members of the EU Affairs Committee.⁸

Systems of Parliamentary Scrutiny

Based on a survey of the 40 national parliamentary chambers, COSAC identified two main scrutiny models that are applied in the 27 Member States.⁹ One widespread type of scrutiny system is the document-based model, which focuses on sifting and examining all incoming EU documents (mostly Commission legislative proposals). The EACs or SSC prioritise and assess the documents requiring closer committee scrutiny. Document-based systems focus extensively on Commission documents and less on the actual decision-making process in the Council of Ministers. The goal of document-based scrutiny is not to systematically mandate Brussels-bound ministers or to ensure a close monitoring of government positions in specific inter-institutional negotiations. The document-based models emphasise information-processing and the development of parliamentary discussions and positions. Many document-based models are accompanied by a scrutiny reserve which prescribes that ministers should not agree to an EU proposal before parliamentary scrutiny is completed. The parliaments of the United Kingdom, the Czech Republic, Cyprus, France, Germany, Italy, Ireland, Portugal, Belgium, the Netherlands (Eerste kamer), Luxembourg and Bulgaria have document-based scrutiny systems.¹⁰ The absence of systematic mandates for government action in the document-based systems does not necessarily imply that these assemblies are without influence. Parliamentary committees often call upon government ministers to clarify their views and positions. Moreover,

some assemblies have invested significantly in information gathering through (public) hearings and consultations and in producing many high-quality reviews and opinions, which are communicated to the executive and to the European Commission. For instance, the UK House of Lords and the French Senate have been particularly active in producing expert contributions which have received attention from their executives and the European institutions.

The second scrutiny model concerns the so-called *mandating or procedural system*, in which parliamentary attention is concentrated on the government's position throughout the European decision-making process. Procedural systems seek to ensure control over what the ministers agree to in Council meetings. Many parliaments with procedural systems issue direct mandates to the ministers which may set the bargaining range or even stipulate explicit voting instructions.¹¹ The parliaments of Denmark, Estonia, Finland, Latvia, Lithuania, Poland (Sejm), Slovakia, Slovenia and Sweden have EACs which systematically provide mandates for government ministers.¹² Government ministers are obliged to present their negotiation positions before the EAC, which may force the government to review its position. The Austrian and Hungarian parliaments also have mandating powers but use these less frequently. In most cases, the mandating process normally takes place just (one week) prior to the meetings of the Council, but in Finland for instance, the process starts as soon as the Council working group begins examining the proposal. In most cases, the government may deviate from the mandate for compelling reasons, but such deviations require justification and sometimes a new consultation with parliament (e.g. Denmark, Austria).

The presence of mandating powers is often regarded as an indication of significant parliamentary influence. This argument needs to be qualified for two reasons. Firstly, the increased use of qualified majority voting in the Council limits national and parliamentary control over European negotiations and policy outcomes, even if binding parliamentary mandates have been issued. Secondly, parliamentary majorities are unlikely to cause controversy by discarding proposed government negotiation mandates, especially when these divergent views may be exploited by opposition parties.

A third category of so-called *Informal Influencers*,¹³ such as Spain or Greece, can be identified. These parliaments focus on informal dialogue with the government and seek to have an influence through broad parliamentary debates on European affairs.¹⁴ They do not organise a systematic scrutiny of EU documents or of the government position in the Council.

Recent Trends and the Barroso Initiative

The distinction between document-based and mandating scrutiny systems is increasingly blurred as parliaments seem to converge towards more mixed systems. For instance, the Estonian, Hungarian, Lithuanian and Dutch (Tweede Kamer)

parliaments combine elements of both systems.¹⁵ Parliaments concentrating on document scrutiny have started to organise hearings with ministers in order to monitor the government's position more closely. Many parliaments with mandating systems have responded to the Barroso initiative of 2006 and intensified the document scrutiny and engaged in the formulation of opinions directly to the Commission.

Almost all national parliaments, whether operating with document-based or mandating systems, still perceived their national government to be the main object of scrutiny and influence in 2007.¹⁶ Parliamentary efforts are still mainly focused on the national level and few parliaments actively seek to influence the European institutions directly. In this regard, the Barroso initiative of 2006 to transmit Commission documents directly to national parliaments with an open invitation to comment on the documents may herald a re-orientation of national parliamentary initiatives from the national towards the European level and the European Commission in particular.

Since September 2006 the European Commission has received almost 450 opinions from 33 national assemblies of 24 Member States. The frequency of parliamentary opinions seems to increase over time with 148 opinions in 2007, 202 in 2008, and 82 for the period January-April 2009. The Portuguese Assembly, Danish Folketing, the Swedish Riksdag and a number of second chambers (German Bundesrat, UK House of Lords, and the French and Czech Senate) have been among the most active assemblies to carry out reviews of Commission policy documents. The parliamentary opinions dealt

National parliaments were portrayed as 'losers' or 'victims' of European integration

with subsidiarity issues (as part of coordinated subsidiarity exercises organised by COSAC), but often went further and covered political issues related to the content of the Commission proposals.¹⁷ Many parliamentary opinions elicited a reply by the European Commission to the parliaments. In fact, the Commission has delivered about 98 replies to the parliamentary opinions.¹⁸ So far, there is no evidence that the Commission significantly altered its initial views and positions but it did deliver additional clarification and justification of its proposals following the parliamentary comments. The Commission's 2006 initiative offered national parliaments a direct channel for communication with the European Commission without having to consider their governments' opinions. The initiative contributed to raising awareness of European affairs and further strengthened the scrutiny of documents within the national parliaments. Even if the parliamentary opinions did not lead to major policy changes, the comments were often reiterated in the European Parliament and by Member States in the Council.

National Parliaments in the Treaty of Lisbon

The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) provide for important changes of direct relevance to national parliaments. For the first time, national parliaments are mentioned and assigned specific roles in the body of the Treaty text. Na-

tional parliaments are to ensure compliance with subsidiarity (Art. 5 TEU) and to contribute to the good functioning of the Union (Art. 12 TEU). With this objective, they are also given some prerogatives in the EU decision-making process. This part of the article will look into these prerogatives, especially the 'early warning' system for monitoring possible breaches of subsidiarity, as well as into the checks carried out so far by COSAC.

New Prerogatives

The specific rights and roles envisaged in the Lisbon Treaty for national parliaments include the following:

- The right to receive documents directly from the European institutions. The scope of the existing Protocol on National Parliaments (No. 1 in the new Treaty) is broadened and includes all draft legislative acts, Council agendas and minutes, annual and other instruments of legislative planning and the Annual Report of the Court of Auditors.

(Art. 70 TFEU), in the evaluation of Eurojust's activities (Art. 85 TFEU), and in the scrutiny of Europol's activities (Art. 88 TFEU).

- Notification to national parliaments of applications made by European States for Union membership (Art. 49 TEU).

The main innovation of the Lisbon Treaty concerns the redrafted Protocol (No. 2 in the new treaty) on the Application of the Principles of Subsidiarity and Proportionality. The protocol maintains the existing provisions that any draft legislative act must contain a detailed statement enabling the appraisal of its compliance with the principles of subsidiarity and proportionality, including:

- a. An assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation.
- b. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators.



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- An important role in ensuring compliance with the subsidiarity principle based on an entirely rewritten Subsidiarity and Proportionality Protocol, which establishes an 'early warning' system for monitoring possible breaches of subsidiarity.
- Representation of national parliaments in a Convention whose purpose is to formulate recommendations for future Treaty revisions (ordinary Treaty revision procedure Art. 48 (3) TEU).
- An obligation to be notified by the European Council six months in advance of the intent to use the so-called passerelle ('bridge') clauses, moving decision-making from unanimity or special legislative procedures to qualified majority voting or to the ordinary legislative procedure.¹⁹ Moreover, if one parliament opposes the proposed decision-making change within the six month period, the passerelle can not be carried out (Art. 48 (7) TEU and Art. 81 (3) TFEU).
- Involvement of national parliaments in the evaluation of EU policies in the area of freedom, security and justice

All draft legislative acts should comply with the proportionality principle by taking into account the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Whereas the justification of legislative drafts needs to cover both the subsidiarity and the proportionality aspects of the proposals, the 'early warning system' or control mechanism for national parliaments only covers the subsidiarity dimension of the proposal.

The 'Early Warning' Mechanism

Within eight weeks any national parliament may submit a reasoned opinion stating why it considers that a draft legislative act does not comply with the principle of subsidiarity. Each national parliament has two votes and in the case of bicameral systems, each of the two chambers has one vote.

In the EU 27, this means a total of 54 votes. Depending on the number of problematic reasoned opinions the protocol foresees two new procedures better known as 'yellow and orange cards'.

The 'yellow card' procedure entails that:

1. at least 1/3 of the available votes (i.e. 18 votes out of 54) are cast against the draft legislative act because of non-compliance with the subsidiarity principle. For draft legislative acts concerning the area of freedom, security and justice, the threshold is 1/4 of the votes (i.e. 14 out of 54). Following such a 'yellow card' the initiating institution (usually the EC) must review its proposal and may decide to maintain, amend or withdraw the draft but must justify its decision.

The 'orange card' procedure only applies to the ordinary legislative procedure (codecision) and entails that:

1. if the reasoned opinions regarding non-compliance with the principle of subsidiarity represent at least a simple majority of the votes allocated to national parliaments (i.e. 28 out of 54), the proposal for the legislative act must be reviewed. Again the European Commission may maintain, amend, or withdraw its proposal. If it decides to maintain its proposal, it must provide justification.
2. if the option is to maintain the proposal, the reasoned opinions of the national parliaments and the Commission are transmitted to the Union legislator, who must consider the subsidiarity issues before the end of the first reading stage. If, by a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament, the legislator considers the proposal incompatible with the subsidiarity principle, the proposal will fail and will not receive further consideration.

Most national parliaments and academic observers regard the new subsidiarity provisions as a useful innovation, albeit one whose importance should not be overstated. The subsidiarity mechanism does not apply to implementing legislation resulting from comitology procedures nor does it cover the exclusive competencies or the areas in which the EU operates primarily in a coordinating capacity (e.g. open methods of coordination). Moreover, the European Commission can maintain its position without further consequence under the 'yellow card' procedure. The threshold for the more stringent 'orange card' procedure is high and may seldom be invoked: in the end, it is the EU legislators, not the national parliaments, who have the last word.

Experience in the Framework of COSAC

In order to test the challenges and overall feasibility of the 'early warning' system, COSAC has carried out a number of trial runs since 2006. The subsidiarity checks have shown rather high and steadily increasing parliamentary response rates, involving up to 33 national parliaments or parliamentary chambers (out of 40) from 23 member states in 2008.²¹ Experiences with the subsidiarity checks have so far identified a number of recurrent difficulties and limitations:

- the time limit of eight weeks is considered to be too short a time frame to conduct a substantive subsidiarity check;

- parliaments find it particularly difficult to distinguish subsidiarity issues from proportionality concerns (not covered by the yellow and orange procedures) and from substantive examinations of the policy content of the proposals;

- overall, few parliaments identified significant non-compliance problems in the subsidiarity checks.

The subsidiarity perspective appears to be too narrow to block a legislative draft; more often parliaments take issue with proportionality, the legal basis or the content of the proposal, but these aspects are not covered by the subsidiarity check.

National parliaments have noted that the subsidiarity mechanism will not be a miracle cure against over-regulation or the loss of legislative power that parliaments may have suffered in the course of European integration. Nevertheless, the subsidiarity checks have provided parliaments with incentives to consider European policy initiatives early on in the process, by reviewing the EC Annual Policy Strategy and Commission Legislative and Work Programme, in order to maximise their chances to meet the eight week deadline. The thresholds for the 'yellow and orange cards' have underscored the need for greater inter-parliamentary cooperation in order to establish a common interpretation of subsidiarity and in order to improve the exchange of the various parliamentary contributions (via the IPEX database and website).

Conclusions

Throughout this article we have examined both the current avenues for national parliaments to participate in the European policy process as well as those that the Lisbon Treaty might bring in. Firstly, the national parliament scrutiny models, whether document based or mandate based, primarily target the domestic executive branch and seek, to varying degrees, to influence the government's position in the Council. Secondly, the Barroso Commission has opened a direct dialogue with the national parliaments, which are invited to engage directly on the supranational level via opinions on policy proposals addressed to the Commission. Thirdly, the Lisbon Treaty provides a treaty-based access point for national parliaments to monitor compliance with the subsidiarity principle.

Assessed separately, and on their independent merits, the different avenues are unlikely to trigger a fundamental reassertion of national parliamentary influence in the European policy process. National scrutiny systems sometimes lack the resources, the mechanisms or the incentives to effectively influence national governments' actions in the EU, and even stringent mandating systems lose a lot of bite in the face of firm majority governments. The direct dialogue of the Barroso Commission has not led to significant and discernable changes in EC policy proposals or outcomes. For national parliaments to find sufficient contestable issues on the grounds of subsidiarity and to reach the required thresholds to produce a yellow or orange card may also prove very difficult and rare.

However, if we consider the combined effect of the different avenues in a dynamic perspective, they might jointly trigger a reassertion of national parliamentary influence in the European policy process. The subsidiarity clauses, the eight week time frame and the broader scope of the documents to be received, all envisaged in the Lisbon Treaty, will stimulate an early involvement of parliaments at the planning and preparatory stages of European policy formulation and will reduce existing information asymmetries. The Barroso initiative already encourages parliamentary scrutiny of these preparatory EC work programmes, consultation documents and communications and broadens the scrutiny process to include other questions beyond subsidiarity. National parliaments are encouraged to participate at an earlier stage, on the basis of more information and direct exchanges with the EC, and with the possibility of their concerns being raised not only in front of their governments but also in the EU. All of these issues constitute incentives for national parliaments to improve their scrutiny systems in order to deal with their new prerogatives.

Increasing interparliamentary cooperation might reinforce the exchange of best practices and the joint use of resources, and could become the means to make the shadow of a collective action (yellow and orange cards) more effective. All this will eventually strengthen the position of parliaments in relation to the executive branch and will also improve parliamentary control over both the executive and EC initiatives.

A fundamental question that underlies the different treaty and procedural innovations is how the members of parliament (MPs) in the Member States will respond to the new opportunities. Raunio points out that MPs have their hands full even without engaging in EU affairs. If their main concerns are re-election and direct policy influence, the in-depth scrutiny of European proposals may not be very attractive to them.²² The ability of individual MPs to influence European policies is extremely limited and a strong focus on EU affairs may not be instrumental in attracting voters. One can only hope that *'l'appétit s'accroît en mangeant'*, or that MPs develop a taste and increased interest in European issues.

NOTES

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¹ Goetz, K.H. & Meyer-Sahling, J-H. "The Europeanisation of national political systems: Parliaments and executives", Living Reviews in European Governance, 3(2) www.livingreviews.org/lreg-2008-2, 2008

² The acronym COSAC comes from the French name for the Conference: *Conférence des organes spécialisés dans les affaires communautaires*.

³ One of the main ways to exchange information is IPEX (Interparliamentary EU Information Exchange). The IPEX Database, available via the internet, contains a complete catalogue of Commission documents, the outcome of the scrutiny process carried out by individual national parliaments, and information regarding interparliamentary cooperation.

⁴ O'Brennan, J., Raunio, T. "Deparliamentarization and European integration", in O'Brennan, J., Raunio, T. (eds). *National parliaments within the enlarged European Union. From 'victims' of integration to competitive actors?* Routledge: London and New York, 2007, p. 1-26.

⁵ COM(2006) 211. Communication from the Commission to the European Council. A citizens' agenda. Delivering results for Europe.

⁶ See COSAC subsidiarity checks <http://www.cosac.eu/en/info/scrutiny/>

⁷ Tans, O. "Conclusion: National Parliaments and the European Union; Coping with the Limits of Democracy", in O. Tans,

Carla M. Zoethout, C. M. and Peters, J. (Eds) *National Parliaments and European Democracy: A Bottom-up Approach to European Constitutionalism*. Groningen: Europa Law Publishing, 2007, p: 227-247.

⁸ 'Third bi-annual Report: Developments in European Union procedures and practices relevant to Parliamentary Scrutiny', prepared by the COSAC Secretariat and presented to the XXXII Conference of Community and European Affairs Committees of Parliaments of the European Union, Luxembourg, 17-18 May 2005.

⁹ COSAC (2005) Third bi-annual report: developments in European Union procedures and practices relevant to parliamentary scrutiny. COSAC Secretariat, May 2005.

¹⁰ COSAC (2007) Eighth bi-annual report: developments in European Union procedures and practices relevant to parliamentary scrutiny. COSAC Secretariat, October 2007

¹¹ Raunio, T. "National parliaments and European integration: what we know and what we should know", Arena Working Paper No. 2, January 2009.

¹² COSAC (2007) Eighth bi-annual report: developments in European Union procedures and practices relevant to parliamentary scrutiny. COSAC Secretariat, October 2007, p. 9.

¹³ Kiiver, Ph. *The National Parliaments in the European Union: A Critical View on EU Constitution-Building*. Kluwer Law International, 2006.

¹⁴ The government usually explains, in the EAC or at the Plenary, the agenda and the outcome of the European Council meetings. Some SSCs also hold hearings for the sectoral ministers to explain specific policies and decisions.

¹⁵ COSAC (2007) p. 9

¹⁶ COSAC (2007) p. 9-10

¹⁷ COM (2008) 237. Report from the Commission. Annual Report 2007 on relations between the European Commission and National Parliaments.

¹⁸ See IPEX

¹⁹ The passerelle clauses constitute a simplified treaty revision procedure allowing the Union to change its voting and decision-making procedures without intergovernmental conference: "Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a

qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence" (Art. 48 (7) first subparagraph).

²⁰ According to the Art. 3 of the Protocol, 'draft legislative acts' shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

²¹ The results of the checks can be found at <http://www.cosac.eu/en/info/scrutiny/>

²² Ranio, T. op.cit

The Adoption of the Euro in the New EU Member States: Repercussions of the Financial Crisis



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The new EU Member States are under the legal obligation to introduce the euro as soon as they meet the convergence/Maastricht criteria. However, their status as “Member States with a derogation” (Art. 122 TEC) gives them some leeway in setting the target date. In 2007, Slovenia was the only country of this group that joined the euro-area; Malta and Cyprus followed in 2008, and the latest Member State to adopt the euro was Slovakia in 2009. For the other Central and East European Countries (CEEC) the timing is still unknown; official announcements are not consistent and target dates vary from 2010 to 2015. This article discusses the obligations related to the European Monetary Union (EMU) during the different stages of the EU and eurozone accession process, whilst also reflecting upon the impact of the financial crisis on eurozone enlargement and addressing the current debate on unilateral euroisation.

Introduction

The new Member States that joined the EU in 2004 and 2007 have to adopt the euro as soon as they meet the Maastricht criteria since adoption of the euro is part of the requirement for EU accession. Participation in the eurozone is in fact mandatory: the clauses that permitted the United Kingdom and Denmark not to adopt the euro were provided under specific circumstances and were not applicable to the new Member States. Yet, the status of new EU Member States as ‘Member States with a derogation’ (Art. 122 of the Treaty establishing the European Community, TEC) gives them some leeway in setting the target date. In 2007, Slovenia was the first country of this group that joined the euro-area; Malta and Cyprus followed in 2008; and the latest new Member State to adopt the euro was Slovakia in 2009. For the other CEEC the timing is still unknown; official announcements are not consistent and target dates vary from 2010 to 2015.

The purpose of this article is to discuss the requirements related to EMU during the different stages of the accession process and to reflect upon the impact of the financial crisis on eurozone enlargement. The complex and dynamic process of enlargement and monetary policy convergence started well before the EU accession in 2004. The article therefore begins with a description of the obligations related to EMU during the pre-accession stage and continues with an

analysis of the implications of EMU upon and after EU accession. It then concludes with a discussion on the financial crisis and its repercussions on the new EU Member States’ prospects of joining the eurozone.

Pre-accession Relations, EU Accession and Implications of EMU

At the Copenhagen Summit held in June 1993 the European Council set out how accession would be granted once each applicant fulfilled the relevant economic and political criteria. These preconditions for EU accession – the so-called Copenhagen criteria – also addressed the need for monetary policy convergences and included:

1. The achievement of stable institutions guaranteeing democracy, the rule of law, respect for human rights and the protection of minorities.
2. The existence of a functioning market economy.
3. The capacity to cope with the pressure and market forces likely to be faced within the Union.
4. Full acceptance of the *acquis communautaire*, i.e., the ability to take on the obligations of EU membership, including adherence to the aims of political economic and monetary union (cf. Conclusions of the Presidency SN 180/1/93).

As the Copenhagen criteria included the ability of the candidate countries to adhere to the aims of EMU, the Directorate General for Economic and Financial Affairs of the European Commission launched its pre-accession fiscal surveillance mechanism in 2001. This mechanism comprised screening in the area of fiscal and monetary policy with respect to EU and EMU accession requirements and was divided into an annual debt and deficit notification and a pre-accession economic programme (PEP) (European Commission 2000b: 5).

In addition to the Copenhagen criteria and in an effort to facilitate the integration of the accession countries into the single European market (cf. Smith 2004: 122) and to develop the financial sector and ensure monetary and fiscal discipline, the candidate countries had to fulfil the following EMU-related conditions during the pre-accession phase:

- Establishment of independent central banks and monetary authorities (Art. 108 TEC).¹
- Prohibition of direct public sector financing by the central bank (Art. 104a TEC) and of privileged access of the public sector to financial institutions (Council Regulation TEC No. 3604/93 specifying definitions for Art. 104a TEC).
- Liberalisation of capital movements (Art. 56 TEC).

Upon accession, all new Member States went straight into stage three of EMU.² However, as Member States with a derogation, they remain outside the eurozone until they meet the convergence criteria. From the day of their accession the new Member States had to adopt the following policies (see European Commission 2000a: 37):

- Treatment of exchange rate policy as a matter of common interest and in light of the expected participation in the exchange rate mechanism (Art. 124 TEC).
- Avoidance of excessive government deficits and adherence to the relevant provisions of the stability and growth pact (Art. 104 TEC and Regulations 1055/05 and 1056/05).
- Participation in the European System of Central Banks (ESCB) from the date of accession (Art. 109 TEC).
- Progress towards a high degree of sustainable convergence (Art. 121 TEC) and the Maastricht convergence criteria.
- Treatment of economic policies as a matter of common concern and coordination of economic policies among Member States through participation in Community procedures (Art. 98 & 99 TEC).

The latter point of participation in the EU's economic policy coordination contains the Broad Economic Policy Guidelines (BEPG) (Art. 99 (2) TEC) and the multilateral surveillance (Art. 99 (3)). The BEPG is the central reference document for the annual assessment of economic policies in the Member States. If the Guidelines are not followed, the Council can

issue recommendations to the country concerned (Art. 99 (4) TEC). Multilateral surveillance is the procedure that allows the EU to monitor and assess national economic developments and policies. The multilateral surveillance of economic policy also comprises the two regulations that form the Stability and Growth Pact (SGP). While Member States with a derogation are not bound by the full provisions of the SGP, they have to submit annual medium-term convergence programmes in preparation for EMU in accordance with the procedures of the SGP (see European Commission 2001a: 25). These annual programmes are monitored by the Euro-



pean Commission and peer-reviewed in the Council of Ministers of Economics and Finance (ECOFIN); they are subject to the excessive deficit procedure but not submitted to procedure, according to which the Council may apply sanctions.

The status as Member State with a derogation gives the new Member States some leeway in setting the target date since there is no fixed timetable for the adoption of the euro. Of particular importance for setting the target date is the requirement for participation in the Exchange Rate Mechanism II (ERM) for at least two years and within a 15 per cent fluctuation range against the euro before adopting the single currency. Therefore, the earliest possible date for an enlargement of the eurozone by the new Member States that first joined ERM II on 28 June 2004 (Estonia, Lithuania and Slovenia), was the end of 2006 or the beginning of 2007, given that the convergence test can only take place after the two years of ERM II membership (thus after June 2006),³ and which follows the recommendations by the European institutions. Following the reports from the European Commission and the European Central Bank (ECB) and after the consultation of the European Parliament, the Council – in the composition of the Heads of State or Government (Art. 122 (2)) – decides on a qualified-majority basis whether the criteria are sufficiently met and accordingly announces the date for the introduction of the euro. The irrevocable conversion rate between the respective national currency and the euro is then set by the Council on the basis of a decision taken unanimously by the current eurozone members and the country concerned.

The ERM participation requirement is one of the convergence or Maastricht criteria, as described in article 121 (1) TEC. The following convergence criteria need to be fulfilled in order to qualify for eurozone membership:

- Price stability: for a year before assessment, the inflation rate must not exceed by more than 1.5 per cent that of the three best-performing Member States.
- Budget deficit: the budget deficit must not exceed 3 per cent of GDP.
- National debt: government debt must not exceed 60 per cent of GDP.
- Long-term interest rates: the long-term interest rate should not exceed by more than 2 per cent the average of the three Member States with the lowest inflation rates.
- Participation in the Exchange Rate Mechanism: the currency must stay within the narrow ranges of the ERM, with no realignment for at least two years.

Whereas the Copenhagen criteria set standards related to a functioning market economy, the capacity to cope with market pressures within the EU and to adhere to the aims of political, economic and monetary union, the Maastricht criteria were designed to achieve price stability, low long-term interest rates, low public deficits and exchange rate stability. Thus, the Copenhagen criteria focus on real and legal-institutional convergence, i.e., on convergence in the economies' structural and institutional characteristics, while the Maastricht criteria place emphasis on the nominal convergence of the inflation rates, interest rates and budget deficit GDP-ratios. In fact, the real convergence parameters of the Maastricht criteria are only secondary in nature as their fulfilment may promote but does not automatically result in structural adjustment and real income catching up (see Backé 1999:

121). Accordingly, the Copenhagen and Maastricht criteria follow two distinctive aims and types of benchmarks. In addition, whereas

the Copenhagen criteria are also accession criteria, meeting the Maastricht criteria is not a precondition for EU accession. Nevertheless, prior to their EU accession, the Maastricht criteria put pressure on the then candidate countries, since they had already paid close attention to the requirements when designing domestic fiscal, monetary and exchange rate policies. Scholars argue that this was because the Maastricht criteria had a meaning for the new Member States, especially in post-communist Europe, beyond that of defining the overall framework for a sound monetary and fiscal policy: fulfilment demonstrated readiness for EU accession and the definitive break with the communist past (Lavrac 1999: 116). Indeed, as a recent study on public opinion on eurozone membership in post-communist countries demonstrates, eurozone membership may still "serve as focal points that provide guidance on the future path of transition

as the adoption of the euro is viewed as the necessary incentive to continue with the reform process, to leave the past behind and to establish institutional trust as well as personal security. This implies that the opinion on the euro is not merely an expression about an EU issue. Instead, it is in large part a function to vote on free market reforms" (Allam and Goerres 2008: 24).

Moreover, after EU accession, the commitment to the Maastricht criteria develops a further dimension as the Council can decide not to provide funds for new projects to the EU Member State concerned if it "has failed to take action to correct an excessive deficit or has not respected the Stability and Growth Pact" (Jones 2006: 97; Council Regulations 1164/1994 and 1264/1999). The technical implications of EMU accession therefore have a considerable impact on the economies and politics of the new Member States. Indeed, the prospect of EMU membership is guiding and constraining today's new Member States' monetary and fiscal policies. Certainly, EMU membership brings benefits and would enhance the new Member States' economic and political credibility, which are especially important for attracting international investors; but the adherence to the Maastricht criteria also entails adjustment costs (Buitert and Grafe 2004). Here, the new Member States, especially in Central and Eastern Europe (CEE), face a policy dilemma arising from the intention to meet the Maastricht criteria at an early stage of transition on the one hand, and the need for structural reforms on the other. This is due to the new EU Member States in post-communist Europe still encountering special transition problems that require high levels of public spending and investment (e.g. on infrastructure), but who stand in conflict with the EMU's deficit criterion.⁴ In addition, bringing down the inflation rate and meeting the Maastricht

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Treaty's stable exchange rate criterion are to a certain extent incompatible (cf. Balassa 1964; Samuelson 1964).⁵ During the catching-up

process, the CEEC will either be under enormous inflationary pressure or have an appreciating nominal exchange rate, deriving from the need to reform expenditure and from faster growth than in the euro area. In addition to the question of economic burden-sharing, the adoption of the euro touches upon issues of state sovereignty and culture (Jones 2002: 23), as giving up its national currency is related to the risk of losing a 'symbolic marker in nation-building efforts' (Risse 2003: 487); an aspect which should not be underestimated especially when studying the political economy of new democracies. Eurosceptic politicians may use this argument to mobilise public opinion and influence the political agenda. For example, the Czech President Vaclav Klaus, who has a very sceptical view on EMU, refers to the euro and Maastricht Treaty as a forced imposition of a new European identity (Bugge 2000: 213).

Related to the fear of losing the national identity is the argument made by Vaclav Klaus that EMU will mean the loss of the just-regained sovereignty to the bureaucratic and centralised Brussels (Interviews Klaus Handelsblatt 17/11/1992; Radio FreeEurope 10/02/2004).

Repercussions of the Financial Crisis on Eurozone Enlargement

As discussed above, technical implications of EMU accession have a considerable impact on the economies and policies of the new EU Member States. Understanding the euro-adoption strategies merely on the basis of economic accounts and cost/benefit analyses, however, would overlook the political reality. In fact, the real difficulty in reforming the economy is political, given that policy adjustment involves significant costs, especially at the outset of reforms. It is therefore no surprise that while all euro-adoption strategies as such aim to fulfil the Maastricht criteria, the strategies of the new Member States differ in terms of their target dates and political support (for a discussion on the domestic political context see Dyson 2006). Slovenia, Cyprus, Malta and Slovakia are the only countries so far that have already adopted the euro; the timing is still unknown for the other new Member States; official announcements are not consistent and target dates vary from 2010 to 2015.

In fact, the target dates have not been static, but have changed on a number of occasions. For example, by the late 1990s, the Czech Republic and Hungary announced target dates for entry into the eurozone for 2005 and 2006 (Jarai 2001). However, given that at that time accession negotiations had not been concluded and no date for EU accession had yet been set, the target dates for 2005 were quite optimistic and, as later became clear, unrealistic. In 2002, the Czech Republic, gave up plans for a quick approach to eurozone entry and the Spidla government announced that the adoption of the euro would only be possible by 2010 or 2011 (Financial Times 09/10/2002). In January 2009, former Prime Minister Topolánek then declared that the government would announce the official target date only in November 2009 (Radio Prague 02/01/2009). Gradually, Hungary also readjusted its strategies and presented its official euro-adoption strategy in August 2003, which called for eurozone entry by 2008 (National Bank of Hungary 2003). In May 2004, the Hungarian government submitted its first convergence programme and readjusted its strategy stating that, with the present macroeconomic problems encountered by the Hungarian economy, eurozone entry would be possible only by 2010. This target date has been postponed again and analysts estimate an adoption of the euro by 2014 (Bloomberg, 16/04/2009).

Table 1: Monetary and exchange rate strategies in the new EU, non-eurozone Member States

	Exchange rate regime	Currency	Features
Currency board			
Bulgaria	Currency board to the euro	Lev	Introduced in 1997
Estonia	Currency board to the euro and member of ERM II with 0% margin since 2004	Kroon	Introduced in 1992
Lithuania	Currency board to the euro and member of ERM II with 0% margin since 2004	Litas	Introduced in 1994; Re-pegged from the US dollar to the euro in February 2002
Conventional fixed peg			
Latvia	Peg to the euro (earlier pegged to Special Drawing Right SDR) and member of the ERM II with 1% margin	Lats	
Managed floating			
Romania	Managed float	Leu	Currency banded (US dollar, euro) is used informally as reference. Inflation targeting
Free float			
Czech Republic	Free float	Koruna	Inflation targeting 2%-4% by end-2005
Hungary	Free float. Until February 2008 unilateral shadowing of ERM II (peg to the euro with +/- 15% fluctuation bands).	Forint	Exchange rate regime combined with inflation targeting 3%
Poland	Free float	Złoty	Inflation targeting: 2.5% +/-1%

Adapted from Rollo (2006: 63), updated by the author

Likewise, the exchange rate regimes have been amended on a number of occasions (Corker et al. 2000; Darvas and Szapary 2008). All CEEC have had to deal with problems arising from strong capital inflows putting more and more pressure on the money supply, and most central banks reacting with costly but ineffective sterilisation operations. At the outset of the transition process, Poland, Hungary and the Czech Republic, for example, opted for peg strategies. However, with growing external imbalances (foreign trade and the current account balances are still deteriorating in most of the new EU Member States) and an inflation targeting strategy as a goal of monetary policy, these exchange rate regimes were later abandoned or radically adjusted (Hallerberg et al. 2002: 345). Table 1 shows the current monetary and exchange rate strategies in the new Member States that are not yet eurozone members. The exchange rate regimes can be divided into countries with euro-based currency boards and conventional fixed peg (Bulgaria, Estonia, Latvia and Lithuania) and countries with flexible exchange rates (Czech Republic, Hungary, Poland and Romania).

The currencies of the new EU Member States with flexible exchange rates depreciated between 29% and 17% from July 2008 to March 2009, with the Polish Złoty depreciating the most during this period. It is therefore no surprise that the high volatility of the Polish Złoty has fuelled the debate of Poland's eurozone membership. While politicians have kept a low key debate on eurozone accession, the financial crisis has mitigated opposition to adopting the euro. The Polish Prime Minister Donald Tusk announced in December 2008 that Poland should strive to adopt the euro as early as 2012. This is an important turn in the government's position given that it has so far refrained from announcing a clear target date. Similar debates are also taking place in the other CEEC. Indeed, given the volatility on the exchange rate market with sharp depreciations of most CEE currencies and stronger market disturbances in the past months, eurozone membership has gained in attractiveness as it is perceived to provide protection during times of financial crises. Risk aversion has led to a withdrawal of capital from emerging market economies. In addition to a decrease in FDI and the related negative impact on the economies in CEEC, a high portion of the credited granted to households and private business has been in foreign currency and mainly in euro. The foreign currency borrowing was encouraged by lower interest rates in the eurozone as compared to the domestic interest rates. Equally, some CEEC have high euro-denominated foreign debt levels making currency depreciation especially painful (Berger 2004: 15). The most dramatic events took place in

Hungary in October 2008 and in Latvia and Romania earlier this year. The three states are on the brink of financial collapse and are relying on financial bailouts from international organisations. In fact, the catastrophic default and the high potential for contagion could only be avoided as a result of loans from the IMF and financial support from the EU.

The combination of higher debt service, job losses and economic downturn led to a sharp increase in non-performing loans. The resulting credit crunch is reinforced

by the fact that the percentage of foreign banks in CEEC is very high. Since their mother banks

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in the West are already experiencing financial difficulties in their home countries, they are restricting funding to their branches in CEEC. By extension, banks have therefore cut back lending and increased real lending rates, perpetuating the credit squeeze; in turn, this exacerbates the economic decline. A speeding up of the eurozone accession process is therefore in the interest of the countries, since through irrevocably fixing the domestic currency to the euro, CEEC debt service would no longer be dependent on currency fluctuations. Indeed, the eurozone is perceived as a safe harbour in a stormy sea [read currency fluctuation and capital flight]. In a leaked report, the IMF has even recommended a unilateral euroisation (Financial Times 6 April 2009).⁶ Euroisation became the axiom for an adoption of the euro as legal tender without a previous convergence process and without having a common central bank. The main advantages of euroisation may include much lower interest rates and the elimination of currency risk (cf. Meade et al. 2002). Yet, the ECB strongly rejects the idea as unilateral euroisation bypasses the convergence criteria and therefore eases the pressure for the new EU Member States to attain fiscal consolidation and low inflation.



In addition, euroisation weakens the EU's institutional framework by undermining the treaty criteria and creates the risk of decreasing confidence in the euro. Euroisation is therefore neither likely nor desirable. Considering the tight trade links between EU Member States,

adopting the euro in Central Europe would certainly be in the interest of the existing eurozone Member States as this would stimulate trade creation. However, a speeding up of the eurozone accession process should not come at the cost of undermining the convergence criteria.

However, with higher inflation rates due to currency depreciation and growing fiscal deficits due to lower economic activities, compliance with the Maastricht criteria has moved to a further distance in some CEEC. Since the start of the financial crisis, governments have launched

Table 2: Maastricht criteria before the crisis

Inflation rate		Long-term government interest rates (bond yields)		General government surplus or deficit		General government gross debt	
April 2008		April 2008		2007		2007	
Average of 3 lowest EU member	1.9	Average of 3 lowest inflation countries	4.42				
Reference value	3.4	Reference value	6.42	Reference value	-3.0	Reference value	60.0
Malta	1.9	Euro area	4.3	Bulgaria	3.4	Estonia	3.4
Slovakia	2.4	Slovakia	4.46	Cyprus	3.3	Latvia	9.7
Euro area	2.6	Slovenia	4.47	Estonia	2.8	Romania	13.0
Cyprus	3.2	Lithuania	4.59	Latvia	0.0	Lithuania	17.3
Poland	3.4	Cyprus	4.6	Slovenia	-0.1	Bulgaria	18.2
Czech Republic	4.8	Czech Republic	4.72	Euro area	-0.6	Slovenia	24.1
Slovenia	5.0	Malta	4.77	Lithuania	-1.2	Czech Republic	28.7
Romania	6.4	Bulgaria	4.8	Czech Republic	-1.6	Slovakia	29.4
Hungary	7.3	Latvia	5.93	Malta	-1.8	Poland	45.2
Lithuania	8.0	Poland	5.99	Poland	-2.0	Cyprus	59.8
Estonia	8.8	Romania	7.34	Slovakia	-2.2	Malta	62.6
Bulgaria	10.1	Hungary	8.02	Romania	-2.5	Hungary	66.0
Latvia	13.0	Estonia	n.a.	Hungary	-5.5	Euro area	66.6

Source: Szapary (2009)

Table 3: Maastricht criteria in December 2008 and January 2009

Inflation rate		Long-term government interest rates (bond yields)		General government surplus or deficit		General government gross debt	
December 2008		December 2008		2009 (19 January forecast of DG ECOFIN)		2009 (19 January forecast of DG ECOFIN)	
Average of 3 lowest EU member	2.6	Average of 3 lowest inflation countries	3.57				
Reference value	4.1	Reference value	5.57	Reference value	-3.0	Reference value	60.0
Euro area	3.3	Euro area	3.71	Bulgaria	2.0	Estonia	6.1
Slovakia	3.9	Malta	4.17	Cyprus	-0.6	Bulgaria	12.2
Poland	4.2	Czech Republic	4.30	Czech Republic	-2.5	Lithuania	20.0
Cyprus	4.4	Slovenia	4.56	Malta	-2.6	Romania	21.1
Malta	4.7	Cyprus	4.6	Slovakia	-2.8	Slovenia	24.8
Slovenia	5.5	Slovakia	4.72	Hungary	-2.8	Czech Republic	29.4
Hungary	6.0	Poland	5.7	Lithuania	-3.0	Slovakia	30.0
Czech Republic	6.3	Bulgaria	7.76	Estonia	-3.2	Latvia	30.4
Romania	7.9	Hungary	8.31	Slovenia	-3.2	Cyprus	46.7
Estonia	10.6	Romania	8.38	Poland	-3.6	Poland	47.7
Lithuania	11.1	Lithuania	9.0	Euro area	-4.0	Malta	64.0
Bulgaria	12.0	Latvia	9.03	Latvia	-6.3	Euro area	72.7
Latvia	15.3	Estonia	n.a.	Romania	-7.5	Hungary	73.8

Source: Szapary (2009)

rescue packages consisting mainly of government guarantees and increased spending on major infrastructure projects. Because of the economic recession, the revenue side will be characterised by a deterioration of tax revenue allocation due to huge losses in corporate enterprise productivity and growing unemployment. This all will translate into higher fiscal deficit in 2009 (see Table 3). Indeed, while in 2007 Hungary was the only country not to comply with the Maastricht deficit criterion (see Table 2), it is expected that all but the Czech Republic and Bulgaria will have a deficit above -3% in 2009 (see Table 3). The relatively low fiscal deficit in transition countries in the past few years was not due to low structural deficits but mainly due to the exceptionally high growth rates of the GDP between 5-10%. Certainly, with a slow-down in economic activities, the GDP growth rate will decline, revenue collection will deteriorate and the state deficit will further increase.

To conclude, while the financial crisis has increased the attractiveness of eurozone membership as it is perceived to be a 'safe harbour in a stormy sea', the currency depreciation and slow-down in economic activities make it more difficult for the new EU Member States to comply with the Maastricht criteria. The current debate on unilateral euroisation in CEEC, sparked by the IMF, underlines the dramatic situation in some of the new EU Member States that are on the brink of a financial collapse. However, unilateral euroisation bears potential risk for European integration as it undermines the institutional framework and unity of the EU. Euroisation is therefore neither likely nor desirable. Rather than bypassing the Maastricht criteria, the debate should concentrate on possible adjustments of the current rules in hard times.

NOTES

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¹ All articles refer to the Treaty establishing the European Community as amended by the Treaty on European Union signed in Maastricht on 7 February 1992, the Treaty of Amsterdam signed on 2 October 1997 and the Treaty of Nice, signed on 26 February 2001.

² Stage one started for the then Member States in 1990 with the complete abolition of capital controls as under Article 56 of the TEC. In stage two (1 January 1994 - 31 December 1998) Member States had to implement measures to achieve compliance with the EMU requirements to be able to enter EMU on 1 January 1999. Stage three of EMU began on 1 January 1999 with the introduction of the euro in financial markets.

³ The current members of the eurozone introduced a transition period of three years between EMU accession and the introduction of euro cash. The new Member States have indicated their intention to follow a so-called "big bang" scenario in which the adoption of the euro will happen at the same time as the introduction of euro coins and bills (see European Commission 2004: 2-5).

⁴ Given that the Maastricht criteria were not designed for transition economies, scholars argue that the convergence criteria and the SGP miss "the economic realities of countries that differ from the EU average as regards to their expected inflation and real GDP growth rates and their inherited stocks

of environmental and public sector capital" (Buiter and Grafe 2004: 68). For a discussion on the effects of the 'EU fiscal accession shock' and alternative fiscal rules for the new EU Member States see Nuti (2006).

⁵ This can be explained by what is called the Balassa-Samuelson effect. The Balassa-Samuelson effect describes the mechanism by which an increase (larger than in other countries) in productivity of tradable goods relative to non-tradable goods causes an appreciation of the exchange rate (Balassa 1964, Samuelson 1964). If productivity growth in one country is higher than in another, inflation will be higher in the former. Thus, as the transition countries catch up with higher GDP growth rates, their price level also catches up so that their inflation rates are also higher. For a discussion on the extent to which the exchange rate appreciation and inflation in CEEC is attributable to the Balassa-Samuelson effect see Egert et al. (2003); Mihaljek and Klau (2004).

⁶ The debate about unilateral euroisation is not new but has been conducted since the late 1990s. At the forefront of the debate in the 1990s were Polish academics and policy makers. The most prominent examples of Polish academics favouring euroisation are Andrzej Bratkowski and Jacek Rostowski (2002); the most prominent politician is the former Finance Minister Kołodko. Andrzej Bratkowski (1991) and Jacek Rostowski (1989-1991) were both economic advisors to the Deputy Prime Minister and Finance Minister Leszek Balcerowicz. Andrzej Bratkowski was deputy President of the National Bank of Poland from 2001-2004. Since 2007, Jacek Rostowski is Finance Minister of Poland.

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The European Competition Network (ECN): It Does Actually Work Well



Mihalis Kekelekis*

National competition authorities and national courts concurrently apply European competition rules with the European Commission focusing on the most severe infringements. The European Competition Network has been established with the aim of assisting the coherent application of competition rules across the EU. This is a network of public authorities consisting of the European Commission and the national competition authorities and functions as a forum for discussion and cooperation. The European Institute of Public Administration undertook a study on the functioning of the European Competition Network. This paper presents the results of that study.

Introduction

During the last decade, European competition policy has undergone major changes with the aim of contributing to the achievement of its main objective as enshrined in Article 3(g) TEC, that a system ensuring undistorted competition should be included in Community activities. As part of these changes, Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 TEC (hereinafter the "Regulation") was adopted.¹ This Regulation came into force on 1 May 2004. The reason for its adoption was that, given the EC's enlargement and the continuous globalisation of the economy, a centralised authorisation system managed by the European Commission (hereinafter "the Commission") using Regulation 17/62 would no longer ensure effective application of competition rules and thus the completion of the single market.²

In this regard the reform contained three main objectives. The first of these is rigorous enforcement of competition law by concentrating on the most important cases involving a real EC interest. The second main objective is effective decentralisation, with the Commission, the National Competition Authorities (hereinafter "NCAs") of the Member States and the national courts having concurrent powers to apply EC competition rules. Each of the 27 NCAs is now fully empowered to apply all elements of the above rules, including the exemption provisions of Article 81(3) TEC, a power previously reserved only for the Commission. The third main objective is simplification of control procedures, with the abolition of the notification and authorisation system.

The European Competition Network (hereinafter "ECN"), which was introduced by the Regulation, is the implementing instrument of the modernisation of the EU's antitrust law enforcement, that is the enforcement of Articles 81 and 82 TEC. Together, the NCAs and the Commission form a network of public authorities which constitutes a forum for discussion and cooperation in the application and enforcement of EC competition policy; this network is called the ECN. To this end the Commission has published a Notice specifying the principles applicable to this cooperation within the ECN.³

The aims of this paper are to provide a brief analysis of the functioning of the ECN, to present the results of a study undertaken by the European Institute of Public Administration (hereinafter "EIPA") in this context, and to conclude on how successful its operation has been.

ECN: the Background

The Notice provides that the ECN must ensure an efficient division of work, mutual assistance between NCAs and an effective and consistent application of EC competition rules.

Division of Work

As the new system is governed by rules of parallel competences, an optimal division of work is required. The Notice clarifies that an NCA is well placed to deal with a case if three conditions are met:

1. the actions of the parties have substantial effects for the territory in which the authority is based;
2. the authority can effectively bring to an end the entire infringement;
3. the authority can effectively gather the evidence required to prove the infringement.

It is important to point out in this context that, although the ECN provides the framework for efficient work sharing between NCAs by means of the exchange of information mechanism, it does not decide on the division of the work, nor do the Commission or the NCAs themselves. In practice NCAs start, conduct and possibly conclude the proceedings in accordance with their own responsibility.

Mutual Assistance

On the basis of Article 11(3) of the Regulation, any NCA acting under Articles 81 or 82 TEC must inform the Commission before or just after commencing its first formal investigative measure. The Commission has also accepted an equivalent obligation to inform NCAs under Article 11(2) of the Regulation. NCAs can furthermore assist each other in various fact-finding measures by means of a standard form containing limited details of the case concerned, such as the authority dealing with the case, the product, the territories and parties concerned, the alleged infringement, the suspected duration of the infringement and the origin of the case.

Article 12 of the Regulation provides for the exchange of information between the Commission and the NCAs and between the NCAs themselves.

Effective and Consistent Application of EC Competition Rules

Under Article 11(4) of the Regulation, an NCA must inform the Commission no later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption Regulation. This information may also be made available to the other members of the ECN.

Under Article 11(6) of the Regulation, the Commission can initiate formal proceedings, thus relieving the respective NCA of its competence to apply Articles 81 and 82 TEC. If the NCA is already acting on a case, then the Commission shall only initiate proceedings after consulting with that NCA.

As stipulated in the Notice, the Commission will in principle only apply Article 11(6) of the Regulation if:

- ECN members envisage conflicting decisions in the same case;
- ECN members envisage a decision which is obviously in conflict with consolidated case law;
- ECN member(s) is (are) unduly drawing out proceedings in the case;
- There is a need to adopt a Commission decision to develop Community competition policy;
- The NCA(s) concerned do not object.

The reason behind Article 11(6) of the Regulation and the special responsibility granted to the Commission is the fact that in the current system, only Commission decisions can be challenged before Community courts, and not the decisions of the NCAs. Therefore, entrusting the Commission with powers to develop Community competition policies is the only way to involve the Community courts directly in the judicial review of such developments and thus ensure the effective and consistent application of EC competition rules. Otherwise, where the case is not dealt with by the Commission, it is only possible to reach Community courts if national courts, which usually do not want to slow proceedings, are willing to request a preliminary ruling.⁴

ECN: the EIPA Study

The Commission's initiative to modernise the antitrust rules, the subsequent Council Regulation 1/2003 and the functioning of the ECN have attracted numerous comments and analyses, as well as heavy criticism in the literature.

It has been stated that with the Regulation "the Commission has orchestrated a political masterstroke. It has given the impression of radical reform to the Member States by abolishing the notification procedure and offered decentralisation provisions [...] which in no way undermine its central role [...] DG Competition has in fact managed to centralise European competition law more than under Regulation 17".⁵

As far as the creation of the ECN is concerned, the criticism is directed at the under-resourced NCAs, the systemic problems of sharing confidential information across the EU, the "case handling" question of who will take the lead in multi-jurisdictional cases, the greater degree of uncertainty for companies as they lose the simplicity of centralised clearance from the Commission and the issue of accountability within the ECN.⁶

The analysis below will attempt to provide answers to a number of issues that have been raised in the literature. This analysis is based among other things on a study undertaken by EIPA on the basis of which a questionnaire was prepared and sent out in order to solicit the views of the NCAs as regards the functioning of their own organisations and of the ECN. The questionnaire was based upon a number of principles that evidently govern the effective operation of networks:⁷

- Does the ECN (and its secretariat) have adequate resources?
- How are decisions made within the ECN? Are decisions made on the basis of qualified majority?
- What ideally should be the role of the ECN vis-à-vis its members? Could tasks be identified that maybe assigned to the network, over which ECN should have clear responsibility for their completion, and in collaboration with members?
- Is there any research programme defined and carried out by the ECN?
- How does the ECN facilitate the establishment of a system for the bilateral exchange of information and experiences on regulatory problems?

- How does the ECN facilitate the establishment of a system for collecting information on the state and methods of application of common rules by national authorities?
- How does the ECN help members to identify best practices on issues of common concern?
- To what extent may national variations be justified by the specific nature of national conditions?

Provide the ECN (and its secretariat) with more resources?

The ECN does not have its own secretariat. DG Competition has five to six members of staff involved in the network. It has not yet been considered whether the establishment of a secretariat would be necessary, given that the Regulation itself provides the legal basis for NCAs to exchange information and discuss implementation and interpretation issues.

Introduce decision-making procedures based on qualified majority?

It was found that this is irrelevant in the context of the ECN. The network neither decides which cases should be pursued nor which authority/ies would be well placed to carry out the investigation. Discussions within working groups and sub-groups are based on consensus; however, the members of the ECN are not obliged to comply with the results achieved, as participation in those groups does not create any legal rights. Nevertheless, they are obliged to make their best efforts to ensure compliance, whereas any deviation is subject to peer pressures.

Identify tasks which could be assigned to the ECN for which the ECN should have clear responsibility for their completion, and in collaboration with members?

Under the ECN, working groups for horizontal issues and sub-groups for sectoral issues have been established. The majority of the NCAs questioned replied that the ECN is carefully constructed and appropriately defined to ensure the effective and consistent application and implementation of EC competition rules. A minority criticised the establishment of so many working groups and subgroups, as active participation in all forums was perceived as very resource-consuming and difficult, particularly for small NCAs.

Define a research programme to be carried out by the ECN?

Ten out of 17 NCAs replied that they do not conduct research on competition policy and law issues. Research is carried out at ECN level through the working groups and subgroups but no particular research plan is defined.

Establish a system for the bilateral exchange of information and experiences on regulatory problems?

The ECN provides a valuable forum for discussion and cooperation among the NCAs. NCAs can now learn from each others' experiences, coordinate investigations, help each other with investigations, exchange evidence and information and discuss issues of common interest.

Thanks to the ECN's interactive access and the electronic database containing details from the standard forms, NCAs can also be informed of other authorities' main contact persons. The ECN thus makes it possible for NCAs to identify among themselves who does what. It is not therefore a simple electronic connection; it is rather an effective daily working tool, an open network that allows, on the one hand, an exchange of confidential information and, on the other hand, easy interaction between the members of the network. Consequently, cooperation can occur even in the absence of formal procedures or formal requirements.

Establish a system for collecting information on the state and methods of application of common rules by national authorities?

Article 11(3) of the Regulation creates an obligation for all NCAs to inform the Commission before or without delay after commencing the first formal investigative measure in all cases involving the application of Article 81 and 82 TEC. This information may be shared with other NCAs.

Generally, the most important element that has come from the creation of the ECN is a "can do" attitude, and the way it has been embraced by all Member States and the willingness shown by all to attempt to accommodate each other and to share information when necessary

"In practice, the obligation to inform about new cases is complied with by uploading the relevant information in a common case-management system. This system was developed by the DG COMP IT-team and has been operational from 1 May 2004.⁸ The system is secured against unauthorised access and access rights are restricted to case-handlers and other authorised personnel of the competition authorities. The IT-system foresees the possibility to insert standardised information on, for instance, the parties, the products, the territories, the alleged infringement, its suspected duration, the contact details of the case handlers in charge etc. [...]"⁹

All NCAs that replied to our questionnaire share the same view, which is that the ECN helps them to improve their enforcement capabilities in relation to competition rules and, at the same time, to ensure the coherence of the application of these rules.

Identify best practices on issues of common concern?

The legal framework for the establishment of the ECN does not provide for the network to exercise any decision powers in order to achieve harmonisation of rules. The ECN however, as its members report, can contribute to such harmonisation by adopting, through its sectoral subgroups and horizontal working groups, best practices on particular issues which could provide guidance to NCAs in relation to their enforcement activities or to their national parliaments in relation to reforming respective legislation.

There are currently numerous subgroups dealing with particular sectors of the economy (e.g. banking, securities, energy, insurance, food, pharmaceuticals, professional services, healthcare, environment, motor vehicles, telecommunications, media, IT & information & communication, abuse of dominant position, Competition Chief Economist and railways). These groups meet at least twice a year and otherwise exchange information via a common intranet application.

There is also a small number of working groups that deal with horizontal issues pertaining to national laws on procedures and sanctions.¹⁰ It is important to note that the decision

NCAs with provisions on mutual assistance and close cooperation, it does not, on the other hand, harmonise national rules on procedures and sanctions, which remain heterogeneous.

The rights of complainants (e.g. right to access a file or attend an oral hearing, right to reply to a statement of objections or rights relating to the treatment of confidential information) are therefore different from one system to another. In some jurisdictions, such as the Irish legal system, it would be extremely difficult to harmonise procedures and sanctions given that under that system, the fines imposed on undertakings for breach of competition rules are at the discretion of the national courts.

However, irrespective of which NCA deals with a case, the application of competition law must be the same. Article 3(1) of the Regulation obliges NCAs to apply EC law to agreements and practices which are capable of affecting trade between Member States. Article 3(2) of the Regulation prevents them from reaching a different conclusion when they apply national laws to restrictive agreements. The only scope for divergence, which remains after the modernisation, is in the field of unilateral behaviour, which may be treated more severely under national law than under Article 82 EC.



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to attend a particular working group meeting is based on the relevance of the topic for discussion. Working groups therefore consist of NCA officials who volunteer to participate. DG Competition is present in all subgroups and working groups. Each working group currently has around 15 to 18 participating NCAs.

To provide an example of a best practice, the ECN has recently launched an 'ECN Model Leniency Programme' that improves the way in which parallel leniency applications are handled in the ECN. The purpose of this model is to ensure that potential leniency applicants are not discouraged from applying as a result of the discrepancies between the existing leniency programmes within the ECN.¹¹

Consider when national variations may be justified by the specific nature of national conditions?

In the sphere of competition law there are few issues that are situated at the interface between uniform Community Law and diverse national laws, such as those on procedures and sanctions. Although the Regulation introduces parallel competences between the Commission and the

The Regulation has established mechanisms to ensure that competition law is applied consistently and efficiently. Pursuant to Article 11(4) of the Regulation, NCAs are thus subject to an obligation to consult the Commission before adopting important decisions (e.g. prohibition and commitments). In practice, they may consult on a draft decision or also on a statement of objections. In addition, the ECN Notice indicates that the Commission is not prevented, obviously for purposes of consistency, from adopting a decision after an NCA decision has been made.¹²

Conclusion

After almost five years of operation, the way the ECN has been functioning so far appears to be very positive. It has certainly gained the support of its members, whose commitment and professional attitude have been of great importance.

Work sharing and the exchange of information contribute to the identification of best practices and also contribute to the effective and efficient solution of clearly pre-defined key issues of common interest, as in the case of leniency

applications, which have proven to be efficient and successful tools in the ECN members' fight against hardcore cartels.¹³

The study has shown that all initial criticism and fears of failure have been effectively tackled. In addition to conducting formal cooperation amongst its members, the ECN's main achievement has been to enhance the strong links between members, either through their joint efforts in the working groups or more informally, by contacting each other. It has been reported to us that, as a result of the creation of the ECN, the gates of communication are now wide open and case handlers from different NCAs across the EU openly discuss, even outside the ECN, both general policy issues and individual cases.¹⁴

Generally, the most important element that has come from the creation of the ECN is a "can do" attitude, and the way it has been embraced by all Member States and the willingness shown by all to attempt to accommodate each other and to share information when necessary.¹⁵ The ECN

has been designed in such a way so as to minimise conflict amongst its members.¹⁶

It must also be pointed out that the Commission retains its managerial role within the ECN, thereby creating a mechanism that aims to tackle legal uncertainty and minimise the risks of inconsistent policy enforcement under decentralisation in the face of a lack of previous strong network experience by the NCAs. The latter's role is not to influence the competition assessment of the Commission in individual cases. On the contrary, taking into account the fact that the Commission is responsible for the coherent implementation of the EC competition rules, the NCAs' objective is to cooperate fully with each other and to exchange opinions and information with the aim of effectively and efficiently applying the competition rules in their respective jurisdictions. By sharing this knowledge, we are certain that a common competition culture in the EU is soon to be established.

NOTES

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¹ OJ 2003 L 1/1.

² White Paper on Modernisation of the Rules Implementing Articles 85 and 86 of the EC Treaty, 28 April 1999. Press release IP/99/275.

³ Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101/43, 27 April 2004. This Notice replaces the Commission Notice on cooperation between national competition authorities and the Commission in handling cases falling within the scope of Articles 81 and 82 TEC, 15 October 1997.

⁴ Ginevra Bruzzone and Marco Boccaccio, "Taking Care of Modernisation After the Start-up: A View from a Member State", *World Competition* (31)1, 2008. Since the Regulation's entry into force, the Commission has never used the powers entrusted to it under Article 11(6).

⁵ Riley A., "EC Antitrust Modernisation: The Commission Does Very Nicely – Thank You! Part 1: Regulation 1 and the Notification Burden; Part 2: Between the Idea and the Reality: Decentralisation under Regulation 1", 2003 *ECLR* 24, 604-615 and 657-672.

⁶ Stephen Wilks, "Agency Escape: Decentralization or Dominance of the European Commission in the Modernization of Competition Policy?", *Governance: An International Journal of Policy, Administrations and Institutions*, Vol. 18, No. 3, 2005 Blackwell Publishing.

⁷ Phedon Nicolaidis, "Regulatory Integration and Cooperation: The Case of the European Regulatory Group on Electronic Communications", EIPA 2006.

⁸ From 1 May 2004 until 31 December 2008, 978 cases were communicated to the ECN, 164 of which are Commission cases and the rest (814) are cases sent by the NCAs (DG COMP source).

⁹ Kris Dekeyser and Dorothe Dalheimer, "Cooperation within the European Competition Network – taking stock after 10 months of case practice", 2005.

¹⁰ See in this respect the work of the ECN Working Group on Cooperation Issues and the "Results of the questionnaire on the reform of the Member States (MS) national competition laws after EC Regulation No 1/2003" (http://ec.europa.eu/competition/ecn/index_en.html). This study shows the process of approximation of national antitrust legislation to the provisions of the Regulation. This does not imply that such approximation is mandatory in respect of all the provisions of the Regulation.

¹¹ See http://ec.europa.eu/comm/competition/ecn/model_leniency_en.pdf.

¹² Paragraph 57 of the ECN Notice states that "the Commission will normally not – and to the extent that Community interest is not at stake – adopt a decision which is in conflict with a decision of an NCA after proper information pursuant to both Article 11(3) and (4) of the Council Regulation has taken place and the Commission has not made use of Article 11(6) of the Council Regulation" (emphasis added).

¹³ 25 NCAs operate a leniency programme. For more information on the work in the leniency field see Kris Dekeyser and Maria Jaspers, "A New Era of ECN Cooperation: Achievements and Challenges with Special Focus on Work in the Leniency Field", *World Competition*, 2007.

¹⁴ Céline Gauer and Maria Jaspers, "The European Competition Network. Achievements and challenges – a case in point: leniency", *Competition Policy Newsletter*, 1 2006.

¹⁵ "The European Competition Network: What It Is and Where It's going", *The Antitrust Source*, July 2005.

¹⁶ Firat Cengiz, "The European Competition Network: Structure, Management and Initial Experiences of Policy Enforcement", EUI Working Papers, MWP 2009/05. See also the Commission's Report on the functioning of Regulation 1/2003, COM(2009) 206 final, 29 April 2009.

Staff News

Maastricht



Theo Jans (BE) joined EIPA in 2009 as a Senior Lecturer in the Unit European Decision Making. He studied Political Sciences at the Vrije Universiteit Brussel (VUB) and the European University Institute (EUI). He received his PhD in Political Sciences from the VUB in 2001. His doctoral dissertation 'Federalism and the regulation of the ethnonational conflict. Joint decision-making in Canada and Belgium' analysed bargaining processes in complex political environments.

Theo has worked as a junior professor at Vesalius College (Brussels), at the Brussels School for International Studies (BSIS), at the University of Kent in Canterbury, and at the VUB's Politics Department and its Institute for European Studies (IES). He has been in charge of the IES Training Unit (2006-2008) and has organised several trainings on decision making for the European Commission and the Belgian Federal Government. His main research interests are European governance, policy-making processes, federalism and institutional conflict regulation. These interests have resulted in several research projects on regional representations and on European integrated product policy. He has published book chapters and articles on conflict regulation, federalism, intergovernmental relations and governance.

His fields of specialisation include Decision Making and European Governance.



Peter Ehn (SE) joined EIPA in February 2009 as a Seconded National Expert in the Unit European Public Management. He obtained a PhD in Political Science from Stockholm University. In his doctoral thesis he discussed the roles and relations between politicians and higher civil servants. Peter joined the Swedish civil service as an Auditor and in 1995 became Deputy Director of the Swedish National Audit Office. During his professional career he has worked in several committees focusing on creating a more effective public administration, with a clearer division of responsibilities and tasks between the state and local and regional authorities. From 2002 to 2009, Peter worked as a Senior Adviser for the Swedish Ministry of Finance. During that time he was mainly responsible for a committee on public sector responsibilities, as well as working as an expert in the committee.

Peter has also had an academic career, writing several books and articles on public administration and regional questions. He worked for a period at the Stockholm Centre for Organisational Research (SCORE). SCORE is a multi-disciplinary research centre with the aim of initiating, pursuing and disseminating research on organisational aspects of modern society.

His fields of specialisation include Public administration, roles of higher civil servants in a comparative perspective, relations and distribution of tasks and responsibilities between Government and state agencies, regionalisation.



Wolfgang Koeth (DE) is a Senior Lecturer in EU External Relations, Enlargement Policies and CFSP at EIPA's European Policies Unit. Before joining EIPA on 1 March 2009, Mr Koeth was working in the European Commission Office in Pristina (Kosovo), where he was Deputy Head of Office and in charge of implementing the EC's assistance in the Rule of Law sector. Prior to the 2004 enlargement, he worked as a Political Advisor and Programme Manager within the EC Delegation in Vilnius (Lithuania) and as a Lecturer in European Affairs at the University of Vilnius. He was also a Parliamentary Assistant in the European Parliament. Mr Koeth is a graduate of the Institute of Political Studies at the Robert Schuman University in Strasbourg. He also holds a degree in Russian Studies from the French National Institute of Eastern Languages and Cultures (INALCO) in Paris, and a degree in French and German Comparative Studies from the Nouvelle Sorbonne.

His fields of specialisation include EU External Relations, Enlargement Policies and CFSP.



Pavlina Stoykova (BG) joined EIPA in January 2009 as a Researcher in the Unit European Public Management. She specialises in a number of areas including comparative public administration issues and the role of the senior civil service in EU Member States. Her other interests include the interface between political and administrative systems in an international and domestic context, as well as the interaction between the central executive and the legislature during the process of EU accession. Pavlina Stoykova is a graduate of the University of Manchester (UK). She also holds degrees in International Relations and International Public Law from Sofia University 'St. Kliment Ohridski'.

Her fields of specialisation include comparative public administration, the role of national parliaments in the EU accession process, interface between political and administrative levels.



Konstantina Sgouraki (GR) joined EIPA on 1 February 2009 as a Seconded National Expert in the Unit European Public Management. She holds two Bachelor degrees, one in International Management & Economics, and one in Business Administration. She also obtained an MBA from the Solvay Brussels School of Economics and Management and the Vrije Universiteit Brussel, specialising in European Integration as well as political and economical aspects of the EU.

She has been working for the Hellenic Telecommunications and Post Commission – the national regulatory authority in Greece – since 2003. She later became Deputy Coordinator of the Personnel Department, where her duties included the restructuring of HR strategy based on performance indicators, as well as human resources development in compliance with the Lisbon strategy. She has also conducted organisational needs analyses, developed training schemes for all administrative levels, created training course material for newcomers, and introduced personnel to the philosophy of TQM and CAF. She previously worked as an economist for several international organisations in the banking sector (such as ABN AMRO Bank, Barclays Bank, State Street Bank). She also joined the Financial Operations Service of the DG ECFIN in Luxembourg, where she conducted comparative research on the 'Growth and Employment Initiative Measures for SMEs.'

Her fields of specialisation include Public sector reform, human resources management, training needs analysis, quality management, intercommunication policy.



Aurélie Courtier (FR) joined EIPA in February 2009 as a Research Assistant in the Unit European Policies. She obtained a Bachelor degree in Political Science from Science Po Toulouse, and a Master degree in European Affairs from the College of Europe in Natolin, where she specialised in EU external relations, with a particular focus on EU relations with Russia and Ukraine. Before joining EIPA, Aurélie completed a traineeship at the European Commission within DG RELEX. She then worked for two and a half years as a Project Manager for the Development Office of the College of Europe in Bruges, where she was responsible for developing and managing different training and academic cooperation programmes on EU affairs. For a short period of time, she also worked for EGMONT – the Royal Institute of International Relations in Brussels, where she assisted the European Affairs Programme team in various research activities.

Her fields of specialisation include EU external relations and EU peace building.



Ioana Eleonora Rusu (RO) joined EIPA in January 2009 as a Research Assistant. She has a Bachelor degree in law and a Bachelor degree in applied modern languages. In addition, she obtained a PhD in EU law from the University of Marburg, Germany, where she worked for four years as a Research Assistant in the Department of International Public and EU Law. Before joining EIPA, Ioana also worked as a Parliamentary Assistant to a Romanian Member of the European Parliament (legal affairs, internal market and consumer protection). She is the co-author of a Romanian manual on EU law.

Her fields of specialisation include competition law and state aid.

Warsaw



Jacek Tomkiewicz (PL) joined the European Centre for Public Financial Management, EIPA's Antenna in Warsaw, on 1 April 2009. Dr Tomkiewicz holds two Master degrees (in Finance and Banking, and in Economics) from the Cracow University of Economics, Cracow, Poland. He also holds a PhD in Economics from the Kozminski University, Warsaw, Poland, where he worked as a research assistant and assistant professor. He also has some experience in policy making, which he gained whilst holding the position of adviser to the Polish Deputy Premier, the Minister of Finance. He spent some time as a visiting fellow at the international research institution: OECD, Stanford University (USA) and the University of Brighton (UK). His areas of expertise include economic policy, economy of transition, public finance and macroeconomics.

His fields of specialisation include Public Financial Management (PFM), budgetary innovations, economics of transition, public finance reform.

Institutional News

In the 3/2008 issue of EIPASCOPE, the formal appointment of the new Swedish Board member at the December 2008 meeting of EIPA's Board of Governors was erroneously not mentioned. Mr Martin SPARR, Deputy Director of the Division for State Administration within the Department of Public Administration, was appointed to become Sweden's full member of the Board of Governors as of 1 January 2009. He succeeded Mr Göran RODIN, Director of the Division of Central Government Employment Policy within the Ministry of Finance, who was full Board member since June 2002.

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(Situation on 31 December 2008 / Situation au 31 décembre 2008)

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