

30 March 1999

A4-0169/99



REPORT

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS))

Committee on Institutional Affairs

Rapporteur: Maria Adelaide Aglietta

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Commented [COMMENT1]:

(Amendment ##)

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PROCEDURAL PAGE

The Committee on Institutional Affairs dealt with this topic in two stages. In July 1998 it adopted a resolution(

) issuing a negotiating mandate to the President of the European Parliament and the chairman of and rapporteur for the Committee on Institutional Affairs.

By letter of 1 September 1998 the Council consulted Parliament, pursuant to Article 145 of the EC Treaty, on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission.

At the sitting of 18 September 1998 the President of Parliament announced that he had referred this proposal to the Committee on Institutional Affairs as the committee responsible and all the committees concerned for their opinions.

At its meeting of 6 October 1997 the Committee on Institutional Affairs had appointed Mrs Aglietta rapporteur.

It considered the Commission proposal and draft report at its meetings of 13 and 28 October 1998, 23 and 30 November 1998, 21 January 1999, 17 February 1999 and 15 and 24 March 1999.

At the last meeting it adopted the draft legislative resolution by 10 votes to 1, with 4 abstentions.

The following were present for the vote: De Giovanni, chairman; Corbett, vice-chairman; Aglietta, rapporteur; Castellina, Delcroix, Frischenschlager, Herman, Lenz (for Brok), Lööw (for Izquierdo Rojo), Mendez de Vigo, Paasilinna (for Barros Moura), Salafranca, Schäfer, Schlechter and Spaak.

Annexed to this report are the opinions drawn up at the first stage (Opinions - Part I), the opinions of the Committee on Foreign Affairs, Security and Defence Policy, the Committee on Budgets, the Committee on Research, Technological Development and Energy, the Committee on Transport and Tourism, the Committee on Culture, Youth, Education and the Media, the Committee on Civil Liberties and Internal Affairs, the Committee on Budgetary Control, the Committee on Fisheries, the Committee on the Rules of Procedure, the Verification of Credentials and Immunities, and the second stage (Opinions - Part II), the opinions of the Committee on Agriculture and Rural Development, the Committee on Budgets, the Committee on External Economic Relations, the Committee on Legal Affairs and Citizens' Rights, the Committee on Employment and Social Affairs, the Committee on Transport and Tourism, the Committee on the Environment, Public Health and Consumer Protection, the Committee on Civil Liberties and Internal Affairs and the Committee on Fisheries.

The report was tabled on 30 March 1999 .

() issuing a negotiating mandate to the President of the European Parliament and the chairman of and rapporteur for the Committee on Institutional Affairs.

) Minutes of the sitting of 16 September 1998, Part II (B4-0801/98).

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A
LEGISLATIVE PROPOSAL

Proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS))

The proposal is approved subject to the following amendments:

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)
First citation

Having regard to the Treaty establishing the European Community, and in particular the third indent of Article 145 thereof,

Having regard to the Treaty establishing the European Community, and in particular the third indent of Article 145 (future Article 202) thereof concerning acts adopted by the Council,

(Amendment 2)
First citation a (new)

Having regard to the Treaty establishing the European Community, and in particular Article 189b (future Article 251) thereof concerning acts adopted by the Council and the European Parliament,

(Amendment 3)
Recital 1

Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the Commission powers for the implementation of the rules which the Council lays down; whereas the Council may impose certain requirements in respect of the exercise of these powers; whereas it may also reserve to itself the right, in specific and duly substantiated cases, to exercise directly

Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the Commission powers for the implementation of the rules which the Council lays down; whereas the Council may impose certain requirements in respect of the exercise of these powers; whereas the principles which derive from the Treaty also apply to the delegation of implementing powers in respect of acts adopted jointly by

implementing powers;

Parliament and the Council;

(Amendment 4)
Recital 1a (new)

Whereas Articles 205 and 206 of the Treaty confer on the Commission direct implementing powers with regard to the budget and give Parliament the power, through the discharge procedure, to bring into play the Commission's responsibility in exercising that implementing role;

(Amendment 5)
Recital 2a (new)

Whereas the Treaty of Amsterdam has broadened the scope of the codecision procedure referred to in Article 189b (future Article 251) of the EC Treaty and has established equality between the European Parliament and the Council;

(Amendment 6)
Recital 4

Whereas the first purpose of the proposed amendments is to clarify the criteria determining the choice of one or other of the procedures provided for the adoption of implementing measures;

Whereas the first purpose of the proposed amendments is to establish the procedures on the basis of which the power to delegate implementing powers to the Commission and scrutiny of implementing activities are to be exercised by the legislative authority;

(Amendment 7)
Recital 4a (new)

Whereas *implementing measures* must not modify the basic legislation (including annexes) and whereas such legislation may not even be modified where the Council

claims implementing powers for itself as the sole legislative authority;

(Amendment 8)
Recital 4b (new)

Whereas the purpose of the committees which may be established under these procedures is to assist the Commission in the exercise of the implementing powers conferred on it; whereas the nature of the procedures should not hinder the Commission in the exercise of those powers or prevent a decision being taken which is necessary for the effective implementation of rules laid down by Parliament and the Council;

(Amendment 9)
Recital 5

Whereas, in this regard, implementing measures and management measures must be taken by a procedure ensuring decision-making within suitable periods;

Deleted

(Amendment 10)
Recital 6

Whereas measures of general scope designed to implement, adapt or update essential provisions of basic legislative instruments should be adopted by a procedure allowing involvement of the legislative authority, be it the Council or the European Parliament and the Council;

Whereas implementing measures should be adopted by a procedure ensuring decision-making within appropriate periods and allowing, where necessary, involvement of the legislative authority;

(Amendment 11)
Recital 7

Whereas the advisory procedure should be followed where the management or regulatory procedure is not or is no longer considered appropriate; whereas account should be taken of experience already gained in the implementation of the relevant instruments;

Whereas the advisory procedure should be followed for measures implementing programmes with budgetary implications, as well as for measures relating to the criteria for granting financial support and to the management procedure for measures of general scope;

(Amendment 12)
Recital 8

Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved;

Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved; whereas it is essential to improve the transparency of the procedures;

(Amendment 13)
Recital 9

Whereas, in this spirit, the European Parliament should be informed of committee proceedings on a regular basis;

Whereas, in this spirit, the European Parliament should be fully informed of committee proceedings on a regular basis;

(Amendment 14)
Recital 9a (new)

Having regard to the rules and principles of transparency and access to documents flowing from Articles A, 151 and 191a of the Treaty and Declarations 35 and 41 attached thereto;

(Amendment 15)
Recital 11

Whereas certain provisions of Community legislation, particularly health protection, require a decision to be taken rapidly; whereas, therefore, it is necessary to provide that those cases are to be subject to a decision-making process which allows the fundamental objectives of the legislation to be observed;

Whereas certain provisions of Community legislation, particularly health protection, require a decision to be taken rapidly;

(Amendment 16)
Recital 12

Whereas Committees set up by the Council otherwise than in accordance with the third indent of Article 145 are not affected by this Decision; whereas the same applies to the specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties;

Deleted

(Amendment 17)
Article 1, first paragraph

Other than in specific, duly substantiated cases where the Council reserves the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument.

Other than in specific, duly substantiated cases where the Council reserves the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument by the legislative authority (the Council or the European Parliament and the Council).

(Amendment 18)
Article 1, second paragraph

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3 to 6, and determined in accordance with the criteria laid down

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, the implementing measures shall be in conformity with the procedures provided for by Articles 3 and 4, and determined in accordance with the criteria laid down

by Article 2.

by Article 2.

(Amendment 19)
Article 2, first paragraph

Implementation and management measures, and in particular those relating to common policies such as the common agricultural policy, to the implementation of programmes with significant budgetary implications, or to the grant of substantial financial support, shall be adopted by use of the management procedure.

Measures of general scope designed to apply basic instruments and measures relating to the implementation of common policies, such as the Common Agricultural Policy, shall be adopted by use of the management procedure.

(Amendment 20)
Article 2, second paragraph

Measures of general scope designed to apply, update or adapt essential provisions of basic instruments shall be adopted by the use of regulatory procedure.

All the other measures, and in particular those relating to the implementation of programmes with budgetary implications and to the criteria for granting financial support, shall be adopted by use of the advisory procedure.

(Amendment 21)
Article 2, third paragraph

The advisory procedure shall be applied where the management or regulatory procedure is not or is no longer considered appropriate.

Deleted

(Amendment 22)
Article 2, fourth paragraph

The safeguard procedure may be applied where the power to decide on such measures is conferred on the

Deleted

Commission.

(Amendment 23)
Article 3, third paragraph a
Advisory procedure

The Commission may adopt measures which shall apply on expiry of a period of no more than (two) months from the date of notification of the decision to the European Parliament and the Council. The provisions of Article 7a (within the framework of the codecision procedure) and 7b (outside the codecision procedure) shall apply.

(Amendment 24)
Article 4, third paragraph
Management procedure

The Commission may adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for not more than three months from the date of such communication.

The Commission may adopt measures which shall apply on expiry of a period of no more than (two) months from the date of notification of the decision to the European Parliament and the Council. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for not more than (...) months from the date of such communication.

(Amendment 25)
Article 4, fourth paragraph

The Council, acting by a qualified majority, may take a different decision within the time-limit provided for by the third paragraph.

Deleted

(Amendment 26)
Article 4, fourth paragraph a (new)

The provisions of Articles 7a and 7b shall apply.

(Amendment 27)
Article 5
Regulatory procedure

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

Deleted

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty. The chairman shall not vote.

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

(Amendment 28)
Article 6
Safeguard procedure

The Commission shall notify the Council and the Member States of any decision regarding safeguard measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case.

Deleted

Any Member State may refer the Commission's decision to the Council within a time-limit to be determined in the instrument in question.

The Council, acting by a qualified majority, may take a different decision within the time-limit determined by the instrument in question.

(Amendment 29)
Article 7, first paragraph

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

On the basis of a framework regulation drawn up by the Commission which takes into account the rules and principles of transparency and access to documents flowing from the Treaty of Amsterdam in Articles A, 151 and 191a and Declarations 35 and 41 attached thereto, each committee shall adopt its own Rules of Procedure on the proposal of its chairman and shall make them available to the European Parliament and the Council.

(Amendment 30)
Article 7, second paragraph

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

The European Parliament shall be informed of committee proceedings on a regular and comprehensive basis at the same time and under the same conditions as the committees. To that end, it shall receive agendas for and summary records of committee meetings, attendance lists, draft measures submitted to the committees for implementation, their forward timetables and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

(Amendment 31)
Article 7, second paragraph a (new)

Except for reasons of confidentiality, all documents shall be made public and accessible by electronic transmission.

(Amendment 32)
Article 7a (new)

Protection of the legislative sphere

Where the codecision procedure applies, Parliament and/or the Council may, within a period of no more than (two) months from the date of the Commission decision, and having informed Parliament or the Council, as appropriate, in advance, challenge the legality of the decision, stating its reasons for doing so, in accordance with procedures to be determined by the institutions.

Within a period of two months, the Commission shall submit either a legislative proposal concerning the measures to be taken pursuant to the provisions of the Treaty, or an amended decision.

(Amendment 33)
Article 7b (new)

Where the codecision procedure does not apply, the Council shall have the right to protect the legislative sphere (provided for in Article 7a). Where the European Parliament considers that an implementing measure or a draft implementing measure taken in accordance with a basic instrument exceeds the implementing powers, it shall ask the Commission to submit a legislative proposal within a period of two months and the latter shall undertake to take account of this position as far as possible.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council, COM(98)0380 - 98/0219(CNS)(),
 - having been consulted by the Council pursuant to Article 145 of the EC Treaty (C4-0501/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Institutional Affairs and the opinions of the Committee on Foreign Affairs, Security and Defence Policy, the Committee on Agriculture and Rural Development, the Committee on Budgets, the Committee on Research, Technological Development and Energy, the Committee on External Economic Relations, Committee on Legal Affairs and Citizens' Rights, the Committee on Employment and Social Affairs, the Committee on Transport and Tourism, the Committee on the Environment, Public Health and Consumer Protection, the Committee on Culture, Youth, Education and the Media, the Committee on Civil Liberties and Internal Affairs, the Committee on Budgetary Control, the Committee on Fisheries and the Committee on the Rules of Procedure, the Verification of Credentials and Immunities (A4-0169/98),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls for the conciliation procedure to be opened should the Council intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council and Commission.

(¹) OJ C 279, 8.9.1998, p. 5.

B
EXPLANATORY STATEMENT

Explanatory statement relating to the attached proposal for amendments to the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS))

In most of our national parliaments it is the rule to confer implementing powers on the executive. Such powers are frequently conferred and often subjected to a scrutiny procedure, whereby the parliament can monitor - and sometimes recall - the implementing decisions of the government.

The European Parliament, on the basis of the principles set out by the resolution adopted on 16 September 1998, calls for a system of committees which is:

- simplified
- transparent
- monitored by the legislative authority.

It is important to underline that the European Parliament does not wish to take over implementing powers itself, but would like to establish a system whereby it can exercise proper scrutiny and, if necessary, call back an implementing measure that it disagrees with, when it stems from the codecision procedure. This would be exceptional, as has been shown under the informal arrangements that are in place under the "modus vivendi".

The Commission's proposal for a new system falls short of meeting the European Parliament's position. It is still only the committees which have the right to request the Commission to refer back an implementing measure - no equivalent right is given to the European Parliament. When a matter is referred back under the regulatory procedure, it would seem that the full legislative procedure would apply, although this is not spelled out very clearly. It would not apply, however, for referrals to Council under the management committee procedure.

Moreover, according to the management and regulatory procedure, the committees may block the Commission and refer the decision to Council. The European Parliament's main criticisms are:

- only Council (or Member State) appointed committees have the right to scrutinise the Commission and refer back its decisions or draft decisions; the European Parliament has no such right;
- a matter referred back in such a way from the executive to the legislative authority is sent to Council alone, rather than to both branches of the legislative authority (European Parliament and Council);
- the whole system lacks transparency, with several committees of civil servants, the composition of which is not always published and the agendas of which are obscure.

The extension of the field of application of the codecision procedure provided for by the Amsterdam Treaty implies that the control of the European Commission's executive activity has to be assumed equally by the legislative authority (European Parliament and Council).

The most important priorities to be taken into account in the modification of the commitology system should consist of:

- **the distinction between "substantial legislation" and "implementation provisions"**, through a better definition in the basic act by the delegation on the exercise of implementation powers (given that, for the European Parliament, an implementing measure does not amend, update or complete the "essential aspects" of normative provisions), while guaranteeing that the legislative authority, i.e., the European Parliament and Council, does not intervene in the implementing measures;
- **the guarantee of effective control of implementation provisions by the European Parliament**, which means the latter may possibly, within a limited time frame to be defined in the course of the negotiations, challenge the proposal of the implementing measure by the European Commission. In such a case, supported by the representative vote of the Assembly, the Commission should withdraw or amend the proposal, or present a legislative proposal;
- **simplification of the ad hoc procedures and committees**, and elimination of regulatory committees;
- **transparency of the executive procedure**, which involves the adoption of an internal regulation valid for all committees and the European Parliament's right to information, independently of its role in the definition of the fundamental act;

Draft amendments of the drafts person

Art. 1 'delegating powers': the Amsterdam Treaty has extended the field of application of the codecision procedure under art. 251 of the EC Treaty (formerly art. 189b) and this implies, in the absence of any changes to art. 202 of the EC Treaty (formerly art. 145 which refers only to acts adopted by Council and not to acts adopted jointly by the European Parliament and the Council), that competence to delegate implementing powers to the Commission and control over executive activity must be shared equally by the legislative authority (the European Parliament and the Council).

Art. 2 'criteria': this article goes together with the committee-type procedure. The European Parliament accepts the idea of simplification and setting up of specific criteria, although executive measures should be taken according to two types of procedure: advisory and management. Within the former fall measures of general scope designed to implement basic legislative instruments and those concerning the implementation of common policies, such as the common agricultural policy; within the latter fall all other measures, and notably those concerning the implementation of programmes with financial implications.

Art. 3 'advisory procedure': this procedure remains as it is, with an addition in paragraph 4 implying that the Commission can take measures which are applicable (two) months after the date of notification to the Parliament and Council. Articles 7a and 7b are applicable. The legislator can revoke a measure.

Art. 4 'management procedure': This amendment changes the procedure proposed by the Commission, in the sense that it introduces a time limit for the application of the measure decided by the Commission, during which the European Parliament and/or the Council can repeal the measure. Moreover, in the case of disagreement between the Commission and the committee, it would be up to the European Parliament and/or the Council to revoke the decision of the Commission. This would mean that the Council could not decide unilaterally to modify the draft executive measure.

Art. 5 'regulatory procedure': to be deleted. The European Parliament has traditionally asked for the abolition of this procedure. Although the Commission proposal implies the intervention of the legislator (European Parliament and Council) in the case of an absence of opinion or conflict between Commission and committee, this does not seem sufficient. Conflict between the Commission and the committee could concern merely executive issues which should not require the intervention of the legislative authority.

Art. 6 'safeguard procedure': to be deleted. It is not yet clear why this type of procedure should continue to exist and how it relates to the committee decision.

Art. 7 'uniform internal rules of procedure': the whole system lacks transparency and this entails: the adoption of uniform internal rules of procedure for all the committees, respect for the European Parliament's right to information, irrespective of its role in the drawing up of the basic act, at the same time as the committee. The European Parliament should receive the minutes, the presence list and the draft calendar. Except for reasons of confidentiality, all measures should be made public and accessible (by electronic transmission).

Art. 7a 'right to revoke a decision (within codecision)': in the framework of the codecision procedure, the European Parliament and/or the Council would have the right, within a time-limit of (two) months from the date of the Commission decision, to challenge the conformity of the decision with the basic act, in accordance with procedures to be set up by each institution. The Commission, within two months, should table a legislative proposal or a modified decision.

Art. 7b 'right to "blow the whistle" (outside codecision)': outside the codecision framework, the Council would keep its power to protect the legislative sphere (provided for in Article 7a), whereas the European Parliament could ask the Commission to submit a new legislative proposal, within a time-limit of two months, and the latter would take into account the opinion of the European Parliament.

OPINIONS - PART I

21 July 1998

OPINION
(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Foreign Affairs, Security and Defence Policy

Draftsman: Mrs Marlene Lenz

PROCEDURE

At its meeting of 22 April 1998 the Committee on Foreign Affairs, Security and Defence Policy appointed Mrs Lenz draftsman.

The considered the draft opinion at its meetings of 3 and 30 June and 20 July 1998. At the last meeting it adopted the following conclusions by 16 votes to 2.

The following took part in the vote: Cushnahan, vice-chairman; Lenz, draftsman; Barón Crespo, Bernard-Reymond, Bertens, Carnero González, Donner, Dupuis, Galeote Quecedo, García Arias (for Mendiluce Pereiro), Habsburg, Hoff, Oostlander, Poettering, Rosado Fernandes (for Marin), Spaak (for André-Léonard), Theorin and Titley.

1. The report by the Committee on Institutional Affairs sets out to devise the basis for an interinstitutional agreement abolishing the existing system of 'commitology' - especially in the light of the Amsterdam Treaty - and introducing new procedures for implementing powers, the aim being to define clear responsibilities for legislative, executive and scrutiny functions.

The current practice involving around 380 management and regulatory committees composed of representatives of the Member States and working alongside the Commission on the implementation of legislation has resulted in an unjustifiable confusion of legislative and executive functions and has overridden the conventional separation of powers in the EU system in an unacceptable manner.

Not only does this jeopardise the democratic credentials of the 'EU system' but the lack of transparency about who is responsible for what makes the 'EU system' difficult to grasp for public opinion and ordinary citizens. The main cause of the criticism that it is an untransparent bureaucratic monstrosity is to be found here.

2. Parliament is co-legislator on an equal footing with the Council in broad areas of legislation relating to the common market (codecision) and in setting the budget. The implementation of legislation and execution of the budget are the sole responsibility of the Commission, which is subsequently subject to scrutiny by the legislative institutions (Parliament and Council).

In practice, however, via the system of 'commitology' the Council involves itself to an excessive degree in the exercise of certain procedures and reserves the right furthermore in specific cases to exercise implementing powers itself. As a result, the Council has evolved from a legislative institution into an executive body as well in which national government bureaucracies are trying virtually to renationalise European decisions, thereby undermining any attempt at transparency, clear responsibilities and democratic processes; moreover, this cannot be rectified by the national parliaments.

3. This statement applies not only to the areas covered by codecision but also to the **area of external relations** where practically all programmes with a budget exceeding ECU 5 m that have a legal basis are overseen by a management committee including national representatives.

As a result, not only is the parity between Parliament and the Council as arms of the budgetary authority called into question where the implementation of programmes is concerned, but programme implementation is hampered considerably by needlessly complicated procedures, and restrictions are placed on a clear definition of the Commission's responsibility.

Effective parliamentary scrutiny of external policy programmes becomes almost impossible as a result. When national ministers accuse the Brussels system of inefficiency - mindful of their national interests - they should in fact explain their own responsibility instead of keeping it a secret from their citizens.

4. For all EU external policy programmes like PHARE, TACIS, MEDA or reconstruction in the former Yugoslavia, the relevant regulations provide for management and/or regulatory committees comprising representatives of the Member States - for PHARE Type II B, for all the others Type III A.

All projects under these programmes worth more than ECU 1 m must go through these committees and receive their blessing. The representatives of the Member States may block or amend Commission proposals by qualified majority, without this process being visible for the purposes of scrutiny by the European Parliament.

This also applies to the OBNOVA programme for reconstruction in the former Yugoslavia where it has in the meantime proved possible, in response to sustained pressure from Parliament, at least to raise the threshold for projects subject to approval by the management committee from the original figure of ECU 2 m to ECU 5 m in the now revised regulation, so granting the Commission more room for manoeuvre and flexibility in implementing programmes.

The basic rule, however, for all external policy programmes is that, after funding has been provided by the budgetary authority (Council and Parliament), the Member States retrieve their ultimate power of decision via the management committees at the stage of implementation - which should be the sole responsibility of the Commission as the answerable executive body.

This has the following consequences:

- Parliament's rights in the area of the budget and of budgetary control are indirectly being undermined. While the Council and Parliament still enjoy equal rights when adopting the budget, the Council arrogates an additional role to itself as the executive body at the stage of programme implementation.

The decision-making process at the stage of programme implementation ceases to be transparent. The Commission is deprived of its sole responsibility as the executive. Parliamentary supervision is hampered since committees of the Council are entirely outside the scope of parliamentary scrutiny.

- The Commission's political responsibility for implementing programmes financed and approved by Parliament is restricted by the system of committees. At the same time, there are examples where the Commission wishes quite deliberately to see politically sensitive projects receive the blessing of the committee of the Member States instead of, say, securing the approval of Parliament.

Topical example: the Commission is planning as a preventive measure to use ECU 4.8 m in Kosovo for the gradual reintegration of Kosovo Albanians into the university in Pristina. Although the project remains under the ECU 5 m threshold in the new regulation, the Commission did not decide on this matter on its own. Instead, it submitted the proposal to the representatives of the Member States because of its political sensitiveness and only in response to subsequent queries did it seek backing from Parliament as well.

5. In connection with the financial regulation the Council has repeatedly urged the systematic creation of a legal basis for all programmes worth more than ECU 5 m. For example, a draft regulation on human rights and democracy is currently under preparation.

This makes sense - and is compulsory after the latest judgment of the European Court of Justice - where clear criteria are needed for the implementation of programmes. It also means, however, that not only is Parliament's budgetary autonomy restricted as a result but also that a very high price has to be paid in that the Council will adopt such regulations only where a management committee is involved.

6. From all the foregoing remarks concerning the practical implementation of external policy programmes, your draftsman draws the following **conclusions**:
 - (a) Management and regulatory committees **as a permanent feature** should in principle be abolished. For the purposes of political and project coordination between the Commission and the Member States the ordinary Council working parties are sufficient().

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- (¹) Nor should it be overlooked - alongside the cost factor which is nowhere in evidence - that major staffing resources are required to dispatch national officials to the many committees, particularly on the part of smaller Member States, and that, as a result, the role of the large Member States (and of their national interests) in the implementation of programmes is growing without this being realised.
 - (b) However, where management procedures are adopted for running programmes with appreciable financial implications and for granting significant financial assistance -

as provided for in the most recent Commission proposal of 24 June 1998 for a Council decision (COM(98)0380) - then the **threshold for establishing management committees** should be **clearly defined** and set at a relatively high level (e.g. ECU 100 m with only projects worth more than ECU 10 m being subject individually to the committee procedure)().

- (c) Parliament must secure respect for the principle of the separation of powers in order to ensure parliamentary supervision of the Commission's implementing measures - and also to be able to display clear responsibilities to the ordinary citizen. This means conversely that Parliament must not interfere with the Commission's implementing powers and must respect the latter's independence in implementing legislation.

Moreover, the Committee on Foreign Affairs, Security and Defence Policy will ensure after the entry into force of the Amsterdam Treaty that, in the area of the Common Foreign and Security Policy (CFSP) as well, Council decision-making on joint foreign policy measures and their implementation take place in full transparency, on the basis of clear responsibility and subject to effective parliamentary scrutiny.

The Committee on Foreign Affairs, Security and Defence Policy calls on the Committee on Institutional Affairs to incorporate these conclusions in its report and consequently proposes the amendments set out in the annex.

(¹) As proposed by Parliament in the Schwaiger report (A4-0123/98) on the amendment of Council Regulation (EC) No 1628/96 of 25 July 1996 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (COM(98)0018 - C4-0105/98 -98/0023(CNS))

ANNEX

Amendments by Mrs Marlene Lenz, draftsman of the opinion of the Committee on Foreign Affairs, Security and Defence Policy, to the report by the Committee on Institutional Affairs (PE 225.917/A) on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (Council Decision of 13 July 1987)

Amendment 1

Recital Fa (new)

Fa. whereas the involvement of management committees in the implementation of external policy programmes that have a legal basis complicates procedures unnecessarily, thus circumscribing any clear definition of the Commission's responsibility and severely hampering the parliamentary scrutiny of external policy programmes;

Amendment 2

Paragraph 2(c), first sentence, to read as follows:

'... in particular the elimination of regulatory committees as a permanent feature and the obligation for the institutions ...'

Amendment 3

After the first sentence in paragraph 2(c) insert the following new sentence:

'... (adopted before and after the 1987 Decision). The threshold for establishing management committees must be clearly defined and set at a relatively high level in order to allow the Commission maximum room for manoeuvre for running programmes with appreciable financial implications and to ensure flexible and effective implementation of programmes and projects. In any event, ...'

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Budgets

Draftsman: Mr Terence Wynn

PROCEDURE

At its meeting of 4 February 1998 the Committee on Budgets appointed Mr Terence Wynn draftsman.

It considered the draft opinion at its meetings of 18 March, 19 May, 4 June, 25 June and 2 July 1998.

At the last meeting it adopted the following conclusions unanimously

The following were present for the vote: Samland, chairman; Giansily and Willockx, vice-chairmen; Wynn, draftsman; Bourlanges, Brinkhorst, Colom I Naval, Dührkop Dührkop, Elles, Ghilardotti, Haug, Katiforis (for Bösch), Kellett-Bowman (for Bardong), Kjer Hansen, McCartin, Pimenta, Seppänen, Tappin, Tomlinson, Virrankoski and Waidelich.

GENERAL COMMENTS

Introduction

1. A declaration to the Final Act of the Draft Treaty of Amsterdam fixed the end of 1998 as the deadline for the Commission to submit to the Council proposals amending the 1987 Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission - "commitology". No change was proposed to Articles 145 and 155 of the EC Treaty, nor to Article 205().
2. The Commission President has committed the Commission to bring forward these proposals no later than July 1998. This opinion is drawn up for the report being prepared on the matter that is to be adopted in plenary by July 1998.

(¹.) *The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 209 [Financial Regulations], on its own responsibility and within the limits of the appropriations, having regard to the principle of sound financial management*

3. The Committee on Budgets - as the Committee on Budgetary Control - has addressed the issue on many occasions, and regularly proposes amendments on the matter of commitology in its opinions and reports. In its view, the executive committees treat matters

that are clearly financial or budgetary in nature, and/or that are issues covered in the legislation. Their decisions could therefore impinge on the legislative and/or budgetary competencies of Parliament and the Council, even more so once the Amsterdam Treaty comes into effect. The Committee, and then the Parliament, explained in September() and October 1996(

) that it would await the proposals from the Intergovernmental Conference on committeeology and look again at the issue then. This opinion does that

A budget eye to the committeeology system

4. Executive committees bring together at least one if not two representatives/experts from each Member State under the chairmanship of a Commission official, backed up by two or more. Each has its internal rules of procedure. At any meeting as many as 30 or more civil servants are present, travel and subsistence costs paid by the Union's budget, with interpretation facilities for the duration of the meeting.
5. During the year about 1450 meetings of executive committees (excluding those covering R&D and certain specific sectors, such as ECSC) take place. The 1997 Union budget for committee meetings under budget items A-2510, 2511, and A-2521 was ECU 19 400 000. A further ECU 19 400 000 was budgeted that year for meetings of experts and working groups at a cost per governmental expert of ECU 695 per day and of private experts of ECU 799 per day.
6. In the 1998 budget, these budget items were brought together in a new chapter A-70 "decentralised expenditure on support staff and administration". For item A-7030 "Meetings in general" ECU 18 300 000 was voted. For item A-7031 "Expenditure on meetings of committees whose consultation is compulsory in the procedure for drafting Community legislation" ECU 16 000 000 was voted and for item A-7032 "Expenditure on meetings of committees whose consultation is not compulsory in the procedure for drafting Community legislation" ECU 3 500 000 was voted. A list of the committees under each item appears in annex I to part A of the Budget. About 415 committees, sub-committees or working groups are listed under A-7031 and 73 under A-7032.
7. After the next rounds of enlargement, these committees could include as many as 50 officials, larger than most parliamentary committees, where the voting and quorum rules are generally more flexible than in the executive committees, which in principle deal with matters that are of lesser consequence than parliamentary committees.
8. The Council also has an extensive array of internal working groups following the developments in almost all sectors of Union activity. This opinion does not deal with these. But for the record over 220 of these groups existed on 1.9.1996.

() and October 1996() Transfer No 32/96 transferring from the reserve to the line ECU 8 000 000 for item A-2510 and ECU 2 000 000 for item A-2511

() that it would await the proposals from the Intergovernmental Conference on committeeology and look again at the issue then. This opinion does that.
) Resolution of 24 October 1996

The issues

9. Given that the Member States are all represented on the executive committees, and that procedures allow the Council to intervene, in the case of management and regulatory committees, to override the Commission, the Council does not have reserves about the committees, that it alone established by legislative decision (the 1987 Decision was adopted by Council after simple consultation of Parliament, where the latter's opinion was largely ignored by Council). It strongly resists encroachment on this domain().
10. The Commission accepts the commitology, even regulatory committees, knowing that much of the implementation of Community programmes lies in the hands of national or regional authorities in the Member States. Actually putting legislation into effect often depends not solely or even largely on the Commission but on these authorities. The latter's involvement in the executive decisions is an assurance of implementation, not always fulfilled.
11. Some in the Commission even argue privately that the level of Member States' representative in regulatory committees is hierarchically higher and that the chances of adequate implementation of executive decisions is increased through such committees. Some are sensitive to the argument that some national officials may see the Commission (and other Union institutions) as a way of further reducing employment in the public service in the Member States, and are keen to avoid that criticism.
12. Parliament on the other hand is not directly involved in these committees, nor has it any means of observing their meetings, since they meet in secret. It has shown critical reserve about the activities of the committees, considering them to act beyond the oversight powers of Parliament, and possibly from time to time in breach of the powers attributed to the institutions under the Treaties, in that they take from the Commission the power of implementation and reduce or deprive the Union institutions of full redress against the Commission.
13. Parliament has become more sensitive to the issue since the introduction of co-decision, since the decisions of executive committees in these areas may impinge on the competencies of the legislative authority, the Parliament and Council together.
14. Parliament has managed to negotiate agreements to alleviate some of the worst excesses of the system, which in the meantime has been applied to the case of co-decision without change of the original Council Decision. The earliest was the 1987 Plumb-Delors agreement, followed by the Klepsch-Millan agreement of 13 July 1993, then the *modus vivendi* of 20 December 1994, followed by the Commission's undertaking of 26 September 1996 (cited in the budget resolution of 24 October 1996). Parliament has also refined its own internal procedures in order to improve its oversight on the documentation that is now provided, in particular through the *modus vivendi*.

(¹) Court of Justice case 302/87

15. It has had occasion to criticise strongly the effects of commitology, most recently in its discussions on the results of the visit of the ad hoc delegation to Bosnia 21-24 February 1998. The effects of this structure have ensured that it takes up to nine months on average to set up EU specific research programmes once the decision on the specific programme is

taken, it can take up to twenty four months to get major funding projects underway in ex-Yugoslavia or the Occupied Territories.

16. The principles the Budgets Committee has defended are:

- maintenance of the Commission's institutional and Treaty responsibility for implementing the budget, and for (overseeing the) implementation of the legislative decisions, such as through:
 - * insurance of redress against the Commission in the event of abuse of executive powers.
- simplification and cost effectiveness of the system, such as through:
 - * control over the attendance in committee meetings, not only to reduce the participation to a minimum (one person per Member State), but also to ensure no conflict of interest (declaration of interest);
- increased democratisation of the system through measures on:
 - * transparency about the subjects to be considered, and the results of votes taken;
 - * forewarning of decisions that may be taken in executive committees, with time for political intervention by Parliament in the event of a breach on matters of political consequence being identified;
 - * openness to oversight and control, during (presence of observers) or after the meeting (papers open to control, and details of activities in the Annual Report and in the working documents attached to the preliminary draft budget).

17. The Commission has nevertheless tried to reduce the confrontation between Parliament and Council, through providing further information regularly on agendas and votes, on draft decisions of note and on the results of activities. It has not been enough.

CONCLUSIONS

18. The Committee on Budgets agrees the following conclusions:

Conclusion No 1

Proposes that the revised committee decision should respect the following principles:

- maintenance of the Commission's institutional and Treaty responsibility for implementing the budget, and for (overseeing the) implementation of the legislative decisions, such as through:
 - * insurance of redress against the Commission in the event of abuse of executive powers.
- simplification and cost effectiveness of the system, such as through:
 - * control over the attendance in committee meetings, not only to reduce the participation to a minimum (one person per Member State), but also to ensure no conflict of interest (declaration of interest);
 - * agreement that decisions would not have committee procedure except for explicit and motivated reasons, that estimate the times taken for decisions to be taken and implementation to be accomplished
- increased democratisation of the system through measures on:
 - * transparency about the subjects to be considered, and the results of votes taken;

- * forewarning of decisions that may be taken in executive committees, with time for political intervention by Parliament in the event of a breach on matters of political consequence being identified, including revocation of the draft decision;
- * openness to oversight and control, during (presence of observers), or after, the meeting (papers open to control, and details of activities in the Annual Report and in the working documents attached to the preliminary draft budget).

Conclusion No 2

Recommends that a consolidated agreement be drawn up immediately covering the special agreements for all legislative procedures, including Commission decisions and Council Directives,

Conclusion No 3

Notes that the principle of majority voting in Council implies that not all Member States need be represented in executive committees when making decisions in those sectors covered by majority voting;

Conclusion No 4

Insists that the powers of the budgetary authority are not to be compromised by executive decisions, and repeats its assurance that it will resort to extreme measures foreseen in the Treaties in cases of blatant abuse;

Conclusion No 5

Notes that Parliament may request conciliation on Community acts of general application which have appreciable financial implications, and that this Decision is one such;

Conclusion No 6

Will consider the appropriateness of placing commitment funding in reserve in the 1999 budget if the modification of the Council Decision threatens to ignore Parliament's positions;

Conclusion No 7

Expects the Commission's transmittal of documents to respect Parliament's right of reply and its duty to control the activities of the Commission; considers that the Commission should improve its reporting on commitment activities; commits itself to raising the matter at the budget conciliation on Council's first reading.

3 June 1998

OPINION
(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission- 'commitology' (report by Mrs Aglietta)

Committee on Research, Technological Development and Energy

Draftsman : Mrs Eryl McNally

PROCEDURE

At its meeting of 28 April 1998 the Committee on Research, Technological Development and Energy appointed Mrs Eryl McNally draftsman.

It considered the draft opinion at its meeting of 3 June 1998.

At that meeting it adopted the following conclusions unanimously.

The following were present for the vote: Lange, acting chairman; McNally, draftsman; Graenitz (for Adam), Heinisch (for Quisthoudt-Rowohl), McAvan and Robles Piquer (for Soulier).

INTRODUCTION

Observations and analysis

In the EU, the nature of the distinction between policy-making and policy execution is clearly problematic: a problem deriving from the unique constitutional status of the Commission - which is both proposer and executor of policies. The commitology system was designed by the Member States to keep a check on what the Commission is doing - and in particular to police the boundary between what is essentially technical, and what is political. In this domain, the location of this boundary almost inevitably requires repeated re-negotiation, and, equally inevitably, the European Parliament wishes to be part of that process.

The controversy over the introduction of the Ciba-Geigy genetically modified maize into the EU market, which was finally authorised after a marathon series of commitology procedures, has brought into sharp focus the issue of the Commission's deployment of delegated powers of implementation to make what might appear to critics to be political decisions, which should be in the hands of the EU's political and legislative authorities: the Council and the Parliament.

The second working document by Mrs Aglietta addresses, inter alia, the concept of the separation of substantive legislation from implementing provisions, within a hierarchy of acts. She observes that:

'In order to prevent confusion between substantive legislation and implementing provision, a clearer definition is needed of the limits on delegation with reference to the roles of the Commission and the legislative authority. The new decision and the new inter-institutional agreement should include the principle that measures which amend or supplement basic provision in essential ways (often the case with technical annexes) should not be considered as implementing provision().'

This is of considerable importance to a Committee which is concerned both with science and technology policy, and with the utilisation of scientific and technical expertise to aid and abet sound policy-making. Mrs Aglietta's presentation of the issue in her Second Working Document is superb: but is it an unattainable ideal? The basic question is this : is it a characteristic of the modern world that it is actually no longer possible, in most instances, clearly to separate substantive policy legislation from 'mere' policy implementation? If it is no longer possible, why might this be so, and what should we do about it?

In areas of complex technologies, apparently 'technical' initiatives and decisions by executive agencies often have far-reaching policy implications. For example, the planning application submitted to Copeland District Council in the UK in 1976 by British Nuclear Fuels Ltd (BNFL), to build the THORP plant, was, simply, an application for permission to build a certain sort of factory, for sound commercial reasons, at a particular site in West Cumbria. Such planning applications are not subject to Parliamentary scrutiny, and are typically dealt with at the local level. But seen from another perspective, this application pushed U.K. nuclear policy in the direction of the 'plutonium economy', and an irreversible commitment to nuclear fuel reprocessing as the chosen policy option. To give another example: most of the national and European rules governing the transportation of hazardous chemicals were effectively drawn up by the large chemical companies themselves: they, after all, were the repository of the appropriate expertise. Thus policies are often 'developed' by those responsible for implementing them.

The dimensions of social organisation embodied in modern complex technologies lead to ramifying and interlocking commitments amongst the actors involved in their development. Technologies are not simply neutral tools to be deployed by policy-implementers in pursuit of goals clearly defined by policy-makers'; rather they possess a dynamic of their own resulting from the complex, costly, committed and powerful institutions, both public and private, which constitute the modern organisational embodiment of technological means.

(¹) Working document 2, PE 225.917, 31 March 1998, p.2.

The delegation of implementing powers typically assumes that a clear separation can be made between facts and values: the latter being the domain of politics and policy choice, and the former characterising executive measures. Increasingly, however, in an uncertain and complex world, policy is often made 'on the hoof', and is characterised by flexibility and re-negotiation - a process which extends beyond the policies, to the policy-makers themselves, as they re-negotiate who they are, and what they stand for. In such a context, the supposed implementation of policy often actually constitutes the development and establishment of policy. It is for this reason that it cannot be left to the executive to decide what is 'merely technical', despite the Commission's view as indicated in its contribution to the Plumb-Delors Agreement. Some 'adaptations to technical progress' are so politically sensitive that recourse is made to a formal legislative proposal, even though, technically, a committee procedure could have been used. Such is the case with the recently proposed modifications to the Directive on the deliberate

release of genetically modified organisms. In other areas however, where modifications to legislation are handled by a committee procedure, Parliamentary scrutiny and control of the political/technical frontier is essential to the preservation of democratic politics.

A current example illustrates the complexity of the relationship between scientific or technical advice and political judgement. The Scientific Committee on Cosmetology will be asked in 1998 to decide whether or not adequate progress has been made in the development of in-vitro methods to justify the coming into force of the ban on animal testing of cosmetics, as proposed by the European Parliament, and accepted by the Council on this condition. Parliament may have a different interpretation of the expert evidence, not least because a different group of experts might well reach a different conclusion. The Commission would of course argue that it normally uses the legal powers and procedures at its disposal to ensure that scientific rationality prevails over ill-informed prejudice, but this, for most observers, represents an unacceptable move towards a technocratic style of governance. Such issues (which would also include risk assessments and appraisals) are best described as 'trans-scientific': that is, they are unlikely to be resolvable within a purely scientific frame of reference.

All of the above observations reinforce the case for Parliament having access to independent advice on such issues.

This can be provided in-house, but there is an additional possible mechanism: - US Supreme Court Judge Louis Brandeis once famously observed that: "sunshine makes the best disinfectant".

The case for transparency and openness

Of fundamental importance in this context over the last two years has been the activities of the European Parliamentary Inquiry Committee into BSE, (Bovine Spongiform Encephalopathy). The consequences of the Inquiry Committee's ferocious criticisms of the Commission's historical failure to separate food safety/consumer interests from agriculture / food production interests, and the concomitant threat of a motion of censure against the Commission if it failed to do something about it, resulted in a radical re-organisation of these services, including the transfer to the Consumer Protection DG of the scientific committees advising on food safety, which it was agreed would in future operate with greater transparency and openness. Parliament has also made it clear, in a series of Resolutions proposed by its Committee on Budgets, that it wishes to see more transparency and openness in the work of both scientific advisory committees, and the committee committees.

The coming into force of the Treaty on European Union in 1993, with the introduction of the co-decision procedure, resulted in the peculiar situation that whereas Council and Parliament now co-decided some legislation, the Council was still in sole charge of monitoring its implementation, via committee committees in which the Parliament is not represented. A so-called "modus vivendi" was subsequently agreed between Council, Commission and Parliament(

), which, inter alia, provided that draft implementing measures following from 'co-decided' EU legislation, to be forwarded to the appropriate Parliament

(
) , which, inter alia, provided that draft implementing measures following from 'co-decided' EU legislation, to be forwarded to the appropriate Parliamentary Committee at the same time as to the committee committees
) OJ (1996) C 102, p.1.

In the USA, the Federal Advisory Committee Act of 1972 obliges all expert advisory committees which advise US Executive Agencies (such as the Environment Protection Agency or the Food and Drug Administration), both in respect of implementing measures and in respect of adaptations to technical progress, to meet in public, to publish their agendas in advance, and to publish minutes, with the usual exemptions for national security issues. In addition, the US Freedom of Information Act makes submissions to and by such committees available for public scrutiny, increasingly also via the Internet. The US system is designed to achieve the kind of openness and transparency which ensures that pressure groups, NGOs, concerned individuals, representatives of industry, et al, make sure that politicians know what is going on in such expert committees.

Neither the European Parliament nor its standing committees is yet adequately equipped to scrutinise technical proposals forwarded to expert committees. In particular, it lacks the scientific and technical expertise so to do. If, however, the expert committees have to meet in public, or at least to publish their documentation, then pressure groups, lobbies or concerned individuals will be able to bring to Parliament's (and the public's) attention any problematic items, which can then be dealt with by appropriate Parliamentary procedures and their attendant re-negotiation of the political agenda.

These are rather radical proposals, but the Amsterdam Treaty explicitly acknowledges the need for more transparency and openness in EU procedures, and so in 1997 the Parliament's Committee on Research, Technological Development and Energy supported by the Committee on Institutional Affairs, initiated via STOA a comparative study of the success or otherwise of the American experiment in openness and transparency. The results are awaited with interest.

There is perhaps a case for a more nuanced application of the concepts of openness and transparency when it comes to Committees whose tasks include decisions on the allocation of monies, which is typically the case for the Programme Management Committees which supervise expenditure in the Specific Programmes within the Framework Programmes for R & TD. It is these committees which are of particular interest to the Committee on Research, Technological Development and Energy, since although the adoption of the Framework Programme is by co-decision, the Specific Programme decisions, in which the committee procedures are defined, require just simple consultation of Parliament: the *modus vivendi*, therefore, does not apply. Nonetheless, given Parliament's role as co-legislator for the Framework Programme, some mechanism needs to be elaborated to enable appropriate Parliamentary scrutiny and control with respect to the Specific Programmes.

CONCLUSIONS

The Committee on Research, Technological Development and Energy proposes the following 'amendments' to be included in the draft resolution of the Committee on Institutional Affairs:

1. Proposes that agendas of committee meetings, together with all pertinent documentation, be e-mailed by the Commission, at least two weeks prior to the meeting, to designated officials in the Parliament, either in the committee responsible for the policy area, or to a central service which shall in turn forward the information electronically to the Parliamentary committee responsible. The minutes of the committee meeting should also be e-mailed to the same mail boxes, within 3 weeks of the meeting taking place.

2. Points out that the use of scanners by the Commission should ensure that even hand-written or faxed documentation can be included in the above e-mails
3. Proposes that the Commission also place all of the above documentation, or at the very least an adequate synopsis of it, on a newly created set of web-sites, accessible by the general public.
4. Proposes that committees for adaptation to technical progress shall routinely meet in public, shall publish agendas at least two weeks in advance of meetings, shall publish minutes of meetings no later than three weeks after the meeting, shall make documentation available to the general public on demand in advance of the meeting, either free of charge or at reasonable cost, and shall publish and regularly update a declaration of interests by the members of each such committee.
5. Believes that an ex-post system of monitoring of committee procedures, involving a short temporary suspension of implementing measures to give Parliament an opportunity to raise objections, based on documentation already supplied, is more practicable than an ex-ante system of Parliamentary scrutiny, provided that systems for the rapid exchange of documentation are in place.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Transport and Tourism

Draftsman: Mr Jean-Pierre Bazin

PROCEDURE

At its meeting of 19 May 1998 the Committee on Transport and Tourism appointed Mr Jean-Pierre Bazin draftsman.

It considered the draft opinion at its meetings of 20 May and 23 June 1998.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Bazin, chairman and draftsman; Wijsenbeek, Lüttge and Sisó Cruellas, vice-chairmen; Aparício Sánchez, Camisón Asensio, Castricum, Cornelissen, van Dam, Danesin, Formentini, González Triviño, Koch, Lukas (for Linser), McIntosh, Megahy, Moreau, Paasio (for Swoboda), Piecyk, Schlechter, Seal, Sindal, Tamino (for van Dijk), Torres Marques (for Baldarelli), Vaz da Silva (for Parodi) and Watts.

I. Introduction

The constitutional system of the European Community, as established by the EEC Treaty, gives the role of Community executive to the Commission, but only after such power is delegated by the Council.

Article 145 stipulates: 'To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:

- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. ...'

Furthermore, according to the same article the Council 'may impose certain requirements in respect of the exercise of these powers'. It was on the basis of this wording that the Council adopted a Decision establishing procedures for the operation of committees(

), which formalised the system of committees made up of national experts; these had already been in operation since the 1960s.

(), which formalised the system of committees made up of national experts; these had already been in operation since the 1960s.) OJ L
197, 18.7.1987

Moreover, again according to the same article the Council 'may also reserve the right, in specific cases, to exercise directly implementing powers itself.

This constitutional system was logical and reflected the degree of European integration at the time, which was characterised by a limited transfer of sovereignty from the Member States, and an institutional system in which the European Parliament was merely a consultative Assembly.

Such a system is less logical and rational following the increase in Community powers and the extension of the European Parliament's powers resulting from the 1992 revision of the Treaty (Maastricht) and that of 1998 (Amsterdam).

The European Parliament has always opposed this system of committee, both for political reasons (lack of transparency) and for reasons relating to the institutional balance and the separation of powers, given that the Community's legislator, the Council, also exercises executive powers.

The latest revision of the Treaty, despite its failure to amend Article 145 of the EC Treaty, provides in an annex that the Commission will present a proposal, before the end of 1998, on the introduction of a new committee system.

II. Parliament's proposals

The Committee on Institutional Affairs is proposing that Parliament should clarify its position on this issue before the Commission makes its formal proposal.

Parliament's position in this area has been strengthened, given the quantitative and also qualitative increase in its legislative powers, which now place it on an absolutely equal footing with the Council.

Consequently, a conflict between Parliament and the Council regarding committee is now likely to paralyse the decision-making procedure (abolition of conciliation).

The rapporteur therefore proposes that Parliament should advocate the following changes to the committee system:

- (a) drawing a distinction between substantive (basic) legislation and implementing provisions;
- (b) ensuring that substantive legislation is adopted under the legislative procedure and not in committee, in the guise of implementing provisions;
- (c) simplifying the committee system by rejecting regulatory and management committees;
- (d) harmonising all implementing procedures and making them public.

III. Comments

At the present stage of consideration, Parliament's proposals, as set out in the rapporteur's two working documents, constitute a rational system which is suited both to the legal realities of European integration and to the concern to ensure greater effectiveness and consistency in the way in which the Union works in practice.

It is incontestable that the present commitology system no longer fulfils the purpose for which it was introduced and, in addition to being out of date, the operational difficulties that it creates outweigh its contribution to the smooth working of the Union.

Where transport is concerned, regulatory committees are the rule; any attempt by Parliament to change the type of committee has failed in most cases.

In most cases, too, information about committee meetings is not forwarded to the Committee on Transport either in advance or afterwards, to inform Parliament of the compliance of the implementing act adopted with the basic legislative act).

Legislative and other acts relating to tourism cannot be taken into account, since tourism does not fall within the sphere of Community competence, despite its economic and social importance and consistent demands made by Parliament.

IV. Conclusions

The Committee on Transport and Tourism calls on the Committee on Institutional Affairs, as the committee responsible, to incorporate the following conclusions into its report, while stressing that outright abolition of the commitology system would not be conceivable, for both practical and legal reasons:

1. Fully endorses the proposal seeking to simplify the commitology system by abolishing all variants;
2. Considers that a system limited to only three types of committee, to be determined in advance according to the type of implementing act, would be the most effective and best suited to cope with the requirements of implementing decisions;
3. Particular attention should be given, both by Parliament and by the Commission, to prior scrutiny of decisions taken within committees, on the basis of the introduction of an effective system for the exchange of information; such a system would also be necessary to enhance the transparency of the European Union's decision-making process;
4. It would nonetheless be more effective, and more consistent with the principle of legal security, to introduce a system whereby implementing procedures were already established in the initial basic act, particularly for cases where the nature of the implementing measures required referral back to the legislator (the Council and Parliament on an equal footing);
5. Monitoring after the event could only be useful, in most cases, in terms of general information. This would, in fact, run counter to legal certainty, the furtherance of European integration and the smooth functioning of the market if acts could be revoked or modified once they were adopted, unless such revocation took place before the acts in

question could enter into force. In the latter case, the value of such monitoring would be very limited.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Culture, Youth, Education and the Media

Letter from the committee chairman to Mr De Giovanni, chairman of the Committee on Institutional Affairs

Brussels, 20 July 1998

Dear Mr De Giovanni,

The Committee on Culture, Youth, Education and the Media considered the above topic at its meeting of 20 July 1998 and adopted the following conclusions().

Parliament, the Commission and the Council should reach an agreement over the next few months on a revision of the arrangements for exercising the implementing powers conferred on the Commission (commitology) pursuant to the Council decision of 13 July 1987.

Commitology, which is defined as the process of adopting measures to enable legislative acts to be implemented by the Commission (assisted by committees of experts from the Member States), began to be developed in the 1960s for the purpose of implementing Council regulations relating to agriculture. Since then there has been a constant increase in the number and variety of committees. Under the Single Act a third subparagraph was added to Article 145 of the EEC Treaty which established the delegation of implementing powers to the Commission in accordance with certain rules and principles. These rules were laid down in the famous 'decision on commitology' of 13 July 1987 which is now to be revised with a view to simplifying a system which is regarded as excessively complex and lacking in transparency. In 1995, Parliament, the Council and the Commission reached an agreement (the *modus vivendi*) on implementing measures which requires Parliament to be fully informed of all commitology decisions which affect legislation adopted by means of the codecision procedure. The *modus vivendi* contained an agreement to the effect that such matters would be considered at intergovernmental level when the Treaties were revised. This was done through the adoption of a declaration annexed to the Amsterdam Treaty in which the Commission is called upon to submit, by the end of 1998 at the latest, a new proposal for a decision establishing the arrangements for the exercise of the implementing powers conferred on the Commission.

(¹) The following took part in the vote: Pex, chairman; De Coene, Evans, Guinebertière, Günther (for Heinisch), Kerr, Monfils, Morgan, Mouskouri, Mutin (for Junker), Pack, Perry, Poisson, Tongue, Vaz da Silva and Whitehead (for Kuhn).

The purpose of the proposal is to simplify, and to increase the transparency of, the decision-making process by reducing the number of committees and procedures. The legislative

procedure would be fully observed, particularly in the case of co-decision and the institutional balance between Parliament and the Council.

Conclusions

On the basis of the above comments the Committee on Culture, Youth, Education and the Media has adopted the following conclusions:

1. The Committee on Culture, Youth, Education and the Media hopes that the immediate introduction of a new, simplified and balanced committee system will help to make the Community procedure more democratic. It also hopes that it will enable the European Parliament to receive more information and to exercise control over the Commission's implementing powers in respect of legislative acts, especially those adopted by Parliament and the Council using the codecision procedure, with due respect for the Commission's independence.
2. The reduction in the number of types of committee and greater transparency in the functioning thereof should also enable members of the general public to understand and to have access to Community legislation. The Commission should inform Parliament more effectively and more regularly about the work of the committees, which will help to cultivate the habit of providing information and will reflect greater transparency. Regular publication of the committees' proceedings and the availability of information regarding the composition thereof, the agendas for their meetings and the decisions they take will help to make good the transparency deficit which all the Community institutions agree exists.
3. Support should be provided for the negotiation of an interinstitutional agreement with the Council and the Commission concerning arrangements for the exercise of the implementing powers conferred on the Commission (committee) to replace the decision of 13 July 1987 which governs the existing committee system.

Yours sincerely,

(sgd)
Peter Pex

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Civil Liberties and Internal Affairs

Draftsman: Mrs Hedy d'Ancona

PROCEDURE

At its meeting of 19 January 1998 the Committee on Civil Liberties and Internal Affairs appointed Mrs d'Ancona draftsman.

It considered the draft opinion at its meetings of 23 April and 26 May 1998.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: d'Ancona, chairman; Reding and Wiebenga, vice-chairmen; Buffetaut, Cederschiöld, De Esteban Martin, Deprez, Gomolka (for Nassauer), Lambraki (for Terrón i Cusí), Lindeperg, Pirker, Schaffner, Schulz, Stewart-Clark, Wemheuer (for Schmid) and Zimmermann.

INTRODUCTION

The Committee on Civil Liberties and Internal Affairs deals with topics relating to both the First and Third Pillars of the European Union. In an opinion on this topic for the committee responsible it is useful to refer to the special position of activities falling under the Third Pillar as well as to a small number of special First Pillar issues relating to the Treaty of Amsterdam. The general aspects of commitology under the First Pillar may be disregarded, since all Parliament's committees will encounter these problems in connection with First Pillar topics, and it may therefore be better for such problems to be dealt with by committees with more experience on traditional commitology problems.

Schengen and the transposition of the Schengen *acquis* into EU legislation

The transposition of the Schengen *acquis* into EC law and EU law is governed by a Protocol integrating the Schengen *acquis* into the framework of the European Union. This protocol is annexed to the Treaty of Amsterdam. In broad terms, the protocol provides that the 'Schengen *acquis*' will apply immediately from the date of the Treaty's entry into force in all Member States except the UK and Ireland. This is not new, since the thirteen states in question are already party to the Schengen agreement, but it seeks to say (see Article 2(1), fourth subparagraph) that the Schengen *acquis* must thereafter be regarded as EU legislation subject to the provisions of closer cooperation. Article 2(1), second subparagraph, provides that the Council shall determine the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*. This

means that the Council must divide up the Schengen *acquis* between the First and Third Pillars. It is important to note that this protocol contains no procedural rules for the consultation of the European Parliament. However, we must assume that European law can only be adopted by the procedures laid down in the Treaties. This means that the procedures of Title III A of Part 3 of the EC Treaty and the procedures of the new Third Pillar will be used, and that the European Parliament will therefore be consulted.

Schengen, the Third Pillar and commitology

As regards the First Pillar, the Committee on Civil Liberties and Internal Affairs considers that a special situation obtains, since the integration of the Schengen *acquis* into EU legislation creates a transitional situation requiring a special approach. Article 131 of the Convention applying the Schengen Agreement provides for the establishment of an 'Executive Committee'. Under Article 132 this committee may set up working parties. Article 115 provides for a 'joint supervisory authority'. Given that Schengen came into being outside the sphere of cooperation with the European Parliament and all national parliaments, this approach applies in particular to the Executive Committee (which, departing from the Agreement, has accorded itself *de facto* powers of amendment regarding cooperation with Norway and Iceland), the subcommittees and the supervisory authority. The decisions of these committees are taken in secret. Most of the implementing measures are not made known to the European Parliament or to national parliaments, and are not published.

Article 2(1) of the abovementioned protocol states that, with effect from the entry into force of the Treaty of Amsterdam, the Council will substitute itself for the Schengen Executive Committee. In our view, there is reason to try to change this. Where regulation is involved, the rules which apply should be those applying to a regulatory committee under the EC Treaty. It should not be the case that the European Parliament and the Commission are left completely on the sidelines. In our view, the following minimum standards need to be observed: transparency of decisions is a precondition for their application, and where decision-making falls within the First Pillar, it must take place with the cooperation of both the Commission and the European Parliament. Since the Treaty of Amsterdam gives few clues about this, an interinstitutional agreement will be needed.

Transposition of Third Pillar legislation into First Pillar legislation

Most decisions taken under the Third Pillar, or under the pre-Third Pillar system, also involve committees (for example the Dublin Convention, the Customs Information System, the Eurodac Convention and even Cirefi and Cirea have structures which are in effect committees). The Treaty has no procedure for inclusion in Community law of decisions from the pre-Amsterdam period. Such decisions will sometimes cease to apply as a result of the incorporation of binding Schengen decisions in EU and EC law, because these are binding and cooperation under the Third Pillar sometimes is not, but they will in many cases remain in force because Schengen generally applies to only 13 Member States and the 'old' form of cooperation to all 15. The question is thus not only the status of the pre-Amsterdam decisions, but also the status of the committees.

In our view an effort must be made to incorporate the decisions from the pre-Amsterdam period which do not yet apply in all Member States as quickly as possible into EC and EU law. This would enable the problems of implementation (and thus of commitology) to be settled in the same way as under the First Pillar. In so far as the pre-Amsterdam rules remain in force - and

this will cover a considerable number of decisions - we recommend that an inter-institutional agreement be negotiated which contains the same minimum provisions as the above-mentioned Convention applying the Schengen Agreement.

As regards the First Pillar, we consider that a general committee system should be introduced in which the Council and the European Parliament play a joint legislative role (perhaps through implementing rules via a simplified procedure) and in which the Commission is given the executive role (with political supervision by the European Parliament). There is no reason at all to depart from this system in connection with the transfer of topics from the Third to the First Pillar, nor in connection with the application of Schengen.

Remaining committee problems and the Third Pillar

Under the Third Pillar the main weight of decision-making lies with the Council. This does not, however, mean that the Commission and the European Parliament are excluded from the proposal and development of decisions. This is shown by the relevant articles which establish the rights of the Commission and the European Parliament's right to be consulted, and practice in recent years has also shown that the European Parliament can play its role in the legislative process to the full, as well as its supervisory role in political decision-making under the Third Pillar. An interinstitutional agreement on the remaining Third Pillar problems might, however, adhere more closely to the minimum demands set out above than is the case with the First Pillar. One of the demands made by the Committee on Civil Liberties and Internal Affairs is for participation by its chairman and secretary (or substitutes where necessary) in meetings of the K.4 committee (article re-numbered in the Treaty of Amsterdam).

CONCLUSIONS

The Committee on Civil Liberties and Internal Affairs calls on the Committee on Institutional Affairs, as the committee responsible, to incorporate the following conclusions in its report:

1. Points to the particular problems of implementing the Schengen *acquis* in the context of the European Union;
2. Calls - on matters which used to be dealt with by cooperation between Member States and now, since the entry into force of the Treaty of Amsterdam, fall within the sphere of responsibility of the European Union - for the establishment of new committees to replace the committees set up under the former cooperation;
3. Calls for these new committees to have the same rules and powers as the normal committees acting in the same sphere;
4. Calls for the above to be confirmed by an interinstitutional agreement;
5. Also considers that, for the new areas remaining within the Third Pillar, a better means of implementation should be agreed upon through an interinstitutional agreement;
6. Proposes in this context that all implementing decisions under the Third Pillar which are regulatory in nature should be submitted to the European Parliament and not enter into force if the European Parliament raises an objection within three months.

7. Proposes that decisions under the Third Pillar which are executive in nature should as far as possible be taken by the Commission;
8. Notes that the Commission and Council, in the context of decisions under the Third Pillar which are executive in nature, have assumed full political responsibility from the European Parliament and wishes for an interinstitutional agreement on this matter too;
9. Hopes, in order to monitor these developments, that the chairman and secretary of the Committee on Civil Liberties and Internal Affairs (or, where necessary, their substitutes) can participate, without the right to vote, in meetings of what is currently termed the K.4 committee;
10. The minimum standards which must in general be required of implementation under the Third Pillar are: transparency of decision-making; respect for the powers of the institutions; and as far as possible the adaptation of Community working methods.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Budgetary Control

Draftsman: Mr Jean-Louis Bourlanges

PROCEDURE

At its meeting of 22 April 1998 the Committee on Budgetary Control appointed Mr Jean-Louis Bourlanges draftsman.

It considered the draft opinion at its meeting of 21 July 1998.

At that meeting it adopted the following conclusions unanimously.

The following were present for the vote: Theato, chairman; Bourlanges, draftsman; Elles, Fabra Vallés (for Redondo Jiménez), Garriga Polledo, Giansily, Kjer Hansen, Virrankoski (for Mulder), Wemheuer and Wynn.

A 1987 Council Decision (87/373/EEC) introduced for the first time regulations governing the participation of a whole range of committees of national experts in work delegated by the Council to the Commission for implementing its acts.

This complex procedure is based on Article 145 of the Treaty (future Article 202), which gives the Council the authority to confer implementing powers on the Commission in respect of acts that it adopts and to impose certain conditions on the exercise of such powers.

A declaration annexed to the final act of the Treaty of Amsterdam instructs the European Commission to submit by the end of 1998 a proposal to amend the 1987 Council decision. That decision might be implemented by an interinstitutional agreement setting out the practical arrangements for applying it. In the light of this, it is in the interests of the Committee on Budgetary Control to deliver an opinion with specific reference to aspects relevant to it, namely financial legislation and implementation of the budget.

One problem has arisen with the change in the balance of legislative power between the Council and Parliament. Article 189b of the Treaty (future Article 251) assigns a power of codecision to Parliament and the Council in specific matters and it is therefore wrong to regard acts adopted under the codecision procedure as having been adopted by the Council alone. However, the main problem relating to implementation of the budget arises from the conflict between Article 145 and Article 205 of the Treaty.

I. SPECIFIC CASE OF PROCEDURES FOR IMPLEMENTATION OF THE BUDGET

There are three issues to be examined here:

(1) Do Articles 145 and 155 apply to implementation of the budget when Article 205 gives the Commission direct power for implementation of the budget exercised 'on its own responsibility and within the limits of the appropriations' and for which it can be held to account by Parliament where it refuses to grant the discharge?

It seemed logical to infer from the coexistence of Articles 145 and 155 on the one hand and Articles 205 and 206 on the other that legislative implementing powers and budgetary implementing powers were two different things and to exclude all budgetary implementing procedures from the scope of Article 145 and of the 1987 committee decision. The European Court of Justice nonetheless decided otherwise in a judgment of 24 October 1989, in which it pointed out that 'the Commission's power to implement the budget is not such as to modify the division of powers resulting from the various provisions of the Treaty which authorised the Council and the Commission to adopt generally applicable or individual measures within specific areas ... and from the institutional provisions of the third indent of Article 145 and Article 155'. The Court also held that the implementing power assigned to the Council by Article 145 applies not only to generally applicable measures but also to individual measures. It therefore follows from these two statements, that the committee system introduced by the 1987 decision applies to all implementing decisions including those that have 'financial implications' and that the committees are even competent to deal with the detailed provisions of individual measures.

(2) The second question is how these rulings affect Article 205 and the Commission's power to implement the budget under the Treaty.

Without really answering this question, the Court merely avoids appearing totally unaware of the provisions of Article 205 by making a subtle distinction when it comes to implementing the budget between an 'administrative decision' and a decision 'to commit the expenditure', taking the view that the second is indeed a matter for the Commission pursuant to Article 205 even though the first comes under the committee system governed by Article 145.

It should thus be noted that the Court takes account of the Commission's responsibility for implementation as laid down in Article 205, involving, as the Court sees it, not only payment but also commitment of the expenditure. Indeed it points out in its judgment that the Commission must obtain a discharge from the European Parliament in respect of its management.

Although the Court distinguishes between 'the power to carry out programmes', which can be assigned to the Commission solely pursuant to and within the limits of Articles 145 and 155, and 'the power to commit expenditure', which is a matter for the Commission as of right pursuant to Article 205, it has not really examined the rights and duties imposed on the Commission as a result of its power, and indeed responsibility, for implementation of the budget; this is by no means a theoretical responsibility since the Commission exercises it under the vigilant control of the discharge authority composed of Parliament, assisted by the Court of Auditors. More specifically, the Court says nothing about the consequences to which the Commission would leave itself open by any decision to commit expenditure which complied with a committee decision but infringed provisions adopted by the legislative authority and translated into practice

by the budgetary authority. However, in its judgment of 18 June 1996, the Court confirmed the general principle of law relating to compliance of an implementing measure with the framework established by an enabling regulation by ruling that 'an implementing directive ... must respect the provisions enacted in the basic directive' and that it must not 'modify the scope of the obligations defined by that directive'.

It follows from this that any commitment of expenditure must be regarded as not complying with the decisions of the legislative and budgetary authorities not only where the expenditure has been wrongly committed but also where all the commitments in question fail to satisfy the obligations laid down by the legislative authority and the budgetary authority, in terms of the total amount or the number or identity of the beneficiaries. The Commission's responsibility for implementation of the budget is thus a very broad concept, which can also be assessed in terms of omission. The full implications of this concept of the Commission's responsibility for implementing the budget must be recognised, when one remembers that the control exercised by the body granting the discharge cannot be confined merely to an examination of whether expenditure has been effected in a regular manner while disregarding the requirements of sound management; verifying whether expenditure is desirable clearly goes beyond the powers of the discharge authority whereas checking whether expenditure has been effected in a regular manner lies well within those powers but between these two extremes it must be acknowledged that factors relating to an assessment of whether funds have been put to the best possible use are playing an increasingly important role in the discharge procedure.

(3) The third issue is how best to overcome any contradiction between decisions taken by the legislative executive authority and the budgetary executive authority.

Where an administrative implementing decision with financial implications, taken pursuant to Articles 145 and 155 of the Treaty, failed to comply with the Commission's interpretation of enabling decisions taken by the legislative and budgetary authorities, the Commission would have no option but to bring the system to a standstill by refusing to commit the expenditure or else give in to the Council, with the attendant risk that it might be held liable during the discharge procedure.

Since neither of these two options can be regarded as satisfactory, it will be necessary to devise a different procedural balance between the Council and Commission which averts the risk of a contradiction of this kind. Unfortunately, by advocating that the use of management committees in which the Council has the final say should become standard practice in implementing the budget, the Commission is making the wrong choice and, in the name of simplification and rationalisation, it is in fact increasing the risk of contradiction between the Council, which holds executive power, and the European Parliament which has a discharge authority relating to the Commission alone, which thus finds itself in the unenviable position of a budgetary authority accountable exclusively to Parliament for decisions imposed upon it by the Council.

The best solution would obviously be to redress the balance between the Commission and the Council. Various options could be envisaged. Two of these are discussed here. The first would be to use advisory committees for implementation of the budget, which would guarantee the independence of the Commission while still requiring it to comply with legislative and budgetary enabling decisions; the second is recourse to a new type of committee, whose decisions would be taken by agreement between the legislative executive authority, the Council, and the budgetary executive authority, the Commission, which would thus have the power to

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endorse or reject the decision for which it would be accountable to Parliament under the discharge procedure.

It should however be noted that a tripartite committee involving the Commission and the two arms of the budgetary authority would be scarcely appropriate since Parliament could not allow itself to be put in a position where it was both judge under the discharge procedure and judged under the committeeology procedure.

II. COMMITOLOGY PREVENTS RIGOROUS IMPLEMENTATION OF THE BUDGET

The committee system prevents totally satisfactory implementation of procedures.

The activities of committees may give rise to conflicts of interest. Committees are often made up of people with links to the economic and business community at which the measures to be funded are targeted. Although conflicts of interest of this kind have been criticised in the past (), this has not led to the drafting of general rules on incompatibilities and transparency in the composition of committees.

Non-mandatory committees raise a particular problem. These are the committees most frequently involved in implementation of the budget. Here it is not a case of official intervention by other institutions, but the Commission which delegates its functions to another body. The most contentious aspect of the system is that these functions are not always of a purely advisory nature but in practice involve the Commission voluntarily divesting itself of its budgetary executive function, for instance where contracting parties are selected on the basis of a short-list drawn up by the committee. In such cases, what we have is the Commission voluntarily giving up its responsibility for implementation of the budget, which is quite unacceptable.

Moreover, committee procedures often result in excessive delays and unnecessary cost:

- **Delays:** the complex procedures result in delays of up to several months (three months in the case of III(a) and III(b) committees) which can have disastrous consequences for the beneficiaries();
- **Cost:** the committees are expensive. There are more than 400() with more than 1400 meetings a year. They often have a large number of members and the expenditure incurred is thus substantial. Spending on

III. CONCLUSIONS AND RECOMMENDATIONS

(), this has not led to the drafting of general rules on incompatibilities and transparency in the composition of committees.) For instance, by the Court of Auditors in the research sector.

(⁵) Small businesses in particular are forced to make expensive prefinancing arrangements.

() with more than 1400 meetings a year. They often have a large number of members and the expenditure incurred is thus substantial. Spending on mandatory committees rose by 7% in 1998 (line A-7031, from ECU 1

) Including subcommittees and working parties.

With a view to revision of the committee decision and the possible conclusion of an interinstitutional agreement defining the implementing arrangements, the Committee on Budgetary Control submits to the Committee on Institutional Affairs the following conclusions and recommendations:

A. Principles.

1. The gradual redressing of the balance of power between the Council and Parliament in the legislative and budgetary procedure requires the respective roles of the three institutions in implementing procedures to be redefined: the Commission must be given exclusive competence for executive matters and must exercise that competence subject to the dual control of the Council and Parliament. Only advisory committees (type 1) are compatible with the principle of the separation of powers between the legislative and budgetary authority on the one hand and the executive authority on the other, and with the principle of strict equality between the Council and Parliament. Interinstitutional negotiations must aim to secure recognition of this point of view.
2. On the assumption that such an ambitious objective might not be achieved in the next round of interinstitutional negotiations, it is important to ensure that Articles 145 and 155 are not wrongly applied, thereby depriving the Commission and Parliament of their prerogatives under Articles 205 and 206 of the Treaty, namely the direct power to implement the budget assigned to the Commission and Parliament's power with regard to the discharge. Respect for Articles 205 and 206 requires, in particular, that the Commission should not be placed in a situation where it is called upon to commit undue expenditure or not to commit due expenditure on the basis of generally applicable or individual decisions imposed upon it by the Council under committee procedures. It follows from this that in the case of acts with financial implications, and in particular budgetary acts, recourse to so-called management or regulatory committees, which in fact give the Council the final say, must be ruled out. In this respect, the Commission's proposal that management committees should become the standard practice for implementation of the budget is fundamentally flawed.
3. For the purposes of exercising its discharge authority, Parliament must receive, on the Commission's responsibility, full information as to the number, agendas, discussions and decisions of committees involved in implementing acts, of any nature whatsoever, with budgetary implications. An annual report detailing the activities of these various types of committee should be drawn up by the Commission at the end of each financial year and sent to Parliament in good time for it to be examined under the discharge procedure.

B. Further proposals.

1. The proliferation of committees and the lack of precise and transparent rules as to their composition may give rise to conflicts of interest. Clear rules must be drawn up covering incompatibilities in particular, to avoid any risk of collusion of vested interests within the committees.
2. The activities of non-mandatory committees must be regulated to prevent them from exercising governmental responsibilities for and on behalf of the Commission.

3. Use of the committee system may result in delays of several months in the adoption of funding measures, causing damage to the final beneficiaries of the appropriations. The conduct of committee procedures should be subject to strict time limits.
4. The expenditure incurred as a result of committees should be managed more rigorously. It is up to the budgetary authority to keep expenditure on committee procedures within reasonable limits, with the dual aim of protecting taxpayers' money and preventing a proliferation of bodies which diminishes the transparency and effectiveness of the budgetary procedure.

The Committee on Budgetary Control would like to see these guidelines taken up by the European Parliament in the interinstitutional negotiations on reform of the committee system.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on Fisheries

Draftsman: Mrs Brigitte Langenhagen

PROCEDURE

At its meeting of 15 April 1998 the Committee on Fisheries appointed Mrs Langenhagen draftsman.

It considered the draft opinion at its meetings of 26 May and 24 June 1998.

At the latter meeting it adopted the following conclusions unanimously.

The following took part in the vote: Fraga Estévez, chairman; Kindermann, vice-chairman; Langenhagen, draftsman; d'Aboville, Apolinário, Baldarelli and Girão Pereira (for Gallagher).

BACKGROUND

Reportedly, the term comitology was invented by the writer C. Northcote Parkinson and first used in his classical parody of the logic of bureaucratic thinking *Parkinson's Law*. It is now being used to denote a system that has a role in European Community decision making; a system which also fails to fully convince the observer of its superior qualities. In this system, committees advise and supervise the Commission when it uses powers that have been delegated to it in legislation adopted by the Council or, when the co-decision procedure has been applied, by the Council and Parliament. These committees are created by means of provisions in the relevant legislation. Their members are experts representing the Member States.

There are three main types of these committees: advisory, management and regulatory committees. Unlike advisory committees, management committees have the power to delay the application of Commission decisions and enable the Council to take a different decision. Regulatory committees must actively approve a projected Commission decision - if not, the matter is automatically referred to the Council.

The term comitology does not cover all the committees that assist the Commission. There are also committees that have been set up by the Commission itself and which only have advisory tasks. These committees are sometimes referred to as non-obligatory committees, as opposed to the committees the consultation of whom is obligatory, according to the relevant legal acts.

"Comitology committees" should neither be confounded with the Council's working groups, although the members of these committees and the working groups are often the same persons.

The most frequently heard motivation for the existence of comitology is that the member states have the task of applying Community legislation and therefore need to be given the possibility to monitor the design of the relevant legal provisions. Comitology tends, however, also to alter the balance between the institutions within the Community, to the detriment of Parliament, which finds itself excluded, and of the Commission, whose role as the Community's executive branch becomes blurred and encroached upon. Moreover, comitology renders decision-making excessively intricate and difficult to follow.

Definitions of the various types of committees and other provisions relating to comitology were laid down in a Council Decision 1987. That decision will now be revised. The Commission is expected to table a proposal for a new Decision before the end of June 1998.

COMITOLGY IN RELATION TO THE COMMON FISHERIES POLICY

The following obligatory committees have been set up in the context of the Common Fisheries Policy (CFP):

- Management Committee for Fisheries and Aquaculture
- Management Committee for Fisheries Products
- Standing Management Committee for Fisheries Structures

There are also two non-obligatory committees:

- Scientific, Technical and Economic Committee for Fisheries.
- Advisory Committee on Fisheries.

The committees have a vital role e.g. in the preparation of TACs and quotas and in the implementation of the Multiannual Guidance Programme for the Community Fishing Fleet.

The relation between Parliament's Committee on Fisheries and the committees just mentioned have two main aspects: firstly the reception by the Committee on Fisheries of information on the activities of the committees and secondly the possibility for members of the Committee on Fisheries to participate in meetings of the relevant committees as observers.

The Fisheries Committee regularly receives copies of agendas for upcoming meetings of the committees. Brief accounts of decisions taken and of preceding votes are also transmitted. Regrettably, copies of documents which are due to be discussed in the committees or information on their work in progress are not sent to the Committee on Fisheries. Moreover, the agendas sometimes arrive very late.

The current procedure for sending observers is very unsatisfactory. In effect, it means that the Member of the European Parliament interested in participating in a meeting as an observer has to wait outside the meeting room, while the committee takes a decision on the request. A proposal from the Chairman of the Committee on Fisheries to the Commissioner responsible for fisheries, Mrs Emma Bonino, for a modification of this procedure did not receive a favourable response.

DISCUSSION

It would appear that in principle, Parliament can strive either to contain the comitology system or to open it up to Parliamentary control and influence. A combined approach is perhaps most appropriate.

In her working paper for Parliament's Institutional Committee, Mrs Aglietta points out three objectives for a new Comitology decision: simplification, democratisation and transparency. The Committee on Fisheries shares the view that improvements in these regards are absolutely necessary.

While the democratic deficit caused by Comitology in its present shape is most evident in relation to legislation adopted under the co-decision procedure, the problems caused by secretive committee procedures in other areas also should not be forgotten. Although in the context of the CFP, Parliament cannot refer to any role as co-legislator, its right to be kept informed about the activities of committees, even when they deal with issues on which Parliament is not consulted at all (e.g. the annual fixing of TACs and quotas), cannot be denied. Here, reference should be made not only to Parliament's general responsibility for exercising democratic control, but also to the interwoven character of the strands that make up the CFP. Irrespective of differences as regards what decision-making procedure applies, the various types of measures influence and complement each other. When Parliament prepares opinions on specific proposals and resolutions, its Committee on Fisheries must thus have the opportunity to look into the work that is being carried out also in other parts of the CFP.

CONCLUSIONS

The Committee on Fisheries supports the approach to the Comitology problem set out in the Institutional Committee's working paper and calls on the Institutional Committee to include in its draft resolution the following paragraphs:

1. Underlines that also when a decision-making procedure other than the co-decision procedure has been applied for the adoption of the legislative act that delegates legislative power to the Commission, Parliament's relevant committee must be kept fully informed about the use of the delegated power;
2. Considers that as a general rule, comitology committees should accept that Members of Parliament participate as observers in their meetings and that appropriate notification routines in this regard should be agreed upon.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the revision of the procedures for the exercise of implementing powers conferred on the Commission - 'commitology' (report by Mrs Aglietta)

Committee on the Rules of Procedure, the Verification of Credentials and Immunities

Draftsman: Richard Corbett

PROCEDURE

At its meeting of 26 May 1998 the Committee on the Rules of Procedure, the Verification of Credentials and Immunities appointed Mr Richard Corbett draftsman.

It considered the draft opinion at its meetings of 26 May and 29 June 1998.

At the latter meeting it adopted the following conclusions unanimously.

The following were present for the vote: Fayot, chairman; Evans, vice-chairman; Corbett, draftsman; Donnelly, Ford, Voggenhuber (for Aglietta) and Wibe.

CONCLUSIONS

The Committee on the Rules of Procedure, the Verification of Credentials and Immunities calls upon the Institutional Affairs Committee, when drafting its resolution, to ensure that the following points should be included:

1. It is not abnormal for legislation to confer implementing powers on the executive. In most of our national parliaments, such powers are frequently conferred, and often subjected to a scrutiny procedure whereby the Parliament can monitor - and sometimes call back - the implementing decisions of the government.
2. In the EU, directives and regulations frequently confer implementing powers on the Commission, but require the Commission to work in conjunction with a committee of national civil servants. In some cases such committees may block the Commission and refer the decision to the Council. Parliament's main criticisms of this system are:
 - only Council (or Member State) appointed committees have the right to scrutinise the Commission and refer back its decisions or draft decisions;
 - a matter referred back in such a way from the executive to the legislative authority is sent to Council alone rather than to both branches of the legislative authority (Parliament and Council);

- the whole system lacks transparency with its myriad committees of civil servants, the composition of which is not always published and the agendas of which are obscure.
3. Parliament has been particularly critical of the so-called regulatory committee procedure (procedure III), whereby Commission implementing measures require the approval of a qualified majority of Member State representatives in a committee. This is virtually the same as the standard legislative procedure, but with the Parliament cut out of the process. It is, therefore, used as a way of eliminating Parliament from the decision-taking process, even though these procedures are often used to modify the original directives or regulations.
 4. The IGC failed to reform this system and the issue was postponed. A Commission proposal for reform is now expected in June 1998. It is important to underline that Parliament does not want to take over implementing powers itself, but wishes to establish a system in which it can exercise proper scrutiny and, if necessary, call back an implementing measure that it disagrees with. This would, of course, be exceptional as has been shown under the informal arrangements that are in place under the *modus vivendi*. But it is an essential democratic safeguard. Furthermore, if a matter is referred back to the legislature by a Council appointed committee or by Parliament, then both branches of the legislative authority must deal with it.
 5. This will require the adoption of appropriate procedures within Parliament, whatever the final outcome of the forthcoming negotiations on a new system. These must be relatively simple. Rule 81 already provides for implementing measures to be referred to the committee that was responsible for the primary legislation, but is silent on how these should be dealt with.
 6. It would be desirable to provide for the Parliamentary committee to enter into a dialogue with the Commission if it is dissatisfied with the measure proposed. If it remains dissatisfied, a simplified procedure of referring the matter to plenary should be devised, allowing Parliament to vote on the implementing measure - perhaps requiring an absolute majority to reject it in order to underline the fact that this would be exceptional and is in the nature of a safeguard.
 7. When either the Parliament or the Council/Council-appointed committee rejects an implementing measure, it should be dealt with under the full legislative procedure (normally co-decision), but Parliament should consider agreeing to tighter time limits than normally applied.

OPINIONS - PART II

25 November 1998

OPINION
(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Agriculture and Rural Development

Draftsman: Mr Jan Mulder

PROCEDURE

At its meeting of 18 March 1998 the Committee on Agriculture and Rural Development appointed Mr Jan Mulder draftsman.

It considered the draft opinion at its meetings of 21/22 July and 24/25/26 November 1998.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Colino Salamanca, chairman; Graefe zu Baringdorf, vice-chairman; Mulder, draftsman; Anttila, Bøge (for Ebner), Botz (for Rehder), Cabezón Alonso (for Campos), Fantuzzi, Filippi, Fraga Estévez, Funk, Garot, Gillis, Goepel, Hardstaff, Jové Peres, Kindermann, Lulling (for Santini), Mayer, Otila (for Cunha), des Places, Poisson (for Chesa), Querbes, Rosado Fernandes, Schierhuber and Sonneveld.

INTRODUCTION

The term commitology refers to a system which is part of decision-making in the European Community. It involves the practice of the Commission enlisting the help of committees made up of national experts for decisions implementing Community legislation. Under the system, the committees deliver opinions to the Commission and scrutinise the Commission when it uses powers conferred on it by legislation adopted by the Council or, in the case of the codecision procedure, by the Council and Parliament.

There are basically three types of committee: advisory, management and regulatory committees. Unlike advisory committees, management committees have the power to defer the application of Commission decisions and to give the Council the opportunity to take a different decision. Regulatory committees have to actively approve a decision taken by the Commission and if they do not do so the matter is automatically referred to the Council.

The argument most commonly heard in favour of the existence of the committee system is that the Member States have the task of implementing Community legislation and should therefore have the opportunity of exercising control over enactment of the relevant legislation.

The Commission determines the type of committee which is necessary to implement the policy concerned. In 1987 a Council decision(

) formalised this 'commitology' system, which has been updated following the entry into force of the Maastricht Treaty and other developments such as

The purpose of the Commission's proposal is to clarify the criteria determining the choice of one or other of the procedures, to simplify these procedures, adapt existing procedures, enhance monitoring and ensure that proposals for the adoption of legislative decisions go to the legislative authority.

DRAFTSMAN'S COMMENTS

The commitology system alters the balance between the Community institutions to the detriment of European Parliament, which is excluded from the system, and of the Commission, whose role as Community executive is weakened and undermined. Moreover, because of commitology, decision-making is excessively complex and difficult to follow.

Your draftsman regards this state of affairs as unsatisfactory. It is therefore very important to simplify the decision-making process and restore the balance between the Community institutions. Moreover, it is impossible for Parliament to keep up with the work of all the committees. Consequently, only legislation should be scrutinised by Parliament systematically and other implementing measures should be scrutinised only when Parliament considers it appropriate.

The draftsman does not wish to enter into aspects of these problems which do not directly concern the Committee on Agriculture and Rural Development. The basic reservation which the draftsman feels is that the regulatory procedure, which concerns "measures of general scope to apply, update or adapt essential provisions of basic instruments", should be brought to a greater extent within the control of the European Parliament. The regulatory procedure concerns the essential provisions of basic instruments, and as such the European Parliament should be involved to a greater extent in this aspect of implementing measures.

The draftsman is aware that a division must be maintained between legislative and executive functions but equally, in view of rapidly changing progress in technology, it is important that the basic legislation should be implemented and controlled by the legislative authority. Four amendments are therefore proposed.

() formalised this 'commitology' system, which has been updated following the entry into force of the Maastricht Treaty and other developments such as the introduction of codecision.
) OJ L 197, 18.7.1987, p. 33.

CONCLUSIONS

The Committee on Agriculture and Rural Development calls on the Committee on Institutional Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission
Amendments by Parliament

(Amendment 1)
Article 2, fourth paragraph a (new)

Every five years, before the start of a new parliamentary term, it shall be decided which committees are to deal with what subjects so that the definition of advisory, management and regulatory committees is clear.

(Amendment 2)
Article 5, first paragraph

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission. The European Parliament shall be informed of the agenda and may, at the request of a political group or 29 Members, ask to give its opinion on the items on the agenda, in accordance with the existing rules.

(Amendment 3)
Article 5, third paragraph

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee, providing the European

committee.

Parliament has not expressed an opinion to the contrary within one month of the decision.

(Amendment 4)
Article 5, fourth paragraph

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged, but shall inform the European Parliament and the Council of the opinion of the committee. In that event, the European Parliament or the Council may ask the Commission to present a proposal relating to the measures to be taken, in accordance with the Treaty.

24 November 1998

OPINION
(Rule 147)

for the Committee on Institutional Affairs

Proposal for a Council decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 final - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Budgets

Draftsman: Mr Terence Wynn

PROCEDURE

At its meeting of 4 February 1998 the Committee on Budgets appointed Mr Terence Wynn draftsman.

It considered the draft opinion at its meetings of 18 March, 19 May, 4 June, 25 June and 2 July 1998 and, at that last meeting, adopted an interim opinion, before Parliament adopted the resolution on the mandate on 16 September 1998. The Committee reconsidered its interim opinion and drew up a second draft opinion which it considered at its meetings of 5 and 24 November 1998.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Samland, chairman, Tillich, Willockx and Giansily, vice-chairmen; Bösch, Brinkhorst, Colom i Naval, Dankert, Dührkop Dührkop, Elles, Fabra Valles, Fabre-Aubrespy, Garriga Polledo, Haug, Kellett-Bowman (for Imaz San Miguel), Miranda, Mulder (for Kjer Hansen), Müller, Pasty, Rübig, Tappin, Theato, Viola (for Böge), Virrankoski and Wynn.

GENERAL COMMENTS

Introduction

1. A declaration to the Final Act of the Draft Treaty of Amsterdam fixed the end of 1998 as the deadline for the Commission to submit to the Council proposals amending the 1987 Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission - "commitology". No change was proposed to Articles 145 and 155 of the EC Treaty, nor to Article 205(

). The Commission President committed the Commission to bring forward these proposals no later than July 1998.

2. Parliament adopted a resolution on 16 September setting out the principles to be observed in the modification of the procedures for the exercise of implementing powers conferred on the Commission. These principles reflected largely those that the Committee on Budgets had espoused in its interim opinion, though the application of these principles seemed more particularly to target acts adopted under the co-decision procedure.
3. The Committee on Budgets - as the Committee on Budgetary Control - has addressed the issue on many occasions, and regularly proposes amendments on the matter of committee in its opinions and reports. In its view, executive committees treat matters that are clearly financial or budgetary in nature, and/or that are issues covered in the legislation. Their decisions could therefore impinge on the legislative and/or budgetary competencies of Parliament and the Council, even more so once the Amsterdam Treaty comes into effect.

A budget eye to the committee system

4. Executive committees bring together at least one if not two representatives/experts from each Member State under the chairmanship of a Commission official, backed up by two or more. Each has its internal rules of procedure. At any meeting as many as 30 or more civil servants are present, travel and subsistence costs paid by the Union's budget, with interpretation facilities for the duration of the meeting. The Budgets Committee has regularly requested that the representation be restricted to one person per Member State, a view agreed by Parliament from time to time.
5. The 1998 Union budget for committee meetings under budget items A-7031, 7032, and 7033, and A-2521 was about ECU 20 349 000. A further ECU 18 344 000 was budgeted that year for meetings of experts and working groups at a cost per governmental expert of about ECU 700 per day and of private experts of ECU 800 per day. A list of the committees under each item appears in annex I to part A of the Budget.
6. After the next rounds of enlargement, these committees could include as many as 50 officials, larger than most parliamentary committees, where the voting and quorum rules are generally more flexible than in the executive committees, which in principle deal with matters that are of lesser consequence than parliamentary committees.
7. The Council also has an extensive array of internal working groups following the developments in almost all sectors of Union activity. This opinion does not deal with these. But for the record over 220 of these groups existed on 1.9.1996.

(.) The Commission President committed the Commission to bring forward these proposals no later than July 1998.) *The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 209 [Financial Regulations], on its own responsibility and within the limits of the appropriations, having regard to the principle of sound financial management*

The issues

8. Given that the Member States are currently all represented on the executive committees, and that procedures allow the Council to intervene, in the case of management and regulatory committees, to override the Commission, the Council does not have reserves about the committees, that it alone established by legislative decision (the 1987 Decision was adopted by Council after simple consultation of Parliament, where the latter's opinion was largely ignored by Council). It strongly resists encroachment on this domain().
9. The Commission accepts the committeeology, even regulatory committees, knowing that much of the implementation of Community programmes lies in the hands of national or regional authorities in the Member States. Actually putting legislation into effect often depends not solely or even largely on the Commission but on these authorities. The latter's involvement in the executive decisions is an assurance of implementation, not always fulfilled.
10. Parliament on the other hand is not directly involved in these committees, nor has it any means of observing their meetings, since they meet in secret. It has shown critical reserve about the activities of the committees, considering them to act beyond the oversight powers of Parliament, and possibly from time to time in breach of the powers attributed to the institutions under the Treaties, in that they take from the Commission the power of implementation and reduce or deprive the Union institutions of full redress against the Commission.
11. Parliament has become more sensitive to the issue since the introduction of co-decision, as the decisions of executive committees in these areas may impinge on the competencies of the legislative authority, the Parliament and Council together. Parliament has managed to negotiate agreements to alleviate some of the worst excesses of the system, which in the meantime has been applied to the case of co-decision without change of the original Council Decision. The earliest was the 1987 Plumb-Delors agreement, followed by the Klepsch-Millan agreement of 13 July 1993, then the *modus vivendi* of 20 December 1994, followed by the Commission's undertaking of 26 September 1996 (cited in the budget resolution of 24 October 1996). Parliament has also refined its own internal procedures in order to improve its oversight on the documentation that is now provided, in particular through the *modus vivendi*.
12. The principles the Budgets Committee has defended are:
 - maintenance of the Commission's institutional and Treaty responsibility for implementing the budget, and for (overseeing the) implementation of the legislative decisions, such as through:
 - * insurance of redress against the Commission in the event of abuse of executive powers.
 - simplification and cost effectiveness of the system, such as through:
 - * control over the attendance in committee meetings, not only to reduce the participation to a minimum (one person per Member State), but also to ensure no conflict of interest (declaration of interest);

(1) Court of Justice case 302/87

- increased democratisation of the system through measures on:
 - * transparency about the subjects to be considered, and the results of votes taken;
 - * forewarning of decisions that may be taken in executive committees, with time for political intervention by Parliament in the event of a breach on matters of political consequence being identified;
 - * openness to oversight and control, during (presence of observers) or after the meeting (papers open to control, and details of activities in the Annual Report and in the working documents attached to the preliminary draft budget).
- 13. The Commission has nevertheless tried to reduce the confrontation between Parliament and Council, through providing further information regularly on agendas and votes, on draft decisions of note and on the results of activities. It has not been enough.
- 14. The Committee has thus proposed amendments to the proposal:
 - in order to generalise the amendments to legislative acts, whether or not adopted under co-decision, so as to include those acts with significant financial implications adopted under other procedures;
 - in order to exclude the possibility for Council to overrule the Commission under the regulatory or safeguards formulae thus respecting its conclusion that "that the powers of the budgetary authority [and of the Commission to implement the budget] are not to be compromised by executive decisions [taken over the head of the Commission]";
 - in order to put in legislative form the conclusion that it adopted in its interim opinion, where it noted "that the principle of majority voting in Council implies that not all Member States need be represented in executive committees when making decisions in those sectors covered by majority voting";
 - in order to ensure *ex ante* information of Parliament on the activities of the committees and the draft proposals for measures submitted to them, and to ensure adequate transparency of the activities of the committees and regular reporting, and thus improve the democratic oversight and control over them;
 - in order to simplify and lighten the burden of executive committees on the administration of Community matters.

CONCLUSIONS

- 15. The Committee on Budgets adopts the following amendments to the Commission proposal and calls on the Committee on Institutional Affairs to do likewise:

(Amendment 1)

Recital 1

(1) Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the Commission powers for the implementation of the rules which the Council lays down; whereas the Council may impose certain requirements in respect of the exercise of these powers; whereas it may also reserve to itself the right, in specific and duly substantiated cases, to exercise directly implementing powers;

(1) Whereas, in accordance with Article 189, in association with Article 145, of the Treaty, in the acts which they adopt, the European Parliament and the Council confer on the Commission powers for the implementation of the rules which they lay down; whereas the European Parliament and the Council may impose certain requirements in respect of the exercise of these powers; [...]

(Amendment 2)

Recital 2

(2) Whereas the Council adopted Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission; whereas that decision has limited the number of procedures for the exercise of such powers;

(2) Whereas, on 13 July 1987, the Council adopted Decision 87/373/EEC laying down the procedures for the exercise powers of implementing powers conferred on the Commission in the acts which it adopts; whereas that decision had limited the number of procedures for the exercise of such powers; whereas the European Parliament and the Council should jointly lay down the procedures for the exercise of implementing powers conferred on the Commission in the acts which they adopt;

(Amendment 3)

Recital 4a (new)

(4a) Whereas the object of committees which may be established under these procedures is to assist the Commission in the exercise of the implementing powers conferred on it; whereas the nature of the procedures should not hinder the Commission in the exercise of those powers or prevent a decision being taken which is necessary for the effective implementation of rules laid down by Parliament and Council;

(Amendment 4)

Recital 4b (new)

(4b) Whereas the Commission has sole responsibility for implementation of the budget in accordance with Article 205 of the Treaty; whereas this responsibility should not in any way be hindered by the procedures laid down for the exercise of implementing powers under legislative acts;

(Amendment 5)

Recital 4c (new)

(4c) Whereas the voting rules in Council and in particular Article 150 of the Treaty lay down that not all Member States need have a personal representative in attendance at a committee which assists the Commission when the chairman calls for a vote;

(Amendment 6)

Recital 5

(5) Whereas, in this regard, implementing measures and management measures must be taken by a procedure ensuring timely decision-making within suitable periods;

1. Whereas [...] implementing measures which are not of general application and routine management measures must be taken by a procedure ensuring timely decision-making by the Commission;

(Amendment 7)

Recital 6

(6) Whereas measures of general scope designed to implement, adapt or update essential provisions of basic legislative instruments should be adopted by a procedure allowing involvement of the legislative authority be it the Council or the European Parliament and the Council;

Whereas measures of general application designed to implement [...] basic legislative acts should be adopted by a procedure allowing involvement of the legislative authority; whereas powers which may be conferred on the Commission by the legislative authority to adapt or update provisions of legislative acts also call for a procedure allowing involvement of the legislative authority;

(Amendment 8)

Recital 7

(7) Whereas the advisory procedure should be followed where the management or regulatory procedure is not or is no longer considered appropriate; whereas account should be taken of experience already gained in the implementation of the relevant instruments;

(7) Whereas the advisory procedure should be followed for implementing measures which are not of general application or for implementing measures where the management [...] procedure is not or is no longer considered appropriate; whereas account should be taken of experience already gained in the implementation of the relevant instruments; whereas the regulatory committee procedures of the type laid down in Council Decision of 13 July 1987 are no longer considered appropriate;

(Amendment 9)

Recital 8

(8) Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved;

(8) Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved; whereas it is essential to improve the transparency of the procedures;

(Amendment 10)
Recital 9

(9) Whereas, in this spirit, the European Parliament should be informed of committee proceedings on a regular basis;

(9) Whereas, in this spirit, the legislative authority should be sent by the Commission the same information, documents and draft implementing measures at the same time and under the same conditions as it sends them to each committee referred to or established under a legislative act for the purpose of assisting the Commission in the implementation of the act; whereas the budgetary authority should receive, on an annual basis, the information that it requires on the operation of committees established for the purposes of assisting the Commission with the implementation of legislation so that it can assess the efficiency and cost-effectiveness of the procedures used; whereas, for this purpose, every such committee that is established should be clearly identified in the budget;

(Amendment 11)
Article 1

Other than in specific, duly substantiated cases where the Council reserves the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument.

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3 to 6, determined in accordance with the criteria laid down by Article 2.

Implementing powers shall be conferred on the Commission in accordance with the relevant provisions in the basic legislative act.

Where the basic legislative act imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3 to 5 of this Decision, determined in accordance with the criteria laid down by Article 2.

(Amendment 12)

Article 2

Determination of implementing procedures

Implementation and management measures, and in particular those relating to common policies such as the common agricultural policy, to the implementation of programmes with significant budgetary implications, or to the grant of substantial financial support, shall be adopted by use of the management procedure.

Implementing measures which are not of general application and, as a general rule, routine management measures, shall be adopted by the advisory procedure.

The Commission shall in all cases remain responsible for the implementation of the budget in accordance with Article 205 of the Treaty. To this end, measures relating to the implementation of programmes with significant budgetary implications, and to the grant of substantial financial support, shall be adopted by the advisory procedure.

However, certain routine management measures, and in particular those relating to the implementation of common policies such as the common agricultural policy, [...] may be adopted by the management procedure if the legislative authority deems this procedure appropriate when adopting the basic legislative act.

Measures of general scope designed to apply, update or adapt essential provisions of basic instruments shall be adopted by the use of regulatory procedure.

Measures of general application to implement basic legislative acts shall be adopted by the management procedure. Implementing measures can under no circumstance modify, update or adapt provisions of basic legislative acts unless the legislative authority has conferred specific powers for this purpose in the basic act concerned.

The advisory procedure shall be applied where the management or regulatory procedure is not or no longer considered appropriate.

The advisory procedure shall be applied where the management [...] procedure is not or no longer considered appropriate by the legislative authority when adopting the basic legislative act.

(Amendment 13)

Article 3

Advisory procedure

The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission. Where the instruments of the pre-accession strategy are concerned, the membership shall be increased by one representative per partner country with advisory status.

(Amendment 14)

Article 4

Management procedure

The Commission shall be assisted by a management committee composed of representatives of the Member States and chaired by the representative of the Commission.

The Commission shall be assisted by a management committee composed of one representative for each Member State and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty. The Chairman shall not vote.

The representative of the Commission shall submit to the committee a draft of the measures to be taken, in accordance with the requirements of Article 7. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty. The representatives of the Member States in the committee shall ensure that they make maximum possible use of the possibilities offered by Article 150 of the Treaty. The Chairman shall not vote.

The Commission may adopt measures which shall apply immediately.

The Commission may adopt measures which shall apply immediately.

However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

[...] The measures adopted shall be communicated forthwith by the Commission to the legislative authority, together with the committee's opinion and a statement of the Commission's reasons

In that event, the Commission may defer application of the measures which it has decided on for not more than three months from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time-limit provided for by the third paragraph.

If these measures are not in accordance with the opinion of the committee, the Commission may defer the application of the measures which it has decided on for not more than three months from the date of such communication.

Deleted

(Amendment 15)
Article 4a (new)

Within a period of six weeks months following the date of communication referred to in Article 4, the Parliament and / or the Council may decide, after stating the reasons for their decision, to reject the measures adopted by the Commission.

The Commission shall, within a period of two months following that rejection either:

- present a modified draft of the measures to be taken

or

- present an appropriate proposal to the legislative authority.

The three institutions shall take all the necessary measures, in the period following the notification of the Commission measures, to reconcile their positions within an appropriate framework, and the Commission shall take all the necessary initiatives to this end.

If the Commission considers it necessary due to the urgency of the matter, it may require the legislative authority to apply an accelerated procedure.

The three institutions shall establish, by common agreement, the practical arrangements for the implementation of this article and the decision-making provisions laid down therein within six months of the publication of this Decision in the Official Journal.

(Amendment 16)

Article 5

Regulatory procedure

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

Deleted

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty. The chairman shall not vote.

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

(Amendment 17)

Article 6

Safeguard procedure

The Commission shall notify the Council and the Member States of any decision regarding safeguarding measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case.

Deleted

Any Member State may refer the Commission's decision to the Council within a time-limit to be determined in the instrument in question.

The Council, acting by a qualified majority, may take a different decision within the time-limit determined by the instrument in question.

(Amendment 18)
Article 7

Openness of procedures

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman, according to a standard format to be adopted by the Commission and communicated to the legislative authority. The Commission shall ensure that the Rules of Procedure of each committee which assists it in the framework of this decision are in accordance with the provisions of the Treaty and of the declarations attached thereto on openness and access to documents. The Rules of Procedure of each committee shall be published. The Commission shall be responsible for ensuring the adequate public diffusion of documents, if necessary by electronic means. Meetings of committees shall be held in public as a general rule. Particular conditions under which documents are classified as confidential or under which meetings can be held in camera shall be determined either in the basic legislative act by which a committee is established or in its Rules of Procedure.

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

The legislative authority shall be sent by the Commission the same information, documents and draft implementing measures at the same time and under the same conditions as it sends them to each committee referred to or established under a legislative act for the purpose of assisting the Commission in the implementation of the act.

The documents to be sent shall include draft agendas, minutes, the list of participants, the results of votes, declarations made, and work programmes. Draft implementing measures shall be accompanied by an indication of the

timetable foreseen for their examination and adoption.

The Commission shall establish the administrative arrangements for the transmission of the above information and documents by agreement with each branch of the legislative authority according to their own requirements.

Every year the Commission shall provide the budgetary authority, at the same time as the preliminary draft budget, a report on the operation of committees established for the purposes of assisting the Commission with the implementation of legislation so that the efficiency and cost-effectiveness of the committees and procedures used can be assessed. Every such committee that is established shall be clearly identified in the budget with an indication of the legislative acts for which it assists the Commission and the budget lines to which it relates.

24 February 1999

OPINION
(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on External Economic Relations

Draftsman: Mr Wolfgang Kreissl-Dörfler

PROCEDURE

At its meeting of 10 November 1998 the Committee on External Economic Relations appointed Mr Kreissl-Dörfler draftsman.

It considered the draft opinion at its meetings of 19 January, 25 January and 17 February 1999.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote: Herzog, chairman; Moniz, vice-chairman; Kreissl-Dörfler, draftsman; Van Bladel (for Karoutchi), Van Dam (for Souchet), Elchlepp, Falconer, Habsburg-Lothringen, Hindley, Miranda de Lage, Plooij-van Gorsel and Valdivielso de Cué.

1. The Commission proposal under examination() aims to revise the system for implementing Union legislation, as defined by Council Decision 87/373/EEC() which would be therefore repealed.

Decision 87/373/EEC has tried to regulate the so-called "commitology" procedures, by which the implementing powers conferred on the Commission by Union legislation are submitted to certain requirements, in particular scrutiny by committees of national civil servants; the different procedures can be summarised in the following manner():

() aims to revise the system for implementing Union legislation, as defined by Council Decision 87/373/EEC() COM(98)0380; OJ C 279 of 8.9.1998, p. 5.

() which would be therefore repealed.) OJ L 197 of 18.7.1987, p.33-35. Declaration 31 annexed to the Final Act of the Intergovernmental Conference which adopted the Amsterdam Treaty calls on the Commission to submit to the Council, by the end of 1998, a proposal to amend the Decision.

(²) Cf. "The European Parliament", second edition, Jacobs, Corbett and Shackleton, p. 231.

Procedure I (advisory committees)

Commission listens to view of committee and then takes a decision taking account of the committee's opinion.

Procedure II (management committees)

If the Commission is *opposed* by a qualified majority in the committee, then *either*;

variant a) The Commission *may* delay the application of its decision for up to one month

variant b) The Commission *shall* delay the application of its decision for a period up to three months and, within these deadlines, Council may, by a qualified majority, take a different decision.

Procedure III (regulatory committees)

If the Commission is *not supported* by a qualified majority in the committee, the matter is referred to Council, which may take a decision on a Commission proposal within a deadline not exceeding three months. If it fails to adopt a decision then:

variant a) The Commission shall adopt its proposal

variant b) The Commission shall adopt its proposal unless a *simple* majority in Council votes against in which case no decision is taken.

Procedure IV (safeguard measures)

No committee, but any Member State may ask for a Commission decision to be referred to Council, In this case:

variant a) Council has a deadline to take an alternative decision by a qualified majority

variant b) Council must confirm, modify or annul the decision by a qualified majority. If it fails to act within a deadline, the decision is abrogated.

2. The 1987 system had already been refined by various statements and undertakings(

), but the main objectives of setting clear guidelines for the choice of implementing procedures, of clearly respecting the separation between executive

(
) , but the main objectives of setting clear guidelines for the choice of implementing procedures, of clearly respecting the separation between executive and legislative powers and of taking account of the increased power
) Cf. COM(98)0380, p.2. These include, in particular: the 1998 "Plumb-Delors" agreement, the "Klepsch-Millan" agreement of 13.7.1993, the "modus vivendi" between the European Parliament, the Commission and Council of 20.12.1994, the "Samland-Williamson" agreement of 25.9.1996, as well as various undertakings by Commission and Council on procedural options.

3. From the point of view of the Committee on External Economic Relations, a series of considerations should be made

- a) first of all, the main objective perhaps of the present revision, which is to take account of the codecision procedure, does not affect our committee, since not one single codecision procedure has fallen under our competence since the institution of the procedure in 1993. It should be stressed, yet again, that the common trade policy is organised by article 113, which does not even provide for simple consultation of the European Parliament,
- b) secondly, annex I to this opinion provides a list of the committees which come under the remit of external economic relations.

It can be remarked that the main committee which is active in external economic relations, the so-called "113 committee" is not included in the list, since it is instituted directly by the Treaty and not by a basic regulation or decision,

- c) a series of important committees, such as the antidumping and ant subsidvention committees, the "barriers to trade" committee, the customs committee, the PHARE, TACIS, MED committees present undoubtedly great interest for our activities.

In the past, our committee has taken, on occasion, clear positions on commitment issues: to take only one example, in the context of the adoption of the TACIS regulation(

), our committee (and the European Parliament) resisted strongly the creation of a regulatory committee, which in practice, would have to approve each TACIS project beyond 1 Million ECU(

This position was strongly upheld by Parliament; it led to a budgetary conciliation with Council, which did not produce however positive results. The main observation by our committee was that the institution of the regulatory committee blurred the distinction between implementation and legislation, and obliged the Commission, even for projects of 1 MECU only, to engage in quasi-legislative negotiations with Council in order to find a qualified majority; the result would be, of course, that only "balanced packages" of projects, where each Member State (and not necessarily beneficiary Countries) would find its interest, had a possibility of being adopted through the regulatory committee; furthermore, the whole procedure would considerably slow down the implementation of the programme.

4. A more general series of observations can be made with regard to transparency and publicity issues: if, in theory, there could be some arguments for confidentiality of discussions in the case of certain implementation measures, in practice confidentiality now applies mainly to "outsiders", while "insiders" (i.e. important economic interests with good connections to administrations) usually have no great problems in obtaining the relevant information. There

() , our committee (and the European Parliament) resisted strongly the creation of a regulatory committee, which in practice, would have to approve each TACIS project beyond 1 Million ECU(

) Regulation No 1279/96 of 25.6.1996, OJ L 165 of 4.7.1996.

(¹) Resolution of 19.4.1996, OJ C 141 of 13.5.1996.

Cf. report by Mr Pex, in the name of the Committee on External Economic Relations (doc. A4-0107/96).

is therefore, in your rapporteur's opinion a good case to be made for publicity of the agendas, minutes and lists of attendance of committee meetings.

5. With regard to the position of the European Parliament, beyond the specific case of committees which fall under the codecision procedure, even in the other cases there should be a formalised procedure for enabling Parliament to intervene where it feels that committee measures have crossed the border between implementation and legislative activity.

Parliament should be in the position, even in the cases where it does not share directly in the legislative competencies, to draw the attention of the Commission and of the Council to these problems, and the other institutions should undertake to take the utmost account of Parliament's position.

6. Finally it should be noted that, in general, the "commitology" sector is particularly complex and non-transparent: there exist, in fact, committees instituted directly by the treaties, committees instituted by basic legislation prior to 1987, and committees falling under the 1987 Decision. Following the adoption of the decision now under discussion, and, possibly, with a view to the next revision of institutional provisions in the treaties, a new examination of the situation should be undertaken after a three-year period. The budgetary authority should also keep in mind the cost of the whole system, which would be considerably increased by future enlargements (normally, two representatives for each Member State take part in these meetings, at the expense of the EU budget).

7. Conclusions

The Committee on External Economic Relations

in general

- a) strongly denounces the present unacceptable situation of institutional imbalance in the common trade policy, which severely curtails Parliament's involvement in decision-making; points to the growing importance of democratic accountability for trade policy decisions in view of the developments in the global economic and trading systems;
- b) considers therefore that, in the "commitology" sector, democratic accountability is best served by the principles of transparency and public access as well as Parliament's involvement in monitoring committee activities and, if necessary, participation in the relevant legislative activities,

with regard to the proposal for a decision under discussion

- c) asks the Committee on Institutional Affairs to incorporate the following amendments in its draft report:

(Amendment 1)
Article 2, first paragraph

Implementation and management measures, and in particular those relating to common policies such as the common agricultural policy, to the implementation of programmes with significant budgetary implications, or to the grant of substantial financial support, shall be adopted by use of the management procedure.

Measures of general scope designed to implement the basic instruments and measures relating to common policies, such as the common agricultural policy, shall be adopted by use of the management procedure.

(Amendment 2)
Article 2, second paragraph

Measures of general scope designed to apply, update or adapt essential provisions of basic instruments shall be adopted by the use of regulatory procedure.

All the other measures, and in particular those relating to the implementation of programmes with budgetary implications and to the criteria for granting financial support, shall be adopted by use of the advisory procedure.

(Amendment 3)
Article 4, fourth paragraph

The Council, acting by a qualified majority, may take a different decision within the time-limit provided for by the third paragraph.

Deleted

(Amendment 4)
Article 4, fourth paragraph a (new)

The provisions of Article 7a and 7b shall apply.

(Amendment 5)
Article 5

Regulatory procedure

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission. Deleted

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty. The chairman shall not vote.

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

(Amendment 6)
Article 7, second paragraph

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

The European Parliament shall be informed of committee proceedings on a regular and comprehensive basis at the same time and under the same conditions as the committees. To that end, it shall receive information on the composition of committees as well as agendas and minutes of committee meetings, records of attendance, draft measures submitted to the committees for implementation, draft calendars and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken. All documents shall be made public and accessible by electronic transmission.

(Amendment 7)
Article 7a (new)

Right to revoke a decision

Where the codecision procedure applies, Parliament and/or the Council may, within a time-limit of (two) months from the date of the Commission decision, giving previous notice to the Parliament or the Council, contest the legality of the decision in a reasoned manner, according to the procedures to be established by the institutions.

Within a period of two months the Commission shall submit either a legislative proposal on measures to be taken in accordance with the provisions of the Treaty, or a modified decision.

(Amendment 8)
Article 7b (new)

Where the codecision procedure does not apply, the Council, acting by a qualified majority, shall have the right to revoke a decision (provided for in Article 7a). Where the European Parliament considers that an implementation measure or a draft implementation measure taken in accordance with a basic instrument exceeds the implementing powers, it shall ask the Commission to submit a legislative proposal within a period of two months and the latter shall take the utmost account of this position.

(Amendment 9)
Article 8a (new)

The Commission shall submit, by 31 December 2001, a proposal for a revised decision, in particular on the basis of the experience in the functioning of the present system as well as the developments at the institutional level.

25 November 1998

OPINION
(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr Bryan Cassidy

PROCEDURE

At its meeting of 2 February 1998 the Committee on Legal Affairs and Citizens' Rights appointed Mr Bryan Cassidy draftsman.

It considered the draft opinion at its meetings of 24 September, 27 October and 24-26 November 1998.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote: De Clercq, chairman; Palacio Vallelersundi, vice-chairman; Cassidy, draftsman; C. Casini, Cot, Fontaine, Gebhardt, Habsburg-Lothringen, Medina Ortega, Sierra Gonzales, Verde I Aldea and Thors.

1. GENERAL OBSERVATIONS

In Community law - as in any legal system - a distinction can be drawn between **legislative** and **implementing** powers. In very general terms it could be said that a legislative act contains general *principles*, whereas an act of implementation contains *details* which have to be in line with the principles.

Even if everybody would agree on the basic idea of 'principles' versus 'details' as a criterion for the distinguishing legislative powers from implementing powers, it is very likely that controversy will arise in any attempt to apply such a criterion to a given case.

2. LEGAL BASIS

The difference between legislative powers and implementing powers are enshrined in **Articles 145 and 155 of the Treaty**.

3. CONCLUSIONS TO BE DRAWN FROM ARTICLES 145 and 155 EC-Treaty (ECT)

- (a) From the above-mentioned Articles it is possible to infer that the Council *may not confer legislative powers* on the Commission.
- (b) As 'the procedures referred to above *must be consonant with* principles and rules to be laid down in advance by the Council', it could be argued that, once the new Commitology Decision has entered into force, any implementing act adopted under the old rules is susceptible of an action for annulment brought pursuant to Article 173 ECT. This would cast the shadow of *undesirable legal uncertainty* on all acts adopted under the old rules after the entry into force of the new Commitology Decision.
- (c) **The notion of 'implementing powers' is not defined in the Treaty.** Nor is the notion 'legislative powers'. New Article 151 (3) ECT, to be inserted by the Amsterdam Treaty, mentions the Council '...acting in its legislative capacity...'

By the very nature of the Community, no single national concept of 'implementing powers' and 'legislative powers' can be applied as such in Community law.

The European Court of Justice has used the expression 'executive powers' in a 1957 Judgment.

) As this judgment did not concern Commitology, it cannot provide answers to our questions.

Consequently, one can only speculate what the Court of Justice would decide if it were asked to rule on such questions. Would it

- (a) use the elements *Member States' concepts have in common* or
- (b) analyse the *practice at the date of the conclusion of the Single European Act* (February 1986) by means of which Articles 145 and 155 obtained their present shape or
- (c) develop, on a *case to case basis*, a concept of its own?

However, it is clear that if Parliament's rights under the co-decision procedure are to be preserved the notion of 'implementing powers' has to be interpreted strictly.

In any case, Article 2 (2) ('Measures of general scope designed to apply, update or adapt *essential provisions of basic instruments...*') is unacceptable and in breach of the law of the Treaty for it clearly exceeds the concept of implementing powers.

4. THE PRESENT COMMISSION PROPOSAL

- (a) The present Commission proposal (Art. 9) would *replace* the current Commitology Decision, i.e. Council Decision 87/373/EEC of 13.7.1987(.

(¹) As this judgment did not concern Commitology, it cannot provide answers to our questions.) ECJ of 13.6.1957, Case 9/56, ECR 1957, p. 63

(²) OJ L 197 of 18.7.1987, p. 33

- (b) Under Decision 87/373/EEC, five types of committees exist: Type I; Type II a) and II b); Type III a) and III b). In addition to that, Decision 87/373/EEC provides for two types of procedures relating to safeguard measures. Safeguard measures are unilateral Member State measures taken on grounds of major, non-economic needs such as those referred to in Article 36 ECT.

The proposal would introduce (a) an advisory procedure (b) a management procedure and (c) a Regulatory procedure.

The *advisory procedure* is substantially identical with the current Type-I-Committee procedure.

The *management procedure* is essentially the same as Type-II-a)-Committee procedure.

The *regulatory procedure* is something *radically new*. It will be discussed under 4(d) below.

- (c) Until now, no *criteria indicating which committee type should perform which task* exist. This allows on the one hand an extremely flexible use of committee types but this same flexibility has led to frequent disagreements between Council and European Parliament in co-decision matters. The Commission proposal establishing a securities committee() failed precisely because Council and Parliament could not agree on the committee type.

The Commission, in its present proposal, tries to establish *obligatory criteria* on the use of committee types. These criteria are contained in Recital 4 and in Article 2.

Article 2 does not give crystal-clear criteria. It leaves room for considerable uncertainties.

For the advisory procedure to be applied it suffices that other procedures are not or no longer **considered** appropriate.

Inversely, it is far from certain that crystal-clear criteria would be more desirable: The bargaining possibilities in conciliation would be seriously compromised.

Changes to the current flexible system should only be accepted if a clear advantage for Parliament would result from them.

- (d) The **regulatory committee** has the following **powers**: 'Measures of general scope to apply, update or adapt essential provisions of basic instruments *shall* be adopted by the regulatory procedure.' (Art. 2 (2))

This provision is very problematic indeed. Firstly, the powers of the regulatory committee would definitely *exceed what is covered by the notion of 'implementing powers'*. This fact by itself justifies the deletion of Art. 2 (2). Secondly, Art. 2 (2) does not just provide an option. Application, updating and adaptation of essential provisions *shall* be adopted by the regulatory procedure.

() failed precisely because Council and Parliament could not agree on the committee type.)

Christine Oddy, procedure 95/0188 (COD), T04144

COM(95)360, rapporteur

The **regulatory procedure** has the following features: The representative of the Commission submits a draft, the committee shall deliver - if necessary within a time limit - its opinion by a weighted vote. The Commission may adopt the measures if they are in accordance with the opinion of the committee.

However, 'If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission **shall not** adopt the measures envisaged. In that event, it **may** present a proposal relating to the measures to be taken, in accordance with the Treaty.' (Art. 5 (4)).

This is one of the most problematic parts of the proposal.

The Commission '**may**' present a proposal. That may have the effect that no measure might be taken in a field where urgent action would be necessary.

There is **no transparency** as to what the Commission and the Council did or did not do. Committee meetings are secret. ***Despite this, the proposal attaches very important legal consequences to both actors' behaviour.*** Who could, for instance, check whether the Commission has made two or three proposals which have not been accepted and only the fourth has led to an act upon which the Council-controlled committee could agree?

It would be an improvement if committee meetings were *public* and that, when the measures envisaged are not in accordance with the opinion of the committee, *the draft measures automatically constitute a formal legislative proposal* of the Commission.

To that end, it should be unequivocally clear that the representative of the Commission shall only submit draft measures which have been formally adopted by the college of the Commissioners. It is inconceivable that mere Commission services should have powers which the treaty expressly reserves to the college of the Commissioners.

However, one could also imagine systems completely different to that proposed. For instance, a simplified implementation procedure with the participation of the Council and the Commission could be put in place. Whenever one of the co-legislators, within, say, three months from the publication of the act in question manifests its opposition by means of a qualified vote, the act shall automatically lose its legal force and the normal legislative procedure shall take its course.

(e) Article 7 (1) reads:

'Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.'

By which majority?

Since when do committees *themselves* take legally binding decisions? - The basic idea that the EC is a community of law requires that all acts capable of affecting the legal position of third parties must be amenable to judicial review. However, Article 173 of the EC-Treaty, which mentions the bodies and institutions against whom an action for annulment can be brought, does not mention 'committees'. Therefore, the rules of procedure should be subject

to the requirement of formal approval by an institution or body the acts of which are amenable to judicial review pursuant to Article 173.

- (e) Article 6 concerns *safeguard procedures*. A definition of the expression safeguard clause can be deduced from *Article 100 a (5)*. It should to be carefully examined whether Article 145 is the appropriate legal base for safeguard measures.
- (g) The Commission proposal does not set any formal requirements relating to the *persons participating* in the committees. The possibility of *conflicts of interest* should be firmly rejected.

The representative of the Commission should be an official - unless the competent Commissioner takes part in the meeting. The statute of Community officials should warrant independence from third-party influence.

The representatives of the Member States should be obliged to sign a declaration of interests which should be accessible to Parliamentary committees.

5. THE LEGAL VALUE OF INTERINSTITUTIONAL AGREEMENTS

The Institutional Affairs Committee proposes the conclusion of an interinstitutional agreement.

The treaties do not mention 'Interinstitutional Agreements' as a source of Community law. The legal effects of such agreements are unclear.

In the light of Court of Justice Cases C-58/94 (§ 27; Netherlands/Council, 30.4.1996) and C-25/94 (§§ 48-50, Commission/Council, 19.3.1996) it could be argued that interinstitutional agreements are legally binding only where parties actually had the intention to be legally bound.

It is common sense that such an agreement must not be contrary to Community law and that it may merely fill a gap in the framework of the existing rules and that it can only concern a field where all parties to it have pre-existing powers to act.

It is doubtful whether such criteria would be met by an interinstitutional agreement on Commitology: Article 145 does neither mention Parliament nor does it have legal lacunae.

6. COMMITOLOGY AND CO-DECISION

We should also address the - legally more complex - question of the adoption of implementing measures in respect of co-decision acts.

Until the entry into force of the co-decision procedure the problem never arose, since the Council was the **only** author of Community acts: it was thus normal that it should be the Council that delegated powers to the Commission to adopt implementing measures. This is the purpose of Article 145 ECT and the Council decision of 13.07.1987 establishing the rules governing the exercise of the implementing powers conferred on the Commission.

As soon as Community acts began to be **jointly** adopted by Parliament and the Council, this political and judicial framework obviously had to be adapted accordingly. This is why it is now essential to amend the above-mentioned Council decision of 13.07.1987, and this is what the Commission has done in the proposal under review. Unfortunately, it has basically maintained

the previous arrangements, even for acts adopted by the codecision procedure. This is unacceptable for the European Parliament: in respect of acts which the European Parliament has co-authored, it doubtlessly has the same legitimacy as the Council to oppose the entry into force of implementing measures, should it desire to do so. In order not to prejudice legal certainty, the European Parliament must exercise its powers within a fixed period of time, which Amendment 11 has set at **two months**.

CONCLUSIONS

1. If the European Parliament is to bridge the 'democratic deficit' in its oversight of the Commission implementing powers, the relevant committees of the European Parliament must establish adequate review procedures.
2. The Committee on Legal Affairs and Citizens' Rights asks the Committee on Institutional Affairs to incorporate the following amendments into its legislative report :

Text proposed by the Commission

Amendments by Parliament

(Amendment 1)
Recital 8a (new)

Whereas the third purpose of the proposed amendments is to introduce transparency and democratic accountability.;

(Amendment 2)
Recital 9

Whereas, in this spirit, the European Parliament should be informed of committee proceedings on a regular basis;	Whereas, in this spirit, <u>the relevant Committees of the European Parliament</u> should be informed of committee proceedings on a regular basis;
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(Amendment 3)
Recital 9a (new)

	<u>Whereas, through its relevant committees, the European Parliament must be informed in good time of disputes between the representatives of the Member States in the committees referred to in articles 3, 4 and 5;</u>
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(Amendment 4)
Article 1, second paragraph a (new)

	<u>The Council shall inform the European Parliament.</u>
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(Amendment 5)
Article 2, second paragraph

<u>Measures of general scope designed to apply, update or adapt essential provisions of basic instruments shall be adopted by the use of regulatory procedure.</u>	<u>Deleted</u>
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(Amendment 6)
Article 2, fourth paragraph a (new)

	<u>The advisory committees dealing with matters covered by the Common Agricultural Policy set up by Commission Decision 98/235/EC of 11 March 1998 shall be required to inform the European Parliament when these committees fail to deliver an opinion within the time-limit established by the chairmen.</u>
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(Amendment 7)
Article 2a (new)

	<u>Conflicts of interest</u> <u>(1) Member State representatives shall submit a declaration of interest in a register available for public inspection.</u>
	<u>(2) Where the committee deliberations are affected by these interests, the representative in question shall either refrain from voting or the Member State shall appoint a substitute.</u>

(Amendment 8)
Article 5, fourth paragraph

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, <u>it may present a proposal relating to the measures to be taken, in accordance with the Treaty.</u>	If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, <u>the draft of the measures envisaged shall be deemed a formal Commission proposal.</u>
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(Amendment 9)
Article 7, first paragraph

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.	Each committee shall adopt its own Rules of Procedure on the proposal of its chairman <u>by qualified majority. These rules shall be published in the Official Journal.</u>
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(Amendment 10)
Article 7

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, all draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

The European Parliament may be represented at the meetings of the committees.

(Amendment 11)
Article 7a (new)

When the committees draw up measures for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty the European Parliament may, within a period of two months, oppose such measures, which shall be inapplicable on that account.

(Amendment 12)
Article 7b (new)

The Commission shall produce before the end of 1999 and update annually thereafter a directory of all advisory, management and regulatory committees, their terms of reference and the legal instrument which set them up.

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219 (CNS)) (report by Mrs Aglietta)

Committee on Employment and Social Affairs

Letter from the committee chairman to Mr Biagio De Giovanni, chairman of the Committee on Institutional Affairs

Brussels, 28 September 1998

Dear Mr de Giovanni,

The Committee on Employment and Social Affairs considered the above subject at its meeting of 23/24 September and adopted the following conclusions():

Parliament's response to the Commission proposal should seek to:

- restore the interinstitutional balance in view of the co-decision procedure, as introduced by the Maastricht Treaty and extended to a wide range of policies under the Amsterdam Treaty, by giving the European Parliament a right of scrutiny and censure equal to the Council's;
- make a clear distinction between implementing measures, whose legitimacy is directly derived from legislative texts, and measures aimed at updating and/or adjusting these texts, which may deviate from the legislator's original intentions and therefore require legislative procedures to be followed;
- provide a clear rationale for each type of committee by identifying which procedures are applicable to which measures;

and, in the light of the above principles, took the view that

- the proposal fails to give the European Parliament the rights conferred on it by the co-decision procedure and fails to ensure the necessary transparency which would allow it to assess the legitimacy of measures adopted by the Commission;
- the decision cannot be allowed to cover measures updating or adjusting existing legislation, to which ordinary legislative procedures must apply;
- the regulatory procedure should consequently be deleted from the proposal;

(¹) The following were present for the vote: Hughes, chairman; Ojala, vice-chairman; Andersson, Cabezón Alonso, Correia, Ettl, Glase, Jöns, Lindqvist, Mann T., Peter, Pronk, Schmidbauer (for Blak), Schörling, Skinner, Theonas, Van Lancker, van Velzen, Waddington, Weiler and Wolf.

- the reference to "measures ... relating to ... the implementation of programmes" (Article 2) is too vague and should not be interpreted as authorising the Commission to submit decisions

which would alter the objectives and priorities of the programmes as laid down in the relevant legislation.

Yours sincerely,

(sgd) Stephen Hughes

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Transport and Tourism

Letter from the committee chairman to Mr Biagio De Giovanni, chairman of the Committee on Institutional Affairs

Brussels, 16 March 1999

Dear Mr De Giovanni,

The Committee on Transport and Tourism considered the above subject at its meeting of 16 March 1999 and adopted the following conclusions:()

CONCLUSIONS

The Committee on Transport and Tourism:

1. Points out that, under the Treaties, the Commission is permitted to exercise certain powers, including those conferred on it by the Council to implement rules which the Council lays down (former Article 145 of the EC Treaty) and that those powers have not been affected by the latest change in the wake of the Amsterdam Intergovernmental Conference;
2. Points out, in addition, that the exercise of the powers thus conferred by the Treaties has been made subject to certain procedures set out in the Council Decision of 13 July 1987 laying down the *modus operandi* of committees of national representatives()officially establishing a practice which had already been followed since the 1960s;
3. Notes that, because of the many different types of committees and its complexity and lack of transparency, the above system has proved ill suited to the requirements of an effective, rapid, and democratic legal system, even though, when it was first implemented, it corresponded to the degree of European integration achieved at the time;

(¹) The following were present for the vote: Bazin, chairman and draftsman; Wijzenbeek, vice-chairman; Castricum, van Dam, McIntosh, Stenmarck and Stockmann (for Lüttge). (officially establishing a practice which had already been followed since the 1960s;) OJ L 197, 18.7.1987, p. 33.

4. Maintains that the codecision procedure established by the EU Treaty and the extension of its scope agreed at the most recent Intergovernmental Conference have profoundly altered the legislative process;
5. Notes that, at the Amsterdam Intergovernmental Conference, the Member States refrained from amending the Treaty provisions relating to implementing measures and, instead, asked the Commission to submit a new proposal for a decision to the Council not later than the end of 1998, with a view to laying down the procedures for the exercise of implementing powers conferred on the Commission, and that the proposal in question is the subject of this opinion;
6. Approves the broad lines of the Commission's approach which are designed to frame criteria to determine what type of committee should be set up, simplify the procedures by reducing the number of committee variants, strengthen the scrutiny which the legislative authority (the Council or the Council and Parliament under the codecision procedure) may bring to bear on the exercise of implementing powers, and, in some cases, enable decisions to be referred to the legislative authority;
7. Regrets that the proposal for a decision as it stands is not entirely consistent with the guidelines announced by the Commission, not least because there are still so many procedural variants that the imperatives of effectiveness and transparency would be difficult to observe;
8. Fully supports, therefore, the call by the Committee on Institutional Affairs to do away with the safeguard procedure, which provides for a fourth distinctive type of committee of national experts;
9. Takes the view, however, that the regulatory procedure, which constitutes the standard practice in the transport sector, must remain in existence, given the complexity and highly technical nature of the subjects to be dealt with; considers that, when this procedure is applied, committee proceedings should be made public and prior information automatically supplied to Parliament;
10. Proposes, accordingly, that Parliament's supervision of implementing measures be tightened up appreciably, which implies a substantive debate between the Commission, committees of national experts, and the appropriate parliamentary committees;
11. Emphasises that, in most cases, ex post evaluation could be useful only for information purposes; considers that Parliament should be allowed to challenge both the procedure applied to and the substance of implementing measures, given that Union law does not distinguish between legislation and implementing acts;
12. Emphasises, finally, that it is in the interest of the Union legal system to bring procedures into line with the Union's current stage of development and calls on the Commission to make the necessary amendments to its proposal with that end in view.

Yours sincerely,

(sgd) Jean-Pierre Bazin

10 December 1998

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on a proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on the Environment, Public Health and Consumer Protection

Draftsman : Ken Collins

PROCEDURE

At its meeting of 23 June 1998 the Committee on the Environment, Public Health and Consumer Protection appointed Ken Collins draftsman.

It considered the draft opinion at its meetings of 23 June and 20 July 1998.

At the last meeting it adopted the following conclusions unanimously.

The following took part in the vote : Collins, chairman/draftsman; Lannoye, vice-chairman; Blokland, Bowe, Cabrol, Eisma, Estevan Bolea (for Burtone), Flemming, González Álvarez, Graenitz, Grossetête, Hulthén, Jackson, K. Jensen, Kestelijn-Sierens, Kuhn, Lange (for Marinucci), Leopardi, Liese (for Florenz), Olsson, Redondo Jimenez (for Schnellhardt), Roth-Behrendt, Schlechter (for van Putten), Schleicher, Sjöstedt (for Bertinotti), Tamino, Thyssen (for Viceconte), Valverde Lopez, Virgin and Whitehead.

I. General Remarks

INTRODUCTION

Council adopted a decision on 13 July 1987 laying down procedures for the exercise of the implementing powers conferred on the Commission (Decision 87/373/EEC)(¹). That 'comitology' decision is now up for revision.

The present opinion looks at the Environment Committee's experience of 'comitology' to date. Some 73 'comitology' committees cover the policy fields for which the Committee on the Environment, Public Health and Consumer Protection is responsible (see annex). The number of draft implementing measures referred to this committee so far totals 141, broken down as follows: . . . 31 in 1995

(¹). That 'comitology' decision is now up for revision.)

OJ No L 197 of 18 July 1987, p.33

- . 26 in 1996
- . 45 in 1997
- . 39 in 1998 (to 20 July).

The texts governing these referrals are the Plumb-Delors agreement of March 1988 (for draft implementing measures not based on an act adopted in co-decision); and the interinstitutional *modus vivendi* of 20 December 1994 (for draft implementing measures based on an act adopted in co-decision). Of the 141 draft measures sent to the Environment Committee since 1995, 67 were referred under the Plumb-Delors agreement and 74 under the *modus vivendi*.

The Environment Committee receives not only draft implementing measures, i.e. legally binding acts, but also documents such as agendas of forthcoming meetings of comitology committees, minutes, summary records, attendance lists, rules of procedure of a specific committee, work programmes, etc.

DEFINING THE IMPLEMENTING PROCEDURES: PARLIAMENT LESS EQUAL

Decision 87/373/EEC defined seven different implementing procedures. The system is unduly complex and unintelligible to the ordinary citizen. It also builds in an inequality for Parliament relative to Council in a number of ways. The time limits (three months) for Council action would be short but manageable if Council were deciding alone without reference to Parliament; the time available for Parliament's input is of necessity shorter but often unmanageably so. The Commission is not bound by Parliament's views on implementing measures under any of the seven procedures. Depending on the procedure involved, Commission and/or Council can block adoption of a measure; Parliament never can. In none of the procedures, therefore, does Parliament have political parity with Council.

CHOOSING THE IMPLEMENTING PROCEDURE IN BASIC LEGISLATION: PARLIAMENT LESS EQUAL AGAIN

It is worth stressing the importance of the provisions conferring implementing powers on the Commission in the basic legislation. Environment policy is very technical, with science developing constantly and rapidly. The legislative texts governing the various policy areas usually contain an article stipulating how they should be implemented and adapted to technical and scientific progress. In areas of relevance to the Environment Committee, Parliament's views have seldom prevailed when it comes to deciding, in the basic legislation, what type of implementing procedure should apply.

Good examples are the directives concerning non-road mobile machinery and foodstuffs treated with ionising radiation. Parliament is confronted with an intransigent Council and a Commission whose prime concern is to see the legislation adopted. In the case of non-road mobile machinery(

), Parliament backed the Commission and re-introduced at second reading the (weaker) management committee procedure the Commission had initially

(
), Parliament backed the Commission and re-introduced at second reading the (weaker) management committee procedure the Commission had initially proposed. However, at the stage of conciliation, the
) European Parliament and Council directive of 16 December 1997
 on the approximation of the laws of the member states relating to the measures to

), Parliament at 2nd reading itself rejected Environment Committee amendments seeking an advisory rather than a regulatory committee.

Another example of the problems facing Parliament when it negotiates 'comitology' provisions in the basic legislation relates to the proposed directive on the labelling of alcoholic beverages(

). Although the proposal is based on Art. 100A of the EC-Treaty, the Commission's approach jeopardises Parliament's prerogatives from the start. It tre

MODUS VIVENDI: PARLIAMENT LESS EQUAL YET AGAIN

The *modus vivendi* was adopted by Parliament, Council and Commission in 1994 because the 1987 Decision did not take account of codecision. In the Environment Committee's experience, the problems with the *modus vivendi* lie less in the text than in the practice. The central theme running through the points below concerns information flow: too little relevant information, too late. Large numbers of documents are sent to the Environment Committee secretariat, which has to register, distribute and archive them. But key information is often missing. Moreover, documents are forwarded by a central Commission unit rather than by the responsible service, often without the latter service being identified. This arrangement seems unnecessarily cumbersome, untransparent and time-consuming given the exceedingly short time-limits for Parliaments response.

Modus Vivendi paragraph 4

Theory: "4. The appropriate committee of the European Parliament shall be sent, at the same time and under the same conditions as the committee referred to in the basic act, any draft general implementing act submitted by the Commission and the timetable for it.

.....

The Commission shall inform the appropriate European Parliament Committee when measures adopted or envisaged by the Commission are not in accordance with the

be taken against the emissions of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery, OJ N° L 59 of 27 February 1998, p. 1

(, Parliament at 2nd reading itself rejected Environment Committee amendments seeking an advisory rather than a regulatory committee.)

Proposal for a European Parliament and Council directive on the approximation of the laws of the member states concerning foods and food ingredients treated with ionising radiation -report BLOCH VON BLOTTNITZ -COD0169

() Although the proposal is based on Art. 100A of the EC-Treaty, the Commission's approach jeopardises Parliament's prerogatives from the start. It treats all the labelling requirements as technical and ther

) Proposal for a European Parliament and Council directive amending directive 79/112 on the approximation of the laws of the member states relating to the labelling, presentation and advertising of foodstuffs -report SCHNELLHARDT -COD97027

opinion delivered by a committee referred to in the basic act or when, in the absence of an opinion, the Commission must submit a proposal to the Council".

Practice in forwarding draft (Commission) implementing measures to EP: this provision has not always been correctly applied, at least in the two years following entry into force of the *modus vivendi*. As late as June 1997, for instance, the Environment Committee learned by chance that the Commission had adopted two decisions(

) on the placing on the market of genetically modified oil seed rape following a favourable opinion of the regulatory committee set up under Art. 21 of D

Practice in forwarding timetables for adoption: for some three years, the Commission usually forwarded draft measures to Parliament without indicating the time-table for their adoption (or even the service from which that information could be obtained). The Environment Committee has been hard put to find out what stage had been reached in the procedures or the persons to ask. On this front, things have improved: timetables are now normally sent to the Environment Committee along with the draft measures and in reasonable time (2-3 weeks before adoption of the implementing measure by the College).

Practice in notifying Parliament when an implementing measure has to be referred to Council:

Cases of '2nd-stage' comitology measures are rare and the Environment Committee has so far only had to deal with two such measures (

). In the second of those cases, the Commission failed to notify Parliament when it referred the measure to Council. The Environment Committee there

Modus Vivendi paragraph 5

Theory: *"The Council shall adopt a draft general implementing act which has been referred back to it in accordance with an implementing procedure only*

- *after informing the European Parliament, setting a reasonable time limit for obtaining its Opinion and*
- *in the case of an unfavourable Opinion, taking due account of the European Parliament's point of view without delay, in order to seek a solution in the appropriate framework."*

() on the placing on the market of genetically modified oil seed rape following a favourable opinion of the regulatory committee set up under Art. 21 of Directive 90/220/EEC (legal base Art. 100a of the Treat

) Commission decisions 97/392 and 97/393/EC from 6 June 1997 concerning the placing on the market of genetically modified swede-rape, OJ N° L 164, p. 38-41

() In the second of those cases, the Commission failed to notify Parliament when it referred the measure to Council. The Environment Committee therefore did not know that the 3-month time-limit was run

) Council Directive amending Directive 94/54/EC concerning the compulsory indication on the labelling of certain foodstuffs with particulars other than those provided for in Council Directive 79/112/EEC - COS0238 Regulation on compulsory indication on the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC -report COLLINS - CNS98081 - A4-181/98

Practice: Council does not yet seem to have absorbed the letter and spirit of the *modus vivendi*. In the above-cited case of the draft Council measure on compulsory labelling of certain foodstuffs produced from GMOs (CNS98081- Collins report), Council did not forward the proposal to Parliament until more than half the time-limit had elapsed. That left just 5 weeks in which to complete the entire consultation procedure, including possible negotiations with Council.

Modus Vivendi paragraph 6

Theory "In the context of this *modus vivendi*, the Commission shall take account as far as possible of any comments by the European Parliament and shall keep it informed at every stage of the procedure of the action which it intends to take on them, so as to enable the Parliament to assume its own responsibilities in full knowledge of the facts".

Practice in taking account of Parliament's comments: who knows? See next point.

Practice in keeping Parliament informed has been little short of a disaster. After the Commission forwards documents to the Environment Committee in the initial stage of an implementing procedure, there is seldom any follow-up. What account was taken of Parliament's views in the standing 'comitology' committee? Was there a vote? If so, what was the result and who took part? When did the Commission adopt the final implementing measure? Parliament is not told. The next Parliament usually hears about the fate of the proposed implementing measure in its publication in the Official Journal or possibly press reports.

II. The Amendments

In view of the negotiations between the President of the European Parliament and the other institutions on an interinstitutional agreement on the exercise of the implementing powers, the Committee on the Environment, Public Health and Consumer Protection has drawn up nine amendments to the proposal of the Commission. They try to translate the key points made by the rapporteur for the Institutional Affairs Committee as follows:

* **simplification** and reduction in the number of types of committees. Recourse to management and regulatory committees should be reduced to a minimum. Regulatory committee procedure III(b) should be completely abolished.

* **redressing** the institutional imbalances to place Parliament on a more equal footing with Council when it comes to defining the delegation of implementing powers to the Commission, and the right to revoke a draft implementing act. The power to revoke an implementing act should lie with both Parliament and the Council (codecision) rather than with only one of the two legislative bodies.

* **greater transparency.** The provisions of the existing *modus vivendi* must be put into effect properly. The Commission must improve the quality of the basic information it provides concerning draft implementing measures. The following data should be supplied routinely and systematically: legal basis for the referral; details of competent service and desk-officer;

timetable for adoption of implementing measure by the College; result of the vote in committee and participation in it. The Commission could also be asked to provide Parliament regularly with other relevant information such as composition of the different committees and work-in-progress reports. Speed of information flow is crucial: at the risk of overstressing practical issues, the Commission should be urged to ensure transmission by e-mail by the competent Commission service to the secretariat of the responsible European Parliament committee. Prior scrutiny of implementing measures by the European Parliament will only be really workable once all relevant information is relayed to Parliament by the fastest and most direct available means. A time limit might be introduced for entry into force of the provisions; the period allowed should start on the date of official transmission to Parliament.

Amendment 1

Art. 145 of the Treaty on which the proposal is based, requires "principles and rules" to be laid down in advance by the Council, - not "procedures". The "procedures" Art. 145 is referring to are to be laid down in the basic instrument at the stage of its adoption and not in the present decision.

Amendment 2

This amendment cites **all** the wording of Art. 145, third indent, not only the first part (which is favourable to Commission and Council). Moreover, it clarifies the wording "principles and rules" which should be used in the title instead of "procedures".

Amendment 3

Redresses the institutional balance. Reminds, that after ratification of Amsterdam Treaty, 70 % of all legislation will be adopted under co-decision. As the wording of Art. 145 of the Treaty is not taking into account Art. 189b (branches of the legislative authority), it is necessary to establish principles and rules for implementing legal acts adopted under co-decision.

Amendment 4

Implementing measures by definition should never "adapt ... or update essential provisions of basic legislative instruments". The first part of the am. seeks to clarify that. Second part makes it clear that Art. 5 gives EP and Council the right to **revoke** the draft implementing measure, not only to get "involved".

Amendment 5

First part brings wording into line with the provisions of Art. 145 of the Treaty (see above am. 1+2). Second part clarifies that Decision 87/373 has to be amended because it was drawn up before co-decision procedure existed and did therefore not take into account the first branch of the legislative authority, i.e. the EP.

Amendment 6

Insists on the fact that this decision should not only establish "rules" but also "principles" (of transparency, openness, democratic decision making), laid down especially in Art. 7 and 7a (new).

Amendment 7

Possibility for EP or Council to revoke the measure in management procedure.

Amendment 8

Possibility for EP or Council to revoke the measure in regulatory procedure.

Amendment 9

Clarifies the fact that Commission should have the possibility to appeal to normal legislative procedure.

Amendment 10

Art. 7 as drafted is not satisfactory. Confuses internal establishment of Rules of procedure with the problem of how the EP could be involved in the process. An extra article should be reserved to the latter question, transparency of the works of the committees, transmission of documents concerning draft implementing measures to EP.

Amendment 11

Sets moratorium for entry into force of any implementing measure during which EP could revoke it.

Amendment 12

Incorporates an improved wording of paragraph 4 of the interinstitutional agreement *modus vivendi* (not legally binding) into Community law. This should guarantee better observation of its provisions.

III. CONCLUSIONS

The Committee on the Environment, Public Health and Consumer Protection calls on the Committee on Institutional Affairs as the committee responsible to incorporate the following amendments in its resolution giving mandate for negotiation to the President of the European Parliament in view of the conclusion of an interinstitutional agreement:

Text proposed by the Commission()

Amendments by Parliament

(Amendment 1)

Title

Council decision No .../EC laying down the procedures for the exercise of implementing powers conferred on the Commission

Council decision No .../EC laying down the principles and rules for the exercise of implementing powers conferred on the Commission

(Amendment 2)

Recital 1

Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the

Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the

(1) OJ C

Commission powers for the implementation of the rules which the Council lays down; whereas the Council may impose certain requirements in respect of the exercise of these powers; whereas it may also reserve to itself the right, in specific and duly substantiated cases, to exercise directly implementing powers;

Commission powers for the implementation of the rules which the Council lays down; whereas it may also reserve to itself the right, in specific and duly substantiated cases, to exercise directly implementing powers; whereas the Council may also impose certain requirements in respect of the exercise of these powers; whereas they must be consonant with principles and rules to be laid down in advance on a proposal from the Commission and after obtaining the opinion of the European Parliament;

(Amendment 3)
Recital 2a (new)

Whereas, in the spirit of Article 189b of the Treaty, it is necessary to establish principles and rules which apply to the implementation of acts adopted by the European Parliament and the Council;

(Amendment 4)
Recital 6

Whereas measures of general scope designed to implement, adapt or update essential provisions of basic legislative instruments should be adopted by a procedure allowing involvement of the legislative authority, be it either the Council or the European Parliament and the Council;

Whereas implementing measures of general scope must be adopted by a procedure allowing for their revocation by the legislative authority, be it either the Council or the European Parliament and the Council;

(Amendment 5)
Recital 8

Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved;

Whereas the second purpose of the proposed amendments is to simplify the set of principles and rules for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective legislative powers of the European Parliament and the Council;

(Amendment 6)
Article 1, second paragraph

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by

Articles 3 to 6 and determined in accordance with the criteria laid down by Article 2.

Articles 3 to 6 and determined in accordance with the criteria laid down by Article 2 and respecting the principles and rules laid down by Articles 7 and 7a.

(Amendment 7)

Article 4 - Management procedure, paragraph 4

4. The Council, acting by a qualified majority, may take a different decision within the time-limit provided for by paragraph 3.

4. Within the time-limit provided for by paragraph 3, the European Parliament or the Council may revoke the Commission's decision.

(Amendment 8)

Article 5 - Regulatory procedure - paragraph 3, first sentence

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures proposed by the Commission are in accordance with the opinion of the committee, a time-limit shall be set for their entry into force; the period allowed should not exceed three months and shall run from the date of official transmission to Parliament and the Council. Within this time-limit the European Parliament or the Council may revoke the Commission's decision.

(Amendment 9)

Article 5 - Regulatory procedure - paragraph 3, second sentence

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it shall inform the European Parliament and the Council immediately. The European Parliament and the Council may call on the Commission to submit a proposal relating to the measures to be taken, in accordance with the Treaty, where the Commission itself does not intend to do so.

(Amendment 10)
Article 7

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

The European Parliament shall be informed of committee proceedings on a regular basis. It shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty and the results of voting. It shall also be informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

Rules of Procedure

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman. Immediately after adoption, these Rules are forwarded to the President of the European Parliament. (Rest deleted)

(Amendment 11)
Article 7 (new second paragraph)

The date set for the entry into force of the relevant measures shall be such as to permit thorough scrutiny by the European Parliament; the period allowed for this should not exceed three months and shall run from the date of official transmission to Parliament.

(Amendment 12)

Article 7a (new)

Article 7a

Transparency of the committee's work

The appropriate committee of the European Parliament shall be sent, at the same time and under the same conditions as the committee referred to in the basic instrument,

- any draft general implementing measure submitted by the Commission,
- a briefing on its political implications,
- the timetable foreseen for its adoption,
- draft agendas of the meetings as well as
- the result of the vote for it.

The Commission shall notify the appropriate European Parliament committee if a specific measure needs to be adopted urgently and shall also notify it of any other possible difficulty. The appropriate European Parliament committee shall undertake to use urgent procedure where necessary.

The Commission shall inform the appropriate European Parliament committee when measures adopted or envisaged by the Commission are not in accordance with the opinion delivered by the committee referred to in the basic instrument or when, in the absence of an opinion, the Commission must submit a proposal to the Council or to the European Parliament and the Council regarding a measure to be taken.

ANNEX

Committees covering the political areas for which the Committee on the Environment, Public Health and Consumer Protection is responsible

A. Committees, whose consultation is compulsory for the Commission

I. Environment

Committees for the adaptation to technical progress of Directives on the removal of technical barriers to trade in the sectors of

1. - detergents
2. - fertilisers
3. - aerosol dispensers
4. - dangerous substances and preparations
5. Advisory Committee on implementing legislation on ambient air quality assessment and management
6. Advisory committee on the monitoring mechanism of Community CO₂ and other greenhouse gas emissions
7. Committee on the Regulation concerning substances that deplete the ozone layer
8. Committee on the financial instrument for the environment (LIFE)
9. Committee on the Convention on international trade in endangered species of wild fauna and flora (CITES)
10. Committee for the directive on the incineration of hazardous waste
11. Committee on the standardisation and rationalisation of reports on the implementation of certain directives relating to the environment
- Committees for the adaptation to technical and scientific progress of
12. - the implementation of the directive on waste
13. - methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States
14. - air quality limit values and guide values for sulphur dioxide and suspended particulates
15. - fresh waters/fish life
16. Committee on the conservation of natural habitats and of wild fauna and flora
17. Committee for the adaptation to technical progress and the implementation of the directive on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations
18. Committee for the application of the regulation authorising voluntary participation by undertakings in the industrial sector in a Community eco-management and audit scheme
19. Regulatory Committee on the Community award scheme for an eco-label
20. Regulatory Committee on the deliberate release into the environment of genetically modified organisms
- Committees for the adaptation to technical progress on:
21. - bathing water
22. - common procedure for the exchange of information on the quality of surface water in the Community
23. - evaluation and control of the risks of existing substances
24. - urban waste water treatment
25. - conservation of wild birds
26. - water intended for human consumption

27. - noise emission of construction plant and equipment
28. - major accident hazards of certain industrial activities
29. - protection of waters against pollution caused by nitrates from agricultural sources
30. - contained use of genetically modified organisms
31. - of directives on the removal of technical barriers to trade in the sector of dangerous substances and preparations
32. Committee on the control of major accident hazards involving dangerous substances
33. Committee on cetacean products
Group of scientific experts:
34. - basic standards
35. - radioactive effluents
36. - Scientific Review Grouped (CITES Regulation)
37. Committee for the transmission of information concerning integrated pollution prevention and control
38. Committee on packaging and packaging waste

II. Consumer protection

39. Advisory Committee on the labelling of household appliances
40. Committee on product safety emergencies (EHLASS)
Committees for the adaptation to technical progress of:
41. - toy safety
42. - directives on cosmetic products
43. Committee on directives relating to textile names and labelling

III. Public Health

44. Advisory Committee on medical devices
45. Advisory Committee on the pricing of medicinal products for human use
46. Standing Committee for veterinary medicinal products
47. Standing Committee on foodstuffs
48. Standing Committee on technical standards and regulations
49. Standing Committee on medicinal products for human use
50. Pharmaceutical Committee
51. Committee for the application of the rules on the manufacture and placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances
52. Committee on Europe against cancer
53. Committee on the Europe against Aids Programme
54. Committee for the adaptation to technical progress: protection of workers from the risks related to exposure to chemical, physical and biological agents at work
55. Committee on the Community action programme on health promotion, information, education
56. Advisory Committee on the programme of Community action on the prevention of drug dependence within the framework for action in the field of public health
57. Committee on the Community action programme on health monitoring in the context of the framework for action in the field of public health
58. Advisory Committee on the programme of Community action on pollution-related diseases in the context of the framework for action in the field of public health

59. Advisory Committee on the programme of Community action on rare diseases in the context of the framework for action in the field of public health
60. Advisory Committee on the programme of Community action on injury prevention in the context of the framework for action in the field of public health

B. Committees, whose consultation is not compulsory for the Commission

61. Advisory Committee on the control and reduction of pollution caused by the discharge of hydrocarbons and other dangerous substances at sea
62. Advisory Committee on the protection of animals used for experimental and other scientific purposes
63. Industrial Waste Management Committee
64. General consultative forum on the environment
65. Consumer Committee
66. Scientific Committee on food
67. Scientific Committee on toxicity, ecotoxicity and the environment
68. Scientific Committee animal nutrition
69. Scientific Committee on plants
70. Scientific Committee on animal health and animal welfare
71. Scientific Committee on veterinary measures relating to public health
72. Scientific Committee on cosmetic products and non-food products intended for consumers
73. Scientific Committee on medicinal products and medical devices

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Civil Liberties and Internal Affairs

Letter from the committee chairman to Mr De Giovanni, chairman of the Committee on Institutional Affairs

Brussels, 18 March 1999

Dear Mr De Giovanni,

The Committee on Civil Liberties and Internal Affairs considered the above subject at its meeting of 15 and 16 March 1999.

At that meeting it adopted the following conclusions():

1. In view of the wording of the proposal, which also refers to the measures issued in implementation of acts adopted by the co-decision procedure, the legal basis of the proposal should be supplemented by a reference, which need only be general, to all articles of the Treaty stipulating this type of procedure and, with regard to the implementation of that procedure, to Article 251 of the EC Treaty;
 2. The information sent to Parliament, and in particular to the committee responsible, on the measures issued in implementation of acts adopted by the Council must be complete and provided in good time:
- in the case of 'first pillar' acts, especially those based on the new Title IV of the EC Treaty dealing with matters which might ultimately involve the joint accountability of the European Parliament and the Council (Article 67(4) of the EC Treaty);

^(b) The following were present for the vote: d'Ancona, chairman; Bontempi, Cederschiöld, Ceyhun, Lindeperg, Nassauer and G. Schmid.

- and of 'third pillar' acts, especially those based on the new Title VI of the Treaty on European Union;
- 3. The draft implementing measures should also be made available to the national parliaments and the public on the Internet, accompanied, where appropriate, by explanatory notes recalling their context.

Yours sincerely,

Hedy d'Ancona

OPINION

(Rule 147)

for the Committee on Institutional Affairs

on the proposal for a Council Decision laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(98)0380 - C4-0501/98 - 98/0219(CNS)) (report by Mrs Aglietta)

Committee on Fisheries

Letter from the committee chairman to Mr De Giovanni, chairman of the Committee on Institutional Affairs

Brussels, 30 October 1998

Dear Mr De Giovanni,

The Committee on Fisheries considered the above proposal at its meeting of 29 October 1998.

At this meeting it adopted the following opinion in letter form unanimously.

In its opinion adopted on 24 June 1998(

) on the Committee on Institutional Affairs' own initiative report on the modification of the procedures for the exercise of implementing powers conferred () , the Committee on Fisheries gave a brief account of the committee system in relation to the Common Fisheries Policy and stated its views.

The Committee on Fisheries considers the provisions contained in the Commission proposal, on which Parliament now is consulted, insufficient to remedy the current lack of transparency and democratic control in relation to the committee system. To become acceptable, the proposal needs to be amended, *inter alia* on the following points:

- The same rules of procedure should apply to all committees. The provision, in article 7 of the proposed decision, that each committee shall adopt its own rules of procedure, is irreconcilable with the stated aim of simplification. Where a plethora of such rules exists, monitoring of the activities of the committees is unnecessarily rendered more difficult;

() on the Committee on Institutional Affairs' own initiative report on the modification of the procedures for the exercise of implementing powers conferred on the Commission - 'committee' (Council Decision of 13 Ju

) Opinion by Mrs Langenhagen on behalf of the Committee on Fisheries, annex to report

A4-0292/98 of 3 August 1998.

() , the Committee on Fisheries gave a brief account of the committee system in relation to the Common Fisheries Policy and stated its views.)

A4-0292/98 (cf above)

- Parliament should, in unequivocal terms, be granted the right to receive the text of draft measures submitted to the committees not only when these measures relate to legislation adopted under the co-decision procedure, but also when other legislative procedures have been used.

- It should be laid down, as a general principle, that Members of the European Parliament, acting on behalf of a relevant parliamentary committee, shall have the right to participate as observers in committee meetings. Refusal should be possible only in exceptional circumstances and in such cases, the relevant parliamentary committee should be informed of the refusal by the committee or its chairman at least three days before the meeting is to be held.

The Committee on Fisheries is confident that weaknesses in the Commission proposal which have more bearing on other policy areas than the Common Fisheries Policy will be addressed in an appropriate way by the other parliamentary committees asked for an opinion and by the Committee on Institutional Affairs in its report.

Yours sincerely,

(sgd) Carmen FRAGA ESTÉVEZ

The following took part in the vote: Fraga Estévez, chairman; Kindermann, Ewing and Souchet, vice-chairmen; d'Aboville, Adam, Baldarelli, Crampton, Cunha, Eisma, Gallagher, McMahon (for Medina Ortega), Novo, Teverson, Valdivielso de Cué (for Langenhagen) and Varela Suanzes-Carpegna.