

Institut Européen  
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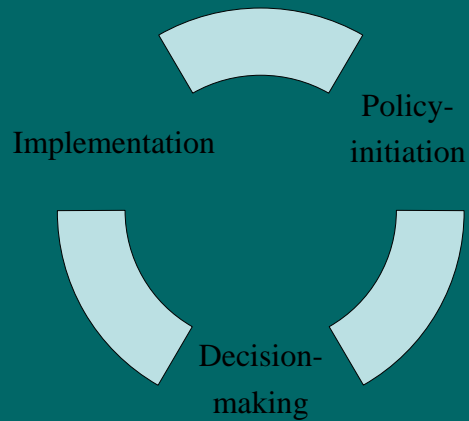
## Reflections on the Implications of the Reform Treaty: What's in It for the European Parliament

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*Sofia, BECSA conference, 14 December 2007*

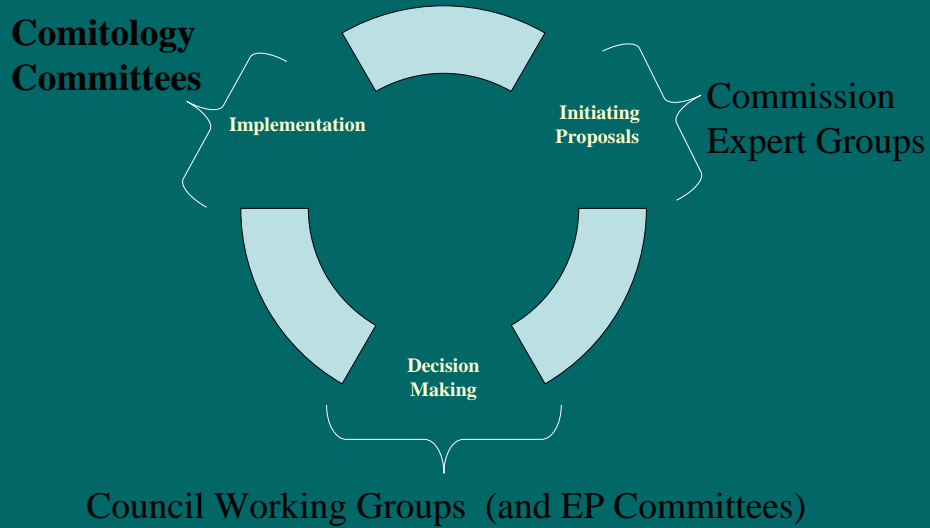
### Theoretical contribution

- Aim: Reconsidering the EP's Influence in EU Decision-Making
- Legitimacy of democratic political systems
- Representativeness and accountability (input)
- Efficiency of policy production and effectiveness of policies resulting from decision making (output)
- Trade-off between output- and input legitimacy

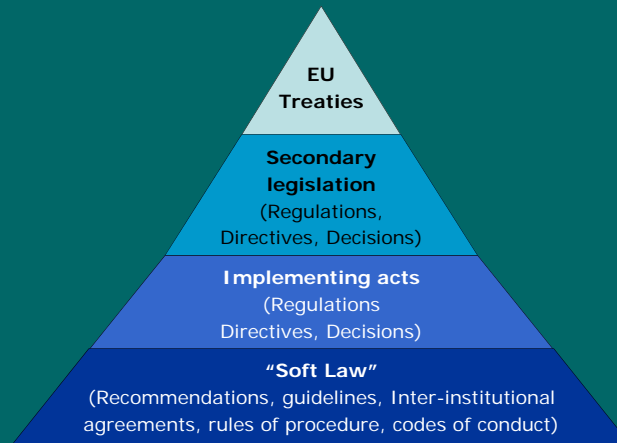
## Circular Conception of the EU Policy-Process



## The Role of Committees in the EU Policy-Process



# Typology of Legal Norms



## Commission Directive 2002/75/EC of 2 September 2002 amending Council Directive 96/98/EC on marine equipment (Text with EEA relevance)

*Official Journal L 254 , 23/09/2002 P. 0001 - 0046*

Commission Directive 2002/75/EC of 2 September 2002 amending Council Directive 96/98/EC on marine equipment (Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,  
Having regard to Council Directive 96/98/EC of 20 December 1996 on marine equipment(1), as last amended by Commission Directive 2001/53/EC(2), and in particular first and second indent of Article 17 thereof,

Whereas:

- (1) For the purposes of Directive 96/98/EC, the international conventions, including the 1974 SOLAS Convention, and testing standards are those, together with their amendments, in force on 1 January 2001.
- (2) Amendments to the SOLAS Convention and to other international conventions and new testing standards have entered into force after 1 January 2001 or will enter into force shortly.
- (3) New rules regarding the equipment to be placed on board ships have been laid down by those instruments.
- (4) Directive 96/98/EC should be amended accordingly.

**(5) The measures provided for in this Directive are in accordance with the opinion of the Committee set up by Article 12 of Council Directive 93/75/EEC(3)**

## What is 'Comitology'? (1)

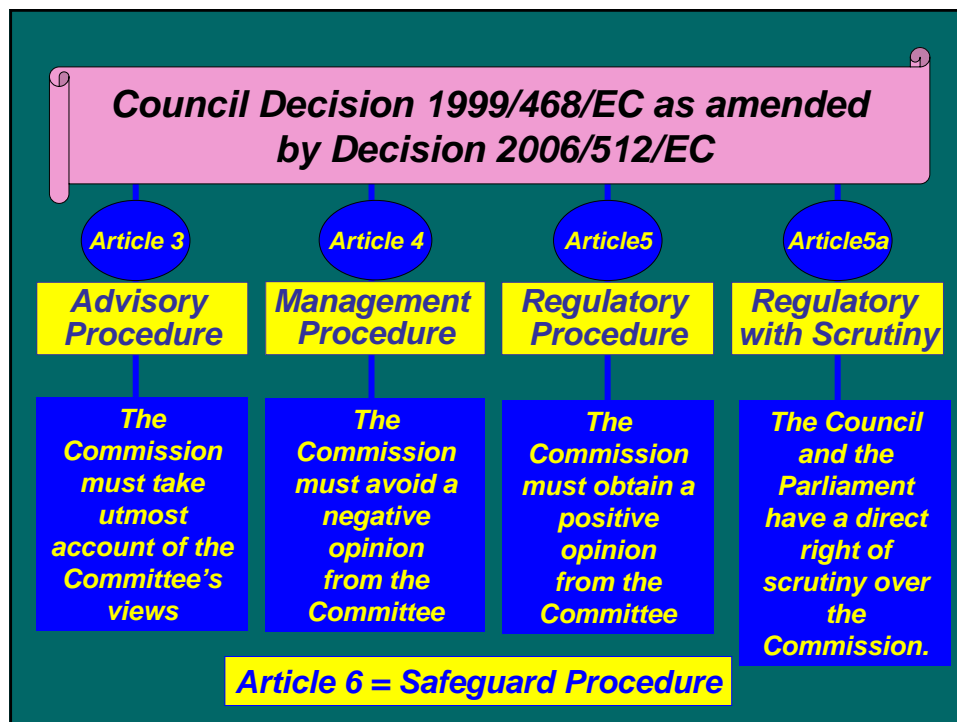
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- Council delegating powers of implementation to the Commission (Art. 202 EC; formerly Art. 145)
- System of Member State control over the Commission when it is implementing policies
- Member States using different kinds of committees to advise on or approve the decisions proposed by the Commission
- The committees are chaired by the Commission and composed of representatives of the Member States.
- The procedure(s) to be followed are specified in the Council Decision 1999/468/EC of 28 June 1999, as amended by Decision 2006/512/EC.

## What is 'Comitology'? (2)

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- Institutionalisation of this system (greater numbers, dedicated rules and procedures) has given rise to the term 'comitology'
- 262 comitology committees (Sept. 2007)
- ca. 2700 adopted implementing measures
- Agriculture (1.481); Health and Consumer Protection (303); Research (202); EuropeAid (124)
- not all committees meet regularly



## Structure of presentation

- EP's power in the current Comitology system
- Critical assessment in terms of legitimacy
- The Lisbon Treaty and its implications for legitimacy

## 1962 – 2006: Historical digest

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Before 1987	- no expressive legal basis
After 1987	- Art. 145 [202(3)] - 1 <sup>st</sup> Comitology Decision 1987/373/EEC
After 1999	- Series of inter-institutional agreements - 2 <sup>nd</sup> Comitology Decision 1999/468/EC
After 2006	- 3 <sup>rd</sup> Comitology Decision 2006/512/EC

## EP's Current Power: Rise of a Phoenix

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- Right Of Information (Art. 7(3))
- Right Of „Scrutiny“ („*droit de regard*“) (Art. 8)
- Right of Veto (Art. 5 a)

## Right Of Information

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- Article 7(3) Comitology Decision: EP's right of information
- EP shall be regularly kept informed by the Commission of committee proceedings and shall receive:
  - Agenda of committee meetings
  - Draft implementing measures
  - Result of voting and summary record
  - List of national authorities present

## Right Of „Scrutiny“

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- Article 8 of Comitology Decision
- EP indicates in reasoned resolution whether draft measures, whose basic act has been adopted under codecision, have exceeded the implementing powers provided for in the basic legislative act
- Commission may:
  - Submit new draft measures
  - Continue with the procedure
  - Submit a legislative proposal to Council and EP

## Right Of „Scrutiny“

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- EP has rarely exercised its right of scrutiny by adopting a resolution pursuant to Article 8:

2000: safe harbour principles

2002: marketing of cosmetics tested on animals

2004: personal data contained in the Passenger Name Record and TSEs

2005: hazardous substance in electrical and electronic equipment

2007: international accounting standards

## Right of Veto

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- Article 5a Comitology Decision
- Regulatory procedure with scrutiny: new procedure applicable to codecision files
- Obligation to use new procedure in case of ‘quasi-legislative’ measures
- Extensive right of scrutiny: EP can block and veto implementing measure, if it disagrees with substance of proposal (veto right) (1 month to 3-4 months)

## Right of Veto

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- The standard reasons for EP to oppose a draft measure:
  - exceeds the implementing powers of the basic act
  - not compatible with objective of the content of the basic act
  - no respect of principles of subsidiarity and proportionality

## Right of Veto

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In case of **positive opinion** of the committee, the EP is on an equal footing with the Council: it may block the Commission.

In case of **negative opinion** it may only oppose the measure if the Council has not already opposed it. In that case, it may not amend the measure and therefore **the EP and the Council are not on an equal footing**.

### Achievements of the Parliament after the 2006 comitology reform :

- A stronger control on the Commission – veto right
- Longer time limits to exercise its control
- A more advantageous system concerning languages regime

## Winner Of The 2006 Comitology Reform?

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- EP managed to achieve a considerable increase in its overview of Commission's delegated powers

But,

- EP is not on equal footing with Council as regards RPS in case of negative opinion of committee

## Winner Of The Comitology Reform?

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But,

- EP still not present in comitology committees
- If Council follows committee in objecting to draft measure, EP is not consulted at all
- If Council adopts draft measure, EP is only consulted afterwards
- No right to revoke the delegation of power (call-back)
- Corbett: 'Comitology reform is a ceasefire, not a peace agreement'

## **Implications for aspects of efficiency**

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- the reform has significantly increased the complexity of the system (not simplification)
- More lengthy process of adopting implementing measures
- Prolongation of the legislative procedure
- Not on equal footing with Council

## **Comitology and the EU Reform Process**

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- New treaty provisions would simplify procedures for delegation and comitology, but would also require further clarification/legislation once the new treaty is signed and ratified
- No reduction and ‘simplification’ of instruments

## The Lisbon Treaty

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- Article 249b

A legislative act may delegate to the Commission the power to adopt non-legislative acts

- to supplement or amend certain non-essential elements of the legislative act
- objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts
- The essential elements of an area shall be reserved for the legislative act and accordingly shall not be subject of a delegation of power

## The Lisbon Treaty

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- Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:
  - the EP (AM) or the Council (QM) may decide to revoke the delegation
  - the delegated act may enter into force only if no objection has been expressed by EP or the Council within a period set by the legislative act

## The Lisbon Treaty

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- Art. 249c
  - Member States shall adopt all measures of national law necessary to implement legally binding Union acts
  - Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases ... on the Council
  - ... The EP and the Council, acting in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by MS of the Commission's exercise of implementing powers

## Conclusions

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- The provisions of the Lisbon Treaty require further reforms if it is ratified, including the possible need for further secondary legislation
- 'Good news' for the proponents of increased EP's influence (right of revocation)
- Increase of democratic legitimacy of EU decision making?
- Legitimacy vs. Efficiency?
- Trade off between input and output legitimacy
- Internal coordination of implementation
- Role of lobbyists: technical expertise to scrutinise and react, if needed, to comitology measures under RPS very limited in EP

## Additional literature

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- Christiansen, T. and B. Vaccari (2006) The 2006 Reform of Comitology: Problem solved or Dispute postponed? EIPA Working Paper EIPAscope 2006/3.
- Duke, S. (2005) The linchpin COPS: assessing the workings and institutional relations of the Political and Security Committee. EIPA Working Paper 05/W/2005.
- Haibach, G., G. F. Schäfer and A. Tuerk (2001) 'Policy implementation and comitology committees: Differentiating between policy legislation and policy implementation'. In European Union Studies Association (EUSA) 2001 (7<sup>th</sup>), May 31-June 2, 2001, pages 14, Madison, Wisconsin.
- Pollack, M. A. (2003) 'Control Mechanism or deliberative democracy?', Comparative Political Studies 36(1-2): 125-155.
- Rhinard, M. (2003) 'Committees in the European Union: An Empirical and Normative Assessment'. In European Union Studies Association (EUSA) 2003 (8<sup>th</sup>), March 27-29, 2003, pages 23, Nashville, TN.
- Scheel, B. (2006) 'Die Neuregelungen der Komitologie und das europäische Demokratiedefizit', ZEuS 4: 521-554.
- Schusterschitz, G. and S. Kotz (2007) 'The Comitology Reform of 2006. Increasing the sources of the European Parliament without changing the Treaties', European Constitutional Law Review 3: 68-90.
- Steunenberg, B. and D. Schmidtchen (2000) The Comitology Game: European Policymaking with Parliamentary Involvement, CSLE Discussion paper 2000-05.
- Vaccari, B. (2005) 'Le processus Lamfalussy: une réussite pour la comitologie et un exemple de 'bonne gouvernance européenne', Revue du droit de l'Union Européenne 4: 803-821.



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