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# ***Comitology Committees in the Enlarged European Union***

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## **Abstract**

The EU's administrative systems relies to a considerable extent on the delegation of executive tasks to the European Commission, which is in turn controlled in this task through a plethora of implementing committees - the so-called 'comitology' system. Considering the centrality of comitology for the implementation of EU legislation, the paper addresses the question whether the 'big bang enlargement' of 2004/2007 has had a significant impact on comitology, and whether any observable changes to the comitology system can be related to the arrival of the new member states. The paper first recalls some of the fundamental aspects of the comitology system, distinguishing between formal and informal arrangements, and highlighting the major changes which have taken place. It then looks at the impact of the 2004/2007 enlargement on the comitology system, analysing how implementing committees have been working and how the new members are adapting. By way of conclusion, the paper examines the main implications of these changes for the system as a whole and considers the most important challenges for the future.

A revised version of this paper is forthcoming as a chapter in E. Best, T. Christiansen and P. Settembri (2008) (eds) *The Institutions of the Enlarged European Union: Continuity and Change*, Cheltenham: Edward Elgar.

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## Introduction<sup>1</sup>

EU legislation is not complete without the implementation of the legislative acts that have been adopted by the Council and the Parliament. Implementation requires, in many cases, actions at the national level, for example when it comes to the transposition of EU directives. However, beyond this decentralised mode of implementation, over time the *centralised* implementation of Community acts has also become essential to the functioning of the EU's administrative system. Centralised implementation involves the delegation of powers to the European Commission to adopt executive measures, and the supervision of the Commission's use of these powers through committees of Member State representatives. The term 'comitology' has been coined to describe this system of about 250 implementing committees and their interaction with the European Commission.

Institutionally speaking, comitology has an oddly hybrid nature, combining the intergovernmental dimension of bringing together national representatives, comparable to Council working groups, with the supranational character of the Commission which is chairing the meetings and ultimately adopting the executive measures submitted to the relevant committee. This, together with the high volume of decisions taken in this realm (2,500-3,000 executive measures are adopted annually),<sup>2</sup> gives comitology a special place within the institutional structure of the EU.

The question addressed here is whether the 'big bang enlargement' of 2004/2007 has had a significant impact on comitology, and whether any observable changes to the comitology system can be related to the arrival of the new Member States. As in the Council of Ministers, there had been an expectation among those involved that, because of the expansion of membership and the different approaches that representatives from the new Member States might bring into

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<sup>2</sup> All reference to figures concerning working of comitology committee can be found in the Report prepared yearly by the European Commission : Report of the Commission on the working of Committees during 2005, COM(2006)446 fin and SEC(2006)1065.

the deliberations, meetings would take longer and agreement might be more difficult to reach. In contrast to the Council, however, no explicit provisions were made to reform the system in preparation for EU enlargement. On the other hand, comitology has in any case developed dynamically over the past decade and there have been major reforms to the formal arrangements of the system also in the years after the 2004 enlargement.

The paper first recalls some of the fundamental aspects of the comitology system, distinguishing between formal and informal arrangements, and highlighting the major changes which have taken place. The second section looks at the impact of the 2004 enlargement on the comitology system, analysing how the implementing committees have been working and how the new members are adapting. This analysis is based primarily on a set of 60 structured interviews conducted with officials participating in a cross-section of comitology committees, coming from both 'old' and 'new' Member States as well as the European Commission. The last section examines the main implications of these changes for the overall system and the most important challenges for the future.

## **The Evolution of Comitology: Formal Rules and Informal Practices**

In order to examine the main features and issues in comitology, it becomes necessary to look into both the formal and the informal arrangements that rule the system. The formal arrangements are based on treaty provisions and set out in a number of pieces of horizontal legislation, mainly the so-called 'Comitology Decisions' of 1999 and 2006. Beyond these formal arrangements, the informal dimension to comitology has always been very important, as individual committees have found distinct ways of working and interacting with the Commission and the European Parliament. This section will briefly review the main issues in the evolution of the comitology system and the main features of the implementing committees in practice.

The genesis of comitology in the 1960s was closely tied to the search for an ad hoc solution to the difficulty of regulating the economic and social life of the Community while relying exclusively on legislation.<sup>3</sup> The need to address changing circumstances quickly and effectively led Community legislators to a

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<sup>3</sup> For a thorough description of the early developments of comitology, see C. F. Bergström (2005).

course of action that is well-known at the domestic level: the delegation of implementing powers to the executive. Faced with increasing difficulties in the legislative process, delegating implementing powers for routine measures to the Commission was an attractive solution, but required a degree of administrative innovation: implementing powers were delegated to the Commission, but each individual legislative act also provided for the supervision of the Commission's use of these powers by committees composed of Member State representatives. Even though it occurred outside the letter of the Rome Treaties, the European Court of Justice was satisfied when comitology was for the first time tested in the Courts: comitology committees did not upset the institutional balance of the Community as they were only tasked with providing opinions rather than actually taking decisions.<sup>4</sup> And the separation between executive and legislative powers was maintained as only decisions about non-essential elements of the legislation were delegated to the Commission. According to the ECJ, the rights and duties of the legislator were not infringed through delegation and comitology.

It was on this basis that comitology then developed rapidly through the 1970s and 1980s. What was initially a limited solution to problems concerning the Common Agricultural Policy (CAP), quickly became a success story in many sectors of Community policy-making: before long, many other areas of legislation such as environment policy, consumer protection, transport and energy or single market regulation also involved delegation of powers and the arrival of comitology committees. Indeed, the growth of comitology was such that it became an issue as soon as the treaties were being reformed for the first time with the Single European Act. The subsequent 1987 Decision,<sup>5</sup> laying down the procedures for the exercise of implementing powers conferred on the Commission, provided for the first time a range of systematic procedures which the Commission would have to follow in consulting implementing committees. With the appearance of the co-decision procedure in the Maastricht Treaty, a reform of the comitology system was required, in particular in order to address the EP's concerns. It took the form of Council Decision 1999/468, a milestone in the evolution of comitology and still the legislative base for the procedures governing the relationship between the Commission and implementing committees.

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<sup>4</sup> See Case Law C-25/70 Köster (1970) ECR p. 1161.

<sup>5</sup> Decision 87/373/EEC of the Council (1987).

The 1999 Decision simplified the system, by reducing the number of procedures from seven to four. Under the *advisory procedure*, Member States vote by simple majority and deliver a non-binding opinion. The *management procedure* is mainly used for the implementation of agricultural measures and financial support programmes. The Commission may adopt the implementing measure so long as there is no qualified majority against the proposal. In case this threshold is met, the matter is to be referred to the Council, which has the possibility to adopt a different decision. Under the *regulatory procedure*, measures can only be adopted by the Commission if a qualified majority of Member States is in favour. Otherwise, the act has to be forwarded to the Council, which may ultimately adopt the act. This procedure, used for all implementing measures having a 'legislative impact', especially in the field of health and safety of persons, foresees also the possibility for the EP to exercise its right of scrutiny in case of lack of positive opinion within the Committee.

The 1999 Decision also increased the role of the European Parliament by granting it the right to scrutiny on measures implementing acts adopted under co-decision and a more general right of information. Additionally, it improved transparency by obliging the Commission to set up a register of comitology committees, to publish a list of Committees and, every year, a report on the working of comitology committees. Finally, it provided criteria according to which the EU legislature was expected to choose the comitology procedure appropriate to a given delegation of powers. Following the adoption of the 1999 Decision, the Commission adopted the standard rules of procedure (SRP) for the comitology committees. These cover most aspects of the preparation and conduct of committee, but notably do not mention working languages.

Even though the 1999 Decision represented an important shift in the history of comitology, it did not prevent further inter-institutional tensions.<sup>6</sup> In the light of the limited powers gained under the 1999 decision, the EP pushed for further parliamentary involvement in control over the Commission's delegated powers – pressure that increased further when it became evident that the Commission had not always respected the EP's prerogatives.<sup>7</sup> In this context, the creation of a

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<sup>6</sup> For a comprehensive description of the impact of the 1999 Comitology Decision, see C. F. Bergström (2005) pp. 264-284 and pp. 320-363.

<sup>7</sup> In April 2005, on the occasion of a Resolution adopted on the basis of its right of scrutiny, the EP has asked upon the Commission to publish a list of all cases of not respect of provisions concerning transmission of documents to the EP. See, European Parliament Resolution on a

European Convention and the drafting of the Constitutional Treaty provided an opportunity to address Parliament's long-standing grievances in the area of comitology.

While there were prospects for a fundamental reform of the Treaty, neither EP nor Council were concerned with further legislation on comitology. This situation changed, however, when the failed ratification of the Constitutional Treaty appeared to bury parliamentary hopes for an equal status with the Member States in controlling of the Commission's delegated powers. At that point, the EP renewed its pressure on Commission and Council via the Lamfalussy process<sup>8</sup> - a tactic that proved to be very effective in getting the Member States to negotiate about expanding the powers of the EP. In late 2005, towards the end of the UK Presidency, Coreper set up a Friends of the Presidency Group - a designated working group to prepare the Council response to a Commission proposal for a new comitology decision that had already been submitted to Council in late 2002. With Article 202 being the treaty base of this legislative proposal, a decision on this matter required unanimity in Council - another factor that explains why the reform of this system is fraught with such difficulty. And yet, despite the two years of inactivity after the original proposal had been submitted by the Commission, and even though the initial positions among the Member States differed quite considerably from one another, negotiations were intense under the Austrian Presidency and progressed rather swiftly towards the adoption of a new decision in July 2006 (Council Decision 2006/512) that allows Council and EP to ultimately reject implementing measures proposed by the Commission, beside the standard 'control' provided by comitology committees.

As we have seen, the comitology system has developed through a process of progressive standardization and increasing openness with respect to its formal procedures. However, we can also observe, a closer examination, a high degree of informality in its workings, with different practices and traditions present in different sectors. A comprehensive understanding of how comitology has changed in response to the enlargement of the EU therefore requires a look at

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draft Commission decision amending the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substance in electrical and electronic equipment (CMT-2005-151 and CMT-2005-642).

<sup>8</sup> The Lamfalussy process has been used to adopt and implement some acts in the financial services sector, and it was characterized by a more structured use of comitology and a major role for the European Parliament. See B. Vaccari (2005).



both the formal and the informal aspects of the system. this creates the challenge of studying not only the way comitology is formally constituted, but also how it is practised. We therefore base our analysis not only on the formal and legislative provisions, but also on the statistics on the working of comitology committees provided by the European Commission and interviews conducted in the framework of an empirical research project on comitology<sup>9</sup>. Statistics have been obtained through reports provided yearly by the Commission on the working of comitology committees<sup>10</sup>, and by analyzing documents available on the Comitology Register<sup>11</sup>. The interviews were conducted on a sample of 60 participants in comitology committee meetings, from the 27 member states and from the European Commission. This study covered a number of key sectors - agriculture, environment, health and consumer protection, transport and energy, taxation and customs, and statistics - which together account for more than the 90% of the total of implementing committees in the EU.

Looking at the informal arrangements, there is a considerable diversity of practices across different sectors and indeed across individual committees. Due to the historical evolution of the comitology system much in the actual execution of the work of comitology committees differs according the diverse traditions and the different needs in different sectors of EU policymaking. Thus, in the area of agriculture, committees are more numerous and meetings much more frequent than in other sectors, reflecting the longer experience with comitology and the

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<sup>9</sup> The interviews were conducted on a sample of 60 participants in comitology committee meetings, from the 27 member states and from the European Commission over a period of 10 weeks in the first half of 2007. Interviewees responded to 25 semi-structured questions contained in a questionnaire. This study covered a number of key sectors - agriculture, environment, health and consumer protection, transport and energy, taxation and customs, and statistics - in which more than 90% of all comitology committees in the EU are active. Our thanks go to the respondents of this survey as well as to Jerome Boniface, Gijs-Jan Brandsma, Johanna Oettel, Ania Tobur and Beatrice Vaccari for their support in this project. A more detailed presentation of the results of this study, together with contributions on other aspects of comitology, are forthcoming in Thomas Christiansen and Beatrice Vaccari (2008) (eds) *21<sup>st</sup> Century Comitology: The Role of Implementing Committees in the Wider European Union*, Maastricht: EIPA (Forthcoming).

<sup>10</sup> See, for instance, European Commission (2006).

<sup>11</sup> The instrument contains a register and repository of documents which relate to the work of comitology committees and are transmitted from the Commission to the European Parliament and covers transmitted documents since 1 January 2003. It can be consulted at the following link: [http://www.europa.eu.int/comm/secretariat\\_general/regcomito/registre.cfm?CL=en](http://www.europa.eu.int/comm/secretariat_general/regcomito/registre.cfm?CL=en).

greater reliance on delegated powers. It is also in this area that the most extensive provision for interpretation is being made.

Language has, in fact, been a long-standing and sensitive issue in comitology. As already noted, no general statements are made in the standard rules of procedure (SRP) concerning language, and the system on the whole relies on each committee finding a workable arrangement with respect to both simultaneous interpretation during the meetings and the translation of documents before the meeting. The ideal scenario from the perspective of national representatives (and the EP) - namely to have all official languages available - is generally seen as unworkable because of the Commission's limited resources, the costs involved and the additional time that a comprehensive language regime would imply. However, the absence of a formal language regime means that these issues need to be resolved on a case-by-case basis in the context of individual committees.

Interpretation is somewhat less contentious than translation. The Commission's working languages, English and French, are most frequently also used in comitology committee meetings, and interpretation into the other 'big' languages and a few of the 'smaller' ones is generally seen as sufficient. As in other parts of the EU, the secular trend in favour of English as *the* working language is evident also in the world of comitology. Participants in meetings are generally proficient in one or more of these languages and therefore do not insist on interpretation into all languages.

Matters are different with respect to translation: documents submitted to committees tend to be highly technical in nature, and failure to receive these in the native languages of national administrations makes internal coordination within the Member States difficult, if not impossible. This, together with the short time span that committee members have between receiving documents and attending the committees (formally at least 14 days but in practice often less), means that they often go into meetings without having fully consulted domestically on Commission proposals. Committee members can demand from the Commission the submission of documents in their own official language, and in cases where such demands have not been met, or documents have arrived late, the ECJ has ruled against the Commission.<sup>12</sup> But there is a general recognition by those working within comitology that such requests cannot be generalised without the entire system slowing down or collapsing altogether. A practical

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<sup>12</sup> See, for instance, Cases C-465/02 and C-466/02, of 25.10.05: Germany and Denmark vs. Commission ('Feta case'). For a comprehensive description of the case, see A.Türk (2000).

arrangement has therefore developed around the understanding that Member State representatives only request their respective language versions when this is actually necessitated because of the specific nature of a particular measure.

As we mentioned above, it is impossible to generalise on the number of times a committee meets in a particular period, and how many such meetings are necessary before the Commission can adopt a proposed measure. On average a Committee meets two to three times per year<sup>13</sup>, but there are significant variations: in the agriculture sector many management committees meet on a weekly or fortnightly basis, while on the other end of the spectrum some committees exist on paper only, without even meeting.

In part, the uncertainty about the duration of comitology procedures originates in the practice of the Commission to table draft implementing measures initially only as agenda items for an 'exchange of views'. Such preliminary discussions are seen to be required in order to allow the Commission to gather sufficient feedback on Member State positions before submitting final drafts to the committee 'for a vote'. The preparatory work done in this way, permitting the Commission to fine-tune their proposals before the formal vote in the committee, is part of the reason why there have been so few referrals of implementing measures to the Council (following a negative, or absence of opinion within the committee). In fact, the Commission has been extraordinarily 'successful' in achieving the necessary majorities at the 'committee stage' with only very few measures every year being submitted to the 'supervisory stage': since 2001, from when on annual reports on comitology have been published by the Commission, such referrals have amounted to less than one per cent of all executive measures adopted by the Commission.<sup>14</sup>

The Commission's ability to 'manage' the delivery of committee opinions in such a manner is also aided by the generally favourable climate that is predominant in the proceedings of comitology committees. While the formal procedure of voting always remains an option, in practice members of the committees try and adopt opinions on as many occasions as possible by consensus. In the same vein, whereas according to the formal arrangements the national representatives' main

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<sup>13</sup> According to responses from interviewees and confirmed by a cross-analysis of the documents on the Comitology register.

<sup>14</sup> For instance, in 2005 only 11 implementing measures, out of a total of 2654 adopted by the Commission, have been sent back to the Council, mainly for absence of opinion within the Committee.

function is to control the Commission, in practice there is usually a rather cooperative spirit between both so that member states' representatives may be seen as 'assisting' rather than 'checking' the Commission in its implementing functions. Some scholars even regard the comitology committees as arenas for policy deliberation among national and European officials,<sup>15</sup> while others as the fusion place for both the national and European administrative systems.<sup>16</sup> In any case, it shows that the comitology system, as well as the assessment of the impact of enlargement, can only be explained if we consider both the formal and informal arrangements.

In general, the implementing committees did not witness any formal adaptation of their procedures to the arrival of the new members. The formal changes introduced by the 2006 Comitology Decision aimed mainly at satisfying the EP's demands for more involvement in comitology, especially in fields governed by co-decision. The result has been the introduction of a new comitology procedure, the *regulatory procedure with scrutiny*, that allows Council and EP to ultimately reject implementing measures proposed by the Commission, besides the standard 'control' provided by comitology committees. Pressures for reform in terms of working methods- such as a new bilateral agreement between the EP and the Commission, and modification of the SRP - have likewise been linked to the new procedure rather than enlargement. However, some informal changes have taken place in the practice of comitology and the next section will look into these.

## **Implementation Committees in the Enlarged European Union**

The prospect of ten, and eventually 12, new members in the implementing committees was initially seen with some concern. The number of members would almost double; the newcomers could not count on the same procedural expertise; they would bring in a different administrative culture; the debate on the language regime would re-emerge, implementation measures would meet greater opposition from states usually reluctant to accept further regulation; and the traditional channels to reach agreements would not work as before. All this could make the decision-making process very difficult to manage increasing the concerns about the future legitimacy and efficiency of the system. However, the new Member States seem to be adapting to the committees dynamics quite well

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<sup>15</sup> C. Joerges and J. Neyer (1997).

<sup>16</sup> W. Wessels (1998).

and, for the time being, their arrival does not seem either to have brought the comitology system to a halt or be creating pressure for future change.

The following assessment of comitology in practice since enlargement is based on the abovementioned interviews conducted with officials participating in committees in key sectors, and by also comparing our data with the results of a previous research project by Egeberg, Schaefer and Trondal<sup>17</sup>.

The new Member States had been represented as observers in comitology committees for several years before accession. The resulting familiarity with both the nature of the dossiers under discussion and 'the way things are done' in each committee helped to prepare them for full membership, and also facilitated a process of socialisation with the norms and attitudes governing the interaction within the committees. This socialisation process not only contributed to familiarise new members with the intricacies of comitology, but also to ensure that their representatives would not 'rock the boat' once they gained the power of the vote.

Indeed, the perception of many interviewees from the old Member States is that the role of the representatives from the new Member States has remained similar after full membership to that they had played as observers, apart from the formal power to vote. They still do not contribute to the debates preceding any vote in committee and are usually seen to play only a marginal role in the decision-making process. This perception is not always shared by the new members themselves, many of whom feel that they are more active than the others perceive them to be. On the one hand, they think their responsibility has increased after full membership and therefore their actual involvement in committee activities. On the other, they believe to bring along, new data, a fresh perspective and approach to the issues, different state cultures, other national views and a wider spectrum of opinions.

The evolution of the role of the new representatives from observers to full membership has also depended on other specific factors, quite apart from individual experience. On the one hand, increasing active participation seems to depend on the size of the country and its voting power. Most respondents agreed

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<sup>17</sup> In 1999, Egeberg, Schaefer and Trondal conducted a survey involving some 250 participants in EU committee meetings. Further details about, and the results of, about this study, which included not on members of comitology committees but also of Council Working Groups and of Expert Advisory Groups, is published in Egeberg, M., Schaefer, G. F. and Trondal, J. (2003a).

that the representatives coming from Poland in particular, and to a lesser extent from Hungary and the Czech Republic, are becoming the most active and participative. On the other hand, representatives from the new Member States seem to be most active in those issues where there is a special national interest at stake or in relevant sectors in their respective countries (e.g. in management committees in agriculture).

On the whole, however, the new members are perceived, and generally perceive themselves, as less proactive and influential in the implementing committees than the representatives coming from the old Member States. This can be explained not only by the lack of experience and confidence and the need to gain the credentials as 'good members' of the group but also by the fact that they often do not get interpretation facilities. Both factors make participation in the comitology committees uneven. In contrast to the Council, no new language regime has been developed to accommodate the greater number of official languages. In very few cases have comitology committees seen the addition of a language of the new Member States to the interpretation or translation scheme, with rare exceptions, mostly to provide for Polish. Even if most participants can cope with English - which, also due to enlargement, is developing into the dominant language of interaction in comitology - the absence of translated documents or interpretation in native languages does compromise the effective participation of new Member States in a number of ways.

First, even if the representative him- or herself is able to manage well in English, circulating draft measures and explanatory documents inside the national administration in advance is made difficult or impossible, which in turn seriously hampers the co-ordination of national positions and the drafting of instructions for those attending the committees. Second, in the meeting itself, active participation is made more difficult - psychologically or practically - if participants are not able to intervene in their native language. All these language-related issues are likely to have combined to also limit the impact that the representatives of the new Member States have had on decision-making in comitology committees, and hence the impact on the system as a whole.

Perhaps surprisingly, the new members rarely complain about the lack of interpretation or translation services, and they usually accept the Commission's justification: translating all draft documents before the meeting into all the languages would not only increase massively the costs of meetings, as would the provision of 23x23 interpretation facilities. It would also significantly delay the process since meetings would take much longer to prepare and the time-lag

between proposal of implementing measures and their eventual adoption would rise.

In general, the representatives coming from the new Member States are perceived as very cooperative with the Commission. Many participants in committee meetings from the old Member States believe that the Commission has found a good ally in the newcomers and that this makes it actually more difficult to build up a potential coalition that would be opposed to the Commission's proposals. The new members indeed have usually a more positive perception of the Commission than the representatives from the old Member States. When asked how they regard the relations between the Commission and the Member States, the new members usually use terms such as cooperative, open, very good, respectful, friendly, easy and constructive, whereas the representatives of the old Member States consider these relations accommodative and cordial, but also imposing, controlling, dominant, hard, difficult, with some tensions and mistrust. The general view is that the arrival of the new Member States has not made much difference to the way in which decisions are taken, nor indeed to the ability of the system to achieve outcomes. The increased number of representatives attending the committees has created some significant challenges. In most cases, however, measures have been taken to adapt working methods in order to avoid a negative impact on the efficiency of the system.

In order to avoid any possible impact on the output of increased membership, the Commission is, for example, providing the Member States with more *information* and more in advance.<sup>18</sup> There is also an increasing *formalisation* of the procedures. For instance, in some cases the discussion and the voting sections of the meeting are now clearly separated, while they were more intertwined previously. In other cases, there is no longer any formal table round, and only those representatives with objections to the Commission's proposal are given the floor. In any case, those present limit their intervention times much more than before, not only as the result of the Commission's pressure but also out of their own initiative, since the sessions have become longer.

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<sup>18</sup> If we likewise compare both questionnaires, in 1999 45% of the respondents said to be getting the background information and documentation from the Commission only the day before the meeting or even during the meeting, whereas in 2007 the percentage goes down to the 14% and the delivery at the very meeting has become rather exceptional.

If we compare the results of our questionnaire with those of a similar one carried out in 1999, we can also observe that many committees seem to be meeting more often during the year.<sup>19</sup> This fact together with increased number of members and committees make the bill of the comitology system higher. Fewer meetings before adopting a proposal, and more effectively prepared and conducted, together with fewer representatives per member state can help to some extent to control this trend.<sup>20</sup>

Nevertheless the lack of interpretations facilities, implementation measures still have to be translated into all the official languages once they have been agreed in order to become binding in the Member States. The time between agreement and publication (after translation) has considerably increased after enlargement, causing some legal gaps and technical difficulties in the national administrations. The need to accommodate a greater number of specific concerns seems also to have led the Commission to concentrate its negotiating efforts on those delegations which are most directly affected by a particular regulation and those necessary to achieve the qualified majority. Some national representatives interviewed thus considered that the effort to reach consensus has decreased and that proposals are being put to the *vote* more often and earlier, usually as soon as the Commission knows it can count on the sufficient support.

Although there seems to be a certain 'symbiosis' in the relationship between the Commission and the new members, the latter also seek support from the old members. An 'Eastern' coalition has not emerged, except in a few specific issues where the new Member States happen to share the same interest, such as agriculture or structural funds. New members usually join existing groupings of countries, whether these are traditional or *ad hoc*. For them, given the difficulties they may still encounter in being proactive, it is much easier to defend their national interest by going under the 'umbrella' of old Member States. Although there are no stable patterns and 'allies' vary depending on national interests in each specific issue, some 'collaborations' are common. For instance, Malta and

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<sup>19</sup> Comparing the results of the 1999 Questionnaire (Egeberg, M., G. F. Schaefer and J. Trondal (2003b) and our 2007 questionnaire, we can observe that the percentage of interviewees responding to meet 1 to 3 times a year has decreased whereas those who say to meet 8 or more times a year has increased.

<sup>20</sup> According to our empirical research, in 2007 many proposals only take 1 or 2 meetings to be adopted, - the second one is usually needed for the Commission to incorporate any amendments.



Cyprus frequently join the traditional 'Mediterranean alliance' (FR, IT, ES, EL, PT) in the agricultural sector. Finally, some special links and collaborative networks developed during the accession process between certain old and new Member States still remain to some extent (e.g. Romania with Spain, Cyprus and Bulgaria with Greece, Poland with Germany, the Baltic states with the Scandinavian states).

Some interviewees, especially from the agriculture committees, coincide in the observation that France is progressively losing its traditional leadership; Germany is seen to be making big efforts to take along the new members so to increase its capacity to influence the process; the UK seems to reinforce its role as the leader of the liberal positions. In general, the larger countries have lost some of their traditional power to broker agreements and an agreement between France and Germany is no longer as important for proposals to move ahead. Enlargement mainly brought in small countries and it is now easier for them to build up a coalition and influence the process against some larger Member States' interests. Coalitions are thus becoming rather volatile and based on short-term interests.

The increased number of actors and difficulties, the changing influence capacity of the Member States and the tendency to short-term coalitions have strengthened the role of the Commission in the decision-making process - something which may be considered necessary in order to provide the process with some sense of direction and common purpose to ensure its effectiveness.

Some features of the participation of the new members in the comitology system also contribute to explain the limited impact of enlargement on the output. The more supportive attitude of the representatives coming from the new members towards the Commission, their lack of confidence or procedural experience, their level of expertise, the inadequacy of the language regime or the insufficiencies in their national coordination systems, all explain the fact that new members are not usually blocking dossiers. Some representatives from old Member States even believe that, after enlargement, it is much more difficult to form a coalition against the Commission's proposals.

Therefore, looking at the first few years of comitology in the enlarged EU we cannot observe major variations in the substantial outcomes. Additionally, much of the variations in the procedural legitimacy might be due to the recent

Comitology reform rather than enlargement itself.<sup>21</sup> However, it is worth considering some consequences that the new trends in both the procedures and the participation mechanisms might have for the input legitimacy of the system. The inclusiveness and representativeness of the process could be affected due to factors such as the unequal participation of the new members and their limited capacity to influence the decision-making process in comparison with the old members.

Furthermore, the increased formalisation and technocratisation of the process make debates more technical and less 'politically' interesting and deliberative. Deliberation usually involves a higher degree of consensus and satisfaction with the measures, favouring agreements round the best argument rather than trading-off negotiations. Increasing shifting coalitions and more technical meetings with less room for personal interaction and debates might also reduce the diffuse reciprocity within the committees and the feelings of solidarity and mutual understanding among their members.

Better organization and increased transparency from the Commission may help the Member States to hold it accountable but it may also affect the inclusiveness of the process if there is a lower degree of flexibility when it comes to accommodating the different national sensitivities and concerns. Based on our research, we observe that quite often the draft proposal is not substantially amended, especially when the Commission knows that it has the support of the required majority. Many complaints about the system are indeed related to the insufficiently accommodative and inclusive efforts by the Commission. At the same time, the control that the national representatives may exercise over the Commission, and therefore the accountability of the system, could be undermined due to both the increasing power and 'presidential' style on the part

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<sup>21</sup> Collective decisions may derive legitimacy both from the inputs and outputs of the system. Input-oriented legitimacy refers to the mechanisms or procedures which link the decisions to the constituents' preferences by means of representation, inclusiveness and accountability. The extent to which the Commission is held accountable, the process is transparent and representative and participation is equal, are all elements of this procedural legitimacy. Output-oriented legitimacy refers to the success of the system in carrying out its functions, that is, whether it is effective or not. See F. W. Scharpf (1999). For a discussion of the impact of the 2006 reform on the accountability of the comitology system, see G. J. Brandsma (2007) and K. St Clair Bradley (2008).

of the Commission, and the incentive to search for prior agreements behind the scenes in view of the limitations of the committee meetings, given the higher incidence of disagreements and diverging preferences among committee members.

## Conclusions

As has been observed several times before, also in other contributions to this volume, it is still early for final assessment of the impact of enlargement. We have identified in this paper a number of issues that need to be raised when trying to make such an assessment, and the analysis demonstrates that the majority of changes so far have occurred in the informal dimension to comitology, in the way in which comitology is *practised* rather than *regulated*. The major formal changes to the comitology system that have occurred before and after the 2004 enlargement round – the creation of Standard Rules of Procedures for committees in 2001, the establishment of an online comitology register and the introduction in 2006 of a new regulatory procedure with scrutiny – cannot be related to enlargement. These reforms are best explained in terms of the long-standing drive towards achieving greater systematisation and transparency in the system, which in turn owes a lot to the pressures from the EP for a greater degree of parliamentary scrutiny over comitology proceedings.

Enlargement has had certain effects chiefly with respect to the informal side, where working practices, operational procedures and generally the ‘way of doing things’ have somewhat changed. However, change here is uneven and difficult to generalise beyond the observations we have made above. The ultimate answer to the question we raised at the outset is that one cannot speak of any transformation of the comitology system in response to the arrival of the 10/12 new Member States. Instead, it is more appropriate to identify processes of mutual adaptation – instances where the comitology system has changed its (informal) arrangements to better accommodate the new participants, but also aspects which imply new obligations and the need to reform for the administrations of the new Member States. In other words, there has been a ‘give and take’ on both sides, and the result is a system that so far has changed remarkably little, or rather, it has changed significantly but in a direction in which it would have changed anyway, even without enlargement as the additional impetus.

However, it may be too soon to conclude on such a 'trouble-free' note for a number of reasons. First, even if we have not identified significant changes that have yet occurred, we have pointed to a number of pressures for *future* change, for example when it comes to the (lack of a) language regime in comitology. Second, there are further changes ahead arising from the treaty reform process which has still been ongoing at the time of writing. These expectations for future change may yet alter the image we have of the impact of enlargement, and should therefore be briefly highlighted.

Raising the language issue, for example, allows an interesting comparison with a previous round of enlargement – that of the Mediterranean states joining the EU in the mid-1980s. Here the initial pattern was the same – no new languages were offered to the new arrivals in comitology committees. While initially this was accepted, the tide eventually turned when Spanish representatives demanded after a few years that their language be made available. When this was granted, other Member States both old (Italy) and new (Portugal) followed suit. Based on that experience, there is some pressure for reform building up in the current arrangement. Clearly the new Member States are dissatisfied with the lack of language resources available to them, and if Poland increased further the pressure for the inclusion of its language, other Central and East European countries could add their voices to the demand for change. The result would be a more costly and cumbersome system, but also one that would make comitology procedures more manageable and indeed more legitimate for the administrations of the new Member States.

Indeed, these observations make one wonder whether the comparatively smooth and unproblematic inclusion of members from the new Member States in comitology committees is not so much a reflection of successful adaptation but simply a mirror of the incomplete integration of the new Member States in the system: given the restrictions of language and time, and the increasing distance between those that negotiate in Brussels and those that should be involved in national administrations, meaningful domestic coordination is hardly possible and thus effective participation of representatives from the new Member States unlikely. However, as national administrations catch up and develop the required resources, mechanisms and procedures, they could also be expected to become more involved in comitology – a development that might rupture the permissive consensus that we have observed so far.

Beyond these considerations, the comitology system is likely to experience further changes in the near future, due to treaty reform process. After the failed ratification of the Constitutional Treaty, a reflection period was followed by the launch of a new IGC which agreed, in October 2007, the 'Reform Treaty'. Just as the Constitutional Treaty did, the Reform Treaty contains significant new provisions concerning the delegation of powers to the European Commission. This includes the distinction between 'implementing acts' (to be adopted according to the 'traditional' comitology procedures, which would however fall under co-decision between Council and Parliament) and the new instrument of 'delegated acts' (to be adopted by Commission if no objections are received from Council or Parliament). These new treaty provisions would require further secondary legislation (as well as new inter-institutional agreements to facilitate the relations between Commission, Council and Parliament in detail) in order to give these effect. We are therefore looking at the need for yet further reforms, either in the shape of a new comitology decision, or indeed a wider regulation of administrative governance in the EU, if and when the Treaty is ratified.

Against the background of these potentially quite significant changes in the world of comitology, we might expect opportunities and challenges for the system to also adapt further to administrative life in a Union of 27 or more Member States. The formal changes that are yet to come provide an opportunity to also address some of the issues that have arisen, but not yet resolved, in terms of the practical working arrangements of comitology. Thus, comitology remains an area to watch when it comes to the impact of enlargement. So far, matters have been remarkably quiet on this front, but it may turn out to be just the quiet before the storm.

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