FACULTY OF LAW

DEPARTMENT OF EUROPEAN, PUBLIC AND INTERNATIONAL LAW
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THE IMPORTANCE AND REFORM OF COMITOLOGY

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The Importance and Reform of Comitology

Outline

Key role of ‘comitology’ for innovation

Key elements of EU ‘comitology’

Proposed reform of the comitology regulation

- Main elements of the proposal
- Some observations
- Outlook

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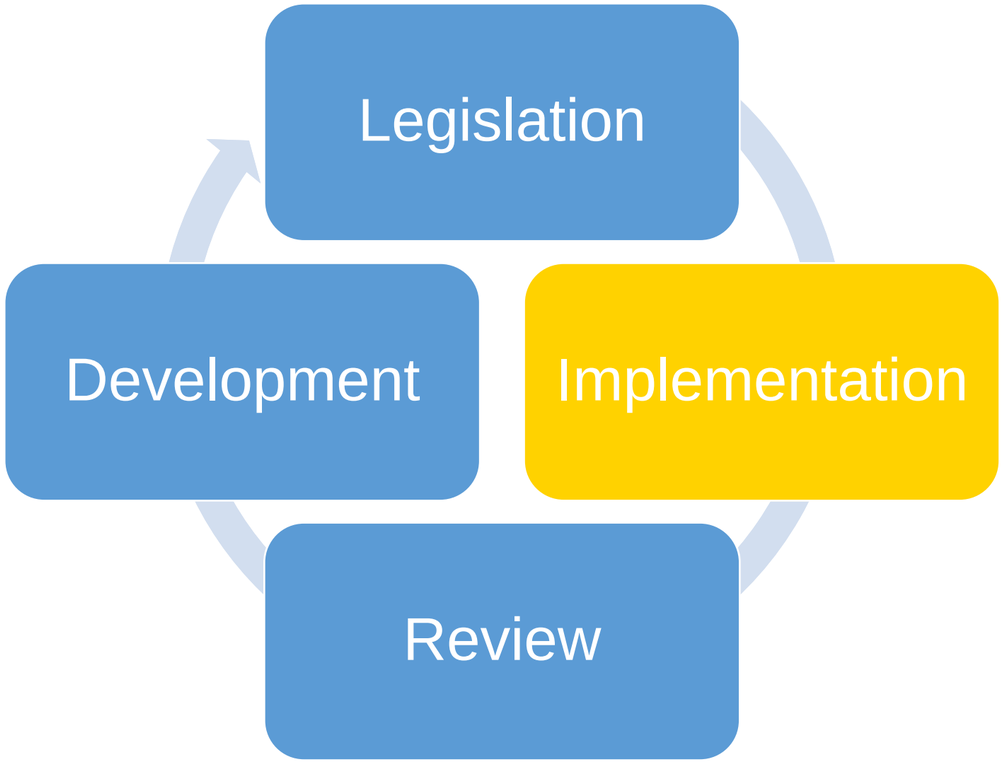
Key role of ‘comitology’ for innovation

Key role results from position of ‘comitology’ in the regulatory cycle



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Key role of ‘comitology’ for innovation

Once formal legislation (typically ordinary legislative procedure) is adopted, it needs to be implemented, applied and enforced

Yet it may be that formal legislation only provides for a framework/skeleton that cannot be immediately applied

Framework needs to be made more concrete or requires constant ‘updating’ > typically done by ‘the executive’

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Key role of ‘comitology’ for innovation

Innovation will in the first place be affected by the legislative framework

e.g. choice for notification or authorization requirement for new activities > this is an essential element, has to be decided by the legislature

How and whether that framework is made concrete and/or updated affects innovation at a lower level

e.g. rules applicable for updating legislative framework; defining information requirements for applicants; granting authorizations

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Key role of ‘comitology’ for innovation

Examples

Regulation 528/2012 on commercialisation and use of biocides takes into account use of nanomaterials and defines nanomaterials in Article 3(1)z

! Commission is made competent to update this definition ‘in view of technical and scientific progress’

! Commission may decide (at request of MS) whether a given material qualifies as nanomaterial

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Key role of ‘comitology’ for innovation

Examples

Regulation 2015/2283 on Novel Foods foresees in a whitelist

! Commission is empowered to determine whether a product is a novel food (Art. 5)

! Commission decides on applications for inclusion on whitelist (following opinion by EFSA) (Art. 12)

! Commission decides on the administrative and scientific requirements for applications (Art. 13)

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Key role of ‘comitology’ for innovation

Examples

Directive 2001/18 on the deliberate release in the environment of GMOs

Article 13(2) describes the info an applicant has to submit

! Commission is empowered to define different requirements for specified GMOs (Art. 16)

! Commission decides on objections to consent or renewals (Art. 18)

! Commission can supplement the annexes on ‘environmental risk assessment’, ‘additional information’ and the ‘monitoring plan’ with further guidance

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Key elements of EU ‘comitology’

Comitology

Goes back to the 1960’s

Commission may be empowered by EU legislature to implement/supplement/amend legislation

When Commission was empowered, it was controlled/assisted by committees of national experts who can refer case back to Council (depending on procedure)

Parliament historically skeptical of comitology, since it was completely sidelined in these procedures

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Key elements of EU ‘comitology’

Lisbon Treaty: distinction between 290 and 291 TFEU

290: delegated act (DA): amend or supplement legislation

291: implementing act (IA): implement binding EU acts

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Key elements of EU ‘comitology’

Parliament now equal to Council under 290 & 291

Comitology ‘shriveled’ to 291, formally no comitology when Commission adopts DAs

But in 2016 Common Understanding on DAs comitology was *de facto* reintroduced

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Key elements of EU ‘comitology’

Both when Commission prepares DAs and IAs it will be assisted by national experts

When Commission proposes DA, EP and Council can veto

When Commission proposes IA, EP and Council cannot veto

committee may give opinion

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Key elements of EU ‘comitology’

Examination procedure as defined in the comitology regulation

Positive opinion: Commission must adopt draft

No opinion: Commission can adopt draft

Negative opinion: Comm cannot adopt draft

has to rework draft or go to appeal committee

appeal com can give +, - or no opinion

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Proposed reform of comitology

Commission <u>proposed</u> amendment of the comitology regulation

Main elements:

- absent or abstaining MS in Appeal Committee (AC) are not counted to calculate majority

- public voting of MS in AC
- when AC does not adopt opinion, Commission can ask AC to reconvene at ministerial level or ask opinion from Council

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Proposed reform of comitology

Commission's proposal may not make much sense at first sight:

Would make it easier for MS to acquire QMV *against* draft IA in AC
Would re-introduce the Council in comitology (even if only advisory)

Commission does not want to take blame anymore in controversial dossiers (GMOs, neonicotinoids) where MS fail to adopt opinion in AC even if a 'no opinion' under examination procedure leaves the Commission the choice to adopt (or not) the draft IA

Commission wants a clear 'mandate' from MS to hide behind when it takes controversial decisions

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Proposed reform of comitology

Proposal is subject to ordinary legislative procedure but foresees no role for EP

In first reading – negotiations (trilogues) ongoing – to be continued

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Thank you for your attention!

Questions?

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