

# Breakthrough on comitology

by **Richard Corbett MEP**

"Comitology" is the name given to the system of delegating implementing powers to the Commission. When this is done, the Commission must act in conjunction with committees of national civil servants who have the power to block the Commission and refer the matter to the Council. It is the confusing number of committees that gave rise to the term "comitology", but the strongest criticism pertained to the fact that the elected Parliament had no right to block implementing measures – only the comitology committees could do so, and if they did, the proposal was referred to Council alone, even when the initial delegation of powers was through an act adopted by Parliament and Council under the co-decision procedure. The system lacked transparency and democratic control.

After years of complaint by Parliament, we may now be on the verge of a significant reform that will place Parliament and Council on an equal footing. Provisional agreement was reached last month in negotiations between Parliament and Council and is now being considered by Parliament's Conference of Presidents.

The EP negotiators, Richard Corbett MEP (rapporteur of the Constitutional Affairs Committee) and Joseph Daul MEP (chair of the Conference of Committee Chairs) have been bargaining with Council for several months, ever since the UK presidency last autumn took the initiative to re-open the subject and seek an agreed solution with the Parliament.

The proposed deal involves a huge breakthrough for the European Parliament: a right to block individual Commission/comitology decisions on delegated legislation.

The system would work by giving Parliament a period (normally of three months) to examine proposals that have been through a comitology committee. If Parliament objects to a proposal then the Commission cannot enact it. Instead it can either make a new proposal, taking account of the reasons for the objection, (in which case the clock is re-set and Parliament can again block) or it can propose new legislation under the legislative procedure.

The system would apply whenever Council and Parliament, under co-decision on the basic legislation, choose to confer powers on the Commission to adopt implementing measures of general scope that can be described as "quasi-legislative" in nature (delegated legislation). It would not apply to administrative or purely executive decisions. Nor would the system apply when the original legislation is not co-decision legislation.

The three month deadline will run from the moment Parliament receives the text in all the official languages. As it will also receive texts beforehand in some languages, this means that in practice the deadline will be longer.

The agreement, if confirmed, completely transforms Parliament's position. At present, it can comment, discuss and debate measures that go through the comitology system, but, at the end of the day, it can be ignored. Even under the "Lamfalussy" procedures for delegated legislation on financial services, where the Commission has conceded enhanced right of information and discussion with Parliament, the bottom line is that Parliament can be overridden.

This has led Parliament, in some directives, to put time-limits ("sunset clauses") on the delegation of powers to the Commission - because once such powers are delegated, Parliament has relinquished control forever. With the new system, there will be no need to resort to this tactic, as Parliament will exercise control over each and every delegated decision. Of course, the right to use "sunset clauses" cannot be denied to the legislator, and it

may wish to continue with this for a period while it tries out the new procedure, but it is likely that this practice will cease in all but a few cases.

Some MEPs had hoped to obtain satisfaction on two further points. One was a right to send observers to comitology committee meetings (Instead there will be an improved system of information to guarantee that Parliament will receive agendas and all the relevant documents at the same time as they are transmitted to the comitology committees). The other was anticipated application of the Constitutional Treaty by giving EP a unilateral right to revoke the original delegation of legislation. Neither of these two points featured in the EP position that was adopted in the plenary when the initial proposal to reform the comitology system was considered. The EP negotiators nonetheless raised them upon the request of some members of the Economic & Monetary Affairs Committee. It was clear, however, that there was no appetite in Council to go down these roads and that there were considerable legal obstacles in cherry-picking from the Constitutional treaty. In any case, these two points are less important than the one on which breakthrough has been achieved, namely the right to examine and block delegated legislation.

One item that is not yet quite clear is the timetable for adapting existing legislation that confers delegated powers on the Commission. There is agreement that there should be a "priority list" of measures that will be adapted within months, including the "Lamfalussy" package of financial services legislation. Beyond that, the Commission has agreed to screen all existing legislation by the end of next year and will table proposals to adapt it. However, there is no agreement by Council on a timetable for adopting this. It is something the EP will have to watch carefully – hence the agreement being, perhaps, more a cease-fire than a peace treaty!