THE COMITOLOGY NEWSLETTER

GUIDING YOU THROUGH THE LABYRINTH

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#63, February 2020

EDITORIAL

Without audacity there will be no Green Deal

In its overall conception, the Green Deal is a revolution that will meet US and Chinese opposition to its carbon tax and obstacles from all conservatives. That is exactly why we must be as audacious as possible, otherwise we will fail.

Nobody can blame farmers for fighting to save their subsidies. They are vital for them. But it is clear that the CAP is a tool of the past. It is not suitable either for farmers or for civil society. It needs to be re-shaped. The Green Deal is a unique opportunity to do this.

At the origin of the current CAP is the World Trade Organization. The first CAP reform in 1992 was closely linked to the Uruguay Round (1993). The WTO (or GATT at the time) declared production subsidies illegal. To ensure conformity the EU greatly reduced agricultural prices while compensating for such reductions with subsidies "decoupled" from production and therefore legal in the eyes of the WTO.

Today nobody remembers the origin of EU farming subsidies. And nobody any longer questions other EU concessions to the WTO, in particular the right granted to the US to export to Europe without customs duties, tonnage restriction or limitation on duration of cereal substitutes (soja meal especially) which have delocalized pig rearing from interior regions to coastal areas, causing pollution.

The Green Deal, the carbon tax and the CAP

A small question to begin: what is the difference between agriculture and other productive activities? Answer: unlike industrial activities that emit CO2, plants capture CO2. Even if farming also emits CO2, it can be claimed that the agriculture-forestry combination offers society ecological services, a green lung, a collector of CO2 from which other productive sectors benefit. Farming possesses green capital. This green capital needs to be compensated.

An integral part of the Green Deal, the carbon tax provides a technical means to achieve it. The goal of a carbon tax, which can only have a European scope, is to tax imported products in accordance with their pollutant quality calculated in the broadest sense: production, transport, recyclability. Moreover, this carbon tax represents the only means to encourage other trading blocs to commit themselves to reducing their ecological footprint.

The sums collected will be allocated to sectors in transition and "virtuous" sectors, in particular agriculture and forestry.

Renegotiating WTO Agreements of the Uruguay Round

It is necessary to renegotiate the Uruguay Round agreements. Trump's opposition to the WTO does not make it any easier, as the US takes the concessions mentioned above for granted. But it is time to give international agreements an environmental dimension and the Green Deal, to be fully effective, requires the renegotiation of disastrous agreements accepted by the EU for almost 30 years.

There is a related need to reconcile production zones with consumption zones, the importance of which the Coronavirus crisis has just demonstrated. On this too, we will have to be audacious, but without audacity there will be no Green Deal.

Relaunching the EU machine: grow the budget or cut debts?

The budget battle is ridiculous. Mobilising all the political leaders for so little! A few billions of euros every year! The Green Deal requires a budget that meets expectations and the impact of the Coronavirus increases the demand for funds. If we recall that the European Central Bank has in 3 years released 4,000 billion euro of liquid assets (and bought back a significant share of national debts) without any inflation, we can say that the option of cancelling a portion of the debts of Eurozone countries should be examined in return for structural commitments and projects with a promise of carbon neutrality by 2050.

Of course, here too conservatives of all stripes will be opposed, but the survival of the European Union is at stake. A big project like the Green Deal, yes. A miserly budget, no! Anything is possible, but we need audacity, more audacity and more again.

DG

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EUROPEAN PARLIAMENT

Parliament rejects RPS measure on lead in recycled PVC

There's nothing like a bit of secondary legislation to help get over the post-Brexit blues. On 12 February the new crop of MEPs turned their minds to more humdrum matters and cast their first veto of the 9th legislature, voting to block a revised restriction under the REACH Regulation.

It is safe to say that lead has a bad rap. Although employed in a wide variety of products and industrial applications, the use of this heavy metal has been subject to increasing limitations both in the EU and worldwide due to its highly toxic effects upon human health and detrimental impact on the environment (some scholars even believe it was one of the factors that brought about the collapse of the Roman Empire).

As a result, lead is listed among the restricted or banned substances in Annex XVII of ***EU Regulation 1907/2006*** on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

However, Article 68 of REACH empowers the Commission to amend via the Regulatory Procedure with Scrutiny (RPS) such restrictions on how specific substances are manufactured, used or marketed in Europe. This provision came into play late last year when the Directorates-General for Industry and Environment (DG GROW and DG ENV) tabled a text based on a 2016 opinion of the European Chemicals Agency (ECHA).

In short, the text proposed to allow a concentration of only 0.01% of lead in the synthetic polymer known as PVC, albeit with derogations: a concentration of 1-2% would be permitted for "recovered" (i.e. recycled) PVC. European producers began to phase out lead in PVC in 2015, due to the EU PVC industry's voluntary commitment, although some lead is still present in imported PVC.

After some discussion, the comitology committee gave its approval on 20 November 2019, when a qualified majority of Member State experts voted in favour (24 for, 1 against, 2 abstaining). Since this is the RPS, the draft was then submitted to the European Parliament (EP) and Council for the required 3-month scrutiny.

As we know, the EP has always regarded itself as the supreme guarantor of consumer health and safety, so there was little surprise when a coalition of left-wing MEPs decided to put forward a resolution against the proposal. In its litany of criticisms, the motion argued that the envisaged derogations ran counter to the prime objective of the REACH Regulation, namely ensuring "a high level of protection of human health and the environment." They also admonished the Commission for not giving adequate consideration to available alternatives.

Being in line with a long-standing position of the Parliament, the motion was clearly persuasive for a majority of MEPs in the Committee on Environment, Public Health and Food Safety (ENVI). On 21 January, 42 voted to veto, compared with 22 against (the latter consisting mainly of EPP and ECR members).

The plenary made it official at the Strasbourg session on 20 February: 394 in favour of an objection, 241 against, 21 abstentions. The necessary threshold of an absolute majority was thus comfortably passed.

The reign of error continues

Sadly, it looks like the refreshed Parliament will not usher in a glorious new era of understanding. ***The final resolution*** is entitled "Objection to an implementing act", but the measure in question comes under the Regulatory Procedure with Scrutiny! An implementing act is an entirely separate category of act, on which the EP incidentally has only a non-binding scrutiny power.

Faced with a binding objection, the Commission cannot adopt the proposal and must now reflect on whether to table a revised text (in other words, re-starting the procedure).

On the whole this is a significant case, for it is the first veto against secondary legislation since the 2019 elections as well as the first successful veto against a restriction dossier under the REACH Regulation. In the view of one ***astute observer***, it also represents "an important setback for ECHA [on whose opinion the Commission draft was strongly based]" and is likely to cast a shadow over upcoming policy debates concerning the circular economy, chemical strategy and recyclates.

Note the post-Brexit numbers

Now that the British have shuffled off the stage, readers should be aware that the majority thresholds have changed. In a Parliament of 705 MEPs, an absolute majority requires 353 MEPs (no longer 376 as it was in the pre-Brexit days).

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COMITOLOGY PROCEDURES

Trilogues on Lisbonisation Part II get underway

It hasn't gone away, you know. As we saw on page 2, the Regulatory Procedure with Scrutiny (RPS) is still very much alive and kicking in important EU files. Will the latest round of negotiations between the Council, European Parliament and Commission herald a breakthrough in this interminable saga?

It was December 2016 when the Commission proposed a new ***Omnibus*** to kickstart the alignment process – that is, the amendment of 168 pieces of legislation in order to replace the RPS, a pre-Lisbon comitology procedure, with delegated acts or implementing acts, the post-Lisbon framework (whence the catchy term "Lisbonisation" has entered the lexicon).

Learning the lessons of the failed 2013 Omnibus, the Commission made sure this time to enable a case-by-case amendment of each legislative act, as well as attempting to pacify the Council in certain sensitive cases by allowing them to retain their comitology role. But in this highly politically charged area, the road remains long and fraught with pitfalls.

In late 2018, when the danger of stalemate began to rear its ugly head, then Commission First Vice-President Frans Timmermans stepped in and divided the Omnibus in two: the files causing the most headaches – REACH, Cosmetics in particular – would be set to one side and negotiated post-elections, while the "easier" pieces of legislation would be aligned straight away (see Newsletter #56). It was trumpeted as a success, but the harsh truth was that almost two-thirds of the Omnibus was left untouched.

Now that the new EP and Commission are *in situ*, it is time to return to this festering sore. The Newsletter received news last month that the three main Institutions have re-started three-way talks on the Omnibus, at least at the technical level. A welcome development, but what are the prospects for a happy denouement?

Reasons for optimism are few, given the entrenched and diametrically opposed positions of the two co-legislators. Readers will have heard this song before: the Council prefers implementing acts as it conserves Member States' comitology competences, while the Parliament favours delegated acts which ensure it can yield a right of veto (especially on issues like health and nutrition claims). Fundamental principles of political power are at stake here, and neither are keen to relinquish their respective privileges.

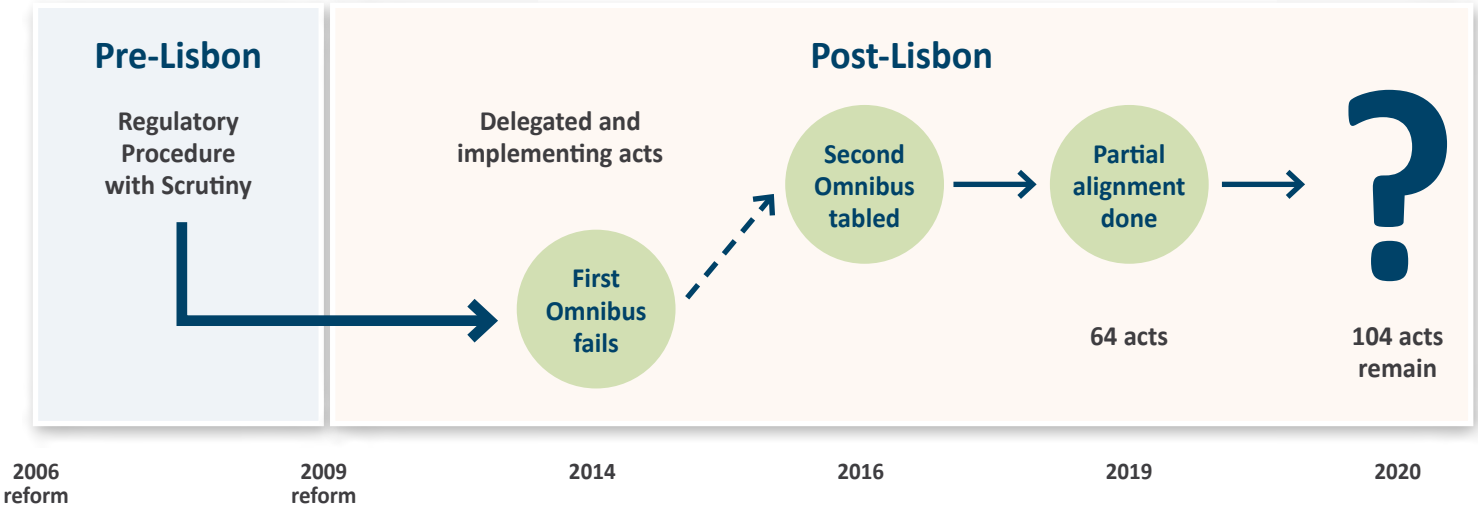
Another problem is that, for certain legislative acts, the Council is not even prepared to accept any alignment at all in the foreseeable future. Its general approach mandate for these talks, unchanged from 2018, proposes to remove 22 acts completely (REACH among them) from the Omnibus.

Lacking political clout and technical expertise, it is hard to see the EP pushing back effectively against the Member States' hard-line stance. If they wished to take the moral high ground, they could (perhaps in alliance with the Commission) point to the 2016 ***Inter-institutional Agreement on Better Law-making*** which mentions the completion of Lisbonisation as a "high priority." Indeed, the Council's current position would have the effect of prolonging the life of the RPS indefinitely – a scenario many, if not most, Member States would be perfectly content with!

The reality is that we are in a world where political brute force prevails over logic and legal certainty. We certainly should not rule out the chance that the trilogues will produce a positive outcome, but the signs presently suggest otherwise.

Stakeholders and citizens should consider the possibility that we may be stuck with a duality of implementation procedures – and all the confusion that entails – for some years to come.

Lisbonisation: the never-ending story



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COMITOLOGY PROCEDURES

Rapporteur Szájer presents draft report on comitology reform

The proposal to amend Regulation 182/2011 has been granted a stay of execution as the Commission and Parliament still think there is a chance of jumpstarting legislative talks. The JURI Rapporteur has made his pitch for enhanced transparency and accountability in the implementing acts process.

Many, the Newsletter included, had pronounced the ***comitology reform*** dead last month when it looked for all the world that the Commission would declare a withdrawal in the 2020 work programme (see Newsletter #62). Regrettably, our soothsaying powers deserted us, for it seems that at the last minute the Berlaymont decided to make one final effort to salvage matters. The draft has been ***listed*** in the CWP section "Pending priority proposals" under the snappy heading "A New Push for European Democracy."

All in all, a rather Pythonesque turn of events. The comitology reform is not dead; could we even say it is getting better? Not if the Member States continue to maintain such intransigent opposition to the proposal, and there is so far little evidence to indicate they are about to change their minds.

Nevertheless, some MEPs think this could give the initiative a new lease of life. Despite the EPP group's lukewarm attitude, the Rapporteur for the proposal, József Szájer (pictured), brought out his ***draft report*** last month and, on 18 February, presented it to his colleagues in the Committee on Legal Affairs (JURI).

What amendments has Mr Szájer suggested?

- Boosting the transparency of the whole comitology process (not just in the Appeal Committee) is the big theme of his report, with an eye to improving "citizens' awareness of procedures" and "increas[ing] trust in the EU institutions." Therefore, he wants Member States to provide a justification for all their votes, even in cases of abstention. He also calls for the Comitology Register to be made more user-friendly so that citizens can easily access such justifications.
- Additional meetings of the Appeal Committee should be attended by national figures of a "sufficiently high political level", which would not necessarily mean ministers.
- As for the idea of a non-binding Council opinion, Szájer would be content for the EP to be notified and kept informed about the process.

In our view, there is nothing ground-breaking in the Rapporteur's report, and it is notable that he did not take up some of the more outlandish suggestions of his colleagues – let us recall that the Greens-EFA group called for a change to voting rules that would have required substance approvals to be refused unless a qualified majority of countries vote in favour.

The notion of national experts providing reasons for their decisions seems the bare minimum we should expect. Wouldn't a more ambitious move be to publish the names of the experts attending comitology meetings (and not simply the names of the departments or ministries they represent)?

Overall, he has taken a cautious approach that reflects the European Parliament's marginal role in the procedure for implementing acts. Mr Szájer knows well that comitology is primarily a matter for the Commission and the Member States, so he would be wise not to overplay his hand. In any case, the fate of this proposal will be determined not in Strasbourg but in Schuman. Unless the Council budges, this late burst of energy will be in vain.

Speaking of the Council, we shall find out very soon whether or not their position has changed. On 4 March 2020, the relevant working party, named "General Affairs (Comitology Revision)", held its first meeting in 18 months, this time under the auspices of the Croatian Presidency.

The proposal was on the ***agenda***, and the Commission Secretariat-General was presumably there to make a fresh pitch. Are the Member States for turning? Stay tuned.

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