Regulatory Consultation in the European Union

Summary for GW Report for Bertelsmann’s International Regulatory Reform Conference

Erin Bankey, January 2011

This paper serves as an overview of EU regulatory process for comparison with the US system. While the key institutions and procedures are outlined here, the effects of the implementation of the Treaty of Lisbon on the regulatory process are still largely unknown. The background given in the paper will supplement the report written for the Bertelsmann Stiftung International Regulatory Reform conference to be held March 10-11, 2011.

The European Union’s Parliamentary System

Five institutions created by the Treaty of Rome govern the European Union: European Parliament, Council of the European Union, European Commission, Court of Justice, and Court of Auditors. These institutions operate within a single institutional framework and act within the decisional process of three pillars: (1) Commission, (2) Council & Parliament, and (3) Member States.

European Parliament is the assembly of representatives directly elected by the 492 million EU citizens, and with the Council it forms the bicameral legislative branch of the EU. The main functions of this body are legislative power, budgetary power, and power over EU institutions, especially the Commission. Both legislative and budgetary powers are shared with the Council under co-decision procedure. Co-decision procedure aims to facilitate increased dialogue between the Parliament, Council and Commission and increase the democratic nature of Community action. Recent treaties have continued to enhance the Parliament’s powers by extending co-decision procedure and granting it rights to bring actions before the Court of Justice.

The Council of the European Union (“Council” or “Council of Ministers”) is the EU’s main decision-making body; it is the institution that represents the Member States. Since January 2007, the Council Presidency is held for an 18-month period by three Presidents

1 http://europa.eu/scadplus/glossary/eu_institutions_en.htm
2 http://europa.eu/scadplus/glossary/european_parliament_en.htm
simultaneously, who prepare a common agenda. The key issue areas of the Council are common foreign and security policy, coordination of economic policies, and holder of executive power, which it generally delegates to the Commission. Council’s decisions are based on proposals from the Commission, and are made jointly with the European Parliament under co-decision procedure. Although the Parliament and the Council form the highest legislative body within the EU, their powers are limited to specific competencies conferred by the European Community and have no control over policy areas held by the other two pillars.\(^4\)

The European Commission is a politically independent institution with virtually exclusive right to initiate legislation.\(^5\) It also prepares and implements the legislative instruments adopted by the Council and Parliament. The Commission is appointed for a five-year term by the Council by qualified majority in agreement with the Member States, and subject to a vote of appointment by the Parliament. Two representatives of nations from each Member State with larger populations, and one per nation from each of the others comprised the Commission until the Treaty of Nice, which entered in force February 1, 2003 and limited the number of Commission Members to one per Member State.\(^6\) Currently in the ratification process, the Constitution would provide for a Commission in which only two-thirds of the Member States would be represented at a given time after 2014, with members selected in accordance with a rotation system, based on the principle of equality.\(^7\)

The Commission is also in charge of implementing law on the community level, and before the Treaty of Lisbon, committees have been used to assist in the implementation process. The committee, or “comitology” process was replaced by “delegated acts” under the Treaty of Lisbon on December 1, 2009.\(^8\) Criticized for lack of transparency and democratic oversight, comitology aimed not to overburden legislators due to practical issues of adapting legislation, but provided little information to the public about meetings.\(^9\)

Although the Treaty has been adopted, the precise legal framework of delegated acts is still under discussion and not expected until April 2011.\(^10\) Delegated acts are a new category of law in addition to regulations and EU directives that law-makers can give the Commission to supplement or amend certain non-essential elements of the EU law or framework by delegating authority; these also have supreme authority over national laws and national constitutions

\(^4\) [http://www.newworldencyclopedia.org/entry/European_Parliament](http://www.newworldencyclopedia.org/entry/European_Parliament)
\(^7\) [http://europa.eu/scadplus/constitution/commission_en.htm](http://europa.eu/scadplus/constitution/commission_en.htm)
\(^8\) [http://europa.eu/lisbon_treaty/index_en.htm](http://europa.eu/lisbon_treaty/index_en.htm)
although they must be approved by an institution where all member states will not be represented if the new organization of Parliament is approved. Until that framework is in place, the comitology procedure still guides implementation of legislation, and will apply to legislation adopted before the treaty came into force.

Under comitology, like most national systems of government, the legislature delegates implementing powers to the executive, the Parliament and Council delegate the development of the detailed measures to the Commission from the legal framework of objectives and timelines outlined in the legislation. Committees are composed of representatives from private sector and national experts from Member States and chaired by the Commission to facilitate dialogue between national administrators. The comitology procedure outlined a framework for interactions between the Commission, committees, and approval process by other EU institutions. Four main categories of committees exist: advisory, management, regulatory, and regulatory committees with scrutiny.

Measures designed by the Commission that do not match regulatory committee opinion are referred to the Council, as well as for informational purposes to the Parliament. The Council may then give agreement, or introduce an amendment within a three-month period. If the time lapses and the Council does not oppose, the Commission may draw up implementing measures, but if Council is in opposition, the Commission must amend or re-submit to the Council before implementation. “Regulatory committees with scrutiny” require Council and the European Parliament consideration prior to adoption of measures by co-decision. If one the institutions opposes the measure, the Commission may not adopt it without amendment (or it may submit a new proposal). There are about 300 committees in the fields of industry, social affairs, agriculture, environment, internal market, research and development, consumer protection, and food safety.

The European Court of Justice (ECJ) ensures compliance with the law in the interpretations and application of the founding Treaties. It is composed of the same number of judges as there are Member States and at present has 27 judges with partial replacement every three years.

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11 http://en.euabc.com/word/271
14 http://europa.eu/scadplus/glossary/experts_committees_en.htm
17 http://europa.eu/scadplus/glossary/experts_committees_en.htm
18 http://europa.eu/scadplus/glossary/eu_court_justice_en.htm
Judges select one of themselves as President of the Court for a renewable three-year term, and the court may sit in chambers (3-5 judges), Grand Chamber (13 judges), or as a Full Court. The main functions of the ECJ are to check whether instruments of the European institution of government are compatible with the Treaties, and give rulings at the request of a national court on the interpretation or the validity of provisions contained in Community law. The Court of First Instance (CFI) was created in 1989 as a second tier of judicial authority to relieve ECJ workload.

The European Court of Auditors is composed of one national from each Member State appointed for six-year renewable terms by qualified majority of the Council after consulting the European Parliament. This body acts independently to check the revenue and expenditure of the EU and anybody created by the Community for legality, regularity, and sound financial management. Under the Treaty of Amsterdam, it has the power to report any irregularities to the European Parliament and the Council, but does not have the power to impose penalties.