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Strengthening European Parliamentary Scrutiny of EU Development Cooperation

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Publication date:
2010

Document Version
Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
van Reisen, M. E. H. (2010). *Strengthening European Parliamentary Scrutiny of EU Development Cooperation*. (Geographic Strategy Papers, Multi-Annual Indicative Programmes and strategy papers, Briefing paper; No. 15). EEPA.

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Brussels, 16 November 2010

STRENGTHENING EUROPEAN PARLIAMENTARY SCRUTINY OF EU DEVELOPMENT COOPERATION

IN GEOGRAPHIC STRATEGY PAPERS, MULTI-ANNUAL INDICATIVE PROGRAMMES AND STRATEGY PAPERS

The EU Development Cooperation Instrument (DCI) is the main EU instrument for cooperation with developing countries.

The implementation of the EU Development Cooperation Instrument (DCI), established in 2007, has been monitored under close scrutiny by the European Parliament. However, the lack of adequate political weight to challenge the application of the DCI in the form of Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers, has inhibited the Parliament's ability to criticise and hold the European Commission accountable to provisions stipulated in the DCI core principles.

Lisbon Treaty Article 290 (of the Treaty on the Functioning of the European Union) makes provision for the possible delegation of power to the Commission in respect Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers for thematic programme. Article 290.1 states that:

A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

On several occasions, the Council has exploited an interpretation of the Treaty which allowed it to remove delegated acts from the competence of the European Parliament on the pretext that execution was the responsibility of the Member States and, at EU level, of the Commission assisted by Committees made up

¹ With advise from Simon Stocker, Eurostep, and editorial and research assistance by: Alexander Harvey, Rachel Baranska, Susan Sellars-Shrestra

of Member States’ representatives. The amendments put in place by the Lisbon Treaty have the intention to re-enforce the legitimate democratic role of the European Parliament. In essence the comitology system has been replaced with an arrangement whereby the Commission takes responsibility for delegated acts under the joint control of the European Parliament and the Council providing either party with the possibility of opposing the measure or revoking the delegated act. An involvement by the Council must be accompanied by an equal involvement by the European Parliament.

Despite the establishment of this shared control, there has been a lack of consistency in its implementation across all financial instruments. In order to address this issue, the European Parliament proposed an amendment (see Box A) in order to treat Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers as delegated acts under the new Lisbon Treaty procedure in Article 290 (see Box B) – a view not shared by the European Commission and the Council.

The position of the European Commission and the Council was that these strategy papers and multiannual programmes do not supplement or amend certain non essential elements of the legislation, and that they do not fall within the scope of Article 290, but are an opportunity for the Commission to exercise its right of implementation (see Box C). The European Parliament’s position was that the Lisbon Treaty stipulated that Member States Committees (established under the ‘comitology’ procedure) and the European Parliament should be given the same right to scrutiny.

<i>Amendment</i>	Delegated Acts (Article 290 TFEU)	Implementing Acts (Article 291 TFEU)
<p>(1b) Article 21 of Regulation (EC) No 1905/2006 is replaced by the following: “Strategy papers and multiannual indicative programmes referred to in Articles 19 and 20, and any reviews thereof referred to in Article 19(2) and Article 20(1), as well as accompanying measures referred to in Article 17, shall be adopted by the Commission <i>by means of delegated acts in accordance with Articles 35, 35a and 35b</i>”.</p> <hr/> <p>Box A</p>	<p>1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.</p> <p>The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.</p> <p>2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:</p> <p>(a) the European Parliament or the Council may decide to revoke the delegation;</p> <p>(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.</p> <hr/> <p>Box B</p>	<p>1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.</p> <p>2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.</p> <p>3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.</p> <hr/> <p>Box C</p>

The European Parliament can now look forward to having a greater say in relation to the content of Country Strategy Papers (CSPs), giving the European Parliament a de facto veto through delegating acts by enabling it to block proposals on Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers, thereby requiring the Commission to present amended proposals.

The European Commission opposed such democratic scrutiny by engaging in dialogue with the Parliament on the content of the strategies with the excuse that “this consultation process goes beyond the strict bounds of comitology” (Andris Piebalgs, Plenary Debate 2010).²

The amendments should be welcomed as it allows the European Parliament to have real political scrutiny over the Geographic Strategy Papers, Multi-annual Indicative Programmes and Strategy Papers. The European Parliament should be congratulated in achieving this victory as it has been a lengthy struggle to get the political involvement of the Parliament in the DCI and ENPI and ACP countries in the Cotonou Agreement for ACP countries, making the process more transparent and accountable.

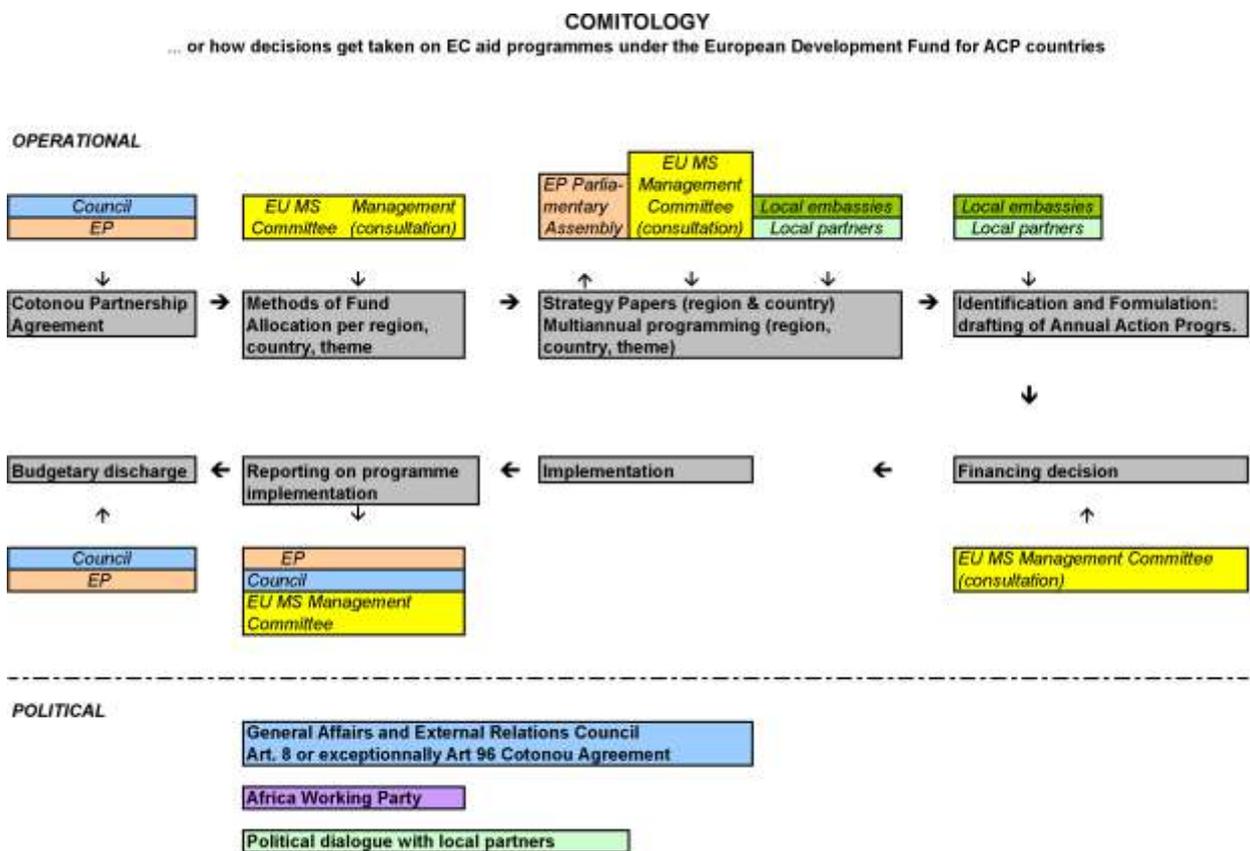
² Reference: European Parliament (2010) *Minutes of Plenary debate 20 October 2010*. [Online] Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20101020&secondRef=ITEM-010&language=EN&ring=A7-2009-0078> (accessed 3 November 2010).

APPENDIX A - Comitology Procedure

In accordance with Article 202 of the Treaty establishing the European Community (ECT), it is the task of the European Commission to implement legislation at the Community level. In practice, each legislative instrument specifies the scope of the implementing powers conferred on the Commission by the Council of the European Union. In this context, the Treaty provides for the Commission to be assisted by a committee, in line with the procedure known as ‘comitology’.

The committees are forums for discussion, consist of representatives from Member States and are chaired by the Commission. They enable the Commission to establish dialogue with national administrations before adopting implementing measures. The Commission ensures that measures reflect as far as possible the situation in each of the countries concerned.

Relations between the Commission and the committees are based on models set out in a Council Decision (the ‘Comitology Decision’), which gives the Parliament the right to monitor the implementation of legislative instruments adopted under the co-decision procedure. Parliament can object to measures proposed by the Commission or, as the case may be, the Council.



Koos Richelle
Director General
EuropeAid Cooperation Office
7th October 2009

Note: EP = European Parliament; MS = Member State

Source: Koos Richelle, Director General, EuropeAid Cooperation Office, European Commission, Presentation to the National Parliament of the Netherlands, 7 October 2009