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CONFIDENTIALITY OVER TRANSPARENCY? THE COMMISSION'S NON-DISCLOSURE OF MEMBER STATES' POSITIONS IN COMITOLOGY: A COMPARATIVE STUDY WITH THE COUNCIL AND JUDICIAL DEVELOPMENTS

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Abstract

Preserving Confidentiality over Transparency? What is the potential extent of transparency in comitology committees? Compared to the Council of the European Union, the comitology committees appear to be a smaller-scale version of it. However, the issue of Member state positions in the voting procedure remains a deadlock since the positions of each Member state are not accessible at the comitology. The Commission has been denying access to documents on the positions based on Article 4 of Regulation 1049/2001 and the rules of procedure for committees. Nevertheless, recent developments in the jurisprudence of the Court of Justice of the European Union could potentially change the situation regarding transparency in comitology.

The given research will be conducted through a comparative study with the Council of the European Union, combined with a multidisciplinary analysis aimed at exploring EU transparency, the reasoning of refusal of the Commission, and future developments in the field.

Resumen

¿Preservar la confidencialidad por encima de la transparencia? ¿Cuál es el potencial de transparencia en los comités de comitología? Comparados con el Consejo de la Unión Europea, los comités de comitología parecen una versión a menor escala de este. Sin embargo, la cuestión de las posiciones de los Estados miembros durante el procedimiento de votación sigue siendo un punto muerto, ya que estas posiciones no son accesibles en el

marco de la comitología. La Comisión ha denegado el acceso a los documentos sobre estas posiciones basándose en el artículo 4 del Reglamento 1049/2001 y en las normas de procedimiento de los comités. No obstante, los recientes desarrollos en la jurisprudencia del Tribunal de Justicia de la Unión Europea podrían cambiar potencialmente la situación en cuanto a la transparencia en la comitología.

La investigación se llevará a cabo mediante un estudio comparativo con el Consejo de la Unión Europea, combinado con un análisis multidisciplinario destinado a explorar la transparencia en la UE, la justificación de las denegaciones por parte de la Comisión y las posibles evoluciones futuras en este ámbito.

Resum

Preservar la confidencialitat per sobre de la transparència? Quin és el potencial de transparència en els comitès de comitologia? Comparats amb el Consell de la Unió Europea, els comitès de comitologia semblen una versió a menor escala d'aquest. Tanmateix, la qüestió de les posicions dels Estats membres durant el procediment de votació continua sent un punt mort, ja que aquestes posicions no són accessibles en l'àmbit de la comitologia. La Comissió ha denegat l'accés als documents sobre aquestes posicions basant-se en l'article 4 del Reglament 1049/2001 i en les normes de procediment dels comitès. No obstant això, els desenvolupaments recents en la jurisprudència del Tribunal de Justícia de la Unió Europea podrien canviar potencialment la situació pel que fa a la transparència en la comitologia.

La recerca es durà a terme mitjançant un estudi comparatiu amb el Consell de la Unió Europea, combinat amb una anàlisi multidisciplinària que té com a objectiu explorar la transparència a la UE, el raonament de les denegacions de la Comissió i els possibles desenvolupaments futurs en aquest àmbit.

Keywords: Comitology; Council of the European Union; Regulation 1049/2001; Confidentiality; Transparency.
Palabras clave: Comitología; Consejo de la Unión Europea; Reglamento 1049/2001; Confidencialidad; Transparencia.
Paraules clau: Comitologia; Consell de la Unió Europea; Reglament 1049/2001; Confidencialitat; Transparència.

SUMMARY

1. INTRODUCTION

The European Union has almost inevitably acquired a significant degree of transparency and open access to documents in its institutional framework, whereas in the past, certain EU institutions functioned with a rather high level of confidentiality.

The current institutional dimension has now experienced a process of openness that allows civil society to participate in the monitoring process of European bodies, nevertheless, such a shift towards a more transparent European Union has been by no means straightforward or nonetheless completely achieved.

The given situation has been the result of the 1992 Treaty reforms and of the following developments in EU treaties, as well as of Regulation 1049/2001 and gradual outcomes of case law by the Court of Justice of the European Union (CJEU, hereinafter) in this regard.

The European primary sources establish the principle of transparency in more instances, establishing it as a key foundation for all European institutions. Regulation 1049/2001 rules the public access to institutional documents and defines the limitations on their disclosure. So far, the framework's elaboration has resulted in novelties that contributed to the EU's transparency, and, in this context, the Council of the European Union serves as one of the most suitable examples, as it has lost much of its confidentiality through these framework changes, thereby opening a new era of institutional accountability.

Yet, the existing lack of transparency in the European dimension remains a subtly influential concern, and this research will address this issue, particularly by focusing on the non-disclosure of Member states' votes in a comparative perspective. Since comitology committees under the Commission share many features and perform functions comparable to those of the Council of the European Union, there remains a reluctance to disclose Member states positions in the comitology context, despite the paradoxical similarities between the two.

The main objective is to analyze the legal and political dynamics underlying the differences between the two entities from a comparative perspective. Both represent each Member state and function with respect to their national sovereignty, thereby sharing the same voting rules, including majority voting and minority blocking rules. However, the

core focus will be to conduct a comparative study that aims to highlight the reasoning behind the non-disclosure of Member states' positions in one entity and not in the other, as well as the potential extension of this non-disclosure practice to the comitology level.

In this context, an important aspect will be the involvement of the Commission in comitology, which may reveal the cause behind the disparities between the two. In light of the pending case *Covington & Burling and Van Vooren v Commission* (T-554/20) and the recent appeal in *Commission v Pollinis France*, both concerning the non-disclosure of Member states' positions, this analysis aims to examine the role of the European Commission, the legal limits of its justifications for refusing access to such information, and the structural complexity of the comitology under the Commission.

2. STATE-OF-THE-ART

Transparency and freedom of information, in their extended sense, are intermediate values that serve as necessary conditions for democracy and public participation (Hins & Voorhoof, 2007). It is argued that transparency contributes to democracy since access to information contributes to citizens' power to control and shape several kinds of governmental activity. Transparency alone will not automatically lead to participation and accountability. However, it may prove to be a necessary condition when further political rights are established, empowering individuals to influence certain governmental actions (Buijze, 2013).

Although transparency played a minor role in the early phases of the EU legal order,[1] the narrative of improving democracy has significantly influenced its advancement.[2] Nonetheless, it must be noted that this progress has been boosted by the need to enrich institutional legitimacy and trust rather than by a sole desire to strengthen democracy (Curtin & Meijer, 2006). Therein, both the Commission and the Council serve as examples, yet, with some experienced hesitations and slight resistance in carrying out

[1] Transparency, democracy, participation, and accountability were not originally intended to be primary concerns for the EU throughout its history Lea

[2] Hillebrandt, Curtin, and Meijer described the development of the Council in light of transparency policies in three phas Curtin s. Before 1992, the Council had no transparency rights; from 1992 to 2006, the middle phase saw the establishment of transparency rights; and the final phase ended in a deadlock.

such. Originally, the Council did not prioritize transparency before the Maastricht Treaty, and appeals for greater transparency were unsuccessful. It was only in the 1990s, when Member states like the Netherlands and Denmark advocated for greater democratic legitimacy during the 1991 Intergovernmental Conference (IGC), that transparency became a central issue and was added to the European agenda. Indeed, the first insight of transparency occurred via Declaration 17 in the Maastricht Treaty, as the proposed treaty article on transparency did not receive enough support. This declaration highlighted the importance of transparency in strengthening the EU's democratic character and public trust and committed to exploring steps to improve transparency. This was a significant starting point, laying out the foundation for EU transparency, and eventually, when Sweden and Finland joined the Union, their strong tradition of transparency strengthened and consequentially influenced the EU transparency framework (Hillebrandt, Curtin & Meijer, 2014).

The first legal basis for transparency, as an article under a primary source, was established in the Treaty of Amsterdam.[3] Eventually, this provided a solid foundation for the adoption of Regulation 1049/2001, which grants the public access to information within the institutional dimension of the EU. The 2001 Regulation discloses, in Article 4, certain grounds that institutions[4] can invoke to withhold information from the public. The numerous legal ambiguities in the broad phrasing of the legislation itself gave rise to an era of intense court litigation, with several landmark cases shaping its interpretation and application. As such, the Council of the European Union demonstrated a reluctance to disclose information in several instances, including cases where the Council refused to disclose the positions of Member States. However, through various case laws of the CJEU, the interpretation of the regulation in question became more narrowly defined, with

[3] See Article 255 TFEU (ex Article 191a) in the consolidated version of the Treaty Establishing the European Community (97/C 340/03): *"1) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.2) General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.*
3) Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."

[4] In Regulation 1049/2001, the European Parliament, the Council, and the Commission are referred to as "the institutions".

judicial rulings progressively limiting the scope for withholding such information, always in accordance with the public interest.

As it stands, the current legal framework of transparency under the Lisbon reform is enshrined in Article 1 TEU and Article 15 TFEU, which respectively declare "*decisions are taken as openly as possible to the citizen*," and "*the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possibly*." From a substantive perspective, the provision establishes the right for citizens to access documents from all EU institutions, not limited to the Council, Commission, and European Parliament (Alemanno, 2014), and obviously, this right extends to committees as well. The current situation is as follows regarding legislative acts, the Council, in accordance with Article 15.2 of the TFEU, is obliged to legislate openly, which results in the consequential disclosure of Member states' positions.[5] As for the application of Regulation 1049/2001, due to cases developed by the Court, the interpretation remains quite restrictive (Lea, 2015) and the refusal of information is reserved for only certain cases. Theoretically, from a comparative point of view, due to the bond with legislative acts also implementing, it should fall in the category. With a broader understanding, this should also include documents relating to comitology procedures (Curtin and Rubio, 2024).

Comitology is a mechanism closely related to national sovereignty, similar to the Council of the European Union. Although not entirely separate from the European Commission, its decisions do not differ much from the Commission's position, and its sessions are presided over by the Commission (Fernández Pasarín, Dehousse Renaud & Plaza, 2020).

In such voting, within the decision-making process, the results of the votes cast by individual Member states are not accessible to the public. This lack of transparency raises significant concerns about public accountability. In all this, the European Ombudsman had already found that the Commission's refusal to grant public access to the positions of Member States constituted maladministration, as it also determined that the Commission

[5] That states that *"The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act"*.

had failed to demonstrate that disclosing the documents in question would seriously affect the decision-making process.[6]

As regards the previously assessed overview, the research seeks to investigate the phenomenon and possible extent of disclosure at the Council and committee levels comparatively and, by all possible means, define the role of the Commission by critically assessing its reasoning for the non-disclosure of Member states' positions, which will be shown to rest on insufficient grounds.

3. TRANSPARENCY AND PUBLIC ACCESS TO DOCUMENTS IN THE EU

3.1. EU transparency: A matter of democracy

The right of access to information[7] in the European Union is disclosed in the primary law sources under the Treaty on the Functioning of the European Union (TFEU, hereinafter), in Article 15, and in Article 42 of the Charter of Fundamental Rights of the EU.[8]

Within this context, the given right falls within the dimensional framework of EU transparency, and even though transparency, in its general scope, can assume different meanings or definitions, the EU legal framework ultimately underlines how EU transparency is based on the collective right to receive and seek access to institutional information, as it is intrinsically bound to democratic principles.

Transparency, along with the right of access to information, serves as both an intermediate value and a necessary condition for democracy itself (Hins & Voorhoof, 2007). Since the democratic value functions as a fundamental core of the supranational

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[6] European Ombudsman, *Recommendation of the European Ombudsman in Case 2142/2018/TE on the European Commission's Refusal to Grant Access to Member State Positions on a Guidance Document Concerning the Risk Assessment of Pesticides on Bees.*
https://www.ombudsman.europa.eu/en/recommendation/en/113624

[7] The right to information falls within the domain of freedom of information, which, however, refers not only to the liberty to provide information by expressing opinions or publishing content but also to the freedom to seek information, understood as the collective right to receive and search for information.

[8] Not only, considering transparency in its broader sense, other articles also address it in general terms, such as Article 1 of the TEU, which emphasizes the openness of the decisions. and also Article 11 of the TEU.

organization, the legislator's intent[9] in addressing this matter is clearly reflected in the EU legal framework on transparency.

Access to information is a tool of accountability that potentially strengthens democracy by enabling citizens to oversee institutions, exercise control, and ultimately shape EU decision-making. European citizens have the right to know what information is held, as access to documentation is essential for understanding the rationale behind institutional actions (Craig, 2018). This is particularly important given that institutional outcomes, whether binding or not, will ultimately affect the collective.

3.2. Regulation 1049/2001 on public access to documents

As provided in Article 15(3) of the TFEU: *"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member state, shall have a right of access to documents of the Union's institutions, bodies, offices, and agencies."*[10] This provision, which reflects the Nordic tradition and concept of public access to documents, allows any natural or legal person residing or established in the EU with the right to request access to documents held by an EU institution without needing to provide an actual reason[11] and in any written form.[12] Nevertheless, this right is not absolute and is therefore subject to certain principles and conditions (Augustyn & Cosimo, 2011).

The development of this is found in Regulation 1049/2001, which performs as the EU's legal framework for public access to documents from the European Parliament, the Council, and the Commission.

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[9] In the EU, the legislator can be understood differently depending on the procedure followed. Generally, the legislative function is carried out by the European Parliament and the Council of the European Union under the ordinary legislative procedure. However, in other contexts, such as intergovernmental negotiations, Member States act collectively, effectively assuming the role of the "legislator".

[10] Treaty on the Functioning of the European Union, Court of Justice of the European Union15, Paragraph 3.

[11] As stated in Article 6 of Regulation 1049/2001, *"[...] The applicant is not obliged to state reasons for the application."* The absence of a specific obligation to justify the request for access further demonstrates the irrelevance of a personal interest in the knowledge of the institutional document.

[12] Regulation 1049/2001, in Article 6 on applications for access, states that requests may "be made in any written form,"" including 'electronic form,' and also in any of the 24 languages that are mentioned in Article 55 of TEU.

In addition to promoting good administrative practices, the secondary law text in question establishes the framework for accessing documents at the EU institutional level by defining the principles and limitations that function as grounds for refusal and setting rules to ensure the effective exercise of this right.[13] Within the context of grounds for refusal to disclose, Article 4 of Regulation 1049/2001 lists these exceptions.[14]

Firstly, the Regulation 1049/2001 establishes the grounds for refusing access in cases where disclosure would undermine the safeguarding of the public interest, primarily listing public security, defence and military matters, international relations, and the economic policies of the EU or any Member state.[15] Secondly, it lists as an exception in order to protect privacy and the integrity of the individual.[16] Lastly, as a matter of this subject's research, there is listed the refusal that undermines the institution's decision-making process.[17] The situation is as follows.[18]

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[13] Regulation 1049/2001, Article 1.
[14] The article states the following:
"Exceptions
1. The institutions shall refuse access to a document where disclosure would undermine the protection of:
(a) the public interest as regards:
- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State;
(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.
2. The institutions shall refuse access to a document where disclosure would undermine the protection of:
- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,
unless there is an overriding public interest in disclosure.
3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.
Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.
[...]"
[15] Regulation 1049/2001, Article 4, Paragraph 1.
[16] Regulation 1049/2001, Article 4, Paragraph 2.
[17] Regulation 1049/2001, Article 4, Paragraph 3.
[18] Daniel Wyatt provided two categories of exceptions. The first category of exceptions is defined as 'mandatory,' while the other is discretionary." Anna Marcoulli and Luigi Cappelletti refer to the first category of exceptions as "*mandatory*" or "*absolute*". This is in accordance with the judgment Aeris Invest v ECB (T-827/17) in para. 197. See: Daniel Wyatt, "The Anaemic Existence of the Overriding Public

On the one hand, the mandatory exceptions outlined in the first clause are quite defined, as they explicitly address the grounds for refusal related to issues such as international relations or security. This makes the first set of exceptions relatively straightforward (Marcoulli & Cappelletti, 2023), as it is founded on more identifiable threats, and does not require the EU institution to engage in a balancing of the public protected interests.[19] However, on the other hand, the exception concerning the refusal that undermines the institution's decision-making process creates a sort of paradox, merely since the exception related to the institution's decision-making process is more vague and may be open to broader interpretation.

This given situation results in practice, in EU institutions, exercising a discretionary power when deciding whether to disclose documents under Article 4, paragraph 3 of Regulation 1049/2001 (Wyatt, 2020).

Notwithstanding, as a matter of fact, the EU's primary sources, including the TEU, the TFEU, and the Charter of Fundamental Rights of the EU, call on European institutions to act within their functions in the most transparent manner possible. Moreover, with regard to access to documents, Regulation 1049/2001 aligns with the concept and principle of openness as widely as possible,[20] as the openness enables citizens to participate more closely in the decision-making process. This, in turn, may ensure that the EU's governance structure enjoys greater legitimacy, while simultaneously accountable to European citizens in a democratic system and more effective in carrying out its functions.[21]

From this situation, what is required is to acknowledge the balancing role of the public interest. Although EU institutions enjoy discretionary power in deciding whether to disclose information, particularly in the context of the decision-making process, this discretion is constrained by the overriding public interest in disclosure. Thus, it balances

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Interest in Disclosure in the EU's Access to Documents Regime," *German Law Journal 21* (2020): 686–701.

[19] Case T-827/17, Aeris Invest v ECB, para 197.

[20] Article 1 of Regulation 1049/2001 explicitly states that its objective is to ensure "*the widest possible access to documents*" held by EU institutions. This affirms the principle of the widest possible access, which serves as the foundation for disclosing information within the institutional framework of the EU. Regulation 1049/2001, Article 1.

[21] See Recitals 1 and 2 of Regulation 1049/2001.

the two elements of EU institutional confidentiality and public access within the framework of transparency (Wyatt, 2020).

As seen, the exception related to the institution's decision-making process is vaguer than defined, and considering the overriding public interest in disclosure, it lacks a clear definition, which has become a source of legal conflict involving the interests of the different parties. In this context, the Court of Justice of the European Union evaluates whether the institution's decision to deny access conforms to the EU legal framework, and it is called upon to interpret and balance the previously cited elements, with case law providing a perspective for new reasoning on future issues.

4. THE COUNCIL OF THE EUROPEAN UNION AND COMITOLOGY COMMITTEES: A COMPARATIVE STUDY

4.1. Introduction to the comparative study

The following content aims to analyze the Council of the European Union and the committees at the comitology level in a comparative perspective, as both are intergovernmental entities that share assorted similarities.

This chapter will emphasize the differences and similarities in light of the existing institutional paradox and subject of this research, where, despite these common features, unlike at the Council of the European Union, there is no disclosure of Member States' positions in comitology.

The study will be carried out through a comparison of the legal frameworks, consisting of various rules and more. It will consider the intrinsic intergovernmental nature of the entities, their institutional roles, functioning, voting systems within the decision-making process, composition, and other relevant factors for the research.

4.2. Functions and roles in the decision-making

The first elements of comparison in this study will be the functions and the roles in the decision-making of these two entities. This is merely considering that the Council of the European Union and the committees in the comitology system have different roles and

carry out their functions with diverse outcomes in the decision-making process of the European Union, but by no means do they differ entirely from one another.

Firstly, considering the functions they perform, the Council of the European Union and the comitology committees contribute to different outcomes at various stages of the EU's decision-making process.

The Council of the European Union, as one of the EU institutions, performs policymaking, and coordinating functions as established in the treaties and, together with the European Parliament, exercises the legislative function.

In the past, the Council of the European Union used to follow the norms of diplomatic negotiations (Hillebrandt, Curtin & Meijer, 2014), exercising a high level of discretion in decision-making, while holding the sole legislative function. However, treaty reforms have gradually shifted legislative power towards a system of "co-decision" with the European Parliament. At the same time, the evolving strengthening of the Council's competencies as legislative entity has also demanded an increase in transparency, seen as a necessary measure to balance its role.

Currently, the Council of the European Union[22] significantly produces a wide range of binding legislative acts and non-binding tools.[23] Yet, in this context, a formal distinction must be drawn: legislative acts are those adopted through the ordinary or special legislative procedure, whereas non-legislative acts are adopted outside these procedures (Craig, 2018).

Among these acts, both delegated acts and implementing acts are classified as non-legislative acts, but only implementing acts are subject to the comitology procedure. The Treaty of Lisbon introduced a formal distinction between these two (Del Monte & and Mańko, 2021). Delegated acts are subject to *ex ante* and *ex post* controls by the two legislative bodies (Peers, & Costa, 2012). In this context, there is the advisory role of "*expertology and not of the proper comitology* ". This is in contrast to implementing acts,

[22] Mainly along with the European Parliament.
[23] Regulations, directives, decisions, recommendations, and opinions.

where the comitology committees are actors involved in non-legislative act-making (Del Monte & and Mańko, 2021).

Because the legislature, composed of the European Parliament and the Council of the EU, may not be able to address all matters when adopting legislative acts, comitology committees and the Commission play a relevant role in implementing secondary legislation, and in such, the committees carry out two types of procedures: the advisory procedure and the examination procedure (Christiansen & Polak, 2009).

Through both the examination procedure and the advisory procedure, committees hold a position, and in function in implementing power, it influences the outcomes of decision-making. Towards an oriented "technocratic governance", mainly due to the predominantly technical nature of implementing matters, the mechanism of comitology under Article 291 TFEU[24] has become a necessary step to support EU legislation by addressing aspects that were not fully detailed in the original EU normative framework (Christiansen & Polak, 2009).

Nevertheless, it is possible to find an interconnection between the two, since both legislative and non-legislative acts primarily serve the purpose of exercising the Union's competences, operating in a complementary manner.

4.3. The intergovernmental nature

The committees assume an additional function that has been pivotal since the establishment of the procedure. Within the context of intergovernmentalism in comitology, this function serves as a "control mechanism" that helps maintain the balance

[24] See Article 291 TFEU in the consolidated version of the Treaty Establishing the European Community (97/C 340/03): *"1) Member States shall adopt all measures of national law necessary to implement legally binding Union acts. 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. 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. 4) The word "implementing" shall be inserted in the title of implementing acts."*

between intergovernmental and supranational elements within the EU's institutional framework.

In its origin, comitology was created as a tool for intergovernmental scrutiny, designed to bind interinstitutional links in decision-making at the EU regulatory level. This led to the establishment of nationally oriented committees within the Commission, purposely designed to ensure a sort of national control over the EU executive body (Fernández Pasarín, Dehousse & Plaza, 2020).

In this way, comitology becomes a traditional tool for intergovernmental control over supranational institutions, namely the Commission. Through its scrutiny power in implementation, comitology essentially makes the committees de facto smaller counterparts to the Council of the European Union (Blom-Hansen, 2013).

The Council of the European Union is the EU institution with a long tradition of intergovernmentalism, and in all of this, it remains the most straightforward manifestation of it at the EU level. The Council of the European Union plays a key role in maintaining interinstitutional links in decision-making at the EU legislative level. In doing so, it represents the interests of national Member states through their national representatives, just as the committees do.

To express the national interests of Member states, these two entities rely on the representations of diverse individuals through different governmental levels. However, as we will explore in the next paragraphs, the intergovernmental nature is not solely expressed as a form of national representation at the EU decision-making level.

4.4. Composition, dynamics and role of the Commission

Analyzing the composition of these two entities reveals that they share significant similarities in their structure. This is supported by the fact that the Council "consists of a representative of each Member State at ministerial level,"[25] much like the committees,

[25] Treaty on the European Union, Article 16, Paragraph 2

which are likewise composed of representatives from the Member States, except that the presidency is chaired by the Commission.[26]

As previously mentioned, both entities serve as channels for national representation at the EU level. However, in their respective composition, two major elements distinguish them: first, the nature of their representatives and their corresponding status as political figures or technocrats; and second, the presidency and consequential presence of the Commission in the comitology.

Depending on the subject being addressed, the Council of the European Union meets under ten different configurations. In these configurations, the representative participants may be ministers or state secretaries, who have the authority to commit their national government and cast its vote. On a different scale, the members of the committees also represent their national governments and cast votes. However, these representatives are typically less political and more technically oriented, working within a greater number of specialized formations compared to the Council.

According to the latest available Annual Report on the Working of Committees for the year 2023, there were 334 established comitology committees throughout the year.[27] In this context, the committees held 650 meetings, conducted 1.242 written procedures, and delivered 2.039 opinions, resulting in either advisory or examination outcomes.[28]

Although comitology committees may appear to be primarily technical and administrative, the regulatory tasks they carry out are far from insignificant (Fernández Pasarín, Dehousse & Plaza, 2020).

Due to the nature of the matters addressed, the committees are typically composed of highly specialized members with technocratic expertise in specific fields, whereas compared to the Council of the European Union, they may seem less political. The line between the two is closer than it might appear. Comitology operates on a model of

[26] Regulation (EU) No 182/2011, Article 3.
[27] This marked a small increase compared to 2022, when there were 322 committees.
[28] 2023 Report from the Commission on the working of the committees, COM(2024) 465 final, Paragraph 3 and 4.

technocratic decision-making, where technical and administrative expertise cannot be easily separated from social and political considerations (Craig, 2018).

Yet, committees are set at a crucial stage of the decision-making process concerning the EU regulatory framework, and the decisions made by these committees carry substantial weight, as they directly affect the implementation of EU legislation. Depending on the legal basis on which the committees are called, the votes cast within the committees can indeed recast the regulatory outcome.[29]

This results in technocratic members of the committees being vested with considerable power without corresponding political responsibility. Combined with the lack of adequate transparency within these entities, this can indeed become a significant concern. In this context, it is also necessary to highlight the other element that distinctly differentiates committees from the Council: the role of the Commission.

The dynamic that arises is that national governments may not always have a determined understanding of their preferences on specific matters when implementing at the comitology level. As a result, national representatives may frequently see themselves in committees not just as representatives of their nations but also as members of a bigger working body on transnational issues under the Commission's direction.[30]

The Commission and the committees, from an intergovernmentalism and supranationalism perspective, traditionally pursue different interests: the first is Europe-oriented, while the latter is more nationally oriented. Committees, although not always in practice, are theoretically supposed to serve a control function over the Commission itself. However, committees operate under the Commission, and their decisions rarely diverge from its position, as the Commission presides over and coordinates their work. This inevitably raises questions and concerns about the actual role of the Commission, particularly regarding its interference or its role in the disclosure of information.

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[29] Which results in either advisory or examination outcomes, depending on the legal basis.

[30] In this regard, Joerges and Neyer argue that comitology should be understood as a form of "*deliberative supranationalism*", where national representatives may not actually hold fixed preferences and often engage in a sort of mutual, collective, and cooperative problem-solving. This translates into, rather than acting solely as civil servants and representatives of national interest, they participate in a transnational administrative affair coordinated by the Commission. See: Joerges, Christian and Jürgen Neyer. "From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology." *Wiley-Blackwell: European Law Journal* (1997).

4.5. Voting system

The intergovernmental nature is not solely expressed through national representation at the EU decision-making level. It is also reflected in the procedural rules that shape these entities. In fact, when examining aspects such as voting procedures, we see that they align with those of the Council of the European Union, emphasizing the continued presence of the national dimension shared by both in the decision-making process.

In relation to comitology, a primary distinction to be made is between the examination procedure and the advisory procedure. Wherever the Advisory procedure applies, the committee shall deliver its opinion, and if a vote is required, the opinion shall be determined by a simple majority[31] of its 27 members, where the presidency does not have voting power.[32] In this case, the committee merely delivers a non-binding opinion, and the Commission decides on its own whether to adopt the act, with or without the approval of the committee.

The situation is different for the examination procedure, which provides decisions with binding effect. In relation to this, the legal framework on voting rules is based on Regulation 182/2011, which lays down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

The regulation, in Article 5, refers to provisions contained within the EU treaties as voting rules wherever the examination procedure applies.[33] The provisions in question are Article 16.4 and 16.5 of the Treaty on European Union (TEU) and, in those applicable cases, Article 238.3 of the Treaty on the Functioning of the European Union (TFEU).[34] Interestingly, these treaty rules also belong to the Council of the European Union.

Article 16 of the Treaty on European Union defines the role, functions, and key characteristics of the Council of the European Union. In particular, paragraphs 4 and 5

[31] Regulation 182/2001, Article 4.
[32] Regulation 182/2001, Article 3.
[33] Regulation 182/2001, Article 5.
[34] Idem.

provide an initial overview of the institution's voting procedures, introducing the concepts of Qualified Majority Voting (QMV) and the blocking minority.[35]

The qualified majority is defined as a minimum of 55 % of the Council's members, which must include at least fifteen of those Member states that account for at least 65 % of the European Union's population. Furthermore, it sets out the notion of a blocking minority, which must consist of at least four Member states of the Council, otherwise the qualified majority is considered to have been achieved.[36]

The Council of the European Union, however, has different decision rules for different matters. As a matter of fact, in certain instances, unanimity is required, but normally, qualified majority voting applies.

Under the qualified majority, there is a national dimension since the voting system considers not only the votes of individual Member states but also the weight of their different populations (Lee, 2002). Marking the distribution of power is based on its voting rules (Petróczy & Csató, 2023), both in comitology and in the Council of the European Union.

The Committee's decision-making process differs from the Commission's internal procedures, which rely on a simple majority[37] within a collegial approach.[38] This dynamic deserves to be mentioned, as it supports the idea that committees function as a smaller-scale replica of the Council, following an intergovernmental approach with qualified majority voting, rather than the collegial, supranational decision-making style of the Commission.

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[35] See Article 16 of the consolidated version of the Treaty on European Union (TEU):
"[...] 3. The Council shall act by a qualified majority except where the Treaties provide otherwise.
4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.
A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.
The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.
5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions [...]."
[36] Treaty on European Union (TEU), Article 16, Paragraph 4.
[37] Treaty on the Functioning of the European Union, Article 250.
[38] Treaty on the European Union, Article 17, Paragraph 6.

In theory, the positions taken at the comitology level are important, as they may alter the EU implementing outcomes. With the advisory opinions, although they are not binding, they can still influence the outcome. And this is especially true in the examination procedure, where the opinions delivered can be binding on the Commission due to their nature.

In fact, whenever voting in the examination procedure, the qualified majority for a positive deliberative vote means that the Commission shall adopt the draft implementing act.[39] However, in the case of a negative deliberation, the Commission shall not adopt the draft implementing act.[40] [41]

4.6. Concluding reflections on the comparative analysis

Considering the diversified aspects, it is evident that despite some existing minor differences, comitology committees and the Council of the European Union share many common elements, reaching even the point of making the comitology formations seem like a "miniature" version of the Council itself.

They are set in different levels of decision-making and have different outcomes, yet they inherit common roots. National interests and the intergovernmental nature are among these shared elements, which are expressed and take form in many ways, from the composition to the weighting power when it comes to making decisions. Such interest is conveyed in both legislative and implementing acts that they carry out, in which there is an existing interconnection between them in a complementary manner, as they serve the purpose of exercising the Union's competences. Moreover, they share the same voting rules, where the issue and weight of the population are also taken into consideration in both processes of decision-making.

However, starting from the last aspect overviewed, namely the potential power that the committee may carry out and influence the outcomes of the EU regulatory

[39] Regulation 182/2001, Article 5.
[40] idem
[41] There is a possible appeal committee, which shall deliver its opinion by the majority provided in the ordinary comitology procedure disclosed in Article 5. And in such cases, any member of the appeal committee may suggest amendments to the draft implementing act, in which the chair Commission may decide whether or not to consider such amendments. See: Regulation 182/2001, Article 6.

framework, several questions and concerns may arise. This is especially true after the overview of the comparative analysis.

While the members of the Council of the European Union are known and enjoy significant legitimacy, in comitology, the members are often technocrats who, in the end, make political decisions, meraly, since the line between political and non-political is very thin. There is a problem of lack of accountability and legitimacy, add to the fact that it is often also unclear who these members are.

Correspondingly, considering the inherent similarities between the two, why don't they share the same level of transparency regarding positions and votes at this level? It is in the public interest to know the positions and consequential votes of each Member state, as access to information is a sort of instrument of accountability that may potentially strengthen EU democracy by enabling citizens to monitor European institutions and their actors. This issue will be explored in more detail in the following section.

5. THE EXTENT OF ACCESS TO DOCUMENTS IN THE DISCLOSURE OF MEMBER STATES' POSITIONS

5.1. Disclosure of Member states' positions and the Commission's refusal in comitology

In the context of disclosure, EU institutions have a duty to conduct a specific assessment of each requested document to evaluate its potential harm in case of its disclosure. As is the case with documents from comitology, individuals must request access from the Commission, which will assess any potential harm in case of disclosure and will decide whether to release the documents or not.

Even though documents related to comitology already benefit from a certain level of transparency through the comitology register and annual reports, not all information is disclosed. In such cases, submitting a request for access to specific documents becomes necessary.

Among the various documents that EU citizens and any natural or legal person residing in the EU can request, some may also include documents concerning the disclosure of Member states' voting positions. This is mainly because, although it is

possible to access the register and obtain information about the work of the comitology committees, including voting results and majorities, the actual positions of individual Member states during decision-making at the committee level are not disclosed, thereby marking a sort of gap in institutional transparency.[42]

According to recent developments regarding the disclosure of Member states' positions at the comitology level, the Commission has been substantially restrictive and it has relied on the grounds provided in Article 4, paragraph 3 of Regulation 1049/2001 to refuse such document disclosure. The refusal was argued, on the Commission's perspective, on the basis that disclosing such information would undermine the integrity of the decision-making process.[43] However, this institutional confidentiality has opened a new era of dispute, with challenges being brought before the CJUE, which may open futhers discussions on the current state of transparency at the EU level. Currently, one case is still pending a final decision at the CJEU, while another has recently been resolved.

Both cases challenge the Commission's refusal to disclose documents, with the initial rulings having been in favor of disclosure. These cases could function as an important point of reflection on the Commission's reasoning behind such refusals, with particular attention to the role of comitology in regulatory outcomes and the broader implications for openness within the EU's implementing decision-making process.

5.1.1. Case T-201/21

Regarding the circumstances of case T-201/21, the European Commission began working in 2018 on a draft implementing act to ban foods with high concentrations of Hydroxy Anthracene Derivatives (HADs), following safety concerns raised by the European Food Safety Authority (EFSA). To be adopted, the implementing act required a positive vote by qualified majority from the competent comitology committee. It was voted on and

[42] While statistical data and information from annual reports are available, the specific positions of Member States cannot be obtained directly from the registers, which emphasizes a sort of "gap" in institutional transparency.
[43] See: Case T-201/21 and Joined Cases T-371/20 and T-554/20.

entered into force in April 2021 after 22 Member states voted in favor and five voted against.[44]

However, some questions arose regarding the vote. Informal discussions suggested that at least one Member state had abstained, but this was not reflected in the voting sheet.[45] Moreover, the proximity to a blocking minority vote made the situation even more engaging.[46] In response to these doubts, a group of lawyers specializing in science practice, Covington & Burling, sought to verify how the Qualified Majority Vote (QMV) had been reached and how each Member state had voted.[47]

The applicant submitted a request for access to documents containing the positions and votes of the 22 Member states in the General Food Law Section of the Standing Committee on Plants, Animals, Food and Feed (PAFF Committee), the formation that had processed the vote at the comitology level. Following the request, the Commission's Directorate General for Health and Food Safety responded to the access request, informing that the access to these Member states votes was denied due to the exception concerning the protection of the decision-making process, under Article 4, paragraph 3 of Regulation 1049/2001.[48]

The applicant's claim was for the Court to order the Commission to immediately grant access to the requested documents, arguing that the vote and, therefore, the position of a Member state in an EU context is inherently public. On the contrary, the Commission relied primarily on Regulation 1049/2001, but not exclusively. It also referenced Regulation 182/2011[49] and in particular the Standard Rules of Procedure for comitology

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[44] Achieving a Qualified Majority Vote (QMV) under Article 238 of the consolidated version of the Treaty on the Functioning of the European Union (TFEU). As seen in the Comitology, the rules of voting are the same as those applied in the Council.

[45] This argument is presented on the website of the law firm Covington. See Website: Van Vooren on Bart. (2023, June 23). *The EU member states' votes banning a product cannot be presumed confidential: Why we litigated Case T-201/21 Covington & VanVooren vs European Commission (and won)*. Inside EU Life Sciences. https://www.insideeulifesciences.com/author/bvanvooren/page/2/
https://www.insideeulifesciences.com/2023/06/22/the-eu-member-states-votes-banning-a-product-cannot-be-not-presumed-confidential-why-we-litigated-case-t-201-21-covington-vanvooren-vs-european-commission-and-won/

[46] Idem.

[47] Idem.

[48] The case concerns the Commission's refusal to grant access to documents, citing the protection of the decision-making process.

[49] Regulation 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

committees, which, in Article 10 Paragraph 2, explicitly require the confidentiality of individual voting positions during committee discussions.[50] In support of this, the Commission cited the provisions in these rules that ensure the confidentiality of the singular positions of committee members during deliberations.[51] Nevertheless, in its ruling, the General Court found that the Commission did not interpret the disclosure properly under Regulation 1049/2001.

The Court clarified that the provisions of the Standard Rules of Procedure regarding confidentiality are not to be interpreted as preventing public access to documents that show the individual positions of Member states.[52] Asserting that the Commission had not produced any proof that the revelation would be detrimental, the General Court dismissed the Commission's claim that it would compromise the decision-making process.[53] However, this does not apply *erga omnes*, since the General Court also specifies that the European Commission may, in specific and well-justified cases, withhold access to documents if it only can prove that disclosure would likely undermine the public interests protected by the exceptions listed in Article 4 of Regulation 1049/2001, such also as in the case of protecting the decision-making process.[54]

As a consequence of these arguments, the ruling annulled the European Commission's decision refusing access to the individual votes of the representatives of the Member States on the basis of Article 4 of Regulation 1049/2001. However, the Commission has lodged an appeal before the CJEU, which remains pending.

5.1.2. Joined Cases T-371/20 and T-554/20

Joined Cases T-371/20 and T-554/20 concern the confidentiality of the individual positions of Member States in comitology procedures within the "Standing Committee on

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[50] See Article 10 Paragraph 2 of the Standard Rules of Procedure for Committees, which provides that: *"For the purpose of Article 10 of Regulation (EU) No 182/2011, the chair shall be responsible for drawing up a summary record briefly describing each item on the agenda and the results of the vote on any draft implementing act submitted to the committee. The summary record shall not mention the individual position of the members in the committee's discussions."* This provision affirms the confidential nature of deliberations during committee meetings.
[51] Case T-201/21, Covington & Burling and Van Vooren v Commission, para 56 and 58
[52] Case T-201/21, Covington & Burling and Van Vooren v Commission, para 65.
[53] Case T-201/21, Covington & Burling and Van Vooren v Commission, para 68, 73 and 74.
[54] Case T-201/21, Covington & Burling and Van Vooren v Commission, para 69.

Plants, Animals, Food and Feed (SCoPAFF)"[55] in the context of the committee's work on the 2013 guidance document issued by the European Food Safety Authority.

As in the previously presented case, the Commission had denied access as part of an ongoing decision-making process under review, as per Article 4, paragraph 3 of Regulation 1049/2001. The Commission maintained that disclosing the individual positions of Member state representatives would undermine the decision-making process by compromising confidentiality (Curtin and Rubio, 2024).

In relation to the Member states' positions, the General Court's ruling is significant as it clarified that, in this case, the Commission could not justify withholding access to documents on the grounds that the decision-making process was still ongoing. Specifically, since the requested documents were related to the decision-making process concerning the 2013 guidance document, which, according to the General Court, had already been concluded at the time the request for access to documents was made,[56] and no further concrete actions had been taken.

Similarly to the circumstances in case T-201/21, the General Court examined the relationship between the Standard Rules of Procedure and Regulation 1049/2001. Accordingly, in its application of the hierarchy of norms, the Court determined that internal rules designed to preserve the confidentiality of positions are subordinated to the 2001 Access Regulation (Curtin and Rubio, 2024). The General Court granted access to the Member states' position while enhancing transparency. However, the Commission appealed this decision in September 2022, and the case was ruled on by the 5th Chamber in January 2025.[57]

5.2. Commission's rationale for non-disclosure and structural defiance

In its argument, the Commission denied access to the positions of Member states, claiming that the individual positions of Member states within the comitology procedure are excluded from public access under the Standard Rules of Procedure. Thus, the rationale

[55] The Joined Cases address access to comitology documents and emails, including Member States' views.
[56] Joined Cases T-371/20 and T-554/20, Pollinis France v Commission, para 59 and 60.
[57] See Case C-726/22 P, Commission v Pollinis France.

developed by the Commission was based on the understanding that the disclosure could seriously undermine the decision-making process, as it could potentially be influenced by external pressure.

As previously seen, in the joint cases T-371/20 and T-554/20, the General Court found the Commission's arguments to be legally unsustainable. The Commission had appealed the decision in Case C-726/22 P. However, regarding the opinion delivered by Advocate General Emiliou, it supported the General Court's ruling at first instance.

The Standard Rules of Procedure of the committees cannot override or expand the exceptions to public access established by Regulation 1049/2001.[58] As noted by the Advocate General, the General Court thoroughly examined the Standard Rules of Procedure and concluded that they do not justify a general presumption of non-disclosure.[59]

Hypothetical risks do not constitute valid grounds for refusing access, the exceptions to access must be assessed and justified with specific and concrete reasoning.[60] In this case, the Commission had failed to provide such concrete justification. The Advocate General confirmed the General Court's reasoning, affirming that the Standard Rules of Procedure cannot serve as grounds for an automatic refusal of access and that the Commission must base any denial on the specific and concrete criteria laid down in the 2001 access Regulation.[61]

In the appeal before the Fifth Chamber in Case C-726/22 P, the judgment was affirmed by the Court, and the appeal of the Commission was dismissed in its entirety.

By the time the party requested the document containing the Member states' votes, there was no proper ongoing decision-making process related to the EFSA's 2013 guidance document.[62] Even though the Commission had requested a revision of the guidance document in the past, the Court concluded that this alone did not indicate that a decision-making process was still active or ongoing. The mere request for revision by the

[58] Opinion of Advocate General Emiliou, Case C-726/22 P Commission v Pollinis, para 101.
[59] Opinion of Advocate General Emiliou, Case C-726/22 P Commission v Pollinis, para 107-111.
[60] Opinion of Advocate General Emiliou, Case C-726/22 P Commission v Pollinis, para 109.
[61] Opinion of Advocate General Emiliou, Case C-726/22 P Commission v Pollinis, Para 111-112.
[62] Case C-726/22 P, Commission v Pollinis France, para 70-71.

Commission was not sufficient to establish the continuation of an ongoing decision-making process.[63]

This affects the application of Article 4 Paragraph 3 of Regulation 1049/2001, as the concept of decision-making process cannot be interpreted in a broad manner. Overall, the decision-making process must be actively pursued and the intention to take a decision, not merely the potential for future decisions.[64]

In a nutshell, following this judgment, the Commission may be prompted to reassess its approach to disclosing the positions of Member states. However, this cannot be seen as a fully adequate long-term solution, as the institutional paradox still persists.

The European Commission finds itself in a position of control and authority over the committees, which, in theory, are meant to provide a form of national oversight. This situation reflects a form of hegemony in the formation of implementing acts, where the Commission exercises significant dominance over the very committees that are supposed to scrutinize its actions.

In this context, relying solely on the integrity of the decision-making process as the Commission's main rationale for refusing access would be misguided. The choice to disclose or not to disclose the position of Member states in the voting, and the ability to preserve confidentiality over transparency, becomes in itself a source of institutional power.

It is about a case of structural defiance that challenges the EU's institutional balance and demands a necessary structural reform. An oversight body should not be subordinated to the very institution it is meant to monitor. Especially in transparency matters, the Commission should not hold unilateral power to decide whether to disclose information, as this damages accountability and disrupts the EU's intergovernmental and supranational framework of checks and balances.

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[63] Case C-726/22 P, Commission v Pollinis France, para 72.
[64] Case C-726/22 P, Commission v Pollinis France, para 73-79.

5.3. Between past developments in the disclosure of Member states' positions at the Council and future evolution in Comitology Committees

Confidentiality, prior to a long reform process and case law developments, had traditionally characterized the Council of the European Union, while at the comitology committees, this continues to be the case.

Regarding the Council, the overall process of increasing transparency has not been straightforward nor fully achieved, and in some respects, it remains unsatisfactory. However, with regard to the disclosure of Member states' positions, the Council has achieved a good level of transparency through several outcomes.

This has been partially the result of a series of Council decisions, beginning with the adoption of the 1993 Code of Conduct (93/730/EC) and 1999 Council Decision (2000/23/EC), which significantly improved the effectiveness of access to these documents.

More substantial steps were followed by the treaties. Member states from Scandinavia, often acting as a minority, have consistently advocated for increased EU institutional transparency and treaty development. Such advocacy led to the creation of Declaration 17 in the Maastricht Treaty and continued through to the establishment of the first legal basis for transparency in the Treaty of Amsterdam. Regarding the disclosure itself of Member states' positions, the turning point occurred with the Lisbon Treaty (Mühlböck, 2021). Whereas the introduction of public voting in the legislative process within the Council significantly changed the landscape, as the outcome votes and the consequential individual positions on legislative acts are now graphically displayed without the need to request access to the institution.[65]

Notwithstanding, the European Court of Justice has played a core role too in this process of openness at the Council level, as its interpretation of EU law has significantly shaped its transparency and access to documents.

[65] See Article 16.8 TEU and Articles 7 and 8 of the Rules of Procedure of the Council of the European Union.

Yet, based on the level of disclosure of Member states' positions, one might expect a shift towards increased transparency in voting within comitology as well. The persistent difficulty in making Member states' positions public during voting sessions may be considered another common feature of the two entities examined in this research. However, any progress in comitology can only occur through structural changes, which would require the political will to reform the current system of comitology. At present, this does not appear to be a priority. The Commission announced the withdrawal of the 2017 proposal to reform comitology in February 2025, citing a lack of political agreement (Bellenghi & Vos, 2025). Although some developments may arise from the previously mentioned appeal, and a pending case that may still bring changes, the current deadlock appears likely to persist.

6. CONCLUSION

In comitology, confidentiality continues to prevail over transparency. This situation results from the structural deficiency within the comitology framework, as well as the absence of reform, with the structural paradox itself driving and sustaining the non-disclosure.

The Commission, which should be subject to scrutiny when exercising implementing powers, in practice dominates the committees. It presides over and manages the committees' work while denying access to the voting positions expressed by Member states' representatives. This control becomes a source of institutional power and limits accountability, as the decision to disclose rests with the Commission.

The Commission applies the rules of procedure for committees, which do not promote transparency, and has consistently failed to justify the refusal of disclosure under Article 4 of Regulation 1049/2001 by providing grounds that are not based on legitimate concerns. In doing so, the Commission maintains control and preserves confidentiality over transparency.

Both the Council of the European Union and the comitology committees, although operating at different levels of decision-making, share certain traits. In this context, this institutional parallelism may serve as a model for future developments and extensions of transparency. Historically, the Council maintained a high level of secrecy regarding

disclosure. However, through case law, political will, and reforms, it has gradually evolved into a more transparent entity.

With recent cases concerning the non-disclosure of comitology documents before the Court of Justice of the European Union, such as the pending case of Covington and Van Vooren versus the European Commission and the most recent appeal case, which confirmed the grant access to the voting positions of Member states, further developments and shifts in institutional behavior may be anticipated.

However, the outcome will also depend on the willingness of the institutions and the political will to reform. The early 2025 Commission's decisions, on the withdrawal of the proposed reform on comitology, suggest that reform in comitology is not yet a prerogative, nor do allude to a political interest in reaching agreements. Without considerable changes, the future of transparency on Member states' position in comitology may remain uncertain.

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