Comitology Preferences in Daily Legislation

Every year the Council and the European Parliament enact hundreds of regulations and directives, and about half of them contain a comitology provision. In these cases, the EU legislators delegate executive power to the Commission, but require it to follow a comitology procedure when using this power.

This chapter examines the EU institutions’ comitology preferences in these situations. Do the preferences of the Commission, the Council and the European Parliament exhibit systematic patterns in daily legislation? This is an alternative investigation of the hypotheses that were also examined in the case study of the 2006 comitology reform in the previous chapter:

Hypothesis 4: The Council favours strict comitology procedures.
Hypothesis 5: The Commission favours permissive or no comitology procedures.
Hypothesis 6: The European Parliament favours:
   a. narrowing delegation to technical matters
   b. permissive or no comitology procedures, or alternatively
   c. access to the comitology system

But while Chapter 5 represented a most-likely case, this chapter provides a hard test of these hypotheses. First, there are guidelines for choosing comitology procedures in daily legislation. They were first introduced by the Council’s second comitology decision in 1999. Although they are non-binding, they nevertheless introduce some order and predictability. If the legislators want to introduce a comitology procedure that runs
against the guidelines, it is legitimate for other actors to challenge this. In this sense the choice of comitology procedure in daily legislation is not completely free. Second, a high degree of open conflict over the choice of comitology procedure in daily legislation is not to be expected. The EU institutions handle hundreds of legislative proposals every year and they have considerable experience with each other’s preferences. Some routinization is likely. In cases where the actors know that their favoured comitology procedure has no chance of surviving the legislative process, they are unlikely to press their case. They are more likely to be strategic and only propose their favourite comitology procedure where it has a reasonable chance of being accepted by the other actors. This raises a tricky problem of anticipated reactions. Both the informal guidelines and the problem of anticipated reactions will be treated in greater detail later in the chapter. The point is that they make this empirical setting a least-likely case for the hypotheses.

Studying comitology preferences in daily legislation is also difficult because the object of study – the comitology procedures – changes over time. The list of procedures to choose from in daily legislation was specified by the Council’s comitology decisions until the Lisbon Treaty and by the European Parliament and the Council’s comitology regulation after the Lisbon Treaty. The 1987 comitology decision specified four different procedures and several variants. The 1999 decision streamlined the comitology procedures to four standard ones. In 2006, a new fifth procedure was introduced when the Council established the regulatory procedure with scrutiny that was examined in the previous chapter. In 2011, the European Parliament and Council’s comitology regulation merged the management and regulatory procedures into variants of the new examination procedure.

To keep a firm grip on the dependent variable, the analyses in this chapter focus on legislative practice under a single comitology decision, namely the 1999 decision. Under the seven-year rule of this decision the Council acting alone or the Council and the European Parliament acting together enacted a total of 686 new regulations and directives. They have all been coded to allow an analysis of the chapter’s hypotheses.

The chapter is organized in the following way. Since my analysis is not the first to investigate comitology preferences in daily legislative practice, I start by reviewing earlier studies. I then explain in greater detail why I focus on legislative practice under the 1999 comitology decision. This is followed by a discussion of the two factors that make such a study a hard case for the hypotheses: the informal guidelines for the choice of comitology procedures and the problem of anticipated reactions. I then