

DIVESTING POWER – EC COMITOLOGY, GMO APPROVALS, AND THE ABDICATION OF POWER BY MEMBER STATES¹

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INTRODUCTION

The European Community (EC)² makes decisions on policies that have direct effect in a geographical area of more than 450 million inhabitants and yet the study of its decision-making dynamics often lags behind the numerous academic endeavors to explain its past-present-future evolution³ This paper follows in the wake of recent⁴ forays into the study of Comitology⁵, arguably the most important tool in the Community's decision-making tool-box, by attempting to modestly contribute to its theoretical and operational understanding through an analysis of a particularly unique case study, that of the authorization procedure for Genetically Modified Organisms (GMOs).

Comitology is often referred to in academic literature as “omnipresent”⁶, “most difficult conceptual and normative” challenge to the study of European decision-making⁷, “probably the most fervently contested interinstitutional battleground between the Commission, Council and the Parliament”⁸ and an important variable “in the historical process of state-building in Europe.”⁹ As Joseph Weiler concluded, Comitology is of great importance to the understanding of the entire EU project and can be characterized as “a new sub-atomic particle, a neutrino or a quark.”¹⁰

However, due to only the recent increase in academic interest, the theoretical “battle-lines” are still murky and the subject allows for considerable interpretive maneuvering. In this situation, any case study that illustrates deficiencies in the contemporary understanding of the process of Comitology should be a welcome addition and should lead to an adjustment of the dominant paradigm that has explanation of Comitology dynamics oscillating between the supranational/intergovernmental divide.

The decision-making mechanism of Comitology operates along the agent-principal axis where the Member States are the principals and the Commission is the agent. The Member States confer on the Commission the power to act as an agent on their behalf both because of the “complexity of society”¹¹ and because it ensures “efficient coordination mechanisms between the different levels of government.”¹² Comitology committees “serve as a forum in which the views of interested parties may be aired and

² Only the First Pillar has truly decision-making powers. Therefore, throughout this paper we will refer to the decision-making actor as the European Community (EC) rather than the European Union (EU).

³ Jeffrey Lewis has as recently as in a 2003 edition of *Comparative Political Studies* commented that Comitology “has suffered from a kind of benign neglect in EU studies.” Lewis, p. 97.

⁴ While Comitology is not a new concept, the watershed of its research occurred in 1997 with a special edition *European Law Journal* that was largely dedicated to its study.

⁵ Can also be referred to as committee governance, will be capitalized throughout because of its definition here as an important institutional concept of the EC, not just a mechanism of governance. Throughout the paper, Comitology will refer to decision-making mechanism using “regulatory committees”. For an explanation of what Comitology is, please refer to Chapter Three.

⁶ Christiansen and Kirchner, p. 1.

⁷ Everson, p. 209.

⁸ Haibach, p. 1.

⁹ Wessels, p. 209.

¹⁰ Quoted in Joerges, p.114.

¹¹ Neuhold, p. 5.

¹² Everson and Snyder, p. 207.

likewise provide the Member States with a means to ensure their continuing influence over EC decision-making [...]”¹³ Member States want to limit the “bureaucratic drift” of the Commission, defined as “the tendency of bureaucratic agents to follow their own interests rather than those of their legislative principal.”¹⁴

Committee governance in general refers to the process in the European Community in which Commission proposals are commented on or regulated by Member State formulated committees, whereas Comitology specifically refers to the regulatory committees which have considerable control over Commission proposals. These committees are a step between Commission proposal and Council approval, so that the committee essentially acts on behalf of the Member States. The Council decides, on a Commission proposal, whether to establish a Comitology committee for a certain policy and in general Comitology is usually used in policies for which the Member States want to retain considerable regulatory control, such as foodstuffs, health and veterinary regulations. More than 65 per cent of all expenditure-related legislation uses the Comitology procedure for implementation¹⁵, clearly illustrating the importance that the Council places on this tool.

Comitology, as a process, starts with the Commission proposal, which the regulatory committee votes on through qualified majority voting (QMV). There are three possible decision outcomes in the regulatory committee:

1. Proposal is adopted through QMV majority (committee votes in favor of the Commission proposal) > Proposal adopted by the Commission;
2. Proposal is turned down through QMV majority (committee votes against the Commission proposal) > Referral to the Council;
3. Proposal is not decided on as no QMV majority is established (committee fails to reach a decision on the Commission proposal) > Referral to the Council.

The first outcome results in the adoption of the proposal, whereas the second and the third both lead to a reference to the Council, which then has three possible decision outcomes as well:

1. Proposal is adopted through QMV majority > Proposal adopted by the Commission;
2. Proposal is turned down through QMV majority > Commission can resubmit the proposal to the committee as either a) amended proposal or b) same proposal or can c) initiate a legislation change through a proposal for a new legislation;
3. Proposal is not decided on as no QMV majority is established > Commission is entitled to adopt the proposal.

This paper deals with the third decision outcome in that it tries to explain the dynamics behind the decision making procedure that results in the Commission adopting the proposal despite the lack of QMV majority either in favor or against it in both the committee and the Council stages of the Comitology procedure. We should note,

¹³ Vos 1997, p. 229.

¹⁴ Ballman et al., p. 555.

¹⁵ Dogan, p. 52.

however, that it is not clear whether the Commission is *required* to adopt the proposal in case of a failure to reach QMV majority in the Council. The Commission has declared that in “‘particular sensitive sectors’ [it] would not go against ‘any predominant position which might emerge within the Council against the appropriateness of an implementing measure.’”¹⁶ Commission would not declare such a position were it not legally capable to decide *not* to adopt a proposal despite a Council indecision. Fundamentally, the Commission still seems to have a choice in whether it wants to adopt its own proposal following a Council indecision. This may be an important point of departure for academic researchers wishing to use game theory modeling of this particular outcome.

It is further necessary to address the issue of “failure” of Comitology and whether this is significant or essentially even a proper way of understanding the outcome being tested. The Comitology procedure accounts for this outcome, it is in the genetic make up of governance by regulatory committees. Therefore, it is an efficient mechanism for a supranational institution, which has received competency in a specific policy area, to come to a decision in face of indecisiveness of the member states.

However, we argue that in fact it *is* a failure for three general reasons. First it is not perceived as legitimate decision-making. The debate on the democratic deficit¹⁷ is well served by many of our empirics. If Member States are “passing the buck” to Brussels, this illustrates a considerable democratic deficit and should be of particular concern for the EP.¹⁸ It also seems to reaffirm the argument that “Were the EU to apply to itself for membership, it might fare worse than, say, Turkey.”¹⁹ Politically sensitive decisions made by the Commission without support from the Member States feed into the distrust of EU institutions and threaten legitimacy.

Considering the failures of The Constitutional Treaty in the summer of 2005, a treaty that was to underline “the importance of direct engagement of citizens and representative organizations in the policy-making process”²⁰, we should take our conclusions regarding Comitology decision-making seriously. When governments decide to “pass-the-buck” to Brussels, they may essentially be increasing the general negative feeling concerning democratic governance of the EU amongst the population. It is no wonder then that in their research, Karp et al. conclude that the “most knowledgeable are more likely to view the democratic performance of the EU with skepticism”²¹ (in direct opposition to what happens on the national level). The answer to this puzzle is very simple, the more people learn about the EU and its decision-making mechanisms (such as Comitology) the more they will realize how undemocratic it is. Those who see an incredible amount of consensus in Comitology and praise its efficiency should take into consideration that the true test of its democratic essence is not passed with non-politicized regulatory proposals

¹⁶ Pollack, p. 133.

¹⁷ In terms of how Comitology may increase the democratic deficit please refer to Neyer 2000.

¹⁸ On Parliament’s considerable disdain of Comitology see Bradley.

¹⁹ Joerges, p. 135 and see also the first paragraph of Demmke.

²⁰ Crum, p. 452.

²¹ Karp et al., p. 271.

that the people of Europe have no care for, but rather exactly the kind of issues that the GMO case study characterizes.

Furthermore, the case study here is one of a failure of Comitology in that Member States themselves are divesting their responsibility to make a decision and then a number of them end up introducing safeguard clauses to negate the effect of the decision made by the Commission. The recent negative (from EC's perspective) WTO ruling placed great emphasis on the role of these safeguards clauses. It is a suboptimal outcome to allow a GMO event to be approved and then enact safeguard clauses.

This brings us to the third failure which is the fact that not coming to a negotiated agreement invites outside actors, like the WTO, to attempt to resolve/influence the impasse, which simply further exacerbates the situation. Making concessions through bargaining at the intergovernmental stage would be the optimal outcome for Member States.

CASE STUDY OF GMO APPROVALS

Our case study is the GMO product authorization procedure. Since December 2003, 19 votes have been taken at various stages of the Comitology process (regulatory committee or the Council) and *not a single meeting resulted in a qualified majority vote (QMV)²² in either favor or against the Commission proposal*, thus leading to Commission pushing through its original proposals in spite of a considerable Member State opposition²³ The empirical data clearly indicates that the inability of Member States to come to a decision through the Comitology procedure in terms of the GMO approvals case is significant and a reality behind which are causal dynamics that need to be elucidated.

There are four general research questions before us in terms of the GMO case, although this research paper will only concentrate on the first in its analysis and the second in its overall assessment of Comitology:

1. What dynamic explains the case in which the regulatory outcome continues to be passed down the Comitology chain until the Commission adopts it in its original form?
2. Can we infer certain mechanics from the case of GMO product authorizations or is the particular case in question *sui generis* and thus an insignificant phenomenon, or at best “an exception that proves the rule” of currently understood mechanics (generally those of intergovernmentalism/deliberative supranationalism)?

²² It should be noted, however, that in the Council meeting on June 24th 2005 the Council decided with an overwhelming QMV majority to reject the five separate proposals of the Commission terminating national bans on five GM products. However, this was not a vote on GMO product approvals and so is not counted along with 19 cases. Nevertheless, we will take it into consideration later on in the paper. Information on the voting can be discerned from Friends of Earth website.

²³ All data is provided by the Friends of Earth Europe website at http://www.foeurope.org/GMOs/pending/votes_results.htm since the voting records of the regulatory committees and the Council are kept confidential. This fact further illustrates/explains the difficulty of researching Comitology.

3. What does the history of the evolution of Comitology tell us about the GMO case, and vice-versa, what does our case study illustrate about the evolution of Comitology?
4. How is this particular case relevant to the overall understanding of the EU, does it reveal something about the debate on democratic deficit, how does it relate to the study of the evolution of the EU?

While the last two questions are the most intriguing and reveal the significance of this research in the larger context of EU integration study, this paper will largely concentrate on the first two. We want to understand the causal mechanics affecting the dynamics of decision making in Comitology that lead to the kind of output exemplified by the GMO approvals case. We also want to attempt to generalize the specifics of our case study that may initiate the same type of outcomes from the Comitology procedure (is this what happens when an issue is polarized/politicized, is this what happens when Member States look to divest themselves of responsibility to make difficult decisions, etc.). Intuitively we will address the current theoretical explanations that dominate the study of Comitology and attempt to conclude whether/how they should be amended, improved or altogether replaced.

The causal argument therefore is that external pressures on the Commission (mainly from the WTO case) have caused it to eschew deliberative mechanism in order to force through GMO approvals while at the same time external pressures on certain Member States (in terms of interest groups and public outrage and how these influence their domestic politics) force them to take a firm position that is in extreme opposition of the Commission. Instead of providing incentives for the stalemate to be solved, the structural characteristic of the Comitology procedure insulates the Commission from having to modify its preference while at the same time giving the Member States an excuse to divest their decision-making and "blame Brussels" in the face of domestic criticism.

Furthermore, we identify that a dynamic of "strategic institutional decay" is in operation as Member States continue to divest themselves of the power and responsibility to resolve the impasse largely because the structure of Comitology as a process does not create sufficient incentives and support for them to conduct bargaining and resolve the situation. Aside from the "failure" of Comitology in the specific case of GMO approvals, it also indicates an overall poor "fitness" level of the European Community decision-making system. This can have very negative implications for the future of the institution.

This case study also indicates that improving the quality of scientific assessment, as the Commission seems to want to do, will not resolve this problem. The issue has never been one of science, but rather politics. It may be necessary to take the GMO approval regulation completely out of Comitology in order to allow intergovernmental deliberation to operate and resolve the situation.

The hypothesis of our research is that the current theoretical frameworks, mainly those of rational-choice/intergovernmentalism and social constructivism/deliberative supranationalism do not sufficiently explain the outcomes in our case study in of

themselves. The Member State decisions largely conform to and thus reinforce rational choice explanations of Comitology dynamics, but current research has not attempted to account for polarization among the Member State position and when it has, Fabio Franchino's *Journal of Theoretical Politics* (2000) article, it has not tried to explain the rationality behind the conscious divestiture of decision-making that is inherent in this case. The conclusion this paper reaches is that greater emphasis must be placed on domestic politics (from the Member States' perspective) and how these are affected by interest groups and "public outrage" (as conceived by Erika Meins) and on the similar external pressures that the Commission feels (in Commission's case this is illustrated by the pressure from the World Trade Organization case against the EU stemming from the moratorium on GMO approvals imposed in 1999). Furthermore, the very structural dynamics inherent in Comitology are part of the causal mechanism, as they are incapable of allowing for successful deliberation of the kind of politicized decisions that the GMO case is a great example of. While rational choice can still explain the outcome of our case (but needs to be modified to take into account external pressures of the pertinent actors), deliberative supranationalism is extremely flawed. Especially problematic is the normative element within deliberative supranationalism that considers Comitology as a positive development in the Community decision-making process. The highly politicized/polarized issues, the kind that the Community may have increasing competency over, simply does not lend to deliberation.

The European Commission is not ignorant of the problem that the GMO case presents. The post moratorium legislation on GMO approval procedure and labeling were in part introduced because of the problems encountered through the Comitology procedure in GMO regulation throughout the late 90s. In April of 2006 the Commission tried to address the current impasse by asserting that it is vital to:

"[...]reassure Member States, stakeholders and the general public that Community decisions are based on high quality scientific assessments which deliver a high level of protection of human health and environment. These improvements will be made within the existing legal framework, in compliance with EC and WTO law, and avoiding any undue delays in authorization procedures."²⁴

However, this paper will show that it is exactly the "existing legal framework" (Comitology), "compliance with WTO law" (WTO legal decision) and "avoiding undue delays in authorization" (due to polarization in Member State positions) that cause Member States to divest their responsibility to make a decision on GMO approvals and thus any solution would have to take these variables into account. The Commission will fail to improve the efficiency of voting by attempting to "reassure the Member States" with "high quality scientific assessments", just as it failed to resolve the situation with the new legislation, since the issue is not contested on the basis of science, but rather politics. The Comitology process exacerbates this combination of variables by preventing deliberation in face of such a politicized issue.

METHODOLOGY

²⁴ Commission Press Release IP/06/498.

Single case studies are generally regarded as inferior to big n study²⁵; however in this paper we employ an examination of a particularly important and critical study and are confident that our research has utility beyond mere descriptive analysis. There are essentially four reasons for looking at the case of GMO approvals in great detail, without a comprehensive comparison with other examples of Comitology “failure”.

The logic to use a single case study begins with Eckstein’s “critical-case study” concept. Converse of this rationalization is the possibility that the case-study itself, since there are many other regulatory proposals by the Commission that the committees *do* make a decision on, could be the “exception that proves the rule”²⁶, a case that contemporary theoretical explanations of Comitology already envision would be inexplicable. However, this paper adopts a Kuhnian proposition that, if understood correctly, “exceptions” (or “anomalies” as Kuhn would prefer) more often cause “paradigm shifts” than reaffirm the dominant theories.²⁷ This position is further elucidated by Eckstein in his assertion that “a single crucial case may certainly score a clean knockout over a theory.”²⁸

The second reasoning is that GMO approvals are a critical and a significant phenomenon that reveal something important about the *institutions* themselves, therefore not just about the theory of institutions. Essentially, the GMO case reveals how the European Community decision-making institutions perform under duress. The case study is therefore a form of a “stress-test” from which we can infer institutional dynamics of the Community. An analogy from the field of medicine may explain further the significance of our approach. When the heart is tested for failures and abnormalities that may lead to a heart attack, it is not observed while it is at rest or in a situation where it is performing at its regular rate, rather the patient is subjected to a Cardiac Stress Test in which they run or walk on the treadmill while an EKG is performed. Not only does such a test tell us the potential problems in the system dynamics (is the blood flow normal and regular, is the heart performing normally, etc.) it also actually tests the overall physical fitness of the subject. Therefore, our test case of GMO approvals is assumed to be the treadmill on which the decision-making institutions of the EC have been forced to run on. The test has already been performed, we have the figures of voting records and they show that a decision has not been reached via QMV in any of the meetings; it is now up to us to explain the significance of this EKG, what it means for the “cardiac” system of decision making and the overall fitness of the European Community.

The third reason why our single case study is relevant and useful is the perspective which understands the GMO approvals case as a critical case lying within the core of the spectrum of issues for which Comitology was essentially designed for. As will be evident in our rundown of the history and evolution of this decision-making mechanism, Comitology was in fact proposed by the Member States in order to control the agency of the Commission in the highly sensitive fields of veterinary, health and food policy. Therefore, this is not just a random policy that is under testing, but rather the critical field

²⁵ See King, Keohane and Verba.

²⁶ I wish to thank Fernando de la Mora for illuminating this avenue of thinking for me.

²⁷ Kuhn, the entire Chapter 9 illustrates this concept.

²⁸ Eckstein, p. 127.

for which Comitology was introduced into the EC decision-making mechanism. The empirical evidence pointing to the efficiency of Comitology is still relevant, but a statistical variance even if it is only in one case is still highly significant if it is in the very policy area that Comitology was created for. It is important to take into consideration the significance of this issue and not become a slave to statistical data. While it is true that in one year, only a small percentage of proposals fail to reach a QMV majority we should not ignore the essential truth that the vast majority of Commission proposals are completely apolitical and irrelevant in the minds of most people. If Comitology keeps “failing” in the few cases where it handles politicized issues, then that in itself is a significant test of its performance in political issues.

Final aspect of the significance is that we have 19 cases as our primary source of data, 19 cases that are temporally significant. Our first case is from December 8th 2003 and our last case is from October 24th 2005. We could also have included the pre-moratorium GMO approval meetings that failed to reach a QMV majority, but we do not have the proper data on the voting records. In any case, the point is that this is not really a single N study, it is a 19n study. Nineteen cases spread over three years of Comitology procedure failing to reach a QMV majority. It may be in only single N *issue*, but the fact may very well be that this is the *only* issue that is politicized to the extent that the GMO case is. There actually are other votes we could look at, such as the 1996 BSE vote which also failed to reach a majority, but no other *issue* offers us 19n samples of Comitology failure. When one is faced with 19 unfavorable EKG results illustrating irregularities in one’s cardiac system, it is time for an analysis and perhaps some kind of a prescription.

The research model will be that of “competitive testing” which means that “we do not evaluate our claims only against ‘the evidence’ but against other theories [and thus other evidence] as well”²⁹ The competitive model will allow us to “learn something about the scope (domain) of each theory’s predictions, where the overlap occurs, and thus where they are observationally equivalent or distinct.”³⁰

While we only seek to understand one case study (and thus our research could be considered a single case study variety), the competitive model increases the amount of observations/variables being tested. The case study itself is enough of a puzzle to require an exhaustive investigation (it is an example of the “least-likely”³¹ observation, especially in relation to the dominant theories of EU integration), but we will follow the advice of King, Keohane and Verba and attempt to increase the testing range of our methodology by subjecting our case study to variations “across space and [...] across time.”³² “Across space” we will test the preference formulation of different actors (Commission and Member States) with the competitive model of theoretical testing (thus space will be two-dimensional, with variation across actors and theoretical variables); while “across time” we will look at how the change in GMO approval legislation and the WTO case have affected the outcome. The temporal/spatial variation in testing may not

²⁹ Jupile, p. 20.

³⁰ Jupile, p. 26.

³¹ King et al., p.209.

³² King et al., p.219.

be stressed in the structure of the paper, but it is inherent in the decision to look at the history of Comitology as a process and in the pre/post-moratorium variation.

This paper will proceed to answer the two main research questions (why Comitology fails and what can be inferred from the case study in which it fails) by outlining first the evolution of Comitology and its contemporary procedural mechanisms. There is actually nothing new to Comitology, just as the “quarks”, as cited by Weiler in the introduction, are not “new”, but rather recently discovered particles that further help the theoretical physicists explain reality. This is why it is helpful for our research to elucidate the historical development of Comitology and gauge how much of the original intention still exists in the process as it pertains to our case study.

We will then turn to the theoretical explanations of Comitology, both in its evolution and in terms of its decision-making process. Following the theoretical rundown we will present the empirics of the GMO approvals case study and then subject it to our competitive model of research in the analysis section. The analysis will be followed by an attempt to generalize and infer from our case study the nature of phenomena that may cause the “failure” of the Comitology procedure. We will conclude with a brief overview of policy relevance and analysis of the contribution to the democratic deficit argument that this research makes.

Before we proceed with the analysis we should note that researching Comitology is fraught with extreme difficulty. There is a serious problem of data collection since the committee meetings are not open to the public and transparency is seriously lacking³³. This paper relies on the empirical studies collected by various academic researchers and by the non-governmental organization (NGO) Friends of the Earth (FoE), which has researched and collected the voting records of all post-moratorium regulatory committee meetings.

STRATEGIC INSTITUTIONAL DECAY

The mode of analysis employed in this paper is firmly entrenched within the Intergovernmental / Rational Choice field of European studies and Political Science in general. Generally summarized, it is understood that “European integration was no accident”³⁴ and that “the configuration of state preferences matters most in world politics – not, as realists argue, the configuration of capabilities and not, as institutionalists (that is functional regime theorists) maintain, the configuration of information and institutions.”³⁵ Comitology as a procedure can be understood through this lens.

Taking intergovernmentalist assumptions as most applicable in our case study we still find that they do not explain our data in a sufficient manner. Our case of GMO approvals throws quite a hefty empirical wrench into the notion that “fundamental actors in international politics [...] *organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values,*

³³ See: Larsson, Torbjorn and Andreas Maurer. and Demmke, p. 17.

³⁴ Moravscik 1998, p. 501.

³⁵ Moravscik 1997, p. 512.

*and variations in societal influence.*³⁶ In essence, taking Moravscik's thinking as the causal starting point, we would expect Member States to overcome their differences over GMO approvals in some way. Genetically Modified Organisms are neither the first fiercely politicized and polarized issue, nor the only point of contention that Member States have had to deal with prior to integration (for an analysis of conflicting state preferences one only has to re-read Moravscik's seminal *The Choice for Europe*. Allowing the issue of GMO approvals to divide them and to show signs of institutional "failure" invites outside actors into the game by shedding light on what is supposed to be an internalized process. Like vultures circling a sick animal, NGOs, the WTO and industry lobbyists all become aware of the issue only once Member States fail to resolve it. This is a *suboptimal outcome* for the Member States and they must be aware of that, therefore illustrating the notion of Strategic Institutional Decay of the European Union³⁷.

Strategic institutional decay accounts for the fact that states are in control of the institutions, they have the power, but refuse to exercise it. The EU institutions and the Community in particular is unable to resolve institutional problems on its own, it requires leadership and legislation from the states, yet states are divesting their responsibility and therefore their power to resolve this issue. Under intergovernmentalist assumptions we would expect Member States to bargain their way out of the GMO issue, to form strategic alliances and barter various policy outcomes so as to reach a resolution. Not resolving this situation is a suboptimal outcome, it allows Member States to "pass-the-buck" on to the EC and to resolve the issue through safeguard clauses, but it also invites the WTO and other actors who can "smell" the decay of Member State policy. The crucial questions becomes, as Flynn asks: "Are they [regulatory committees] being used by Council to take hard and unpopular decisions in environmental policy that it would rather not be seen taking?"³⁸ The evolution of Comitology into this kind of a process is almost impossible to account for by contemporary EC integration theories.

The process of strategic institutional decay essentially revises the intergovernmental / rational choice state-centered model through a slightly better understanding of domestic embeddedness of states. We should be careful not to take too much credit for that, as Moravscik does emphasize domestic politics in his approach. However, in our case it is more than just about economics and monetary incentives, the utility function is more complicated than what Moravscik states. Under intergovernmentalist assumptions, the threat (and eventually the outcome) of the WTO case should form enough of an economic incentive (except maybe in the heavily organic farming Austria) for Member States to lobby each other and find a solution to the issue. Instead, Member States maneuver between a lot of different aspects (they want economic interests, but also want to deal with NGO and the civil society). This is an example of rational states responding to interest groups, but unlike in Moravscik's examples, the interest groups are highly varied.

³⁶ Moravscik 1997, p. 516. Emphasis added.

³⁷ The author is indebted to Dr. Yves Tiberghien for his considerable contribution to the formulation of this concept.

³⁸ Flynn, p. 95.

Our model explains institutional strategic decay as a rational outcome in which Member States give up power rather than take up leadership. While our argument is that such an outcome is still suboptimal, especially by Moravscik intergovernmental standards, it is not irrational. The external pressures on the actors, both Member States and the Commission, and the particular institutional dynamics underpinning the decision-making process of Comitology, allow states to be “lazy”, to strategically refuse to resolve this issue through interstate bargaining and to “pass-the-buck” to Brussels. The issue at hand is really of Member States not using their “big stick”, their power, to resolve the current impasse. The EC, and essentially the Commission, cannot force Member States to resolve the situation.

Interestingly, what our analysis inherently concludes is that suboptimal outcome in the face of rationality is difficult to correct for, but eventually will have to be corrected for. Member States cannot keep divesting their power in the case of GMO approvals because: a) the Commission is not going to let them, as their recent comments on the issue suggest; b) because they will start incurring financial losses from the WTO and c) because public opinion of EC institutions will decline and that will affect more important issues surrounding European institutions. Member States are rational and they understand this, which is why we term our mode of analysis as *strategic decay*.

Our analysis essentially reveals that Comitology is not designed for high-stake political battles because it is in fact a *very* poor model of deliberative decision-making. Under Moravscik’s assumptions national preference formation leads to interstate bargaining, which leads to the choice of whether or not to delegate decision-making to an interstate commitment, which ultimately rests on its economic costs and benefits. In this case, the decision to place GMO approvals under the Comitology procedure is of suboptimal efficiency and will have to be corrected for.

The analysis of the external pressures being exerted on the Commission and the Member States will reveal in what ways this issue is in fact a high-stakes political battle, while the analysis of the Comitology procedure will reveal the inability of such a decision-making mechanism to handle them. In the case of GMO approvals, the Comitology procedure is neither “a control mechanism in which the primary aim is control and decision-rules matter [n]or a forum for deliberation in which the national/supranational line breaks down...”³⁹ It is truly an institutional dynamic in of itself that in our particular case study actually exacerbates the conflict and to some extent prevented deliberative mechanics to take hold. It works almost flawlessly when dealing with technocratic, scientific issues, but when these issues become highly politicized the system breaks down.

The essential conclusion is that GMO approvals are being regulated through the wrong forum and will have to be removed from the Comitology procedure in order to return to optimal efficiency the decision-making in that policy area. This case study is a revealing case for the conditions under which Comitology works and does not work. We add missing stories and missing assumptions to the intergovernmental dynamic. Instead of building coalitions, as intergovernmentalism would assume they would, Member States

³⁹ Pollack, p.126.

are not pursuing bargains, they are being “lazy”, they are “giving up” and “passing-the-buck”, and they are “abdicating power”.

CONCLUSION

Our analysis has concluded that external pressures on the Member States and the Commission along with the decision-making mechanisms of the Comitology procedure have created the current impasse over GMO approvals. The politicization of GMOs in some Member States due to the incredible increase in environmental NGO bargaining power, resulting from the public outrage concept, has made them extremely opposed to GMOs. This opposition, while rooted in the misgivings about the safety of the food within the larger populace, is inherently political as it is based on governments’ apprehensions that a pro-GMO stand will result in loss of support at home. No matter what kind of scientific evidence the Commission proposes, these Member States will be opposed, especially when the precautionary principle (which the Commission negotiated into the new GMO legislation in order to resolve the 1999 impasse) allows them to consider long term effects that may not even be testable and enact safeguard clauses accordingly. Therefore, the new, post-moratorium, GMO legislation and scientific assessment procedures are irrelevant to this considerable block of countries (anti-GMO countries together form a block of 69 votes, only 21 votes away from a blocking vote in the 232 qualified majority procedure) that base their opinion purely on the political aspects of the issue.

This impasse further illustrates the problem with the structure of Comitology when faced with a considerable politicization of an issue. Aside from the fact that the committees will always be split and thus unable to make a decision when a strong number of countries has a blocking minority, the structure of Comitology in this case also reveals the inherent flaw in fostering deliberative solutions. In the face of a politicized issue, Comitology encourages deadlock because Member States can always rely on their safeguard clauses to opt out of the regulation proposed by the Commission. This gives Member States indifferent about the outcome of the proposal the incentive to not ally with their colleagues, since these will be able to opt out later anyways. Instead, “passing the buck” dynamics may emerge where the unpopular decision is forced on to the Commission and then those opposed opt out through safeguards.

Much as in the case of the Member States, the Commission is under considerable external pressure to force through the GMO products. The Commission began proposing GMO approvals as the WTO case started and has disregarded its own commitments not to push sensitive proposals in the face of considerable (if not QMV) opposition. In trying to resolve the moratorium, the Commission agreed to the precautionary principle being entrenched in GMO legislation, but it has recently concentrated solely on the scientific assessments in order to comply with the WTO rules. Unlike in other cases, the Commission does not have the luxury to practice incrementalism and deliberative strategies.

The dynamic that is occurring is one we have dubbed strategic institutional decay. Member States do not have sufficient incentive to resolve the politicized impasse through regular bargaining and negotiations. They are abdicating power to the Commission and skirting their responsibility to make a decision. This form of decision-making is a serious threat to the legitimacy of the European Union and is likely to increase the dissatisfaction of its citizens. Comitology as a procedure is incapable of bringing the conflict over GMO approvals to an end and the issue, far too politicized as it is, should be removed from this form of decision-making.

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