**Fiche 18: Access to documents relating to implementing acts and RPS/PRAC acts**

**Main issues:**

This note addresses access to documents in the context of Comitology procedures. Comitology refers to a set of procedures through which Member States control how the European Commission implements EU law.  

Before it can adopt an implementing act, the Commission must consult a committee composed of representatives of each Member State. The committee provides an opinion on the Commission’s proposed measures. These opinions can be binding on the Commission, depending on the particular procedure specified in the legal act, which is being implemented. This procedure is based on Regulation 182/2011. 

In addition, some committees currently also still function under the Regulatory Procedure with Scrutiny ('RPS' or 'PRAC' referring to the French denomination 'Procédure de Réglementation Avec Contrôle'), a procedure that dates back to the era before the entry into force of the Lisbon Treaty and that is set out under the 2006 amendment of Council Decision 1999/468/EC. This procedure empowers the European Parliament and the Council to block a measure proposed by the Commission under certain circumstances. 

The Comitology register contains information and documents relating to the work of these committees, including all documents forwarded to the EU Parliament and the Council for information or scrutiny. One of the objectives of the Comitology Register is to put the public, as far as possible, on an equal footing with regard to the accessibility of comitology documents, which are transmitted to the European Parliament and the Council. 

The main accessibility issues concern draft versions of documents issued before the College adopts an implementing act or an act under the Regulatory Procedure with Scrutiny (RPS/PRAC). 

**Current administrative practice:**

**General approach**

- Several documents relating to Comitology procedures are made publicly available through the Comitology Register, the Better Regulation Portal, the respective database under the Agreement on Technical Barriers to Trade (TBT) under which technical draft regulations are notified in the WTO context, or the website of the European Parliament. Therefore, when receiving an access to documents request covering Comitology-related documents, please check first if the requested document(s) is/are available online and provide the relevant link to the applicant; 

- In terms of proactive publication in the Comitology Register, the reference of the following types of documents must be made public in the Comitology Register: 
  - a list of committees; 
  - the agendas of committee meetings; 

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the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong;

- the draft implementing acts on which the committees are asked to deliver an opinion;

- the voting results;

- the final draft implementing acts following delivery of the opinion of the committees;

- information concerning the adoption of the final draft implementing acts by the Commission.

If the requested document(s) is/are not available online, you will need to identify the documents held by the Commission which fall within the scope of the request and assess them individually to determine whether access can be granted to them, or to parts thereof. Some preparatory documents might not be in the Comitology Register, even though services should also generally upload in the register early drafts discussed in the committee. However, in the context of an access to documents request, you might need to also identify documents, which are not in the Comitology Register. In general:

- agendas are, in principle, made accessible through the Comitology Register, except in exceptional cases when there are specific reasons for maintaining confidentiality⁸;

- draft implementing and RPS/PRAC acts submitted to a Committee are accessible through the Comitology Register after the inter-service consultation and before the vote in the Committee, if the respective Directorate-General or service made them public in the Comitology Register. If this was not the case⁹, an individual assessment of the document(s) has to be made taking into account the circumstances applicable at the moment of the request. If no exception of Regulation 1049/2001 applies to the draft act or parts thereof;

- after a positive vote in a committee under the examination procedure in Regulation 182/2011 the act must be adopted by the Commission. Although the decision-making process is not yet formally finalised until the adoption of the act by the College, in principle the decision making process will not be seriously harmed if a draft act is disclosed after a positive vote in the committee, but before its adoption by the College. This is also reflected in the Comitology Register, in which after the uploading of the voting sheet the draft act becomes public by default unless an exception of Regulation 1049/2001 applies to the draft act or parts thereof;

- draft implementing and RPS/PRAC acts which have passed through inter-service consultation and for which public feedback is requested through the Better Regulation Portal¹⁰ before the vote in the Committee, are accessible as from their publication on the Better Regulation Portal;

- access to contributions in inter-service consultations should be granted in principle after the adoption of the draft implementing act by the College, unless an exception of Regulation 1049/2001 applies to specific parts thereof¹¹;

- summary voting results are accessible after the vote, through the Comitology Register. However, access to detailed voting sheets showing the vote breakdown per Member State should be refused also after the vote has taken place and even after the act is adopted based on the protection of the decision-making process¹²;

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⁸ For example, for discussion of antidumping measures in the Trade Defence Instruments Committee.

⁹ For example, draft acts of non-general application (e.g. addressed to a certain legal person) are usually not published in the Comitology Register.

¹⁰ See fiche 4 on details relating to access to contributions to inter-service consultations, link: https://myintragomm.ec.europa.eu/sr/docinter/Documents/Fiche4-Access_inter-service_consultations.pdf.

¹¹ Article 10 of Regulation (EU) No 182/2011 provides for the information on committee proceedings that can be made public and in relation to the voting refers to the "voting results", i.e. the total voting results only, not the individual Member State votes. The Standard Rules of Procedure for the Committees, which are adopted based on Article 9 of Regulation 182/2011, contain specific confidentiality requirements, which explicitly exclude the positions of individual Member States from public access. Articles 10(2) and 13(2) of the Standard Rules of Procedure for Committees provide, respectively, that summary records of meetings shall not mention the position of individual members in the committee's discussions, and that the committee's discussions shall be confidential. Although similar provisions exist in the Standard Rules of Procedure for the Appeal Committee, the Commission has tabled a proposal to make public the individual Member State representatives vote in the appeal.
summary records of the meetings are, in principle, accessible through the Comitology Register. Access to detailed records of the meetings which have been sent to the Member States should be granted unless an exception of Regulation 1049/2001 applies to those records or parts thereof. Individual positions of the Member States must not be disclosed based on the protection of the decision-making process and specific confidentiality provisions provided for in the Standard Rules of Procedure of the Committees;

audio-visual records are not, in principle, exempted from identification as documents held by the Commission according to Regulation 1049/2001, unless they have a short-lived nature (for instance, if written minutes have subsequently been drafted). Directorates-General and services should consider the possibility of their deletion, once they have fulfilled their purpose, for example, after establishing the written records of a particular meeting. If the audio-visual records are not short-lived and comply with the Commission’s document registration criteria and are hence identified as ‘documents held by the Commission’, consultation of the individuals concerned is mandatory under Article 4(1)(b) before they can be released, given their biometric nature.

Case law:

Judgment of the Court of First Instance of 18 December 2008 in case T-144/05, Pablo Muñiz v Commission of the European Communities.

Judgment of the General Court of 7 June 2013 in case T-93/11, Stichting Corporate Europe Observatory v European Commission.

Reference documents/links:

- Examples of confirmatory decisions and a summary of relevant case-law are available on the Commission’s access-to-documents webpages on My Intracomn13;

- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu.