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**COMMON CONSOLIDATED CORPORATE TAX BASE  
WORKING GROUP (CCCTB WG)**

Explanatory note on the comitology procedure

Meeting to be held on 10, 11 and 12 December 2007

Centre de Conférences Albert Borschette  
Rue Froissart 36 - 1040 Brussels

**WORKING PAPER**

## I. Introduction and purpose of the paper

1. In the Commission Services Working Documents on '*CCCTB: possible elements of a technical outline*' (hereinafter: CCCTB/WP/057)<sup>1</sup> and on '*CCCTB: possible elements of the administrative framework*' (hereinafter CCCTB/WP/061)<sup>2</sup> references are made to a regulatory committee of the comitology procedure as laid down in Article 5 of Council Decision 1999/468/EC of 28 June 1999<sup>3</sup> (hereinafter the Comitology decision). In these Working Documents one possibility is for the detailed implementation of some of the measures laid down in the basic CCCTB Directive to be delegated by the Council to the Commission and be agreed via the comitology process. This is in line with the Joint Practical Guide of the European Parliament, the Council and the Commission for the drafting of Community legislation and would only lead to implementing measures.
2. In the September Working Group (WG) meeting<sup>4</sup> MS experts<sup>5</sup> expressed concerns regarding comitology raising potential national constitutional problems. Consequently, MS experts asked during the WG meeting and via their written contributions for an explanation how the comitology procedure would work in practice regarding the Common Consolidated Corporate Tax Base (CCCTB) legislation and which implementation rules would be covered by the comitology procedure.
3. The purpose of the paper is to provide a summary of main principles of the comitology procedure laid down in the Comitology decision. As it is envisaged to make use of the 'regulatory committee', this paper will only focus on the regulatory procedure and will explain this procedural method in detail.
4. As regards comitology there are technical and 'political' issues. This paper covers only technical issues of the comitology procedure. As regards the technical issues the comitology decision provides a common framework for the exercise by the Commission of implementing powers conferred on it by Council.
5. Possible implementation measures which could be covered by the comitology procedure can be found in Paragraphs 10, 16, 25, 46, 66 of CCCTB/WP/057 and in Paragraphs 16, 25, 30, 32, 35, 45, 60 of CCCTB/WP/061. It is not the purpose of this paper to include a list of further or more detailed possible implementation rules which could be delegated to the Commission and agreed via the comitology process.

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<sup>1</sup> Commission Services Working Document CCCTB\WP\057 can be found at the following address: [http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/common\\_tax\\_base/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm). That document began to bring the various structural elements of the base together into a coherent set of rules and was presented at the CCCTB WG meeting on 27-28 September 2007.

<sup>2</sup> Commission Services Working Document CCCTB\WP\061 will be published on the DG TAXUD website after the CCCTB Working Group meeting on 10, 11 and 12 December 2007 have been taken place.

<sup>3</sup> As amended by Council Decision 2006/512/EC

<sup>4</sup> The CCCTB WG meeting took place on 27-28 September 2007. The summary report will be published on the following webpage:

[http://ec.europa.eu/taxation\\_customs/taxation/company\\_tax/common\\_tax\\_base/article\\_4381\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/company_tax/common_tax_base/article_4381_en.htm).

<sup>5</sup> In common with all CCCTB Working Group documents references to 'Member States' refer to the comments by experts from the various Member States administrations and do not represent a formal position of a Member State.

## II. Comitology committees

6. In accordance with Article 202 of the Treaty the implementation of statutory provisions at the European level is the task of the Commission. In each legal act ('the basic instrument') the extent of implementing powers which are conferred on the Commission by the legislator (the Council, acting alone, or with the European Parliament where the co-decision procedure applicable,) is stipulated. In specific cases the Council may also reserve the right to exercise directly implementing powers itself.
7. Pursuant to Article 202, such implementing powers must correspond to principles and rules laid down in advance by the Council. The measure adopted by the Council which determines how those powers may be exercised is Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (Official Journal 1999 L 184 p.23). As the Court of Justice stated in its judgment in Case C-378/00 Commission v Parliament and Council [2003] ECR I-937, "those principles and those rules must ... be observed when measures conferring implementing powers on the Commission are adopted" (paragraph 40).
8. The purpose of comitology committees is to assist the Commission in exercising the implementing powers conferred upon it by the legislator. Comitology committees share three essential features<sup>6</sup>.
9. *First*, comitology committees are created by the legislator by adoption of the basic instrument under which they are established. Hence, the legal basis of the comitology committees is enshrined in a 'basic instrument'.
10. *Second*, their structure and working methods are in several respects standardised. A representative of the Commission chairs each committee, which consists of MS representatives. It is the MS that are legally 'members' of the committees and exercising the voting rights, not the persons representing them. The committees intervene within the framework of the procedures set out in the basic legislative instrument, in compliance with the Comitology Decision.
11. *Third*, the committees deliver opinions on draft implementing measures submitted to them by the Commission pursuant to the basic legislative instrument and intervene within the framework of the advisory procedure, the management procedure or the regulatory procedure provided for that purpose.
12. The choice of the procedure for a committee is made by the legislator according to the nature of the implementing powers conferred on the Commission, ie a CCCTB Directive would create the comitology committee and specify the implementing powers. The management of programmes with a budgetary implication (including the choice and management of individual projects) is usually done under the management procedure, whereas the implementation of legislation with a general importance follows the regulatory procedure. The advisory procedure should be followed in any case in which it is considered the most appropriate. In the CCCTB context it is assumed a regulatory committee would be the most appropriate.
13. The committees each adopt their own Rules of Procedure on the proposal of the chairman, which are based on a model, called Standard Rules of Procedure, adopted by the Commission on 31 January 2001 (published in the OJ C 38/3 of 06.02.2001, p. 3).

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<sup>6</sup> See Report from the Commission on the working committees during 2005 (SEC(2006) 1065), on 9 August 2006), p. 2.

14. Comitology committees should be distinguished from other committees and groups of experts set up by the Commission to assist it in exercising its right of initiative or in carrying out monitoring, coordination or cooperation tasks with the Member States.
15. To improve transparency of how comitology committees work Article 7 (5) of the Comitology Decision provides that the Commission has to publish a register giving the references of all documents sent to the European Parliament under comitology procedures. The European Parliament only receives these documents if the basic instrument was adopted under the co-decision procedure.
16. Notwithstanding the transparency provided by Article 7 (5) in 2006 an amendment was made to the 1999 Comitology Decision, after a concern that there was a substantial democratic deficit in the process of comitology due to the almost non-existent part played by the European Parliament. Council Decision 2006/512/EC set up a new procedure which could be used in delegated decision-making. It introduced the 'Regulatory Procedure with Scrutiny' which could be used on non-essential elements of a basic legal act adopted under the co-decision procedure which is not the case for taxation. The European Parliament obtains a right of veto on the substance of such implementing measures and therefore greatly improves its control powers over the implementing powers conferred on the Commission by comitology procedures.

### **III. Regulatory procedure**

17. Pursuant to Article 2 (b) of the Comitology Decision, the regulatory procedure is prescribed in the case of measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants and in adapting or updating non-essential provisions of a basic instrument.
18. Under the regulatory procedure (Article 5 (2) of the Comitology Decision) the Commission has to submit to the committee a draft of the measure to be taken. The chairmen of the committee (a representative of the Commission) can lay down a time-limit according to the urgency of the matter, within which the committee has to deliver its opinion on the draft. The Commission can adopt the measure only if it obtains an opinion of the committee by qualified majority that is in accordance with the draft measure.
19. In the absence of this approval (measures envisaged are not in accordance with the opinion of the committee or no opinion delivered), the Commission has to refer back the proposed measure to the Council without delay and has to inform the European Parliament. The Council takes a decision by qualified majority within a period to be laid down in the basic instrument but which must in no case exceed three months from the date of referral to the Council. If within that period the Council has indicated by qualified majority, that it opposes the proposal, the Commission has to re-examine it. It can submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty. However, if the Council does not take a decision within the time limit (neither adoption of the implementing act nor indication of opposition to the proposal by qualified majority), the Commission can adopt the measure.
20. Under the regulatory procedure a qualified majority of the votes of the committee members, as defined in Article 205(2), (4) of the Treaty, has to be obtained in order to

deliver an opinion (positive or negative). The votes of the representatives of the MS within the Committee must be weighted in the manner set out in that Article. The Chairman is not allowed to vote.

21. As already noted, the procedure described above is to be applied in all circumstances in which the legislator confers implementing powers on the Commission, irrespective of the procedure governing the adoption of the basic instrument. That is to say, the rules governing the exercise of implementing powers remain the same whether the basic instrument is adopted under the co-decision procedure or by the Council alone acting by unanimity. One example in the area of DG TAXUD is the 'Committee on Excise Duties' (Article 24 of Council Directive 92/12/EEC of 25 February 1992). Another is the 'Committee of Recovery' (Article 20 of Council Directive 76/308/EEC of 15 March 1976).<sup>7</sup>

#### **IV. Comitology procedure in the CCCTB Directive**

22. Only implementing measures with regard to basic rules which are already laid down in the Directive can be referred to the comitology procedure. It must be described in the basic Directive for which measures which implementation rights are delegated to the comitology procedure. In the CCCTB context the comitology procedure could be envisaged to be used for common interpretation of terms, for implementing detailed rules on basic provisions laid down in the basic Directive and for detailed administrative rules. Such measures could not introduce new provisions and therefore it appears that the comitology procedure could not be used for a general annual update of the Directive.
23. The measures agreed via the comitology procedure could take the form of a Commission Regulation, Commission Directive or Commission Decision. In the CCCTB context the most appropriate appears to be a Commission Directive. In this case the constitutional constraints (involvement of Member State parliaments regarding scrutiny) raised by some Member State experts should be met because the measure agreed via the comitology procedure would require implementation by Member States in the same way as the basic Directive.

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<sup>7</sup> Examples in other policy areas in which the Council acts by unanimity area, such as culture, are Decision 508/00/EC (Article 5); Decision 1999/311/EC (Article 7); Decision 1904/2006/EC (Article 9).