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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the working of committees in 2023

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1. INTRODUCTION

The Commission presents its annual report on the working of committees in 2023 in line with Article 10(2) of Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[1] (the 'Comitology Regulation').

The report gives an overview of developments in 2023 in the 'comitology' system, which refers to the committees that the Commission consults on draft implementing acts. These committees are composed of Member States' representatives and chaired by the Commission. They follow different operating procedures depending on the relevant basic legal act empowering the Commission to adopt implementing acts (see Table II).

The report provides a summary of the committees' activities. It is accompanied by a **staff working document** containing detailed statistics on the work of the individual committees for each policy sector[2]. It highlights the main changes and trends observed on an annual basis, presenting overall figures on meetings, written procedures, opinions delivered (i.e. positive, negative or no opinion) and acts adopted. It also provides an overview of cases referred to the appeal committee and the exercise of the right of scrutiny by the European Parliament and the Council under Article 11 of the Comitology Regulation. Information is also provided on the measures adopted under the regulatory procedure with scrutiny.

2. OVERVIEW OF DEVELOPMENTS IN THE COMITOLOGY SYSTEM IN 2023

2.1. General developments

In 2023, comitology committees continued to operate under the procedures set out in the Comitology Regulation, i.e. the advisory procedure (Article 4) and the examination procedure (Article 5), as well as the regulatory procedure with scrutiny set out in Article 5a[3] of the Comitology Decision[4].

All meetings, regardless of their format (in person, remote or hybrid), are listed as meetings in the Comitology Register[5], and the summary record specifies the format of the meeting.

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1 OJ L 55, 28.2.2011, p. 13.
2 As covered by the Commission departments dealing with the respective policy areas.
3 For further details on the use of this procedure, see Section 3.5
4 Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).
5 https://ec.europa.eu/transparency/comitology-register/screen/home

As to the alignment of acts still referring to the regulatory procedure with scrutiny to the legal framework introduced by the Treaty of Lisbon, in 2023, interinstitutional discussions on the Commission's proposal[6] did not achieve progress towards aligning the remaining basic acts.

As regards the Commission proposal of 14 February 2017[7] aiming to amend the Comitology Regulation concerning the appeal committee, and notably to address 'no opinion' situations in sensitive areas[8], no progress was possible in 2023, given that the respective positions of the European Parliament and the Council (the 'co-legislators') remained far apart.

The Commission continued to make draft texts for important implementing acts public for a 4-week period, allowing stakeholders to submit comments. In 2023, 73 draft implementing acts were published for public feedback on the 'Have your say' website[9], which is almost identical to the 2022 figure (72).

2.2. Case-law developments

As regards the transparency of the work of comitology committees, in case T-201/21 (*Covington & Van Vooren vs European Commission*), the General Court upheld the line it set out the previous year in joined cases T-371/20 and T-554/20 (*Pollinis France* v *Commission*[10], both cases currently under appeal). The General Court was invited again to examine the Commission's refusal to grant access to documents (under Regulation (EC) No 1049/2001[11]) that indicate individual votes of the Member States cast in the context of a comitology committee. In its judgment of 14 June 2023, the General Court decided that votes by Member States within a comitology committee must be considered as being cast 'as part of deliberation and preliminary consultations' within the Commission concerning the draft implementing act in question. Therefore, the exception to access to documents laid down in the second subparagraph of Article 4(3)[12] of Regulation 1049/2001 is applicable to documents reflecting individual votes of the Member States. The General Court, however, took the view that the reasons put forward in the contested decision by the Commission could not justify, in the circumstances of that case, the application of the exception laid down in the second subparagraph of Article 4(3) of Regulation 1049/2001. In the view of the Court, it could not be demonstrated that

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6 Proposal for a Regulation of the European Parliament and of the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union, COM (2016) 799 final.

7 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 182/2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM (2017) 085 final).

8 The Commission has proposed targeted amendments to the Comitology Regulation to avoid the occurrence of a situation where it is legally obliged to take an authorisation decision in the absence of a qualified majority of the Member States taking a position (either in favour or against) in the committee/appeal committee. Such a 'no opinion' situation is in the Commission's view particularly problematic when it concerns politically sensitive matters of direct impact on citizens and businesses, for instance in the field of health and safety of humans, animals or plants.

9 https://ec.europa.eu/info/law/better-regulation/have-your-say_en

10 T-371/20 and T-554/20, *Pollinis France* v *Commission*, ECLI:EU:T:2022:556.

11 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

12 '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.'

disclosure of the requested documents would risk to seriously undermine the decision-making process in question. The General Court annulled the decision refusing access to the requested document. The Commission subsequently lodged an appeal against the judgment.

In its judgment of 28 February 2023 in case C-695/20 *(Fenix International Ltd vs Commissioner for her Majesty's Revenue and Customs*), the Court of Justice made two observations of general application on implementing powers. The case concerned a request for a preliminary ruling on the validity of Article 9a(1) of Council Implementing Regulation No 282/2011, based on whether or not the Council supplemented or amended Article 28 of the VAT Directive 2006/112/EC[13], thus exceeding the implementing powers conferred on it by Article 397 of that Directive, under Article 291(2) of the Treaty on the Functioning of the European Union (TFEU). First, the Court recalled that when it comes to the use of Council implementing powers, Article 291(2) TFEU requires a detailed statement of the reasons why that institution is entrusted with adopting the act in question. Second, it noted that the considerations relating to the limits of the Commission's implementing powers are also valid where such powers are conferred on the Council, given that Article 291(2) TFEU draws no distinction as to the nature and scope of implementing powers based on the institution on which they are conferred. The Court of Justice noted that the implementing powers conferred on the Commission or the Council under Article 291(2) TFEU entail, in essence, the power to adopt measures that are necessary or appropriate for the uniform implementation of the provisions of the legislative act on the basis of which they are adopted and which merely specify the content of that act, in compliance with the essential general aims pursued by that act, without amending or supplementing it, in its essential or even non-essential elements[14]. The Court ruled that the contested implementing regulation did not breach any of these principles and could therefore be upheld as valid.

3. OVERVIEW OF ACTIVITIES

The figures indicated in the following sections are all based on the findings presented in detail in the accompanying staff working document.

3.1. Number of committees

This report focuses exclusively on comitology committees, which have been set up by the legislator to assist the Commission in its exercise of the implementing powers that have been conferred upon it by basic legal acts. Other entities, in particular expert groups set up by the Commission itself, are not covered in this report**.**

Table I shows the number of comitology committees that existed during the period of 1 January to 31 December 2023[15], with the figures for the previous year added for comparison.

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13 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 11.12.2006, p. 1.

14 The same principles on the limits of implementing powers of the Commission were also reiterated in the Court judgments of 16 March 2023, Saatgut-Treuhandverwaltung (KWS Meridian), C 522/21, ECLI:EU:C:2023:218, paragraph 35, and of 22 March 2023, Tazzetti v Commission (joined cases T-825/19 and T-826/19), ECLI:EU:T:2023:148, paragraphs 156-157.

15 Some committees existed only during part of the year depending on the exact start/end of the validity of their basic legal act.

TABLE I — TOTAL NUMBER OF COMMITTEES

Commission department	2022	2023
AGRI (Agriculture and Rural Development)	12	11
BUDG (Budget)	2	2
CLIMA (Climate Action)	5	5
CNECT (Communications Networks, Content and Technology)	15	17
COMP (Competition)	0	2
DEFIS (Defence Industry and Space)	8	10
EAC (Education and Culture)	4	4
ECFIN (Economic and Financial Affairs)	2	2
ECHO (Humanitarian Aid and Civil Protection)	2	2
EMPL (Employment, Social Affairs and Inclusion)	5	5
ENER (Energy)	13	14
ENV (Environment)	26	26
ESTAT (Eurostat)	1	1
FISMA (Financial Stability, Financial Services and Capital Markets Union)	11	10
FPI (Service for Foreign Policy Instruments)	2	1
GROW (Internal Market, Industry, Entrepreneurship and SMEs)	38	40
HERA (Health Emergency Preparedness and Response)	0	1
HOME (Migration and Home Affairs)	18	19
INTPA (International Partnerships)	3	3
JUST (Justice and Consumers)	24	24
MARE (Maritime Affairs and Fisheries)	3	3
MOVE (Mobility and Transport)	31	33
NEAR (Neighbourhood and Enlargement Negotiations)	2	2
OLAF (European Anti-Fraud Office)	1	1
REFORM (Structural Reform Support)	1	1
REGIO (Regional and Urban Policy)	2	2
RTD (Research and Innovation)	17	17
SANTE (Health and Food Safety)	33	32
SG (Secretariat-General) *	3	4
TAXUD (Taxation and Customs Union)	26	27
TRADE (Trade)	12	13
TOTAL	**322**	**334**

** Including the appeal committee* [16]

In 2023, there were **334 comitology committees**, including committee configurations[17]. This represents a small increase in the number of committees as compared to 2022 (when there were 322 comitology committees), reflecting the establishment of new committees by legislation which entered into force in 2023.

16 The appeal committee is registered in the Comitology Register as a committee under the responsibility of the Secretariat-General. In practice, however, it is managed by the departments concerned.

17 In a few basic acts the legislator has provided for specific configurations of the committee. These are presented individually in the staff working document and each of them is counted separately into the overall figure of committees.

Table II shows a breakdown of the committees in 2023 by type of procedure under which they operated (i.e. advisory procedure, examination procedure, regulatory procedure with scrutiny). Committees with multiple procedures are indicated separately.

TABLE II — NUMBER OF COMMITTEES BY PROCEDURE

Commission department	Type of procedure				
	Advisory	Examination	Regulatory with scrutiny	Multiple procedures	TOTAL
AGRI	0	8	0	3	11
BUDG	0	1	0	1	2
CLIMA	0	1	0	4	5
CNECT	1	10	0	6	17
COMP	1	0	0	1	2
DEFIS	0	3	0	7	10
EAC	0	3	0	1	4
ECFIN	0	1	0	1	2
ECHO	0	2	0	0	2
EMPL	1	1	1	2	5
ENER	2	8	0	4	14
ENV	0	13	1	12	26
ESTAT	0	0	0	1	1
FISMA	0	4	2	4	10
FPI	0	1	0	0	1
GROW	2	13	2	23	40
HERA	0	1	0	0	1
HOME	1	15	0	3	19
INTPA	0	3	0	0	3
JUST	7	12	0	5	24
MARE	0	2	0	1	3
MOVE	3	14	1	15	33
NEAR	0	2	0	0	2
OLAF	0	1	0	0	1
REFORM	1	0	0	0	1
REGIO	0	0	0	2	2
RTD	0	3	0	14	17
SANTE	0	12	0	20	32
SG*	0	3	0	1	4
TAXUD	0	11	0	16	27
TRADE	3	5	0	5	13
TOTAL:	22	153	7	152	**334**

* *Including the appeal committee*

3.2. Number of meetings and written procedures

The intensity of committees' activity is primarily defined by the number of committee meetings held and written procedures[18] conducted. These are shown in Table III.

TABLE III — NUMBER OF MEETINGS AND WRITTEN PROCEDURES

Commission department	Number of committees	Meetings		Written procedures	
		2022	2023	2022	2023
AGRI	11	100	77	52	1
BUDG	2	4	4	0	0
CLIMA	5	5	9	3	2
CNECT	17	15	24	30	19
COMP	2	0	7	0	1
DEFIS	10	46	50	7	13
EAC	4	11	10	17	15
ECFIN	2	14	18	0	0
ECHO	2	7	3	12	2
EMPL	5	0	1	0	0
ENER	14	18	20	8	8
ENV	26	23	23	10	7
ESTAT	1	3	4	7	4
FISMA	10	10	6	23	15
FPI	1	9	3	6	0
GROW	40	30	28	78	38
HERA	1	0	0	0	0
HOME	19	49	42	60	15
INTPA	3	18	21	14	8
JUST	24	21	13	6	4
MARE	3	3	5	10	7
MOVE	33	40	41	20	17
NEAR	2	19	11	48	17
OLAF	1	0	0	0	0
REFORM	1	1	0	2	1
REGIO	2	3	2	3	3
RTD	17	62	43	355	223
SANTE	32	95	98	813	769
SG*	4	12	10	6	0
TAXUD	27	31	48	36	33
TRADE	13	24	29	49	20
TOTAL:	**334**	**673**	**650**	**1 675**	**1 242**

** Including meetings/written procedures of the appeal committee*

There were **650 meetings** in 2023, which is slightly less than in 2022 (when there were 673 meetings), and **1 242 written procedures**, which is significantly lower than the year before (when there were 1 675 procedures).

[18] Committee voting can take place at a regular committee meeting or, in duly justified cases, by written procedure, in line with Article 3(5) of the Comitology Regulation.

3.3. Number of opinions and implementing acts

This report also gives an indication of the specific output of the committees, which is another important indicator of the level of activity.

TABLE IV — NUMBER OF OPINIONS AND IMPLEMENTING ACTS ADOPTED[19]

Commission department	Opinions[20]		Implementing acts adopted		Parliament resolutions /Council decisions (Art. 11)
	2022	2023	2022	2023	2023
AGRI	103	102	100	102	0
BUDG	0	0	0	0	0
CLIMA	4	11	5	11	0
CNECT	31	26	30	23	0
COMP	0	2	0	3	0
DEFIS	12	19	16	19	0
EAC	21	20	24	17	0
ECFIN	17	25	17	25	0
ECHO	13	3	13	4	0
EMPL	0	2	0	2	0
ENER	30	13	21	9	0
ENV	25	26	22	17	0
ESTAT	10	15	9	14	0
FISMA	25	14	22	10	0
FPI	5	0	4	0	0
GROW	85	63	73	67	0
HERA	0	0	0	0	0
HOME	58	62	49	68	0
INTPA	106	118	104	118	0
JUST	13	4	9	4	0
MARE	13	10	19	10	0
MOVE	48	44	55	40	0
NEAR	110	37	108	37	0
OLAF	0	0	0	0	0
REFORM	2	1	1	1	0
REGIO	3	3	5	3	0
RTD	354	223	333	213	0
SANTE	819	1041	907	967	8 (European Parliament)
SG*	13	22	0	0	0
TAXUD	43	52	40	45	0
TRADE	85	81	86	87	0
TOTAL:	**2 048**	**2 039**	**2 072**	**1 916**	**8**

**Including opinions delivered by the appeal committee. To avoid double-counting, adopted implementing acts passing through the appeal committee are counted towards the first-level committees in the respective policy areas. See also Section 3.4 and Table V.*

[19] As regards adopted implementing acts, the indication of Commission departments (policy areas) means that the acts in question were prepared (discussed and/or voted on) in a committee managed by the respective Commission department; in some cases the actual adoption of the act was formally ensured by another Commission department.

[20] A vote resulting in 'no opinion' is counted in the total number of opinions as this is one possible outcome in the committee.

Table IV shows overall figures on the formal opinions delivered by the committees and the subsequent implementing acts adopted by the Commission[21]. It also indicates the cases where either the European Parliament or the Council have exercised their right of scrutiny under Article 11 of the Comitology Regulation.

The committees delivered **2 039 opinions**[22] in 2023, which is a small decrease compared with 2022 (2048). Similarly, the **1 916 implementing acts** adopted following a committee procedure were fewer than in the previous year (2072).

The European Parliament and the Council have a right of scrutiny under Article 11 of the Comitology Regulation. In 2023, the European Parliament adopted eight resolutions based on Article 11 of the Comitology Regulation, all of which concerned acts by DG SANTE. The Council did not exercise its right to oppose a draft measure under this provision in 2023.

3.4. Meetings of the appeal committee

As shown in Table V below, the appeal committee met 10 times during 2023, and discussed 22 draft implementing acts which the Commission referred to it. Voting at the meetings in all cases and not using written procedures, it delivered a 'no opinion' in all 22 cases[23]. The Commission adopted all 22 implementing acts following the appeal committee vote, with 3 of them adopted in 2024.

TABLE V — ACTIVITY OF THE APPEAL COMMITTEE

Commission department	Number of meetings/written consultations of the appeal committee		Number of opinions[24] of the appeal committee		Number of acts adopted following an opinion of the appeal committee	
	2022	2023	2022	2023	2022	2023
MOVE	0/0	1(0)	0 (0)	1 (1)	0	1
SANTE	10/6	9(0)	12 (12)	21 (21)	10	18
TRADE	1/ 0	0	1 (1)	0	1	0
TOTAL:	**11/6**	**10(0)**	**13 (13)**	**22 (22)**	**11**	**19**

21 The number of opinions and implementing acts/measures in any given year can differ; the reasons for this are explained in the introduction to the accompanying staff working document.

22 The overwhelming majority of the votes in the committees were positive, whereas a 'no opinion' was delivered in 31 cases (including those eventually referred to the appeal committee). There was 1 negative vote delivered (on labelling requirements of the novel foods α-cyclodextrin and γ-cyclodextrinand) and consequently the draft act was withdrawn by the Commission.

23 Further details are available in the accompanying staff working document.

24 The term 'opinion' also includes the scenario where the formal outcome is a 'no opinion' meaning that there is no required majority in either sense. The number of 'no opinions' is indicated in parentheses.

3.5. Use of the regulatory procedure with scrutiny

The Comitology Regulation maintained the effects of the regulatory procedure with scrutiny for the purposes of existing basic legal acts referring to it[25]. This procedure can no longer be introduced into new legislation, but it still appears in many existing basic legal acts and will continue to apply under those acts until the respective empowerments have been aligned to empowerments for either delegated or implementing acts.

In 2023, 57 measures were adopted under the regulatory procedure with scrutiny (see Table VI), which is less than in 2022 (when 68 measures were adopted). The right to oppose acts under the regulatory procedure with scrutiny was used once in 2023, by the European Parliament. For comparison, in 2022, the co-legislators did not use this right.

TABLE VI — NUMBER OF MEASURES ADOPTED ACCORDING TO THE REGULATORY PROCEDURE WITH SCRUTINY

Commission department	Regulatory procedure with scrutiny – measures adopted	European Parliament opposed adoption of draft measures	Council opposed adoption of draft measures
AGRI	0	0	0
BUDG	0	0	0
CLIMA	0	0	0
CNECT	0	0	0
COMP	0	0	0
DEFIS	0	0	0
EAC	0	0	0
ECHO	0	0	0
ECON	0	0	0
EMPL	0	0	0
ENER	1	0	0
ENV	5	0	0
ESTAT	0	0	0
FISMA	4	0	0
FPI	0	0	0
GROW	7	0	0
HERA	0	0	0
HOME	0	0	0
INTPA	0	0	0
JUST	0	0	0
MARE	0	0	0
MOVE	0	0	0
NEAR	0	0	0
OLAF	0	0	0
REFORM	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANTE	40	1	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL	**57**	**1**	**0**

[25] Article 12, second paragraph of the Comitology Regulation.

4. CONCLUSION

The committees continued to work in 2023 at a similar level of intensity as the previous year. There were 334 committees, which held 650 meetings, carried out 1 242 written procedures and delivered 2 039 opinions, leading to the adoption of 1 916 implementing acts and 57 measures under the regulatory procedure with scrutiny. Enabling Member States to exercise their control powers in line with the Comitology Regulation, the committees provide valuable assistance to the Commission in exercising the implementing powers conferred on it by the co-legislators.

The Commission invites both the European Parliament and the Council to take note of this report.