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REPORT FROM THE COMMISSION

ON THE WORKING OF COMMITTEES DURING 2018

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In accordance 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 Commission hereby presents the annual report on the working of committees for 2018.

This report gives an overview of developments in the comitology system in 2018 and a summary of the committees' activities. It is accompanied by a staff working document containing detailed statistics on the work of the individual committees.

1. OVERVIEW OF DEVELOPMENTS IN THE COMITOLOGY SYSTEM IN 2018

1.1. General development

As described in the 2013 annnual report[2], all comitology procedures provided for in the 'old' Comitology Decision[3], with the exception of the regulatory procedure with scrutiny, were automatically adapted to the new comitology procedures provided for in the Comitology Regulation.

In 2018, the comitology committees were therefore operating under the procedures set out in the Comitology Regulation, i.e. advisory (Article 4) and examination (Article 5), as well as under the regulatory procedure with scrutiny set out in Article 5a of the Comitology Decision.

The Interinstitutional Agreement on Better Law-Making of 13 April 2016[4] recalls, in its point 27, the need to align the regulatory procedure with scrutiny:

'The three institutions acknowledge the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. The Commission will propose that latter alignment by the end of 2016.'

In line with this commitment, the Commission adopted a proposal for the alignment of the basic acts providing for the regulatory procedure with scrutiny to delegated and implementing acts[5]. It also adopted a second proposal, dealing specifically with the alignment of basic acts

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1 Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

2 Report from the Commission on the working of committees during 2013 (COM(2014)572 final).

3 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), as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11) (Consolidated version in OJ C 255, 21.10.2006, p. 4).

4 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

5 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).

in the field of justice[6]. The interinstitutional negotiations on the first file have been partially concluded. The legislator agreed to the alignment of 64 of the basic acts concerned[7], while negotiations on the remaining acts and on the acts in the area of justice will continue. Where alignment takes place from the regulatory procedure with scrutiny to delegated acts the respective committees will no longer play a role and the respective delegated acts will in the future be prepared with the help of expert groups.

The Commission on 26 February 2016 adopted a Report on the implementation of Regulation (EU) 182/2011[8]. In this report, the Commission concluded that the overall legal framework for comitology is functioning well. However, it also pointed at the time to the political problem of 'no opinion' outcomes especially in a few very sensitive areas such as the authorisation of genetically modified organisms. Subsequently, the Commission on 14 February 2017 adopted a proposal for a Regulation of the European Parliament and of the Council amending the Comitology Regulation (EU) No 182/2011[9]. This proposal puts forward a number of targeted changes to the functioning of the appeal committee to address no opinion situations in sensitive areas. This file, however, is currently blocked in interinstitutional negotiations.

Negotiations between the three institutions have been concluded on non-binding criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union, so the delineation between delegated and implementing acts. The final text of the delineation criteria has been published in the Official Journal on 3 July 2019[10].

In its Communication 'Better regulation for better results' of May 2015, the Commission committed that draft texts for delegated acts and drafts for important implementing acts will be made public for a four weeks feedback period, allowing stakeholders to submit comments. In 2018, 165 such draft acts were published for public feedback on the Commission's 'Have your say' website[11].

1.2. Development of case law

In its judgment of 13 December 2018 in Joined Cases T- 339/16, T- 352/16 et T- 391/16, the General Court dealt with the question of essential elements of the basic act. The Court analysed whether limits on car emissions values were considered an essential element of the basic act which the Commission was not empowered to amend, even though those limits were laid down in an annex to the basic act. In the particular case at hand, the General Court looked into the recitals and enacting terms of the basis act and found that the emission limits laid down in an annex to the basic act were an essential, and 'even a central element of the act', because the purpose of all the other provisions of that act was to ensure respect of those limits, and there was no explicit provision empowering the Commission to amend them.

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6 Proposal for a Regulation of the European Parliament and of the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the Functioning of the European Union (COM(2016)798).

7 Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 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 (OJ L 198, 25.7.2019, p. 241).

8 Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) 182/2011 (COM(2016)92).

9 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).

10 Interinstitutional Agreement on the Non-Binding Criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union (OJ C 223, 3.7.2019, p. 1).

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

2. OVERVIEW OF ACTIVITIES

2.1. Number of committees and meetings

It is important to distinguish between the comitology committees on the one hand, and other entities, in particular 'expert groups' created by the Commission itself, on the other. The latter provide expertise to the Commission[12] in preparing and implementing policy as well as delegated acts, whereas comitology committees assist the Commission in the exercise of the implementing powers that have been conferred upon it by basic legal acts. This report focuses exclusively on comitology committees. The number of active comitology committees in the period 1 January to 31 December 2018 was calculated by sector of activity (see Table I). The figures for the previous year (on 31 December 2017) are also given for purposes of comparison. Sections and configurations are not counted separately as these belong to a parent committee.

TABLE I — TOTAL NUMBER OF COMMITTEES

Policy sector	2017	2018
AGRI (Agriculture and Rural Development	12	11
BUDG (Budget)	2	2
CLIMA (Climate Action)	5	5
CNECT (Communications Networks, Content and Technology)	7	7
DEVCO (International Cooperation and Development)	5	5
DIGIT (Informatics)	1	1
EAC (Education and Culture)	2	2
ECFIN (Economic and Financial Affairs)	1	1
ECHO (Humanitarian Aid and Civil Protection)	2	2
EMPL (Employment, Social Affairs and Inclusion)	5	5
ENER (Energy)	13	13
ENV (Environment)	30	30
ESTAT (Eurostat)	4	4
FISMA (Financial Stability, Financial Services and Capital markets Union)	8	8
FPI (Service for Foreign Policy Instruments)	4	4
GROW (Internal Market, Industry, Entrepreneurship and SMEs)	42	44
HOME (Migration and Home Affairs)	13	13
JUST (Justice and Consumers)	23	25
MARE (Maritime Affairs and Fisheries)	3	3
MOVE (Mobility and Transport)	31	31
NEAR (Neighbourhood and Enlargement Negotiations)	3	3
OLAF (European Anti-Fraud Office)	1	1
REGIO (Regional and Urban Policy)	1	1
RTD (Research and Innovation)	5	7
SANTE (Health and Food Safety)	17	17
SG (Secretariat-General)	3*	3*
TAXUD (Taxation and Customs Union)	11	13
TRADE (Trade)	13	14
TOTAL:	**267**	**275**

** Including the appeal committee (for the needs of the comitology register, the appeal committee is registered as a committee under the responsibility of the Secretariat-General; in practice, it is managed by all services concerned).*

In 2018, the comitology committees could generally be broken down according to the type of procedure under which they operated (advisory procedure, examination procedure, regulatory procedure with scrutiny — see Table II). Certain committees which applied multiple procedures have been separated from committees operating under a single procedure.

[12] For more details see: http://ec.europa.eu/transparency/regexpert/index.cfm.

TABLE II — NUMBER OF COMMITTEES BY PROCEDURE

	Type of procedure				
	Advisory	**Examination**	**Regulatory with scrutiny**	**Operates under several procedures**	**TOTAL:**
AGRI	0	6	0	5	11
BUDG	0	1	0	1	2
CLIMA	0	1	0	4	5
CNECT	0	3	0	4	7
DEVCO	0	2	0	3	5
DIGIT	0	0	0	1	1
EAC	0	1	0	1	2
ECFIN	0	0	0	1	1
ECHO	0	1	0	1	2
EMPL	0	0	0	5	5
ENER	3	5	2	3	13
ENV	0	9	5	16	30
ESTAT	0	2	0	2	4
FISMA	0	1	2	5	8
FPI	0	3	0	1	4
GROW	3	11	4	26	44
HOME	2	7	0	3	12
JUST	7	7	4	7	25
MARE	0	1	0	2	3
MOVE	3	8	4	16	31
NEAR	1	1	0	1	3
OLAF	0	1	0	0	1
REGIO	0	0	0	1	1
RTD	0	6	0	1	7
SANTE	0	7	0	10	17
SG	0	2	0	1	3*
TAXUD	1	10	0	2	13
TRADE	3	4	0	7	14
TOTAL:	**23**	**100**	**21**	**130**	**274**

* *Including the appeal committee.*

The number of committees is not the only indicator of activity at comitology level. The *number of meetings* held, as well as the *number of written procedures*[13] used in 2018, also reflects the intensity of work in general, both at sector level and in individual committees (Table III).

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

TABLE III — NUMBER OF MEETINGS AND WRITTEN PROCEDURES

	Number of committees	Meetings		Written procedures	
		2017	2018	2017	2018
AGRI		90	95	17	16
BUDG		4	4	0	1
CLIMA		7	5	2	6
CNECT		17	15	11	12
DEVCO		17	18	9	16
DIGIT		1	2	0	0
EAC		6	6	1	1
ECFIN		3	2	0	0
ECHO		4	4	3	4
EMPL		6	4	1	1
ENER		6	11	5	6
ENV		29	30	13	12
ESTAT		6	5	2	3
FISMA		10	3	18	16
FPI		2	6	0	3
GROW		70	64	34	16
HOME		28	39	29	22
JUST		10	10	5	7
MARE		4	4	10	11
MOVE		54	53	35	31
NEAR		8	9	19	7
OLAF		0	0	0	0
REGIO		1	2	2	0
RTD		57	53	246	218
SANTE		108	100	494	430
SG		8*	6*	1*	0
TAXUD		33	36	29	21
TRADE		27	29	38	24
TOTAL:		**616**	**620**	**1 024**	**880**

** meetings/written procedure of the appeal committee*

2.2. Number of opinions and implementing acts/ measures

As always, this report provides overall figures on the formal *opinions* delivered by the committees and the subsequent *implementing acts*/*measures* adopted by the Commission[14]. These figures quantify the tangible 'output' of the committees (see Table IV).

The European Parliament and the Council have a right of scrutiny under Article 11 of the Comitology Regulation. In 2018, the European Parliament adopted 9 resolutions on the basis of Article 11 of the Comitology Regulation, while the Council has not adopted any such resolution.

[14] It is to be noted that there can be discrepancies between the number of opinions and the number of implementing acts/measures in any given year. The reasons for these are explained in the introduction to the accompanying staff working document.

TABLE IV — NUMBER OF OPINIONS AND IMPLEMENTING ACTS/MEASURES ADOPTED

	Opinions[15]		Implementing Acts adopted		Regulatory procedure with scrutiny - measures adopted	
	2017	**2018**	**2017**	**2018**	**2017**	**2018**
AGRI	142	146	137	145	0	5
BUDG	7	4	5	6	0	0
CLIMA	11	14	3	14	4	1
CNECT	19	19	18	15	0	0
DEVCO	53	67	54	66	0	0
DIGIT	1	1	1	1	0	0
EAC	5	6	4	6	0	0
ECFIN	3	2	3	2	0	0
ECHO	7	6	6	7	0	0
EMPL	7	4	5	5	1	0
ENER	8	7	7	4	0	0
ENV	31	31	16	14	18	11
ESTAT	9	9	4	8	6	3
FISMA	22	18	7	5	0	6
FPI	4	5	2	5	0	0
GROW	104	77	83	53	24	15
HOME	76	74	68	61	0	0
JUST	10	10	6	8	0	0
MARE	20	17	17	15	0	0
MOVE	59	61	50	57	4	11
NEAR	74	86	74	86	0	0
OLAF	0	0	0	0	0	0
REGIO	2	4	0	2	0	0
RTD	248	225	176	159	0	0
SANTE	803	629	753	603	56	38
SG*	16	12	17	11	0	0
TAXUD	79	56	85	57	0	0
TRADE	86	59	86	52	0	0
TOTAL:	**1906**	**1633**	**1687**	**1456**	**113**	**90**

* *Including opinions delivered by the appeal committee and adopted acts.*

2.3. Meetings of the appeal committee

The appeal committee met 6 times during 2018, and discussed 12 draft implementing acts (in the areas of health and consumer policy) which were referred by the Commission. The appeal committee delivered no opinion in all 12 cases. The Commission decided to adopt 11 implementing acts following such no opinion in 2018.

2.4. Use of the regulatory procedure with scrutiny

As mentioned under Section 1, the regulatory procedure with scrutiny has not been affected by the comitology reform of 2011. This procedure can no longer be used in new legislation, but it still appears in many existing basic acts and will continue to apply under those acts until they are aligned. In 2018, 90 measures were adopted according to the regulatory procedure with scrutiny (see Table V). The right to oppose was used once, by the European Parliament. In 2017, by comparison, the right to oppose was also used once.

[15] A vote resulting in 'no opinion' is counted towards the total number of opinions.

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

	Regulatory procedure with scrutiny - measures adopted	European Parliament opposed adoption of draft measures	Council opposed adoption of draft measures
AGRI	5	0	0
BUDG	0	0	0
CLIMA	1	0	0
CNECT	0	0	0
DEVCO	0	0	0
DIGIT	0	0	0
EAC	0	0	0
ECFIN	0	0	0
ECHO	0	0	0
EMPL	0	0	0
ENER	0	0	0
ENV	11	0	0
ESTAT	3	0	0
FISMA	6	0	0
FPI	0	0	0
GROW	15	0	0
HOME	0	0	0
JUST	0	0	0
MARE	0	0	0
MOVE	11	0	0
NEAR	0	0	0
OLAF	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANTE	38	1	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL:	**90**	**1**	**0**

3. DETAILED INFORMATION ON THE ACTIVITIES OF THE COMMITTEES

The working document accompanying this report provides detailed information about the work of the individual committees in 2018, broken down on the basis of the different Commission departments concerned.

4. CONCLUSION

The European Parliament and the Council are invited to take note of this Report.