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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the working of committees in 2021

{SWD(2022) 279 final}

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1. INTRODUCTION

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 Commission hereby presents its annual report on the working of committees in 2021.

The report gives an overview of developments in 2021 in the 'comitology' system, which refers to the committees that the Commission consults on draft implementing acts. They are composed of representatives of all Member States, chaired by the Commission, and they follow different operating procedures depending on the basic act (cf. Table II).

The report provides a summary of the committees' activities and 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, procedures, opinions delivered (i.e. positive, negative or no opinion) and acts adopted. It also gives an overview of cases referred to the appeal committee and of objections from the European Parliament and the Council.

2. OVERVIEW OF DEVELOPMENTS IN THE COMITOLOGY SYSTEM IN 2021

2.1. General developments

The comitology committees were operating in 2021 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[3].

The prolonged pandemics of COVID-19 and the measures to contain it continued to limit the possibility of holding physical meetings of committees set up under the Comitology Regulation. Most committee meetings were therefore still held remotely (online). Remote meetings were treated as normal committee meetings, including for the purposes of the Comitology Register; they are listed as meetings and the summary record specifies that the meeting was held remotely.

As regards other areas beyond the functioning of comitology committees, the Interinstitutional Agreement on Better Law-Making of 13 April 2016[4] recalls in its point 27 the need to align acts still refering to the regulatory procedure with scrutiny to the new legal framework introduced by the Treaty of Lisbon. Interinstitutional discussions continued on

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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 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).

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).

aligning the remaining basic acts, on the basis of the Commission's proposals of 2019 (i.e. general[5] and concerning the area of justice[6]). However, negotiations did not progress in 2021 due to the limitations related to COVID-19.

The Commission proposal of 14 February 2017 on a Regulation of the European Parliament and of the Council amending the Comitology Regulation (EU) No 182/2011 remains pending[7]. This proposal put forward a number of targeted changes to the functioning of the appeal committee to address 'no opinion' situations in sensitive areas. Due to the very different positions of the co-legislators, it was not possible to progress in 2021.

The Commission continues to make draft texts for important delegated and implementing acts public for a 4 weeks period, allowing stakeholders to submit comments. In 2021, 85 draft implementing acts were published for public feedback on the 'Have your say' website[8].

2.2. Case-law developments

As regards case-law in the field of comitology, in its judgment of 27 January in case Republic of Poland v European Commission[9], the General Court provided an interpretation of the transitional provisions on qualified majority voting in the changeover from the Treaty of Nice to the Treaty of Lisbon voting rules. Under Article 3(2) of Protocol 36 of the Treaties, any Member State had the right, during a transitional period up to 31 March 2017, to request the application of the weighted voting system that applied under the Treaty of Nice. The General Court held the view that the Nice Treaty qualified majority (under Article 3(3) of Protocol 36) should still apply, if a Member State requested it before 31 March 2017, when the vote on the act takes place after that date.

In the case referred to the Court, the Commission refused Poland's request to use the weighted voting system because the vote on that Decision would take place after 31 March 2017. The General Court annulled the Commission Implementing Decision and ordered that the Commission adopt a new Implementing Decision to replace the annulled one in accordance with the qualified majority rules under the Treaty of Nice. That new Decision, which the Court ordered to be in place within twelve months from the date of its judgment, was adopted on 30 November 2021[10].

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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 final,

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

9 Judgment of the General Court of 27 January 2021, Case T-699/17, Republic of Poland v European Commission, ECLI:EU:T:2021:44, paragraph 60.

10 Commission Implementing Decision (EU) 2021/2326 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants

3. OVERVIEW OF ACTIVITIES

3.1. Number of committees

This report focuses exclusively on comitology committees which are set up by the legislator to assist the Commission in the 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 presents the number of comitology committees that existed during the period of 1 January to 31 December 2021, with the figures for the previous year added for comparison. These figures were provided by the relevant Commission departments and are taken from the accompanying staff working document.

TABLE I — TOTAL NUMBER OF COMMITTEES

Commission department	2020	2021
AGRI (Agriculture and Rural Development	11	12
BUDG (Budget)	2	2
CLIMA (Climate Action)	5	5
CNECT (Communications Networks, Content and Technology)	9	11
DEFIS (Defence Industry and Space)	5	13
DIGIT (Informatics)	1	1
EAC (Education and Culture)	2	4
ECFIN (Economic and Financial Affairs)	1	2
ECHO (Humanitarian Aid and Civil Protection)	2	2
EMPL (Employment, Social Affairs and Inclusion)	5	6
ENER (Energy)	14	14
ENV (Environment)	27	27
ESTAT (Eurostat)	2	2
FISMA (Financial Stability, Financial Services and Capital Markets Union)	11	11
FPI (Service for Foreign Policy Instruments)	2	1
GROW (Internal Market, Industry, Entrepreneurship and SMEs)	38	39
HOME (Migration and Home Affairs)	19	20
INTPA (International Partnerships)	5	3
JUST (Justice and Consumers)	26	28
MARE (Maritime Affairs and Fisheries)	3	3
MOVE (Mobility and Transport)	32	33
NEAR (Neighbourhood and Enlargement Negotiations)	3	3
OLAF (European Anti-Fraud Office)	1	1
REGIO (Regional and Urban Policy)	1	2
RTD (Research and Innovation)	17	31
SANTE (Health and Food Safety)	34	33
SG (Secretariat-General) *	4	3
TAXUD (Taxation and Customs Union)	26	28
TRADE (Trade)	14	13
TOTAL:	**322**	**353**

** Including the appeal committee* [11]

In 2021, there were 353 comitology committees that existed during the year[12].

[11] 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 all departments concerned.

This number includes all the committee configurations[13] and represents approximately a 10% increase in the number of committees compared to 2020. One particular factor explaining this increase is that 2021 was a transition year during which the new generation of MFF[14] programmes and funds began and new MFF regulations / basic acts entered into force, in most instances repealing the old ones[15]. As a result, in several cases 'old' and 'new' committees existed - for different parts of the year - for such basic acts. Taking into account all cases of committees abolished in the year, the total number of the committees in existence at the end of the year (31 December 2021) was 317, which is very similar to 2020 (322).

TABLE II — NUMBER OF COMMITTEES BY PROCEDURE

Commission department	Type of procedure				
	Advisory	**Examination**	**Regulatory with scrutiny**	**Multiple procedures**	**TOTAL:**
AGRI	0	4	0	8	12
BUDG	0	1	0	1	2
CLIMA	0	1	0	4	5
CNECT	0	6	0	5	11
DEFIS	0	4	0	9	13
DIGIT	0	1	0	0	1
EAC	0	4	0	0	4
ECFIN	0	1	0	1	2
ECHO	0	1	0	1	2
EMPL	1	1	2	3	7
ENER	2	6	1	5	14
ENV	0	8	4	16	27
ESTAT	1	0	0	1	2
FISMA	0	4	2	5	11
FPI	0	1	0	0	1
GROW	3	9	2	26	39
HOME	1	17	0	3	20
INTPA	0	3	0	0	3
JUST	8	11	4	5	28
MARE	0	3	0	1	3
MOVE	3	9	0	21	33
NEAR	1	2	0	1	3
OLAF	0	1	0	0	1
REGIO	0	0	0	2	2
RTD	0	24	0	7	31
SANTE	0	13	0	22	33
SG*	0	2	0	1	3
TAXUD	0	13	0	15	28
TRADE	3	4	0	7	14
TOTAL:	**23**	**154**	**15**	**170**	**353**

* *Including the appeal committee*

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12 This figure - as presented in Table II - indicates the total number of committees that existed in 2021, for the entire year or only part of it. Some committees were abolished during the year; their work output is, however, counted and included in the figures presented in Tables III and IV.

13 In a few basic acts the legislator has provided for specific configurations of the committee.

14 Multiannual Financial Programme (for the 2021-2027 programming period)

15 In certain cases, the repeal is accompanied by a provision [in the new basic act] stating that the new basic act 'should not affect the continuation or modification of actions initiated pursuant to [the old basic act], which shall continue to apply to those actions until their closure'.

Table II shows a breakdown of the committees in 2021 by type of procedure under which they operated (i.e. advisory procedure, examination procedure, regulatory procedure with scrutiny). Committees with multiple procedures have been separated from those operating under a single procedure.

3.2. Number of meetings

The number of committee meetings is one of the indicators of activity at comitology level. Combined with the number of written procedures[16], it reflects the intensity of work, both at sectoral level and in individual committees (see Table III).

TABLE III — NUMBER OF MEETINGS AND WRITTEN PROCEDURES

Commission department	Number of committees	Meetings		Written procedures	
		2020	2021	2020	2021
AGRI	12	79	121	69	104
BUDG	2	1	6	5	2
CLIMA	5	7	5	8	8
CNECT	11	12	13	17	21
DEFIS	13	14	36	6	12
DIGIT	1	2	0	0	0
EAC	4	2	8	1	12
ECFIN	2	5	2	0	0
ECHO	2	8	8	6	8
EMPL	6	3	0	1	0
ENER	14	12	10	3	0
ENV	27	20	24	9	20
ESTAT	2	3	3	11	16
FISMA	11	14	14	14	17
FPI	1	4	3	3	0
GROW	39	35	33	48	62
HOME	20	47	41	38	38
INTPA	3	9	19	51	168
JUST	28	9	30	3	6
MARE	3	0	4	15	16
MOVE	33	44	61	41	37
NEAR	3	7	7	66	41
OLAF	1	0	0	0	0
REGIO	2	1	1	0	7
RTD	31	32	41	275	148
SANTE	33	93	93	678	634
SG*	3	6	6	2	6
TAXUD	28	32	39	26	23
TRADE	14	13	18	73	70
TOTAL:	**353**	**514**	**646**	**1 469**	**1 476**

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

[16] 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.

There were 646 meetings in 2021, which is significantly more than in 2020, with 1 476 written procedures.

3.3. Number of opinions and implementing acts

This report also gives an indication on the tangibe output of the committees. Table IV presents overall figures on the formal opinions delivered by the committees and the subsequent implementing acts adopted by the Commission[17].

TABLE IV — NUMBER OF OPINIONS AND IMPLEMENTING ACTS ADOPTED

Commission department	Opinions[18]		Implementing acts adopted		Parliament resolutions /Council decisions (Art. 11)
	2020	2021	2020	2021	2021
AGRI	102	101	100	100	0
BUDG	3	2	3	1	0
CLIMA	10	9	6	9	0
CNECT	28	43	23	41	0
DEFIS	8	19	7	14	0
DIGIT	1	0	1	0	0
EAC	3	8	3	8	0
ECFIN	10	1	10	0	0
ECHO	8	8	7	9	0
EMPL	3	0	2	0	0
ENER	5	3	1	0	0
ENV	19	24	11	15	0
ESTAT	12	16	12	15	0
FISMA	11	22	12	18	0
FPI	3	0	1	0	0
GROW	61	62	44	31	1 (Council)
HOME	69	67	11	36	0
INTPA	58	168	58	167	0
JUST	3	9	2	8	0
MARE	15	16	16	9	0
MOVE	59	64	59	61	0
NEAR	66	40	65	40	0
OLAF	0	0	0	0	0
REGIO	0	7	0	5	0
RTD	275	149	191	110	0
SANTE	749	818	748	775	10 (Parliament)
SG*	1	2	1	2	0
TAXUD	56	50	54	47	0
TRADE	80	76	81	71	0
TOTAL:	**1718**	**1782**	**1529**	**1592**	**11**

* *Further information on the work/opinions of the appeal committee is provided in TABLE V.*

The committees delivered 1782 opinions in 2021, slightly more than in 2020 (1718), in line with the increased number of committees. The number of implementing acts adopted following a committee procedure, 1592 in 2021, was also a bit higher than in 2020 (1529).

[17] There can be discrepancies between the number of opinions and of implementing acts/measures in any given year. The reasons are explained in the introduction to the accompanying staff working document.

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

The European Parliament and the Council have a right of scrutiny under Article 11 of the Comitology Regulation. In 2021, the European Parliament adopted 10 resolutions[19] on the basis of Article 11 of the Comitology Regulation, all concerning acts of DG SANTE. The Council exercised its right to scrutiny on one occasion[20], concerning an act of DG GROW.

3.4. Meetings of the appeal committee

As indicated in Table V, the appeal committee met six times during 2021, and discussed 12 draft implementing acts which the Commission referred to it. Using written consultations as regards 10 draft acts and voting in a meeting with respect to 2, it delivered a 'no opinion' in 11 cases and a positive opinion in 1 of them[21]. The Commission adopted all 12 implementing acts following the appeal committee.

TABLE V — ACTIVITY OF THE APPEAL COMMITTEE

Commission department	Number of meetings/written consultations of the appeal committee		Number of opinions[22] of the appeal committee		Number of acts adopted following an opinion of the appeal committee	
	2020	2021	2020	2021	2020	2021
MOVE	1	1 / 0	1	1 (0)	1	1
SANTE	3	14 / 14	9	10 (10)	3	10
TRADE	1	1 / 0	1	1 (1)	1	1
TOTAL:	**5**	**16 / 14**	**11**	**12**	**5**	**12**

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 acts referering to it[23]. 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 the respective empowerments are aligned to empowerments for either delegated or implementing acts (as indicated in Section 1.1).

In 2021, 68 measures were adopted according to the regulatory procedure with scrutiny (see Table VI below), which is somewhat higher than in 2020 when that number stood at 55.

The right to oppose acts under the regulatory procedure of scrutiny was used twice in 2021 by the European Parliament and was not used by the Council. For comparison, in 2020, the European Parliament opposed four times, whereas the Council did not use this right.

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19 This list does not include the European Parliament's resolution (2021/2594(RSP)) on the adequate protection of personal data by the United Kingdom, in which it 'objected to the two draft implementing acts' in question, but without specifically basing itself on Article 11 of the Comitology Regulation.

20 Since the entry into force of the Comitology Regulation this was the first occasion the Council used its right of scrutiny by opposing to a draft implementing act of the Commission.

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

22 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.

23 Article 12, second paragraph of the Comitology Regulation.

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
DEFIS	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	6	0	0
ESTAT	3	0	0
FISMA	4	0	0
FPI	0	0	0
GROW	10	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
REGIO	0	0	0
RTD	0	0	0
SANTE	45	2	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL:	**68**	**2**	**0**

4. CONCLUSION

The activity of committees continued in 2021 at levels comparable to previous years, with an increase in the total number of committees and opinions delivered: there were 353 committees, which held 646 meetings, carried out 1476 written procedures and delivered 1782 opinions. They provide valuable assistance to the Commission for exercising the implementing powers conferred on it by the co-legislators.

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