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REPORT FROM THE COMMISSION
ON THE WORKING OF COMMITTEES DURING 2011

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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 powers¹ (the 'Comitology Regulation'), the Commission hereby presents the annual report on the working of committees for 2011.

This report contains an overview of developments in the comitology system in 2011 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 COMITOLGY SYSTEM IN 2011

The Comitology Regulation was adopted by the European Parliament and the Council on 16 February 2011 and entered into force on 1 March 2011. It repealed the Comitology Decision of 1999² and replaced the procedures set out in that Decision by just two procedures (advisory and examination procedures).

1.1. New comitology procedures

Under Article 2 of the Comitology Regulation, the examination procedure is used in particular for (i) measures of general scope and (ii) measures with a potentially major impact (e.g. in taxation or EU agricultural policy), whereas the advisory procedure is generally used for all other implementing measures.

1.1.1 Examination procedure (Article 5 of the Comitology Regulation)

Where the basic act refers to the examination procedure, the committee delivers its opinion on a draft implementing act by qualified majority:

- Where there is a qualified majority in favour of the draft implementing act (positive opinion), the Commission adopts it.
- Where there is a qualified majority against the draft implementing act (negative opinion), the Commission cannot adopt it³. In such cases, the Commission can:

- (1) withdraw the draft implementing act altogether, if it is not deemed necessary;
- (2) if it is deemed necessary, amend the draft implementing act and submit the revised version to the (same) committee within two months of the delivery of the negative opinion; or,
- (3) if it is deemed necessary, refer the same draft to the appeal committee (see below) within one month of the delivery of the negative opinion.

¹ OJ L 55, 28.2.2011, p. 13.

² Council Decision 1999/468/EC of 28 June 1999 (OJ L 184, 17.7.1999, p. 23), as amended by Council Decision 2006/512/EC (OJ C 255, 21.10.2006, p. 4).

³ Except in very exceptional cases set out in Article 7 of the Comitology Regulation.

- Where there is no qualified majority for or against the draft implementing act ('no opinion'), the Commission can choose to adopt the draft implementing act, withdraw the draft implementing act, or amend it and go back to the (same) committee. However, there are certain cases in which the Commission cannot adopt the draft implementing act⁴, namely:
 - (1) where it concerns any of the following sensitive areas: taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures; or,
 - (2) where the basic legal act provides that the draft implementing act may not be adopted if no opinion is delivered; or,
 - (3) where a simple majority of the component members of the committee opposes it.

In those three cases, the Commission has the same options as under a negative opinion.

1.1.2 Advisory procedure (Article 4 of the Comitology Regulation)

Under the advisory procedure, the committee delivers its opinion on a draft implementing act, if necessary, by taking a vote by a simple majority of its component members. The opinion of the committee under the advisory procedure is not legally binding, but the Commission must take the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered, before it decides on the draft implementing act.

1.1.3 Immediately applicable implementing acts ('urgency procedure')

The Comitology Regulation allows a basic act to give the Commission the option of adopting immediately applicable implementing acts on imperative grounds of urgency. This 'urgency procedure' is not a separate comitology procedure, but rather a 'variant' of the examination or advisory procedure.

Under the urgency procedure, the Commission may, without first consulting a committee, adopt an implementing act that applies immediately and remains in force for a period which will not usually exceed six months. Only after adoption (at the latest 14 days after adoption), will the Commission submit the adopted act to the relevant committee in order to obtain its opinion in accordance with the relevant comitology procedure (advisory or examination procedure). Where the examination procedure applies, the Commission must immediately repeal the implementing act concerned if the committee delivers a negative opinion.

1.2 References to former comitology procedures

In order to ensure a smooth transition between the regime provided for in the Comitology Decision and the new comitology regime, the Comitology Regulation provides for automatic adaptation of the old procedures to the new procedures (Article 13). In consequence, all references to the procedures provided for in the Comitology Decision (advisory, management, regulatory and safeguard) are to be understood as references to the corresponding procedures of the Regulation (as of 1 March 2011, the former advisory procedure became the new

⁴ But see footnote no. 3.

advisory procedure, the former management and regulatory procedures became the examination procedure and the former safeguard procedure became the urgency procedure).

The only exception is the regulatory procedure with scrutiny. This procedure continues to apply provisionally (in line with Article 5a of the Comitology Decision) in the basic acts which make reference to it, until those acts are formally amended and adapted to the Lisbon Treaty.

Since 1 March 2011, therefore, the comitology committees have been operating under the procedures set out in the Comitology Regulation: advisory (Article 4 of the Comitology Regulation) and examination (Article 5 of the Comitology Regulation), as well as under the regulatory procedure with scrutiny set out in Article 5a of the ‘old’ Comitology Decision).

1.3 Role of the appeal committee

As part of the examination procedure, the control mechanism established by the Comitology Regulation includes the possibility of referral to an appeal committee. The appeal committee is also a comitology committee, i.e. it is made up of the representatives of the Member States, is chaired by the Commission and applies the same voting rules (qualified majority). Unlike the other comitology committees, however, it is not a permanent body; it is actually a procedural tool, which gives the Member States the opportunity of a second discussion at a higher level of representation. The consequences of voting in the appeal committee are as follows:

- (1) if a positive opinion is given, the Commission adopts the implementing act;
- (2) if no opinion is given, the Commission may adopt the act⁵;
- (3) if a negative opinion is given, the Commission cannot adopt the act.

1.4 Role of the Parliament and the Council

Both legislators must be properly and continuously informed of committee proceedings through the Comitology Register, which has been adapted to the new procedures. Article 10 of the Comitology Regulation specifies which documents must be sent to the EP and Council at the same time as they are sent to the committee members.

The Parliament and Council also have a right of scrutiny over draft implementing acts based on acts adopted under co-decision. This means that, at any stage of the procedure, they can indicate to the Commission that the draft exceeds the implementing powers provided for in the basic act. In such a case, the Commission has to review the draft and inform the Parliament and the Council whether it intends to maintain, amend or withdraw it (Article 11 of the Comitology Regulation).

1.5 New Standard Rules of Procedure for committees

The Comitology Regulation provides for the adoption by the Commission of standard procedural rules (Article 9). The Commission adopted new Standard Rules of Procedure for

⁵ With the exception of definitive multilateral safeguard measures (Article 6(4) of the Comitology Regulation).

comitology committees on 8 July 2011⁶. On this basis, committees are to adopt their individual rules of procedure, by a simple majority of their members, on a proposal from the chair of the committee. Where necessary, existing committees must adapt their rules of procedure to the new standard rules.

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 in preparing and implementing policy⁷, 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 comitology committees on 31 December 2011 was calculated by sector of activity (see Table I). The figures for the previous year (on 31 December 2010) are also given for the purposes of comparison.

TABLE I — TOTAL NUMBER OF COMMITTEES (2011)

Policy sector	2010	2011
Agriculture and Rural Development (AGRI)	14	14
Anti-fraud Office (OLAF)	1	1
Budget (BUDG)	2	2
Climate Action (CLIMA)	4	4
Communication (COMM)	1	1
Development and Cooperation – EuropeAid (DEVCO)	6	6
Economic and Financial Affairs (ECFIN)	1	1
Education and Culture (EAC)	7	7
Employment, Social Affairs and Inclusion (EMPL)	4	4
Energy (ENER)	14	15
Enlargement (ELARG)	4	4
Enterprise and Industry (ENTR)	30	31
Environment (ENV)	32	30
Foreign Policy Instruments Service (FPI)	4	4
Health and Consumer (SANCO)	22	24
Home Affairs (HOME)	10	11
Humanitarian Aid and Civil Protection (ECHO)	2	2
Informatics (DIGIT)	1	1
Information Society and Media (INFSO)	6	7
Internal Market (MARKT)	13	13
Justice (JUST)	13	13
Maritime Affairs and Fisheries (MARE)	4	5
Mobility and Transport (MOVE)	29	29
Regional Policy (REGIO)	1	1
Research (RTD)	6	6
Secretariat-General (SG)	0	2*
Statistics (ESTAT)	8	8
Taxation and Customs Union (TAXUD)	10	11

⁶ OJ C 206, 12.7.2011, p. 11.

⁷ See for more details: <http://ec.europa.eu/transparency/regexpert/faq.cfm?aide=2>.

Trade (TRADE)	10	11
TOTAL:	259	268

* Including the appeal committee (for the needs of the Comitology Register, the appeal committee is registered as a committee under the responsibility of SG; in practice, it is managed by all services concerned).

In 2011, 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). Because certain committees applied multiple procedures, they have been separated from committees operating under a single procedure.

TABLE II — NUMBER OF COMMITTEES BY PROCEDURE (2011)

	Type of procedure				TOTAL:
	Advisory	Examination	Regulatory with scrutiny	Operates under several procedures	
AGRI		11		3	14
BUDG	1	1			2
CLIMA				4	4
COMM		1			1
DEVCO		5		1	6
DIGIT		1			1
EAC	1	2		4	7
ECFIN	1				1
ECHO		1		1	2
ELARG	1	3			4
EMPL	1		2	1	4
ENER	1	8	1	5	14
ENTR	7	4	5	15	31
ENV		5	4	21	30
ESTAT		2		6	8
FPI		4			4
HOME	1	4		6	11
INFSO		3		4	7
JUST	2	1	4	6	13
MARE		5			5
MARKT		1	4	8	13
MOVE	3	4	4	18	29
OLAF		1			1
REGIO				1	1
RTD		5		1	6
SANCO	1	10	1	12	24
SG		2			2*
TAXUD	1	9		1	11
TRADE	2	6		3	11
TOTAL:	23	99	25	121	268

* Including the appeal committee.

The figures indicate that around 37% of the committees (99 out of 268) worked exclusively under the examination procedure, while only about 8% of the committees (23 out of 268) worked exclusively under the advisory procedure. However, most committees (121 out of 268

or 45 %) operated under several procedures. The breakdown by policy sector shows that use of different types of procedures varies from one policy sector to another.

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*⁸ used in 2011 also reflects the intensity of work in general, at sector level and also in individual committees (Table III).

TABLE III — NUMBER OF MEETINGS AND WRITEN PROCEDURES (2011)

	Number of committees	Meetings		Written procedures	
		2010	2011	2010	2011
AGRI	14	148	142	1	3
BUDG	2	4	4	0	0
CLIMA	4	15	14	3	0
COMM	1	2	1	3	4
DEVCO	6	28	17	44	55
DIGIT	1	1	2	0	0
EAC	7	17	18	50	52
ECFIN	1	1	0	0	0
ECHO	2	5	5	29	12
ELARG	4	5	8	15	12
EMPL	4	4	3	10	9
ENER	14	19	13	3	2
ENTR	31	56	56	35	32
ENV	30	48	41	18	16
ESTAT	8	16	14	8	6
FPI	4	5	4	2	3
HOME	11	23	24	23	27
INFSO	7	24	20	13	20
JUST	13	6	6	16	15
MARE	5	11	9	6	11
MARKT	13	34	18	14	12
MOVE	30	60	53	13	12
OLAF	1	2	3	1	1
REGIO	1	9	5	0	5
RTD	6	60	61	174	201
SANCO	24	131	146	278	314
SG	2	-	6*	-	1
TAXUD	11	107	81	0	7
TRADE	11	18	15	7	6
TOTAL:	268	859	783	766	838

* Including 5 meetings of the appeal committee.

⁸ 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.

2.2 Number of opinions and implementing acts/ measures

As with previous reports, this report provides overall figures on the formal *opinions* delivered by the committees and the subsequent *implementing acts/measures* adopted by the Commission⁹. These figures quantify the tangible ‘output’ of the committees (see Table IV). A total of 1 868 *opinions* were delivered by the committees in 2011 (compared with 1 904 in 2010); a total of 1 788 implementing acts/measures were adopted by the Commission (compared with 1 812 in 2010).

TABLE IV — NUMBER OF OPINIONS AND IMPLEMENTING ACTS/MEASURES ADOPTED (2011)

	Opinions	Acts adopted	Measures adopted according to RPS
AGRI	271	271	1
BUDG	1	1	0
CLIMA	10	6	10
COMM	6	5	0
DEVCO	128	128	0
DIGIT	1	1	0
EAC	100	85	0
ECFIN	0	0	0
ECHO	15	16	0
ELARG	58	58	0
EMPL	11	3	0
ENER	15	7	5
ENTR	59	34	25
ENV	55	14	35
ESTAT	11	7	12
FPI	2	1	0
HOME	33	15	1
INFSO	41	40	1
JUST	14	4	0
MARE	23	22	0
MARKT	13	3	3
MOVE	65	49	24
OLAF	0	0	0
REGIO	6	6	0
RTD	206	200	0
SANCO	625	574	46
SG	9*	1	0
TAXUD	84	69	0
TRADE	6	5	0
TOTAL:	1 868	1 625	163

* Including 8 opinions delivered by the appeal committee.

⁹ 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.

2.3 Meetings of the appeal committee

On 29 March 2011, the appeal committee met for the first time in order to adopt its Rules of Procedure¹⁰ in line with Article 3(7) of the Comitology Regulation. The appeal committee met four more times during 2011, and discussed eight draft implementing acts altogether (in the area of Health and Consumers (SANCO)) which were referred by the Commission. In two cases, the appeal committee delivered a positive opinion, in five cases no opinion, and in one case a negative opinion. In the five cases in which no opinion was delivered, the Commission decided to adopt the implementing acts.

2.4 Use of the Regulatory Procedure with Scrutiny (RPS)

As mentioned under 1.2, the RPS procedure 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 several existing basic acts and will continue to apply under those acts until they are formally amended.

The number of implementing measures adopted according to RPS in 2011 stands at 163 (see Table IV).

In 2011, the right of veto was used in two cases:

- In May 2011 the Council opposed the adoption of a draft Commission Directive amending Directive 98/79/EC of the European Parliament and of the Council on in vitro diagnostic medical devices. The draft measure was consequently not adopted. A revised measure was adopted by the Commission on 20 December 2011 (OJ L 341/50 of 22.12.2011).
- In October 2011 the Council opposed the adoption of a draft Commission Directive amending Directive 2009/43/EC of the European Parliament and of the Council as regards the list of defence-related products. The draft measure was consequently not adopted. A revised measure was adopted by the Commission on 22 March 2012 (OJ L 85, 24.3.2012, p. 3).

In 2010, by comparison, the European Parliament made use of the right of veto on draft measures in one case and the Council in two cases.

TABLE V — NUMBER OF IMPLEMENTING MEASURES ADOPTED ACCORDING TO THE REGULATORY PROCEDURE WITH SCRUTINY (RPS) (2011)

	Measures adopted according to RPS	EP opposed adoption of draft measures under RPS	Council opposed adoption of draft measures under RPS
AGRI	1	0	0
BUDG	0	0	0
CLIMA	10	0	0
COMM	0	0	0
DEVCO	0	0	0
DIGIT	0	0	0
EAC	0	0	0
ECFIN	0	0	0

¹⁰ OJ C 183, 24.6.2011, p. 13.

ECHO	0	0	0
ELARG	0	0	0
EMPL	0	0	0
ENER	5	0	0
ENTR	25	0	1
ENV	35	0	0
ESTAT	12	0	0
FPI	0	0	0
HOME	1	0	0
INFSO	1	0	0
JUST	0	0	0
MARE	0	0	0
MARKT	3	0	0
MOVE	24	0	0
OLAF	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANCO	46	0	1
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL:	163	0	2

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 2011, broken down on the basis of the different Commission departments concerned.