

## Amending the Comitology Regulation

When adopting implementing acts, the Commission acts under the scrutiny of the Member States (represented in specialised committees and an appeal committee) following mechanisms set out in the Comitology Regulation. In 2017, the Commission proposed amendments to this Regulation, aimed at eliminating 'no-opinion' deadlocks in the appeal committee and increasing transparency in the procedure. The European Parliament is expected to vote on the proposal during the December plenary session.

### Background: Comitology Regulation and 'no-opinion' deadlocks

EU legislation often empowers the European Commission to adopt implementing acts, on the basis of Article 291 TFEU. The Commission's exercise of this power is scrutinised by the European Parliament, Council and Member States, on the basis of the rules and principles laid down in the [Comitology Regulation \(182/2011\)](#). The most frequently used procedure for Member States' scrutiny is the 'examination procedure', which takes place in specialised '[comitology committees](#)' composed of Member State representatives, and chaired by a representative of the Commission who does not vote. According to the Commission's [annual comitology report for 2018](#) (the latest one available), there were 275 active comitology committees at the end of that year.

The Commission must present draft implementing acts to the appropriate committee for an opinion. If that committee manages to reach a majority for either a negative or positive opinion, the Commission is bound by that opinion and must then adopt the proposed act (in the case of a positive opinion), or may not adopt it (negative opinion). The comitology committees vote on the basis of [qualified majority \(QMV\)](#): i.e. for an opinion (positive or negative) to be adopted, it needs the support of 55 % of Member States (15 out of 27) representing 65 % of the EU population; with an abstention counting as a vote against. If a qualified majority cannot be reached in support of either a positive or negative opinion (for or against the proposed implementing act), the result is a **decision-making deadlock** ('no-opinion scenario'). In [98 % of cases](#), committees do in fact adopt positive opinions, and 'no-opinion' cases thus only concern about 2 % of procedures (as there are hardly any negative opinions). In the case of a negative opinion, the Commission may bring an appeal to the **appeal committee**, established in order to bring comitology decision-making to a higher political level. But here again the QMV rules apply and a 'no-opinion' scenario may arise.

In the 'no-opinion scenario', the Commission is normally empowered to adopt the implementing act (*may*), but is not under a duty to do so. However, in certain cases, under a 'no opinion' scenario, the Commission may not normally adopt implementing acts without first going to the appeal committee. Those are: i) in specific **sensitive areas** (taxation, financial services, protection of the health or safety of humans, animals or plants, and definitive multilateral safeguard measures), ii) if the basic act so provides, and iii) if a simple majority of the component members of the committee oppose the draft.

In the [Commission's](#) view, a no-opinion scenario is particularly problematic when an implementing act 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 (e.g. genetically modified organisms or glyphosate). According to the Commission, 'in 2015 and 2016 it was 'legally obliged to adopt 17 acts which concerned the authorisation of sensitive products and substances such as glyphosate or genetically modified organisms (GMOs), despite Member States being unable to take position either in favour or against the decisions.' This question was addressed by then European Commission President, Jean-Claude Juncker, in his [2016 State of the Union speech](#) when he announced that, 'it is not right that when EU countries cannot decide among themselves whether or not to ban the use of glyphosate in herbicides, the Commission is forced by Parliament and Council to take a decision. So we will change those rules – because that is not democracy.'

## European Commission proposal

On 14 February 2017, the Commission adopted a [proposal](#) to amend the Comitology Regulation aimed at increasing transparency and accountability of the decision-making process leading to the adoption of implementing acts. It considered that the Member States should assume greater responsibility in the decision-making process. It therefore proposed amendments aimed at **improving the functioning of the comitology procedures at the level of the appeal committee** in order to ensure broader political accountability and responsibility for the adoption of politically sensitive implementing acts, but without modifying the comitology framework as such. The main elements of the proposal are as follows:

- **amending the voting rules for the appeal committee** in order to reduce the risk of a no-opinion scenario and to clarify the positions of the Member States. According to the new rules, only those Member States which are present or represented, and which do not abstain, should be considered as participating Member States for the calculation of the qualified majority. Furthermore, in order to ensure that the voting outcome is representative, a vote should only be considered valid if a simple majority of the Member States participate in the vote in the appeal committee (quorum);
- providing for the possibility of a **further referral to the appeal committee at ministerial level** if no opinion is delivered. This aims at transferring the issue to a higher political level, and therefore reducing the risk of no-opinion outcomes at the appeal committee level and making the Member States responsible for taking sensitive decisions;
- increasing the transparency of the comitology procedure by **making public the votes of the Member States' representatives** in the appeal committee;
- enabling the Commission to formally **refer specific cases to the Council** for a non-binding opinion, after a no-opinion outcome in the appeal committee, with a view to obtaining the institution's political orientation on the implications of the no-opinion outcome.

Following the publication of the proposal, the Commission sought [stakeholder feedback](#). Within [Council](#), the proposal was discussed between March and May 2018, but significant reservations of a political and legal nature were raised. A non-paper from 15 Member States was presented, concluding that they remained unconvinced of the necessity and added value of the proposal. On 2 March 2018, the Council Legal Service presented its [opinion](#) on the proposal. It found that determining the level of Member State representation in the regulation, and conferring upon the Council an advisory role in the procedure, would violate the Treaties.

## European Parliament position

Following the opinions of a number of committees, submitted in the previous and current terms, on 1 October 2020, Parliament's Committee on Legal Affairs (JURI) adopted its [report](#). It proposes to oblige Member States' representatives to give reasons for their vote, abstention or for any absence from the vote, and where particularly sensitive areas are concerned (consumer protection, health and safety of humans, animals or plants, or the environment), also case-specific detailed reasons for their vote or abstention. Other amendments concern better accessibility to the [comitology register](#) to increase transparency for citizens, and empowering Parliament and Council to call on the Commission to submit a proposal amending the basic act, where they deem it appropriate to review the implementing powers granted to the Commission.

First-reading report: [2017/0035\(COD\)](#); Committee responsible: JURI; Rapporteur: József Szájer (EPP, Hungary). See also the EPRS [Legislative Train Schedule](#) on this file.

