OPINION

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs


Rapporteur for opinion: Pascal Durand
SHORT JUSTIFICATION

The Committee on Constitutional Affairs adopted the below opinion to the report of the Committee on Legal Affairs on 24 May 2018. However, the Committee on Legal Affairs did not finalise work on this proposal during the previous European Parliament legislature. On 21 October 2019, Parliament decided, in accordance with Rule 240, to resume business on this proposal. Therefore, the Committee on Constitutional Affairs submits the below opinion again to the Committee on Legal Affairs.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation
Recital 2

Text proposed by the Commission
Amendment

(2) The system established by Regulation (EC) No 182/2011 has, overall, proven to work well in practice and struck an appropriate institutional balance as regards the roles of the Commission and the other actors involved. That system should therefore continue to function unchanged except for certain targeted amendments concerning specific aspects of procedure at the level of the appeal committee. These amendments are intended to ensure wider political accountability and ownership of politically sensitive implementing acts without, however, modifying the legal and institutional responsibilities for implementing acts as organised by Regulation (EU) No 182/2011.

Amendment 2

Proposal for a regulation
Recital 3

Text proposed by the Commission

(3) In a number of specific cases, Regulation (EU) No 182/2011 provides for referral to the appeal committee. In practice, the appeal committee has been seized in cases where no qualified majority, either in favour or against, was attained within the committee in the context of the examination procedure and thus no opinion was delivered. In the majority of cases this happened in relation to genetically modified organisms and genetically modified food and feed and plant protection products.

Amendment

(3) In a number of specific cases, Regulation (EU) No 182/2011 provides for referral to the appeal committee. In practice, particularly in relation to genetically modified organisms, genetically modified food and feed and plant protection products, the appeal committee has been seized in cases where no qualified majority, either in favour or against, was attained within the committee in the context of the examination procedure and thus no opinion was delivered. Thus, a very small percentage of the cases subject to the examination procedure are concerned.

Amendment 3

Proposal for a regulation
Recital 6

Text proposed by the Commission

(6) That discretion is, however, significantly reduced in cases relating to the authorisation of products or substances, such as in the area of genetically modified food and feed, as the Commission is obliged to adopt a decision within a reasonable time and cannot abstain from taking a decision.

Amendment

(6) However, in cases relating to the authorisation of products or substances, such as in the area of genetically modified food and feed, the Commission is obliged to adopt a decision within a reasonable time and cannot abstain from taking a decision.

Amendment 4

Proposal for a regulation
Recital 7

Text proposed by the Commission

(7) While the Commission is empowered to decide in such cases, due to the particular sensitivity of the issues at stake, Member States should also fully assume their responsibility in the decision-

Amendment

(7) While the Commission has the competence to decide in such cases, due to the particular sensitivity of the issues at stake, Member States should also assume greater responsibility in the decision-
making process. This, however, is not the case when Member States are not able to reach a qualified majority, due to, amongst others, a significant number of abstentions or non-appearances at the moment of the vote. making process. Where the act concerns the protection of the health or safety of humans, animals or plants, and when, in such cases, Member States are not able to reach a qualified majority in favour of proposals to grant authorisation for a product or substance, that authorisation should be deemed to have been refused.

Amendment 5
Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) In order to increase the added value of the appeal committee its role should therefore be strengthened by providing for the possibility of holding a further meeting of the appeal committee whenever no opinion is delivered. The appropriate level of representation at the further meeting of the appeal committee should be ministerial level, to ensure a political discussion. To allow the organisation of such a further meeting the timeframe for the appeal committee to deliver an opinion should be extended.

Amendment

(8) The role of the appeal committee should therefore be strengthened by providing for the possibility of holding a further meeting of the appeal committee whenever no opinion is delivered. The appropriate level of representation at the further meeting of the appeal committee should preferably be ministerial level, to ensure a political discussion. To allow the organisation of such a further meeting the timeframe for the appeal committee to deliver an opinion should be extended.

Amendment 6
Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The voting rules for the appeal committee should be changed in order to reduce the risk of no opinion being delivered and to provide an incentive for Member State representatives to take a clear position. To this end only 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.

Amendment
deleted

(9) The voting rules for the appeal committee should be changed in order to reduce the risk of no opinion being delivered and to provide an incentive for Member State representatives to take a clear position. To this end only 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.
majority. 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 are participating members of the appeal committee. If the quorum is not reached before expiry of the time-limit for the committee to take a decision, it will be considered that the committee delivered no opinion, as is the case today.

Justification

The change in the voting rules seems inspired by bringing about certain statistical effects rather than increasing Member States' responsibility. Member State representatives may have valid reasons to abstain when voting.

Amendment 7

Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) The Commission should have the possibility, in specific cases, to ask the Council to indicate its views and orientation on the wider implications of the absence of an opinion, including the institutional, legal, political and international implications. The Commission should take account of any position expressed by the Council within 3 months after the referral. In duly justified cases, the Commission may indicate a shorter deadline in the referral.

Amendment

(10) In specific cases, at the request of the Commission, the European Parliament and the Council may decide to express their views on the wider implications of the outcome of the vote in the appeal committee, including the institutional, legal, political and international implications. In such cases, those views should be expressed within 3 months.

Amendment 8

Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) Transparency on the votes of Member State representatives at the appeal committee level should be increased and the individual Member State

Amendment

(11) Transparency should be increased throughout the entire legislative process. In particular, the votes of individual Member State representatives should be
representatives' votes should be made public. Where a basic act concerns the protection of the health or safety of humans, animals or plants, and the draft implementing act for which the basic act provides involves proposing to grant authorisation for a product or a substance, substantive reasons for those votes should be given by each Member State representative. More detailed information should also be given on the composition of committees.

Justification

Transparency should be increased throughout the whole legislative process. Moreover, substantive reasons should be given for certain votes in the interest of a reasoned decision-making process, to increase Member States' political responsibility and bearing in mind possible legal claims.

Amendment 9

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission
(11a) Where sustained difficulties arise in the implementation of a basic act, consideration should be given to reviewing the implementing powers conferred on the Commission in that act.

Amendment

Amendment 10

Proposal for a regulation
Article 1 – paragraph 1 – point 1
Regulation (EU) No 182/2011
Article 3 – paragraph 7 – subparagraph 6

Text proposed by the Commission
Where no opinion is delivered in the appeal committee pursuant to the second subparagraph of Article 6(3), the chair may decide that the appeal committee shall hold a further meeting, at ministerial level. In such cases the appeal committee shall deliver its opinion within 3 months of the

Amendment
Where no opinion is delivered in the appeal committee pursuant to the second subparagraph of Article 6(3), or in the absence of a positive opinion resulting from a vote in the appeal committee pursuant to Article 6(4a) the chair may decide that the appeal committee shall hold
initial date of referral. a further meeting, preferably at ministerial level. In such cases, the appeal committee shall deliver its opinion within 3 months of the initial date of referral.

Amendment 11

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point a
Regulation (EU) No 182/2011
Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

(a) in paragraph 1, the following second subparagraph is added:

“However, only members of the appeal committee who are present or represented at the time of the vote, and do not abstain from voting, shall be considered as participating members of the appeal committee. The majority referred to in Article 5(1) shall be the qualified majority referred to in Article 238(3) (a) TFEU. A vote shall only be considered to be valid if a simple majority of the Member States are participating members.”

Amendment

Justification

The change in the voting rules seems inspired by bringing about certain statistical effects rather than increasing Member States' responsibility. Member State representatives may have valid reasons to abstain when voting.

Amendment 12

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point b
Regulation (EU) No 182/2011
Article 6 – paragraph 3 a

Text proposed by the Commission

3a. Where no opinion is delivered in the appeal committee, the Commission may refer the matter to the Council for an

Amendment

3a. Where no opinion has been delivered by the appeal committee, the Commission may ask the European
opinion indicating its views and orientation on the wider implications of the absence of opinion, including the institutional, legal, political and international implications. The Commission shall take account of any position expressed by the Council within 3 months after the referral. In duly justified cases, the Commission may indicate a shorter deadline in the referral.

Parliament and the Council to express their views on the wider implications of the outcome of the vote in the appeal committee. Those expressions of views shall be delivered within three months.

Amendment 13

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point b a (new)
Regulation (EU) No 182/2011
Article 6 – paragraph 4 a (new)

Text proposed by the Commission
(ba) the following paragraph is inserted:

“4a. By way of derogation from paragraph 3, where the basic act concerns the protection of the health or safety of humans, animals or plants and the draft implementing act for which the basic act provides involves proposing to grant authorisation for a product or substance, the Commission shall, in the absence of a positive opinion resulting from a vote by the majority provided for in Article 6(1), not adopt that draft implementing act and the authorisation shall be deemed to have been refused. This is without prejudice to the right of the Commission to propose a modified draft implementing act concerning the same subject matter.”

Amendment 14

Proposal for a regulation
Article 1 – paragraph 1 – point 3 – point -a (new)
Regulation (EU) No 182/2011
Article 10 – paragraph 1 – point c
Present text

(c) the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong;

Amendment

(-a) in paragraph 1, point (c) is replaced by the following:

"(c) the summary records, together with the lists of the persons present and the authorities and organisations to which those persons belong;"


Justification

Transparency should be increased throughout the entire legislative process. More detailed information should be given on the composition of committees.

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point a

Regulation (EU) No 182/2011

Article 10 – paragraph 1 – point e

Text proposed by the Commission

(e) the voting results including, in the case of the appeal committee, the votes expressed by the representative of each Member State;

Amendment

(e) the voting results, broken down by representative of each Member State, as well as a record of the substantive reasons given by each Member State representative for their vote where the basic act concerns the protection of the health or safety of humans, animals or plants and the draft implementing act for which the basic act provides involves proposing to grant authorisation for a product or a substance;

Justification

Transparency should be increased also at the level of the standing committee. Moreover, substantive reasons should be given for votes in the interest of a reasoned decision-making process, to increase Member States' political responsibility and bearing in mind possible legal claims.

Amendment 16

Proposal for a regulation
Article 1 – paragraph 1 – point 3 – point b
Regulation (EU) No 182/2011

Article 10 – paragraph 5

Text proposed by the Commission

5. The references of all documents referred to in points (a) to (d), (f) and (g) of paragraph 1 as well as the information referred to in points (e) and (h) of that paragraph shall be made public in the register.

Amendment

5. All documents and information referred to in paragraph 1, points (a) to (h), shall be made public in the register.

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 3 a (new)
Regulation (EU) No 182/2011

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

(3 a) In Article 11, the following paragraph is added:

“In addition, where either the European Parliament or the Council considers that the conferral of implementing powers on the Commission in a basic act needs to be reviewed, it may, at any time, call on the Commission to submit a proposal to amend that basic act.”


Justification

Where it appears difficult to obtain a positive opinion of the Member States in similar cases, it may be opportune to review the implementing powers conferred on the Commission.

Amendment 18

Proposal for a regulation

Article 2 – paragraph 1

Text proposed by the Commission

This Regulation shall not apply to pending procedures on which the appeal committee has already delivered an opinion on the

Amendment

This Regulation shall apply to procedures begun after the date of its entry into force.
date of entry into force of this Regulation.
## PROCEDURE – COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Title</th>
<th>Rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers</th>
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<tr>
<td>Committee responsible Date announced in plenary</td>
<td>JURI 1.3.2017</td>
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<tr>
<td>Opinion by Date announced in plenary</td>
<td>AFCO 1.3.2017</td>
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<tr>
<td>Rapporteur Date appointed</td>
<td>Pascal Durand 20.3.2017</td>
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<td>Discussed in committee</td>
<td>3.5.2017 30.5.2017</td>
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<tr>
<td>Date adopted</td>
<td>24.5.2018</td>
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| Result of final vote                                                 | +: 10  
|                                                                      | −: 8  
|                                                                      | 0: 2                                                                                                                          |
| Members present for the final vote                                   | Mercedes Bresso, Richard Corbett, Pascal Durand, Danuta Maria Hübner, Diane James, Ramón Jáuregui Atondo, Jo Leinen, Maite Pagazaurtundúa Ruiz, Markus Pieper, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Claudia Ţapardel, Kazimierz Michał Ujazdowski |
| Substitutes present for the final vote                               | Martina Anderson, Jérôme Lavrilleux, Jiří Pospíšil, Rainer Wieland                                                              |
| Substitutes under Rule 200(2) present for the final vote             | Agnieszka Kozłowska-Rajewicz, Fernando Ruas                                                                                     |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention