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**REPORT FROM THE COMMISSION**  
**on the working of Committees during 2015**

{SWD(2016) 425 final}

# **REPORT FROM THE COMMISSION**

## **ON THE WORKING OF COMMITTEES DURING 2015**

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<sup>1</sup> (the 'Comitology Regulation'), the Commission hereby presents the annual report on the working of committees for 2015.

This report gives an overview of developments in the comitology system in 2015 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 2015**

#### **1.1 General development**

The Commission examined the first 5 years of the implementation of Regulation 182/2011 in a report adopted on 26 February 2016<sup>2</sup>. It concluded that the Regulation has allowed over the last five years the effective use of the Commission's implementing powers under the control of Member States. It further concluded that the existing framework allows for an efficient and constructive cooperation between the Commission and Member States.

As described in the 2013 annual report<sup>3</sup>, all comitology procedures provided for in the 'old' Comitology Decision<sup>4</sup>, with the exception of the regulatory procedure with scrutiny (RPS), were automatically adapted to the new comitology procedures provided for in the Comitology Regulation (Regulation (EU) 182/2011).

In 2015, 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 (RPS) set out in Article 5a of the Comitology Decision.

In accordance with the statement<sup>5</sup> made at the time of adoption of the Comitology Regulation that all the RPS provisions in existing basic acts would be adapted to the criteria laid down in the Treaty, the Commission adopted in 2013, following a preliminary screening exercise in 2012, three proposals<sup>6</sup> to align a total of 200 basic acts to Articles 290 and 291 TFEU. In November 2014, the Commission at the beginning of its new mandate and in the context of a review of pending legislative proposals, decided to withdraw these proposals<sup>7</sup> pending the

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<sup>1</sup> 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).

<sup>2</sup> COM/2016/092 final.

<sup>3</sup> Report from the Commission on the working of committees during 2013, COM(2014)572 final.

<sup>4</sup> 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).

<sup>5</sup> This statement was published in the Official Journal together with Regulation (EU) No 182/2011 (OJ L 55 of 28.2.2011, p. 19).

<sup>6</sup> COM(2013)451, 452 and 751.

<sup>7</sup> OJ C 80, 7.3.2015, p. 17.

outcome of future discussions between the institutions in the context of the Interinstitutional Agreement on Better Law-Making. This led to a new Agreement officially signed on 13 April 2016 which recalls "the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny."<sup>8</sup>

In its Work Programme for 2017<sup>9</sup>, the Commission accordingly announces that it will "propose legislation to align existing acts with the Treaty provisions on delegated and implementing acts, thus phasing out the regulatory procedure with scrutiny" as well its intention to "assess the democratic legitimacy of existing procedures for the adoption of delegated and implementing acts and consider options for changing existing procedures for the adoption of certain secondary acts."

## **1.2 Development of case law**

With its judgment in Case C-88/14, *Commission v. Parliament and Council* (the "Visa reciprocity mechanism" case), on 16 July 2015, the Court came back to the question of delineation between delegated and implementing acts. With its application in this case, the Commission sought the annulment of the revised reciprocity mechanism in so far as the provisions confer on the Commission a delegated power in accordance with article 290(1) TFEU rather than an implementing power within the meaning of article 291(2) TFEU. The Commission considered the latter to be more appropriate in this case, given the tasks at hand (the amendment of an annex following a visa requirement introduced by a third party). The Court dismissed the Commission's action and argued that neither the existence nor the extent of the discretion conferred on the Commission by a legislative act is relevant for determining whether the act to be adopted by the Commission should be a delegated or an implementing act.

In its judgment in Joined Cases T-261/13 and T-86/14, *Netherlands v. Commission* ("Eurostat") of 23 September 2015, the Court annulled provisions in Commission implementing measures adopted following the regulatory procedure with scrutiny. It recalled that the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves. The Kingdom of the Netherlands argued in this case that the adoption of implementing measures under Regulation (EC) No 2494/95 and of measures to implement those implementing measures, require the application of the regulatory procedure with scrutiny, while the Commission's implementing measures in question provided for Eurostat to establish and update methodological frameworks without being required to follow the regulatory procedure with scrutiny. The Commission argued that the methodological frameworks were not meant to be binding upon Member States and did not themselves constitute implementing measures as referred to in Regulation (EC) No 2494/95. The Court decided that such frameworks constitute implementing measures which must be complied with in order to give practical effect to the applicable regulations and to ensure the comparability of harmonised indices of consumer prices. As such, the contested provisions should have provided for the application of the regulatory procedure with scrutiny for the adoption of the necessary implementing measures, as foreseen in Regulation No 2494/95.

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<sup>8</sup> Chapter V, paragraph 27.

<sup>9</sup> SWD(2016) 400 final

## 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<sup>10</sup> 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 2015 was calculated by sector of activity (see Table I). The figures for the previous year (on 31 December 2014) 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	2014	2015
<b>AGRI</b> (Agriculture and Rural Development)	18	18
<b>BUDG</b> (Budget)	2	2
<b>CLIMA</b> (Climate Action)	5	5
<b>CNECT</b> (Communications Networks, Content and Technology)	6	5
<b>DEVCO</b> (International Cooperation and Development)	5	5
<b>DIGIT</b> (Informatics)	1	2
<b>EAC</b> (Education and Culture)	5	5
<b>ECFIN</b> (Economic and Financial Affairs)	1	1
<b>ECHO</b> (Humanitarian Aid and Civil Protection)	2	2
<b>EMPL</b> (Employment, Social Affairs and Inclusion)	4	4
<b>ENER</b> (Energy)	15	14
<b>ENV</b> (Environment)	31	31
<b>ESTAT</b> (Eurostat)	7	6
<b>FISMA</b> (Financial Stability, Financial Services and Capital markets Union)	9	8
<b>FPI</b> (Service for Foreign Policy Instruments)	4	4
<b>GROW</b> (Internal Market, Industry, Entrepreneurship and SMEs)	44	43
<b>HOME</b> (Migration and Home Affairs)	14	11
<b>JUST</b> (Justice and Consumers)	20	21
<b>MARE</b> (Maritime Affairs and Fisheries)	4	4
<b>MOVE</b> (Mobility and Transport)	30	30
<b>NEAR</b> (Neighbourhood and Enlargement Negotiations)	3	3
<b>OLAF</b> (European Anti-Fraud Office)	1	1
<b>REGIO</b> (Regional and Urban Policy)	1	1
<b>RTD</b> (Research and Innovation)	5	5
<b>SANTE</b> (Health and Food Safety)	21	21
<b>SG</b> (Secretariat-General)	3*	3*
<b>TAXUD</b> (Taxation and Customs Union)	11	11
<b>TRADE</b> (Trade)	15	14
<b>TOTAL:</b>	<b>287</b>	<b>280</b>

\* 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).

<sup>10</sup> For more details see: <http://ec.europa.eu/transparency/regexpert/index.cfm>

In 2015, 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.

**TABLE II — NUMBER OF COMMITTEES BY PROCEDURE (2015)**

	Type of procedure				TOTAL:
	Advisory	Examination	Regulatory with scrutiny	Operates under several procedures	
AGRI	0	12	0	6	18
BUDG	1	1	0	0	2
CLIMA	0	1	0	4	5
CNECT	0	1	0	4	5
DEVCO	0	2	0	3	5
DIGIT	0	2	0	0	2
EAC	0	1	0	4	5
ECFIN	0	0	0	1	1
ECHO	0	1	0	1	2
EMPL	0	0	0	4	4
ENER	2	4	2	6	14
ENV	0	6	5	20	31
ESTAT	0	2	0	4	6
FISMA	0	1	2	5	8
FPI	0	3	0	1	4
GROW	6	9	5	23	43
HOME	2	6	0	3	11
JUST	5	5	5	6	21
MARE	0	2	0	2	4
MOVE	3	7	3	17	30
NEAR	1	1	0	1	3
OLAF	0	1	0	0	1
REGIO	0	0	0	1	1
RTD	0	4	0	1	5
SANTE	0	9	0	12	21
SG	0	2	0	1	3
TAXUD	1	9	0	1	11
TRADE	2	6	0	6	14
<b>TOTAL:</b>	<b>23</b>	<b>98</b>	<b>22</b>	<b>137</b>	<b>280</b>

\* 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*<sup>11</sup> used in 2015, also reflects the intensity of work in general, both at sector level and in individual committees (Table III).

<sup>11</sup> 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	
		2014	2015	2014	2015
AGRI	18	140	145	8	10
BUDG	2	4	4	2	0
CLIMA	5	12	6	1	1
CNECT	5	11	15	10	11
DEVCO	5	16	16	12	7
DIGIT	2	2	3	0	0
EAC	5	6	4	6	1
ECFIN	1	5	1	0	0
ECHO	2	9	6	3	5
EMPL	4	4	4	7	5
ENER	14	20	16	7	2
ENV	31	38	38	12	12
ESTAT	6	8	6	6	5
FISMA	8	7	8	7	9
FPI	4	5	2	2	3
GROW	43	60	76	24	28
HOME	11	28	29	40	31
JUST	21	10	10	12	5
MARE	4	9	11	2	4
MOVE	30	64	51	23	22
NEAR	3	12	7	20	19
OLAF	1	2	2	0	0
REGIO	1	10	1	4	0
RTD	5	52	57	131	205
SANTE	21	122	106	506	437
SG	3	6*	5*	0	1
TAXUD	11	89	65	25	20
TRADE	14	22	25	23	25
<b>TOTAL</b>	<b>280</b>	<b>773</b>	<b>719</b>	<b>893</b>	<b>868</b>

\* Including 4 meetings 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<sup>12</sup>. These figures quantify the tangible ‘output’ of the committees (see Table IV). Out of the total number of draft implementing acts submitted to the committees in 2015, the EP adopted 3

<sup>12</sup> 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.

resolutions<sup>13</sup> on the basis of Article 11 of the Comitology Regulation, while the Council has not adopted any such resolutions.

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

	Opinions		Implementing Acts adopted		RPS Measures adopted	
	2014	2015	2014	2015	2014	2015
AGRI	141	116	135	116	2	1
BUDG	15	4	14	4	0	0
CLIMA	19	7	14	7	5	1
CNECT	21	20	20	12	0	1
DEVCO	86	57	84	58	0	0
DIGIT	1	1	1	1	0	0
EAC	28	5	9	2	0	0
ECFIN	5	1	5	1	0	0
ECHO	9	9	7	11	0	0
EMPL	7	9	3	6	0	0
ENER	14	8	4	1	4	6
ENV	38	37	16	16	19	11
ESTAT	17	16	6	6	10	10
FISMA	17	16	3	10	1	6
FPI	4	4	2	0	0	0
GROW	54	74	19	37	24	13
HOME	45	63	42	42	0	0
JUST	19	9	11	9	1	1
MARE	22	15	22	15	0	0
MOVE	93	55	44	46	32	17
NEAR	112	65	110	65	0	0
OLAF	0	0	0	0	0	0
REGIO	12	1	8	1	0	0
RTD	152	266	150	223	0	0
SANTE	799	736	695	671	67	62
SG	13	11*	2	23	0	0
TAXUD	79	65	74	65	0	0
TRADE	67	56	63	58	0	0
<b>TOTAL</b>	<b>1 889</b>	<b>1 726</b>	<b>1 563</b>	<b>1 506</b>	<b>165</b>	<b>129</b>

\* Including 10 opinions delivered by the appeal committee and 22 adopted acts.

## 2.3 Meetings of the appeal committee

The appeal committee met 4 times during 2015, and discussed 11 draft implementing acts (in the areas of health and consumer policy and mobility and transport) which were referred by the Commission. The appeal committee delivered no opinion in 10 cases. The Commission decided to adopt all of these 10 implementing acts and to withdraw 1 act.

<sup>13</sup> Resolution on the draft Commission implementing regulation adopting a list of invasive alien species of Union concern (2015/3010(RSP); Resolution on Commission Implementing Decision (EU) 2015/2279 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize NK603 × T25 (MON-ØØ6Ø3-6 × ACS-ZMØØ3-2) (2015/3006(RSP); Resolution on draft Commission implementing decision granting an authorisation for uses of bis(2-ethylhexyl) phthalate (DEHP) under Regulation (EC) No 1907/2006 of the European Parliament and of the Council (2015/2962(RSP).

## 2.4 Use of the regulatory procedure with scrutiny (RPS)

As mentioned under Section 1, the RPS 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 2015 129 measures were adopted according to the RPS (see [Table V](#)). The right to oppose was not used. In 2014, by comparison, the right to oppose was used once.

**TABLE V — NUMBER OF MEASURES ADOPTED ACCORDING TO THE REGULATORY PROCEDURE WITH SCRUTINY (RPS) (2015)**

	RPS Measures adopted	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	1	0	0
CNECT	1	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	6	0	0
ENV	11	0	0
ESTAT	10	0	0
FISMA	6	0	0
FPI	0	0	0
GROW	13	0	0
HOME	0	0	0
JUST	1	0	0
MARE	0	0	0
MOVE	17	0	0
NEAR	0	0	0
OLAF	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANTE	62	0	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
<b>TOTAL</b>	<b>129</b>	<b>0</b>	<b>0</b>

## 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 2015, broken down on the basis of the different Commission departments concerned.