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REPORT FROM THE COMMISSION
ON THE WORKING OF COMMITTEES DURING 2017

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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 2017.

This report gives an overview of developments in the comitology system in 2017 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 COMITOLOGY SYSTEM IN 2017

1.1. General development

As described in the 2013 annual report², all comitology procedures provided for in the 'old' Comitology Decision³, with the exception of the regulatory procedure with scrutiny, were automatically adapted to the new comitology procedures provided for in the Comitology Regulation (Regulation (EU) 182/2011).

In 2017, 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 set out in Article 5a of the Comitology Decision.

The Interinstitutional Agreement on Better Law-Making of 13 April 2016⁴ recalls the need to align the regulatory procedure with scrutiny:

"The three institutions acknowledge the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. The Commission will propose that latter alignment by the end of 2016."

In line with this commitment, the Commission adopted a new proposal for the alignment of the basic acts providing for the regulatory procedure with scrutiny to delegated and implementing acts⁵. It also adopted a second proposal, dealing specifically with the alignment of basic acts in the field of justice⁶. The interinstitutional negotiations on both files are ongoing. The Committee on Legal Affairs adopted its report on the proposal and received a

¹ 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).

² Report from the Commission on the working of committees during 2013, COM(2014)572 final.

³ 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).

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).

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).

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).

mandate to enter into negotiations⁷. The Council adopted its General Approach on 20 March 2018⁸.

The Commission on 26 February 2016 adopted a Report on the implementation of Regulation (EU) 182/2011⁹. In this report, the Commission concluded that the overall legal framework for comitology is functioning well. However, it also pointed at the time to the political problem of "no opinion" outcomes especially in a few very sensitive areas such as the authorisation of genetically modified organisms. Therefore and notably in light of experiences with the authorisation procedure for glyphosate, President Juncker in his State of the Union address in September 2016 announced a Commission initiative to address this problem and to increase accountability, responsibility and transparency on the side of Member States when voting in committee, and in particular in the appeal committee. Subsequently, the Commission on 14 February 2017 adopted a 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) 85 final). This proposal puts forward a number of targeted changes to the functioning of the appeal committee to address no opinion situations in sensitive areas. The interinstitutional negotiations on this file are ongoing.

Negotiations between the three institutions are also ongoing on non-binding criteria for the application of Articles 290 and 291 of the Treaty on the Functioning of the European Union, so the delineation between delegated and implementing acts.

In its Communication "Better regulation for better results" of May 2015, the Commission committed that draft texts for delegated acts and drafts for important implementing acts will be made public for a four week feedback period, allowing stakeholders to submit comments. In 2017, 165 such draft acts were published for public feedback on the Commission's "Have your say" website¹⁰.

1.2. Development of case law

In its judgment of 20 September 2017 in Case C-183/16¹¹ (Tilly Sabco), the Court of Justice underlined the need to respect the timeframes for the submission of draft implementing acts to the committee ahead of the vote and to only deviate in well justified cases. In line with Article 3(3) of Regulation 182/2011 the chair has to submit the draft agenda and the draft implementing act to the committee not less than 14 calendar days before the meeting. The time limit for submission can be shortened in exceptional cases. This possibility is further detailed in the Standard Rules of Procedure for committees¹², on the basis of which committees adopt their rules of procedure. The chair can also set a time limit for the committee to deliver its opinion on the draft. The time limits have to be proportionate and afford the committee members early and effective opportunities to examine the draft and express their views.

⁷ Report on the 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, Committee on Legal Affairs, A8-0020/2018.

⁸ 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 - Partial general approach, 6933/18, 9 March 2018.

⁹ Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EU) 182/2011, COM(2016)92.

¹⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

¹¹ Judgment of the Court of Justice of 20 September 2017, *Tilly-Sabco v Commission*, C-183/16.

¹² Standard Rules of Procedure for comitology committees, OJ C 206, 12.7.2011, p. 11.

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 Commission¹³ 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 2017 was calculated by sector of activity (see Table I). The figures for the previous year (on 31 December 2016) 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	2016	2017
AGRI (Agriculture and Rural Development)	17	12
BUDG (Budget)	2	2
CLIMA (Climate Action)	5	5
CNECT (Communications Networks, Content and Technology)	6	7
DEVCO (International Cooperation and Development)	5	5
DIGIT (Informatics)	1	1
EAC (Education and Culture)	2	2
ECFIN (Economic and Financial Affairs)	1	1
ECHO (Humanitarian Aid and Civil Protection)	2	2
EMPL (Employment, Social Affairs and Inclusion)	5	5
ENER (Energy)	14	13
ENV (Environment)	30	30
ESTAT (Eurostat)	6	4
FISMA (Financial Stability, Financial Services and Capital markets Union)	8	8
FPI (Service for Foreign Policy Instruments)	4	4
GROW (Internal Market, Industry, Entrepreneurship and SMEs)	41	42
HOME (Migration and Home Affairs)	13	13
JUST (Justice and Consumers)	23	23
MARE (Maritime Affairs and Fisheries)	4	3
MOVE (Mobility and Transport)	31	31
NEAR (Neighbourhood and Enlargement Negotiations)	3	3
OLAF (European Anti-Fraud Office)	1	1
REGIO (Regional and Urban Policy)	1	1
RTD (Research and Innovation)	5	5
SANTE (Health and Food Safety)	21	17
SG (Secretariat-General)	3*	3*
TAXUD (Taxation and Customs Union)	11	11
TRADE (Trade)	12	13
TOTAL:	277	267

* Including the appeal committee (for the needs of the comitology register, the appeal committee is registered as a committee under the responsibility of the Secretariat-General; in practice, it is managed by all services concerned).

In 2017, 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.

¹³

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

TABLE II — NUMBER OF COMMITTEES BY PROCEDURE

	Type of procedure				TOTAL:
	Advisory	Examination	Regulatory with scrutiny	Operates under several procedures	
AGRI	0	7	0	5	12
BUDG	0	1	0	1	2
CLIMA	0	1	0	4	5
CNECT	0	3	0	4	7
DEVCO	0	2	0	3	5
DIGIT	0	1	0	0	1
EAC	0	1	0	1	2
ECFIN	0	0	0	1	1
ECHO	0	1	0	1	2
EMPL	0	0	2	3	5
ENER	2	4	1	6	13
ENV	0	7	4	19	30
ESTAT	0	2	0	2	4
FISMA	0	2	2	4	8
FPI	0	4	0	0	4
GROW	4	9	4	25	42
HOME	2	9	0	2	13
JUST	7	6	4	6	23
MARE	0	2	0	1	3
MOVE	3	8	4	16	31
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	8	0	9	17
SG	0	3	0	0	3*
TAXUD	1	8	0	2	11
TRADE	3	4	0	6	13
TOTAL:	23	99	21	124	267

* 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*¹⁴ used in 2017, also reflects the intensity of work in general, both at sector level and in individual committees (Table III).

¹⁴

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	
		2016	2017	2016	2017
AGRI	12	111	90	7	17
BUDG	2	4	4	0	0
CLIMA	5	7	7	1	2
CNECT	7	18	17	12	11
DEVCO	5	18	17	11	9
DIGIT	1	2	1	0	0
EAC	2	5	6	3	1
ECFIN	1	0	3	0	0
ECHO	2	4	4	4	3
EMPL	5	4	6	1	1
ENER	13	12	6	4	5
ENV	30	26	29	11	13
ESTAT	4	6	6	5	2
FISMA	8	11	10	13	18
FPI	4	5	2	2	0
GROW	42	63	70	36	34
HOME	13	36	28	65	29
JUST	23	22	10	4	5
MARE	3	6	4	5	10
MOVE	31	52	54	25	35
NEAR	3	7	8	12	19
OLAF	1	1	0	1	0
REGIO	1	1	1	0	2
RTD	5	57	57	263	246
SANTE	17	117	108	437	494
SG	3	5	8*	0	1*
TAXUD	11	50	33	22	29
TRADE	13	24	27	38	38
TOTAL	267	674	616	982	1 024

* 8 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 Commission¹⁵. 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 2017, the European Parliament adopted 9 resolutions on the basis of Article 11 of the Comitology Regulation, while the Council has not adopted any such resolution.

¹⁵

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.

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

	Opinions ¹⁶		Implementing Acts adopted		Regulatory procedure with scrutiny - measures adopted	
	2016	2017	2016	2017	2016	2017
AGRI	110	142	105	137	1	0
BUDG	7	7	0	5	0	0
CLIMA	7	11	6	3	0	4
CNECT	20	19	14	18	0	0
DEVCO	57	53	55	54	0	0
DIGIT	1	1	1	1	0	0
EAC	4	5	4	4	0	0
ECFIN	0	3	0	3	0	0
ECHO	7	7	4	6	0	0
EMPL	4	7	3	5	0	1
ENER	8	8	4	7	6	0
ENV	38	31	13	16	11	18
ESTAT	11	9	3	4	5	6
FISMA	28	22	28	7	0	0
FPI	2	4	0	2	0	0
GROW	84	104	45	83	21	24
HOME	76	76	61	68	0	0
JUST	6	10	6	6	0	0
MARE	10	20	10	17	0	0
MOVE	65	59	44	50	17	4
NEAR	64	74	65	74	0	0
OLAF	2	0	2	0	0	0
REGIO	2	2	1	0	0	0
RTD	270	248	191	176	0	0
SANTE	717	803	632	753	55	56
SG	11	16*	9	17	0	0
TAXUD	82	79	67	85	0	0
TRADE	75	86	75	86	0	0
TOTAL	1 768	1906	1 448	1687	116	113

* Including 16 opinions delivered by the appeal committee and 17 adopted acts.

2.3. Meetings of the appeal committee

The appeal committee met 8 times and was consulted by written procedure once during 2017, and discussed 16 draft implementing acts (in the areas of health and consumer policy and trade) which were referred by the Commission. The appeal committee delivered no opinion in 15 cases and a favorable opinion once. The Commission decided to adopt 17 implementing acts of which one was voted on by the appeal committee in 2016.

2.4. Use of the regulatory procedure with scrutiny

As mentioned under Section 1, the regulatory procedure with scrutiny 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 2017 113 measures were adopted according to the regulatory procedure with scrutiny (see Table V). The right to oppose was used once, by the European Parliament. In 2016, by comparison, the right to oppose was also used once.

¹⁶

A vote resulting in "no opinion" is counted towards the total number of opinions.

TABLE V — NUMBER OF MEASURES ADOPTED ACCORDING TO THE REGULATORY PROCEDURE WITH SCRUTINY

	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	4	0	0
CNECT	0	0	0
DEVCO	0	0	0
DIGIT	0	0	0
EAC	0	0	0
ECFIN	0	0	0
ECHO	0	0	0
EMPL	1	0	0
ENER	0	0	0
ENV	18	0	0
ESTAT	6	0	0
FISMA	0	0	0
FPI	0	0	0
GROW	24	0	0
HOME	0	0	0
JUST	0	0	0
MARE	0	0	0
MOVE	4	0	0
NEAR	0	0	0
OLAF	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANTE	56	1	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL	113	1	0

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 2017, broken down on the basis of the different Commission departments concerned.

4. CONCLUSION

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