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REPORT FROM THE COMMISSION
ON THE WORKING OF COMMITTEES DURING 2013

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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 2013.

This report gives an overview of developments in the comitology system in 2013 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 2013

1.1 General development

As described in the 2012 report², all comitology procedures provided for in the 'old' Comitology Decision³, with the exception of the regulatory procedure with scrutiny (RPS), were automatically adapted to the new comitology procedures provided for in the Comitology Regulation.

In 2013, 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 RPS set out in Article 5a of the Comitology Decision.

In accordance with the statement⁴, 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 proposals⁵ to align a total of 200 basic acts to Articles 290 and 291 TFEU. These proposals are now undergoing the ordinary legislative procedure.

1.2 Review of the Rules of Procedure of the Appeal Committee

The Rules of Procedure (RoP) of the appeal committee, adopted on 29 March 2011⁶, include a review clause (Article 14) stipulating that the Commission should evaluate, by April 2014, how the rules operate in practice. This review relates only to the RoP, not to the provisions of Regulation 182/2011 itself, which is to be reviewed by 1 March 2016.

Since the entry into force of Regulation 182/2011 on 1 March 2011 and up to the end of 2013, the appeal committee has been mainly convened in relation to one policy area, namely health and consumer protection, and more specifically in relation to genetically modified food and

¹ OJ L 55, 28.2.2011, p. 13.

² Report from the Commission on the working of committees during 2012, COM(2013) 701 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 This statement was published in the Official Journal together with Regulation (EU) No 182/2011 (OJ L 55 of 28.2.2011, p. 19).

⁵ COM(2013) 0451, 0452 and 0751.

⁶ OJ C 183, 24.6.2011, p. 13.

feed and plant protection products. The Commission referred 23 draft implementing acts to the appeal committee, which has met 15 times since its inception. Out of the draft acts referred to the appeal committee, two were not in the area of health and consumer protection (these concerned customs and environment).

In the majority of cases the appeal committee was convened because the committee concerned delivered no opinion. One of the main reasons for this is found in Article 5(4) second subparagraph of Regulation 182/2011, which stipulates that in cases of no opinion in the field of health and safety of humans, animals or plants, the implementing act may not be adopted⁷. If the implementing act is deemed necessary, there is the option to submit an amended version of the act to the same committee or to submit the draft implementing act within one month to the appeal committee. In cases such as the authorisation of genetically modified food or feed, the scope for amendments is limited and a resubmission to the committee is therefore not likely to lead to another result. The Commission services therefore chose to submit the implementing act to the appeal committee. In most cases the appeal committee likewise delivered no opinion and the Commission adopted the measures in line with Article 6(3) of Regulation 182/2011.

Issues identified from the practical experience of dealing with the appeal committee so far relate to the setting of the meeting date and the level of representation, the possibilities to foster compromise and the use of the written procedure.

1.2.1 Meeting date and level of representation

Regulation 182/2011 provides in its Article 3(7) that *'The chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States and the Commission to ensure an appropriate level of representation.'* This is reflected in Article 1(5) of the RoP, which requires the Commission to *'consult Member States on various options'* for the date of the meeting and Member States may make suggestions in this regard. The objective is to ensure a sufficiently high level of representation, as a general rule not below the level of members of the committee of permanent representatives, in order to not simply repeat the discussions held within the committee concerned.

Given that the meeting must, in accordance with Article 3(7) of Regulation 182/2011, be held at the latest six weeks after referral to the appeal committee, finding a suitable meeting date can present a practical challenge, but an agreeable solution was nevertheless found in all cases. As regards the level of representation, experience so far has shown that ministerial-level representation is not the norm; usually it is at the level of the permanent representative. Member States decide on their representative in the appeal committee, and the wording of Article 1(5) of the RoP offers sufficient flexibility to adapt the level of representation to the case at hand.

⁷ Which is without prejudice to the adoption of implementing acts in exceptional cases as provided in Article 7.

1.2.2 Fostering compromise

Regulation 182/2011 provides clearly that the draft implementing act must be submitted to the appeal committee. It is therefore not possible to submit an amended version. However, in line with Article 6(2) of Regulation 182/2011, until an opinion is delivered any member of the appeal committee may suggest amendments to the draft implementing act and the chair may decide whether or not to modify it. This is reflected in Article 4(2) of the RoP. It is therefore currently possible for the chair to facilitate a compromise by, for example, accepting or proposing amendments during the meeting.

1.2.3 Written procedure

In specific policy areas, such as genetically modified food and feed and plant protection products, because of the nature of the topic the appeal committee did not find compromises. The appeal committee meetings are often short and repeat the outcome of the committee concerned, with no opinion being delivered. In such specific cases, the use of the written procedure has therefore been proposed from the outset on some occasions. The possibility and conditions for the use of the written procedure are set out in Article 3(5) of Regulation 182/2011 and referred to in Article 7 of the RoP, whereby the chair may in particular use the written procedure when the draft has already been discussed during a meeting of the appeal committee. This wording does not exclude the use of the written procedure from the outset if justified. According to Article 3(5) of Regulation 182/2011, a meeting must however be convened if a committee member so requests and these requests have so far always been made.

1.2.4 Conclusion

The experiences with the appeal committee so far confirm that the RoP reflect the provisions of Regulation 182/2011 well, that they provide an efficient basis for the work of the appeal committee and that there is therefore at this point no need for amendment of the RoP. Should such a need emerge, the planned review of Regulation 182/2011 in 2016 offers an opportunity to revisit the issue.

1.3 Development of case law

With its judgment in Case C-427/12, *Commission v Parliament and Council* (the ‘Biocides case’), on 18 March 2014 the Court of Justice pronounced for the first time on a case of delineation between delegated and implementing acts. With its application in the Biocides case, the European Commission sought the annulment of a provision providing for the adoption of measures setting the fees payable to the European Chemicals Agency by implementing acts. The Commission considered that these should be set by delegated acts. The Court of Justice dismissed the action by the Commission as unfounded. While the Court did not appear to question that Articles 290 and 291 TFEU each have their own scope, it recognised that the legislator has a margin of discretion when it decides to confer a delegated power on the Commission pursuant to Article 290(1) TFEU or an implementing power pursuant to Article 291(2) TFEU. As a consequence, the Court found that judicial review is limited to manifest errors.

Two judgments of the Court of Justice in 2013 clarified certain aspects of the regulatory procedure under Decision 1999/468/EC⁸. The cases concerned situations in which the regulatory committee had voted before Regulation 182/2011 entered into force, the procedure therefore had to be considered pending within the meaning of Article 14 of that Regulation, and it had to be concluded according to the rules contained in Decision 1999/468/EC.

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 Commission⁹ 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 comitology committees on 31 December 2013 was calculated by sector of activity (see Table I). The figures for the previous year (on 31 December 2012) 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 (2013)

Policy sector	2012	2013
Agriculture and Rural Development (AGRI)	15	20
Anti-Fraud Office (OLAF)	1	1
Budget (BUDG)	2	2
Climate Action (CLIMA)	4	4
Communication (COMM)	1	1
Communications Networks, Content and Technology (CNECT)	6	6
Development and Cooperation – EuropeAid (DEVCO)	6	6
Economic and Financial Affairs (ECFIN)	1	2
Education and Culture (EAC)	7	8
Employment, Social Affairs and Inclusion (EMPL)	3	4
Energy (ENER)	16	18
Enlargement (ELARG)	4	4
Enterprise and Industry (ENTR)	30	33
Environment (ENV)	31	33
Health and Consumer (SANCO)	24	26
Home Affairs (HOME)	11	13
Humanitarian Aid and Civil Protection (ECHO)	2	3
Informatics (DIGIT)	1	1
Internal Market (MARKT)	15	15
Justice (JUST)	14	17
Maritime Affairs and Fisheries (MARE)	4	4
Mobility and Transport (MOVE)	31	32
Regional Policy (REGIO)	1	2
Research (RTD)	6	8

⁸ Judgment of 26 September 2013 in case T-164/10, Pioneer Hi-Bred International, Inc. v European Commission and Judgment of 13 December 2013 in case T-240/10, Hungary v European Commission.

⁹ For more details see: <http://ec.europa.eu/transparency/regexpert/index.cfm>

Secretariat-General (SG)	2*	2*
Service for foreign policy instruments (FPI)	4	4
Statistics (ESTAT)	7	7
Taxation and Customs Union (TAXUD)	11	13
Trade (TRADE)	11	13
TOTAL:	271	302

* 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 2013, 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 (2013)

	Type of procedure				TOTAL:
	Advisory	Examination	Regulatory with scrutiny	Operates under several procedures	
AGRI	0	15	0	5	20
BUDG	1	1	0	0	2
CLIMA	0	0	0	4	4
CNECT	0	2	0	4	6
COMM	0	1	0	0	1
DEVCO	0	5	0	1	6
DIGIT	0	1	0	0	1
EAC	1	2	0	5	8
ECFIN	1	0	0	1	2
ECHO	0	2	0	1	3
ELARG	1	3	0	0	4
EMPL	0	0	2	2	4
ENER	3	8	1	6	18
ENTR	6	6	4	17	33
ENV	0	6	5	22	33
ESTAT	0	3	0	4	7
FPI	0	4	0	0	4
HOME	1	6	0	6	13
JUST	3	4	4	6	17
MARE	0	4	0	0	4
MARKT	0	2	4	9	15
MOVE	3	7	4	18	32
OLAF	0	0	0	1	1
REGIO	0	0	0	2	2
RTD	0	6	0	2	8
SANCO	1	9	1	15	26
SG	0	2	0	0	2
TAXUD	1	11	0	1	13
TRADE	3	6	0	4	13
TOTAL:	25	116	25	136	302

* 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*¹⁰ used in 2013, also reflects the intensity of work in general, both at sector level and in individual committees (Table III).

TABLE III — NUMBER OF MEETINGS AND WRITTEN PROCEDURES (2013)

	Number of committees	Meetings		Written procedures	
		2012	2013	2012	2013
AGRI	20	134	132	3	3
BUDG	2	5	6	0	1
CLIMA	4	16	13	0	3
CNECT	6	26	16	7	12
COMM	1	1	2	2	4
DEVCO	6	24	20	28	48
DIGIT	1	2	2	0	0
EAC	9	14	9	53	59
ECFIN	2	1	0	0	0
ECHO	3	4	5	6	5
ELARG	4	5	4	22	10
EMPL	4	2	2	6	15
ENER	18	27	33	9	2
ENTR	33	51	56	25	29
ENV	33	46	42	14	18
ESTAT	7	12	12	6	4
FPI	4	7	4	7	7
HOME	13	31	21	40	15
JUST	17	7	4	18	11
MARE	4	11	8	8	15
MARKT	15	11	9	7	6
MOVE	32	50	52	22	16
OLAF	1	4	2	0	0
REGIO	2	7	7	6	3
RTD	8	56	23	227	240
SANCO	26	144	127	354	403
SG	2	3*	7*	0	0
TAXUD	13	81	81	14	32
TRADE	13	15	19	5	9
TOTAL:	302	797	718	889	970

* Including 7 meetings of the appeal committee.

¹⁰ 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 always, this report provides overall figures on the formal *opinions* delivered by the committees and the subsequent *implementing acts/measures* adopted by the Commission¹¹. These figures quantify the tangible ‘output’ of the committees (see [Table IV](#)).

TABLE IV — NUMBER OF OPINIONS AND IMPLEMENTING ACTS/MEASURES ADOPTED
(2013)

	Opinions	Acts adopted	Measures adopted according to RPS
AGRI	189	202	1
BUDG	9	9	0
CLIMA	11	5	8
CNECT	45	45	1
COMM	4	4	0
DEVCO	127	127	0
DIGIT	1	1	0
EAC	75	55	0
ECFIN	0	1	0
ECHO	6	7	0
ELARG	35	39	0
EMPL	14	14	0
ENER	17	3	7
ENTR	49	29	21
ENV	60	36	25
ESTAT	13	4	13
FPI	6	6	0
HOME	21	19	0
JUST	11	12	0
MARE	29	29	0
MARKT	7	4	8
MOVE	56	39	7
OLAF	0	0	0
REGIO	4	5	0
RTD	250	250	0
SANCO	709	605	80
SG	9*	8	0
TAXUD	105	106	0
TRADE	54	52	0
TOTAL:	1916	1716	171

* Including 9 opinions delivered by the appeal committee.

¹¹ 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

The appeal committee met 7 times during 2013, and discussed 9 draft implementing acts altogether (in the areas of health and consumer policy, customs and environment) which were referred by the Commission. In all 9 cases, the appeal committee delivered no opinion and the Commission decided to adopt 8 of these implementing acts.

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 2013, 171 measures were adopted according to the RPS (see [Table IV](#)). The right of veto was used in one case (DG ENV). In 2012, by comparison, the right of veto was not used.

TABLE V — NUMBER OF MEASURES ADOPTED ACCORDING TO THE REGULATORY PROCEDURE WITH SCRUTINY (RPS) (2013)

	Measures adopted according to RPS	EP opposed adoption of draft measures under RPS	Council opposed adoption of draft measures under RPS
AGRI	1	0	1
BUDG	0	0	0
CLIMA	8	0	0
CNECT	1	0	0
COMM	0	0	0
DEVCO	0	0	0
DIGIT	0	0	0
EAC	0	0	0
ECFIN	0	0	0
ECHO	0	0	0
ELARG	0	0	0
EMPL	0	0	0
ENER	7	0	0
ENTR	21	0	0
ENV	25	1	0
ESTAT	13	0	0
FPI	0	0	0
HOME	0	0	0
JUST	0	0	0
MARE	0	0	0
MARKT	8	0	0
MOVE	7	0	0
OLAF	0	0	0
REGIO	0	0	0
RTD	0	0	0
SANCO	80	0	0
SG	0	0	0
TAXUD	0	0	0
TRADE	0	0	0
TOTAL:	171	1	1

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 2013, broken down on the basis of the different Commission departments concerned.