

Mechanisms for control by Member States of the Commission's exercise of implementing powers, 'Comitology Regulation'

2010/0051(COD) - 26/02/2016 - Follow-up document

The Commission presents a report on the implementation of Regulation 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 (the 'Comitology Regulation').

The adoption of the Regulation, which entered into force on 1 March 2011, was the result of amendments made in the Treaty of Lisbon with regard to the framework for the conferral of powers upon the Commission by introducing a distinction between delegated and implementing powers.

Functioning of Regulation (EU) 182/2011: the report focuses on the elements newly introduced by Regulation (EU) 182/2011 compared to the Council Decision 1999/468/EC, as amended by Council Decision 2006/512/EC, which provided the framework applicable before Regulation (EU) 182/2011.

Overall the figures indicate that the Regulation has **allowed a seamless continuation of the system**. When comparing the figures since 2011 to the years before the application of Regulation (EU) 182/2011, **both the number of committees and their activity has remained stable**. The number of committees was at 266 in 2009 and at 287 in 2014. Similarly the number of measures adopted was at 1808 in 2009 and at 1728 in 2014.

Building on experience, the Regulation **introduced a number of provisions linked to the working of the committees** that reflected common practice, but were not spelled out in the legislation before. This includes provisions on:

- the use of the written procedure;
- an explicit requirement for the chair to find solutions that command the widest possible support within the committee ;
- the possibility of amending the draft acts prior to the vote to take account of the discussions of the committee.

These common provisions continued to be effective and useful in ensuring a proper functioning of the committees. The **written procedure** is widely used and it is an efficient tool. The work of the committees **remains consensual**: the overwhelming percentage of opinions (well over 90%) are positive opinions, the majority of these adopted by unanimous vote or by consensus of the committee members, and there are hardly any negative and relatively few negative opinions.

Main changes:

- **the reduction of the number of committee procedure** : the old regulatory and management procedures were replaced by the examination procedure, while the advisory procedure was maintained. The report states that the reduction of the number of procedures has not raised particular issues;
- **the creation of the appeal committee**: the Regulation (EU) created a second layer to address issues on which the committee could not find agreement. So far, the appeal committee has mainly been convened in relation to **one policy area**, namely health and consumer protection, and more

specifically in relation to genetically modified food and feed and plant protection products. Overall the referral to the appeal committee has taken place with a comparable frequency to the earlier referrals to the Council, which are no longer permitted under the new institutional framework;

- ***examination procedure***: the Regulation introduced more flexibility for the Commission in cases where there is no qualified majority in favour or against the draft (referred to as a no opinion) in the committee in the examination procedure. The report notes that even though it has been used so far in few cases, **the new flexibility allowed the Commission to reassess the draft measure** after the voting results and the discussion in the committee had shown that it did not enjoy the widest possible support within the committee;
- ***criteria for the choice between the procedures***: the advisory procedure applies in principle to all cases to which the examination procedure does not apply. Overall, the choice of procedure appears to have been uncontroversial. **The examination procedure is clearly the procedure applicable in the majority of cases**, and only about 10% of the opinions are adopted by advisory procedure;
- ***the right of scrutiny for the European Parliament and the Council regarding basic acts adopted under the ordinary legislative procedure***: right has not been used by Council and used in only 4 cases by the European Parliament by the end of January 2016. In one of these, the European Parliament adopted a [resolution](#) after the implementing act was adopted criticising the short timeline between the transmission to the committee and the adoption.

The report concludes that Regulation (EU) 182/2011 has **allowed, over the last five years, the effective use of the Commission's implementing powers under the control of Member States**. The existing framework allows for an efficient and constructive cooperation between the Commission and Member States. At this point, the Commission has not identified issues that would require or warrant a legislative proposal to amend Regulation (EU) 182/2011 at this point of time.