



30.4.2018

OPINION

of the Committee on Industry, Research and Energy

for the Committee on Legal Affairs

on the 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)0085 – C8-0034/2017 – 2017/0035(COD))

Rapporteur: Claude Turmes

PA_Legam

SHORT JUSTIFICATION

Article 291 of the Treaty of Lisbon provides that legislative acts shall grant implementing powers to the Commission where uniform conditions of execution are needed. How Member States control the exercise of these implementing powers and the adoption of related implementing acts is set out in Regulation 182/2011, hereby proposed for revision.

In many cases, the existing procedure has been functioning well. However, there are cases, in particular under the "examination procedure", that are more problematic, raising questions of responsibility and ownership of the decisions made by the Member States, especially in politically sensitive areas, such as in the field of health and safety of humans, animals and plants.

According to the "examination procedure", a qualified majority in favour of the implementing act proposed by the Commission is necessary to adopt the act. If this majority is not reached, the Commission may appeal to an Appeal Committee. And if no majority is established in the Appeal Committee neither for nor against the implementing act ("no-opinion" situation), the Commission may decide to adopt or to reject the act on its own.

To address this problem, the Commission proposes in its revision to:

- Make the voting positions of individual Member State representatives in the Appeal Committee public;
- Introduce additional levels of appeal at the ministerial level and possibly further refer the matter to Council level for orientation;
- Not count abstentions and introduce a new quorum to participate in the votes (simple majority of Member States).

Your rapporteur for opinion fully supports the proposal to improve transparency and suggest further similar measures throughout the procedure, including requiring Member States to provide justifications for adopting or rejecting an implementing act. On the other hand, your rapporteur for opinion believes that proposed additional levels of appeal would likely not be helpful, as experience shows that outcomes of votes in appeal committees are rarely different to outcomes in the standing committees. Your rapporteur for opinion is also strongly opposed to the proposed change in quorum and vote counting practices, unacceptable from a democratic point of view.

To resolve the problem arising to situations of "no-opinion", the proposal is to distinguish cases according to the area and the nature of the decision. For products and substances in the fields of health, animals and plants, the Commission would be required to prohibit the substance if there is no qualified majority in favour of granting its authorisation. This procedure would remove the case-by-case choice of the Commission and ensure more legal certainty as the obligation to not authorise the substance in case of absence of majority would be enshrined in this Regulation.

In addition, in cases involving the same basic act, there are systematically situations in which the Member States do not deliver an opinion. In these cases, provision should be made for the Commission to consider a revision of the basic act on that precise point.

AMENDMENTS

The Committee on Industry, Research and Energy 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 1 a (new)

Text proposed by the Commission

Amendment

(1a) The European Parliament has set up a special committee to look into the Union's authorisation procedure for pesticides in the Union in order to identify possible conflicts of interest in the approval procedure and to look at the role of Union agencies, and examine whether they are staffed and financed to a level that is adequate for them to fulfil their obligations. The final report of its factual findings and recommendations, to be approved by the Parliament sitting in plenary, should be taken into account to improve the system established by Regulation (EU) No 182/2011.

Justification

The special committee installed by the European Parliament will deal with some of the very specific procedures of this proposal. Its outcome might therefore change our approach and should be taken into consideration from the beginning.

Amendment 2

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

(2) The system established by Regulation (EU) 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.

the other actors involved. That system should therefore continue to function unchanged except for certain targeted amendments concerning specific aspects of ***the examination procedure, advisory procedure and the*** procedure at the level of the appeal committee. These amendments are intended to ensure wider political accountability and ownership, ***in particular by the Member States,*** of politically sensitive implementing acts ***and to take greater account of the precautionary principle*** without, however, modifying the legal and institutional responsibilities for implementing acts as organised by Regulation (EU) No 182/2011.

Amendment 3

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, 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, ***which are issues in relation to which the opinions and decision-making of Member States are of utmost importance.***

Amendment 4

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) Experience has shown that, in the vast majority of cases, the appeal committee repeats the outcome of the examination committee and results in no opinion being delivered. The appeal committee has therefore not helped in providing clarity on Member State positions.

Amendment

(4) Experience has shown that, in the vast majority of cases, the appeal committee repeats the outcome of the examination committee and results in no opinion being delivered. The appeal committee has therefore not helped in providing clarity on Member State positions, ***and such situations of ambiguity in turn decelerate the decision-making process in the Union on very significant matters.***

Amendment 5

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-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.***

Amendment

(7) While the Commission is ***currently*** empowered to decide in such cases, due to the particular sensitivity of the issues at stake, Member States should assume ***greater*** responsibility in the decision-making process. ***Therefore, it is of the utmost importance that Member States be incentivised to take a clear decision, in favour or against, and actively take part during voting sessions by at least being present. Where the draft implementing act concerns the protection of the health or safety of humans, animals or plants, the precautionary principle should prevail. 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 6

Proposal for a regulation

Recital 8

Text proposed by the Commission

Amendment

(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.

deleted

Amendment 7

Proposal for a regulation

Recital 9

Text proposed by the Commission

Amendment

(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. 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.

deleted

Amendment 8

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

deleted

Amendment 9

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 representatives' votes should be made public.

Amendment

(11) Transparency should be increased *throughout the entire advisory, examination and appeal committee procedure. In particular, the votes of individual Member State representatives, including their voting intentions where no formal vote takes place,* should be made public. *Such requirements should apply to votes at the appeal committee, the examination committee and throughout the advisory procedure. More detailed information on the composition of expert committees should be made public.*

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

Amendment

(1) in Article 3(7), the following sixth subparagraph is added: *deleted*

“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 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

Amendment

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

“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 12

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 182/2011

Article 6 – paragraph 3a

Text proposed by the Commission

Amendment

(b) the following paragraph 3a is inserted: **deleted**

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

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

Amendment

(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 involves granting authorisation for a product or a substance, in the absence of a positive opinion voted by the majority provided for in Article 5(1), the Commission shall not adopt that draft implementing act and the authorisation shall be deemed to have been refused.”;

Amendment

14

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point -a (new)

Regulation (EU) No 182/2011

Article 10 – paragraph 1 – introductory part

Present text

1. The Commission shall keep a register of committee proceedings which shall contain:

Amendment 15

Amendment

(-a) in paragraph 1, the introductory part is replaced by the following:

“1. The Commission shall keep a **public** register of committee proceedings, which **shall be available for access via the internet. That public register** shall contain.”;

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point -a 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 16

Amendment

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

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

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 17

Amendment

(e) the voting results, **both in the committees and** in the appeal committee, **accompanied by a justification, including the cases of abstentions**;

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point a a (new)

Regulation (EU) No 182/2011
Article 10 – paragraph 3

Text proposed by the Commission

Amendment

(aa) paragraph 3 is deleted;

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 3 – point a b (new)

Regulation (EU) No 182/2011

Article 10 – paragraph 4

Text proposed by the Commission

Amendment

(ab) paragraph 4 is deleted;

Amendment 19

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

Amendment

(b) paragraph 5 is replaced by the following: **deleted**

“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 20

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

Amendment

(3a) 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 the 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 to the Commission.

PROCEDURE – COMMITTEE ASKED FOR OPINION

| | |
|---|--|
| Title | Rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers |
| References | COM(2017)0085 – C8-0034/2017 – 2017/0035(COD) |
| Committee responsible Date announced in plenary | JURI 1.3.2017 |
| Opinion by Date announced in plenary | ITRE 1.3.2017 |
| Rapporteur Date appointed | Claude Turmes 30.5.2017 |
| Discussed in committee | 22.1.2018 |
| Date adopted | 24.4.2018 |
| Result of final vote | +: 31 –: 29 0: 1 |
| Members present for the final vote | Zigmantas Balčytis, José Blanco López, David Borrelli, Jonathan Bullock, Cristian-Silviu Buşoi, Reinhard Bütikofer, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Ashley Fox, Adam Gierek, Theresa Griffin, Rebecca Harms, Eva Kaili, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jeppe Kofod, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Christelle Lechevalier, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Angelika Mlinar, Csaba Molnár, Nadine Morano, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Miroslav Poche, Julia Reda, Paul Rübig, Massimiliano Salini, Algirdas Saudargas, Neoklis Sylikiotis, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Liese Wierinck, Hermann Winkler, Flavio Zanonato, Carlos Zorrinho |
| Substitutes present for the final vote | Pilar Ayuso, Cornelia Ernst, Francesc Gambús, Françoise Grossetête, Werner Langen, Rupert Matthews, Răzvan Popa, Dominique Riquet, Theodor Dumitru Stolojan |
| Substitutes under Rule 200(2) present for the final vote | Rosa D'Amato |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 31 | + |
|-----------|--|
| ECR | Edward Czesak, Zdzisław Krasnodębski |
| EFDD | Rosa D'Amato |
| ENF | Angelo Ciocca, Christelle Lechevalier |
| GUE/NGL | Cornelia Ernst, Paloma López Bermejo, Neoklis Sylikiotis |
| NI | David Borrelli |
| S&D | Zigmantas Balčytis, José Blanco López, Adam Gierek, Theresa Griffin, Eva Kaili, Jeppe Kofod, Peter Kouroumbashev, Miapetra Kumpula-Natri, Edouard Martin, Csaba Molnár, Dan Nica, Miroslav Poche, Răzvan Popa, Kathleen Van Brempt, Martina Werner, Flavio Zanonato, Carlos Zorrinho |
| VERTS/ALE | Reinhard Bütikofer, Jakob Dalunde, Rebecca Harms, Julia Reda, Claude Turmes |

| 29 | - |
|------|---|
| ALDE | Fredrick Federley, Kaja Kallas, Angelika Mlinar, Morten Helveg Petersen, Dominique Riquet, Lieve Wierinck |
| ECR | Ashley Fox, Rupert Matthews |
| EFDD | Jonathan Bullock |
| ENF | Barbara Kappel |
| PPE | Pilar Ayuso, Cristian-Silviu Buşoi, Pilar del Castillo Vera, Christian Ehler, Francesc Gambús, Françoise Grossetête, Krišjānis Kariņš, Seán Kelly, Werner Langen, Janusz Lewandowski, Nadine Morano, Angelika Niebler, Paul Rübig, Massimiliano Salini, Algirdas Saudargas, Theodor Dumitru Stolojan, Vladimir Urutchev, Henna Virkkunen, Hermann Winkler |

| 1 | 0 |
|-----|------------------|
| ECR | Evžen Tošenovský |

Key to symbols:

+ : in favour

- : against

0 : abstention