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REPORT

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	6752/18
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Subject:	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 – Presidency progress report

The present report has been drafted under the responsibility of the Bulgarian Presidency and is without prejudice to particular points of interest or further contributions of individual delegations. It outlines the work done so far in the Council's WP GAG+1 and gives an account on the state of play in the examination of the above mentioned proposal.

I. INTRODUCTION

1. The Commission adopted its Proposal for a Regulation 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 (hereinafter: the Comitology regulation) on 14 February 2017¹. The proposal consists of four targeted amendments to the Comitology regulation concerning the procedure for adoption at the appeal committee level of opinions on draft Commission implementing acts. It was adopted as a consequence of certain difficulties encountered by the Commission with respect to GMOs authorisations and the glyphosate approval. The revision of the Comitology regulation was highlighted as an element of Priority 10 "Union of democratic change" in the Letter of intent signed by the President and the Vice- President of the Commission in September 2017.
2. In the Council, the proposal was presented to the especially dedicated Working Party on General affairs + 1 (legal advisors) (hereinafter: WP GAG (Comitology revision)) in November 2017 during the Estonian Presidency. At this meeting the working party decided to request the opinion of the Council Legal Service on several issues relating to the proposal, in particular on its compliance with the proportionality principle. Under the Bulgarian presidency three meetings of WP GAG (Comitology revision) took place. During these meetings the draft regulation was discussed article by article, with the corresponding recitals.
3. In the European Parliament, the examination of the responsible JURI committee is still pending. In the course of the internal procedure for consultation so far opinions have been delivered by ECON, INTA, ENVI, ITRE and AFCO committees. The appointed rapporteur for the file is József Szájer (EPP, Hungary).

¹ Doc. 7804/17.

II. STATE OF PLAY IN THE COUNCIL

4. Under the Bulgarian Presidency, the efforts have been focused on the examination of the proposal in detail. Each of the four elements has been taken up in the light of the conclusions drawn by the Council Legal Service (hereinafter: CLS) in its opinion issued on 2 March 2018². During the first semester of 2018 WP GAG (Comitology revision) held three meetings- on 9 March, 27 April and 25 May, at which delegations had the opportunity to express their positions on the four elements of the proposal, the enacting terms and the recitals in the Preamble of the draft regulation.
5. On the basis of the discussions in the WP GAG (Comitology revision) and of the written positions submitted by delegations, the Presidency put together the present progress report which objective is to inform of the state of play of the discussions at Working Party level.

– **Outcome of the discussions on the provisions of the draft regulation**

Meeting of the appeal committee at ministerial level (proposal for a new sixth subparagraph in Article 3, paragraph 7)

6. Delegations presented their positions on this amendment and an almost roundtable was run. Following the conclusions drawn by the CLS in its opinion of 2 March 2018 the vast majority of Member States expressed positions against this element of the proposal. Member States shared the conclusion of the CLS that in essence to determine such level of participation unnecessarily touches upon the national political structures of the Member States protected by Article 4(2) TEU and goes against the principle of sincere cooperation as stipulated in Article 4(3) TEU. The Presidency preliminarily concluded that this proposed amendment was not supported by Member States.

² Doc. 6752/18.

Changes to the voting rules for the appeal committee (proposal for a new second subparagraph to Article 6, paragraph 1)

7. During the discussion on this element of the proposal the majority of the delegations opposed the proposed amendment but it emerged that several delegations were flexible and open to discuss alternatives. Therefore, the Presidency came up with drafting suggestions³ regarding the proposed amendment to the voting rules of the appeal committee. They were inspired by the alternatives laid out in point 48 of the CLS opinion and the structure of Article 5 and Article 6 of the Comitology regulation.
8. The drafting suggestions were neither supported by delegations, nor by the Commission. Therefore, the Presidency provisionally concluded that there was not sufficient support for this amendment.

Referral to the Council (proposal for a new paragraph 3a in Article 6)

9. Similarly to the discussion on the proposal for meetings of the appeal committee at ministerial level, the vast majority of Member States expressed positions against this particular amendment. The Member State supported the conclusions in the CLS opinion that such an amendment would go beyond the role envisaged by the Treaties for the Council and would be in breach of the principle of institutional balance (Article 13 (2) TEU). Consequently, the Presidency provisionally concluded that there was no support for this amendment.

³ Doc 6022/2018.

Make individual Member State representatives' votes at appeal committee level public (proposal for amendments to Article 10, paragraph 1 (e) and paragraph 5)

10. With respect to the idea of increasing the transparency of the way Member States vote in the appeal committee many delegations conveyed positive views. Nonetheless, they expressed readiness to explore alternative ways to the Commission amendment of achieving this, such as by amending the Rules of procedure for the appeal committee⁴. Other delegations reiterated their reluctance to move forward with this element of the proposal. The preliminary conclusion drawn by the Presidency was that there was no sufficient support for this amendment.

Common non-paper of 15 Member states in response to the presidency's consultation regarding the proposed draft regulation

11. At the meeting of WP GAG (Comitology revision) of 27 April, at the request of a couple of delegations a general discussion on the appropriateness and the necessity of the proposal took place. They put forth arguments of political and legal nature against the whole proposal. Many Member States shared similar concerns.
12. As a consequence of a written consultation lodged by the Presidency a Common non- paper by 15 Member States was presented. This document concludes that these Member States remain unconvinced by the necessity and the added value of the proposal not only given the conclusions drawn by the CLS in its opinion, but also based on the positive evaluation of the efficiency of the existing framework made by the Commission in the report on the implementation of the Comitology regulation published in 2016⁵.

⁴ OJ C 183, 24.6.2011, p. 13.

⁵ COM (2016) 92 final.

III. CONCLUSION

13. As outlined in the above sections of this report, additional consideration might be given to possible further discussions with respect to more particularly modifying the existing voting regime in the appeal committee and making public the way Member States vote in this committee.
14. Coreper is invited to take note of this progress report.
