**FICHE ON THE "NO OPINION-NO ACTION" CLAUSE IN COMITOLOGY**

**Fiche no 35**

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| **Commission Proposal** | **Relevant Article** |
| Common Provisions Regulation COM(2011) 615 | Article 143 |

*This paper has been drawn up on the basis of the proposals for regulations adopted by the European Commission on 6 October 2011 and the subsequent amended proposals for a Common Provisions Regulation. It does not prejudge the final nature of the act, or the content of any delegated or implementing act that may be prepared by the Commission*

The provisions on comitology in the Common Provisions Regulation proposal (CPR) foresee that, under the examination procedure, *"where the committee delivers no opinion, the Commission shall not adopt the draft implementing act"* (Article 143(3)).

As negotiations on MFF sectorial proposals have moved on, it now appears that this general clause in the CPR stands as a unique case, which would lead to an unbalanced solution as compared with implementing procedures for other financing programmes.

Indeed, the "no opinion-no action" clause is a derogation from the general rule laid down in the new Comitology Regulation[[1]](#footnote-1) according to which, where no opinion is delivered, the Commission may adopt the draft implementing act (Article 5(4)). This derogation is foreseen for specific issues: acts concerning taxation, financial services, health or safety protection or definitive multilateral safeguard measures[[2]](#footnote-2). For other issues, a basic act may also specifically provide for the "no opinion-no action" clause[[3]](#footnote-3), but it should be in duly justified cases, in line with the spirit of the new Comitology Regulation, which states that "the procedural requirements should be proportionate to the nature and impact of the implementing acts to be adopted" (Recital 10).

A general "no opinion-no action" clause, as foreseen at the moment for the CPR, would complicate implementation and cause undue delays as pointed out in the Commission’s scoreboard on simplification adopted by the College on 26 February 2013 (COM (2013) 98). Indeed, if no opinion is delivered by the committee, the Commission has the choice between submitting an amended version of the draft implementing act to the same committee and submitting the same draft implementing act to an appeal committee for further deliberation[[4]](#footnote-4). In either case, given the committees' rules of procedure, the delay is a matter of months rather than weeks.

It needs to be stressed that, in practical terms, the clause would mean that the Commission would not be able to adopt an implementing act in the case where a (simple) majority of Member States would support the measure in the committee. If the Commission considers appropriate to maintain the initial draft implementing act, it would then have to go to the appeal committee to repeat the vote. If the appeal committee delivers no opinion, then the Commission can adopt the act, even with a simple majority against (Article 6(3) Comitology Regulation).

This is why the Commission considers that such a clause should be used only in exceptional and duly justified cases and not as a general rule. In this context, even where the Council introduced a "no opinion-no action" clause, it was only for a limited number of acts and specific cases (see attached table).

In the case of CAP, which is the most relevant sector for comparison with the CPR in terms of financial envelope and of method of implementation (shared management), the Council has never introduced a general "no opinion-no action" clause. When it has introduced the clause, in each case it is only for a very limited number of acts, listed in the relevant provision.

The Commission has firmly objected to these amendments, even though they are for specific acts only, because the Council has introduced them without proper justification.

The Parliament has supported the Commission's position whenever such clauses were discussed in trilogues. In particular, Parliament's negotiating teams have asked for a written explanation on the Council's part, thereby embracing the idea that such a clause cannot be introduced without proper justification (e.g. trilogue held on 6 May 2013 on the Statistical Framework Regulation[[5]](#footnote-5)).

In several instances, the Council has been persuaded to drop the clause, such as most recently in the CAP-related proposal on Collection of Accountancy Data for Agricultural Holdings[[6]](#footnote-6).

Therefore, in line with the goal of simplification and the need for balanced and proportionate committee procedures, the "no opinion-no action" clause should be removed from the CPR, or at the very least considerably reduced in scope, to target clearly defined acts, listed in a limitative manner.

The attached table gives a comprehensive overview of the "no opinion-no action" clause in negotiations on MFF sectorial proposals.

| **Programme** | **Article** | **Remarks** |
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| **1. Programmes where the Commission proposed the no opinion clause** | | |
| Common Provisions Regulation  *COM(2011) 615* | Article 143 | *provisions cover the Coordination Committee of the ESI Funds (sole committee for the Cohesion policy Funds)* |
| Civil Protection Mechanism  *COM(2011) 934* | Article 31 | *for the following acts only:*  *- annual work programmes*  *- modalities for matters listed in Article 30* |
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| **2. Programmes where the Council introduced the no opinion clause** | | |
| CAP Horizontal  *COM(2011) 628* | Article 112 | *for the following acts only:*  - *minimum conditions for accreditation*  *- procedure for issuing and withdrawing accreditation of paying agencies, as well as of coordinating bodies*  *- obligations of paying agencies as regards public intervention and the content of their management and control responsibilities* |
| CAP Direct Payments  *COM(2011) 625* | Article 56 | *for the following acts only:*  *- rules for first allocation of payment entitlement*  *- measures regarding the reversion of non-activated payment entitlements to the national reserve*  *- notification requirements* |
| CAP single CMO  *COM(2011) 626* | Article 162 | *for some implementing acts relating to oenological products only* |
| CFP Regulation  *COM(2011) 425* | Article 56 | *for some acts relating to conservation measures and the entry/exit scheme only* |
| CFP CMO  *COM(2011) 416* | Article 51 | *for some acts concerning the production and marketing plans of producer organisations only* |
| Home Funds Horizontal  *COM(2011) 752* | Article 55 | *for the following acts only:*  *- work programmes*  *- rules for checks carried out by MS and reporting*  *- rules relating to the audit authorities and the annual clearance of accounts*  *- rules on information and publicity*  *Note: provisions cover committees for each of the Home Funds* |
| COSME  *COM(2011) 834* | Article 16 | *for the annual work programmes only* |
| Health for Growth  *COM(2011) 709* | Article 16 | *for the annual work programmes only* |
| TEN-T Guidelines  *COM(2011) 650* | Article 55 | *for details of the core network corridor work plans only* |
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| **3. Programmes where the Council did not introduce the no opinion clause** | | |
| EAFRD  *COM(2011) 627* | Article 91 |  |
| EMFF  *COM(2011) 804* | Article 151 |  |
| CEF  *COM(2011) 665* | Article 24 |  |
| Fiscalis 2020  *COM(2012) 465* | Article 15 |  |
| Consumer Programme  *COM(2011) 707* | Article 24 |  |
| Erasmus for All  *COM(2011) 788* | Article 30 |  |
| Galileo  *COM(2011) 814* | Article 35 |  |
| PSCI  *COM(2011) 609* | Article 18 |  |
| Europe for Citizens  *COM(2011) 884* | Article 9 |  |
| RELEX Common Implementing Rules  *COM(2011) 842* | Article 15 | *provisions cover committees for each RELEX instrument* |
| Horizon 2020 SIP  *COM(2011) 811* | Article 9 |  |
| Creative Europe  *COM(2011)* *785* | Article 18 |  |
| Justice  *COM(2011) 759* | Article 10 |  |
| Rights & Citizenship  *COM(2011) 758* | Article 9 |  |
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| **4. Programmes with no committee** | | |
| Pericles 2020  *COM(2011) 913* |  |  |
| Hercule III  *COM(2011) 914* |  |  |
| EGF  *COM(2011) 608* |  |  |

1. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. [↑](#footnote-ref-1)
2. See point (a) of 2nd subparagraph of Article 5(4) of the Comitology Regulation. [↑](#footnote-ref-2)
3. See point (b) *ibid.* [↑](#footnote-ref-3)
4. See 3rd subparagraph of Article 5(4) of the Comitology Regulation. [↑](#footnote-ref-4)
5. COM(2012) 167. [↑](#footnote-ref-5)
6. COM(2011) 855; agreement for dropping the "no opinion-no action" clause at the 1456th meeting of the Special Committee on Agriculture, 29 April 2013. [↑](#footnote-ref-6)