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EC Proposes Changes in Comitology Rules

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Report Highlights:

On February 14, 2017, the European Commission published a legislative proposal to amend the EU's comitology rules (Regulation EU 182/2011) in a stated effort to make Member States (MS) more accountable for EU legislation. These proposed changes in the decision-making rules would apply to all areas of EU law-making. However, to date, only approval decisions for genetically engineered (GE) products and glyphosate, the active ingredient in a widely used plant protection product, have failed to reach a qualified majority for or against. In these cases, the Commission has been obliged to take the final decision.

General Information:

A number of stakeholders has raised concerns that the proposed changes may lead to an even lengthier pre-market approval process for GE imports and pesticides or herbicides. It is also possible that a new *de facto* moratorium on approvals of sensitive agricultural GE and other products may be imposed while the EU institutions consider the Commission's proposal. The proposal was published on the [EC's feedback website](#) on February 15, 2017. Anyone whether a citizen of the EU or not can submit comments on it during an 8-week period following its publication. These public comments will be summarized by the Commission and presented to the Council and European Parliament for consideration in their deliberations although there is no obligation for these comments to be acted upon.

The European Commission proposed a revision of the EU's comitology procedures (Regulation EU 182/2011). With this proposal, the Commission aims to force the MS to take political responsibility in decision making. Under the current rules, MS have invariably failed to reach a qualified majority for or against every Commission proposal to authorize GE imports and more recently with the reauthorization of glyphosate. A qualified majority requires 55 percent of EU Member States representing 65 percent of the total EU population. As a result, the current rules require that the European Commission makes the final decision when the MS fail to reach a qualified majority. By removing abstentions and "no shows" the Commission aims to make the EU voting system work as it was originally designed and have the MS, not the Commission, make the decisions.

The four amendments in the proposal are:

- a) Changes to the voting rules in Appeal Committee: a qualified majority will be calculated only taking MS voting in favor or against a draft act. MS that are not present or abstain are considered as non-participants for the calculation of a qualified majority. More specifically, instead of taking into account all 28 MS and the total EU population, a qualified majority would be calculated on the basis of 55 percent of those MS voting in favor or against at the Appeal Committee and 65 percent of their populations.
- b) Second referral to the Appeal Committee at Ministerial level in the case of "no opinion." The Commission can convene a second meeting at Appeal Committee where MS are represented by national government Ministers. This is aimed to ensure that sensitive decisions are discussed at a political level. In cases where this second meeting is convened, a further three month delay would be added to the decision-making process.
- c) Increase voting transparency at the Appeal Committee level by making public the votes of MS representatives. Clearly, this provision would allow MS' citizens, NGOs, and national and international media to know the position taken by MS governments on science-based issues.
- d) Ensure political input by giving the Commission the right to refer the matter to the Council of Ministers for an opinion if the Appeal Committee is unable to reach an opinion. In this scenario, where MS continue to deliver a "no opinion" at the Ministerial-level Appeal Committee vote, the matter would be referred to MS' Ministers at Council. Ministers would be asked their views on the institutional, legal, political, and international impact of the "no opinion." Based on these views, the Council would

issue a non-binding opinion of which the Commission would take account. If the Council were to take a vote on the issue, all positions in favor or against and abstentions would be taken into consideration. The possibility of referring the matter to the Council may further delay the decision making process by three months.

The proposal will shortly be transmitted to the EP and the Council. It seems likely that the General Affairs Council and the JURI Committee at the EP will be responsible for the matter. It is clear that legally the current legislation should continue to apply until it is amended or repealed. This is acknowledged by the European Commission in its [Q&A document](#) about the proposal. However, some stakeholders are increasingly concerned about the possibility of a new *de facto* moratorium on GE approvals during the period when the comitology proposal is debated by Council and EP. Nineteen GE events were previously blocked by the College of Commissioners between November 2013 and April 2015 while the Commission was evaluating the decision making procedures on GE authorizations. Current fears are that a possible *de facto* moratorium could last for three years as Council and the EP will likely take that long to debate the proposal. It is critical that the current system of GE approvals will continue while the legislative proposal is being debated.

Initial analysis of the proposal suggests that its most significant impact, should it be adopted, would be to further delay the GE approval process as referral to a second Appeal Committee and the Council could take up to an additional six months.