

The call for more Transparency within the Comitology system

Normative Assessment of EU's Comitology System in
implementation acts, its accountability and transparency
between 2009-2017

Abstract

In studies surrounding the EU, assessments usually focus on the decision-making in the first tier-rule making system between the Commission, Parliament and the Council. What this study has analyzed is the second-tier rule making system, The Comitology. This institution is built up by hundreds of different committees tackling different subjects. Each committee is represented by one representative from each member state to make a decision in the implementation drafts put forward by the Commission. The Comitology is the Commission's examination and advisory procedures before an act is implemented. The assessment has in reports and its register, studied decision-making within the Comitology from the theories *Transparency, Accountability, Principal-Agent* and *Multi-level governance* since start of the Treaty of Lisbon. The normative assessment showed that when a committee vote results ends in *no opinion*, the system is at most lacking in accountability and improvements have to be made to the register in order to gain more transparency. The conclusion asserts that the changes that are in the process of being made within the Comitology are important, but it also argues if it really is the ultimate change to an already complex system.

Key words: EU, Comitology, multi-level governance, transparency, accountability
Words: 9820

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1 Introduction

The Comitology is not usually spoken of when it comes to analyzing the institutions of the European Union. Even if this system of experts have a lot of say within the process of implementation acts. The Comitology is the last stand to have influence before implementation of acts by the Commission (EU, Comitology). Discussions around the EU usually consist of the normative study of wanting more transparency and that the politicians within the EU should be held accountable for their action and decision-making. But what about the experts in the Comitology and its many committees, are they holding same level of Transparency and Accountability that is expected in electoral democracy?

“The promise of electoral democracy is that voters can hold political officials accountable for their policy choices, and thereby ensure a close connection between public will and public policy”(Galimard.2014.P.4).

This question made me interested in doing an assessment about the Comitology system of the EU. The debate that caught my eye when deciding was two articles tackling the question about transparency and accountability. One argued that the Comitology makes too many decisions that are politically sensitive and deserves therefore to be demanded for accountability, transparency and decisions to be made by politicians (Andersson, SvD. 2017). While another article states that politicians are not experts and that these forms of decisions should be based on facts and not gut or the latest opinion that is on trend (Fjellner, SvD. 2017).

There have been cases with discussions that the Comitology system is lacking in Transparency for Europe’s citizens, and that the system is unfair. In cases of voting procedures within the Comitology (Johansson. 2017.pdf).

1.1 The Complexity of Comitology

The Comitology system is a system during the legislation when the Commission proposes a draft implementing measurement to be voted or get advice through consultation by a selected group of experts. Within the committee one representative from every member state with expert knowledge within the area of the implementation is present. These experts are approved by the European Parliament and the Council and handpicked by each member state (EU. Comitology). The Comitology is a part of the Commission's committees working under the institution. In 2017 there were 267 different committees within The European Union and they are each responsible to come to an agreement about the implementation acts (Commission. Report 2017).

One reason why the Comitology exists is because when the Commission was first opened the working people writing and legislating the laws had too much work. The second reason was that the member states wanted more openness and more information about the decision-making taking place within Brussels, this is divided up in these committees to function as consultation for the Commission (Blom. 2011. P. 59).

The Comitology is the second tier rule-making system within the EU. The first-tier rule-making system is when the Commission proposes legislation which is either accepted, neglected or modified by the Council or the European Parliament, the one that is usually talked about when it comes to the EU. The second-tier rule-making system is underneath the first, where decisions are being taken by the Comitology if acts should be adopted that have been agreed by the Council and the Parliament before-hand (Blom. 2011. P. 2). This section where committees are consulted first with a meeting is a part of the rule-making system called the Comitology (Blom. 2011. P.143).

In order to understand the institutional set-up of the system we will now present Blom's way of portraying to the reader the four levels of understanding the Comitology more thoroughly:

Level 1: *The Treaty* - which specify how the rules are and how it has been decided how the system work (Blom, 2011. P. 22).

Level 2: *Framework rules* - which explains the rules within the system of the Comitology (Blom, 2011. P. 23)

Level 3: *Daily legislative practice* - in the framework rules there are procedures that needs to be accounted, which committee should be picked for what question, this out forms the daily legislative practice (Blom, 2011. P. 27).

Level 4: *Daily working practice* - the rules of working formally and informally within the Comitology system's committees and individuals (Blom, 2011. P. 23).

When I was doing my research within the Comitology system I took inspiration from *The EU Comitology in theory and practice* by Blom, Hansen. The book investigates the institutional history of the Comitology system, its development in modern days and its role within the European Union from an implementation perspective. Blom also covers the representatives of Denmark in the different committees. Other studies that have been made within this subject analyze the Comitology's register system, and analyze how fair, good or poor it is with statistics and if the system was transparent before the Lisbon Treaty was implemented (Brandsma. 2008). Other study made for the politician Max Andersson tackles the question of the new Comitology rules within the case study of Glyphosate and the complexity of the system (Johansson. 2017). Another study focuses on the empirical evidence found in the case study when the Comitology was voting about GMO laws, where comparisons between the old system and new one, to prove the Comitology system continuously inefficiency (Klika. 2013).

1.2 Treaty of Lisbon

The Lisbon Treaty was implemented in December of 2009 and this treaty was the buildup of the Comitology as we know it today. Within the treaty the first split between delegated acts and implementation acts was defined (Blom, 2011. P. 18). In the Lisbon Treaty, it states that the Commission's actions of implementing powers is to be controlled by the member states, which is through the Comitology (Blom. 2011. P.19). The treaty was also the one that started the co-existence of power between the Parliament, the Council and the Commission (Treaty of Lisbon, 2007).

What particularly changed within the Comitology system with the Lisbon Treaty was that the system is more open than before. Since 2000 the Commission has published annual reports online that contains information of Comitology meetings, what type of committees there are and what decisions have been made. Yet it is still very hard to find out who the representatives are. The Commission with the introduction of the Treaty of Lisbon opened up a new online register system that is opened for the public. Within this register you can find which countries that were present, information about the meetings and decisions taken. It is a remarkable change of the system as compared to before according to Blom (Blom, 2011. P.16).

The Lisbon Treaty also introduced changes in 2011 within the system of the Comitology when in cases where no opinion is being put forward, the Commission have to call up together another committee called the appeal committee, this will we talk more in detail about in chapter 3 (Blom, 2011. P.21).

Even if this system is not usually studied, it is more common nowadays then earlier to do so. If studying as a comparable study between now and back then the new system is more opened up its hidden doors to public visibility. The question is if this increased openness is enough for upholding theoretical levels of being accountable and transparent?

1.3 Question and purpose

The purpose of this study is to analyze the Comitology system and theoretically answer if the system is holding enough of transparency and accountability level that is expected of this institution within the EU. The normative study will try to showcase if the system has failure of accountability, transparency in a state of multi-Level governance.

The assessment will try to be answering the questions:

1. How has the voting in the Comitology been since the implementation of Treaty of Lisbon?
2. How does the Comitology system work in practice?
3. What should the Commission change to gain transparency and accountability in the Comitology?

My hypothesis is that when votes of *no opinion* have come up is when the system is at most lacking in transparency and accountability because of EU's multi-level governance. This is when the system of the Comitology takes a puzzled turn and pressure is suddenly put on the Commission without the expert's knowledge to vote about a subject that could affect a lot of people (Comitology Regulation art.5.3).

2 Theory

In the interinstitutional agreement from 2016 on a mandatory agreement the institutions agrees that:

“(3) The three institutions affirm that transparency and accountability are essential to maintain the trust of European citizens in the legitimacy of the political, legislative and administrative processes in the Union”. (COM(2016) 627 final)

This combination of the words transparency and accountability is common in the EU to be able to uphold trust in, legitimacy, and the legislative right of politics. Transparency and accountability is in an interrelation with each other, you cannot have transparency without accountability, and you cannot have accountability without transparency (Meijer. 2014. p.2).

2.1 Transparency

The whole idea of transparency can be traced back to Jeremy Bentham’s idea about openness. Where transparency is described as the deficit of abusive power within representative bodies that affect the worth of trust, from citizens that are being governed by that power (Meijer. 2014. p.1).

The background to Bentham’s idea of openness lies in his theory of *panopticon*, where inmates of a prison is always visible to the guards, which can be applied to experts within this study. Panopticon statement is when you are being watched, usually the better you behave (Meijer. 2014. p. 3).

The meaning of the word when going online is “the characteristic of being easy to see through” (Cambridge Dictionary) which is parallel with one of transparency most essential attribute, *access to information*. Access to information which is said in Article 42 within EU Charter of Fundamental Rights explains:

“Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents” (FRA. Article 42).

This also includes the committees work when asking for request: *“Requests for access to committee documents shall be handled in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council”* (2011/C 206/06. Article 13.1).

Transparency within the EU is that every individual should be able to access relevant documents and information about the work in the European Union, which is essential for a democratic polity. EU should and according to their legislation always strive for an open Union as possible. This will lead to that servants and politicians can be held accountable for its action (Craig, Paul 2012).

In order to distinguish the term transparency there is three perspective of transparency as a term:

- **First perspective: Transparency as a virtue**

This means when an actor sees himself as transparent when it comes to decision-making within the process that is being done.

This type of analyze can then be used within scientific reports to be able to set up goals of what and how public actors should live up to. It is a normative theory (Meijer. 2014. P.5).

- **Second perspective: Transparency as a relation**

This form of transparency is linked together with the theory of principal-agent theory: a theory when a principal is seeking out information from and about the agent to analyze if the agent is sticking to the social contract signed (Meijer. 2014. P.5).

- **Third perspective: Transparency as a system**

This means that an analysis is more centralized around the acting of the character within the system. That the democratic decision-making is transparent in all institutions likewise. This perspective means that you cannot only analyze the relation between agents-principal like in the second perspective but more analyze the principal-agent in a set of many relations within a system of regulation and procedures (Meijer. 2014. P. 5-6).

In this study we will focus on the third perspective, transparency as a system. To be able to answer my questions but also to be able to analyze the Comitology system within itself. By using the principal-agent theory I will not only from my own perspective of information seeking understand the system in practice, but also from an actor-perspective.

2.2 Accountability

Thoughts about accountability historically surround listing and counting, which are important to be able to hold an actor accountable. Accountability is defined as a state when a person is demanded to explain their action to another part why a scenario happened. By this meaning it means that a person that is demanded explanation should give one and the justification for it. How the order of voters were, what result, did the after effect meet the standards of the normal order (Olsen. 2014. P.2).

Accountability is a diffusing word which scholars identify very differently usually to their own standard of analyzing actions within politics. Therefore you could say that the term accountability is related to the principal-agent theory in the sense that agents are doing tasks for the principals that are later affected by the agent's decision-making (Boven. 2014. P.7).

When discussing the subject of accountability the study will take its stand point from *accountability as a mechanism*. By this it means that accountability is a state when an agent could be held by other agents or the institution itself to account. This form of studying accountability focuses on whether they can be held accountable for actions, then

the behavior of the sitting people in the Comitology (Boven. 2014. P.9). In order to understand accountability in the essence of the study we will turn our focus to the theory of principal-agent.

2.2.1 Principal-Agent theory - Holmström's model

Principal-agent theory focuses on the relation between agents and principals, where agents have to undertake a mission forwarded by another actor, called principals. The principals always judge the performance of the agents that are working for the principal (Galimard 2014. P. 1-2). The very core of the theory is to analyze the work of the agent and in order to get a result this study will need to focus on who is accountable to whom (Galimard. 2014. 2-3).

The agents within this study will be the agents of expertise sitting in the Comitology system and principals will be the people around the system. Principals that cannot directly control each agents action (Galimard. 2014. P. 8).

In the text by Galimard they mention Principal-agent theory as family of models and that one of which must be proved in order to get a result within this theory, which along the assessment will be answered along the questions of this study:

1. "What the agents can do and how this affects the principal(s).
2. What the principal(s) can do and how this affects the agent(s).
3. Who the principal(s) and agent(s) are" (Galimard. 2014. P.3).

This study will focus on two models combined. The first one is *moral hazard problem*. Within this form it focuses on the agents' free selection of decisions that affect the principals' *utility*. The principal cannot control the agent directly in his decision-making and the opinions can be very different between the principal and the agent's (Gailmard. 2014. P.3).

Secondly, we will focus on the principal-agent theory of *free selection of decisions* which is portrayed in Holmström's principal-agent model (Galimard. 2014. P. 8-10). In this

model the agent has a stand of expertise knowledge which the principal does not have (example Comitology system). The way for the principal to influence in this sense is to build up policy-decision that the agents agree upon (implementation drafts). The agent then chooses its decision upon its own self-interest or preferred knowledge. The model also suggests that the agents and principal does not always have the same ideological or optionality opinion, which means the principal could in many cases be met by decisions that are not the preferred, but that are the desired outcome for the agent. The position of the principal in this sense is to make policies that are close to its own preferred policy to get the most optional outcome (Galimard. 2014. P. 9-10).

Using the theory of principal-agent will be an opportunity for the study to analyze how the system works in practice but also how the system could change in practice more thoroughly. The study will be using three case studies within the assessment with three different outcomes, within three different years after Lisbon Treaty, followed by a conclusion from the perspective of principal-agent theory.

2.3 Multi-Level Governance (MLG)

Liesbet Hooghe and Gary Marks, who are the founders of this theory, explain multi-level governance as the separation of powers with applying multi-levelling of political governance into smaller institutions. They argue that the EU during its history has moved away from the importance of states to now instead be on the supranational level, the assemblies and smaller authorities in the EU (Civitas.pdf).

Multi-level governance theory sees policy-making in the Comitology as something that is not functioning, they see the system as a complex network of policy-making where politicians are no longer involved within decision-making. The theory constitutes that nowadays anybody can really affect the work of policies within the EU like for example lobbyist, experts, governments and citizens (Papadopoulos. 2014. P.2).

Hooghe and Marks (2009) distinguish two types of multi-level governance, this study will focus on:

Type II, which says that this form of governance seems to be split from the network system and independent in the way that it is getting away from the direct control from politicians (Papadopoulos. 2014. P.3). This system is seen as wary and the possibilities that the procedures could overlap with the actors, this form of emergence can be viewed as the development of the complexities of these multi-level policy-making systems (Papadopoulos. 2014. P.3-4).

The theory of multi-level governance sees accountability within the multi-level system as a social mechanism: “*a relation in which an agent can be held to account by another agent and face consequences*” (Papadopoulos. 2014. P. 2). This connects with the accountability part of theory where we distinguished that agents can be held to account by themselves or its institution.

Multi-Level Governance will be used in this study as the eyes of my own observations when it comes to the conclusion of the case studies together with principal-agent theory.

3 The Procedure of the Comitology

In this chapter, we will talk about the systematical procedure that is the Comitology, its function and how decision-making and votes are formed. In order to be able to do a normative analyze of the system where my own opinions about the system matter from perspective of transparency, principal-agent theory, accountability and multi-level governance. The systematical procedure of the system must be disclosed.

(Recommendation is to follow the model posted below this chapter while reading to understand where in the process we are talking about.)

3.1 Procedure of voting

Within the Comitology meetings the decision of the committee lies on a *qualified majority vote*. This means that of the 28 member states each one has an official selected representative represented in one of the Comitology many committees. During the vote procedure, if a majority of them votes yes to adopt implementation (over 50%), the policy will be adopted by the Commission. If the same Committee have a qualified majority that votes against the implementation act, it will not be adopted by the Commission. In situations where there is no qualified majority either in favour or against, causing a result of no opinion, the Commission has three options: change the act, send a new proposal or the system of decision-making with the first tier-rule making system starts over. A last option is that the case is being passed on to an appeal committee (The Comitology, EU).

3.2 Appeal Committee

In cases where the Commission gets hindered by the committee from adopting an implementation act when votes of no opinion occur, the act can be sent to an appeal committee. The appeal committee can be easily described as a bonus committee which have the same format as a normal meeting within the Comitology. There are many appeal committees just like the normal committees but they are usually represented by higher official representatives, one from each member state (The Comitology, EU).

The appeal committee gives an option of second negotiations about the implementation of an act. The reasons behind the existing of appeal committee could be that the EU has a system where an act that gets started in the decision-making will have to be adopted within a certain amount of time (EU, Comitology). This could mean in a sense that in order to pass an implementation within a time limit, this second negotiation where the first committee voted against or no opinion is possible. If this form of voting in the appeal committee is not being decided by a qualified majority this act is then to be send to the Commission for a final vote. Where the ones that first proposed the implementation act is the one finally deciding it (Johansson. 2017).

One of my case studies will be the decision of allowing Glyphosate to be used for another 5 years, where the decision went all the way to the appeal committee. Where later the European Commission president Jean-Claude Juncker had to comment in his State of the Union Speech back in 2017 the changes that have to be made within the Comitology system (Fact Sheet 2017. Strasbourg. 14 feb. 2014). We will discuss this more in the normative discussion in the assessment after achieving our results of this study.

3.3 The detective work of finding answers within the Comitology

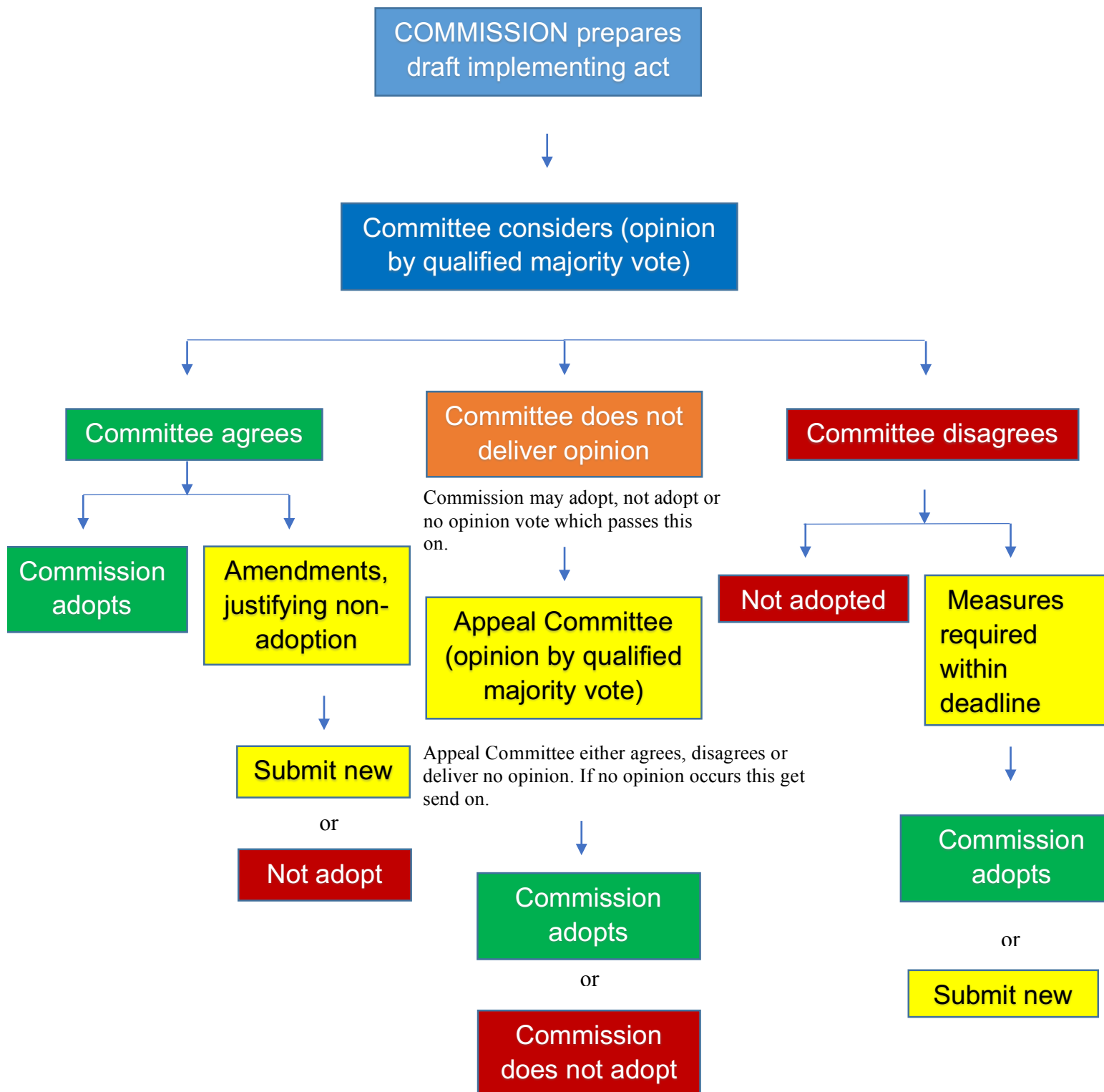
The Comitology have demands from both the EU council as the European Parliament of **right of information**, where the information from the committees is constantly presented to the Parliament and the Council. **Right of scrutiny**, this is where the Parliament or

Council is saying that the format of procedure that has been taken by the Commission has gone out of its limits of power when it comes to the rules of procedure. The Commission in this sense have to then analyze its own procedure to see if there has been error in its own decision-making, and thereafter decide if the decision should be as is, change it or withdraw the decided act (EU, Comitology).

The Commission also publish annual reports about the Comitology decision's in order to broadcast how many decisions that are being taken by each committee. But it still leaves many question about the numbers being published, which will be shown in the Empirical findings in the assessment of the annual reports.

Within the Comitology register it is possible of finding information about the voting's that have been done, what processes that are ongoing and what the turnout of the act was. The interesting thing here is that you cannot see the individual vote from each member state and you cannot see who the representative is either (Comitology register).

The general model of implementing acts (The Comitology system)



Yellow: Certain circumstances.

Source: Europost: <http://www.europost.eu/en/a/view/Brussels-proposes-changes-to-EU-decision-making-process> (Read 7/5 2019) and Standard rules of procedure for Committees (2011/C 206/06)

4 Research design and material

4.1 Method

4.1.1 Quantitative method

The study will be using quantitative method to be able to study the Comitology system's system. By studying the register documents of three cases, the voting for it, and if the access to information and visibility is enough to make the working people held accountable. The study will compare the numbers of decision across all the years since the start of the Treaty of Lisbon. In the *Oxford Handbook of public accountability* they link together *the quantitative method and accountability*, saying that if a study only analyze the empirical in qualitative studies about accountability it is not enough of understanding accountability in just a few qualitative or normative discussion. That is why this study uses quantitative method to also showcase the numbers the Comitology has produced over the years (Brandsma. 2014. P. 1-2).

The quantitative method that will be used in the assessment of the empirical findings will be the numbers in the annual reports from 2009-2017, together with the second part of three examples of case studies that will then be followed by a normative discussion around changes the Comitology should do. The quantitative method will also try in its conclusion to analyze if the availability of the information is enough and how the system portray itself to myself as an observer (Brandsma. 2014. P.7). By doing this the method selecting cases of principal-agent assessment will be by using the reports and information of individual cases that can be found within the Comitology register.

By using numbers the quantitative method will do a comparison of the Comitology voting and meetings since the implementation of the Treaty of Lisbon. Which means that this study will be focusing on the same actor to showcase the differences over the years. Case studies will be used to understand the function of the systems practice. What should be

bear in mind is that the Comitology as a lot of different procedures and this study only covers the system within the decision-making and not the other.

By doing case studies around the system itself we get an understanding of the principal and agent's role within the system, from the perspective of Holmström's model (Brandsma. 2014. P.11).

4.2 Literature and delimitation

The primary sources of this assessment have come from the many reports that are presented in the Commission's annual reports about the work in the Committees and the Comitology register.

The secondary sources that are the central used for the empirical explanation about the Comitology system is Blom Hansen's *The EU comitology system in theory and practice - Keeping an eye on the commission* where Blom analyze of the Comitology system made in 2011 gives a relevant insight of the history about the Comitology, its general function, the rules of procedures, laws and regulation that is not easy for everybody to understand, but that Blom explains in a more objectively matter.

When selecting my theories, I have been focusing a lot on the values of the European Union which instantly was transparency. When researching about which other theories to apply to this study accountability came up as a normative perspective from myself. My sources when it has come to the selection of my theories has been primarily from *The Oxford handbook of public accountability* edited by Goodin, Schillemans, Bovens among others. The reason why I chose this book was because it covered the theories in a very full perspective way and also how the different chapters of writers combine the theories together, *multi-level governance with accountability, principal-agent theory, accountability together with transparency* which was a great contribution for making the connection between the theories work.

The margins of error when analyzing the system through these variables is to be able to come to a concrete normative answer. There will always be possibilities for misconception of the truth, because I cannot truly ever be sitting as a neutral person observing the system take place in a room. The reader should bear in mind that the Comitology has many different procedures, it function as an examination procedure, advisory procedure, management, examination and even more within this system. The focus point is the system in itself of procedure, where an extra focus is laying on the form of the system procedure in decision-making and votings.

The delimitation of this study is firstly that I decided to focus only on the time after the Lisbon Treaty was implemented. The Lisbon Treaty was voted through in 2006 but it was first implemented and started in 2009. I have also focused on three outcomes in my case studies from different years with cases that ended in *no opinion*, *adopted through consensus* and *rejected*. By doing this the assessment will find out the variety of cases throughout the years. The reason why the selection of three cases are three and not more is because the study is not fully leaning on to have the assessment focusing only on the roles within principal-agent theory, but more focusing on the system itself in the results.

4.3 Assessment process

4.3.1 Empirical findings

In my empirical finding assessment, I will be using the Commission's reports between 2009-2017 so an examination of the decision-making within the Comitology can be done. By doing this the study will be able to see where the system either is lacking or where it is clear that there is lack of transparency or accountability. In order to do my normative discussion about transparency and accountability the assessment needs to provide numbers of evidence within empirical findings that claim that there is a puzzle otherwise I will not be able to come to a rightful conclusion of a normative solution.

4.3.2 Case studies

In order to showcase the numbers together with what actually happens within the Comitology in practice I will look into three selected cases of Comitology, its procedure and the results of the voting's of implementation acts. The case study will analyze one case with a positive outcome, one negative and one that was voted no opinion and then decided by appeal committee. By doing three cases of different subjects over different years we will achieve how the Comitology works in practice overall within its decision-making. The case study will help portraying how the work of Comitology actually is formed in motion and with conclusion from the principal-agent theory, understand the role of the Comitology's actors. The purpose here is not to showcase all of the different effects the Comitology could take, more about how the system works. It is about showcasing of what is visible of the decision-making puzzle that is the Comitology. A short explanation about the subject of each case that is going to be analyzed will also be used to give context within the matter.

4.3.3 Normative discussion

Why this thesis focus on a normative assessment is due to get to the bottom of what the Comitology should be like, when it comes to the question that the system is lacking in both transparency and accountability.

The normative assessment will follow Badersten's execution in the book *Normativ metod – att studera det önskvärda*, the perspective of *normative analysis in its actual meaning*. This means that in the assessment the study will try to precisely determine the rightfulness if an action is holding the levels demanded according to the theories in a set of normative expectation, both from my own side but also from a critical point of view of changes happening to the system (Badersten, 2006, p. 47).

In order to uphold my normative standpoint in my assessment I will need to make sure that I prove the things that the Comitology actually uphold in transparency and accountability which will be the evidences that is being found through the web. This in order to prove my point of normative discussion. The precision in my arguments, argumentation, intersubjectivity, relevancy will also be important so that the study has a

purpose (Badersten, 2006, p.103-104). By using normative method in this way together with the empirical findings and the case studies, this will be able to answer my final question in the normative discussion of how it should change. The assessment will be able to analytically analyze the Comitology system and see if the valuables of accountability and transparency are upheld to its potential.

5 Assessment

In this first part the study we will do a presentation of different tables of numbers concerning the total of opinions and meetings being held since the start of the Treaty. In the second part of the assessment we will present the three case studies that have been selected concerning the practice of the Comitology with the perspective of the principal-agent theory. The normative discussion will surround the value of transparency and accountability within the Comitology system and what actually should be changed within it.

5.1 Empirical Findings

Total meetings and opinions of Comitology

Year:	Total Committees:	Opinions	Meetings:	Appeal Committee meetings
2009	266	2091	894	-
2010	259	1904	859	-
2011	268	1868	783	5
2012	270	1923	796	3
2013	302	1916	718	7
2014	287	1889	773	6
2015	280	1726	719	4
2016	277	1768	674	5
2017	267	1906	616	8
	Total:	16 991	6 832	38

(-) = the appeal committee was first introduced in 2011

Source: Report from the Commission on the working of Committees between 2009-2017

In the next one I will first present the year 2009 to 2010 because this was before the appeal committee came into the picture. Before 2011 there were different formats, it was more divided how the voting's of the draft ended in particularly detail. While in the rest of the documents is mostly portrayed how many acts were actually adopted and how

many ended up in the appeal committee.

Year:	Measures adopted according to RPS	Measures under codecision	Measures not under codecision	EP(E),Council(C) opposed adoption of draft measures under RPS
2009	131	779	1029	E: 1
2010	164	980+832*	-	E: 1, C: 2

*Measures adopted on acts other than co-decision acts

-no information about measures not under codecision in the annual report of 2010

Source: Report from the Commission on the working of Committees between 2009-2010

Total opinions, implementing acts and the total of opposed adoption of drafts.

Year:	Opinions	Implementing acts adopted	Measures adopted according to RPS	EP(E),Council(C) opposed adoption of draft measures under RPS
2011	1868	1625	163	C:2
2012	1923	1657	167	-
2013	1916	1716	171	E:1, C:1
2014	1889	1563	165	C:1
2015	1726	1506	129	-
2016	1768	1448	116	E:1
2017	1906	1687	113	E:1
Total:	12 996	11 202	1021	E:3, C:4

Source: Report from the Commission on the working of Committees between 2011-2017

If we look at total opinions between 2011 to 2017 from the first set-up of numbers it is the total of 12 996 opinions. If we take this number and subtract it with the total of implementing acts which is 11 202 between these years, the result is 1794 of the implementation acts that were not adopted. This makes out 13,8% of the total opinions put forward to the Comitology that is not being adopted by the committee, appeal or Commission (without counting the measures adopted according to RPS). The conclusion drawn here is that generally an implementation act that is being put forward to the Comitology will be adopted. But what about the appeal committee?

Appeal committee:

Year:	Meetings:	Draft implementing discussed	Positive opinion	No opinion	Negative opinion
2011	5	8	2	5	1
2012	3	6	-	6	-
2013	7	9	-	9	-
2014	6	13	2	11	-
2015	4	11	-	10*	-
2016	5	11	-	11	-
2017	8	16	1	15	-
Total:	38	74	5	67	1

(*)one act withdrawn

(-) none

Source: Report from the Commission on the working of Committees between 2011-2017

No opinion is a pattern here within the appeal committee even if this committee is with higher representatives officials taking decisions.

2011: All 5 no opinion votes of the implementation acts was later adopted by the Commission.

2012: All 6 no opinion votes of the implementation acts was later adopted by the Commission.

2013: 8 out of the 9 no opinion votes of the implementation acts was later adopted by the Commission.

2014: All 11 no opinion votes of the implementation acts was later adopted by the Commission.

2015: All 10 no opinion votes of the implementation acts was later adopted by the Commission. (One act was withdrawn*).

2016: 9 out of the 11 no opinion votes of the implementation acts was later adopted by the Commission.

2017: All 15 no opinion votes of the implementation acts was later adopted by the Commission.

As shown here most cases delivered *no opinion* according with Article 6(3) of regulation 182/2011 which states that “*where no opinion is delivered, the Commission may adopt the draft implementing act.*”(182/2011.A6(3)). This means no qualified majority was ever reached which

is a scenario that is described in Article 5(1) of regulation 182/2011 that “*The appeal committee shall deliver its opinion by majority [..]*” (182/2011.A5(1))

It is something very puzzling and remarkable that higher officials of representation can in group when taking formal votes end up that consequently with a no opinion result. Even if it is their job to provide for the Commission a decision. It is also interesting that it is impossible to find answer of who the participants are in the committees and appeal committees, by going through the register only their organization on a barely readable paper that has been made into pdf-format is available in the register about the committees.

5.1.1 Conclusion of the Empirical Findings

The conclusion the study drawn from the empirical findings is that most of the acts that are in the implementation act gets adopted within the Comitology and only around 10 percent of these get rejected. Have in mind while stating this the acts not being adopted at first hand can still be adopted after amendments being made. Which is something that is not put forward within the annual report or formalized in any text, which makes the reader of these documents confused and for the study of these reports.

The appeal committees’ numbers are very puzzling of the majority of no opinion results in the voting sheets. Because the representatives that are attending the meeting for a decision that should not be taken by the Commission, but still in some cases still have to. If a sensitive subject would go pass this line of procedure the Commission without any expert knowledge have to take a decision, which could affect all of Europe in theory. Information about which representative that are in the appeal committee is not possible to find and not the majority of the summary records or voting’s within them either. The only documents presented are the ones with text about the subject and what decision was made within the appeal, no showcase of how many voted what for example.

5.2 The Comitology in practice – three cases

5.2.1 The case of Glyphosate – The problem of no opinion

Case: Dossier CMTD(2017)1355 of 8 November-10 November 2017

In 2017 the Commission had to make a decision about the use of glyphosate being allowed for another 10 years or less. Glyphosate in general has been known to be a debate if it causes cancer or not, this substance that usually exist within gardening plant protection products.

According to the summary report of the standing committee on *plants, animal, food and feed* during October and November there were two committee meetings but where no qualified majority won. Even if the standing suggestion of being able to use Glyphosate for another 10 years was reduced to 5 years. In the meetings between 8 November-10 November which then continued on to another formal voting after amendments from 10 years to 5 years which ended in:

14 member states votes in favour (36,9%)
9 member states voted against (32,26%)
5 member states abstained (30,79%)

No qualified majority was yet again not uphold and got in this particular case send to the appeal committee because of the time limit of the permission of the act. Where a qualified majority won just by a small margin but that this form of procedure was heavily in critique how this question was handled with a potential dangerous substance for the citizens of Europe.

Why this format of appeal committee decision got a lot of media attention was due to Germany's agriculture minister that voted yes within the appeal committee, but later claimed by Merkel that this was not the decision in line with what the government's (Sydsvenskan. 2017). If this does not prove that the system of non-control of the agent

which is represented within the Comitology according to Holmström's model of principal agent then what is.

5.2.2 The case of Humanitarian aid – procedure of consensus

Case: Dossier: CMTD(2014)1325, 21 of october-24 october, 2014

During 21 of October to 24th there was a meeting within the Humanitarian Aid committee concerning the refugee crisis in Ukraine during the incident on the Crimea. The incident that saw many people flee from eastern of Ukraine to seek refuge in other countries and in the western parts of Ukraine. The decision was about providing financial aid for the crisis-affected population from EU's general budget.

This decision was taken in consensus to deliver this humanitarian aid to Ukraine for the help of these refugees. This proves that the Comitology does not only handle decisions surrounding the EU but also humanitarian aid to close by countries just as countries farther away.

In this case there was not any necessary formal votes, the voting result was instead decided on consensus with a qualified majority of the committee saying yes. This was later adopted and the money send to help for the humanitarian aid that Ukraine at this time needed. During discussion five member states was against the proposal all other was in favour. Member states against are not mentioned in documents.

5.2.3 The case of Orphacol – procedure of rejection

Case: Dossier: CMTD(2011)1402 8 November 2011 - 15 december 2011

This case was regarding *refusing a marketing authorisation under Regulation (EC) No 726/2004 of the European Parliament and of the Council for "Orphacol – Cholic acid*. Orphacol is a medicine which contains cholic acid which is a substance in the bile to break down different forms of fat (European Medicine Agency).

The committee *on medicinal products for human use* delivered a negative opinion by a qualified majority. An implementing act was deemed by the chair to be necessary and the act was submitted to the appeal committee for further deliberation.

In this case a formal vote was processed within the committee and the result ended up in 64 votes in favour, 281 votes against and no abstentions. Because the implementing act was deemed as essential the chair passed the act on to a appeal committee for another decision within the matter. Where the question was withdrawn by the appeal.

When a voting procedure has been through the first committee and a negative opinion of qualified majority has been delivered by a committee of experts why does it have to be send on to the appeal committee for a second negotiation?

5.2.4 Conclusion – in the eyes of the principal-agent theory and MLG

If we go back to the first case, the case about glyphosate showcase in many aspects the Holmström's model of principal-agent theory because whom is accountable to whom? The agents in this matter is hired for their knowledge and for taking decisions within the questions, which they should have most knowledge about and yet it ends in a no opinion result. In which the principal, the Commission, together with the Council and Parliament have to amend the implementation act of the case from 10 years to 5 years to the desired possible outcome for the agents. This case study example showed that the principals around the Comitology is pressuring the committees for an answer through the form of amendments. When voting is finally made and delivers a no opinion it gets send on to the appeal committee which in the glyphosate case barely delivered a qualified majority, within the time limit of the act. The decision is then interesting from a perspective of accountability with the example Merkel's excuse for the agriculture minister's vote within the appeal committee. The agriculture minister that sits in the government back home but not representing the decision that was in line with the government.

In the second case about the humanitarian aid for the refugee within Ukraine we see instead the effectivity of the Comitology system where implementation can easy and fast be made. An implementation act that was immediately confirmed through the sense of

consensus because the qualified majority already was in order of the desired outcome of the aid during time of incident. This showcase the effectivity of the agents decision making if being consistent and both the principal and agent gets its desired outcome making it possible for the agent to pick a side.

The conclusion we can draw from the last case about Orphacol is that when the agent's in the first committee voted no to an act the Commission founded it necessary that this draft got voted through during the time limit it was allowed. This mean that when the principal cannot provide the utility within Holmström's model of principal-agent it can even if rejection by the agent, send it to an appeal committee for a second comment. This could be seen as the pressure of the principal actually having control over the desired outcome by sending it on to strive for the desired outcome of the appeal committee instead. Question here is if the Commission liability is within this system of a process where pressure of stress can be send on to the appeal committee and where another no opinion vote could get the commission, principals the desired outcome they wanted from the beginning in theory.

In the perspective of multi-level governance this provides with an understanding of the creation of several governances within the knowledge and experts of Europe. But also, how this form of governance is in many ways a complicated matter for scholars studying the system from the outside. It is also clear that even if it seems like a lot of procedures there are ways of the implementation still get implemented, by the Commission even if the first committee of experts votes no. What can be said is that even if this system of experts in many ways is lacking the demands that can be put towards the EU, the strive for transparency is positive within this system compared to how it was before the Lisbon Treaty. It is also very difficult criticizing the organization of using experts' knowledge for decision can hardly be argued against according to an effective rightful political decision-making according to myself.

5.3 Normative discussion

5.3.1 What should the Comitology change?

The Commission's President Juncker put forward four changes that he wanted to change within the Comitology in his State of the Union speech back in 2017 (EC. 14/2. 2017). The changes that the president said would enhance accountability and transparency within the Comitology. The first change lied in changing the rules of voting in the appeal committee to just be able to vote in favour or against. A question that could be asked here is if this plan is for more effective implementation acts only? It would take away the problem of no opinion votes being sent on to make unknowledgeable decisions taken by Commission if appeal committees voted no opinion as well. But in the same sense it would increase the pressure of the working people within the committees, if a politician in parliament in the EU and in other countries can vote no opinion why should not experts be able to as well? Even if this discussion has two sides I am in favour of a system where high representatives knows what is best for the people of Europe, and not where the representatives are uncertain and these forms of agents should know the preferred outcome more than anyone else on the demands from the principal.

The second change was to introduce a second appeal committee but on a minister level. This would mean that discussion would be possible on even higher level of representation than it is in the first appeal committee. This sounds like a good proposal because of the formality happening if no opinion vote would occur in the appeal committee as well. The question here is how the system would be formed within the appeal committee in the case of ministers being present. In the glyphosate case there was the agricultural minister vote being presence within the appeal committee, which was against the own government line within the question back in Germany. Question here is how home governments can hold their send outs for accountability.

The third change was to increase voting transparency, to make sure that the appeal committee votes are open to the people. Because of the high representative positions it should be able to find out what the people voted in the questions coming to them. I believe this change is the most crucial one that could be changed quickly and effective by just publish documents surrounding appeal committees meetings more public.

The fourth change proposed was ensuring political input, by this it meant that the appeal committee should be able to send the act to the Council of ministers if the appeal cannot take a decision within the matter. This would mean yet again that the complex system takes another U-turn of amendments and discussion before a decision actually is taken. The opinion I have in this matter is more that if the system as it is today with the rush of implementing acts (in few cases) gets send to the appeal committee for a quick decision would this not mean that it will be even more time pressure of permission of the act to get adopted? Too much governance is an ineffective governance according to the multi-level governance theory.

I contacted Europe Direct myself about if these procedures of change have been implemented and I got told that they are still on going and right now are waiting for committee decision. This procedure are ready to be met by the Comitology after being passed from council to parliament and been accepted both times (2017/0035(COD)).

My opinion about changes to the system as Juncker proposed I stand behind, the implementation should be implemented within the Comitology system. The thing I have thoughts about is if the system in general enhances accountability in the matter. Because I do not think the problem is the lack of numbers generally but more that we do not know in which extent who is there and who voted what, a lack of transparency of what is actually happening. The register in general needs an update, there is an old Comitology register and a reformed one but the possible findings of documents is not easy for any person. The format of searching for documents does not always work, when searching for subject within the title, even if written perfectly in the search box cannot be found and perfects date are written as well because it wants you to select the exact document you want to search for, because you need to find the case yourself with the help of dossier numbers. In order to gain more transparency and accountability according to me the system have to, firstly, improve the openness of who actually sits within these forms of meetings. Secondly, and the most important goal of achieving accountability and transparency according to me, to publish how every member state voted within the matter. It is also important that the situation of no opinion disappears. There are voting sheets and list of member states attended from organization but never how they voted or if people questioning the result which member state it was stating something.

6 Conclusion

This assessment has looked into the Comitology system to be able to have a normative discussion of what changes have to be made. By using numbers from the Commission's annual reports to study voting over the years and with three case studies from the perspective of Holmström's principal-agent theory and multi-level governance the study shows the Comitology in its essence. This was followed by a normative discussion surrounding accountability and transparency that talked about the necessary changes that should be made to the system, but also discussion around the changes planned by the Commission for the Comitology. The research of the study has shown a pattern within the Comitology system's appeal committee that consistently vote results turned into no opinion, this is where suddenly the Commission have to take a decision within the matter without expert knowledge about the subject. The appeal committee have in majority of the time of the meetings voted no opinion and even if these meetings are a small sum of the total of committee meetings it should not be less regarded because of the higher representative's presence. The turnout of no opinion within the appeal committee is not positive for the system within accountability or transparency. Firstly, because the lack of information from the appeal meetings is a negative impact on the transparency and secondly no one knows who to hold accountable from a citizen's perspective, because there is no information about which member state voted what. The research has confirmed that the system is lacking when it comes to the open register, but also my own critique of analyzing have been made if these changes actually better the situation of the complex Comitology system. What other studies could take after for further research within the area would be to study the Comitology's functions in qualitative perspective with interviews with working people or that have worked within the system. It would also be interesting for a future study of analyzing countries votes within these meetings, and request documents for arguments why they voted like they did if the proposals from Juncker are being voted through.

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