

## **Comitology: Delegation under Control?**

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### **Abstract**

*This paper sheds new light on deliberative dynamics at work in comitology. Starting from the findings of a previous research on the frequency of consensus within the executive committees of the EU in 2008, which unveiled the existence of contested votes in over a quarter of member states representatives' deliberations, this paper seeks to provide a measure of the intensity of opposition to Commission's draft implementing proposals before and after the post-Lisbon reform of comitology. Applying this approach to data from the comitology register (2008-2013), the paper analyses the structure of contestation, proposes an index of opposition and tests the factors that may explain variations. Attention is paid to rationalist and sociological arguments, policy types and procedural settings before and after the last reform of the comitology system. Our findings reveal that conflict with Commission's positions, although weak, is not that rare during deliberations prior to the formulation of an opinion. The paper is organized as follows. The first part is theoretically grounded in scholar's debates concerning the nature of interactions in EU executive committees. The second part presents the data and method of the research with particular emphasis on the index of opposition. The third part exposes the patterns of support and opposition to Commission's implementing proposals as revealed by the empirical study. The fourth part attempts to explain these findings by testing the main hypotheses that have been traditionally formulated regarding Member states-Commission deliberative dynamics. The paper ends with some remarks on the strength of dissent in comitology.*

### **Key words**

Comitology, contestation, Council, delegation of power, European Commission, executive decision-making

## Introduction<sup>1</sup>

Delegation of power without contestation? This paper sheds new light on deliberative dynamics at work in comitology. Starting from the findings of a previous study on the frequency of consensus within the executive committees of the EU in 2008, which unveiled the existence of contested votes in over a quarter of member-state representatives' deliberations, the paper seeks to provide a measure of the intensity of opposition to the Commission's draft implementing proposals before and after the post-Lisbon reform of comitology in December 2010. Using data from the comitology register (2008-2013), the paper analyses the structure of contestation, proposes an index of opposition and explores the factors that may explain variations. Attention is paid to procedural, policy types and sociological arguments. Our findings are threefold. First, they reveal that conflict with the Commission's positions, although weak, is not so rare during deliberations prior to the formulation of a final opinion. Second, patterns of support and opposition appear to be stable over time, i.e., the post-Lisbon reform has not fundamentally altered either the strength or the direction of dissent. Third, sharp cross-sectorial variations exist. Confirming the intergovernmental thesis which hypothesizes that member states oppose regulatory measures considered contradictory to their national interests, the main explanatory variable that accounts for these results seems to be the political saliency attributed by member states to the issues at stake.

The paper is organized as follows. First, we address the theoretical debate on the nature of interactions in EU executive committees and discuss, in particular, the question of the Commission's capabilities in shaping national representatives' political allegiances and forging support for its implementing proposals. Second, we scrutinize the extent and intensity of contestation in the delegation phase of the EU decision-making process. This empirical part is divided into three sections. Section I presents the data and method of the research with particular emphasis on the construction of an index of opposition. Section II lays out the patterns of support and opposition to the Commission's implementing proposals as revealed by the empirical study. Section III attempts to explain these findings by testing several hypotheses derived from the literature. The paper ends with some remarks on the strength of dissent in comitology and a suggested future research agenda to better capture and explain cross-sectorial variations.

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## **I. Comitology: The strength of dissent**

Since the 60s, the main principle of governance underlying the configuration of the comitology system has been the control of the delegated competences entrusted by the Council to the Commission as regards the implementation of EU common policies. The origin and development of comitology reflect nothing other than the need to articulate interinstitutional relationships at the regulatory level of EU decision-making and to crystallise, in particular, member states' control over the Commission's executive powers. As such, comitology was configured as a classic instrument of intergovernmental control of supranational institutions.

By imitating its territorial and sectorial composition as well as its modes of decision, executive committees look like 'Councils in miniature' (Blom-Hansen, 2013, 427). Yet, they differ from their master's institution in at least two aspects. First, their highly specialised areas of expertise and backstage position on the EU decision-making scene invest them with less political aura. Generally speaking, executive committees appear to be eminently technical and administrative even though the regulatory tasks they perform are actually far from being anecdotic, as reflected, for instance, by the important lobbying activity deployed in this domain (cfr. Wetendorff Nørgaard *et al.* 2014; Interview 2). Second, and more crucially from an interinstitutional point of view, executive committees are intergovernmental units embedded in the Commission and thus placed under its supranational leadership.

This peculiarity has generated a recurrent debate in the literature about the nature of day-to-day interactions within executive committees beyond their formal definition as guardians of national interests (Brandsma and Blom-Hansen 2010; Egeberg *et al.*, 2003; Joerges and Neyer, 1997a and 1997b; Trondal and Veggeland 2003). Do member states keep a strict control over the Commission's room for manoeuvre in the executive domain, as expected given the essence of comitology and suggested by the successive 'games of control positions' surrounding the reforms of the comitology system (Brandsma and Blom-Hansen 2012) or is the Commission 'escaping' from this monitoring and actually making use of comitology procedures to strengthen its own institutional position? In brief, to what extent is the institutional design of comitology as a vector of intergovernmentalism challenged on the ground by its daily functioning and, in particular, by the Commission's tendency to regard this system as a mode of self-affirmation?

These questions about the practical denaturation of comitology as a mechanism of member states' control have led to different interpretations. One part of the literature sustains that executive committees maintain their original control function (Blom-Hansen 2013; Pollack, 2003) while other scholars argue the contrary: that executive committees are privileged arenas for collective deliberation and socialisation to European common interest (Dehousse, 2003; Joerges and Neyer 1997a and 1997b). From this perspective, meetings between national representatives who are high-profile experts are a fertile ground for the creation of a European epistemic community that enhances actors' autonomy from command-and-control governmental approaches (Böhling 2014). Between these two polarised views, a third interpretation considers that committees' members combine and deal with both identities in a kind of schizophrenic exercise (Brandsma *et al.*, 2008, 82; Egeberg *et al.*, 2003). As pointed out by Brandsma,

‘Member states feel that implementation of common policies is important enough to install a system of 200 committees to control the commission but then the matters comitology deals with are of such nature that it takes experts to attend these committees and they do not necessarily bargain on the basis of national preferences’ (Brandsma, 2010: 491).

The question is thus what kind of interest national representatives actually represent when they are working in executive committees, i.e. under the umbrella of the Commission. The prominent position occupied *de facto* by this institution in comitology raises, indeed, the question of its ascendancy over the result of deliberations. Overall, the power of the Commission as agenda-setter, policy advocate and architect of consensus is at the centre of the discussion on the actual nature of comitology as a national counterweight to the Commission's delegated powers.

The objective of this paper is to contribute to this debate by bringing new empirical data on the member states' behaviour regarding the Commission's action in the executive domain before and after the post-Lisbon reform of comitology. Our previous study on the frequency of member states' dissensus with the Commission's regulatory measures in executive committees in 2008 showed that conflicts, i.e. contested votes, existed in over a quarter of member states' deliberations (Dehousse *et al.*, 2014). This finding revealed, thus, that national representatives' opposition to the Commission's draft implementing proposals, although not frequent, does exist. The present research aims at refining these initial results by 1) looking at the structure of

contestation over a longer period, encompassing the pre- and the post-Lisbon reform, 2) attempting to quantify the intensity of this conflict and 3) trying to explain the variations. Our starting hypothesis is that the power of the Commission to forge support for its implementing proposals depends on the political saliency of the issues at stake. When member states have strong preferences they will be less inclined to accept the Commission's proposals without contestation.

## **II. Data and method. Measuring opposition in comitology procedures**

The empirical contribution to be found in this article relies on a dataset encompassing six years of executive committees' workings and voting records which are available on the comitology register for the period 2008-2013<sup>2</sup>. In the cases where on-line information from the comitology register's website was incomplete, the missing data were directly requested from the register. This information was downloaded from the register and entered in the database and was continuously updated in order to keep up with the many changes that the comitology register website suffered throughout this period. All in all, at present, the database holds almost all (99.89%) of the voting procedures initiated in the framework of the comitology system for the period 2008-2013 (N=8366). These quantitative data have begun to be complemented and contrasted with semi-structured interviews with European Commission officials at the level of head of unit, Council members, national representatives participating in executive committees, and comitology lobbyists. At the moment of writing, six interviews of this type have been conducted. The aim is to enlarge this sample during the upcoming period.

As regards quantitative data processing, we proceeded in two steps. The first one is of a descriptive nature. It consists of identifying patterns of support and opposition to the Commission's draft implementing proposals on the basis of member states' votes within executive committees. All the voting sheets available in the comitology register for the years 2008-2013 were coded so as to identify the structure of votes and, in particular, the scope of contestation over the period under scrutiny<sup>3</sup>. Concretely, for any instance of voting, we have counted the number of votes 'FOR', votes 'AGAINST' and 'ABSTENTIONS' as well as the

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<sup>2</sup> Comitology register: <http://ec.europa.eu/transparency/regcomitology/index.cfm>.

<sup>3</sup> Our study does not include data on withdrawn draft implementing proposals by the Commission. Only implementing proposals that were voted in executive committees are considered.

number of votes ‘NOT REPRESENTED’<sup>4</sup>. This information was classified in terms of committees (270 as a mean for the period 2008-2013), procedures (advisory, management, regulatory, regulatory with scrutiny or safeguard procedure before the entry into force of the post-Lisbon reform; advisory or examinations procedure after the reform) and policy domains according to the comitology register’s classification<sup>5</sup>. Preliminary observations at this stage include the following. 1) In contrast with the Council’s minutes, the comitology register does not provide information about the votes cast by each delegation. Member states’ preferences appear, thus, as aggregated. 2) Member states ‘not represented’ who did not make any explicit mention of opposing or abstaining the Commission’s draft implementing act before the expiry of the time limit are regarded as having tacitly agreed to the Commission’s implementing proposal (Art.3. parag. 5 of the Regulation [EU] No 182/2011 of the European Parliament and of the Council of 16 February 2011). It is worth noting that according to our dataset, 24.4 % of the cases under scrutiny show a varying intensity of “tacit agreement”. 3) In the case of the advisory procedure, decisions can be adopted through a simple majority of member states (favourable vote of at least 15 member states since the accession of Croatia in 2013). A QMV similar to that of the Council is the rule for the other procedures (since the accession of Croatia, 260 favourable votes out of 352).

The second step is of an analytical nature. We propose the construction of an Index of Opposition (*O*) with the aim of capturing and measuring the strength of dissent in comitology deliberations for the period 2008-2013 (N=8098), in addition to its frequency. Together with voting sheets presenting inconsistent information (N=141), we decided to discard from the sample any instances of contested votes under the advisory procedure rules, both before and after the post-Lisbon reform, as the structure of votes is here expressed through the number of member states in favour, against, abstaining and not represented, which renders the calculation of the index of opposition impossible (N=127). In contrast, cases where the committee expressed

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<sup>4</sup> By way of example, the voting procedure V024762/01, issued in 2012, was approved with 345 votes “For”, 0 votes “Against”, 0 votes “Abstaining” and 0 votes of “Not represented” MS. The structure of vote of this particular voting procedure will thus be noted as follows:  $SV_{V024762/01} = 345-0-0-0$ . By contrast, voting procedure V021969/01 was approved with 333 votes “For”, 0 votes “Against”, 0 votes “Abstaining” and it is also said that 1 MS was “Not Represented”. In this case, we can assume that, in fact, 12 votes were “not represented”. Consequently, its structure of vote will be noted as follows:  $SV_{V021969/01} = 333-0-0-12$ .

<sup>5</sup> The classification system of the comitology register includes all the Commission’s DGs as well as four other administrative bodies: OLAF (European Anti-Fraud Office); Eurostat, Secretariat General and the Service for Foreign Policy Instruments (2016 data). Our data reflect the current categories set in the register. Data have been retroactively updated following changes introduced in the DG’s nomenclature of the register after the constitution of Juncker’s Commission in 2014.

full support or opposition (28 Member states in favour or against) or those where the opinion was delivered through a general allusion to “consensus” or “unanimous favourable” (sic), were included in the final sample (N=755).

We consider the index of opposition as a proxy to measure the intensity of conflict with the Commission’s executive proposals. For the purpose of this study, the notion of dissent or opposition refers to any possible situation where member states’ preferences on any particular policy issue at hand differ in varying intensities from the original draft implementing proposal from the Commission. Here, we assume that 1) non-support (tacit or explicit) is regarded as opposition to the Commission’s draft implementing proposal; 2) abstention is considered a lesser form of opposition than votes against (cfr. Hayes-Renshaw *et al.*, 2006; Mattila, 2004). Conventionally, we decide to consider abstention as half-opposition. The Index of Opposition is, thus, conceived to measure to what extent the voting results display evidence of opposition to the Commission’s draft implementing act (beyond a final ‘favourable opinion’ to the Commission’s proposal).<sup>6</sup>

The index we propose is as follows:  $O$  is equal to the number of votes against plus the abstentions (considered as half-opposition) divided by the total number of votes at stake<sup>7</sup>.

$$O = \frac{\textit{Against} + 0,5 \cdot \textit{Abstention}}{\textit{For} + \textit{Tacit Agreement} + \textit{Against} + \textit{Abstention}}$$

We additionally identify six categories of opposition on the basis of the intensity of opposition to the Commission’s proposal. The construction of these categories is based on the majority required for the adoption of decisions at Council level. We assume that:

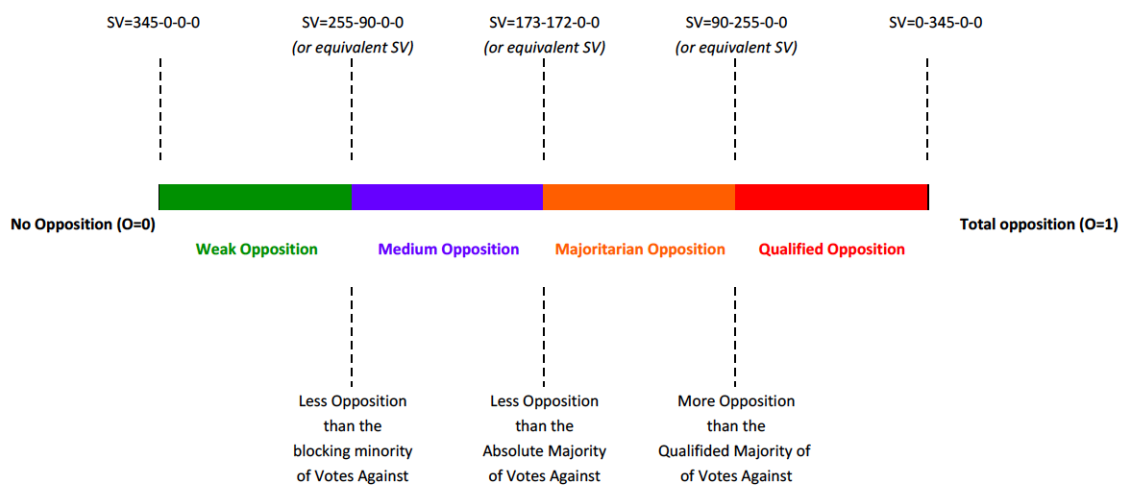
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<sup>6</sup> It is worth noting that this index of opposition does not allow the ordering of committees’ opinions that, although presenting very different structures of vote, have the same value of opposition. Illustratively, SVV005863/01=167-109-65-4 (year 2009); SVV021131/01=149-87-109-0 (2012) and SVV027002/01=187-125-33-0 (2013) all present the same value of opposition:  $O = 0,41014$ . Which of these three voting procedures should be considered the most contested is, however, a question that remains open at this stage.

<sup>7</sup> In all policy sectors with the exception of Justice, in which the opt-out clause applies for Denmark, Ireland and the UK, the total number of votes at stake is 345 before the accession of Croatia in 2013 and 352 since then. When the opt-out clause was activated before, the total number of votes could be either 302 (all three countries) or 338 (opt-out of Denmark). Since that date, the total number of votes is 309 or 345.

- 1) Absence of opposition ( $O = 0$ ) is a situation where there is unanimous support for the Commission's proposal. In this event,  $O$  equals 0. Voting sheets referring to "consensus" or "unanimous favourable" are also placed in this category.
- 2) Weak opposition is a situation where there are votes against and/or abstentions in a number below the blocking minority (i.e. at most 90 votes against or any equivalent structure of votes with the same value for the index of opposition).
- 3) A medium opposition is a situation where there are votes against and/or abstentions in a number equal to or higher than the blocking minority but lower than the absolute majority of votes against (i.e. from 91 to 172 votes against or any equivalent structure of votes with the same value for the index of opposition).
- 4) A majoritarian opposition is a situation where there are votes against and/or abstentions in a number equal to or higher than the absolute majority but lower than the qualified majority of votes against (i.e. from 173 to 254 votes against or any equivalent structure of votes with the same value for the index of opposition)
- 5) A qualified opposition is a situation where there are votes against and/or abstentions in a number equal to or higher than the qualified majority of votes against but lower than full opposition (i.e. from 255 to 342) or any equivalent structure of votes with the same value for the index of opposition.
- 6) Full opposition ( $O = 1$ ) is a situation where all the votes are against the Commission's draft proposal, thus there are neither votes in favour nor abstentions

### Scale of opposition in voting procedures





### III. Findings

Globally speaking, data on the structure of contestation for the period 2008-2013 confirm previous findings for the year 2008 (Dehousse *et al.* 2014). In the vast majority of cases, deliberations end with a favourable result for the Commission (96.8%). Noticeable cases of opposition, i.e. cases that ended with a ‘non-favourable opinion’ on the Commission’s draft implementing proposals are extremely rare (table 1). Actually, during the period 2008-2013 only 9 cases of this sort were recorded (0.11% of the total volume of comitology opinions under scrutiny). For the rest, unanimity is the prevalent but not the only mode of decision in comitology: as an average, 79.3% of the opinions on the Commission’s draft proposals delivered by executive committees through a vote between 2008 and 2013 were uncontested, i.e. all member states voted in favour (either explicitly or through tacit agreement) or a general allusion to consensus or unanimous favourable appeared on the voting sheet as a result of the committee’s deliberations. Yet, in a non-negligible 20.7% of the total sample, the decision was contested to some extent through the expression of at least one vote against, an abstention or both, without this preventing the committees’ members from delivering a final positive opinion (table 2).

In a nutshell, these data confirm that final adoption of the Commission’s draft implementing proposal does not preclude the existence of dissensus during previous deliberations. Member-state opposition is not typical behaviour in executive committees but does nevertheless exist in over one in five voting procedures. In 12.3% of the cases at least one member state expressed a negative opinion while in 15.1% of the votes at least one member state abstained. When member states choose to manifest dissensus, they therefore opt more frequently for abstention than for explicit opposition. Last but not least, no noticeable variations are appreciated between the pre- and the post-Lisbon reform.

**Table 1. Final opinions delivered by executive committees (2008-2013)**

	N	Favourable Opinion	Unfavourable Opinion	No Opinion
2008	692	99,3%	0,1%	0,6%
2009	881	96,9%	0,0%	3,1%
2010	952	98,4%	0,3%	1,3%
2011	1772	95,1%	0,3%	4,6%
2012	1880	95,9%	0,0%	4,1%
2013	1921	97,4%	0,0%	2,6%
<b>Total</b>	<b>8098</b>	<b>96,8%</b>	<b>0,1%</b>	<b>3,1%</b>

**Table 2. Support vs contestation (2008-2013)**

	N	NOT CONTESTED	CONTESTED (aggregated figures)	CONTESTED (disaggregated figures)		
				ONLY votes against	ONLY abstentions	BOTH votes against and abstentions
2008	692	78,0%	22,0%	3,9%	12,9%	5,2%
2009	881	78,0%	22,0%	7,4%	8,1%	6,6%
2010	952	81,8%	18,2%	5,7%	7,8%	4,7%
2011	1772	76,8%	23,2%	6,2%	8,6%	8,5%
2012	1880	80,2%	19,8%	5,0%	8,0%	6,8%
2013	1921	80,3%	19,7%	5,6%	7,7%	6,4%
<b>Total</b>	<b>8098</b>	<b>79,3%</b>	<b>20,7%</b>	<b>5,6%</b>	<b>8,4%</b>	<b>6,7%</b>

If we look at this opposition in terms of intensity, our findings reveal that, in general, opposition levels are low and stable across time (table 3). Between 2008 and 2013, only five instances of qualified opposition against the Commission's proposals were registered (one in 2008 and four in 2011). Cases of majoritarian opposition are not exactly rare but there are nevertheless very few: 23 cases were recorded during the period, mainly concentrated in years 2011 and 2012 (73.9%). By contrast, instances of medium opposition (148 cases concentrated in years 2011, 2012 and 2013) and, above all, of weak opposition (1502 cases) are markedly more frequent and actually represent the dominant feature of the contestation landscape in comitology. Finally, opposition descriptives have slightly increased with the coming into force of the Lisbon treaty (table 4).

**Table 3. Strength of Opposition (2008-2013)**

	N	Opposition, $\phi$	No Opposition	Weak Opposition	Medium Opposition	Majoritarian Opposition	Qualified Opposition	Full Opposition
2008	692	0,0173	78,3%	20,7%	0,7%	0,1%	0,1%	0,0%
2009	881	0,0252	78,0%	18,8%	3,0%	0,2%	0,0%	0,0%
2010	952	0,0154	81,8%	16,9%	1,3%	0,0%	0,0%	0,0%
2011	1772	0,0295	76,8%	20,0%	2,5%	0,5%	0,2%	0,0%
2012	1880	0,0217	80,2%	17,9%	1,4%	0,5%	0,0%	0,0%
2013	1921	0,0209	80,3%	17,7%	1,8%	0,2%	0,0%	0,0%
<b>Total</b>	<b>8098</b>	<b>0,0225</b>	<b>79,3%</b>	<b>18,5%</b>	<b>1,8%</b>	<b>0,3%</b>	<b>0,1%</b>	<b>0,0%</b>

**Table 4. Strength of Opposition, the Lisbon effect**

	N	Opposition, $\phi$	No Opposition	Weak Opposition	Medium Opposition	Majoritarian Opposition	Qualified Opposition	Full Opposition
Pre-Lisbon procedures	3115	0,0224	76,1%	22,1%	1,7%	0,2%	0,0%	0,0%
Post-Lisbon procedures	4983	0,0226	81,3%	16,4%	1,9%	0,3%	0,1%	0,0%
<b>Total</b>	<b>8098</b>	<b>0,0225</b>	<b>79,3%</b>	<b>18,5%</b>	<b>1,8%</b>	<b>0,3%</b>	<b>0,1%</b>	<b>0,0%</b>

On another note, our data reveal that contestation is not equally distributed across policy sectors (tables 5 and 6). In addition to the Secretariat General which deals with the instances of votes taking place at the level of the Appeal Committee (i.e. a special committee's configuration which is composed by the Permanent Representatives of the member states and that replaces the Council in its function of second instance since the post-Lisbon reform of comitology<sup>8</sup>), the most contested policy domains for the period in terms of frequency are Budget (72.7%), followed by Taxation and Customs Union (issues related to the negotiation of the Customs Union Code, 67.0%), Eurostat (50.0%), a policy domain that is arguably very sensitive for member states in political terms due to the online publication of their statistics and resulting public exposure of their performance to media, citizens and other countries, Climate Action (44.8%) and Environment (43.8%).

Compared to these data, the Health and Food Safety sector seems to be much less conflictual (16.5% of contested votes and a mean of opposition that is below the highest ten policy domains). These aggregated data must however not be misinterpreted. Indeed, this domain presents a particularly high volume of activity, namely 35.9% of the total number of comitology opinions for the period under scrutiny. In addition, one of its most active committees, the *C2500-*

<sup>8</sup> The Appeal Committee can block the Commission's draft implementing proposals through a qualified majority against. It is worth noting that between 2011 and 2013, this committee intervened on 22 occasions.

*Standing Committee on Medicinal Products for Human Use* (1276 voting records between 2008 and 2013, which stand for 15.6% of the total sample, and 43.9% of the opinions issued in SANTE) tends to be very consensual due to its internal rules of procedure which facilitate pre-agreements at the level of national medicines agencies (Interview 3). The combination of these two variables serves to blur the existence of very few but nevertheless strong and noticeable contestation cases. As a matter of fact, five out of the ten most conflictual instances of votes for the period 2008-2013 correspond to this policy domain: typically cases related to regulations on NGOs and medicines for human use (table 9).

Concretely, the most controversial voting procedure in our dataset is an unfavourable opinion on a Commission draft proposal to implement Regulation (EC) No 853/2004 of the European Parliament and of the Council concerning the use of antimicrobial substances to remove surface contamination from poultry carcasses, which was delivered by the *Standing Committee on Plants, Animals, Food and Feed - Section: "Biological safety of the food chain"* (C20404) in 2008. The structure of votes was  $SV_{V000724}=0$  votes in favour-316 votes against-29 abstentions -0 votes not represented.

In addition, as mentioned before, in 2011 four cases of qualified opposition were recorded, three of them in the Human Health domain once again<sup>9</sup>. The first two were issued by the *Standing Committee on Medicinal Products for Human Use* (C02500) with the following voting results:  $SV_{V016696/01}=74$  votes in favour-245 votes against-26 abstentions-0 votes not represented and  $SV_{V017628/01}=79$  votes in favour-266 votes against-0 abstentions-0 votes not represented. The third one refers to a decision of the Appeal Committee (C38900) intervening in the framework of the market authorisation of another medicinal product for human use under Regulation (EC) No 726/2004 of the European Parliament and of the Council: “Orphacol – Cholic Acid”. This committee ratified the negative opinion delivered in first instance by the regular committee, with the following voting result:  $SV_{V017668/01}=64$  votes in favour-281 votes against-0 abstentions-0 votes not represented. The fourth case recorded in 2011 took place, for its part, in the field of Education and Culture: the *Committee of the Integrated Action Programme in the field of lifelong learning* (C30800). In this latter case, the structure of vote was  $SV_{V014513/01}=39$  votes in favour-256 votes against-36 abstentions-14 votes not represented. To sum up, our data reveal that four out of five cases of qualified opposition between 2008 and 2013 took place in the SANTE domain.

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<sup>9</sup> V016696/01, V017628/01 and V017668/1.

**Table 5. Support vs contestation, breakdown by policy domains (2008-2013)**

	N	NOT CONTESTED	CONTESTED (aggregated figures)	CONTESTED (disaggregated figures)		
				ONLY votes against	ONLY abstentions	BOTH votes against and abstentions
AGRI	677	63,7%	36,3%	5,5%	12,9%	18,0%
BUDG	11	27,3%	72,7%	0,0%	72,7%	0,0%
CLIMA	67	52,2%	47,8%	9,0%	28,4%	10,4%
CNECT	133	80,5%	19,5%	7,5%	9,8%	2,3%
COMM	35	100,0%	0,0%	0,0%	0,0%	0,0%
COMP	0	--	--	--	--	--
DEVCO	852	90,5%	9,5%	5,2%	3,6%	0,7%
DIGIT	7	100,0%	0,0%	0,0%	0,0%	0,0%
EAC	448	90,0%	10,0%	4,5%	4,0%	1,6%
ECFIN	1	100,0%	0,0%	0,0%	0,0%	0,0%
ECHO	161	88,8%	11,2%	0,0%	11,2%	0,0%
EMPL	52	86,5%	13,5%	3,8%	7,7%	1,9%
ENERG	78	60,3%	39,7%	16,7%	20,5%	2,6%
ENV	235	56,2%	43,8%	12,3%	14,0%	17,4%
ESTAT	120	50,0%	50,0%	16,7%	16,7%	16,7%
FISMA	68	79,4%	20,6%	5,9%	13,2%	1,5%
FPI	16	93,8%	6,3%	6,3%	0,0%	0,0%
GROW	312	75,6%	24,4%	8,7%	9,6%	6,1%
HOME	167	79,6%	20,4%	5,4%	13,8%	1,2%
JUST	103	81,6%	18,4%	5,8%	8,7%	3,9%
MARE	79	72,2%	27,8%	6,3%	16,5%	5,1%
MOVE	346	72,3%	27,7%	4,9%	14,5%	8,4%
NEAR	142	85,2%	14,8%	2,1%	12,0%	0,7%
OLAF	0	--	--	--	--	--
REGIO	31	74,2%	25,8%	0,0%	22,6%	3,2%
RTD	671	94,5%	5,5%	1,5%	3,4%	0,6%
SANTE	2905	83,5%	16,5%	3,5%	6,9%	6,1%
SG	23	4,3%	95,7%	26,1%	0,0%	69,6%
TAXUD	291	33,0%	67,0%	29,2%	12,7%	25,1%
TRADE	67	100,0%	0,0%	0,0%	0,0%	0,0%
<b>Total</b>	<b>8098</b>	<b>79,3%</b>	<b>20,7%</b>	<b>5,6%</b>	<b>8,4%</b>	<b>6,7%</b>

\*\* Acronyms reproduce those used by the Commission

(e.g. [http://ec.europa.eu/atwork/synthesis/amp/index\\_en.htm](http://ec.europa.eu/atwork/synthesis/amp/index_en.htm), lastchecked: 02 May 2016)

**Table 6. Strength of Opposition: breakdown by policy domain (2008-2013)**

	N	Opposition, $\phi$	No Opposition	Weak Opposition	Medium Opposition	Majoritarian Opposition	Qualified Opposition	Full Opposition
AGRI	677	0,0595	63,5%	29,2%	5,8%	1,5%	0,0%	0,0%
BUDG	11	0,0543	27,3%	72,7%	0,0%	0,0%	0,0%	0,0%
CLIMA	67	0,0402	52,2%	44,8%	0,0%	3,0%	0,0%	0,0%
COMP	34	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%	0,0%
CNECT	134	0,0146	80,6%	19,4%	0,0%	0,0%	0,0%	0,0%
COMP	0	--	--	--	--	--	--	--
ECFIN	1	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%	0,0%
EAC	448	0,0121	90,0%	8,7%	1,1%	0,0%	0,2%	0,0%
EMPL	52	0,0040	86,5%	13,5%	0,0%	0,0%	0,0%	0,0%
ENERG	78	0,0261	60,3%	39,7%	0,0%	0,0%	0,0%	0,0%
ENV	236	0,0465	56,4%	41,9%	1,3%	0,4%	0,0%	0,0%
FISMA	68	0,0075	79,4%	20,6%	0,0%	0,0%	0,0%	0,0%
SANTE	2913	0,0171	83,5%	14,8%	1,4%	0,2%	0,1%	0,0%
ECHO	161	0,0046	88,8%	11,2%	0,0%	0,0%	0,0%	0,0%
DIGIT	7	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%	0,0%
GROW	312	0,0162	75,6%	24,0%	0,3%	0,0%	0,0%	0,0%
DEVCO	852	0,0117	90,5%	7,6%	1,9%	0,0%	0,0%	0,0%
JUST	103	0,0097	81,6%	18,4%	0,0%	0,0%	0,0%	0,0%
MARE	79	0,0198	72,2%	27,8%	0,0%	0,0%	0,0%	0,0%
HOME	167	0,0124	79,6%	19,2%	1,2%	0,0%	0,0%	0,0%
MOVE	346	0,0168	72,3%	27,5%	0,0%	0,3%	0,0%	0,0%
NEAR	142	0,0064	85,2%	14,1%	0,7%	0,0%	0,0%	0,0%
REGIO	31	0,0125	74,2%	22,6%	3,2%	0,0%	0,0%	0,0%
RTD	671	0,0040	94,5%	5,4%	0,0%	0,1%	0,0%	0,0%
TAXUD	292	0,0844	32,9%	59,6%	7,2%	0,3%	0,0%	0,0%
TRADE	67	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%	0,0%
OLAF	0	--	--	--	--	--	--	--
ESTAT	121	0,0332	50,4%	49,6%	0,0%	0,0%	0,0%	0,0%
SG	24	0,3904	4,2%	8,3%	75,0%	8,3%	4,2%	0,0%
FPI	16	0,0023	93,8%	6,3%	0,0%	0,0%	0,0%	0,0%
Total	8110	0,0225	79,2%	18,6%	1,8%	0,3%	0,1%	0,0%

\*\* Acronyms reproduce those used by the Commission  
(e.g. [http://ec.europa.eu/atwork/synthesis/amp/index\\_en.htm](http://ec.europa.eu/atwork/synthesis/amp/index_en.htm), lastchecked: 02 May 2016)

#### IV. Explaining contestation

How can we explain these results? This section briefly explores the explanatory power of three theses derived from the literature: 1) the type of procedure; 2) the type of policy and 3) the socialisation effect.

An initial interpretation inferred from rationalism would be that member states oppose executive measures considered contradictory to their national interests (Brandsma and Blom-Hansen 2016). In this regard, procedural settings do matter because they actually reflect member states' strategy of variable control over the Commission's autonomy. Depending on the importance of the issues at stake, member states would be inclined to opt for more or less constraining procedures. If this is the case, one would expect to find more frequent and stronger controversy in regulatory and management committees (pre-Lisbon) and examination committees (post-Lisbon) than in advisory committees since governments agreed on stricter

control in the first two categories (Brandsma and Blom-Hansen, 2010; Dogan 1997; Pollack 2003).

A second thesis is derived from Lowi's work on types of public policies, which famously suggested that 'policies determine politics' (Lowi 1964 and 1972). Majone transposed this idea to the study of European public policy by arguing that in the case of the European Union, the main distinction is between regulatory policies, on the one hand, which respond to market failures and, on the other hand, distributive policies such as public works or research and development, which allocate public resources among alternative users, or redistributive policies, which transfer resources from one group to another. The difference between the two categories is important in any political system, but it is especially crucial in the EU, whose financial autonomy is severely limited (Majone 1996: chapter 4). What is interesting to us are the implications of this basic distinction for the politics of each type of policy. Since regulatory policies are dominated by efficiency concerns, they generally rely heavily on the contribution of experts and can be expected to be more consensual, whereas distributive or redistributive policies tend to be fairly conflictual since they often involve zero sum games. Thus, one might expect to find more evidence of dissensus in committees/policy domains dealing with (re)distributive issues than in those where regulatory issues are more prominent (Dehousse *et al.* 2014)<sup>10</sup>. Finally, from a sociological institutionalist perspective, one might regard consensus as the product of a dynamic of socialisation: delegates who are used to meeting regularly and frequently take decisions together might be more inclined to make efforts to understand each other's concerns and viewpoints, and therefore more willing to transcend national interest and engage in some form of supranational logic (Egeberg *et al.* 2003; Quaglia *et al.* 2008).

Tables 7 and 8 provide a breakdown of voting results according to the type of comitology procedure. The data seem to broadly confirm the intergovernmental hypothesis. Although contestation can be found in all categories, dissensus appears to be more frequent in committees where the procedures are more constraining for the Commission. Before Lisbon, contestation was markedly more frequent in the Regulatory with Scrutiny (41.3%) and Regulatory (35.3%) procedures than in the merely advisory ones (3.9%), even if we are aware that our sample, as mentioned before, introduces a bias as it discards 127 contested votes (out of 212 cases) falling under this latter procedure. The post-Lisbon reform has not fundamentally altered this path: the examination procedure still produces a much higher frequency of dissensus (20.1%) than the

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<sup>10</sup> See also Brandsma and Blom-Hansen 2010: 504, for another variant of this hypothesis.

advisory procedure (0.3%). At first glance, the main difference lies in the decrease of contestation rates in the post-Lisbon period. However, this reduction can be explained by the fact that the most constraining and contested pre-Lisbon procedures (the RPS and Regulatory procedures) have been channelled since the reform through Art. 290 (delegated acts) and thus excluded from the new comitology system. In summary, our data seem to ratify the idea that member states' institutional choice for more or less constraining procedures and, consequently, control over the Commission's implementing powers depends on the importance they attribute *ab initio* – during the negotiations of the modalities of comitology procedures – to the issues at stake and their anticipation of potential inter-institutional conflict at the executive committee level.

**Table 7. Contestation and type of procedure (2008-2013)**

	N	NOT CONTESTED	CONTESTED (aggregated figures)	CONTESTED (disaggregated figures)			
				ONLY votes against	ONLY abstentions	BOTH votes against and abstentions	
Pre-Lisbon	Advisory Procedure (1)	152	96,1%	3,9%	2,0%	2,0%	0,0%
	Management Procedure (1)	1369	90,9%	9,1%	4,2%	3,9%	0,9%
	Regulatory Procedure (1)	694	64,7%	35,3%	5,6%	16,9%	12,8%
	Regulatory with Scrutiny (2)	908	58,7%	41,3%	12,6%	17,1%	11,7%
	Safeguard Procedure (1)	0	--	--	--	--	--
Post-Lisbon	Advisory Procedure (3)	289	99,7%	0,3%	0,0%	0,3%	0,0%
	Urgent Advisory Procedure (3)	1	100,0%	0,0%	0,0%	0,0%	0,0%
	Examination Procedure (3)	4693	79,9%	20,1%	5,4%	7,6%	7,2%
	Urgent Examination Procedure (3)	4	100,0%	0,0%	0,0%	0,0%	0,0%
<b>Total</b>	<b>8110</b>	<b>79,1%</b>	<b>20,9%</b>	<b>5,7%</b>	<b>8,5%</b>	<b>6,7%</b>	

(1) Decision EC/1999/469 of the Council, of 28 June.

(2) Decision EC/2006/512 of the Council, of 17 July.

(3) Regulation (EC) 182/2011 of the EP and of the Council, of 11 February.

**Table 8. Strength of opposition and type of procedure**

Type of Procedure	N	Opposition, $\theta$	No	Weak	Medium	Majoritarian	Qualified	Full
			Opposition	Opposition	Opposition	Opposition	Opposition	Opposition
Pre-Lisbon	Advisory Procedure (1)	152	0,0043	96,1%	3,3%	0,7%	0,0%	0,0%
	Management Procedure (1)	1369	0,0106	90,9%	7,5%	1,5%	0,1%	0,0%
	Regulatory Procedure (1)	694	0,0374	64,7%	31,3%	3,5%	0,4%	0,1%
	Regulatory with Scrutiny (2)	908	0,0316	58,7%	40,4%	0,7%	0,2%	0,0%
	Safeguard Procedure (1)	0	--	--	--	--	--	--
Post-Lisbon	Advisory Procedure (3)	289	0,0001	99,7%	0,3%	0,0%	0,0%	0,0%
	Urgent Advisory Procedure (3)	1	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%
	Examination Procedure (3)	4693	0,0241	80,1%	17,4%	2,1%	0,4%	0,1%
	Urgent Examination Procedure (3)	4	0,0000	100,0%	0,0%	0,0%	0,0%	0,0%
<b>Total</b>	<b>8110</b>	<b>0,0225</b>	<b>79,2%</b>	<b>18,6%</b>	<b>1,8%</b>	<b>0,3%</b>	<b>0,1%</b>	<b>0,0%</b>

(1) Decision EC/1999/469 of the Council, of 28 June.

(2) Decision EC/2006/512 of the Council, of 17 July.

(3) Regulation (EC) 182/2011 of the EP and of the Council, of 11 February.



As regards the intensity of opposition, weak opposition is the rule for all procedures. Nevertheless, it is stronger when comitology procedures foresee tighter control (bearing in mind that data on advisory instances of votes are underestimated)<sup>11</sup>.

**Table 9. Qualified opposition**

YEAR	VOTING SHEET	Opposition, $\phi$	STRUCTURE of Vote				PROCEDURE	POLICY DOMAIN
			FOR	AGAINST	ABSTENTION	NOT REPRESENTED		
2008	V000724/01	0,9580	0	316	29	0	Regulatory Procedure (1)	SANCO
2011	V017668/01	0,8145	64	281	0	0	Examination Procedure (3)	SG
2011	V014513/01	0,7942	39	256	36	14	Examination Procedure (3)	EAC
2011	V017628/01	0,7710	79	266	0	0	Examination Procedure (3)	SANCO
2011	V016696/01	0,7478	74	245	26	0	Examination Procedure (3)	SANCO

(1) Decision EC/1999/469 of the Council, of 28 June.

(2) Decision EC/2006/512 of the Council, of 17 July.

(3) Regulation (EC) 182/2011 of the EP and of the Council, of 11 February.

On another hand, our data seem to contradict the hypothesis we derived from Majone's work. Whereas contestation accounts for a quarter of decisions taken by committees active in regulatory policies, the percentage is considerably lower in areas where the distribution of EU funds is at stake (9.5%). This is consistent with one of our earlier findings: we have seen above that the most contested votes are all related to Health and Food Safety issues, a field where disputes tend to revolve around questions linked to scientific uncertainty. This being said, the category with the highest values of opposition is that of Internal Support (0.0641), which includes conflictual sectors like ESTAT and, above all, since the post-Lisbon reform, all the procedures carried out by the Appeal Committee.

Last but not least, the sociological institutionalist hypothesis would lead us to expect that frequent meetings and the habit of taking decisions together should be conducive to greater levels of mutual understanding, and therefore to a higher percentage of decisions taken unanimously. At present our data do not lend strong support to this. Beyond the fact that hierarchical control and follow-up exerted by governments on their national representatives

<sup>11</sup> The five cases of qualified opposition included in our dataset correspond to one regulatory procedure prior to Lisbon in the Health and Consumer Protection domain (V000724/01, year 2008) and to four examination procedures after the post-Lisbon reform, all four in 2011: one in the Education and Culture domain (V0014513/01, EAC, 2011) and two in the Health and Consumer Protection domain (V016696/01 and V017628/01, SANTE, 2011). The latter refers to an intervention of the Appeal Committee, here also on a SANTE issue (V017668/01, 2011). Cases of majoritarian opposition are distributed across more policy domains (AGRI, CLIMA; MOVE, RTD) and do also coincide with the stricter procedures.

cannot be underestimated (Interviews 3, 4 and 6), there are at least two elements of committees' functioning that question the idea of a strong socialisation effect.

First, as revealed by the summary records and the attendance lists that are available on the comitology register, the composition of executive committees can vary: national representatives can change from one meeting to another. In addition, their number, institutional status and affiliation at the domestic level are not uniform and even rather eclectic (cfr. Egeberg *et al.*, 2003; Interview 3). Depending on the issues at stake, a government can send from one to five representatives and these can come from very different horizons. By way of example, during the 118th meeting of the '*Committee for the Common Organisation of the Agricultural Markets*' (C42900) that took place in Brussels on 29 September 2015, France was represented by three members from the Ministry of Agriculture and one member of France Agrimer<sup>12</sup>, Spain was represented by two members from the Ministry of Agriculture and two representatives of the Autonomous Communities and Denmark by one member of the Danish Agency for Agriculture (European Commission, S041980/01). During the same meeting, Greece, Cyprus and Romania were directly represented by Permanent Representatives. Arguably, this heterogeneity, which questions the existence of an epistemic community with strong cohesion, renders difficult any attempt to generalize on the socialisation effect. Second, participation is not unimodal: it can take place through physical attendance but also through a written procedure or the delegation of vote to another state. Illustratively, Slovenia and Romania delegated their representation respectively to the United Kingdom and Austria during the C34200 REACH committee (chemistry sector) in September 2015 (European Commission, S041836/01). These practices do not seem to reinforce the thesis of socialisation through direct contact either.

## **Conclusion**

Delegation does not involve the absence of contestation. In this paper, the objective was to refine the study of the contestation landscape in the executive committees of the EU by looking at the frequency and strength of opposition over a six-year period, encompassing the pre- and the post-Lisbon reform. Our analysis confirms that opposition to Commission proposals is limited in comitology procedures. Broadly speaking, opposition is rare and weak and the post-

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<sup>12</sup> Etablissement National des Produits de l'Agriculture et de la Mer.

Lisbon reform, which is generally assumed to be a turning-point in the path of the comitology system, involving a reconsideration of the balance of power, the relationships between the Commission and the member states, does not appear to have had a decisive impact at this level. The main variable explaining dissensus seems to be the saliency attributed by member states to the issues at stake. When member states have strong national preferences they will be less inclined to engage in consensual dynamics. Further research should study variations across sectors and committees in greater depth.

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Interview 2, Brussels, 24/07/2015, European comitology lobbyist

Interview 3, Barcelona, 01/09/2015, European official, General Secretariat of the Council

Interview 4, Madrid, 24/09/2015, Spanish Diplomat, Ministry of the Presidency

Interview 5, Madrid, 12/04/2016, National Representative, Ministry of Education, Culture and Sport, Spain.

Interview 6, Brussels, 27/02/2017, European Official, General Secretariat of the Council.

