

9.12.2010

A7-0355/ 001-028

**AMENDMENTS 001-028**

by the Committee on Legal Affairs

**Report**

**József Szájer**

**A7-0355/2010**

Control by Member States of the Commission's exercise of implementing powers

Proposal for a regulation (COM(2010)0083 – C7-0073/2010 – 2010/0051(COD))

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**Amendment 1**

**Proposal for a regulation**

**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*(1a) It is for the legislator, in full respect of the criteria laid down in the Treaty on the Functioning of the European Union, to decide in each basic act to confer implementing powers on the Commission in accordance with Article 291(2) of the Treaty on the Functioning of the European Union.*

**Amendment 2**

**Proposal for a regulation**

**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*(5a) Where appropriate, the control mechanism should include referral to an appeal committee which should meet at the appropriate level.*

**Amendment 3**

## Proposal for a regulation

### Recital 8

*Text proposed by the Commission*

(8) Criteria should be laid down to determine the procedure to be used for the adoption of implementing acts. In order to achieve greater consistency **and in order to ensure that** procedural requirements **are** proportionate to the nature of the implementing acts to be adopted, **those criteria should be binding**.

*Amendment*

(8) Criteria should be laid down to determine the procedure to be used for the adoption of implementing acts. In order to achieve greater consistency, **the** procedural requirements **should be** proportionate to the nature **and impact** of the implementing acts to be adopted.

### Amendment 4

## Proposal for a regulation

### Recital 9

*Text proposed by the Commission*

(9) The examination procedure should **only** apply for the adoption of measures of general scope designed to implement basic acts and specific measures with a potentially important impact. That procedure should provide for the control of the Member States in such a way that **measures** cannot be adopted if they are not in conformity with the opinion of the committee, except in very exceptional circumstances, where the Commission should be able, in spite of a negative opinion, to adopt and apply **measures** for a limited period of time. The Commission should be able to review the draft **measures** in the event that no opinion is delivered by the committee, taking into account the views expressed within the committee.

*Amendment*

(9) The examination procedure should **in particular** apply for the adoption of measures of general scope designed to implement basic acts and specific measures with a potentially important impact. That procedure should provide for the control of the Member States in such a way that **acts** cannot be adopted if they are not in conformity with the opinion of the committee, except in very exceptional circumstances, where the Commission should be able, in spite of a negative opinion, to adopt and apply **acts** for a limited period of time. The Commission should be able to review the draft **acts** in the event that no opinion is delivered by the committee, taking into account the views expressed within the committee.

*(note: the text should be adapted throughout to the expression "implementing acts" .)*

### Amendment 5

**Proposal for a regulation**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) Provided that the basic act confers implementing powers on the Commission relating to programmes with substantial budgetary implications or directed to third countries, the examination procedure should apply.***

**Amendment 6**

**Proposal for a regulation**  
**Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***(9b) The Chair of the relevant committee should endeavour to find solutions which command the widest possible support within the committee or the appeal committee and should explain in which manner the discussions and suggestions for amendments have been taken into account. For that purpose the Commission should pay particular attention to the views expressed within the committee or the appeal committee as regards draft definitive anti-dumping or countervailing measures.***

**Amendment 7**

**Proposal for a regulation**  
**Recital 9 c (new)**

*Text proposed by the Commission*

*Amendment*

***(9c) When considering the adoption of other draft implementing acts concerning particularly sensitive sectors, notably taxation, consumers' health, food safety and protection of the environment, the Commission, in order to find a balanced solution, will as far as possible act in such a way as to avoid going against any predominant position which might emerge within the appeal committee against the***

*appropriateness of an implementing act.*

## **Amendment 8**

### **Proposal for a regulation**

#### **Recital 10**

*Text proposed by the Commission*

(10) The advisory procedure should apply in all other cases and where it is considered to be most appropriate.

*Amendment*

(10) The advisory procedure should **as a general rule** apply in all other cases and where it is considered to be most appropriate.

## **Amendment 9**

### **Proposal for a regulation**

#### **Recital 12**

*Text proposed by the Commission*

(12) The European Parliament and the Council should be **kept** informed of committee proceedings on a regular basis.

*Amendment*

(12) The European Parliament and the Council should be **promptly** informed of committee proceedings on a regular basis.

## **Amendment 10**

### **Proposal for a regulation**

#### **Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) The European Parliament or the Council should be able at any time to indicate to the Commission that they consider a draft implementing act to exceed the implementing powers provided for in the basic act, taking into account their rights relating to the review of the legality of Union acts.***

## **Amendment 11**

### **Proposal for a regulation**

#### **Recital 13**

*Text proposed by the Commission*

(13) Public access to information on committee proceedings should be ensured.

*Amendment*

(13) Public access to information on committee proceedings should be ensured

*in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>.*

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

## **Amendment 12**

### **Proposal for a regulation Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) A register containing information on committee proceedings should be kept by the Commission. Consequently, rules relating to the protection of classified documents applicable to the Commission should also apply to the use of the register.***

## **Amendment 13**

### **Proposal for a regulation Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) Decision 1999/468/EC should be repealed. In order to ensure the transition between the regime provided for in Decision 1999/468/EC and this Regulation, any reference in existing legislation to the procedures provided for in that Decision should, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, be understood as a reference to the corresponding procedures provided for in this Regulation. The effects of Article 5a of Decision 1999/468/EC should be maintained for the purposes of existing basic acts which refer to that Article.

(14) Decision 1999/468/EC should be repealed. In order to ensure the transition between the regime provided for in Decision 1999/468/EC and this Regulation, any reference in existing legislation to the procedures provided for in that Decision should, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, be understood as a reference to the corresponding procedures provided for in this Regulation. The effects of Article 5a of Decision 1999/468/EC should be ***provisionally*** maintained for the purposes of existing basic acts which refer to that Article.

## **Amendment 14**

## Proposal for a regulation

### Article 1

#### *Text proposed by the Commission*

This Regulation lays down the rules and general principles governing the mechanisms which **shall** apply in cases where a legally binding Union act (hereafter "basic act") requires that the adoption of **binding** implementing acts by the Commission be subject to the control of Member States.

#### *Amendment*

This Regulation lays down the rules and general principles governing the mechanisms which apply in cases where a legally binding Union act (hereinafter a "basic act") **identifies the need for uniform conditions of implementation and consequently** requires that the adoption of implementing acts by the Commission be subject to the control of Member States.

### Amendment 15

## Proposal for a regulation

### Article 2

#### *Text proposed by the Commission*

1. A basic act may provide for the application of the examination procedure **or the advisory procedure, according to the type** of implementing **measures concerned**.
2. The examination procedure **may only apply** for the adoption of:
  - (a) Implementing **measures** of general scope;
  - (b) Other implementing **measures** relating to:
    - i) common agricultural and common fisheries policies;
    - ii) environment, security and safety or protection of the health or safety of humans, animals or plants;
    - iii) common commercial policy.
3. **For all other implementing measures, and for implementing measures referred to in paragraph 2 where it is considered to be appropriate, the advisory procedure**

#### *Amendment*

1. A basic act may provide for the application of **the advisory procedure or** the examination procedure **taking into account the nature or the impact of the implementing acts required**.
2. The examination procedure **applies, in particular,** for the adoption of:
  - (a) Implementing **acts** of general scope;
  - (b) Other implementing **acts** relating to:
    - i) programmes with substantial implications;**
    - i) common agricultural and common fisheries policies;
    - ii) environment, security and safety or protection of the health or safety of humans, animals or plants;
    - iii) common commercial policy;
    - iiia) taxation.**
3. **The advisory procedure applies, as a general rule, for the adoption of implementing acts not falling within the ambit of paragraph 2, but it may also**

*shall apply.*

*apply, in duly justified cases, for the adoption of the implementing acts referred to in that paragraph.*

## Amendment 16

### Proposal for a regulation Article 3

#### *Text proposed by the Commission*

1. Where a basic act provides for the application of the procedures referred to in Articles 4, **5 and 6**, ***the provisions set out in*** paragraphs 2 to **6** of this Article shall apply.
2. The Commission shall be assisted by a committee composed of ***the*** representatives of ***the*** Member States ***and*** chaired by a representative of the Commission.
3. The ***chairperson*** shall submit to the committee a draft of the ***measures*** to be ***taken***.
4. ***The committee shall examine the draft measures.*** Until an opinion ***has been delivered, the chairperson*** may present amended versions of the draft ***measures in order to take into account the discussions*** within the committee. ***For that purpose, the chairperson may convene several meetings of the committee. The committee shall deliver its opinion on the draft within a time-limit which the chairperson***

#### *Amendment*

1. Where a basic act provides for the application of the procedures referred to in Articles 4 ***to*** 6, paragraphs 2 to 7 of this Article shall apply.
2. The Commission shall be assisted by a committee composed of representatives of Member States. ***The committee shall be chaired by a representative of the Commission. The Chair shall not take part in the committee vote.***
3. The ***Chair*** shall submit to the committee a draft of the ***acts*** to be ***adopted by the Commission.***  
***Except in duly justified cases, he or she shall convene a meeting not less than 14 days from the submission to the committee of the draft of the acts to be adopted and of the draft agenda. The committee shall deliver its opinion on the draft within a time-limit which the Chair may lay down according to the urgency of the matter. Time-limits shall be proportionate and shall afford representatives of the Member States early and effective opportunities to examine the draft acts and express their views.***
4. Until ***the committee delivers*** an opinion, ***any committee member may suggest amendments and the Chair*** may present amended versions of the draft ***acts.***

*may lay down according to the urgency of the matter.*

5. *The chairperson* may obtain the committee's opinion by written procedure. He or she shall send the committee members the draft *measures on which their opinion is sought* and shall lay down a time-limit according to the urgency of the matter. Any committee member who does not explicitly oppose or abstain before the time-limit *laid down expires is* considered to have given *their* tacit agreement to the draft *measures*.

*Within the time-limit laid down in accordance with the previous subparagraph, any committee member may ask for the written procedure to be terminated and for the draft measures to be examined at a committee meeting. The chairperson may decide to maintain the written procedure or to terminate the written procedure without result, in which case a committee meeting shall be convened as soon as possible.*

6. The committee's opinion shall be recorded in the minutes. Each *Member State may* ask to have *its* position recorded in the minutes.

*The Chair shall endeavour to find solutions which command the widest possible support* within the committee. *He or she shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which are largely supported within the committee.*

5. *In duly justified cases, the Chair* may obtain the committee's opinion by written procedure. He or she shall send the committee members the draft *acts* and shall lay down a time-limit according to the urgency of the matter. Any committee member who does not explicitly oppose or abstain before the *expiry of that* time-limit *shall be* considered to have given *his or her* tacit agreement to the draft *acts*.

*Unless otherwise provided in the basic act, the written procedure shall be terminated without result where, within the time-limit referred to in the first subparagraph, the Chair so decides or a committee member so requests. In such a case, the Chair shall convene a committee meeting within a reasonable time.*

6. The committee's opinion shall be recorded in the minutes. Each *member of the committee shall have the right to* ask to have *his or her* position recorded in the minutes. *The Commission shall send the minutes to the committee members without delay.*

*6a. Where applicable, the control mechanism shall include referral to an appeal committee.*

*The appeal committee shall adopt its own rules of procedure by simple majority, on a proposal from the Commission.*

*Where the appeal committee is seised, it*



*shall meet at the earliest 14 days, except in duly justified cases, and at the latest six weeks, after the date of referral. Without prejudice to paragraph 3, the appeal committee shall deliver its opinion within two months from the date of referral.*

*A representative of the Commission shall chair the meetings of the appeal committee.*

*The Chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States and the Commission to ensure an appropriate level of representation. The Commission shall convene the first meeting of the appeal committee within one month after the entry into force of this Regulation in order to adopt its rules of procedure.*

*(note: the change from "chairperson" to "Chair" should be effected throughout the text.)*

## **Amendment 17**

### **Proposal for a regulation**

#### **Article 4**

##### *Text proposed by the Commission*

1. **The** committee shall deliver its opinion, if necessary by taking a vote. If the committee takes a vote, the opinion shall be delivered by **the majority laid down in Article 238(1) of the Treaty**.

2. The Commission shall decide on the **measures** to be **taken**, taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered. **It shall inform the committee of the manner in which the opinion has been taken into account.**

##### *Amendment*

1. **Where the advisory procedure applies,** **the** committee shall deliver its opinion, if necessary by taking a vote. If the committee takes a vote, the opinion shall be delivered by **a simple majority of its component members**.

2. The Commission shall decide on the **acts** to be **adopted**, taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered.

## **Amendment 18**

## Proposal for a regulation

### Article 5

#### *Text proposed by the Commission*

1. **The** committee shall deliver its opinion by **a qualified** majority **as provided for** in Article 16(4) and (5) of the Treaty on European Union.

2. If **the draft measures are in accordance with the opinion of** the committee, the Commission shall adopt **these measures, unless exceptional circumstances or new elements have arisen which would justify the measures not being adopted. In such cases, the chairperson may submit to the committee a new draft of the measures to be taken.**

3. **If the draft measures are not in accordance with the opinion of** the committee, the Commission shall not adopt those **measures. The chairperson** may submit to the committee **the draft measures** for further deliberation or submit an amended version of the draft **measures.**

4. If no opinion is delivered, the Commission may adopt the draft **measures.** Where the Commission does not adopt the draft **measures**, the **chairperson** may submit to the committee an amended version of the draft **measures.**

#### *Amendment*

1. **Where the examination procedure applies, the** committee shall deliver its opinion by **the** majority **laid down** in Article 16(4) and (5) of the Treaty on European Union **and, where applicable, Article 238(3) of the Treaty on the Functioning of the European Union, for acts to be adopted on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in those Articles.**

2. If the committee **delivers a positive opinion**, the Commission shall adopt **the draft acts.**

3. **Without prejudice to Article 5b, if the committee delivers a negative opinion**, the Commission shall not adopt those **acts. Where implementing acts are deemed to be necessary, the Chair** may **either** submit **the draft acts within one month** to the **appeal** committee for further deliberation or submit **to the committee within two months** an amended version of the draft **acts.**

4. If no opinion is delivered, the Commission may adopt the draft **acts, except in the case provided for in the next subparagraph.** Where the Commission does not adopt the draft **acts**, the **Chair** may submit to the committee an amended version of the draft **acts.**

**Without prejudice to Article 5b, the Commission shall not adopt the draft acts where:**

**– the measures concern taxation, financial services, the protection of the**

*health or safety of humans, animals or plants, or definitive multilateral safeguard measures, or*

*– the basic act so provides, or*

*– a simple majority of the component members of the committee opposes them.*

*In any of the cases referred to in the second subparagraph, where implementing acts are deemed to be necessary, the Chair may either submit the draft acts within one month to the appeal committee for further deliberation or submit to the committee within two months an amended version of the draft acts.*

5. By derogation from paragraph 3, *the Commission may adopt draft measures which are not in accordance with the opinion of the committee where their non adoption within an imperative deadline would create a significant disruption of the markets or a risk for the security or safety of humans or for the financial interests of the Union.*

*In such a case the Commission shall immediately inform the committee of its reasons for adopting the measures and may submit them to a second deliberation of the committee. If the measures adopted are not in accordance with the second opinion of the committee, or if the measures have not been submitted to a second deliberation within a month after their adoption, the Commission shall repeal the measures forthwith. If the measures are in accordance with the second opinion of the committee, or if no opinion is delivered, those measures shall remain in force.*

5. By way of derogation from paragraph 4, *the following procedure shall apply for the adoption of definitive antidumping or countervailing measures, in cases where no opinion is delivered within the examination committee and a simple majority of its component members opposes the draft act.*

*The Commission shall conduct consultations with the Member States. Fourteen days at the earliest and one month at the latest after the meeting of the committee, the Commission shall inform the committee members of the results of those consultations and submit a draft act to the appeal committee. By way of derogation from Article 3(6a), the appeal committee shall meet 14 days at the earliest and one month at the latest after the submission of the draft act. The appeal committee shall deliver its opinion in accordance with Article 5a. The time-limits laid down in this paragraph are without prejudice to the need to ensure that the deadlines laid down in the relevant basic acts are respected.*

**Amendment 19**

**Proposal for a regulation  
Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 5a**

***Referral to the appeal committee***

***1. The appeal committee shall deliver its opinion by the majority provided for in Article 5(1).***

***2. Until an opinion is delivered, any member of the appeal committee may suggest amendments to the draft acts. The Commission may adapt the draft acts.***

***The Chair shall endeavour to find solutions which command the widest possible support.***

***The Chair shall inform the appeal committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards suggestions for amendments which are largely supported within the appeal committee.***

***3. If the appeal committee delivers a positive opinion, the Commission shall adopt the draft acts.***

***If no opinion is delivered, the Commission may adopt the draft acts.***

***If the appeal committee delivers a negative opinion, the Commission shall not adopt the draft acts.***

***4. By way of derogation from paragraph 3, for the adoption of definitive multilateral safeguard measures, in the absence of a positive opinion voted by a qualified majority, the Commission shall not adopt the draft acts.***

***5. By way of derogation from paragraph 1, for a period of 18 months after the entry into force of this Regulation the appeal committee shall deliver its opinion on definitive draft anti-dumping or countervailing measures by a simple***

*majority of its component members.*

## Amendment 20

### Proposal for a regulation Article 5 b (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 5b*

##### *Adoption of acts in exceptional cases*

*By way of derogation from Article 5(3) and the second subparagraph of Article 5(4), the Commission may adopt the draft acts where they need to be adopted without delay in order to avoid creating a significant disruption of the markets in the area of agriculture or a risk for the financial interests of the Union within the meaning of Article 325 of the Treaty on the Functioning of the European Union.*

*In such a case the Commission shall immediately submit the adopted acts to the appeal committee. Where the appeal committee delivers a negative opinion on the adopted acts, the Commission shall repeal those acts forthwith. Where the appeal committee delivers a positive opinion or delivers no opinion, those acts shall remain in force.*

## Amendment 21

### Proposal for a regulation Article 6

*Text proposed by the Commission*

*Amendment*

1. By way of derogation from Articles 4 and 5, a basic act may provide that, on imperative grounds of urgency, the provisions set out in paragraphs 2 to 5 of this Article shall apply.
2. The Commission shall adopt *measures* which shall apply immediately.

1. By way of derogation from Articles 4 and 5, a basic act may provide that, on *duly justified* imperative grounds of urgency, the provisions set out in paragraphs 2 to 5 of this Article shall apply.
2. The Commission shall adopt *acts* which shall apply immediately *and shall remain in force for a period not exceeding six months unless the basic act provides otherwise.*

3. **The chairperson** shall *without delay* submit the *measures* referred to in paragraph 2 to the relevant committee in order to obtain its opinion *in accordance with the procedure provided for in the basic act*.

4. In the case of the examination procedure, where *the measures are not in accordance with the opinion of the committee pursuant to Article 5(3)*, the Commission shall repeal the *measures* adopted in accordance with paragraph 2.

5. *By way of derogation from paragraph 4, the Commission may maintain the measures in force on grounds related to the protection of the environment or of the health or safety of humans, animals or plants, the conservation of marine resources, for security and safety reasons, or to avoid disruption or threat of disruption of the markets. In those cases, the chairperson shall without delay either resubmit to the committee the same measures for a second deliberation or submit an amended version of the measures.*

*The measures referred to in paragraph 2 shall remain in force until they are repealed or replaced by another implementing act.*

## Amendment 22

### Proposal for a regulation Article 7

#### *Text proposed by the Commission*

1. Each committee shall adopt by a majority of its component members its own rules of procedure on the proposal of its *chairperson*, on the basis of standard rules which shall be *published* by the Commission in the *Official Journal of the European Union*.

In so far as necessary existing committees

3. *At the latest 14 days after their adoption, the Chair* shall submit the *acts* referred to in paragraph 2 to the relevant committee in order to obtain its opinion.

4. In the case of the examination procedure, where the committee *delivers a negative opinion*, the Commission shall *immediately* repeal the *acts* adopted in accordance with paragraph 2.

5. *Where the Commission adopts provisional anti-dumping or countervailing measures, the procedure provided for in this Article shall apply. The Commission shall take provisional action after consulting or, in cases of extreme urgency, after informing the Member States. In this case, consultations shall take place ten days, at the latest, after notification to the Member States of the action taken by the Commission.*

#### *Amendment*

1. Each committee shall adopt by a majority of its component members its own rules of procedure on the proposal of its *Chair*, on the basis of standard rules which shall be *drawn up* by the Commission *after consultation with Member States. Such standard rules shall be published by the Commission* in the *Official Journal of the European Union*.

In so far as necessary existing committees

shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents and on data protection applicable to the Commission shall apply to the committees.

### **Amendment 23**

#### **Proposal for a regulation**

#### **Article 8**

##### *Text proposed by the Commission*

1. The Commission shall keep a register of committee proceedings which shall contain:

- (a) the agendas of committee meetings,
- (b) the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong,
- (c) the draft **measures** on which the committees are asked to deliver an opinion,
- (d) the results **of voting**,
- (e) the final draft **measures** following the opinion of the committees,
- (f) **the** information concerning the final adoption of the **measures** by the Commission, and
- (g) statistical data on the **working** of the committees.

2. The European Parliament and the Council shall have access to the information referred to in paragraph 1.

shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents and **the rules** on data protection applicable to the Commission shall apply to the committees.

##### *Amendment*

1. The Commission shall keep a register of committee proceedings which shall contain:

***(-a) a list of committees,***

- (a) the agendas of committee meetings,
- (b) the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong,
- (c) the draft **acts** on which the committees are asked to deliver an opinion,
- (d) the **voting** results,
- (e) the final draft **acts** following the opinion of the committees,
- (f) information concerning the final adoption of the **acts** by the Commission, and
- (g) statistical data on the **work** of the committees.

***1a. The Commission shall also publish an annual report on the work of the committees.***

2. The European Parliament and the Council shall have access to the information referred to in paragraph 1 ***in accordance with the applicable rules.***

***2a. At the same time as they are sent to the committee members, the Commission shall make available to the European Parliament and the Council the documents referred to in points (a), (c)***

3. The references of all documents referred to in points (a) to (f) of paragraph 1 as well as the information referred to in point (g) of paragraph 1 shall be made public in the register.

#### **Amendment 24**

##### **Proposal for a regulation Article 8 a (new)**

*Text proposed by the Commission*

***and (e) of paragraph 1 whilst also informing them of the availability of such documents.***

3. The references of all documents referred to in points (a) to (f) of paragraph 1 as well as the information referred to in point (g) of paragraph 1 shall be made public in the register.

*Amendment*

##### ***Article 8a***

##### ***Right of scrutiny for the European Parliament and the Council***

***Where the basic act is adopted under the ordinary legislative procedure, the European Parliament or the Council may at any time indicate to the Commission that they consider a draft implementing act to exceed the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft measure in question, taking account of the positions expressed, and shall inform the European Parliament and the Council whether it intends to maintain, amend or withdraw the draft implementing act.***

#### **Amendment 25**

##### **Proposal for a regulation Article 9**

*Text proposed by the Commission*

Decision 1999/468/EC shall be repealed.  
The effects of Article 5a of ***the repealed*** Decision shall be maintained for the purposes of existing basic acts making reference thereto.

*Amendment*

Decision 1999/468/EC shall be repealed.  
The effects of Article 5a of Decision ***1999/468/EC*** shall be maintained for the purposes of existing basic acts making reference thereto.

#### **Amendment 26**



## Proposal for a regulation

### Article 10

*Text proposed by the Commission*

#### Article 10

*Adaptation* of existing basic acts

1. Where basic acts adopted before the entry into force of this Regulation provide for the exercise of implementing powers by the Commission in accordance with Decision 1999/468/EC, the following rules shall apply:

(a) *references* to Article 3 of Decision 1999/468/EC **shall be understood as references** to Article 4 of this Regulation;

(b) *references* to Articles 4 and 5 of Decision 1999/468/EC **shall be understood as references** to Article 5 of this Regulation;

(c) *references* to Article 6 of Decision 1999/468/EC **shall be understood as references** to Article 6 of this Regulation;

(d) *references* to Articles 7 and 8 of Decision 1999/468/EC shall **be understood as references to Article 8** of this Regulation.

2. Articles 3 and 7 of this Regulation shall apply to all existing committees.

*Amendment*

#### Article 10

***Transitional provisions: adaptation*** of existing basic acts

1. Where basic acts adopted before the entry into force of this Regulation provide for the exercise of implementing powers by the Commission in accordance with Decision 1999/468/EC, the following rules shall apply:

(a) ***where the basic act makes reference*** to Article 3 of Decision 1999/468/EC, ***the advisory procedure referred to in*** Article 4 of this Regulation ***shall apply***;

(b) ***where the basic act makes reference*** to Articles 4 and 5 of Decision 1999/468/EC, ***the examination procedure referred to in*** Article 5 of this Regulation ***shall apply***;

***(ba) where the basic act makes reference to Article 4 of Decision 1999/468/EC, the second and third subparagraphs of Article 5(4) shall not apply***;

***(bb) where the basic act makes reference to Article 5 of Decision 1999/468/EC, that basic act shall be considered to be the basic act within the meaning of the second subparagraph, second indent of Article 5(4)***;

(c) ***where the basic act makes reference*** to Article 6 of Decision 1999/468/EC, Article 6 of this Regulation ***shall apply***;

(d) ***where the basic act makes reference*** to Articles 7 and 8 of Decision 1999/468/EC, ***Articles 8 and 8a*** of this Regulation ***shall apply***.

2. Articles 3 and 7 of this Regulation shall apply to all existing committees ***for the purposes of paragraph 1***.

***2a. Article 5b of this Regulation shall apply only to existing procedures which make reference to Article 4 of Decision***

*1999/468/EC.*

***2b. The transitional provisions laid down in this Article shall not prejudice the nature of the acts concerned.***

**Amendment 27**

**Proposal for a regulation  
Article 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 11a***

***Review clause***

***No later than five years after the entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation, accompanied, if necessary, by appropriate legislative proposals.***

**Amendment 28**

**Proposal for a regulation  
Article 12**

*Text proposed by the Commission*

*Amendment*

***This Regulation shall enter into force on 1 October 2010.***

***This Regulation shall enter into force on 1 March 2011.***

***Article 10 of this Regulation shall apply from 1 December 2010.***

***This Regulation is binding in its entirety and directly applicable in all Member States.***

***This Regulation is binding in its entirety and directly applicable in all Member States.***

**JOINT STATEMENT BY THE EUROPEAN PARLIAMENT, THE  
COUNCIL AND THE COMMISSION**

Article 5(2) of this Regulation requires the Commission to adopt a draft implementing act where the committee delivers a positive opinion. This provision does not preclude that the Commission may, as is the current practice, in very exceptional cases, take into consideration new circumstances that have arisen after the vote and decide not to adopt a draft implementing act, after having duly informed the committee and the legislator.

**STATEMENTS BY THE COMMISSION**

— I —

The Commission will proceed to an examination of all legislative acts in force which were not adapted to the regulatory procedure with scrutiny before the entry into force of the Lisbon Treaty, in order to assess if those instruments need to be adapted to the regime of delegated acts introduced by Article 290 of the Treaty on the Functioning of the European Union. The Commission will make the appropriate proposals as soon as possible and no later than at the dates mentioned in the indicative calendar annexed to this declaration.

While this alignment exercise is underway, the Commission will keep the European Parliament regularly informed on draft implementing measures related to these instruments which should become, in the future, delegated acts.

As regards legislative acts in force which currently contain references to the regulatory procedure with scrutiny, the Commission will review the provisions attached to this procedure in each instrument it intends to modify, in order to adapt them in due course according to the criteria laid down in the Treaty. In addition, the European Parliament and the Council will be entitled to signal basic acts they consider important to adapt as a matter of priority.

The Commission will assess the results of this process by the end of 2012 in order to estimate how many legislative acts containing references to the regulatory procedure with scrutiny remain in force. The Commission will then prepare the appropriate legislative initiatives to complete the adaptation. The overall objective of the Commission is that, by the end of the 7<sup>th</sup> term of the Parliament, all provisions referring to the regulatory procedure with scrutiny would have been removed from all legislative instruments.

— II —

The Commission notes that it has recently launched a study which will provide a complete and objective review of all aspects of the EU's trade defence policy and practice, including an evaluation of the performance, methods, utilisation and effectiveness of the present TDI scheme in achieving its trade policy objectives, an evaluation of the effectiveness of the existing and potential policy decisions of the European Union (e.g., the Union interest test, the lesser duty

rule, the duty collection system) in comparison with the policy decisions made by certain trading partners and an examination of the basic anti-dumping and anti-subsidy regulations in light of the administrative practice of the EU institutions, the judgments of the Court of Justice of the European Union and the recommendations and rulings of the WTO Dispute Settlement Body.

The Commission intends, in the light of the results of the study and of developments in the Doha Development Agenda negotiations to explore whether and how to further update and modernize the EU's trade defence instruments

The Commission also recalls the recent initiatives it has taken to improve the transparency of the operation of trade defence instruments (such as the appointment of a Hearing Officer) and its work with Member States to clarify key elements of trade defence practice. The Commission attaches substantial importance to this work, and will seek to identify, in consultation with the Member States, other initiatives which could be taken in this respect.

### — III —

Under the comitology rules based on Council Decision 1999/468/EC, where a Common Agricultural Policy (CAP) management committee has delivered an unfavourable opinion, the Commission must submit the draft measure in question to the Council which may take a different decision within a month. However, the Commission is not barred from acting but has the choice to either put the measure in place or defer its application. Hence, the Commission may take the measure where it considers on balance that suspending its application would for instance provoke irreversible negative market effects. When afterwards the Council decides otherwise the measure put in effect by the Commission becomes of course redundant. Thus the current rules equip the Commission with an instrument that allows protecting the common interest of the whole Union by adopting a measure at least on an interim basis.

Article 5b of this Regulation pursues the objective to maintain this approach within the new comitology arrangements but limited to exceptional situations and on the basis of clearly defined and restrictive criteria. It would allow the Commission to adopt a draft measure despite the unfavourable opinion of the examination committee provided that its “non adoption within an imperative deadline would create a significant disruption of the markets (...) or for the financial interests of the Union.” The provision refers to situations where it is not possible to wait until the committee votes again on the same or another draft measure because in the meantime the market would be significantly disrupted e.g. due to the speculative behaviour of operators. To ensure the Union's ability to act it would give Member States and the Commission the opportunity to have another informed discussion on the draft measure without leaving things undecided and open to speculation with the negative consequences for the markets and the budget.

Such situations may namely arise in the context of the day-to-day management of the CAP (e.g. fixing of export refunds, management of licences, special safeguard clause) where decisions need often to be taken quickly and can have significant economic consequences for the markets and thus farmers and operators but also for the budget of the Union.

In cases where the European Parliament or the Council indicate to the Commission that they consider a draft implementing act to exceed the implementing powers provided for in the basic act, the Commission will immediately review the draft implementing act taking into account the positions expressed by the European Parliament or the Council.

The Commission will act in a manner which takes duly into account the urgency of the matter.

Before deciding whether the draft implementing act shall be adopted, amended or withdrawn, the Commission will inform the European Parliament or the Council of the action it intends to take and of its reasons for doing so.

ANNEX to statement I by the Commission