



EUROPEAN PARLIAMENT

2009 - 2014

Committee on the Internal Market and Consumer Protection

2010/0051(COD)

3.6.2010

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers
(COM(2010)0083 – C7-0073-/2010 – 2010/0051(COD))

Rapporteur: Louis Grech

PA_Legam

SHORT JUSTIFICATION

The possibility to adopt implementing acts is enshrined in Article 291 of the Treaty on the Functioning of the European Union, which provides that where uniform conditions for implementing legally binding Union acts are needed the legislator can confer implementing powers on the Commission.

The Treaty of Lisbon puts the Parliament and the Council on equal footing where the ordinary legislative procedure applies *inter alia* with regard to conferral of implementing powers on the Commission. It is therefore of particular importance to retain the right of scrutiny that is currently guaranteed to the Parliament under Article 8 of Council Decision 1999/468/EC and to ensure the possibility for the co-legislators to object to the draft measures. Moreover, the Parliament should be granted the access to the committee meetings; as well as certain improvements with regard to the information provided to the Parliament and the Council should be guaranteed (e.g. agendas well in advance, minutes of the meetings, detailed voting lists).

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) The Treaty on the Functioning of the European Union now requires the European Parliament and the Council to lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment

(3) The Treaty on the Functioning of the European Union now requires the European Parliament and the Council to lay down ***in advance*** the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Justification

In order to align with the wording of Article 291 TFEU.

Amendment 2

Proposal for a regulation

Recital 4 a (new)

Amendment

(4a) Wherever the ordinary legislative procedure applies, especially in respect of the conferral of implementing powers on the Commission, it is important to ensure that the European Parliament is placed on an equal footing with Council.

Justification

In accordance with the Treaty of Lisbon it is of utmost importance to ensure that the Parliament is on equal footing with the Council with regard to conferral of implementing powers, in cases where the basic act has been adopted under the ordinary legislative procedure.

Amendment 3

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 kept **fully** informed of committee proceedings on a regular basis. ***If deemed necessary for the exercise of its scrutiny, the European Parliament should be granted the possibility to attend the committee meetings, without taking part in the vote on the draft implementing measures.***

Amendment 4

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) Decision 1999/468/EC should be repealed. ***In*** order to ensure the transition

Amendment

(14) Decision 1999/468/EC should be repealed. ***References in existing basic acts***

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.**

to the procedures provided for in that Decision should be adapted in the shortest possible time, and in any event no later than... *, to the new rules on delegated and implementing powers set out in Articles 290 and 291 of the Treaty on the Functioning of the European Union. Pending that adaptation, in order to ensure the transition between the regime provided for in Decision 1999/468/EC and this Regulation, **the procedures provided for in this Regulation should provisionally apply where** existing legislation **makes reference** to the procedures provided for in that Decision, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, **which should continue to apply provisionally.**

*** Two years from the entry into force of this Regulation.**

Justification

The mechanism of 'automatic alignment' provided for in Articles 9 and 10 appears to be based on the incorrect assumption that all implementing powers currently subject to comitology procedures other than RPS must, following the Lisbon Treaty, be considered as powers to adopt implementing acts within the meaning of Article 291 TFEU. This disregards the fact that there may be implementing powers that fall within the category of delegated acts (Article 290 TFEU) even if they are not subject to RPS. Any alignment of existing legislation should be therefore made on a case-by-case basis.

Amendment 5

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 shall apply in cases where a legally binding Union act (hereafter "basic act") requires that, **where uniform conditions for the implementation of legally binding Union acts are needed**, the adoption of **such** binding implementing acts by the

Commission be subject to the control of Member States.

Justification

In order to align with the wording of Article 291 TFEU.

Amendment 6

**Proposal for a regulation
Article 5 – paragraph 2**

Text proposed by the Commission

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.

Amendment

2. If the draft measures are in accordance with the opinion of the committee, the Commission shall, ***without prejudice to Article 6a***, 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.

Justification

In order to align with the introduction of a new Article 6a.

Amendment 7

**Proposal for a regulation
Article 5 – paragraph 4**

Text proposed by the Commission

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

4. If no opinion is delivered, the Commission may, ***without prejudice to Article 6a***, 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.

Justification

In order to align with the introduction of a new Article 6a.

Amendment 8

Proposal for a regulation

Article 5 – paragraph 5 – subparagraph 1

Text proposed by the Commission

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.

Amendment

5. By derogation from paragraph 3, the Commission may, ***without prejudice to Article 6a***, 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.

Justification

In order to align with the introduction of a new Article 6a.

Amendment 9

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 ***of this Article***.

Justification

In order to improve drafting and avoid confusion.

Amendment 10

Proposal for a regulation

Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Monitoring by the European Parliament and the Council of the Commission's exercise of implementing powers

If the European Parliament or the Council considers that the draft measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to the basic act adopted under Article 294 of the Treaty on the Functioning of the European Union, would not be in accordance with the basic act, it shall express its objection in that regard and the Commission shall reconsider such draft measures. Taking the reasons for the objection into account and within the time-limits applicable to the procedure under way, the Commission may either submit a new draft measure to the committee or submit a proposal to the European Parliament and the Council on the basis of the Treaty on the Functioning of the European Union.

The Commission shall inform the European Parliament, the Council and the committee of the action which it intends to take in that regard and of its reasons for doing so.

Justification

Parliament should retain the right of scrutiny that is currently guaranteed by Article 8 of the Comitology decision (Decision 1999/468/EC).

Amendment 11

Proposal for a regulation
Article 8 – paragraph 1 – point a

Text proposed by the Commission

(a) the agendas of committee meetings,

Amendment

(a) the agendas of committee meetings, ***to be made available within a reasonable time in advance of the meetings,***

Justification

It is necessary to ensure that the agendas are available well in advance, in order for the Parliament to be aware as soon as possible of the draft measures that will be discussed at the meeting and thus prepare for its future activities.

Amendment 12

Proposal for a regulation
Article 8 – paragraph 1 – point b

Text proposed by the Commission

(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,

Amendment

(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, ***as well as any minutes which are available,***

Justification

There should be a possibility to have access not only to the summary records, but also to the minutes (the possibility to request access to the minutes is enshrined in Inter-institutional agreement between the European Parliament and the Commission (2008/C 143/01)).

Amendment 13

Proposal for a regulation
Article 8 – paragraph 1 – point d

Text proposed by the Commission

(d) the results of voting,

Amendment

(d) the ***detailed*** results of voting, ***including the explanations of vote by individual Member States,***

Justification

It is important to know the reasons for voting against or abstentions, as this might give a good indication of the possible problems relating to the draft measure.

Amendment 14

Proposal for a regulation

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The European Parliament shall have the right to attend committee meetings.

To this end, the European Parliament shall designate representatives who will attend the meetings and report on the results of the proceedings to the relevant parliamentary committee as soon as possible. The representatives of the European Parliament shall not take part in the vote on the draft implementing measures.

Justification

It is important for the Parliament to know the reasons behind the opinions delivered by committees. To this end, it is better if the European Parliament gets information directly, through its own representatives. The latter are simple representatives and not members of the committee, which is why they shall not take part in votes which could take place.

Amendment 15

Proposal for a regulation

Article 9

Text proposed by the Commission

Amendment

Decision 1999/468/EC shall be repealed.

Decision 1999/468/EC shall be repealed ***with effect from...****

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

**** Two years from the entry into force of this***

Regulation.

Justification

The mechanism of 'automatic alignment' provided for in Articles 9 and 10 appears to be based on the incorrect assumption that all implementing powers currently subject to comitology procedures other than RPS must, following the Lisbon Treaty, be considered as powers to adopt implementing acts within the meaning of Article 291 TFEU. This disregards the fact that there may be implementing powers that fall within the category of delegated acts (Article 290 TFEU) even if they are not subject to RPS. Any alignment of existing legislation should be therefore made on a case-by-case basis.

Amendment 16

Proposal for a regulation

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Adaptation of existing acts

9a. By...*, the Commission shall review the basic acts adopted before the entry into force of this Regulation with a view to adapting such acts to the new rules on delegated and implementing powers set out in Articles 290 and 291 of the Treaty on the Functioning of the European Union. The Commission shall regularly report to the European Parliament and to the Council on the progress of that review. Where appropriate, such reports shall be accompanied by a legislative proposal.

**** Two years from the entry into force of this Regulation.***

Justification

The mechanism of 'automatic alignment' provided for in Articles 9 and 10 appears to be based on the incorrect assumption that all implementing powers currently subject to comitology procedures other than RPS must, following the Lisbon Treaty, be considered as powers to adopt implementing acts within the meaning of Article 291 TFEU. This disregards the fact that there may be implementing powers that fall within the category of delegated acts (Article 290 TFEU) even if they are not subject to RPS. Any alignment of existing legislation should be therefore made on a case-by-case basis.

Amendment 17

Proposal for a regulation

Article 10

Text proposed by the Commission

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

Transitional measures

1. ***Pending the adaptation, in accordance with Article 9a, of*** basic acts adopted before the entry into force of this Regulation ***providing*** 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***;

(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 ***Article 7*** of Decision 1999/468/EC, Article 8 of this Regulation ***shall apply***.

(da) where the basic act makes reference to Article 8 of Decision 1999/468/EC, Article 6a 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.***

Justification

The mechanism of 'automatic alignment' provided for in Articles 9 and 10 appears to be based on the incorrect assumption that all implementing powers currently subject to comitology procedures other than RPS must, following the Lisbon Treaty, be considered as powers to adopt implementing acts within the meaning of Article 291 TFEU. This disregards the fact that there may be implementing powers that fall within the category of delegated acts (Article 290 TFEU) even if they are not subject to RPS. Any alignment of existing legislation should be therefore made on a case-by-case basis.

PROCEDURE

Title	Control by Member States of the Commission's exercise of implementing powers
References	COM(2010)0083 – C7-0073/2010 – 2010/0051(COD)
Committee responsible	JURI
Opinion by Date announced in plenary	IMCO 24.3.2010
Rapporteur Date appointed	Louis Grech 7.4.2010
Discussed in committee	10.5.2010
Date adopted	3.6.2010
Result of final vote	+: 36 -: 0 0: 0
Members present for the final vote	Pablo Arias Echeverría, Cristian Silviu Buşoi, Lara Comi, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Kurt Lechner, Toine Manders, Hans-Peter Mayer, Mitro Repo, Robert Rochefort, Zuzana Roithová, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin Von Thun Und Hohenstein, Kyriacos Triantaphyllides, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler
Substitute(s) present for the final vote	Ashley Fox, Anna Hedh, Constance Le Grip, Emma McClarkin, Morten Messerschmidt, María Muñiz De Urquiza, Konstantinos Poupakis, Sylvana Rapti, Wim van de Camp