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*****I**
REPORT

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))

Committee on Legal Affairs

Rapporteur: József Szájer

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0083),
 - having regard to Article 294(2) and Article 291(3) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0073/2010),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development, the Committee on International Trade, the Committee on Economic and Monetary Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on the Internal Market and Consumer Protection, the Committee on Transport and Tourism, the Committee on Regional Development, the Committee on Agriculture and Rural Development, the Committee on Fisheries, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Constitutional Affairs (A7-0355/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

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

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 **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.**

(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

Amendment

(9) The examination procedure should **only** apply for the adoption of measures of general scope designed to implement basic

(9) The examination procedure should **in particular** apply for the adoption of measures of general scope designed to

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.

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

Amendment

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

(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 documents¹.***

¹ 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

Amendment

This Regulation lays down the rules and general principles governing the mechanisms which ***shall*** apply in cases

This Regulation lays down the rules and general principles governing the mechanisms which apply in cases where a

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.

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 shall apply.**

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

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**.

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

1. By way of derogation from Articles 4 and 5, a basic act may provide that, on

provisions set out in paragraphs 2 to 5 of this Article shall apply.

2. The Commission shall adopt *measures* which shall apply immediately.

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

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. *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.*

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 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

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 **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:

(-aa) 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

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.

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

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) 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;

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

(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.

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 11 a

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

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

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.

Amendment

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

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

23.6.2010

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

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: Gabriele Albertini

SHORT JUSTIFICATION

Article 291 TFEU provides that, where uniform conditions for implementing legally binding Union acts are needed and implementing powers are conferred on the Commission, the control on the exercise of such implementing powers by the Commission rests with the Member States solely. To this end, the European Parliament and the Council, by means of a regulation adopted in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning the mechanism for control by the Member States. Article 291 TFEU is clear: only the Member States should control the exercise of implementing powers by the Commission. This does not mean that Parliament is deprived of any possibility to intervene, should the exercise of implementing powers by the Commission counteract the intention of the legislator. Indeed, Parliament retains the possibility to transmit observations to the Commission at any time of the process leading to the adoption of implementing measures, or after such process is completed, and it can equally adopt at any stage a resolution to signify potential problems concerning draft implementing measures to the Commission, notwithstanding the fact that no express reference is made in the text of the Commission proposal. At the same time, as testified by case C-403/05 before the ECJ¹, **on instances where the Commission should not take into proper consideration Parliament's observations and concerns, Parliament can always bring an action for annulment before the Court of Justice of the European Union, if it believes that the Commission has exceeded its implementing powers.** Thus, Parliament's prerogatives as a co-legislator remain fully unaffected. It is, however, of the utmost importance, for Parliament to be able to fully and timely exercise its prerogatives, that the Commission actively informs Parliament about all draft measures, amended draft measures and final draft measures, which

¹ OJ C 315, 22.12.2007, p.8.

it intends to adopt under Article 291 TFEU. Thus, as such draft measures, amended draft measures or final draft measures become available, the Commission should transmit them formally to the European Parliament. Such transmission should be in addition to the information requirement bestowed upon the Commission on the provision of information through the Comitology register. Finally, in light of the specificity and political sensitivity of implementing acts to be adopted under the external financial assistance instruments and in line with the practice established with the democratic scrutiny dialogue, Parliament should have the opportunity to contribute to the process leading to the definition of the content of the draft implementing acts to be adopted under the external financial assistance instruments.

AMENDMENTS

The Committee on Foreign Affairs 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 11 a (new)

Text proposed by the Commission

Amendment

(11a) The Commission should formally transmit to the European Parliament the draft measures, any amended versions of such draft measures and the final draft measures following delivery of the opinion of the relevant committee, as they become available.

Justification

It is fundamental that the Commission actively informs Parliament about all draft measures, amended draft measures and final draft measures which it intends to adopt under Article 291 TFEU.

Amendment 2

Proposal for a regulation Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) With regard to implementing acts under the external financial assistance instruments, the European Parliament should be consulted by the Commission during the process leading to the submission of drafts of such acts or any amended versions of such acts.

Justification

In light of the specificity and political sensitivity of implementing acts to be adopted under the external financial assistance instruments and in line with the practice established with the democratic scrutiny dialogue, the Commission should consult Parliament during the process leading to the submission of draft implementing acts to be adopted under the external financial assistance instruments.

Amendment 3

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The European Parliament and the Council, each in its own right, may transmit to the Commission, at any stage of the procedure, observations on the draft measures, on any amended versions of such draft measures and on the final draft measures following delivery of the opinion of the relevant committee, as they see fit.

Justification

For the sake of clarity, it should be reaffirmed that Parliament and Council, as co-legislators, each in their own right, always retain the possibility to transmit observations to the Commission at any time of the process leading to the adoption of implementing measures, if they so see fit.

Amendment 4

Proposal for a regulation Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) The European Parliament and the Council, each in its own right, may transmit to the Commission observations on the implementing measures at any time after these have been adopted.

Justification

For the sake of clarity, it should be reaffirmed that Parliament and Council, as co-legislators, each in their own right, always retain the possibility to transmit observations to the Commission even after implementing measures have been adopted.

Amendment 5

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Implementing acts under the external financial assistance instruments

When the Commission adopts implementing acts under the external financial assistance instruments, the European Parliament shall be consulted by the Commission during the process leading to the submission of drafts of such acts or any amended versions of such acts with a view to their submission to the relevant committee for an opinion under Article 4 or Article 5.

Justification

In light of the specificity and political sensitivity of implementing acts to be adopted under the external financial assistance instruments and in line with the practice established with the democratic scrutiny dialogue, Parliament should have the opportunity to contribute to the process leading to the definition of the content of draft implementing acts to be adopted under the external financial assistance instruments.

Amendment 6

Proposal for a regulation Article 8 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. The Commission shall formally transmit to the European Parliament the draft measures, any amended versions of such draft measures and the final draft measures following delivery of the opinion of the relevant committee under Article 4 or Article 5, as they become available.

Justification

It is fundamental that the Commission actively informs Parliament about all draft measures, amended draft measures and final draft measures which it intends to adopt under Article 291 TFEU. This information requirement is additional to the one bestowed upon the Commission on the provision of information through the comitology register.

Amendment 7

Proposal for a regulation Article 8 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

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

1. In addition to complying with the information requirements under paragraph -1, the Commission shall keep a register of committee proceedings which shall contain:

Justification

It is fundamental that the Commission actively informs Parliament about all draft measures, amended draft measures and final draft measures which it intends to adopt under Article 291 TFEU. This information requirement should by all means be additional to the one bestowed upon the Commission on the provision of information through the comitology register.

Amendment 8

Proposal for a regulation

Article 8 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions, and the reasons for those positions, of the representatives of the Member States,

Justification

The positions of the Member States' representatives should be accessible to the European Parliament (which holds all sittings and committee meetings in public).

Amendment 9

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Justification

As a consequence of amendments 6 and 7. It is fundamental that the Commission actively informs Parliament about all draft measures, amended draft measures and final draft measures which it intends to adopt under Article 291 TFEU. This information requirement should by all means be additional to the one bestowed upon the Commission on the provision of information through the comitology register.

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 | AFET 24.3.2010 |
| Rapporteur Date appointed | Gabriele Albertini 14.4.2010 |
| Discussed in committee | 22.6.2010 |
| Date adopted | 22.6.2010 |
| Result of final vote | +: 53 -: 1 0: 1 |
| Members present for the final vote | Gabriele Albertini, Sir Robert Atkins, Arnaud Danjean, Mário David, Marietta Giannakou, Ana Gomes, Andrzej Grzyb, Takis Hadjigeorgiou, Richard Howitt, Anna Ibrisagic, Anneli Jäätteenmäki, Jelko Kacin, Nicole Kiil-Nielsen, Maria Eleni Koppa, Andrey Kovatchev, Vytautas Landsbergis, Ryszard Antoni Legutko, Krzysztof Lisek, Sabine Lösing, Barry Madlener, Mario Mauro, Willy Meyer, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Norica Nicolai, Kristiina Ojuland, Pier Antonio Panzeri, Ioan Mircea Pașcu, Vincent Peillon, Alojz Peterle, Bernd Posselt, Cristian Dan Preda, Libor Rouček, Werner Schulz, Marek Siwiec, Ernst Strasser, Charles Tannock, Zoran Thaler, Inese Vaidere, Geoffrey Van Orden, Kristian Vigenin, Graham Watson, Boris Zala |
| Substitute(s) present for the final vote | Nikolaos Chountis, Véronique De Keyser, Liisa Jaakonsaari, Evgeni Kirilov, Doris Pack, Teresa Riera Madurell, Tokia Saïfi, Marietje Schaake, György Schöpflin, Indrek Tarand, Traian Ungureanu, Luis Yáñez-Barnuevo García |

3.6.2010

OPINION OF THE COMMITTEE ON DEVELOPMENT

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: Gay Mitchell

SHORT JUSTIFICATION

The Development Cooperation cover a relevant numbers of European Union acts (financing decisions) adopted under the comitology decision: European Commission Secretary General's Annual reports show that in the last three years (2006-2008) 795 implementing measures have been adopted by the European Commission in this field.

These measures are mostly adopted according to the "management procedure" laid down in Article 4 of Decision EC/1999/468 (Comitology).

According to the DEVE Committee this procedure was not satisfactory: therefore changes to introduce Regulatory Procedure with Scrutiny to the External Relations Instrument's decisions had already been proposed under the old Treaty.

Following the entry into force of the Lisbon Treaty, the current comitology provisions will have to be replaced by delegated acts and implementing acts according to Articles 290 and 291 of the TFEU.

Difficult negotiations with the Commission and the co-legislator are currently going on with the declared objective for the DEVE Committee to apply to the External Relations Financial Instruments the Treaty provision concerning Delegated Acts (art. 290).

The Committee on Development therefore can not accept an automatic transformation of current "management procedure" into the "examination" procedure.

It is paramount important to recall that the ordinary legislative procedure is applicable to the

Development Cooperation policy, which means that the European Parliament and the Council act on equal footing as co-legislators. The European Parliament therefore should exercise all the related control powers when it comes to delegated and implementing acts. In particular, it should maintain the existing rights (Right of Scrutiny, Democratic Scrutiny, Access to information) and possibility to see them reinforced, after the Lisbon Treaty.

One possible measure to ensure that the European Parliament is treated on an equal footing is the possibility to grant representatives of the European Parliament access to meetings of the "committees of representatives of the Member States".

Finally, the European Parliament and the Council should both be able to object to a draft implementing measure if this latter were in contrast with a Union Act.

AMENDMENTS

The Committee on Development 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

Title

Text proposed by the Commission

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

Amendment

Regulation of the European Parliament and of the Council laying down the rules and general principles concerning the Commission's exercise of implementing powers ***in accordance with Article 291 of the Treaty on the Functioning of the European Union***

Justification

The proposed regulation will cover the whole functioning of implementing powers according to Article 291 TFEU, not only the control. In addition, the European Parliament as co-legislator should be set at equal footing with the Council.

Amendment 2

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 the rules and general principles concerning the Commission's exercise of implementing powers.

Justification

See justification to AM 1.

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for ***such*** control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty, ***the equal footing of the European Parliament and the Council with regard to all acts adopted under the ordinary legislative procedure*** as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Justification

Clarification.

Amendment 4

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) **Without prejudice to the** procedure to be used for the adoption of implementing acts, **which is determined in the basic act, the examination procedure should in principle be used for the adoption of general implementing measures, where uniform conditions are needed.**

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 5

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 provide for the control 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.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 6

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

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

Amendment 7

Proposal for a regulation Article 1

Text proposed by the Commission

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 the adoption of ***binding*** implementing acts by the Commission be subject to the control of Member States.

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 ***uniform conditions of implementation and provides*** that the adoption of implementing acts by the Commission be subject to the control of Member States.

Justification

Clarification.

Amendment 8

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. The examination procedure ***may only***

2. The examination procedure ***shall in***

apply for the adoption of:

principle apply for the adoption of ***general implementing measures, where uniform conditions are needed.***

(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.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 9

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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 shall apply.

deleted

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 10

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Objections to draft implementing measures

If the European Parliament or the Council expresses its objection to draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic act adopted under Article 294 TFEU, on the grounds that those measures would not respect the basic act, the Commission shall re-examine the draft measures.

The Commission may withdraw those draft implementing measures for which the European Parliament or the Council has expressed an objection, or propose a new draft which shall take into account the remarks of the European Parliament and the Council.

Justification

The European Parliament's current right of scrutiny should be maintained. Article 8 of Decision 99/468 should therefore be included in the regulation.

Amendment 11

Proposal for a regulation Article 8 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions, and the reasons for those positions, of the representatives of the Member States,

Justification

The positions of the Member States' representatives shall be accessible to the European Parliament (which holds all sittings and committee meetings in public).

Amendment 12

**Proposal for a regulation
Article 8 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. The European Parliament, the Council **and the Member States** shall have **equal** access to the information referred to in paragraph 1. **To that end, the European Parliament and the Council shall receive, at the same time as the members of the committees and on the same terms, all the information referred to in paragraph 1.**

Justification

The amendment clarifies the modalities of transmission of information by taking over the relevant provisions of the Interinstitutional Agreement of 3 June 2008.

Amendment 13

**Proposal for a regulation
Article 8 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. Representatives of the European Parliament shall have access to committee meetings as observers.

Justification

The committee meetings shall be accessible to observers of the European Parliament (which holds all sittings and committee meetings in public).

Amendment 14

Proposal for a regulation Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Repeal of Decision 1999/468/EC

***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.***

Justification

The Comitology Decision, pending the decision on the application of Article 290 (delegated acts) to the External Relations Financial Instruments, will still have a limited application in this field.

Amendment 15

Proposal for a regulation Article 10

Text proposed by the Commission

Amendment

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:

deleted

(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.

Justification

An automatic alignment, as suggested by the Commission, would undermine the prerogatives of the European Parliament. This could be granted after the agreement is reached on the application of Article 290 (Delegated Acts) to the external relations instruments.

Amendment 16

**Proposal for a regulation
Article 10 a (new)**

Text proposed by the Commission

Amendment

Article 10a

Adaptation of existing acts

The Commission undertakes to examine the Union legislation in force and to submit the necessary legislative proposals for its alignment with the provisions of the Treaty of Lisbon, and particularly with Articles 290 and 291 TFEU, before 31 December 2010.

Justification

An automatic alignment, as suggested by the Commission, would undermine the prerogatives of the European Parliament. This could be granted after the agreement on the application of Article 290 (Delegated Acts) to the external relations instruments is reached.

Amendment 17

**Proposal for a regulation
Article 10 b (new)**

Text proposed by the Commission

Amendment

Article 10b

Limitation of the alignment

Article 10 of this Regulation shall not apply to:

Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation¹;

Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument²;

Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability³;

Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide⁴;

Council Regulation (EURATOM) No 300/2007 of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation⁵;

Council Regulation (EC) No 1934/2006 of 21 December 2006 establishing a financing instrument for cooperation with industrialised and other high-income countries and territories⁶;

Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)⁷;

Regulation (EC) No 1337/2008 of the European Parliament and of the Council of 16 December 2008 establishing a facility for rapid response to soaring food prices in developing countries⁸;

Council Decision 2006/526/EC of 17 July 2006 on relations between the European Community on the one hand, and

*Greenland and the Kingdom of Denmark on the other*⁹;

*Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid*¹⁰.

¹ OJ L 378, 27.12.2006, p. 41.

² OJ L 310, 9.11.2006, p. 1.

³ OJ L 327, 24.11.2006, p. 1.

⁴ OJ L 386, 29.12.2006, p. 1.

⁵ OJ L 81, 22.3.2007, p. 1.

⁶ OJ L 405, 30.12.2006, p. 41.

⁷ OJ L 210, 31.7.2006, p. 82.

⁸ OJ L 354, 31.12.2008, p. 62.

⁹ OJ L 208, 29.7.2006, p. 28.

¹⁰ OJ L 163, 2.7.1996, p. 1.

Justification

The automatic horizontal alignment suggested by the Commission, pending a decision on the application of Article 290 (Delegated Acts) to the external relations instruments, will determine a legal loophole. Nothing in the proposed Regulation suggests that the Commission will propose a screening with the view to introducing delegated acts. Therefore, if Articles 9 and 10 of the proposal are maintained, thus deleting the now binding comitology, the present amendment will leave to the European Parliament the legal basis which is needed to object to measures in breach of the External relations acts.

By the contrary, should amendments 14 and 15 be adopted, thus avoiding the deletion of the current comitology, Amendments 17 and 18 will fall.

Amendment 18

Proposal for a regulation Article 12 - subparagraph 2

Text proposed by the Commission

Amendment

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

Justification

Consequence of the deletion of Article 10.

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 | DEVE 24.3.2010 |
| Rapporteur Date appointed | Gay Mitchell 4.5.2010 |
| Date adopted | 2.6.2010 |
| Result of final vote | +: 26 -: 0 0: 0 |
| Members present for the final vote | Thijs Berman, Michael Cashman, Corina Crețu, Nirj Deva, Charles Goerens, Catherine Grèze, Enrique Guerrero Salom, András Gyürk, Eva Joly, Filip Kaczmarek, Franziska Keller, Gay Mitchell, Bill Newton Dunn, Maurice Ponga, David-Maria Sassoli, Birgit Schnieber-Jastram, Michèle Striffler, Alf Svensson, Eleni Theoharous, Anna Záborská, Iva Zanicchi, Gabriele Zimmer |
| Substitute(s) present for the final vote | Fiona Hall, Wolf Klinz, Miguel Angel Martínez Martínez, Patrizia Toia |

1.6.2010

OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE

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: Vital Moreira

SHORT JUSTIFICATION

Following the entry into force of the Lisbon Treaty, the current comitology provisions will have to be replaced by delegated acts and implementing acts according to Articles 290 and 291 of the TFEU.

This adaptation of the existing legislation to the provisions of the Lisbon Treaty is of major importance especially for those policy areas which (like the common commercial policy) were not adopted under the co-decision procedure and which have thus not been aligned to the increased parliamentary control through the Regulatory procedure with scrutiny (RPS) from 2006 onwards.

Due to the considerable number of acts concerned and the often complex process of distinguishing between delegated acts and implementing acts, the Committee on International Trade expects difficult negotiations with the Commission and the co-legislator, which shall be held on a case-by-case basis.

By applying the ordinary legislative procedure to the Common Commercial Policy, the TFEU puts the European Parliament and the Council on equal footing as co-legislators. Parliament should thus endeavour to be treated also on equal footing when it comes to delegated and implementing acts. In particular, it should at least maintain its existing rights with regard to "comitology" acts related to basic acts adopted under the codecision procedure (Right of Scrutiny, Right to veto, Access to information, ...). In addition, representatives of the European Parliament should have access to meetings of the Commission with "representatives of the Member States".

Finally, the European Parliament and the Council should both be able to object to a draft implementing measure which would counteract the intention of the co-legislator.

AMENDMENTS

The Committee on International Trade 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 Title

Text proposed by the Commission

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

Amendment

Regulation of the European Parliament and of the Council laying down the rules and general principles concerning the Commission's exercise of implementing powers ***in accordance with Article 291 of the Treaty on the Functioning of the European Union***

Justification

The proposed regulation will cover the whole functioning of implementing powers according to Article 291 TFEU, not only the control of the Commission by Member States. In addition, the EP as co-legislator should be set at equal footing with the Council.

Amendment 2

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 the rules and general principles concerning the Commission's exercise of implementing powers.

Justification

See justification of AM 1

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for ***such*** control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty, ***the fact that the European Parliament and the Council are on an equal footing with regard to all acts adopted under the ordinary legislative procedure***, as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Justification

Clarification in the light of Article 291 TFUE

Amendment 4

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) ***Without prejudice to the*** procedure to be used for the adoption of implementing acts, ***which is determined in the basic act, the examination procedure should in principle be used for the adoption of general implementing measures, where uniform conditions are needed.***

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 5

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 provide for control 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.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 6

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

Amendment

deleted

considered to be most appropriate.

Amendment 7

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) The Commission's powers, as laid down by the Treaty, concerning the implementation of the competition rules, are not affected by this Regulation,

Amendment

(15) The Commission's powers, as laid down by the Treaty, concerning the implementation of the competition rules, ***as well as the specific procedures created for the implementation of the common commercial policy which are not currently based upon Decision 1999/468/EC***, are not affected by this Regulation. ***Arrangements for those aspects of the common commercial policy should be determined by the Council and the Parliament on a case-by-case basis, on the basis of each legislative proposal from the Commission, and with a view to determining the appropriate decision-making arrangements,***

Justification

Those procedures created for the implementation of the Common Commercial Policy which are currently exempted from Decision 1999/468/EC should remain so until the Council and the European Parliament have had a case-by-case discussion of the appropriate arrangements as part of the upcoming Trade Omnibus Act that is to be adopted by the Commission. It should be left to the co-legislator to amend the basic acts accordingly.

Amendment 8

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

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 the adoption of binding implementing acts by the Commission be subject to the control of Member States.

(hereafter "basic act") requires **uniform conditions of implementation and provides** that the adoption of binding implementing acts by the Commission be subject to the control of Member States.

Justification

Clarification

Amendment 9

**Proposal for a regulation
Article 2 - paragraph 2**

Text proposed by the Commission

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.

Amendment

2. The examination procedure **shall in principle** apply for the adoption of **general implementing measures where uniform conditions are needed.**

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act. Moreover, it is highly questionable whether to apply the examination procedure to policy fields that fall under the exclusive competence of the Union.

Amendment 10

Proposal for a regulation Article 2 - paragraph 3

Text proposed by the Commission

Amendment

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 shall apply.

deleted

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 11

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Objection to draft implementing measures

If the European Parliament or the Council expresses an objection to draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic act adopted under Article 294 of the Treaty, on the grounds that those measures would negate the intention of the legislator as expressed in the basic act, the Commission shall re-examine the draft measures.

Taking the reasons for the objection into account and within the time-limits of the procedure underway, the Commission may submit new draft measures to the committee or submit a proposal to the European Parliament and the Council in accordance with the Treaty.

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

Justification

The current right of scrutiny of the EP should be maintained. Article 8 of Decision 99/468 should therefore be included in the regulation.

Amendment 12

Proposal for a regulation

Article 8 - paragraph 1 - point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions and reasons of the representatives of the Member States,

Justification

The positions of the Member States' representatives shall be accessible to the European Parliament (which holds all sittings and committee meetings in public).

Amendment 13

Proposal for a regulation

Article 8 - paragraph 2

Text proposed by the Commission

Amendment

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

2. The European Parliament, the Council **and the Member States** shall have **equal** access to the information referred to in paragraph 1. ***To that end, the European Parliament and the Council shall be sent, at the same time as the members of the committees and on the same terms, all the information referred to in paragraph 1.***

Justification

The amendment clarifies the modalities of transmission of information by taking over the relevant provisions of the Agreement (2008/C 143/01) between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down

the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC of 3 June 2008.

Amendment 14

Proposal for a regulation

Article 8 – paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. The Commission shall ensure that Representatives of the European Parliament can attend committee meetings as observers. If the Commission decides to exclude Representatives of the European Parliament from committee meetings as observers, it shall explain its decision in writing.

Justification

The committee meetings shall be accessible to observers of the European Parliament (which holds all sittings and committee meetings in public).

Amendment 15

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Time limit for review

The Commission shall examine the Union legislation in force and submit the necessary legislative proposals for its alignment with the provisions of the Treaty of Lisbon, particularly with Articles 290 and 291 of the Treaty on the Functioning of the European Union, before 31 December 2010.

Justification

Alignment for the acquis to the current provisions on delegated acts and implementing acts is of vital importance for those policy areas, which were not adopted by COD procedure before

the entry into force. A case by case assessment of those provisions should be undertaken as a matter of urgency.

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 | INTA 24.3.2010 |
| Rapporteur Date appointed | Vital Moreira 28.4.2010 |
| Discussed in committee | 28.4.2010 |
| Date adopted | 1.6.2010 |
| Result of final vote | +: 24 -: 2 0: 0 |
| Members present for the final vote | William (The Earl of) Dartmouth, Kader Arif, David Campbell Bannerman, Daniel Caspary, Harlem Désir, Christofer Fjellner, Joe Higgins, Yannick Jadot, Metin Kazak, David Martin, Vital Moreira, Godelieve Quisthoudt-Rowohl, Niccolò Rinaldi, Tokia Saifi, Helmut Scholz, Peter Šťastný, Gianluca Susta, Iuliu Winkler, Jan Zahradil |
| Substitute(s) present for the final vote | Josefa Andrés Barea, Catherine Bearder, George Sabin Cutaş, Mário David, Béla Glattfelder, Salvatore Iacolino, Syed Kamall, Georgios Papastamkos |

15.6.2010

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

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: Antolín Sánchez Presedo

AMENDMENTS

The Committee on Economic and Monetary Affairs 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 1 a (new)

Text proposed by the Commission

Amendment

(1a) Implementing powers may adapt or update certain non-essential elements of a basic act, but cannot be extended to supplement or amend such elements, since in those cases Article 290 of the Treaty on the Functioning of the European Union applies.

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) In the context of the Treaty establishing the European Community, the exercise of implementing powers by the Commission was governed by Council Decision 1999/468/EC of 28 June 1999.

Amendment

(2) In the context of the Treaty establishing the European Community, the exercise of implementing powers by the Commission was governed by Council Decision 1999/468/EC of 28 June 1999. ***This arrangement should be discontinued in order to meet the requirements laid down following the latest reform of the Treaties.***

Amendment 3

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 the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. ***Such control does not preclude or restrict the democratic control resulting from the provisions regarding democratic principles, the conditions governing the functioning of the institutions and the application of the principles of subsidiarity and proportionality as laid down in, inter alia, Articles 5, 10, 11 and 13 of the Treaty on European Union and Protocol No 2 to the Treaties.***

Amendment 4

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for *such* control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty ***and the equal footing of the European Parliament and the Council with regard to all acts adopted under the ordinary legislative procedure***, as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment 5

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate that for the purposes of such *a* control there should be instituted committees composed of the representatives of the Member States and chaired by the Commission.

Amendment

(5) In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate that for the purposes of such control there should be instituted committees composed of the representatives of the Member States ***and observers from the Council and the European Parliament*** and chaired by the Commission.

Amendment 6

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) ***The*** European Parliament and the

Amendment

(12) ***In order to ensure that the functions***

Council should be *kept* informed of committee proceedings *on a regular basis*.

of the European Parliament and the Council *established in the Treaty on the Functioning of the European Union are fully respected, they* should be *promptly and fully* informed of committee proceedings *sufficiently far in advance of the adoption of each measure*.

Amendment 7

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.

deleted

Amendment 8

Proposal for a regulation

Article 1

Text proposed by the Commission

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 the adoption of *binding* implementing acts by the Commission be subject to the control of

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") *identifies the need for uniform conditions of implementation and* requires that the adoption or exercise

Member States.

of implementing acts by the Commission be subject to the control of Member States.

Amendment 9

Proposal for a regulation Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In cases where non-legislative acts of general application are needed in order to supplement or amend certain non-essential elements of the basic act, Article 290 of the Treaty on the Functioning of the European Union shall apply.

Amendment 10

Proposal for a regulation Article 2 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. The examination procedure ***may only*** apply for the adoption of:

2. The examination procedure ***shall*** apply for the adoption of:

Amendment 11

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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 ***shall*** apply.

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 ***may*** apply.

Amendment 12

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The Commission shall be assisted by a committee composed of the representatives of the Member States **and observers from the Council and the European Parliament** and chaired by a representative of the Commission.

Amendment 13

Proposal for a regulation Article 3 – paragraph 5 –subparagraph 1

Text proposed by the Commission

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.

Amendment

5. The chairperson may obtain the committee's opinion by written procedure. He or she shall send the committee members **and observers** 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.

Amendment 14

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Objection to draft implementing measures

1. If the European Parliament or the Council expresses its objection to draft implementing measures the adoption of

which is contemplated and which have been submitted to a committee pursuant to a basic act adopted under Article 294 of the Treaty on the Functioning of the European Union, on the grounds that those measures would exceed the implementing powers conferred in the basic act, the Commission shall re-examine the draft measures.

2. Taking the reasons for objections into account and within the time-limits of the procedure under way, the Commission shall submit either new draft measures for consideration by the committee or a proposal to the European Parliament and the Council on the basis of the Treaty on the Functioning of the European Union.

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

Amendment 15

Proposal for a regulation

Article 8 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions of the members of the committee and statements of the reasons therefor,

Amendment 16

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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

2. The European Parliament and the Council shall have *equal* access to the information referred to in paragraph 1. *To that end, the European Parliament and*

the Council shall be sent all information referred to in paragraph 1 at the same time and on the same terms as it is sent to the committee members.

Amendment 17

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Annual report on the exercise of implementing powers

The Commission shall each year submit to the Member States a report on the exercise of implementing powers conferred on the Commission pursuant to Article 291 of the Treaty on the Functioning of the European Union. The Member States may also submit their remarks to be annexed to the report.

The annual report, together with the annex, shall be sent to the European Parliament, the national parliaments, the European Council and the Council, and shall also be forwarded to the European Economic and Social Committee and the Committee of the Regions.

Amendment 18

Proposal for a regulation Article 8 b (new)

Text proposed by the Commission

Amendment

Article 8b

Alignment of the acquis

By [date] at the latest, the Commission shall review basic acts adopted before the entry into force of this Regulation with a view to adapting those 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 legislative proposals.

Amendment 19

Proposal for a regulation

Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Repeal of Decision 1999/468/EC

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 20

Proposal for a regulation

Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

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 21

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Review

Within three years of the entry into force of this Regulation, and taking into account the input provided by Member States, the Commission shall present a general report on the procedures laid down in this Regulation and, if appropriate, put forward a new legislative proposal.

Amendment 22

Proposal for a regulation Article 12 –paragraph 2

Text proposed by the Commission

Amendment

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

deleted

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 | ECON 24.3.2010 |
| Rapporteur Date appointed | Antolín Sánchez Presedo 27.4.2010 |
| Discussed in committee | 20.5.2010 14.6.2010 |
| Date adopted | 14.6.2010 |
| Result of final vote | +: 38 -: 1 0: 0 |
| Members present for the final vote | Burkhard Balz, Sharon Bowles, Udo Bullmann, Pascal Canfin, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Diogo Feio, Markus Ferber, Elisa Ferreira, Vicky Ford, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Enikő Győri, Liem Hoang Ngoc, Gunnar Hökmark, Othmar Karas, Wolf Klinz, Werner Langen, Hans-Peter Martin, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Simon, Peter Skinner, Ivo Strejček, Kay Swinburne, Ramon Tremosa i Balcells, Corien Wortmann-Kool |
| Substitute(s) present for the final vote | Marta Andreasen, Elena Băsescu, Lajos Bokros, Herbert Dorfmann, Sari Essayah, Philippe Lamberts, Gay Mitchell, Sirpa Pietikäinen |

2.6.2010

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

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: Jo Leinen

SHORT JUSTIFICATION

Article 291 of the Treaty on the Functioning of the European Union (TFEU) lays down the framework for the adoption of implementing acts. Article 291(3) in particular requires Parliament and the Council to lay down, by way of regulation, the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

In its proposal for such a regulation, (COM (2010)0083), the Commission seeks to give effect to this requirement by introducing the advisory and examination procedures to govern the adoption of implementing acts.

The proposed Regulation should clearly provide for Parliament and the Council to be placed on an equal footing as regards access to information concerning the committee meetings under the new procedures. Article 8 of the proposed Regulation should therefore be strengthened to provide specifically for Parliament and Council to have equal access to such information as soon as it becomes available.

The automatic alignment of the existing advisory, management and regulatory procedures contained in Articles 3, 4 and 5 of the existing Comitology Decision¹ without review of the existing acquis is not appropriate. A thorough review of the existing acquis needs to be carried out to determine which measures properly fall within the scope of the provisions

¹ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, OJ L 184, 17.7.1999, p.23.

concerning delegated acts which are contained in Article 290 of the TFEU, and those which fall within the scope of implementing acts under Article 291 TFEU. Article 10 of the proposed regulation should therefore be strengthened to require the Commission to carry out such a review and to submit an appropriate legislative proposal following such a review.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety 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 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 basic legislative act should indicate for which measures the examination procedure should apply and for which measures the advisory procedure.*** 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 2

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 and fully** informed **in an equal manner** of committee proceedings **as soon as relevant documents are available and should have equal access to information concerning those proceedings**.

Justification

It is not good enough to inform Parliament and Council 'regularly'. Both should be informed in 'real time'.

Amendment 3

Proposal for a regulation
Article 5 – paragraph 3

Text proposed by the Commission

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**.

Amendment

3. If the draft measures are not in accordance with the opinion of the committee **or if no opinion is delivered by the committee**, the Commission shall not adopt those measures **and shall submit to the Council without delay the proposal concerning the measures to be taken or an amended version of** the draft measures for further deliberation **and shall inform the European Parliament of this**.

Amendment 4

Proposal for a regulation
Article 5 – paragraph 5 – subparagraph -1 (new)

Text proposed by the Commission

Amendment

For the purposes of the basic act adopted in accordance with Article 294 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament or the Council may voice an objection to the draft measures, regardless of the opinion of the committee, on the grounds that the draft measures contradict the intentions of the legislator as expressed in the basic act.

In this case the proposed measures shall not be adopted. The Commission may submit revised draft measures to the committee, taking into account the reasons underlying the European Parliament's or the Council's objection.

In this case the Commission shall inform the European Parliament and the Council of the actions that it intends to take.

Amendment 5

Proposal for a regulation

Article 5 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

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.

In such a case the Commission shall immediately inform the committee, ***the European Parliament and the Council*** 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 no opinion is delivered, but a majority as laid down in Article 238(1) TFEU objects to the measure***, 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, **and there is no majority as laid down in Article 238(1) TFEU against the measure**, those measures shall remain in force.

Justification

If there is still a simple majority of Member States against the measure in the second round, the Commission should not be empowered to adopt the measure.

Amendment 6

Proposal for a regulation

Article 8 – paragraph 1 – point d

Text proposed by the Commission

(d) the results of voting,

Amendment

(d) the results of voting, **including the position of each Member State**,

Justification

It is important to know not only the final result of the vote, but also how Member States voted, respectively.

Amendment 7

Proposal for a regulation

Article 8 - paragraph 2

Text proposed by the Commission

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

Amendment

2. The European Parliament and the Council shall have **equal** access to, **and shall receive at the same time and on the same terms**, the information referred to in paragraph 1 **as soon as such information is available**.

Amendment 8

Proposal for a regulation
Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Representatives of the European Parliament shall have access to committee meetings as observers.

Justification

Parliament should also be allowed to attend committee meetings.

Amendment 9

Proposal for a regulation
Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall examine the EU legislation in force and shall submit no later than 31 December 2011 a legislative proposal which aligns existing EU legislation with Article 290 and 291 TFEU and in particular which states those measures which fall within the scope of the provisions on delegated acts referred to in Article 290 TFEU and those which fall within the provisions on implementing acts referred to in Article 291 TFEU.

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 | ENVI 24.3.2010 |
| Rapporteur Date appointed | Jo Leinen 7.4.2010 |
| Discussed in committee | 3.5.2010 |
| Date adopted | 2.6.2010 |
| Result of final vote | +: 52 -: 0 0: 5 |
| Members present for the final vote | János Áder, Elena Oana Antonescu, Kriton Arsenis, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Martin Callanan, Nessa Childers, Chris Davies, Bairbre de Brún, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Jill Evans, Karl-Heinz Florenz, Elisabetta Gardini, Gerben-Jan Gerbrandy, Julie Girling, Françoise Grossetête, Cristina Gutiérrez-Cortines, Dan Jørgensen, Karin Kadenbach, Christa Klaß, Holger Kraemer, Jo Leinen, Corinne Lepage, Peter Liese, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Vladko Todorov Panayotov, Antonyia Parvanova, Mario Pirillo, Pavel Poc, Vittorio Prodi, Frédérique Ries, Daciana Octavia Sârbu, Carl Schlyter, Horst Schnellhardt, Theodoros Skylakakis, Bogusław Sonik, Catherine Soullie, Salvatore Tatarella, Anja Weisgerber, Glenis Willmott, Sabine Wils, Marina Yannakoudakis |
| Substitute(s) present for the final vote | Judith A. Merkies, Miroslav Mikolášik, Rovana Plumb, Bart Staes, Kathleen Van Brempt, Anna Záborská |
| Substitute(s) under Rule 187(2) present for the final vote | Vicky Ford, Norbert Glante, Jan Kozłowski, Emma McClarkin |

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

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 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.***

Amendment

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

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,

committee a new draft of the measures to be taken.

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

Amendment

(a) the agendas of committee meetings,

(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

Amendment

(b) the summary records, together with the lists of the authorities and organisations to which the persons designated by the

(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,

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

Amendment

(d) the results of voting,

(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

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 ***with effect from...****.

**** 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

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***

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.

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 Muñoz De Urquiza, Konstantinos Poupakis, Sylvana Rapti, Wim van de Camp |

1.6.2010

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

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: Saïd El Khadraoui

SHORT JUSTIFICATION

Article 291 of the Treaty on the Functioning of the European Union (TFEU) lays down the framework for the adoption of implementing acts. Article 291(3) in particular requires Parliament and the Council to lay down in advance, by way of regulation, the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

The automatic alignment of the existing advisory, management and regulatory procedures contained in Articles 3, 4 and 5 of the existing Comitology Decision is not appropriate. A thorough review of the existing *acquis* needs to be carried out to determine which measures fall within the scope of the provisions concerning delegated acts which are contained in Article 290 of the TFEU. The Commission should make adequate legislative proposals to that effect. As long as this thorough review has not taken place, appropriate transitory rules should safeguard the legislators' prerogatives.

The opportunity to improve shortcomings of existing practices should be seized. In particular, Parliament's access to information on implementing proceedings should be improved. Article 8 of the proposed Regulation should therefore be strengthened.

Currently, implementing proceedings do not only concern drafting implementing acts. Indeed, there are cases where precisely the circumstances of an absence of an implementing act should be known to the legislator (e. g. in the conformity checking procedure of Article 5 of Regulation (EC) No. 2099/2002, where the need to transpose IMO rules into Union law is assessed).

In certain cases under the Comitology decision, Parliament's access to information was provided by interinstitutional cooperation in which the "right of scrutiny" period of one month played a role (e. g. in confidential proceeding such as those for establishing the "black list" of air carriers where a consensual urgency procedure is applied). The abolition of that period seems only acceptable if Parliament's timely and complete access to information is guaranteed.

AMENDMENTS

The Committee on Transport and Tourism 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 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 ***at the same time as the committee members***.

Justification

Parliament's information should be improved.

Amendment 2

Proposal for a regulation

Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Until the EU acquis is adapted to the Treaty of Lisbon in this respect, transitional rules should enable the European Parliament and the Council to exercise adequate scrutiny on a case-by-case basis over the powers that were conferred on the Commission under Article 202 of the EC Treaty and which

now fall under the delegation of power referred to in Article 290 of the Treaty on the Functioning of the European Union.

Amendment 3

Proposal for a regulation Article 3 - paragraph 2

Text proposed by the Commission

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.

Amendment

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.
Representatives of the European Parliament shall have the right to attend as observers.

Justification

Parliament's information should be improved.

Amendment 4

Proposal for a regulation Article 8 - paragraph 2

Text proposed by the Commission

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

Amendment

2. The European Parliament and the Council shall ***at the same time as the committee*** have access to the information referred to in paragraph 1 ***as well as to all other information subject to committee proceedings. Subsequent modifications to documents submitted to the European Parliament and the Council shall be clearly identified, but under no circumstances shall those modifications reduce interinstitutional transparency.***

Amendment 5

Proposal for a regulation
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a
Issues subject to committee proceedings

The European Parliament and the Council may analyse, debate and comment on any issue subject to committee proceedings.

Amendment 6

Proposal for a regulation
Article 9 - paragraph 2

Text proposed by the Commission

Amendment

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

2. The effects of Article 5a of the repealed Decision, ***with the exception of paragraphs 3 and 4 thereof***, shall be maintained for the purposes of existing acts making reference thereto. ***Article 10(2a) of this Regulation shall also apply.***

Justification

The minimum objection period for delegated acts according to Parliament's resolution on the power of legislative delegation of 5 May 2010 should apply.

Amendment 7

Proposal for a regulation
Article 10 - Title

Text proposed by the Commission

Amendment

Adaptation of existing basic acts

Transitional rules

Justification

It should be emphasized that these rules are transitional and apply only for the period until the whole acquis is adapted to the Lisbon treaty in respect of delegated and implementing

acts.

Amendment 8

Proposal for a regulation

Article 10 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The following procedure shall apply to measures of general application:

(a) Before adopting a measure, the Commission shall submit a final draft to the European Parliament and the Council.

(b) The European Parliament or the Council may object to the measure within a period of two months from the date of submission. At the initiative of the European Parliament or the Council this period shall be extended by two months.

(c) If, on expiry of that period, neither the European Parliament nor the Council has objected to the measure, the Commission shall adopt it. The measure may be adopted and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

(d) If the European Parliament or the Council objects to a measure, it shall not be adopted. The institution which objects shall state the reasons for objecting to the measure.

Justification

This mechanism guarantees the legislators' prerogatives and is intended for cases where a regulatory or management procedure for adopting acts of general scope should be replaced by a procedure for delegated acts. The objection period is the minimum for delegated acts according to Parliament's resolution on the power of legislative delegation of 5 May 2010.

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 | TRAN 24.3.2010 |
| Rapporteur Date appointed | Saïd El Khadraoui 27.4.2010 |
| Discussed in committee | 31.5.2010 |
| Date adopted | 1.6.2010 |
| Result of final vote | +: 39 -: 0 0: 0 |
| Members present for the final vote | Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Ryszard Czarnecki, Luis de Grandes Pascual, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Mathieu Grosch, Ville Itälä, Dieter-Lebrecht Koch, Georgios Koumoutsakos, Werner Kuhn, Jörg Leichtfried, Eva Lichtenberger, Marian-Jean Marinescu, Gesine Meissner, Vilja Savisaar, Olġa Sehnalová, Dirk Sterckx, Silvia-Adriana Țicău, Thomas Ulmer, Dominique Vlasto, Roberts Zīle |
| Substitute(s) present for the final vote | Jean-Paul Basset, Spyros Danellis, Tanja Fajon, Markus Ferber, Nathalie Griesbeck, Gilles Pargneaux, Dominique Riquet, Alfreds Rubiks, Salvatore Tatarella, Oldřich Vlasák, Sabine Wils |

23.6.2010

OPINION OF THE COMMITTEE ON REGIONAL DEVELOPMENT

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: Danuta Maria Hübner

AMENDMENTS

The Committee on Regional Development 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 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for such control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for such control are clear, **transparent**, effective and proportionate to the nature of the implementing acts and that they **duly** reflect the **new** institutional **framework and** requirements of the Treaty **on the Functioning of the European Union** as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Justification

Clarification as to the new institutional framework introduced by the Treaty of Lisbon.

Amendment 2

**Proposal for a regulation
Recital 4 a (new)**

Text proposed by the Commission

Amendment

(4a) The new institutional framework reinforces the European Parliament's role as co-legislator, putting it on an equal footing with the Council in the context of the ordinary legislative procedure. In this context, it is appropriate to give the European Parliament and the Council the possibility to have their views taken into consideration on an equal basis where either of them consider that a draft measure submitted to a committee exceeds the implementing powers conferred on the Commission by the basic act.

Justification

Reference to the enhanced role of the Parliament as co-legislator in the new institutional framework.

Amendment 3

**Proposal for a regulation
Recital 4 b (new)**

Text proposed by the Commission

Amendment

(4b) The Treaty on the Functioning of the European Union makes the conferring of implementing powers on the Commission conditional on the need for uniform application of implementing acts, whereby mechanisms for the Member States to control the Commission's exercise of implementing powers must conform to criteria of efficiency and consistency.

Justification

The need for uniform application of implementing acts is the basis for conferring implementing powers on the Commission. Control by the Member States must be carried out efficiently, so as to yield effective results, and consistently, so as to ensure that control can be foreseen.

Amendment 4

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) In those basic acts which require ***the control of the Member States*** for the adoption by the Commission of implementing acts, it is appropriate that for the purposes of ***such a*** control there should be instituted committees composed of the representatives of the Member States and chaired by the Commission.

Amendment

(5) In those basic acts which require the adoption by the Commission of implementing acts, it is appropriate that for the purposes of control ***by the Member States as provided for in Article 291 of the Treaty on the Functioning of the European Union*** there should be instituted committees composed of the representatives of the Member States and chaired by the Commission.

Justification

The requirement of control by Member States stems in general from the Treaty and not from the basic acts themselves.

Amendment 5

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 and ***predictability as*** to the nature of the implementing acts to be adopted. ***However,*** those criteria should be ***of a non-binding nature and the procedure to be used should be determined in each basic act.***

Justification

The choice of the procedure should be left to the legislator on a case-by-case basis, so that the legislator has the opportunity to assess the possible implications of the nature of the procedure chosen as regards each individual legislative act.

Amendment 6

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, **where appropriate, be applied as regards** measures of general scope designed to implement basic acts and specific measures with **substantial implications, including of a budgetary nature**. 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.

Justification

Clarification of the non-binding nature of the procedures, while reserving the examination procedure (which confers more powers on the Member States) for more important measures.

Amendment 7

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) The European Parliament and the Council should be **kept** informed of

Amendment

(12) The European Parliament and the Council should be informed of **any**

committee proceedings *on a regular basis*.

committee proceedings *and related documentation at the same time and on the same terms as the committees*.

Justification

The rights of the Parliament regarding information in due time and in due form should be preserved.

Amendment 8

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 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.

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, ***a transitional scheme should apply whereby*** 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 procedure 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. ***That transitional scheme should be without prejudice to the legislator's discretion as to the procedure to be chosen for any future legislative acts.***

Justification

Any alignment context should be considered as transitional and should not impinge on the legislator's rights to decide what kind of acts and procedures to provide for in the future.

Amendment 9

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 **procedures and the mechanisms of control** which shall apply in cases where a legally binding Union act (hereafter "basic act") **confers implementing powers on the Commission where uniform conditions for implementing that act are needed.**

Justification

Adjustment of the text to Article 291 of the Treaty on the Functioning of the European Union.

Amendment 10

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

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.**

Amendment

2. **Without prejudice to paragraph 1**, the examination procedure **shall, where appropriate**, apply for the adoption of implementing measures of general scope **and specific measures with substantial implications, including of a budgetary nature.**

Amendment 11

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

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 shall apply.***

Amendment

3. ***Without prejudice to*** paragraph 2, ***the advisory procedure shall be applied in any case*** where it is considered to be appropriate.

Amendment 12

Proposal for a regulation Article 3 – paragraph 6 a (new)

Text proposed by the Commission

6a. Where a vote is taken in the committee, the chairperson shall not vote.

Amendment

Amendment 13

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

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

Amendment

2. The European Parliament and the Council shall ***be informed of any committee proceedings and of*** the information referred to in paragraph 1 ***at the same time and on the same terms as the committees.***

Amendment 14

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Monitoring rights of the European Parliament and of the Council

If the European Parliament or the Council consider that a draft measure submitted to a committee pursuant to a basic act adopted under Article 294 of the Treaty on the Functioning of the European Union would exceed the implementing powers provided for in the basic act, the Commission shall be informed and shall re-examine the draft measure. Taking the objection into account and within the time limits of the procedure under way, the Commission may submit new draft measures to the committee, continue with the procedure 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 it intends to take on the objection and its reasons for doing so.

Justification

The right to oppose to any measures adopted under a legislative act should remain with the legislator.

Amendment 15

Proposal for a regulation Article 10 - title

Text proposed by the Commission

Adaptation of existing basic acts

Amendment

Transitional provisions

Amendment 16

Proposal for a regulation Article 10 - paragraph 1 - point d

Text proposed by the Commission

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

Amendment

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

Amendment 17

Proposal for a regulation Article 10 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The transitional scheme provided for in points (a) to (c) of paragraph 1 shall be without prejudice to the legislator's discretion as to the procedure to be applied in any future basic acts.

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 | REGI 24.3.2010 |
| Rapporteur Date appointed | Danuta Maria Hübner 27.4.2010 |
| Discussed in committee | 2.6.2010 |
| Date adopted | 21.6.2010 |
| Result of final vote | +: 40 -: 1 0: 0 |
| Members present for the final vote | Luís Paulo Alves, Charalampos Angourakis, Sophie Auconie, Catherine Bearder, Jean-Paul Besset, Victor Boștinăru, Zuzana Brzobohatá, John Bufton, Alain Cadec, Salvatore Caronna, Tamás Deutsch, Danuta Maria Hübner, Ian Hudghton, Evgeni Kirilov, Constanze Angela Krehl, Petru Constantin Luhan, Ramona Nicole Mănescu, Iosif Matula, Erminia Mazzoni, Miroslav Mikolášik, Lambert van Nistelrooij, Franz Obermayr, Jan Olbrycht, Wojciech Michał Olejniczak, Markus Pieper, Tomasz Piotr Poręba, Monika Smolková, Georgios Stavrakakis, Nuno Teixeira, Oldřich Vlasák, Kerstin Westphal, Joachim Zeller |
| Substitute(s) present for the final vote | Jens Geier, Catherine Grèze, Andrey Kovatchev, Marie-Thérèse Sanchez-Schmid, Elisabeth Schroedter, Richard Seeber, Dimitar Stoyanov |
| Substitute(s) under Rule 187(2) present for the final vote | Marian Harkin, Stanimir Ilchev, Alexandra Thein |

5.5.2010

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

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: Paolo De Castro

SHORT JUSTIFICATION

Under the current comitology system, the CAP is the policy area which covers the huge majority of comitology acts: In 2006, 1576 implementing measures have been adopted by the Commission (2007: 963 measures / 2008: 439 measures).

In almost all cases, these measures are adopted according to the "management procedure" laid down in Article 4 of Decision EC/1999/468.

Following the entry into force of the Lisbon Treaty, the current comitology provisions will have to be replaced by delegated acts and implementing acts according to Articles 290 and 291 of the TFEU.

This adaptation of the existing legislation to the provisions of the Lisbon Treaty is of major importance especially for those policy areas which (like agricultural policy) were not adopted under the co-decision procedure and which have thus not been aligned to the increased parliamentary control through the Regulatory procedure with scrutiny (RPS) from 2006 onwards.

Due to the considerable number of acts concerned and the often complex process of distinguishing between delegated acts and implementing acts, the Committee on Agriculture and Rural development expects difficult negotiations with the Commission and the co-legislator, which shall be held on a case-by-case basis.

It is therefore unacceptable at this stage for the Committee on Agriculture and rural development to proceed with an automatic transformation of current "management procedures" into implementing ("examination") acts, without examining case-by-case whether the measure fulfils the criteria of a delegated act.

The Commission is thus called upon to present the necessary legislative proposals for the adaptation of the *acquis* without delay.

By applying the ordinary legislative procedure to the Common Agricultural Policy, the TFEU puts the European Parliament and the Council on equal footing as co-legislators. Parliament should thus endeavour to be treated also on equal footing when it comes to delegated and implementing acts. In particular, it should at least maintain its existing rights with regard to "comitology" acts related to basic acts adopted under the codecision procedure (Right of Scrutiny, access to information, ...). In addition, representatives of the European Parliament should have access to meetings of the "committees of representatives of the Member States".

Finally, the European Parliament and the Council should both be able to object to a draft implementing measure which would counteract the intention of the co-legislators.

AMENDMENTS

The Committee on Agriculture and Rural Development 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

Title

Text proposed by the Commission

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

Amendment

Regulation of the European Parliament and of the Council laying down the rules and general principles concerning the Commission's exercise of implementing powers ***in accordance with Article 291 of the Treaty on the Functioning of the European Union***

Justification

The proposed regulation will cover the whole functioning of implementing powers according to Article 291 TFEU, not only the control. In addition, the EP as co-legislator should be set at equal footing with the Council.

Amendment 2

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 (*TFEU*) now requires the European Parliament and the Council to lay down the rules and general principles concerning the Commission's exercise of implementing powers.

Justification

See justification of AM 1

Amendment 3

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for **such** control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the *Treaty* as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the *TFEU and the equal footing of the European Parliament and the Council with regard to all acts adopted under the ordinary legislative procedure*, as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Justification

Clarification

Amendment 4

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) **Without prejudice to** the procedure to be used for the adoption of implementing acts, **which is determined in the basic act, the examination procedure should in principle be used for the adoption of general implementing measures where uniform conditions are needed.**

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 5

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 provide for the control 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.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 6

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

deleted

Amendment 7

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 *are to* apply in cases where a legally binding Union act (hereafter "basic act") requires ***uniform conditions of implementation and provides that*** the adoption of ***such*** binding implementing acts by the Commission be subject to the control of Member States.

Justification

Clarification

Amendment 8

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

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.***

Amendment

2. The examination procedure ***shall in principle*** apply for the adoption of ***general implementing measures where uniform conditions are needed.***

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 9

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

Amendment

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 shall apply. *deleted*

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 10

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

If the European Parliament or the Council expresses its objection to draft implementing measures the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic act adopted under Article 294 of the TFEU, on the grounds that those measures would run counter to the intention of the legislator as expressed in the basic act, the Commission shall re-examine the draft measures.

Taking the reasons for the objection into account and within the time-limits of the

procedure under way, the Commission may submit new draft measures to the committee or submit a proposal to the European Parliament and the Council on the basis of the TFEU.

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

Justification

The current right of scrutiny of the EP should be maintained. Article 8 of Decision 99/468 should therefore be included in the regulation and rephrased in a way that allows for the EP or the Council to express its objection to measures that would counteract the intention of the legislator expressed in the basic act.

Amendment 11

Proposal for a regulation

Article 8 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions and reasons of the representatives of the Member States,

Justification

The positions of the Member States' representatives shall be accessible to the European Parliament (which holds all sittings and committee meetings in public).

Amendment 12

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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

2. The European Parliament, the Council *and the Member States* shall have *equal* access to the information referred to in paragraph 1. *To that end, the European Parliament and the Council shall be sent, at the same time as the members of the*

committees and on the same terms, all information referred to in paragraph 1.

Justification

The amendment clarifies the modalities of transmission of information by taking over the relevant provisions of the Interinstitutional Agreement of 3 June 2008

Amendment 13

Proposal for a regulation

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Representatives of the European Parliament shall have access to committee meetings as observers.

Justification

The committee meetings shall be accessible to observers of the European Parliament (which holds all sittings and committee meetings in public)

Amendment 14

Proposal for a regulation

Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Repeal of Decision 1999/468/EC

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.

Justification

Technical and juridical consequence of the deletion of Article 10

Amendment 15

Proposal for a regulation Article 10

Text proposed by the Commission

Amendment

Article 10

deleted

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.

Justification

Alignment for the acquis to the current provisions on delegated acts and implementing acts is of vital importance for those policy areas, which were not adopted by COD procedure before the entry into force. A case by case assessment of those provisions should be undertaken as a matter of urgency. An automatic alignment as suggested by the Commission would undermine the prerogatives of the European Parliament.

Amendment 16

Proposal for a regulation Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Adaptation of existing acts

The Commission shall, before 31 December 2010, examine the Union legislation in force and submit the necessary legislative proposals for its alignment with the provisions of the Lisbon Treaty and in particular with Articles 290 and 291 of the TFEU.

Justification

Alignment for the acquis to the current provisions on delegated acts and implementing acts is of vital importance for those policy areas, which were not adopted by COD procedure before the entry into force. A case by case assessment of those provisions should be undertaken as a matter of urgency.

Amendment 17

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

Consequence of the deletion of Article 10

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 | AGRI 24.3.2010 |
| Rapporteur Date appointed | Paolo De Castro 17.3.2010 |
| Discussed in committee | 12.4.2010 |
| Date adopted | 4.5.2010 |
| Result of final vote | +: 32 -: 0 0: 0 |
| Members present for the final vote | Liam Aylward, Christophe Béchu, José Bové, Luis Manuel Capoulas Santos, Vasilica Viorica Dăncilă, Michel Dantin, Paolo De Castro, Albert Deß, Herbert Dorfmann, Lorenzo Fontana, Béla Glattfelder, Martin Häusling, Esther Herranz García, Peter Jahr, Elisabeth Jeggle, Stéphane Le Foll, George Lyon, Gabriel Mato Adrover, Mairead McGuinness, Krisztina Morvai, James Nicholson, Rareş-Lucian Niculescu, Wojciech Michał Olejniczak, Georgios Papastamkos, Marit Paulsen, Britta Reimers, Ulrike Rodust, Giancarlo Scottà, Czesław Adam Siekierski, Csaba Sándor Tabajdi |
| Substitute(s) under Rule 187(2) present for the final vote | Spyros Danellis, Milan Zver |

15.6.2010

OPINION OF THE COMMITTEE ON FISHERIES

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: Werner Kuhn

SHORT JUSTIFICATION

Following the entry into force of the Lisbon Treaty, the current comitology provisions will have to be replaced by delegated acts and implementing acts according to Articles 290 and 291 of the TFEU.

This adaptation of the existing legislation to the provisions of the Lisbon Treaty is of major importance especially for those policy areas which (like fisheries policy) were not adopted under the co-decision procedure and which have thus not been aligned to the increased parliamentary control through the Regulatory procedure with scrutiny (RPS) from 2006 onwards.

Due to the considerable number of acts concerned and the often complex process of distinguishing between delegated acts and implementing acts, the Committee on Fisheries expects difficult negotiations with the Commission and the co-legislator, which shall be held on a case-by-case basis.

By applying the ordinary legislative procedure to the Common Fisheries Policy, the TFEU puts the European Parliament and the Council on equal footing as co-legislators. Parliament should thus endeavour to be treated also on equal footing when it comes to delegated and implementing acts. In particular, it should at least maintain its existing rights with regard to "comitology" acts related to basic acts adopted under the codecision procedure (Right of Scrutiny, access to information, ...). In addition, representatives of the European Parliament should have access to meetings of the "committees of representatives of the Member States".

Finally, the European Parliament and the Council should both be able to object to a draft

implementing measure which would counteract the intention of the co-legislators.

AMENDMENTS

The Committee on Fisheries 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

Title

Text proposed by the Commission

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

Amendment

Regulation of the European Parliament and of the Council laying down the rules and general principles concerning the Commission's exercise of implementing powers ***in accordance with Article 291 of the Treaty on the Functioning of the European Union***

Justification

The proposed regulation will cover the whole functioning of implementing powers according to Article 291 TFEU, not only the control. In addition, the EP as co-legislator should be set at equal footing with the Council.

Amendment 2

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 the rules and general principles concerning the Commission's exercise of implementing powers.

Justification

See justification of AM 1

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) It is necessary to ensure that procedures for ***such*** control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Amendment

(4) It is necessary to ensure that procedures for control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the Treaty, ***the fact that the European Parliament and the Council are on an equal footing with regard to all acts adopted under the ordinary legislative procedure***, as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

Justification

Clarification

Amendment 4

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) ***Without prejudice to the*** procedure to be used for the adoption of implementing acts, ***which is determined in the basic act, the examination procedure should in principle be used for the adoption of general implementing measures, where uniform conditions are needed.***

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 5

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 provide for the control 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.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 6

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

Amendment

deleted

considered to be most appropriate.

Amendment 7

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 ***uniform conditions of implementation and provides*** that the adoption of binding implementing acts by the Commission be subject to the control of Member States.

Justification

Clarification

Amendment 8

Proposal for a regulation

Article 2 - paragraph 2

Text proposed by the Commission

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;

Amendment

2. The examination procedure ***shall in principle*** apply for the adoption of ***general implementing measures where uniform conditions are needed.***

iii) common commercial policy.

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 9

**Proposal for a regulation
Article 2 - paragraph 3**

Text proposed by the Commission

Amendment

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 shall apply. **deleted**

Justification

The decision on whether to use the advisory procedure, which gives more power to the Commission, or the examination procedure, where the Member States have more powers, should be left to the co-legislator of the basic act.

Amendment 10

**Proposal for a regulation
Article 6 a (new)**

Text proposed by the Commission

Amendment

Article 6a

Objection to draft implementing measures

If the European Parliament or the Council expresses an objection to draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic act adopted under Article 294 of the Treaty, on the grounds that those measures would negate the intention of the legislator as expressed in the basic act,

the Commission shall re-examine the draft measures.

Taking the reasons for the objection into account and within the time-limits of the procedure under way, the Commission may submit new draft measures to the committee or submit a proposal to the European Parliament and the Council in accordance with the Treaty.

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

Justification

The current right of scrutiny of the EP should be maintained. Article 8 of Decision 99/468 should therefore be included in the regulation.

Amendment 11

Proposal for a regulation

Article 8 - paragraph 1 - point e a (new)

Text proposed by the Commission

Amendment

(ea) the positions and reasons of the representatives of the Member States,

Justification

The positions of the Member States' representatives shall be accessible to the European Parliament (which holds all sittings and committee meetings in public).

Amendment 12

Proposal for a regulation

Article 8 - paragraph 2

Text proposed by the Commission

Amendment

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

2. The European Parliament, the Council **and the Member States** shall have **equal** access to the information referred to in

paragraph 1. ***To that end, the European Parliament and the Council shall be sent, at the same time as the members of the committees and on the same terms, all the information referred to in paragraph 1.***

Justification

The amendment clarifies the modalities of transmission of information by taking over the relevant provisions of the Interinstitutional Agreement of 3 June 2008

Amendment 13

Proposal for a regulation

Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Representatives of the European Parliament shall have the right to attend committee meetings as observers.

Justification

The committee meetings shall be accessible to observers of the European Parliament (which holds all sittings and committee meetings in public)

Amendment 14

Proposal for a regulation

Article 10 a (new)

Text proposed by the Commission

Amendment

Article 10a

Time-limit for review

The Commission shall, before 31 December 2011, examine the Union legislation in force and submit the necessary legislative proposals for its alignment with the provisions of the Treaty of Lisbon and in particular with Articles 290 and 291 of the Treaty on the Functioning of the European Union.

Justification

Alignment for the acquis to the current provisions on delegated acts and implementing acts is of vital importance for those policy areas, which were not adopted by COD procedure before the entry into force. A case by case assessment of those provisions should be undertaken as a matter of urgency.

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 | PECH 24.3.2010 |
| Rapporteur Date appointed | Werner Kuhn 7.4.2010 |
| Date adopted | 2.6.2010 |
| Result of final vote | +: 18 -: 0 0: 0 |
| Members present for the final vote | Josefa Andrés Barea, Kriton Arsenis, Alain Cadec, Carmen Fraga Estévez, Pat the Cope Gallagher, Carl Haglund, Werner Kuhn, Isabella Lövin, Maria do Céu Patrão Neves, Britta Reimers, Crescenzo Rivellini, Ulrike Rodust, Struan Stevenson, Jarosław Leszek Wałęsa |
| Substitute(s) present for the final vote | Estelle Grelier, Raül Romeva i Rueda, Antolín Sánchez Presedo, Ioannis A. Tsoukalas |

24.6.2010

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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: Juan Fernando López Aguilar

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs 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 a (new)

Text proposed by the Commission

Amendment

(3a) In accordance with Article 52(1) of the Charter of Fundamental Rights of the European Union, no implementing measure can limit the exercise of the rights and freedoms recognised by the Charter if the limits have not been defined by law and respect the essence of those rights and freedoms.

Justification

Following the entry into force of the Lisbon Treaty and of the EU Charter, the obligation to limit only by law Fundamental rights already foreseen by the European Convention of

Human Rights is now confirmed by article 52 of the European Charter. The European Parliament already raised, on several occasions, the issue of non-respect of Fundamental Rights in measures adopted under so called Comitology procedures (see the cases of Safe Harbour principles, the Commission adequacy finding of the 2004 EU-US Agreement on PNR and more recently implementing measures of the Schengen borders code defining the FRONTEX mandate.

Amendment 2

Proposal for a regulation

Article 2 - paragraph 2-point b - point iii a (new)

Text proposed by the Commission

Amendment

iiia) the area of freedom, security and justice.

Justification

The examination procedure is by definition the procedure which recognises and strengthens the control by Member States of the Commission's exercise of its implementing powers. Enhanced control by Member States, has to be granted bearing in mind the specific importance of the relationship between the European and National legal order as foreseen by article 67 paragraph 1 of the TFEU and having regard to the importance and sensitivity of the Freedom, Security and Justice related policies. ("1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.")

Amendment 3

Proposal for a regulation

Article 8 - paragraph 3

Text proposed by the Commission

Amendment

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.

3. 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 documents¹ the references and the texts 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.

¹ OJ L 145, 31.5.2001, p. 43.

Justification

Regulation 1049/2001 is already applicable to the text linked to the decision making procedure for Comitology. Only as far as preparatory texts are directly available to the external world, all the interested parties can raise the attention of the institutions, notably the European Parliament whenever a draft measure could be considered inappropriate. By granting adequate transparency in the preparatory phase of the implementing measures, the European Union will not only serve the right of its citizens to transparency but also the efficiency of its own decision making process.

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 | LIBE 24.3.2010 |
| Rapporteur Date appointed | Juan Fernando López Aguilar 10.5.2010 |
| Discussed in committee | 23.6.2010 |
| Date adopted | 23.6.2010 |
| Result of final vote | +: 42 –: 2 0: 1 |
| Members present for the final vote | Roberta Angelilli, Gerard Batten, Mario Borghezio, Emine Bozkurt, Simon Busuttil, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Kinga Gál, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Clemente Mastella, Louis Michel, Claude Moraes, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Manfred Weber, Tatjana Ždanoka |
| Substitute(s) present for the final vote | Alexander Alvaro, Edit Bauer, Andrew Henry William Brons, Anna Maria Corazza Bildt, Ioan Enciu, Nadja Hirsch, Ramón Jáuregui Atondo, Franziska Keller, Petru Constantin Luhan, Mariya Nedelcheva, Kyriacos Triantaphyllides |

15.6.2010

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

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: Ashley Fox

AMENDMENTS

The Committee on Constitutional Affairs 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

Title

Text proposed by the Commission

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

Amendment

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 ***in accordance with Article 291 of the Treaty on the Functioning of the European Union***

Amendment 2

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 provide for ***a method of control enabling*** Member States ***to ensure*** that measures cannot be adopted if they are not in conformity with the opinion of the committee ***or if the committee does not deliver an opinion. The Commission should nevertheless be able,*** in very exceptional circumstances ***to be defined in the basic act,*** to adopt and apply measures for a limited period of time, ***during which it should submit the measures for control by the Member States.*** The Commission should be able to review the draft measures, taking into account the views expressed within the committee.

Justification

The decision on whether to use the advisory or the examination procedure should be left to the legislator in the basic act. In the absence of opinion or in the case of a negative opinion the Commission should only be authorised to apply the measures for a limited period of time, giving it the time to modify its original proposal.

Amendment 3

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 apply ***to those cases to which the examination procedure is not applicable.***

Amendment 4

Proposal for a regulation
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The European Parliament or the Council may at any time indicate to the Commission that a draft implementing act exceeds the implementing powers provided for in the basic legislative act. In such a case, the Commission should review the draft measure in question and inform the European Parliament and the Council of the action which it intends to take and of its reasons for doing so.

Justification

A right of scrutiny, previously provided for in Article 8 of the Comitology Decision, is necessary for each co-legislator to be able to indicate to the Commission that it considers that a draft implementing act exceeds the implementing powers provided for in the basic legislative act.

Amendment 5

Proposal for a regulation
Article 1

Text proposed by the Commission

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 the adoption of **binding** implementing acts by the Commission be subject to the control of Member States.

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") **identifies the need for uniform conditions of implementation** and requires that the adoption of implementing acts by the Commission be subject to the control of Member States.

Justification

It should be made clear that Article 291 TFEU leaves it up to Parliament and the Council to identify the situations in which uniform conditions are necessary to implement acts adopted under the ordinary legislative procedure and thus where implementing powers are to be conferred on the Commission, and to decide which controls by Member States apply to the

exercise of such implementing powers.

Amendment 6

Proposal for a regulation Article 2 – paragraph 1

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.

Amendment

1. A basic act may provide for the application of the examination procedure or the advisory procedure, ***taking into account the nature and impact of the*** implementing measures concerned.

Amendment 7

Proposal for a regulation Article 5 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. If the draft measures are not in accordance with the opinion of the committee, ***or if the committee does not deliver an opinion,*** 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.

Justification

A negative opinion or the absence of opinion should have the same consequences and should lead to further deliberation in the committee before the measures being eventually adopted.

Amendment 8

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

Amendment

deleted

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

Linked to amendment on Article 5, paragraph 3.

Amendment 9

Proposal for a regulation Article 6 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. The chairperson shall *immediately* submit the measures referred to in paragraph 2 to the relevant committee in order to obtain its opinion, *within one month*, in accordance with the procedure provided for in the basic act.

Amendment 10

Proposal for a regulation Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

*Objection to draft implementing measures
The European Parliament or the Council may indicate to the Commission at any time that it considers that a draft implementing act exceeds the powers of implementation provided for in the basic act.*

Taking the reasons for the objection into account and within the time-limits applicable to the procedure under way, the Commission may submit new draft measures to the committee or a proposal to the European Parliament and the

Council on the basis of the Treaty on the Functioning of the European Union.

Justification

The current right of scrutiny of the EP should be maintained.

Amendment 11

**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 records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong,

Amendment 12

**Proposal for a regulation
Article 8 – paragraph 2**

Text proposed by the Commission

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

Amendment

2. The European Parliament, the Council **and the Member States** shall have **equal** access to the **information. They shall receive all** information referred to in paragraph 1 **at the same time and on the same terms as the committees.**

Justification

Clarifies the modalities of transmission of information, in line with the Interinstitutional Agreement of 3 June 2008.

Amendment 13

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. **Pending the adaptation of** basic acts adopted before the entry into force of this Regulation, **where such acts** 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**;
- (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, Article 8 of this Regulation **shall apply**.

Justification

It has to be made clear that the transitional arrangement provided for in Article 10 of the proposal is only a technical solution which does not prejudice the necessary adaptation of the acquis 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 | AFCO 24.3.2010 |
| Rapporteur Date appointed | Ashley Fox 3.5.2010 |
| Discussed in committee | 17.5.2010 |
| Date adopted | 14.6.2010 |
| Result of final vote | +: 20 -: 0 0: 0 |
| Members present for the final vote | Andrew Henry William Brons, Carlo Casini, Ashley Fox, Matthias Groote, Roberto Gualtieri, Zita Gurmai, Gerald Häfner, Ramón Jáuregui Atondo, Syed Kamall, Constance Le Grip, David Martin, Morten Messerschmidt, Paulo Rangel, Indrek Tarand, Rafał Trzaskowski |
| Substitute(s) present for the final vote | Marietta Giannakou, Enrique Guerrero Salom, Alain Lamassoure, Íñigo Méndez de Vigo, Vital Moreira, Helmut Scholz |

PROCEDURE

| | | | | |
|---|---|--------------|-----------|-----------|
| Title | Control by Member States of the Commission's exercise of implementing powers | | | |
| References | COM(2010)0083 – C7-0073/2010 – 2010/0051(COD) | | | |
| Date submitted to Parliament | 9.3.2010 | | | |
| Committee responsible Date announced in plenary | JURI 24.3.2010 | | | |
| Committee(s) asked for opinion(s) Date announced in plenary | AFET | DEVE | INTA | BUDG |
| | 24.3.2010 | 24.3.2010 | 24.3.2010 | 24.3.2010 |
| | CONT | ECON | EMPL | ENVI |
| | 24.3.2010 | 24.3.2010 | 24.3.2010 | 24.3.2010 |
| | ITRE | IMCO | TRAN | REGI |
| | 24.3.2010 | 24.3.2010 | 24.3.2010 | 24.3.2010 |
| | AGRI | PECH | CULT | LIBE |
| | 24.3.2010 | 24.3.2010 | 24.3.2010 | 24.3.2010 |
| | AFCO | FEMM | PETI | |
| | 24.3.2010 | 24.3.2010 | 24.3.2010 | |
| Not delivering opinions Date of decision | BUDG | CONT | EMPL | ITRE |
| | 2.6.2010 | 23.3.2010 | 21.4.2010 | 7.4.2010 |
| | CULT | FEMM | PETI | |
| | 22.3.2010 | 20.4.2010 | 30.3.2010 | |
| Rapporteur(s) Date appointed | József Szájer 23.3.2010 | | | |
| Discussed in committee | 28.4.2010 | 31.5.2010 | 23.6.2010 | 5.7.2010 |
| | 2.9.2010 | 22.11.2010 | | |
| Date adopted | 1.12.2010 | | | |
| Result of final vote | +: -: 0: | 23 0 1 | | |
| Members present for the final vote | Raffaële Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Diana Wallis, Tadeusz Zwiefka | | | |
| Substitute(s) present for the final vote | Jan Philipp Albrecht, Sergio Gaetano Cofferati, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Toine Manders, Arlene McCarthy, Angelika Niebler, József Szájer | | | |