

# EUROPEAN PARLIAMENT

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**A5-0266/2003**

11 July 2003

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## **SECOND REPORT**

on the proposal for a Council decision on amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission  
(COM(2002) 719 – C5-0002/2003 – 2002/0298(CNS))

Committee on Constitutional Affairs

Rapporteur: Richard Corbett

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 10 January 2003 the Council consulted Parliament, pursuant to Article 202 of the EC Treaty on the proposal for a Council decision on amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(2002) 719 – 2002/0298(CNS)).

At the sitting of 13 January 2003 the President of Parliament announced that he had referred this proposal to the Committee on Constitutional Affairs as the committee responsible and to all the Committees interested for their opinions. (C5-0002/2003).

The Committee on Constitutional Affairs appointed Richard Corbett rapporteur at its meeting of 17 February 2003.

The committee considered the Commission proposal and the draft report at its meetings of 17 February 2003 and 23 April 2003.

At the latter meeting it adopted the draft legislative resolution by 17 votes to 0 with 1 abstention.

The following were present for the vote: Giorgio Napolitano, chairman, Jo Leinen, vice-chairman; Ursula Schleicher vice-chairman; Richard Corbett, rapporteur; Teresa Almeida Garrett, Enrique Barón Crespo, Juan José Bayona de Perogordo (for Hanja Maij-Weggen, pursuant to Rule 153(2)), Margrietus J. van den Berg (for Olivier Duhamel), Georges Berthu, Carlos Carnero González, Jean-Maurice Dehousse, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Monica Frassoni, Salvador Garriga Polledo (for José María Gil-Robles Gil-Delgado, pursuant to Rule 153(2)), Gerhard Hager, Juan Andrés Naranjo Escobar (for Iñigo Méndez de Vigo, pursuant to Rule 153(2)), Marcelino Oreja Arburúa (for Luigi Ciriaco De Mita, pursuant to Rule 153(2)), and Reinhard Rack (for The Lord Inglewood).

The opinion of the Committee on Economic and Monetary Affairs was attached.

The report was tabled on 29 April 2003 (A5-0128/2003).

At the sitting of 13 May 2003 Parliament adopted 17 amendments to the text proposed by the Commission. In the light of the Commission's position on the amendments adopted, the rapporteur asked for the report to be referred back to committee pursuant to Rule 69(2). Parliament approved the request.

As the committee was unable to meet the deadline of two months referred to in this provision, it asked for the procedure provided for in Rule 68(4) to be applied.

At the sitting of 1 July 2003 the question was referred back to committee under Rule 68(4)/144.

At its meeting of 8 July 2003 the committee confirmed Richard Corbett as rapporteur, considered the draft second report and adopted the draft legislative resolution by 9 votes to 0 with 1 abstention.

The following were present for the vote : Jo Leinen (acting chairman), Richard Corbett

(rapporteur), Margrietus J. van den Berg (for Enrique Barón Crespo), Georges Berthu, Guido Bodrato (for Teresa Almeida Garrett), Jens-Peter Bonde, Jean-Louis Bourlanges, Carlos Carnero González, Gianfranco Dell'Alba (for Olivier Dupuis) and Giorgos Dimitrakopoulos.

The second report was tabled on 11 July 2003.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (COM(2002) 719 – C5-0002/2003 – 2002/0298(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2002) 719)<sup>1</sup>,
  - having regard to Article 202 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0002/2003),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Economic and Monetary Affairs (A5-0128/2003),
  - having regard to the second report of the Committee on Constitutional Affairs (A5-0266/2003),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> Not yet published in OJ..

## Amendment 1

## Recital (2)

(2) Current developments in Community legislation show that it is increasingly common for legislative instruments to require additional measures to be adopted, whose technical principles and details must be established on the basis of sound analysis and expert opinion within suitable periods of time. Whenever this prompts the legislature to delegate wider powers to the Commission, it must have **a say in** the measures which the Commission plans to adopt.

(2) Current developments in Community legislation show that it is increasingly common for legislative instruments to require additional measures to be adopted, whose technical principles and details must be established on the basis of sound analysis and expert opinion within suitable periods of time. Whenever this prompts the legislature to delegate wider powers to the Commission, it must have **all information provided for in the Interinstitutional Agreement of 28 June 1999<sup>1</sup> about** the measures which the Commission plans to adopt **and a right to have a say**.

*Justification*

*In order to exercise its "right to have a say" effectively, Parliament must be fully informed at an early stage. This is worth being recalled here. Details are set out in Article 7(3) of the Council Decision and the Agreement between Parliament and Commission on procedures for implementing the Council Decision which provides that documents are forwarded electronically.*

## Amendment 2

## Recital (6)

(6) In these cases, the regulatory procedure must allow the Commission to assume full responsibility for adopting executive measures, after having solicited the opinion of the Committee of Representatives of the Member States, whilst enabling the European Parliament and the Council to oversee the executive role. This means that, in the event of a disagreement between the Commission and the

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<sup>1</sup> Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, JO L 256, 10.10.2000, p. 19

legislature, the Commission must be able, depending on the case, to either present a proposal *under* Article 251 of the Treaty or adopt *its* draft of *initial* measures, *possibly with amendments*.

legislature, the Commission must be able, depending on the case ***and taking account of the positions of the European Parliament and the Council***, to either present a proposal ***for an instrument in accordance with the procedure in*** Article 251 of the *EC* Treaty, or adopt ***the proposed*** draft of measures ***accompanied by an appropriate statement, or modify it, or withdraw its draft altogether***.

#### *Justification*

*The basic idea of this new type of regulatory procedure is that Parliament and Council as co-legislators, as rightly said in the fifth recital, must have an effective means of supervising the Commission.*

*This means that in case of disagreement with the legislature the Commission must be placed in front of a threefold choice: Either it abandons the idea of implementing measures altogether, or it chooses the alternative of a fully fledged legislative procedure by proposing an act to modify or supplement the basic act, or it takes on board the objections raised by Parliament or Council and adopts the draft measures accordingly. The phrase "possibly with amendments" gives the impression that the Commission would be entitled to adopt the draft measures whilst ignoring Parliament's or Council's objections.*

#### Amendment 3 Recital 9a (new)

***(9a) The application of this decision shall be without prejudice to any of the undertakings made by the European Commission in the field of securities legislation, in particular the solemn declaration made before Parliament on 5 February 2002 by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chairman of Parliament's Committee on Economic and Monetary Affairs.***

#### *Justification*

*It is important to underline that the concessions and undertakings made by the European Commission in the context of the Lamfalussy process are respected as this process is based on a particularly wide use of comitology.*



Amendment 4  
ARTICLE 1, PAR. 2

Article 4(3)

(Decision 1999/468/EC)

2. In Article 4(3) the words “without prejudice to Article 8” are deleted.

2. In Article 4(3) **and in article 5 (3)** the words “without prejudice to Article 8” are deleted.

*Justification*

*As Article 8 is deleted all references to it have to be deleted as well.*

Amendment 5  
ARTICLE 1, PAR. 3 A (NEW)

Article 5, par. 6, subparagraph 1

(Decision 1999/468/EC)

**3a.**

***Article 5(6), subparagraph 1 is replaced by the following:***

***“(6) The Council may act by qualified majority on the proposal, within a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.”***

*Justification*

*The wording, 'where appropriate in view of any such position', is no longer necessary due to the deletion of Article 5(5), as proposed by the Commission which contained a reference to the EP's position.*

Amendment 6  
ARTICLE 1, PAR. 4 (NEW)

Article 5a, paragraph 5

(Decision 1999/468/EC)

5. If the European Parliament, by an absolute majority of its members, or the Council, by the majority provided for by Article 205(2) of the Treaty, express any objections to the final draft of the executive measures presented by the Commission within one month, which may be extended by another month, of its being forwarded, the Commission must either *withdraw its draft and* present a proposal for an instrument in accordance with the procedure in Article 251 of the EC Treaty, or adopt the proposed *measure, possibly amending its draft to take account of the objections.*

5. If the European Parliament, by an absolute majority of its members, or the Council, by the majority provided for by Article 205(2) of the Treaty, express any objections to the final draft of the executive measures presented by the Commission within one month, which may be extended by another month, of its being forwarded, ***taking account of the positions of the European Parliament and the Council,*** the Commission must either present a proposal for an instrument in accordance with the procedure in Artikel 251 of the EC Treaty, or adopt the proposed ***draft of measures accompanied by an appropriate statement, or modify it, or withdraw its draft altogether.***

*Justification*

*See justification for amendment 2.*

Amendment 7

ARTICLE 1, PAR. 4

Article 5a, paragraph 6

(Decision 1999/468/EC)

6. If, on imperative grounds of urgency, the time limits for the regulatory procedure cannot be abided by, the Commission may adopt the executive measures after having obtained the opinion of the regulatory committee in accordance with paragraph 2. It shall notify the European Parliament, the Council and the Member States of these without delay. Within one month of notification, the European Parliament, by an absolute majority of its members, or the Council, by the majority provided for by Article 205(2), may raise objections. In this

6. If, on imperative grounds of urgency, the time limits for the regulatory procedure cannot be abided by, the Commission may adopt the executive measures after having obtained the opinion of the regulatory committee in accordance with paragraph 2. It shall notify the European Parliament, the Council and the Member States of these without delay. Within one month of notification, ***which may be extended by another month if the Council or Parliament so request,*** the European Parliament, by an absolute majority of its

case, the Commission *may* either *withdraw the adopted measure and* present a proposal for an instrument in accordance with the procedure *under* Article 251 of the Treaty *or* uphold the *measure, possibly with amendments to take account of the objections expressed.*

members, or the Council, by the majority provided for by Article 205(2), may raise objections. In this case, *taking account of the positions of the European Parliament and the Council*, the Commission *must* either present a proposal for an instrument in accordance with the procedure *in* Article 251 of the *EC* Treaty *while provisionally maintaining or withdrawing the adopted measures, or* uphold the *measures accompanied by an appropriate statement, or modify them, or withdraw them altogether.*

#### *Justification*

*The possibility of a prolongation of the deadline for Parliament and Council should exist in the urgency procedure in the same way as in the regular one. This makes even more sense as in this case the measures concerned have been already adopted so that there is no legal void.*

*If there are objections and the Commission chooses to present a legislative proposal it should have the possibility of maintaining the measures adopted pending the outcome of the procedure.*

*The word "possibly" has to be deleted for the same reasons as in amendments 2 and 6.*

#### Amendment 8 ARTICLE 1, PAR. 4 (NEW)

Article 6, letter (a)

(Decision 1999/468/EC)

*4a.*

*Article 6(a) is amended as follows:*

*"(a) the Commission shall notify the Council, the Member States and the European Parliament of any decision regarding safeguard measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case."*

*Justification*

*The amendment adds the European Parliament as addressee of such a notification to the existing wording.*

Amendment 9  
ARTICLE 1, PAR. 5

Article 7, paragraph 5

(Decision 1999/468/EC)

c) Paragraph 5 is replaced by the following:

5. ***The references of*** all documents sent to the European Parliament pursuant to paragraph 3 shall be ***made public*** in a register to be set up to this end by the Commission.

c) Paragraph 5 is replaced by the following:

5. All documents sent to the European Parliament pursuant to paragraph 3 shall be ***listed*** in a register to be set up to this end by the Commission ***in 2003, which shall be available on the Internet.***

*Justification*

*The Commission proposes to delete the reference to a deadline (i.e. of 2001) by which it should have set up a register of all the references of documents sent to the EP pursuant to Article 7 (3). As the register has yet to be set up, the now superseded deadline date of 2001 should be replaced with a new deadline date.*

*In order to improve the transparency of all stages of the legislative process, the register should also be made available on the Internet.*

## EXPLANATORY STATEMENT

On the 13th May Parliament examined the report of the Constitutional Affairs Committee on the Commission proposal to amend the 1999 'Comitology' decision. An account of the issues involved can be found in the explanatory statement of the Committee's report (A5-0128/2003).

Parliament approved a series of amendments to this proposal. However, the Commission stated that it disagreed with some of the amendments, and Parliament therefore referred the matter back to the Constitutional Committee in order to allow the Rapporteur the possibility to enter into talks with the Commission.

Following intensive talks with the Commission, the Rapporteur was able to reach agreement on (almost) all points and these are reflected in the amendments contained in this Second Report which substitute the 17 amendments adopted on 13 May 2003.

The main elements of the compromise reached with the Commission are as follows:

- The Commission now accepts Parliament's position that the one month deadline should be extendable to two months at Parliament's request, even under the urgent procedure.
- Parliament would accept to drop the amendments that re-iterate points already covered by the existing Inter-Institutional Agreement.
- Instead of a reference to "full" information, which is an imprecise concept in legal terms, there will be a reference to "all the information provided for in the Inter-Institutional agreement".
- The references to the Commission "amending its draft" to take account of Parliament's (or Council's) objections will be changed to the Commission simply "taking account" of the objections. This is because amendments are not necessarily the only way for the Commission to take account of Parliament's objections.

The Rapporteur also proposes to drop those amendments that have been taken over by events (references to the on-going Convention, that has now finished its work).

If this proposal is adopted as amended, the system for the exercise of the Commission's implementing powers (or, potentially, the under the new Constitution, delegated legislative powers) will be subject to far better Parliamentary scrutiny. When the Commission adopts a measure, Parliament and Council, shall each have a period up to two months to object to it. In such cases, the Commission must choose one of the following options:

- withdraw the measure
- adopt the measure whilst taking account of the objections
- submit a proposal to Parliament and Council under the legislative procedure (with or without suspensive effect).

This will provide a lasting solution to the long standing controversy on the Commission's

implementing powers, and the possibility for Parliament to supervise them.