

# EUROPEAN PARLIAMENT

1999



2004

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*Session document*

FINAL  
**A5-0471/2003**

4 December 2003

## REPORT

on the communication from the Commission: 'The operating framework for the European regulatory agencies'  
(COM(2002) 718 – 2003/2089(INI))

Committee on Constitutional Affairs

Rapporteur: Teresa Almeida Garrett



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## PROCEDURAL PAGE

By letter of 11 December 2002 the Commission forwarded to Parliament its communication 'The operating framework for the European regulatory agencies' (COM(2002) 718), which was referred to the Committee on Constitutional Affairs for information.

At the sitting of 15 May 2003 the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report on the subject under Rules 47(2) and 163, and that all the interested committees had been asked for their opinions.

The Committee on Constitutional Affairs had appointed Teresa Almeida Garrett rapporteur at its meeting of 23 April 2003.

It considered the draft report at its meetings of 6 November, 25 November and 1 December 2003.

At the last meeting it adopted the draft resolution unopposed, with one abstention.

The following were present for the vote: Ursula Schleicher (acting chairman), Teresa Almeida Garrett (rapporteur), Georges Berthu, Cees Bremmer, Giorgio Calò, Carlos Carnero González, Richard Corbett, Armando Cossutta, Andrew Nicholas Duff, José María Gil-Robles Gil-Delgado, Sylvia-Yvonne Kaufmann, Iñigo Méndez de Vigo and Dimitris Tsatsos.

The opinions of the Committee on Budgets and the Committee on Legal Affairs and the Internal Market are attached.

The report was tabled on 4 December 2003.

## DRAFT EUROPEAN PARLIAMENT RESOLUTION

**on the communication from the Commission: 'The operating framework for the European regulatory agencies'**  
**(COM(2002) 718 – 2003/2089(INI))**

*The European Parliament,*

- having regard to the Commission communication on 'The operating framework for the European regulatory agencies' (COM(2002) 718),
  - having regard to the White Paper on Governance, in particular Chapter III.3.2<sup>1</sup>,
  - having regard to Rules 47(2) and 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Budgets and the Committee on Legal Affairs and the Internal Market (A5-0471/2003),
- A. pointing out that the general legislative framework for 'executive' agencies entrusted with certain tasks in the management of Community programmes has been established in the form of a regulation adopted following consultation of the European Parliament, i.e. Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute of executive agencies<sup>2</sup>, thereby providing the Commission with a valuable new management tool,
- B. noting that the establishment and implementation of the budget of all Community bodies which have legal personality and their own budget, both future executive agencies and also all the existing agencies, are henceforth covered by a specific regulation adopted following consultation of the European Parliament, i.e. Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>, and that under this regulation discharge for the implementation of the budget is in all cases given individually by Parliament to the agency's director,
- C. noting, further, that the basic instruments relating to the existing agencies have been amended to make the principle of the right of access to documents provided for by Article 155 of the Treaty and further stipulated by Regulation (EC) No 1049/2001 applicable to them<sup>4</sup> and that, a legislative regulatory framework for the externalisation of tasks incumbent upon the Commission in the form of agencies is thus finally beginning to take shape, and that certain key demands made by Parliament have been taken into account in this context,
- D. whereas it is essential to rationalise and standardise the structure of the present and future agencies in the interests of clarity, transparency and legal security, and also given the prospect of a Union with 25 Member States or more,
- E. whereas the present agencies require an urgent review, particularly as regards the extent to

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<sup>1</sup> COM(2001) 428, 25.7.2001.

<sup>2</sup> OJ L 11, 16.1.2003, p. 1.

<sup>3</sup> OJ L 357, 31.12.2002, p. 72.

<sup>4</sup> Regulations (EC) Nos 1641 to 1655/2003, OJ L 245, 29.9.2003, pp. 1-43.

which their activities are worthwhile, the transparent performance of their duties, appointments to posts and cost management at the agencies,

- F. whereas the current negotiations on the remit, structure and seat of the European Armaments Agency illustrate the limits of the intergovernmental approach,
- G. pointing out that Parliament, in its resolution of 29 November 2001<sup>1</sup> on the White Paper on Governance, took up a position on 'autonomous regulatory authorities' stressing *inter alia* that<sup>2</sup> the creation of new autonomous agencies presupposes that highly specialised scientific or technical expertise is required, that it must not lead to a reduction in judicial scrutiny by the Commission or to any watering down of the Commission's political accountability to Parliament and the Council,
- H. whereas the assessments to be made when setting up new agencies must be based on the most stringent criteria as regards the extent to which the agencies' activities would be proper and worthwhile, location decisions, transparency in terms of tasks, appointments to posts, and cost management,
- I. noting that the Commission also recognises that it will always be for the legislator to decide on a case-by-case basis whether an agency should be created, how it should be organised and its relations with the institutions and with the operators concerned<sup>3</sup>,
- J. pointing out, further, that Parliament, in its resolution of 17 December 2002 on the typology of acts and the hierarchy of legislation in the European Union<sup>4</sup>, took the view that implementing powers should rest with the Commission and, within their respective territorial jurisdictions, the Member States, but that the legislative authority constituted by the Council and Parliament may delegate to a specialist agency or self-regulating body the task of laying down certain technical measures to implement laws, that the procedure for the adoption and scrutiny of delegated regulations should differ depending on whether the legislative authority confers responsibility for that task on the Commission or on a separate authority, a specialist agency or a self-regulating body, but that such a measure would be submitted to the two arms of the legislative authority in the same way as a Commission implementing measure<sup>5</sup>,
- K. pointing out that the draft treaty establishing a European constitution does not include a legal basis for the setting-up of agencies, but instead makes explicit reference to reviewing the legality of acts of bodies or agencies of the Union intended to produce legal effects vis-à-vis third parties, stipulating *inter alia* that acts setting up bodies and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies; pointing out, likewise, that the draft treaty also provides that bodies and agencies must respect the principles of transparency of the proceedings of Union institutions and the protection of personal data,
- L. pointing out that the Commission, both in its communication and previously in the White Paper on Governance, focuses on future 'regulatory' agencies, i.e. agencies 'required to be

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<sup>1</sup> OJ C 153, 27.6.2002, p. 314.

<sup>2</sup> Paragraphs 16 to 18 of the resolution.

<sup>3</sup> Chapter 3 of the communication, 'Basis of the operating framework', p. 6.

<sup>4</sup> P5\_TA(2002)0612.

<sup>5</sup> Paragraphs 13, 16 and 17 of the resolution.

actively involved in exercising the executive function by enacting instruments which contribute to regulating a specific sector'<sup>1</sup>, does not say what will be the fate of existing agencies and leaves aside agencies established outside the framework of the EC Treaty; whereas such an approach does not appear inappropriate in the context of reflection on new forms of 'governance' which may be introduced 'without departing from the law as it stands', but it must not disregard the fact that older agencies and those created on the basis of the EU Treaty also merit consideration and, as a matter of urgency, proposals for modification in order to bring them into line with a common approach to be agreed between the institutions,

- M. noting that the Commission, whilst being open to the trialogue with Parliament and the Council and aware of the needs of individual cases, refers in its communication to certain 'basic principles on which the system of the Union is founded' and refers to a number of desiderata regarding their functioning which it would wish to be respected when future agencies are created, such as the balance of powers between the institutions, the principle of the unity and integrity of the executive function at European level and the principle of the ultimate political responsibility of the Commission,
- N. confirming its attachment to the principle of the democratic legitimacy of the Union's legislative activity<sup>2</sup>, and whereas regulatory agencies as defined by the Commission - provided that they comply with the requirements of transparency and accountability - may provide a means by which Community institutions and the Member States, as well as the elements which they comprise, can participate in a new form of administration which will enable the Commission to refocus its resources on its primary tasks, increase the credibility of the regulatory process in a given sector and thereby contribute to 'multiple-level-governance',
1. Welcomes the Commission communication following up the White Paper on Governance as a first step towards greater clarity in relation to the Commission's position in this field;
  2. Calls on the Commission to define the framework conditions for the use of regulatory agencies by adopting a framework regulation, as it has done for 'executive' agencies, which should be preceded by an interinstitutional agreement spelling out common guidelines;
  3. Notes that the Commission has set out the basic conditions for the creation of regulatory agencies whilst stressing, in particular, that they may not be entrusted with a decision-making power which the Treaty confers directly on the Commission, or responsibility in areas in which they would be called upon to exercise any powers of political appraisal<sup>3</sup>, and stresses, further, that the Commission starts from the principle that 'these agencies may (...) be empowered to adopt individual decisions in a clearly specified area of Community legislation but not legislative measures of general application'<sup>4</sup>, so that it might be preferable to avoid the term 'regulatory' so as to rule out any misunderstanding;

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<sup>1</sup> Communication p. 4.

<sup>2</sup> Paragraphs 8 to 10 of the resolution on the White Paper on Governance of 29 November 2001 quoted above.

<sup>3</sup> Page 31 of the White Paper on governance and p. 9 of the communication.

<sup>4</sup> Point 4.2, p. 8 of the communication.

### Creation of the agencies

4. Stresses that the creation of such agencies, in contrast to 'executive' agencies, requires a legislative act and should be confined to the normal legislative procedure, i.e. the codecision procedure, with use of the procedure under Article 308 of the EC Treaty being reserved for strictly exceptional cases; welcomes the change in the Commission's recent practice in this context;
5. Considers that the autonomy of the new regulatory agencies should be exercised under the direct supervision of the Commission and monitored politically by the European Parliament on the basis of the powers vested in it by the Treaty;
6. Takes the view that decisions on the location of any future regulatory agencies should form an integral and vital part of the basic instruments establishing them and that, in accordance with criteria making for transparency, efficiency, and scrutiny of costs, the seats of the agencies should be near those of the authorities which are to supervise them;
7. Stresses that the choice in favour of creating an agency must be justified in each case on the basis of an external cost-benefit assessment, taking account of the nature of the tasks to be allocated, the need for non-statutory specialised staff and the desired degree of decision-making autonomy;
8. Proposes that use be made of sunset clauses whenever the continuity of the agency's tasks is not guaranteed;
9. Notes that the basic instrument of an agency must guarantee that the agency respects the institutions' obligations as regards access to documents and the protection of personal data, as well as the rules on protection against fraud and protecting the Community's financial interests;
10. Observes that the Financial Regulation and the Staff Regulations should apply to the regulatory agencies;
11. Takes the view that, if an agency's creation is the result of a codecision procedure between Parliament and the Council on a proposal from the Commission, it should not be considered as calling into question the principle of the balance of powers between the institutions as regards the distribution of functions, a principle which, given the needs linked to the evolution of the Community system, must be seen from a dynamic angle;
12. Calls on the Commission, before submitting the legislative proposal concerning the setting-up of these agencies, to submit an assessment of the budgetary implications and the viability of such agencies in comparison with centralised and similar activities and to make specific proposals for restructuring administrative and staff resources with a view to avoiding additional operational costs;

### Functioning of the agencies

13. Notes that, among the 15 existing agencies based on the EC Treaty, no fewer than 12 types of structure can be distinguished and 10 variants in the composition of the administrative board, which comprises at least one representative for each Member State in 10 cases; notes,



further, that the head of the agency's executive is appointed by the administrative board on a proposal from the Commission in seven cases, but is in other cases appointed by the Commission on a proposal from the administrative board or by the Council on the basis of a list of candidates drawn up by the administrative board or by the Commission;

14. Takes the view that such a multitude of different forms is not transparent or comprehensible and that, even bearing in mind the differences in tasks, it is not justified;
15. Supports, therefore, the Commission's efforts aimed at arriving at a limited number of models, at least for future agencies responsible for contributing to the regulation of a particular sector, and agrees that a distinction should be drawn in this context only between 'decision-making' agencies, which are empowered to enact legal instruments binding on third parties, and 'executive' agencies which have no such power;
16. Takes the view that the structure of future agencies may be differentiated in line with the degree of communitarisation in a specific area, and that it must aim to establish clear chains of responsibility whilst guaranteeing that the agency enjoys the necessary autonomy and credibility;
17. Takes the view that the structure of current and future agencies merits in-depth consideration at interinstitutional level and wishes already to make the following contribution:
  - (a) the structure of the agency, i.e. the composition and respective tasks of its bodies, must first of all correspond to the demands of its functioning so as to guarantee, in the case of a 'decision-making' agency, that it is capable of appropriate and immediate reaction;
  - (b) in this context, a 'dualistic' structure comprising a permanent executive body and a programming and monitoring body meeting only periodically is preferable in the majority of cases to a 'monistic' structure;
  - (c) the institutions' involvement in the appointment of the members of each body must reflect their principal role in the Community system;
  - (d) given that the Commission bears ultimate political responsibility for the management of Community activities, it appears appropriate to leave the task of selecting and appointing the executive body, generally the director, to the Commission. The candidate chosen by the Commission should be invited to make a statement before the competent parliamentary committee and reply to questions put by the members. On the committee's recommendation, Parliament should deliver an opinion on the proposed candidate. This role of 'ex-ante political scrutiny' played by Parliament would be the natural complement to the 'ex-post' political scrutiny in the form of the discharge for the implementation of the budget. The Commission, finally, would retain the right to suspend or dismiss the director in the event of serious misconduct;
  - (e) as regards the monitoring body, normally termed the administrative board, the prime concern must be to keep this body at a manageable size, while seeking to ensure balanced representation of men and women, and guarantee a high level of expertise. The formula envisaged by the Commission - six members appointed by the Commission itself, six members appointed by the Council and three members with no voting rights representing the interested parties - is one option. A promising variant already used and

offering more favourable conditions for consensus among the institutions is to entrust the Commission with the task of drawing up a comprehensive list of candidates on which Parliament may express its opinion and on the basis of which the Council makes the appointments except for one member directly appointed by the Commission<sup>1</sup>;

- (f) ways of including the sectors affected or specific expertise must be taken into consideration in the case of a small administrative board by making provision for an advisory committee comprising members from all the Member States;
- (g) if a structure designed according to this model is adopted, however, Parliament's direct participation in the agency's bodies in the form of members of the administrative board appointed by Parliament, as provided for in the three existing agencies, does not appear indispensable for Parliament properly to carry out its task of political scrutiny;
- (h) pending the entry into force of the Treaty establishing a Constitution for Europe, the composition of the administrative board and the relationship between the representation of the Commission and the Member States on it could be based on four standard models, depending on whether the agency's remit was based on exclusive competences of the Union, shared competences or the CFSP or concerned fields where the Union plays a supporting role;

#### Scrutiny of the agencies

- 18. Takes the view that scrutiny of the legality of the agency's legal acts must be dealt with clearly and comprehensibly in the instrument establishing that agency, laying down, depending on the nature of the agency's tasks, that the Court of Justice is responsible for ruling on appeals made against acts of the agency under the conditions laid down in Article 230 of the EC Treaty, that administrative complaints against the agency's acts may be brought before the Commission and that an appeal for annulment might then be brought against the Commission's decision before the Court of Justice, or by stipulating that the agency's acts are first of all subject to an internal appeal before independent boards of appeal and that their decisions may then be submitted to the Court's consideration;
- 19. Takes the view that, in addition to the obligation to submit accounts within the framework of the annual discharge procedure, regular external evaluation of each agency's activity, with a report being submitted to Parliament, the Commission and the Council, is indispensable;
- 20. Stresses that, in brief, external scrutiny of the agencies must comprise the following elements: judicial supervision as described, financial and budgetary control exercised jointly by Parliament, the Council and the Court of Auditors when the budget is drawn up and adopted and during the discharge procedure, political scrutiny exercised primarily by Parliament, in particular through informal monitoring of the agency's work by the specialised parliamentary committees, scrutiny by the European Ombudsman in order to ascertain that administration is in accordance with sound management principles, and supervision by the agency's 'users' and the general public;

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<sup>1</sup> See in this connection Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, OJ L 31, 1.2.2002, pp. 1-24.

21. Recalls that the regulations concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>1</sup> provide for the Office to open and conduct administrative investigations within the institutions, bodies or agencies established by or on the basis of the EC and Euratom Treaties, and considers it vital that the agencies should be required to submit to the investigative powers of the Office under the same conditions as the institutions;
22. Encourages its standing committees whose powers and responsibilities concern the agencies to intensify and develop their methods for the informal monitoring of agencies' activities by appointing permanent rapporteurs, examining annual work programmes and reports, sending the rapporteur or delegations to visit the agency or inviting the director to committee meetings;
23. Calls upon the Conference of Committee Chairmen to review cooperation among the committees in this area and in particular cooperation among the specialised committees on the one hand and the Committee on Budgets and the Committee on Budgetary Control on the other, and to update the 'guidelines' adopted in July 1998;

#### Other agencies

24. Stresses that the Commission should conduct a review of all the existing agencies with a view to proposing possible amendments to their basic instruments so as to adapt them to the models to be defined for the purposes of the future regulatory framework;
25. Notes that the legislative environment of the agencies is changing with the draft constitution, particularly with the disappearance of the pillars and the introduction of a hierarchy of legislation making provision for delegated regulations, and it will consequently be necessary to check whether the differences between agencies based on the EC Treaty and those based on the EU Treaty are still justified, and suggests to the Commission that it consider this question as of now;
26. Recalls that the Charter of Fundamental Rights incorporated in the draft Treaty establishing a Constitution for Europe provides for the establishment of an authority to monitor compliance with the rules guaranteeing rights to the protection of personal data;
27. Points out, finally, in this context the need to codify the law governing administrative procedures to provide greater clarity and legal security for the general public, and also for those involved in these procedures, including the European agencies;
28. Instructs its President to forward this resolution to the Commission, the Council and the governments of the Member States.

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<sup>1</sup> Regulation (EC) No 1073/1999 of the European Parliament and of the Council, OJ L136, 31.5.1999, p. 1, and Council Regulation (Euratom) No 1074/1999, OJ L 136, 31.5.1999, p. 8.

## EXPLANATORY STATEMENT

In line with its executive function and with a view to improving the conditions in which EU legislation is applied, the Commission proposes, as a follow-up to its White Paper on Governance, to define the conditions for creating new regulatory agencies, the framework within which they are to carry out their activities and the Commission's responsibilities as regards supervising those agencies.

In the communication entitled 'The operating framework for the European regulatory agencies', the Commission outlines the general guidelines which should be followed for the future creation of new European agencies, and the rapporteur notes with satisfaction that the views expressed by Parliament in its resolution on the White Paper on European Governance have duly been taken into account, with responsibility for the creation of agencies being attributed to the explicit choice of the legislator, on a case-by-case basis, through an act based on the provision of the Treaty which constitutes the legal basis for the specific Community policy which is to be implemented.

The Commission also accepts that the use of such agencies is justified only in highly specialised scientific or technical areas, with a precise demarcation of the tasks to be performed and within a framework of responsibility and autonomy which does not call into question the unity and integrity of the executive function or lessen the Commission's political accountability to Parliament and the Council.

The Commission confines the scope of its communication to the 'regulatory agencies' which are to be created in the future within the institutional framework of the EC Treaty. It makes no reference to the existing agencies and the future adaptation of their statutes and, above all, it does not consider the consequences in this area of the profound changes proposed in the draft European Constitution, particularly the end of the pillar structure, the introduction of a hierarchy of legislation and the explicit provision made for judicial supervision of agencies' acts.

Whilst understanding the difficulties involved in such consideration in a context of profound institutional change which has not yet been finally approved, it is nevertheless important to identify these difficulties in order to define the future legislative environment of the Community bodies under review more completely, coherently and boldly.

It is also time to make an in-depth assessment of the work of the current agencies, propose the reworking of some of their tasks and powers and, possibly, update the structure and composition of their organs. These are concerns which Parliament has expressed to the Commission through the parliamentary committees most directly involved in scrutiny of the agencies' functioning.

In the limited area dealt with in the communication under review, particular emphasis should be placed on the following remarks:

1. It is important that Parliament should be informed of the nature of the 'appropriate legal instrument' through which the Commission intends to define the framework of general conditions governing the creation of regulatory agencies. Does it intend to do this through a framework regulation - already used in the case of 'executive' agencies - or is it considering an interinstitutional agreement? The Commission is called upon to clarify its choice.

2. The different functions and diverse powers which may be conferred on agencies may require differentiated solutions in terms of structure, the composition of organs and rules governing operation and control, and it is not advisable to create a single model of a legislative framework. Differentiating between agencies on the basis of the proposed criterion, that is distinguishing at least those agencies with binding decision-making powers affecting third parties, appears correct.
3. In order to avoid any misunderstanding, however, it is suggested that the term 'regulatory' should not be used to characterise this type of agency, given that the scope for the intervention of 'decision-making' agencies should be limited to the application of individual decisions in a precise legislative and regulatory framework, without any real discretionary power to assess conflicting interests.

Agencies are above all characterised by the independence of their technical judgements and the degree of autonomy vis-à-vis the administration, and accordingly the emphasis should perhaps be placed on these characteristics when classifying agencies.

4. As regards the more specific definition of the corresponding structure - whilst at the same time stressing the desirability of more in-depth consideration at interinstitutional level - a preference is expressed for a dualist structure, with a permanent executive organ, a small board or executive committee chaired by the agency's director, and a planning and supervisory body meeting periodically and having responsibility, in particular, for the adoption of the agency's general operating rules, the planning of its work and the corresponding budget.

The existence of an advisory body would make the more extensive participation of highly qualified scientific or technical specialists possible or, in other cases, of qualified representatives of the operators concerned, from all the Member States.

5. As regards the composition and appointment of the corresponding members, Parliament considers it important to arrive at an agreement which will enable all the Community institutions to play a part whilst scrupulously respecting their respective functions and responsibilities. Parliament wishes to be involved in selecting the agency's director through a prior hearing by the competent parliamentary committees, and to have a say in the selection of names proposed for the administrative board.
6. As regards financial and budgetary matters, the adoption of a specific financial regulation for all Community bodies with legal personality in December 2002 already made provision for precise rules on the discharge for the implementation of the agencies' budgets, their auditors and accounting rules, which should therefore also be transferred to the future legislative framework.
7. Explicit provision should also be made in that framework for all the obligations relating to sound administration, transparency, access to documents, the protection of personal data and the fight against fraud and corruption applicable at Community level.

4 November 2003

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Constitutional Affairs

on the communication from the Commission: 'The operating framework for the European regulatory agencies'  
(COM(2002) 718 – 2003/2089(INI))

Draftsman: Wilfried Kuckelkorn

### **PROCEDURE**

The Committee on Budgets appointed Wilfried Kuckelkorn draftsman at its meeting of 17 June 2003.

It considered the draft opinion at its meeting of 4 November 2003.

At the meeting it adopted the following conclusions unanimously.

The following were present for the vote: Terence Wynn (chairman), Anne Elisabet Jensen (vice-chairwoman), Franz Turchi (vice-chairman), Wilfried Kuckelkorn (draftsman), Ioannis Averoff, Kathalijne Maria Buitenweg, Den Dover, Bárbara Dührkop Dührkop, James E.M. Elles, Göran Färm, Salvador Garriga Polledo, Neena Gill, Catherine Guy-Quint, John Joseph McCartin, Jan Mulder, Joaquim Píscarreta, Giovanni Pittella, Paul Rübig (for Markus Ferber), Per Stenmarck, Kyösti Tapio Virrankoski and Ralf Walter.

## CONCLUSIONS

The Committee on Budgets calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

### Paragraph 5

Considers that *(deletion)* the seat of *a regulatory* agency should *be established in proximity to the Commission and that this provision should* form an integral and essential part of the basic act by which the agency is established;

### Paragraph 15

#### **Budgetary Aspects**

- *Considers that the new regulatory agencies' autonomy should be exerted under the direct control of the Commission and should be politically controlled by the Parliament with regard to its competences granted by the Treaty;*
- *Recalls that all the provisions of the Financial regulation and the staff regulations should apply to the regulatory agencies.*
- *Recalls that their tasks should be limited to setting up secondary legislation linked to the initiatives taken by the Commission and approved by the legislative and budgetary authorities; expects that agencies will present for evaluation, upon request, their preliminary work programme to the European Parliament's competent committee in order to enhance democratic control;*
- *Asks the Commission to present prior to the legislative proposal creating those agencies, a prior assessment on the budgetary consequences, the value for money in comparison with centralised and similar activities and concrete proposals to transfer administrative and human resources, in order to make them operate with no additional cost;*

5 November 2003

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Constitutional Affairs

on the communication from the Commission: 'The operating framework for the European regulatory agencies'  
(COM(2002) 718 – 2003/2089(INI))

Draftsman: Manuel Medina Ortega

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Manuel Medina Ortega draftsman at its meeting of 7 July 2003.

It considered the draft opinion at its meetings of 6 October and 4 November 2003.

At the latter meeting it adopted the following suggestions by 22 votes to 0, with 1 abstention.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Manuel Medina Ortega (rapporteur), María Luisa Bergaz Conesa (for Michel J.M. Dary pursuant to Rule 153(2)), Maria Berger, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Malcolm Harbour, Philippe A.R. Herzog (for Alain Krivine pursuant to Rule 153(2)), Hans Karlsson (for Fiorella Ghilardotti), Giorgos Katiforis, Carlos Lage (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Sir Neil MacCormick, Hans-Peter Mayer (for Paolo Bartolozzi), Arlene McCarthy, Marcelino Oreja Arburúa (for Anne-Marie Schaffner), Barbara O'Toole (for Bill Miller), Fernando Pérez Royo (for Evelyn Gebhardt pursuant to Rule 153(2)), Imelda Mary Read (for François Zimeray) and Diana Wallis.



## CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Points out that the Commission is responsible for preserving the unity of the executive function at Community level and that the current proliferation of executive agencies and regulatory agencies is compromising the Community executive's transparency; considers, therefore, that the number of agencies should be restricted as far as possible and that a decision should be taken to set up an agency only when it is in no way possible to entrust a specific task to the Commission's central services,
2. Considers that the legal basis for the creation of an agency ought to be the same Treaty provision as that forming the legal basis for the Community legal act regulating the specific activity which necessitates the agency's creation and that for this reason Article 308 TEC should not be used as has happened in the past,
3. Considers that the administration of a Community agency ought to be subject to the same controls as the rest of the Community executive, that its officials and other staff ought to be employed under all the guarantees set out in the Staff Regulations and that, to this end, the hiring of temporary staff to carry out public service duties ought to be avoided or restricted,
4. Believes that the head of a Community agency ought to attend a hearing before his appointment by the Commission, of the same type as for European Commissioners, before the relevant European Parliament committee,
5. Considers that, along the lines of existing practice in the Office for Harmonisation in the Internal Market, provision should be made, at least for the regulatory agencies, for the creation of boards of appeal to review the agencies' decisions before appeals may be brought before the Court of First Instance of the European Communities,
6. Considers that the constituent members of such boards of appeal, responsible for reviewing the decisions of the agencies, should be directly appointed by the Commission in order to guarantee the independence of the members so that they do not become, as is the case for many Member State administrative tribunals, mere delaying obstructions prior to genuine judicial appeal,
7. Believes that legal recourse against the acts of agencies ought to be available not only to the institutions and the Member States but also to those third parties that are involved; these should be able to bring not only actions for annulment but also actions before the Court of First Instance for omission against those agencies that do not act when they should, and actions for compensation for damages deriving from acts or omissions by the agencies,
8. Believes that in view of their particular remoteness from the Community executive, which is ultimately responsible for their operation, the agencies ought to be subject to special monitoring to ensure that they comply in detail with the principles of sound Community administration and in particular the legislation on transparency and access to documents, as well as the rules on protection against fraud and protecting the Community's financial interests.

