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*****I** **REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the term of office of the Executive Director of the European Food Safety Authority (COM(2005)0190 – C6-0146/2005 – 2005/0081(COD))

Committee on Legal Affairs

Rapporteur: Giuseppe Gargani

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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the term of office of the Executive Director of the European Food Safety Authority (COM(2005)0190 – C6-0146/2005 – 2005/0081(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0190)¹,
 - having regard to Article 251(2) and Articles 37, 95, 133 and 152(4)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0146/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on the Environment, Public Health and Food Safety (A6-0354/2005),
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.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 1 A (new)

(1a) Provision should be made for the Executive Director to be appointed on the basis of a list of candidates proposed by the Commission, after hearing the opinion of the representative appointed by the European Parliament.

¹ Not yet published in OJ.

Amendment 2
RECITAL 2

(2) Provision should be made to extend this term of office once, after suitable evaluation.

(2) Provision should be made to extend this term of office once, after suitable evaluation **and after hearing the representative of the European Parliament.**

Amendment 3
ARTICLE 1, POINT 1
Article 26, paragraph 1 (Regulation (EC) No. 178/2002)

1. ***In the first sentence, the words “which shall be renewable” are deleted.***

1. ***The first paragraph is hereby replaced by the following:***

"1. The Executive Director shall be appointed by the Management Board, on the basis of a list of candidates proposed by the Commission, after hearing the opinion of the representative appointed by the European Parliament, after an open competition, following publication in the Official Journal of the European Communities and elsewhere of a call for expressions of interest, for a period of five years. Before appointment the candidate nominated by the Management Board shall be invited without delay to make a statement before the European Parliament and answer questions put by members of this institution. The Executive Director may be removed from office by a majority of the Management Board.

Amendment 4
ARTICLE 1, PARAGRAPH 2
Article 26, paragraph 1 (Regulation (EC) No 178/2002)

2. The following subparagraphs are added:

On a proposal from the Commission and after an evaluation, the term of office of the Executive Director may be extended once for a period of not more than five years.

In the evaluation, the ***Commission*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Authority's duties and requirements in the coming years.

2. The following subparagraphs are added:

After an evaluation, ***after hearing the opinion of the representative appointed by the European Parliament, the Management Board may extend*** the term of office of the Executive Director once for a period of not more than five years

In the evaluation, the ***Management Board*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Authority's duties and requirements in the coming years.

The evaluation shall be submitted without delay to the Commission and to the European Parliament.

EXPLANATORY STATEMENT

The renewal of the terms of office of the directors of the 18 decentralised agencies and bodies set up under the first pillar raises a legal problem which has been identified by the Commission's legal service.

The use of the term 'renewable' in the basic regulations for the various agencies harks back to Article 214(1) of the EC Treaty, on appointing Commission Members, and Articles 223 and 225 on appointing Court of Justice Judges. In neither case, however, may a simplified procedure be applied.

If the same practice were applied, the various agencies would have to follow the lengthy -and expensive - appointment procedure laid down in the basic regulations in order to extend the term of office of their respective directors.

To solve this problem, the Commission has submitted to us 18 proposals for regulations for the purpose of amending the various basic regulations.

Your rapporteur approves the Commission proposals but is taking this opportunity to give Parliament a role in the procedures for the appointment, and renewal of the term of office of, the directors of the agencies in question.

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

for the Committee on Legal Affairs

on the proposals for regulations of the European Parliament and of the Council:

1. amending Regulation (EEC) No 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network as regards the term of office of the Executive Director
(COM(2005)0190 – C6-0141/2005 – 2005/0072(COD))
2. amending Regulation (EC) No 178/2002 as regards the term of office of the Executive Director of the European Food Safety Authority
(COM(2005)0190 – C6-0146/2005 – 2005/0081(COD))
3. amending Regulation (EC) No 851/2004 establishing a European Centre for disease prevention and control as regards the Director's term of office
(COM(2005)0190 – C6-0147/2005 – 2005/0082(COD))
4. amending Regulation (EC) No 726/2004 as regards the term of office of the Executive Director of the European Medicines Agency
(COM(2005)0190 – C6-0148/2005 – 2005/0083(COD))

Draftswoman: Jutta D. Haug

SHORT JUSTIFICATION

The Commission has adopted a proposal which aims to harmonise the provisions concerning the terms of reappointment of the Community agency directors. It claims that the existing provisions, allowing the renewal of the term of office by a simple decision by the appointing authority, are legally problematic.

In order to introduce a legally sound but administratively simple system for reappointing agency directors when their first term comes to an end, the Commission proposes a procedure where the appointing bodies would have the option of either extending the term of office or launching a completely new selection procedure. The decision on how to proceed could be taken, however, only after the Commission had assessed "the results achieved in the first term of office and the agency's duties and requirements in the coming years". A harmonised model for the first term of office (five years) and for the extension of the term (possible only once for maximum five years) would apply to all Community agencies under the first pillar.

Remarks

The objective of the proposal - filling in legal loopholes and streamlining administrative practices - can naturally be supported. Another question is whether the provisions on the term of office of the directors of 18 agencies should be harmonised, given the variety of agencies concerned, and the differences in their roles and tasks. When looking at the matter from a personnel policy point of view, it looks logical that the basic terms and conditions of

employment are the same for those holding similar positions. But from an institutional point of view, the matter is more complicated.

Depending on the agency, the decision on the procedure after an evaluation whether to extend the term of office or launch a new selection procedure would be either taken by the Commission, the Council or the Management Board of the agency. In the case of the European Environment Agency (EEA), the European Food Safety Authority (EFSA), the European Centre for Disease Prevention and Control (ECDC) and the European Medicines Agency (EMA), the Commission proposes that it should have the right to carry out the evaluation and on the basis of its results, make a proposal on further steps to the appointing authority, i.e. the Management Board of the agency.

While acknowledging the usefulness of an evaluation of director's performance after the first five-year period in office, your draftsman has doubts whether the wording of the current proposal gives the Commission a too decisive role in the reappointment procedure, given that the agencies concerned are supposed to carry out their tasks independently from the Commission. The new provisions would put the fate of the Director to the hands of the Commission.

In order to avoid a conflict of interest and endangering the independence of the specialised agencies, it would be appropriate to give the Management Board the task to carry out an evaluation (or the right to decide how to do it) and then, if appropriate, take a decision on the extension of the term of office of the director.

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 TO PROPOSAL 1

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 ARTICLE 1

Article 9, paragraph 1, first sentence (Regulation (EEC) No 1210/90)

1. The Agency shall be headed by an Executive Director appointed by the management board on a proposal from the

1. The Agency shall be headed by an Executive Director appointed by the management board on a proposal from the

¹ OJ C ... /Not yet published in OJ.

Commission for a period of five years which, ***on a proposal from the Commission and*** after an evaluation, may be extended once for a period of not more than five years.

In the evaluation, the ***Commission*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Agency's duties and requirements in the coming years.

Commission for a period of five years which, after an evaluation, may be extended once for a period of not more than five years.

In the evaluation, the ***management board*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Agency's duties and requirements in the coming years.

The evaluation shall be submitted without delay to the Commission and to the European Parliament.

Justification

The Management Board as the appointing authority should carry out an evaluation of the Executive Director's performance and after that, if appropriate, take a decision on the extension of the term of office. As the evaluation concerns a holder of public office and a Community agency, it is important that it is made available to the Commission and the European Parliament.

AMENDMENT TO PROPOSAL 2

Text proposed by the Commission¹

Amendments by Parliament

Amendment 2

ARTICLE 1, POINT 2

Article 26, paragraph 1, new subparagraphs (Regulation (EC) No 178/2002)

On a proposal from the Commission and after an evaluation, the term of office of the Executive Director ***may be extended*** once for a period of not more than five years.

In the evaluation, the ***Commission*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Authority's duties and requirements in the coming years.

After an evaluation, ***the Management Board may extend*** the term of office of the Executive Director once for a period of not more than five years.

In the evaluation, the ***Management Board*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Authority's duties and requirements in the coming years.

The evaluation shall be submitted without delay to the Commission and to the European Parliament.

Justification

The Management Board as the appointing authority should carry out an evaluation of the Executive Director's performance and after that, if appropriate, take a decision on the extension of the term of office. As the evaluation concerns a holder of public office and a Community agency, it is important that it is made available to the Commission and the European Parliament.

¹ OJ C ... /Not yet published in OJ.

AMENDMENT TO PROPOSAL 3

Text proposed by the Commission¹

Amendments by Parliament

Amendment 3

ARTICLE 1

Article 17, paragraph 1 (Regulation (EC) No 851/2004)

1. The director shall be appointed by the Management Board on the basis of a list of candidates proposed by the Commission after an open competition, following publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest, for a five-year period which, ***on a proposal from the Commission and*** after evaluation, may be extended once for a period of not more than five years.

In the evaluation the ***Commission*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Centre's duties and requirements in the coming years.

1. The director shall be appointed by the Management Board on the basis of a list of candidates proposed by the Commission after an open competition, following publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest, for a five-year period which, after evaluation, may be extended once for a period of not more than five years.

In the evaluation, the ***Management Board*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Centre's duties and requirements in the coming years.

The evaluation shall be submitted without delay to the Commission and to the European Parliament.

Justification

The Management Board as the appointing authority should carry out an evaluation of the Director's performance and after that, if appropriate, take a decision on the extension of the term of office. As the evaluation concerns a holder of public office and a Community agency, it is important that it is made available to the Commission and the European Parliament.

¹ OJ C ... /Not yet published in OJ.

AMENDMENT TO PROPOSAL 4

Text proposed by the Commission¹

Amendments by Parliament

Amendment 4

ARTICLE 1, POINT 2

Article 64, paragraph 1, new subparagraphs (Regulation (EC) No 726/2004)

On a proposal from the Commission and after evaluation, the term of office of the Executive Director ***may be extended*** once for a period of not more than five years.

In the evaluation the ***Commission*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Agency's duties and requirements in the coming years.

After evaluation, ***the Management Board may extend*** the term of office of the Executive Director once for a period of not more than five years.

In the evaluation, the ***Management Board*** shall assess in particular:

- the results achieved in the first term of office and the way in which they have been achieved;
- the Agency's duties and requirements in the coming years.

The evaluation shall be submitted without delay to the Commission and to the European Parliament.

Justification

The Management Board as the appointing authority should carry out an evaluation of the Executive Director's performance and after that, if appropriate, take a decision on the extension of the term of office. As the evaluation concerns a holder of public office and a Community agency, it is important that it is made available to the Commission and the European Parliament.

¹ OJ C ... /Not yet published in OJ.

PROCEDURE

Title	Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the term of office of the Executive Director of the European Food Safety Authority
References	COM(2005)0190 - C6-0146/2005 -2005/0081(COD)
Committee responsible	JURI
Committee asked for its opinion Date announced in plenary	ENVI 7.6.2005
Draftsman Date appointed	JUTTA HAUG 21.6.2005
Discussed in committee	14.9.2005 11.10.2005
Date amendments adopted	11.10.2005
Result of final vote	for: 45 against: 0 abstentions: 1
Members present for the final vote	Adamos Adamou, Georgs Andrejevs, Johannes Blokland, John Bowis, Frederika Brepoels, Dorette Corbey, Avril Doyle, Mojca Drčar Murko, Edite Estrela, Jillian Evans, Anne Ferreira, Karl-Heinz Florenz, Françoise Grossetête, Satu Hassi, Gyula Hegyi, Marie Anne Isler Béguin, Caroline Jackson, Dan Jørgensen, Urszula Krupa, Peter Liese, Roberto Musacchio, Riitta Myller, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, Jonas Sjöstedt, María Sornosa Martínez, Antonios Trakatellis, Thomas Ulmer, Anja Weisgerber, Åsa Westlund
Substitutes present for the final vote	María del Pilar Ayuso González, Bairbre de Brún, Milan Gaľa, Hélène Goudin, Jutta D. Haug, Erna Hennicot-Schoepges, Miroslav Mikolášik, Pál Schmitt, Robert Sturdy, Phillip Whitehead
Substitutes under Rule 178(2) present for the final vote	Genowefa Grabowska, Ambroise Guellec, Eoin Ryan
Comments	

PROCEDURE

Title	Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the term of office of the Executive Director of the European Food Safety Authority:		
References	COM(2005)0190 – C6-0146/2005 – 2005/0081(COD)		
Date of consulting Parliament	13.5.2005		
Committee responsible Date announced in plenary	JURI 7.6.2005		
Committee(s) asked for opinion(s) Date announced in plenary	ENVI 7.6.2005		
Not delivering opinion(s) Date of decision			
Enhanced cooperation Date announced in plenary			
Rapporteur(s) Date appointed	Giuseppe Gargani 15.6.2005		
Previous rapporteur(s)			
Simplified procedure – date of decision Date of decision			
Legal basis disputed Date of JURI opinion	/		
Financial endowment amended Date of BUDG opinion	/		
Parliament to consult European Economic and Social Committee – date decided in plenary			
Parliament to consult Committee of the Regions – date decided in plenary			
Discussed in committee	5.9.2005	5.10.2005	22.11.2005
Date adopted	22.11.2005		
Result of final vote	+ : 14 – : 0 0 : 0		
Members present for the final vote	Maria Berger, Bert Doorn, Giuseppe Gargani, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Aloyzas Sakalas, Rainer Wieland, Nicola Zingaretti, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Nicole Fontaine, Othmar Karas, Marie Panayotopoulos-Cassiotou, Michel Rocard		
Substitute(s) under Rule 178(2) present for the final vote			
Date tabled	28.11.2005	A6-0354/2005	
Comments (available in one language only)	...		