



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Development

2010/0051(COD)

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

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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

Amendment

(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.

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***

Amendment

(9) The examination procedure should provide for the control in such a way that measures cannot be adopted if they are not

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.

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

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

Member States.

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*** apply for the adoption of:

2. The examination procedure ***shall in 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

deleted

be appropriate, the advisory procedure shall apply.

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

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 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 other⁹;

Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid¹⁰.

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

deleted

from 1 December 2010.

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	<table> <tr> <td>+: </td><td>26</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	26	–:	0	0:	0
+:	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						