

Opinion of the European Economic and Social Committee on the

- **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Part one**
- **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part two**
- **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part three**
- **Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part four**

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(2008/C 224/07)

On 21 January 2008, 24 January 2008 and 4 March 2008, the Council decided to consult the European Economic and Social Committee on the:

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Part one

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part two

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part three

Proposal for a Regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part four

On 11 December 2007, 15 January 2008 and 11 March 2008, the Bureau of the European Economic and Social Committee instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pezzini as rapporteur-general at its 445th plenary session, held on 28 and 29 May 2008 (meeting of 29 May), and adopted the following opinion unanimously.

1. Conclusions and recommendations

1.1 The Committee welcomes the introduction of the regulatory procedure with scrutiny into the comitology system and the alignment to this procedure of the four proposed packages of directives and regulations.

1.2 The Committee notes that the urgent amendment of some acts proposed by the Commission ⁽¹⁾ is in line with Decision 2006/512/EC and the joint statement concerning both the list of acts to be adjusted as quickly as possible and the repeal of time limits on the exercise of the Commission's implementing powers.

1.3 The Committee recommends that the regulations aligning certain acts to Decision 2006/512/EC be adopted in good time, before the Treaty of Lisbon enters into force.

1.4 Indeed, the Committee points out that the Lisbon Treaty introduces a new legislative hierarchy, distinguishing between legislative, delegated and implementing acts; the European Parliament and the Council are to have equal powers as regards establishing the procedures for scrutinising such acts.

1.5 The Committee stresses the importance of:

- fully involving the EP;
- streamlining and simplifying the procedures;
- keeping the EP more informed, both on the committees and on the measures that come before them at all stages of the procedure; and
- confirming the repeal of time limits on implementing powers, which are included in some acts, governed by the co-decision procedure and the Lamfalussy process.

1.6 The Committee stresses the importance of comitology procedures being as transparent as possible and more accessible to people living in the EU, especially those affected by these acts.

1.7 The Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as close as possible to the people, while information must be fully accessible to the public and civil society.

1.8 Finally, the Committee calls for the impact of implementing the new procedure to be assessed; a periodic report should be presented to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of information.

⁽¹⁾ COM(2006) from 901 final to 926 final.

2. Introduction

2.1 On 17 July 2006 ⁽²⁾, the Council amended the decision laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾, adding a new *regulatory procedure with scrutiny*. This procedure will allow the legislator to oppose the adoption of quasi-legislative measures, namely measures of general scope 'amending' non-essential elements of basic instruments adopted by co-decision, if it considers that the draft exceeds the implementing powers provided for in the basic instrument, is incompatible with the aim or the content of that instrument or fails to respect the principles of subsidiarity or proportionality.

2.2 This measure is typical of comitology, which refers to the procedures through which the Commission, in accordance with Article 202 of the EC Treaty, executes the powers conferred upon it to implement Community *legislative acts*, i.e. acts adopted by the Parliament and Council, or by the Council alone, under one of the decision-making procedures laid down by the EC Treaty (consultation, co-decision, cooperation and assent).

2.3 The five comitology procedures (consultation, management, regulation, regulation with scrutiny and safeguard) are regulated by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, and oblige the Commission to submit draft implementing measures to a committee made up of Member State officials.

2.4 In October 2006, the European Parliament, the Council and the Commission adopted a joint statement ⁽⁴⁾, containing a list of legal instruments already in force to be given priority for adjustment under the new procedure. The statement also welcomed the adoption of Council Decision 2006/512/EC, which provided for the inclusion in Decision 1999/468/EC of a new procedure, known as the *regulatory procedure with scrutiny*, which enables the legislator to scrutinise the adoption of *quasi-legislative* measures implementing an instrument adopted by co-decision.

2.5 Without prejudice to the rights of the legislative authorities, the Parliament and Council recognise that the principles of good legislation require that implementing powers be conferred on the Commission without any time-limit. However, where an adaptation is necessary, the European Parliament, the Council and the Commission consider that a clause requesting the Commission to submit a proposal to revise or abrogate the provisions concerning the delegation of implementing powers could strengthen the scrutiny exercised by the legislator.

⁽²⁾ Decision 2006/512/EC (OJ L 200, 22.7.2006).

⁽³⁾ Decision 1999/468/EC (OJ L 184, 17.7.1999).

⁽⁴⁾ OJ C 255, 21.10.2006.

2.6 Following its entry into force, this new procedure will apply to the quasi-legislative measures provided for in instruments adopted in accordance with the co-decision procedure, including those provided for in instruments to be adopted in future in the financial services field (Lamfalussy instruments ⁽³⁾).

2.7 However, for the new procedure to be applicable to instruments adopted by co-decision which are already in force, those instruments must be adjusted in accordance with the applicable procedures, so as to replace the regulatory procedure laid down in Article 5 of Decision 1999/468/EC by the regulatory procedure with scrutiny, wherever there are measures which fall within its scope.

2.8 In December 2006, the Commission adopted the 25 proposals ⁽⁶⁾ concerned, on which the Committee expressed its views ⁽⁷⁾.

2.8.1 Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures are to be adopted in accordance with the regulatory procedure with scrutiny.

2.8.2 The Commission representative thus submits a draft of the measures to be taken to a Regulatory Procedure with Scrutiny Committee, composed of representatives of the Member States and chaired by the Commission representative.

2.8.3 If the measures envisaged by the Commission are in accordance with the opinion of the committee, the following procedure is to apply:

- 'the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;
- the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified

majority, may oppose the adoption of the said draft by the Commission, justifying their opposition; (...)

- if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;
- if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.'

2.8.4 If the measures envisaged by the Commission are not in accordance with the opinion of the committee, or if no opinion is delivered, the following procedure is to apply:

- 'the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;
- the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;
- if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;
- if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny by the European Parliament;
- the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal, may oppose the adoption of the measures in question, justifying their opposition by indicating that:
 - the proposed measures exceed the implementing powers provided for in the basic instrument;
 - the proposed measures are not compatible with the aim or the content of the basic instrument; or
 - do not respect the principles of subsidiarity or proportionality;
- if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that event, the Commission may submit to the committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;
- if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.'

2.9 The proposed regulations under review here, are prompted by the need to adapt existing legislation to the procedure laid down in Article 251 of the Treaty, in accordance with the applicable procedures in the areas of: agriculture;

⁽³⁾ The so-called Lamfalussy approach is a decision-making process which applies to the adoption and implementation of Community legislation on financial services (securities, banking and insurance). Specifically, it sets out a four-level approach to decision-making:

- level one involves traditional legislative activity (adoption of regulations and directives under the co-decision procedure). Before presenting a legislative proposal in the field of securities, the Commission consults the European Securities Committee (ESC), which comprises representatives of each Member State;
- level two has regard to the implementing measures executed by the Commission, on the basis of the delegation contained in the legislative act, in line with the regulatory procedure (now the regulatory procedure with scrutiny). On the basis of a technical opinion from the Committee of European Securities Regulators (CESR), comprising representatives of the national regulatory and supervisory authorities for the sector, the Commission prepares a draft implementing measure to submit to the European Securities Committee (ESC), which then gives its opinion;
- at level three, the CESR coordinates, informally, the activities of the national regulatory and supervisory authorities for the securities sector, with the aim of ensuring consistent, uniform implementation of the measures adopted at the first two levels;
- level four involves the legislative and administrative implementation of EU legislation by the Member States, overseen by the European Commission.

⁽⁶⁾ COM(2006) from 901 final to 926 final.

⁽⁷⁾ Opinion CESE 418/2007, 14.3.2007, rapporteur: Mr Retureau.

employment; humanitarian aid; enterprise policy; environment; European statistics; internal market; consumer health and protection; energy and transport; and the information society.

3. The Commission proposals

3.1 The Commission proposals amend regulations and directives ⁽⁸⁾ subject to the procedure referred to in Article 251 of the Treaty to bring them into line with the new procedures established by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC.

3.2 In general, in line with the priorities of Community policy on Better Regulation ⁽⁹⁾, this entails adapting and updating the instruments in question as necessary so that they can be properly implemented, in accordance with Article 251 of the TEC.

4. General comments

4.1 The Committee fully endorses the distinction made between legislative and implementing instruments, which, in line with the Lisbon Treaty, will lead to a new definition of delegated acts, making it possible to simplify and streamline Community law-making and regulation ⁽¹⁰⁾, preserving a system of Parliamentary democratic scrutiny of the Commission's implementing powers.

4.2 The Committee therefore welcomes the introduction of the regulatory procedure with scrutiny into the comitology system, enabling the Council and the Parliament to scrutinise and, where appropriate, amend the Commission's implementing regulations when the legislative act recognises the Commission's right to exercise implementing powers in some areas, without authorising it to make substantive amendments.

4.3 The Committee recommends that the regulations aligning the four packages of directives and regulations to Decision 2006/512/EC be adopted in good time, before the Treaty of Lisbon enters into force.

4.4 Indeed, the Committee points out that the Lisbon Treaty introduces a new legislative hierarchy, distinguishing between legislative, delegated and implementing acts ⁽¹¹⁾ while preserving existing terminology (directives, regulations, decisions): the European Parliament and the Council are to have equal powers

as regards establishing the procedures for scrutinising delegated and implementing acts (comitology) ⁽¹²⁾.

4.5 The Committee stresses the importance of:

- fully involving the EP, which would in the last instance have the right to reject a decision;
- reducing the number and complexity of comitology procedures;
- keeping the EP more informed, both on the committees and on the measures that come before them at all stages of the procedure;
- a consultation procedure for the Council to consult the EP when a draft implementing act is referred to the Council following a dispute within the Commission/committee of experts;
- an EP-Council consultation procedure to be followed where the EP has issued a negative opinion, giving the EP a greater role;
- confirming the repeal of time limits on implementing powers, which are included in some acts, governed by the co-decision procedure and the Lamfalussy process.

4.6 The Committee stresses, as it has in the past, that 'comitology procedures, involving only representatives of the Commission and Member State governments and tasked, according to the nature of the committee established, with the management, consultation or regulation flowing from the follow-up and implementation of legislative acts, should be more transparent and accessible to people living in Europe and especially to those affected by these acts' ⁽¹³⁾.

4.7 In this connection the Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as close as possible to the people, thus ensuring that Community acts are as transparent and accessible as possible for all members of the public and civil society.

4.8 Lastly, the Committee believes that the impact of implementing the new procedure needs to be assessed; a periodic report should be submitted to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of user-friendly information which is accessible to all on delegated Community acts, so that this operation, which combines regulation and actual implementation, can be monitored.

Brussels, 29 May 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽⁸⁾ Cf. COM(2007) 740 final, p. 6, General list.

⁽⁹⁾ Cf. Opinion 1068/2005 of 28.9.2005, rapporteur: Mr Retureau, and Opinion CESE 1069/2005 of 6.10.2005, rapporteur: Mr Van Iersel.

⁽¹⁰⁾ Cf. EP report on the Treaty of Lisbon of 18/02/2008, rapporteurs: Íñigo Méndez De Vigo (EPP/DE, ES) and Richard Corbett (PES, UK).

⁽¹¹⁾ Articles 249-249d of the TFEU.

⁽¹²⁾ Articles 249b and 249c of the TFEU.

⁽¹³⁾ Opinion OJ C 161 of 13.7.2007, p. 48, rapporteur: Mr Retureau.