

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, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Five’

COM(2009) 0048 (COD)

(2009/C 317/12)

Rapporteur-General: **Mr RETUREAU**

On 14 May 2009 the Council decided to consult the European Economic and Social Committee, under Article 152 of the Treaty establishing the European Community, 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, with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Five

COM(2009) 0048 (COD).

On 12 May 2009 the Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee’s work on the subject.

In accordance with Rule 20 of the Rules of Procedure, the European Economic and Social Committee appointed Mr Retureau as rapporteur-general at its 455th plenary session, held on 15 and 16 July 2009 (meeting of 16 July), and adopted the following opinion by 122 votes to two.

1. Conclusions

1.1 The EESC accepts the Commission’s proposals concerning the regulatory procedure with scrutiny, although it wonders whether there may be a need for a specific procedure in the case of amendments which, without altering the scope and purpose of the instrument concerned, extend somewhat beyond the ‘non-essential’ criterion and have quite a significant social, economic or health-related impact.

1.2 However, it considers that scrutiny is difficult to put in place because of the way parliamentary work is organised.

1.3 The added value of the new procedure is not yet clear to the public, as the civil society organisations interested in the ‘supplementary’ rules introduced by the comitology procedure may find it difficult to keep track of the successive regulatory amendments to the original instrument.

2. Recap of the procedures for adaptation to the regulatory procedure with scrutiny in 2007 and 2008

2.1 The regulatory procedure with scrutiny by the Parliament has gathered pace in the last two years with the ‘omnibus’ adaptation of legal instruments previously adopted using the ‘normal’ comitology procedure. This latter procedure remains valid when the conditions for the procedure with scrutiny do not apply.

2.2 Council Decision 2006/512/EC of 17 July 2006 amended the Council Decision of 28 June 1999 laying down the procedures for the exercise of the implementing powers conferred on the Commission (1999/468/EC), notably by adding an Article 5a which introduces a new type of procedure known as the

‘regulatory procedure with scrutiny’. This gives Parliament the ‘right to scrutiny’ of amendments made to the relevant legislative instruments under the comitology procedure, insofar as these amendments are ‘non-essential’ or concern the addition or deletion of provisions or elements deemed non-essential.

2.3 The comitology procedures which handle the follow-up to legislative instruments thus now include a new option that strengthens Parliament’s scrutiny of the exercise of the implementing powers conferred on the Commission. The instruments concerned are covered by the co-decision procedure (Article 251 of the Treaty) or, in the financial sphere, the Lamfalussy process ⁽¹⁾.

2.4 In a joint statement, the Commission, Council and Parliament listed a number of instruments that they felt should be adjusted as a matter of urgency in order to replace the initial procedure by the regulatory procedure with scrutiny. The joint statement also recognises that ‘the principles of good legislation require that implementing powers be conferred on the Commission without time-limit’.

⁽¹⁾ Article 5a of the amended Decision 1999/468/EC introduces a new regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

2.4.1 The Commission has opted to align the existing instruments covered by the new procedure by proposing ‘omnibus’ regulations, each of which aligns a set of instruments, rather than adopting a separate regulation for each instrument.

2.4.2 The first three sets were adopted at the end of 2007 and the fourth was adopted on 11 February 2008 ⁽²⁾. The Commission has thus proposed retroactive amendment of all the instruments which it considered were covered by the new comitology procedure with scrutiny, so as to incorporate the new procedure and, where appropriate, remove the time limitations on the implementing powers they confer.

2.5 For its part, in a resolution of 23 September 2008 the Parliament called on the Commission to review 14 listed instruments which it considered should be subject to the new procedure with scrutiny rather than the original comitology procedure. The present opinion concerns the Commission’s proposed response to the resolution.

2.6 The Parliament also considered that ‘the procedures for implementing Council Decision 1999/468/EC were highly unsatisfactory and that, with the exception of the procedures for the new regulatory procedure with scrutiny, still are, due *inter alia* to the way in which the comitology database has operated’. It noted that ‘documents are often sent in bits and pieces and without a clear explanation of their status, and sometimes under misleading headings, e.g. draft implementing measures that have not yet been voted on in committee are sent under the heading “right to scrutiny”, when they should be sent under the heading “right to information”, which makes it unclear which deadlines apply’ ⁽³⁾.

3. The Commission proposals

3.1 The present Commission proposal is designed to adapt to the regulatory procedure with scrutiny (known by its French acronym of ‘PRAC’) two of the instruments listed by the Parliament. The Commission also explains why it does not consider that the other 12 instruments need to be aligned, citing legal reasons relating to the nature of the instruments concerned.

3.2 The instruments are listed below:

Instruments for which alignment has already been carried out or proposed

- Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 amending Council Directive 74/150/EEC ⁽⁴⁾.
- Directive 2001/43/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 92/23/EEC ⁽⁵⁾.

⁽²⁾ COM(2008) 71 final; COM(2007) 740 final; COM(2007) 741 final; COM(2007) 822 final and COM(2007) 824 final; OJ C 224 of 30.8.2008.

⁽³⁾ EP Committee on Constitutional Affairs, Rapporteur: Monica Frassoni A6-0107/2008. Proposal for a Decision, recital B.

⁽⁴⁾ OJ L 173 of 12.7.2000.

⁽⁵⁾ OJ L 211 of 4.8.2001.

- Directive 2004/3/EC of the European Parliament and of the Council of 11 February 2004 amending Council Directives 70/156/EEC and 80/1268/EEC. The Commission considers that these two directives became automatically subject to the regulatory procedure with scrutiny ⁽⁶⁾.

- Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 amending Council Directive 70/156/EEC ⁽⁷⁾.

- Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 amending Council Directive 70/156/EEC ⁽⁸⁾.

- Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC ⁽⁹⁾.

Instrument not covered by co-decision

- Council Regulation (EC) No 1083/2006 of 11 July 2006 repealing Regulation (EC) No 1260/1999 ⁽¹⁰⁾.

Instrument adopted after entry into force of the 2006 reform

- Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006. As this regulation was adopted after 23 July 2006, i.e. after the entry into force of the rules establishing the PRAC, it does not require any adaptation ⁽¹¹⁾.

Instruments containing no provisions covered by the PRAC

- Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001 amending Council Directive 95/53/EC and Council Directives 70/524/EEC, 96/25/EC and 1999/29/EC ⁽¹²⁾.

- Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EEC ⁽¹³⁾.

- Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC ⁽¹⁴⁾.

⁽⁶⁾ OJ L 49 of 19.2.2004.

⁽⁷⁾ OJ L 310 of 25.11.2005.

⁽⁸⁾ OJ L 161 of 14.6.2006.

⁽⁹⁾ OJ L 191 of 22.7.2005.

⁽¹⁰⁾ OJ L 210 of 31.7.2006.

⁽¹¹⁾ OJ L 378 of 27.12.2006.

⁽¹²⁾ OJ L 234 of 1.9.2001.

⁽¹³⁾ OJ L 315 of 19.11.2002.

⁽¹⁴⁾ OJ L 157 of 30.4.2004.

— Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 ⁽¹⁵⁾.

3.3 Lastly, the Commission acknowledges that the following instruments contain provisions which do have to be adapted to the PRAC:

— Directive 2000/15/EC of the European Parliament and of the Council of 10 April 2000 amending Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁶⁾, and

— Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 ⁽¹⁷⁾.

3.4 The purpose of the proposal is to adapt these two instruments to the regulatory procedure with scrutiny.

4. General comments

4.1 The EESC has followed with interest the introduction of a new comitology procedure: the regulatory procedure with scrutiny.

4.2 The EESC accepts the Commission's proposals, although it wonders whether there may be a need for a specific procedure in the case of amendments which, without altering the scope and purpose of the instrument concerned, extend somewhat beyond the 'non-essential' criterion and have quite a significant social, economic or health-related impact. The WEEE Regulation is a case in point.

Brussels, 16 July 2009.

The President
of the European Economic and Social Committee
Mario SEPI

4.3 The EESC considers that scrutiny makes the comitology procedure more democratic as regards monitoring the management of certain instruments that are subject to amendment, as it dispenses with more cumbersome procedures such as revision, which would involve needless work for the institutions. However, scrutiny remains difficult for Parliament to organise, because of the scheduling of its work.

4.4 The added value of the new procedure is not yet clear to the public, as the civil society organisations interested in the 'supplementary' rules introduced by the comitology procedure may find it difficult to keep track of the successive regulatory amendments to the original instrument.

4.5 The situation becomes even more complicated when regulatory amendments actually extend well beyond the 'non-essential' criterion – a concept which in some cases remains imprecise. The new rules on toxic products in waste electrical and electronic equipment are a case in point. The addition or deletion of hazardous substances from the list is to be subject to the procedure with scrutiny, but the EESC requested in its opinion ⁽¹⁸⁾ that the relevant businesses, workers and consumer organisations should be consulted when the list is amended, and that an impact study should be conducted, as in this specific instance the amendments appear 'essential'.

4.6 Subject to this remark, which may concern certain specific cases and can be applied in practice without having to amend the current rules, the EESC is able to accept the Commission's proposals.

⁽¹⁵⁾ OJ L 108 of 24.4.2002.

⁽¹⁶⁾ OJ L 105 of 3.5.2000.

⁽¹⁷⁾ OJ L 204 of 11.8.2000.

⁽¹⁸⁾ COM (2008).809 final and CESE 1032/2009 of 10.6.2009.