

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0237/2006

3.7.2006

REPORT

on the conclusion of an interinstitutional agreement taking the form of a joint statement concerning the draft for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (new regulatory procedure with scrutiny) (10126/1/2006 – C6-0208/2006 – 2006/2152(ACI))

Committee on Constitutional Affairs

Rapporteur: Richard Corbett

CONTENTS

	Page
PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION	3
EXPLANATORY STATEMENT.....	5
ANNEX: Texts forming the outcome of negotiations ('comitology package').....	10
PROCEDURE	22

PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the conclusion of an interinstitutional agreement taking the form of a joint statement concerning the draft for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (new regulatory procedure with scrutiny) (10126/1/2006 – C6-0208/2006 - 2006/2152(ACI))

(Interinstitutional agreement procedure)

The European Parliament,

- having regard to the Treaty establishing the European Community, and in particular the third indent of Article 202 thereof,
- having regard to the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹,
- having regard to the Commission proposal for a Council Decision amending Decision 1999/468/EC (COM(2002)0719)²,
- having regard to the declaration of President Prodi before the European Parliament of 5 February 2002 ("Prodi Declaration"),
- having regard to its position of 2 September 2003³,
- having regard to the amended proposal from the Commission (COM(2004)0324)⁴,
- having regard to the draft of the Council (10126/1/2006 - C6-0208/2006)⁵,
- having regard to the draft joint statement,
- having regard to Rule 120(1) of its Rules of Procedure,
- having regard to the report of the Committee on Constitutional Affairs (A6-0237/2006),

Whereas,

- A. the Council and the Commission agreed last autumn to open talks on the possibilities for carrying on the reform of comitology procedures on the basis of the Commission's amended proposal,
- B. the Conference of Presidents decided on 10 November 2005 to begin discussions with the

¹ Council Decision 1999/468/EC of 28 June 1999, OJ L 184, 17.7.1999, p. 23.

² Not yet published in OJ.

³ OJ C 76 E, 25.3.2004, p. 82.

⁴ Not yet published in OJ.

⁵ Not yet published in OJ.

Council and the Commission on the comitology procedures and gave a mandate to this end to the Chairman of the Conference of Committee Chairmen and the Rapporteur of the committee responsible which was renewed on 19 January 2006,

- C. these talks have led to a draft for a new procedure and draft statements in connection with the decision to be taken on this procedure,
 - D. the new procedure will introduce into the 1999 Decision on comitology, a new procedure, known as the 'Regulatory Procedure with Scrutiny', which will entitle the European Parliament and the Council to scrutinise 'quasi-legislative' measures implementing an instrument adopted by codecision on an equal footing and to reject such measures,
 - E. the Constitutional Treaty signed by all Heads of Government and State grants Parliament the right to revoke the delegation of powers (Article I - 36). The final compromise text for a new regulatory procedure with scrutiny does not provide for such a right for the Parliament. The right to revoke a delegation of powers will therefore remain a key demand of the European Parliament which could be achieved notably by the Constitutional Treaty,
 - F. the decision will be accompanied by a joint statement by the European Parliament, the Council and the Commission, a statement by the Commission to be recorded in the minutes of the Council and statements by the Commission concerning the implementation and application of the new procedure,
 - G. these statements reflect important points brought into the negotiations by the three institutions, without them the compromise on the new procedure would not have been achieved and its practical impact would not have been secured,
1. Approves the conclusion of the agreement taking the form of a joint statement annexed to this decision;
 2. Takes note of the statement by the Commission concerning its undertaking to take transparency measures, made in connection with the joint statement;
 3. Takes note of the statements by the Commission concerning the language regime and the starting point of the period for scrutiny and the alignment of acts in force made on the same occasion;
 4. Instructs its President to forward this decision to the Council and Commission, for information.

EXPLANATORY STATEMENT

1. Introduction

It may be recalled that the problem was created with the development in the 1960s and 1970s of a system for delegating implementing powers to the Commission whereby the latter is empowered to act in conjunction with a committee of national representatives (at the level of officials). Except where they are purely advisory, such committees could block the Commission's decision on an implementing measure and refer the matter back to the Council.

Parliament criticised the fact that only a committee, and not the Parliament, had such a right and that a blocked decision was referred back to Council alone with no parliamentary involvement.

In 1993, under a new codecision procedure, legislative powers were allocated to Parliament and Council on an (almost) equal footing. Parliament took the view that codecision acts, in which Council and Parliament can jointly delegate implementing measures, implied that they should both be involved in defining the procedures for exercising delegated powers and that they should have equal rights regarding retrieval or call-back. Council, however, argued that Article 202 of the EC-Treaty remained unchanged, providing for Council (alone) to define the system for implementing powers.

The key step forward for Parliament which is possible now as outcome of negotiations with the Council and the Commission, is that Parliament will be able to block the adoption of 'quasi-legislative' implementing measures to which it objects. If it does so, the Commission can make a new proposal or table draft legislation.

2. The road to the 'package'

What is now on the table, a compromise text for a new 'regulatory procedure with scrutiny' and a set of draft statements to accompany this text, one to be made by the three institutions jointly and one to be made by the Commission individually, is the - late - fruit of a procedure which started four years ago with a Commission proposal to amend Council's Decision of 1999 on 'comitology'.¹

On that occasion, the Commission rightly recalled that the Treaty as it stands, does not distinguish between delegation of legislative and exercise of executive powers and that it had proposed to the European Convention to amend Article 202 of the Treaty in order to establish a new system for delegating powers introducing the concept of 'delegation of legislative powers'.

It recognized at the same time that a relatively long period will elapse before any new Treaty

¹ Proposal for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, COM 719 of 11.12.2002

provisions on this come into force and that the Council's 1999 Decision on comitology needs to be amended now as it does not take account of the fact that in matters governed by the codecision procedure the legislative function is exercised by two institutions, the European Parliament and the Council.

The Commission proposed therefore a new regulatory procedure giving Parliament and the Council a right to object to draft comitology measures, though limited to 'executive measures... designed to widely implement the essential aspects of the basic instrument or adapt certain other aspects of it'.¹ This right was no longer limited to cases where the Commission had allegedly exceeded its implementing powers, as in the Parliament's 'droit de regard' under the existing regime. The proposal was presented as 'an initial reform of the current system as a temporary measure, pending the advent of a new system for delegating powers in the new Treaty...using to the maximum effect the legal scope afforded by the current Treaty, which does not allow to go further'.²

What the Commission meant by this is in essence that when 'executive competences' are conferred upon the Commission, it would have to have 'the last word', even if Parliament or Council object. This was expressed in the formula 'the Commission must either withdraw its draft ...or adopt the proposed measure, **possibly** amending its draft to take account of the objections'.³

Parliament welcomed the proposal in principle as 'an important step forward towards a possibly definitive solution of the age-old problem of comitology'⁴ but tried to get rid of the 'possibly' formula. The Commission refused to accept this request, the matter was referred back to committee and the Rapporteur Corbett following intensive talks reached important improvements of the proposal. On the question of whether the Commission could uphold its draft measures in spite of objections however, a breakthrough was at that time not possible. In an amended proposal the Commission conceded to act 'taking account of the positions' of Parliament and Council and accepted the obligation to 'inform the legislator of the action it intends to take on the latter's objections and of its reasons for doing so'.⁵ This was as the Rapporteur put it, 'not ideal, but suitable to tide us over until the new constitution comes into force'.⁶

Time passed and the Council did not progress with the Commission proposal until the introduction of clauses conferring implementing powers on the Commission became again contentious and Parliament started to introduce so called 'sunset clauses' into the texts, especially in the financial markets sector, limiting the delegation of powers in time.⁷ The UK Presidency reacted by setting up a special working party to explore 'horizontal solutions' to

¹ Article 2a letter b) of the proposed new procedure

² Page 2 of the Explanatory Memorandum

³ Article 5a (5) as proposed by the Commission; highlighting by the author

⁴ Explanatory Statement of the Rapporteur, Richard Corbett, in the report of the committee responsible, doc. A5-0128/2003 of 29 April 2003

⁵ Article 5a(5) in its version of the amended proposal, doc. COM(2004)324 of 22.4.2004

⁶ Debate in plenary on the Second report (A5-0266/2003) on 2 September 2003

⁷ Problems with comitology came up among others in the context of the following reports: Nassauer on the third money laundering directive, Cashman on the regulation ' External and internal borders: Code on the rules governing the movement of persons across borders, Doorn, Statutory audit of annual and consolidated accounts, and Radwan, capital adequacy of investment firms and credit institutions

avoid controversies in every single case. The Commission agreed not to seek ad hoc solutions in specific legislative proposals.

This situation opened the option of a genuine interinstitutional approach. Parliament decided on 10 November 2005 to begin discussions on both the political and administrative aspects of the comitology procedures and decided that exploratory talks should be conducted jointly by Mr Daul, Chairman of the Conference of Committee Chairmen, and Mr Corbett, as representative of the Committee on Constitutional Affairs.¹ This exploratory mandate was renewed on 19 January 2006. In its meeting of 23 January 2006 and in subsequent meetings the Committee on Constitutional Affairs was informed by its Rapporteur about the progress of the talks and their foreseeable outcome. Meanwhile Parliament increased pressure on the negotiations as branch of the budgetary authority by withholding funding of comitology committees.

3. The 'package'

These exceptional circumstances and means led, under the very engaged Austrian Presidency, to complex negotiations which resulted in an agreement on 2 June on the package now in front of us.

The Council asked Parliament on 13 June for an opinion on the final compromise text for a new regulatory procedure with scrutiny² which would be incorporated into the existing comitology Decision instead of the procedure proposed by the Commission originally. This text was referred to the Committee on Constitutional Affairs under Rule 55(3) of the Rules of Procedure as a reconsultation. At the same time were transmitted two draft statements for approval in connection with this compromise text, one by the European Parliament, the Council and the Commission and one by the Commission,³ together with two draft Commission declarations not included in the Council's 'package' and dealing with the language regime and the question of alignment of acts in force.

The Conference of Presidents after having heard Mr Daul and Mr Corbett, asked the Committee on Constitutional Affairs, having been reconsulted by the Council, to examine the results of the negotiations in order to submit a recommendation to the plenary.

3.1. The new regulatory procedure with scrutiny

The text of the new procedure is annexed to this report.

The procedure comprises, as proposed initially by the Commission, two separate phases, a so called executive phase, where the Commission submits its draft measures to the representatives of national authorities in the relevant committee, and a so called supervisory phase, where the draft will be submitted to Parliament and Council.

¹ Decision by the Conference of Presidents

² Letter SGS6/06990 of the Secretary General/High Representative

³ Doc. 10125/06 of 6 June 2006

The scope of the procedure is now defined as applying to cases where the basic instrument is adopted in codecision and '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...'.¹

The 'essential elements' of a legislative act remain the domain of the legislator and can only be amended through the normal legislative procedure.

This is the concept of 'executive measures' with a 'legislative substance' already mentioned in the Commission's original proposal² and now often referred to as 'quasi legislative measures', a concept which has finally been accepted by the Council.

The new procedure has to be chosen in the basic act whenever the criteria are present. These are therefore binding upon the legislator and in consequence legally enforceable.³

The main feature of the supervisory phase of the procedure is that, parting from the existing comitology procedures, Parliament and Council are in principle placed on an equal footing, with a minor difference when the committee does not agree with the measures envisaged by the Commission.⁴ This difference is not logical but not essential in practice either.

Different from the original proposal is that Parliament's and Council's possible objections have to be motivated by reference to a limited number of reasons.⁵ Their 'raison d'être' is not very clear but they are formulated so broadly that in practice they do not restrict the exercise of the right to object. Whether this is a good example of 'better law making' is a different question.

The real and almost revolutionary achievement of the new procedure is the fact that a dogma has been abandoned, the dogma whereby under the existing Treaty when 'implementing powers' are delegated to the Commission, they have to be exercised by it without 'interference' by the legislator and that Article 202 of the Treaty does not allow to go further.⁶

The new procedure is a good example of developing the institutional system without Treaty change in order to improve the governance of the Union. It will, wisely applied, be in the interest of all three institutions and enhance the democratic character of decision making.

3.2. The accompanying statements

The text of the draft statements is equally annexed to this report.

¹ Article 2(2) new

² Page three of the Explanatory Memorandum

³ 'shall be adopted in accordance with' in Article 2(2) new instead of 'should be adopted by use of' in the existing Article 2

⁴ Article 5a(4) (b) and (d)

⁵ Article 5a(3) (b) and (4) (e)

⁶ See the Commission's earlier position quoted in footnote 3 above.

They do not need to be commented but reflect rather important points brought into the negotiations: The interest of the Council to see sunset clauses to be used in the future only exceptionally (point 3.) and the interest of Parliament to see existing law adjusted (points 4. and 5.).

On the former point, it is true that the existence of the new procedure gives Parliament sufficient guarantees that it can control the use of delegated powers, so that it will no longer need to have recourse to sunset clauses on the delegation itself. However, it would be wrong to rule out entirely the right that the legislator undoubtedly has under the treaties to put a time limit, if circumstances arise in which it would be appropriate.

On the latter point, a priority list of 25 items of existing legislation has been agreed upon. The Commission will then screen all other legislation and bring forward proposals to adapt it, by the end of 2007.

The declarations of the Commission are essential to improve the flow of information especially in the field of financial services legislation. They make it also clear that the 'Lamfalussy acquis' with regard to special information rights in the field of the financial services remains in place.

The additional declarations by the Commission are of great relevance for the time available for Parliament and Council in order to exercise their right of scrutiny. The Commission commits itself further to examine all acts in force adopted under codecision with a view to adapt them to the new procedure and make appropriate proposals before the end of 2007. However, there is no commitment to that timetable by the Council.

Without these statements the new procedure would not have been achieved and its practical impact would not have been secured. They are essential elements of the package which your Rapporteur recommends to approve as a whole.



ANNEX: Texts forming the outcome of negotiations ('comitology package')

**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 9 June 2006 (13.06)
(OR. fr)**

**Interinstitutional File:
2002/0298 (CNS)**

**10126/1/06
REV 1**

LIMITE

**INST 89
JUR 243**

NOTE

-
- | | |
|--------------|--|
| 1) from : | 2) Presidency |
| 3) to : | 4) Friends of the Presidency Group (Committee Procedure) |
| 5) Subject : | 6) Amended proposal for a Council Decision of amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission |
-

Delegations will find attached a draft of the final compromise text for a new procedure resulting from the meeting of the Permanent Representatives Committee on 8 June 2006.

Council Decision of ...
amending the Council Decision of 28 June 1999 laying down the procedures for the exercise of
implementing powers conferred on the Commission ¹

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular the third indent
of Article 202 thereof,
Having regard to the proposal from the Commission ²,
Having regard to the Opinion of the European Parliament ³,

Whereas:

- (1) The Council adopted Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission; that Decision has provided for a limited number of procedures for the exercise of such powers.
- (2) That Decision should be amended to introduce a new type of procedure for the exercise of those powers, the regulatory procedure with scrutiny, which allows the legislator to oppose the adoption of draft measures where it indicates that the draft exceeds the implementing powers provided for in the basic instrument, or that it is incompatible with the aim or the content of that instrument or fails to respect the principles of subsidiarity or proportionality.
- (3) It is necessary to follow the 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 TEC, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.
- (4) In this same framework, it should be ensured that the European Parliament receives better information on the work of committees,

¹ OJ L 184, 17.7.1999, p. 23.

² OJ L ...

³ OJ L ...

HAS DECIDED AS FOLLOWS:

Article 1

The Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission is hereby amended as follows:

- (1) In the preamble, at the end of recital 5, the words 'with the exception of the regulatory procedure with scrutiny' shall be added.
- (2) In the preamble, after recital 7, a new recital (7a) shall be added, to read as follows:

'(7a) The regulatory procedure with scrutiny should be followed as regards 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 TEC, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements; this procedure should enable the two arms of the legislative authority to scrutinise such measures before they are adopted. The essential elements of a legislative act may only be amended by the legislator on the basis of the Treaty.'

- (3) Recital 10 shall be replaced by the following recital:

'(10) The third purpose of this Decision is to improve information to the European Parliament by providing that the Commission should inform it on a regular basis of committee proceedings, that the Commission should transmit to it documents related to activities of committees and inform it whenever the Commission transmits to the Council measures or proposals for measures to be taken; particular attention will be paid to the provision of information to the European Parliament on the proceedings of committees in the framework of the regulatory procedure with scrutiny, so as to ensure that the European Parliament takes a decision within the stipulated deadline.'

- (4) In Article 1, '5a' shall be added between '5' and '6' on the last line.

- (5) In Article 2:

- (i) the words '1. Without prejudice to paragraph 2' shall be added at the beginning of the first paragraph;
- (ii) a paragraph 2 shall be added as follows:
'2. Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 TEC, 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 shall be adopted in accordance with the regulatory procedure with scrutiny.'

- (6) In Article 4(2) and Article 5(2), 'and (4)' shall be added after 'Article 205(2)'

- (7) After Article 5, a new Article 5a shall be added, to read:

'Article 5a

Regulatory procedure with scrutiny

1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:
 - (a) The Commission shall without delay submit the draft measures for scrutiny by the Council and the European Parliament.
 - (b) 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 draft by the Commission, on the grounds that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality.
 - (c) 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.
 - (d) 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.
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 shall apply:
 - (a) 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.
 - (b) The Council shall act on the proposal by a qualified majority within two months from the date of referral to it.
 - (c) 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.

- (d) 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.
 - (e) The European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal in accordance with (a), may oppose the adoption of the measures in question, on the grounds that the proposed measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality.
 - (f) 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.
 - (g) 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.
5. By way of derogation from paragraphs 3 and 4, a basic instrument may in duly substantiated exceptional cases provide:
- (a) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) of this Article shall be extended by an additional month, when justified by the complexity of the measures; or
 - (b) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) of this Article shall be curtailed where justified on the grounds of efficiency.
6. A basic instrument may provide that if, on imperative grounds of urgency, the time-limits for the regulatory procedure with scrutiny referred to in paragraphs 3, 4 and 5 cannot be complied with, the following procedure shall apply:
- (a) If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the Commission shall adopt the measures, which shall immediately be implemented. The Commission shall without delay communicate them to the European Parliament and to the Council.
 - (b) Within a time-limit of one month after that communication, the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the measures adopted by the Commission, on the grounds that the measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality.
 - (c) In the event of opposition by the European Parliament or the Council, the Commission shall repeal the measures. It may however provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. In that event, it shall without delay submit to the Committee an amended draft of the measures or a legislative proposal on the basis of the Treaty. The provisional measures shall remain in force until they are replaced by a definitive instrument.'
- (8) At the end of the first sentence of Article 7(3), the following shall be added:

'following arrangements which ensure that the transmission system is transparent and that the

information forwarded and the various stages of the procedure are identified'.

Article 2

This Decision shall take effect on the day following that of its publication in the Official Journal of the European Communities.

Done at,

=====

**Statement to be adopted at a forthcoming triologue between
the European Parliament, the Council and the Commission**

1. The European Parliament, the Council and the Commission welcome the forthcoming adoption of the Council Decision amending the Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹. The inclusion in the 1999 Decision of a new procedure, known as the 'regulatory procedure with scrutiny', will enable the legislator to scrutinise the adoption of 'quasi-legislative' measures implementing an instrument adopted by codecision.
2. The European Parliament, the Council and the Commission emphasise that, in the context of the existing Treaty, this Decision provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the codecision procedure.
3. Without prejudice to the rights of the legislative authorities, the European Parliament and the Council recognise that the principles of good legislation require that implementing powers be conferred on the Commission without time-limit. However, where an adaptation is necessary within a specified period, 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.
4. This new procedure will apply following its entry into force to the quasi-legislative measures provided for in instruments adopted in accordance with the codecision procedure, including those provided for in instruments to be adopted in future in the financial services field (Lamfalussy instruments). However, for it to be applicable to instruments adopted by codecision 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.
5. The European Parliament, the Council and the Commission consider that the following instruments should be adjusted as a matter of urgency:
 - (a) Regulation of the European Parliament and of the Council on nutrition and health claims made on foods (not yet published in the Official Journal)
 - (b) Directive of the European Parliament and of the Council re-casting Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (not yet published in the Official Journal)
 - (c) Directive of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (not yet

¹ OJ L 184, 17.7.1999, p. 23.

published in the Official Journal)

- (d) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87)
- (e) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1)
- (f) Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15)
- (g) Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council (OJ L 191, 22.7.2005, p. 29)
- (h) Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (OJ L 79, 24.3.2005, p. 9)
- (i) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1)
- (j) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38)
- (k) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1)
- (l) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64)
- (m) Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1)
- (n) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10)

- (o) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16)
- (p) Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) (OJ L 37, 13.2.2003, p. 24)
- (q) Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 37, 13.2.2003, p. 19)
- (r) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1)
- (s) Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1)
- (t) Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses (OJ L 41, 13.2.2002, p. 20)
- (u) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67)
- (v) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1)
- (w) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1)
- (x) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles (OJ L 269, 21.10.2000, p. 34)
- (y) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

To this end, the Commission has indicated that it will shortly submit proposals to the European Parliament and the Council for the amendment of the instruments referred to above, so as to introduce the regulatory procedure with scrutiny and consequently repeal any provisions of these instruments that provide for a time-limit on the delegation of implementing powers to the Commission. The European Parliament and the Council will ensure that the proposals are adopted as rapidly as possible.

6. In accordance with the Interinstitutional Agreement on better law-making

(OJ 2003 C 321/01), the European Parliament, the Council and the Commission draw attention to the important role played by implementing measures in legislation. In addition, they consider that the general principles of the Interinstitutional Agreement on common guidelines for the quality of drafting of Community legislation (OJ 1999/C 73/01) should apply in any event to measures of general scope adopted under the new regulatory procedure with scrutiny.

Statements to be included in the Council minutesA. Commission statement (pursuant to Article 7(3))

With a view to giving full effect to Article 7(3) of the Council Decision amending Decision 1999/468/EC, the Commission undertakes to adopt transparency measures to ensure that the European Parliament is simultaneously informed of draft implementing measures submitted to the committees. By improving the registry's functional specifications, the Commission should enable the European Parliament fully to exercise its powers of scrutiny, in particular through:

- clearer identification of the various documents relating to the same procedure
- indication of the stage in the procedure and the time frame
- a clear distinction between the draft measures received by Parliament at the same time as the committee members under the right of information and the final draft following consultation of the committee which is forwarded to the European Parliament.

In respect of financial services, the Commission will, as it has undertaken, ensure that Parliament is regularly informed of the work of the committees. The Commission undertakes:

1. to ensure that the Commission official chairing meetings of the committees informs Parliament, at its request and following each meeting, of discussions relating to the draft implementing measures submitted to the committees.
2. to answer, orally or in writing, any questions relating to discussions on the draft implementing measures submitted to the committees.
3. to confirm, for this purpose, the undertakings referred to in points 1 to 7 of the letter of 2 October 2001 from Commissioner Bolkestein to the Chairman of the Committee on Economic and Monetary Affairs.

Commission declarations (not included in the Council's package)

Language regime

The Commission will endeavour to make its proposals available under the regulatory procedure with scrutiny in all official languages in the shortest time possible. In any event, for the Commission, the period foreseen under Article 5a paragraphs 3c) and 4e) will start only once the legislator has received the last language version.

Alignment

The Commission commits to proceed to an examination of all acts in force adopted under codecision with a view to adapt them, if necessary, to the new regulatory procedure with scrutiny. The Commission will make the appropriate proposals, in the framework of its right of initiative, as soon as possible and, in any case, before the end of 2007.

PROCEDURE

Title	Conclusion of an interinstitutional agreement taking the form of a joint statement concerning the draft for a Council Decision amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission (new regulatory procedure with scrutiny)
Procedure number	20126/1/2006 - C6-0208/2006 - 2006/2152(ACI)
Committee responsible Date announced in plenary	AFCO 3.7.2006
Rapporteur(s) Date appointed	Richard Corbett 22.2.2006
Previous rapporteur(s)	
Discussed in committee	22.6.2006 3.7.2006
Date adopted	3.7.2006
Result of final vote	+ 10 - 0 0 1
Members present for the final vote	Jens-Peter Bonde, Richard Corbett, Panayiotis Demetriou, Bronisław Geremek, Ignasi Guardans Cambó, Jo Leinen, Íñigo Méndez de Vigo, Marie-Line Reynaud, Johannes Voggenhuber
Substitute(s) present for the final vote	Jules Maaten, Alexander Radwan
Substitute(s) under Rule 178(2) present for the final vote	
Date tabled	3.7.2006
Comments (available in one language only)	