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DRAFT REPORT

on the conclusion of an Interinstitutional Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC
(C6-0009/2008 - 2008/2002(ACI))

Committee on Constitutional Affairs

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PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

on the conclusion of an interinstitutional agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC (C6-0009/2008 - 2008/2002(ACI))

The European Parliament,

- having regard to Article 202 of the EC Treaty,
 - having regard to Council Decision 2006/512/EC of 17 July 2006 amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission¹,
 - having regard to the draft agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC (hereinafter referred to as "the Agreement"),
 - having regard to Rules 81 and 120(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs (A6-0000/2008),
- A. whereas certain provisions of the Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EEC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission² have unfortunately been disregarded by the Commission, for example the provision that Parliament is to receive, at the same time as the members of the committee and on the same terms, the various comitology documents, insofar as these documents are almost always sent to Parliament too late and, in any case, not at the same time as to the members of the committee,
- B. whereas the procedures for implementing Council Decision 1999/468/EEC were highly unsatisfactory and, with the exception of the procedures for the new regulatory procedure with scrutiny, still are, among other reasons, due to the way in which the comitology database has operated; 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 upon 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,
- C. whereas this problem, in practice, reduces Parliament's already very limited control over

¹ OJ L 200, 22.7.2006, p. 11.

² JO C 339, 29.11.2000, p. 269

comitology matters even further,

- D. whereas the Commission has now undertaken to establish an electronic register containing all documents forwarded to Parliament, to which Parliament shall have direct access, which will enable a clear identification of the documents covered by the same procedure, an indication of the stage of the procedure and the timetable, a clear distinction between the draft measures received by Parliament and the final draft following the committee's opinion and a clear identification of any modification in comparison to documents already forwarded to Parliament,
- E. whereas the Agreement is of great practical significance not only in relation to the new regulatory procedure with scrutiny, but for all comitology procedures,
1. Emphasises that, when applicable, reference to the regulatory procedure with scrutiny is obligatory for all three institutions and is not subject to bargaining or negotiation; calls on the Commission, the Council and all parliamentary committees to take this circumstance duly into account in all relevant legislative procedures;
 2. Recalls that the regulatory procedure with scrutiny is to be applied in relation to all measures of general scope which seek 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;
 3. Calls on Commission and Council, in the case of grey areas, where it may be unclear whether the new regulatory procedure with scrutiny, or another comitology procedure, is to apply, to apply the new regulatory procedure with scrutiny;
 4. Stresses that the sole purpose of the new regulatory procedure with scrutiny is to strengthen Parliament's right of control, and that it in no way changes the scope of implementing powers that can be conferred on the Commission;
 5. Is of the opinion that the Agreement represents a step in the right direction as far as its rights and powers with regard to delegated legislation are concerned;
 6. Welcomes the fact that the Agreement defines more precisely the obligation of the Commission to inform Parliament under Article 7(3) of Decision 1999/468/EC by stipulating that Parliament is to be informed of the proceedings of the committees following arrangements which ensure that the transmission system is transparent and efficient and that the information forwarded and the various stages of the procedure are identified;
 7. Expects that the Commission will fully adhere to all provisions in the revised Agreement, which is unfortunately not the case with the current one;
 8. Calls for a consistently high standard of summary records, with attendance lists that indicate, at a minimum, the name of the people that attended, their affiliation and their email-addresses;

9. Points out that effective operation of the new register will be the decisive element with regard to full and satisfactory implementation of the new Agreement and, therefore, eagerly awaits its being put into practice;
10. Expressly welcomes the new provisions under which the register shall clearly identify the status of all comitology documents received, any possible link with other documents already forwarded and any changes that have been made;
11. Calls on the Commission in this context to change its internal procedures in order to ensure that a distinction is made between, on the one hand, draft measures which must be sent to Parliament under its right to information at the same time as to the relevant committee and, on the other hand, draft measures which must be sent to Parliament under its right of scrutiny;
12. Welcomes the introduction of an “early warning system” whereby Parliament is informed as soon as becomes apparent that urgent draft implementing measures are going to be submitted to a committee, but insists that this must not be used to turn non-urgent matters into urgent ones, as curtailed time-limits may only apply in duly substantiated, exceptional cases;
13. Calls on the Commission, also, to take into account elections to the European Parliament in relation to the transmission of documents; 14. Points out that, in order to exercise its right of scrutiny on the basis of adequate information, Parliament needs to be regularly provided with all the background documentation explaining why the Commission is proposing certain measures; welcomes the Commission's readiness to assist Parliament in order to ensure full cooperation when dealing with specific implementing measures and calls, therefore, on the Commission to submit to Parliament, upon request, any background document that relates to the draft implementing measure;
15. Does not share the Commission's view that draft implementing measures submitted to it are not to be made public until the vote in the committee, and insists on its right to consult whomsoever it may wish in relation to any draft measures; calls on the Commission to reconsider its view and to make all draft implementing measures public as soon as they are formally proposed;
16. Approves conclusion of the Agreement and looks forward to its full implementation without delay after its approval;
17. Decides to annex the Agreement to its Rules of Procedure, replacing Annex XII thereof;
18. Instructs its President to forward this Decision and its annex, for information, to the Council, the Commission, and the parliaments of the Member States.

EUROPEAN PARLIAMENT COMMISSION

AGREEMENT BETWEEN THE EUROPEAN PARLIAMENT AND THE COMMISSION

on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC

Information to the European Parliament

1. Pursuant to Article 7(3) of Decision 1999/468/EC¹, the European Parliament is to be informed by the Commission on a regular basis of proceedings of committees² in accordance with arrangements which ensure that the transmission system is transparent and efficient and that the information forwarded and the various stages of the procedure are identified. To that end, it is to receive, at the same time as the members of the committees and on the same terms, the draft agendas for committee meetings, the draft implementing measures submitted to those committees pursuant to basic instruments adopted in accordance with the procedure provided for by Article 251 of the Treaty, the results of voting, summary records of the meetings and lists of the authorities to which the persons designated by the Member States to represent them belong.

Register

2. The Commission will establish a register containing all documents forwarded to the European Parliament³. The European Parliament will have direct access to this register. In accordance with Article 7(5) of Decision 1999/468/EC, references of all documents transmitted to the European Parliament will be made public.

¹ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

² Throughout this Agreement, the word "committee" shall be taken to refer to committees established in accordance with Decision 1999/468/EC, except where it is specified that another committee is referred to.

³ The target date for the establishment of the register is 31 March 2008.

3. In accordance with the undertakings given by the Commission in its statement on Article 7(3) of Decision 1999/468/EC¹, and once the appropriate technical arrangements have been made, the register provided for in paragraph 2 will enable, in particular:

- a clear identification of the documents covered by the same procedure and of any changes to the implementing measure at each stage of the procedure;
- an indication of the stage of the procedure and the timetable;
- a clear distinction between the draft measures received by the European Parliament at the same time as the committee members in accordance with the right to information and the final draft following the committee's opinion that is forwarded to the European Parliament;
- a clear identification of any modification in comparison to documents already forwarded to the European Parliament.

4. When, after a transitional period starting from the entry into force of this Agreement, the European Parliament and the Commission conclude that the system is operational and satisfactory, the transmission of documents to the European Parliament shall be made by electronic notification with a link to the register provided for in paragraph 2. This decision shall be taken through an exchange of letters between the presidents of both institutions. During the transitional period, the documents will be forwarded to the European Parliament as an attachment to an electronic mail.

5. Furthermore, the Commission agrees to forward to the European Parliament, for information and at the request of the parliamentary committee responsible, specific draft measures implementing basic instruments which, although not adopted in accordance with the procedure provided for by Article 251 of the Treaty, are of particular importance to the European Parliament. These measures shall be entered in the register provided for in paragraph 2 with a notification thereof to the European Parliament.

6. In addition to the summary records referred to in paragraph 1, the European Parliament may request access to minutes of committee meetings². The Commission will examine each request, on a case by case basis, under the confidentiality rules set out in Annex 1 to the Framework Agreement on relations between the European Parliament and the Commission³.

Confidential documents

7. Confidential documents will be processed in accordance with internal administrative procedures drawn up by each institution with a view to providing all the requisite guarantees.

¹ OJ C 171, 22.7.2006, p. 21.

² See the judgment of the Court of First Instance of the European Communities of 19 July 1999 in Case T-188/97 *Rothmans v Commission* [1999] ECR II-2463.

³ OJ C 121, 24.4.2001, p. 122.

European Parliament resolutions under Article 8 of Decision 1999/468/EC

8. Pursuant to Article 8 of Decision 1999/468/EC, the European Parliament may indicate, in a resolution setting out the grounds on which it is based, that draft measures implementing a basic instrument adopted in accordance with the procedure provided for by Article 251 of the Treaty would exceed the implementing powers provided for in that basic instrument.

9. The European Parliament is to adopt such resolutions in accordance with its Rules of Procedure; it is to have a period of one month in which to do so, beginning on the date of receipt of the final draft of the implementing measures in the language versions submitted to the members of the committee concerned.

10. The European Parliament and the Commission agree that it is appropriate to establish a shorter time limit on a permanent basis for some types of urgent implementing measures on which a decision must be taken within a shorter period of time in the interests of sound management. This applies in particular to some types of measure relating to external action, including humanitarian and emergency aid, to health and safety protection, to transport security and safety and to exemptions from public procurement rules. An agreement between the Member of the Commission and the Chair of the parliamentary committee responsible will lay down the types of measure concerned and the applicable time limits. Such an agreement may be revoked at any time by either side.

11. Without prejudice to the cases referred to in paragraph 10, the time limit will be shorter in urgent cases and in the case of measures relating to day-to-day administrative matters and/or having a limited period of validity. That time limit may be very short in extremely urgent cases, in particular on public health grounds. The Member of the Commission responsible is to set the appropriate time limit and to state the reason for that time limit. The European Parliament may in such cases use a procedure whereby application of Article 8 of Decision 1999/468/EC is delegated to the parliamentary committee responsible, which may send a response to the Commission within the relevant time limit.

12. As soon as the Commission's services foresee that draft measures covered by paragraphs 10 and 11 might have to be submitted to a committee, they will informally warn the secretariat of the parliamentary committee or committees responsible thereof. As soon as initial draft measures have been submitted to the members of the committee, the Commission's services will notify the secretariat of the parliamentary committee or committees of their urgency and of the time limits that will apply once the final draft has been submitted.

13. Following the adoption by the European Parliament of a resolution as referred to in paragraph 8 or a response as referred to in paragraph 11, the Member of the Commission responsible is to inform the European Parliament or, where appropriate, the parliamentary committee responsible of the action the Commission intends to take thereon.

14. Data pursuant to paragraphs 10 to 13 will be entered in the register.

Regulatory procedure with scrutiny

15. Where the regulatory procedure with scrutiny applies, and following the vote in the committee, the Commission will inform the European Parliament of the applicable time limits. Subject to paragraph 16, these time limits will start to run only once the European Parliament has received all language versions.

16. Where shorter time limits apply (Article 5a(5)(b) of Decision 1999/468/EC) and in cases of urgency (Article 5a(6) of Decision 1999/468/EC), the time limits shall start to run from the date of receipt by the European Parliament of the final draft implementing measures in the language versions submitted to the members of the committee, unless the Chair of the parliamentary committee objects. In any event, the Commission will endeavour to forward all language versions to the European Parliament as soon as possible. As soon as the Commission's services foresee that draft measures covered by Article 5a(5)(b) or (6) might have to be submitted to a committee, they will informally warn the secretariat of the parliamentary committee or committees responsible thereof.

Financial services

17. In accordance with its statement on Article 7(3) of Decision 1999/468/EC, in respect of financial services the Commission undertakes to:

- ensure that the Commission official chairing a committee meeting informs the European Parliament, at its request, after each meeting, of any discussions concerning draft implementing measures that have been submitted to that committee;
- give an oral or written reply to any questions regarding discussions concerning draft implementing measures submitted to a committee.

Finally, the Commission will ensure that the undertakings made at Parliament's plenary sitting of 5 February 2002¹ and restated at its plenary sitting of 31 March 2004² and those referred to in points 1 to 7 of the letter of 2 October 2001³ from Commissioner Bolkestein to the Chairman of the European Parliament's Committee on Economic and Monetary Affairs are honoured in respect of the entire financial services sector (including securities, banks, insurance, pensions and accounting).

Calendar of parliamentary work

18. Except where shorter time limits apply or in cases of urgency, the Commission will take into account the European Parliament's periods of recess when transmitting documents under this Agreement, in the following manner:

¹ OJ C 284 E, 21.11.2002, p. 19.

² OJ C 103 E, 29.4.2004, p. 446 and Verbatim Report of Proceedings (CRE) for Parliament's plenary sitting of 31 March 2004, under 'Vote'.

³ OJ C 284 E, 21.11.2002, p. 83.

-European Parliament's summer recess: the time limits normally applicable shall be suspended from the first day of the second part-session in June until one month before the last day of the second part-session in September, for documents transmitted during this period;

- European Parliament's winter recess: the time limits normally applicable shall be suspended from the first day of the second part-session in November until one month before the last day of the first part-session in February, for documents transmitted during this period.

Cooperation between the European Parliament and the Commission

19. The two institutions express their readiness to assist each other in order to ensure full cooperation when dealing with specific implementing measures. To this effect, appropriate contacts at administrative level will be established.

Preceding agreements

20. The 2000 Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC¹ is hereby replaced. The European Parliament and the Commission consider the following agreements superseded and thus of no effect in so far as they are concerned: the 1988 Plumb/Delors Agreement, the 1996 Samland/Williamson Agreement and the 1994 *modus vivendi*².

¹ OJ L 256, 10.10.2000, p. 19.

² OJ C 102, 4.4.1996, p. 1.