



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.2002
COM(2002) 719 final

2002/0298 (CNS)

Proposal for a

COUNCIL DECISION

**amending Decision 1999/468/EC laying down the procedures for the exercise of
implementing powers conferred on the Commission**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The reasons for and purpose of the reform

- *The law in force*

At present, Article 202 of the EC Treaty provides that responsibility for implementing European legislation lies, in principle, with the Commission, where such implementation is necessary at Union level and where it is hence not in the hands of the Member States. However, the Treaty entitles also the Council to reserve the right to exercise its implementing powers directly in specific and exceptional cases. This exception is however not compatible with the fact that the legislative function is exercised by two institutions, the European Parliament and the Council, in matters governed by the codecision procedure under Article 251 of the Treaty, since the Council is present not only as delegating institution but also as the one that can exercise the delegated competence. Besides, the Treaty does not distinguish between delegation of legislative and exercise of executive power.

- *Commission's contribution to the Convention¹*

It is for these reasons that the Commission proposed, in its communication to the Convention, to amend the Article 202 of the Treaty in order to establish a new system for delegating powers which more closely reflect the legal and political realities of the situation and the requirements for running an enlarged Union. This amendment aims, on one hand, at doing away with the Council's executive powers and, on the other hand, at introducing in the Treaty the concept of delegation of legislative powers. This delegation will be exercised within the limits and the conditions foreseen in the basic act. Therefore, the Commission has explicitly suggested that the Council and the European Parliament should, in the framework of delegation of legislative powers, have the possibility to oppose a text proposed by the Commission (call back). The latter should then either renounce to its text or modify it or present a legislative proposal.

- *The present reform*

However, given the relatively long period which will elapse before the new Treaty comes into force, Council Decision 1999/468 on "comitology" needs to be amended now as it does not take account of the European Parliament's position as a co-legislator. Clearly, revision of the "comitology" decision without amending the Treaty cannot go as far as a more thoroughgoing reform conducted in the process of amending the Treaty, since the present Treaty allows to confer to the Commission only executive competences. The Commission therefore proposes to undertake 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. This should contribute to clarifying the exercise of executive functions and placing on an equal footing the European Parliament and the Council as supervisors of the Commission's exercise of the implementing powers conferred on it, and using to the maximum effect the legal scope afforded by the current Treaty, which does not allow to go further.

The review should incorporate the general ideas on enhancing transparency, efficiency and responsibility in EU action set out in the White Paper on European governance, one of which was the proposal to refocus the institutions on their key tasks.

¹ Cf. doc. COM(2002)728 final.

The White Paper suggests that the European Parliament and the Council concentrate more on the direction and substance of Community policies with the Commission assuming prime responsibility for executive tasks at European level under the supervision of the legislature. To put it more precisely, a simple legal mechanism should be available so that the European Parliament and the Council can monitor and oversee policy in the light of the principles and political guidelines set out in the legislation. This means that the legal mechanism by which the Commission adopts implementing measures also needs to be reviewed on the basis of a report to be prepared by the Commission, at the latest one year following the entry into force of the present Decision.

As Mr Prodi explained to the European Parliament in November 2001 during the debate on the White Paper, it was with this in mind that the Commission, in its Communication “Better lawmaking” of 5 June 2002, announced its intention to present proposals to adapt the comitology system without amending the Treaty, with a view to placing the two branches of the legislature on an equal footing as supervisors, at least of matters subject to codecision, and clarifying the exercise of executive responsibilities.

Reviewing comitology has become a more pressing matter in the areas where the European Parliament is a co-legislator under Article 251, since, in these areas, its part in the procedure is restricted to exercising a “right to scrutiny” of the legitimacy of the executive instrument, which is incompatible with its role as a co-legislator. What is more, it is in the procedure under Article 251 that the “Community method” is applied to the full, which is why it is logical to start reviewing the arrangements for exercising executive powers here. The current review of “comitology” is hence restricted to the scope of that procedure, pending reform of Article 202 which might be proposed by the Convention on the future of the Union and which would pave the way to a wider review.

The procedures followed for the adoption of executive measures in the field of competition will not be affected by the present decision.

Varying degrees of supervision by the legislature

The need for supervision by the legislature arises mainly when executive measures to be adopted by the Commission have a legislative substance, implementing essential aspects of basic instruments or adapting others, such as when directives are brought into line with scientific and technical progress or their annexes are amended. In such cases the legislature needs to be able to supervise the exercise of the powers conferred. This is in keeping with the approach set out by the Commission in its proposals of 5 June 2002 (cf. COM (2002) 275 final) on better lawmaking. These proposals mainly recommend reverting to the original definition of the directives as laid down in the Treaty, since these should be restricted to the essential aspects involving a political decision and ensuring that technicalities or details are a matter for executive measures. The Commission should, in turn, be able to retain full responsibility for instruments it is to adopt conferring executive powers, enabling procedural arrangements to be adopted or individual decisions to be taken.

The debate on this matter should also take account of other aspects, especially the fact that in the institutional system established by the current Treaty, the European Parliament does not have an executive role and that the national authorities must have a say in the process of executive decision-making at Community level, since they can provide invaluable expertise and facilitate subsequent implementation of executive measures at national level.

The procedures proposed for executive measures in respect of acts adopted according to the procedure under Article 251

With regard to the above, the “comitology” Decision could be adapted for basic instruments adopted under the Article 251 procedure along the following lines:

1. The regulatory committee procedure (Article 5 of Decision 1999/468/EC) could be changed to apply when executive measures of a general scope concerning the substance of the matter in question are to be adopted
2. The advisory committee procedure (Article 3 of Decision 1999/468/EC) could be maintained and, following the changes to the regulatory procedure, extended to certain administrative measures, for which other procedures are currently used (such as adoption of executive measures for financial aid programmes).

The problems with the current regulatory committee procedure

The proposal for amending the regulatory committee procedure is justified in the light of the problems this procedure poses at present:

- above all, the imbalance between the two legislative arms in respect of executive acts relating to basic instruments adopted under the codecision procedure. The European Parliament's part in the procedure is restricted to a control of legitimacy, whereas the Council can alter the substance of the instrument; this is compounded by
- the absence of a clear distinction between the execution phase proper and the supervisory phase, contrary to the above-mentioned guidelines of the White Paper;
- the risk of an impasse when adopting the measures in question in cases where the Council cannot put together a qualified majority, strong opposition to the Commission's proposal emerges and the European Parliament has no say in the outcome.

A new regulatory procedure for executive measures in respect of acts adopted by the procedure under Article 251

Any change in procedure must obviously solve the problems and take account of the other aspects pointed out above and, at the same time, comply with the key criteria of the White Paper on governance and the action plan on “Better lawmaking”: simplicity, efficiency, transparency and responsibility.

A procedure comprising two separate phases should be proposed.

In the initial phase (executive phase), the Commission will be responsible for drawing up executive measures and submitting them to the representatives of national authorities in the committee. The committee must give its opinion on the draft within a period of time laid down by its Chairman and can influence the substance of the measure by delivering an unfavourable opinion by a qualified majority (or, even in the absence of an opinion, through the opinions expressed by the various national delegations). If an unfavourable or no opinion is delivered, provision is made for a further period of one month to find a solution for which a qualified majority can be obtained. Ultimately, however, it is the Commission that is responsible for the substance of the draft. At the end of this phase, the Commission proposes a final draft, which may be amended to reflect the committee's opinion.

In the second phase (supervisory phase), the draft will be submitted to the European Parliament and the Council to enable them to exercise their right of political supervision. If either of the two institutions raises any objections — by an absolute majority of Members of Parliament and a qualified majority in the Council — within a period of one month (which may be extended by another month), the Commission has two options: either to enact the proposed measure, possibly with amendments to reflect the objections expressed, or to present a legislative proposal to be submitted to the codecision procedure. Of course, if no objections are raised within the time limit, the Commission will finally adopt the act as drafted.

A diagram of the procedure is given in the annex.

The new procedure seems to meet the requirements indicated above; in particular:

- Each institution will concentrate on its own tasks without any more confusion between the legislative and executive functions.
- The new procedure is simpler and more comprehensible than the present one. Each institution assumes clear and transparent responsibilities vis-à-vis the citizens and the national authorities' invaluable expertise is available in the executive phase. The Commission's central role and the latitude it will enjoy in dealing with objections raised by the legislature, in particular, will enable it to assume responsibility for the measures it adopts.
- The European Parliament and the Council are strictly equal partners in overseeing the way in which the Commission discharges the executive responsibilities conferred upon it by legislative instruments adopted under the codecision procedure. In particular, the two arms of the legislature will have a say on the substance of the draft and, in certain cases, will be able to raise politically sensitive questions which might affect the balance of the basic legislative instrument, with the result that an executive measure would have to give way to a legislative proposal.
- There will no longer be any risk of an impasse, because there will be a choice between adopting the executive measure and presenting a legislative proposal.

This approach will, of course, have to be combined with an appropriate solution for adopting executive measures in an urgent procedure where this is necessary to ensure that the basic instrument is applied properly.

Proposal for a

COUNCIL DECISION

amending Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission

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 Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) In accordance with Article 202 of the Treaty, responsibility for implementing rules laid down by the Council, possibly together with the European Parliament, lies, in principle, with the Commission. The Commission exercises its powers in accordance with the procedures established by the Council under Article 202 and in compliance with the arrangements made for this purpose in the legislative instruments adopted under the Treaty.
- (2) Current developments in Community legislation show that it is increasingly common for legislative instruments to require additional measures to be adopted, whose technical principles and details must be established on the basis of sound analysis and expert opinion within suitable periods of time. Whenever this prompts the legislature to delegate wider powers to the Commission, it must have a say in the measures which the Commission plans to adopt.
- (3) The procedures laid down in Decision 1999/468/EC do not provide a satisfactory means of dealing with this situation. Scrutiny by the European Parliament under Article 8 of Decision 1999/468/EC to determine whether the implementing powers are excessive has not proved effective enough and the authority that the Council can exercise may lead to confusion between executive and legislative powers or to an impasse in the decision-making process. The procedures laid down in Decision 1999/468/EC may also lead to the Commission having to adopt an instrument without an opinion from the Committee or reactions from the legislature.
- (4) Decision 1999/468/EC must therefore be amended to enhance the effectiveness of the decision-making process by clarifying the responsibilities and procedures.

² OJ C [...] of [...], p. [...].

³ OJ C [...] of [...], p. [...].

- (5) The European Parliament and the Council must, as co-legislators, have an effective means of supervising the exercise of executive powers with a genuine normative scope which substantially change the existing legal situation. To this end, the regulatory procedure must be applied to general measures intended to implement essential aspects or adapt certain other aspects of the basic instruments adopted under the procedure of Article 251 of the Treaty.
- (6) In these cases, the regulatory procedure must allow the Commission to assume full responsibility for adopting executive measures, after having solicited the opinion of the Committee of Representatives of the Member States, whilst enabling the European Parliament and the Council to oversee the executive role. This means that, in the event of a disagreement between the Commission and the legislature, the Commission must be able, depending on the case, to either present a proposal under Article 251 of the Treaty or adopt its draft of initial measures, possibly with amendments.
- (7) If the deadlines set for the regulatory procedure are not met, provision needs to be made for an urgent procedure to enable the Commission to adopt executive measures immediately without prejudice to subsequent supervision by the European Parliament and the Council.
- (8) Executive powers in respect of the basic instruments in question which have a bearing only on procedural arrangements or individual decisions need not be subject to specific arrangements for supervision by the legislature, since they must comply with the relevant guidelines and principles in the basic instrument. This does not, however, mean that it is not useful for the Commission to consult committees made up of Member States' representatives who are experts on the matters in question. The advisory procedure should therefore be the standard procedure for executive measures in the sense of the word mentioned above, such as those implementing financial support programmes. The management procedure is no longer applicable for implementing instruments adopted by the codecision procedure.
- (9) Given the limited scope of the current exercise, there is no need to review the arrangements for exercising the powers conferred on the Commission in basic instruments other than those adopted by the procedure under Article 251 of the Treaty. These arrangements are therefore not affected by this Decision. However, the arrangements provided for by instruments adopted under this procedure need to be reviewed on the basis of a report to be prepared by the Commission, at the latest one year following the entry into force of the present Decision.

DECIDES:

Article 1

Decision 1999/468/EC is amended as follows:

1. Article 2a below is added :

“Article 2a

The choice of procedures for adopting executive measures in respect of basic instruments adopted by the procedure under Article 251 of the Treaty is determined by the following criteria:

- a) the advisory procedure is applied whenever the executive measures have an individual scope or concern the procedural arrangements for implementing basic instruments;
 - b) the regulatory procedure is applied whenever the executive measures are designed to widely implement the essential aspects of the basic instrument or adapt certain other aspects of it.
2. In Article 4(3) the words “without prejudice to Article 8” are deleted.
 3. Paragraph 5 of Article 5 is deleted”
 4. Article 5a below is added:

“Article 5a

Regulatory procedure for basic instruments adopted by the procedure under Article 251 of the Treaty.

1. The Commission is assisted by a regulatory committee made up of representatives of the Member States and chaired by a representative of the Commission.
2. The Commission representative submits to the Committee a draft of the measures to be taken. The Committee delivers its opinion on the draft, possibly by putting it to the vote, within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion is delivered by the majority laid down in Article 205(2) of the Treaty for adopting decisions which the Council is required to adopt on a proposal from the Commission. The votes of the Member States’ representatives in the Committee shall be weighted in the manner set out in that article. The Chairman shall not vote.
3. If the Committee delivers a favourable opinion, the Commission adopts the final draft. If its opinion is unfavourable or no opinion is delivered, the Commission submits a new draft without delay, attempting to take account of the position expressed by the Committee. Within a month of the new draft being submitted, the Committee may make observations, on the basis of which the Commission prepares its final draft. Failure to deliver an opinion within the time limits does not prevent the draft from being finalised.
4. The Commission forwards the final draft without delay to both the European Parliament and the Council. If neither of the two institutions expresses any objections within one month of the draft being forwarded, the Commission adopts the proposed measure. This period will be extended by another month if the European Parliament or the Council so requests.

5. If the European Parliament, by an absolute majority of its members, or the Council, by the majority provided for by Article 205(2) of the Treaty, express any objections to the final draft of the executive measures presented by the Commission within one month, which may be extended by another month, of its being forwarded, the Commission must either withdraw its draft and present a proposal for an instrument in accordance with the procedure in Article 251 of the EC Treaty, or adopt the proposed measure, possibly amending its draft to take account of the objections.
 6. If, on imperative grounds of urgency, the time limits for the regulatory procedure cannot be abided by, the Commission may adopt the executive measures after having obtained the opinion of the regulatory committee in accordance with paragraph 2. It shall notify the European Parliament, the Council and the Member States of these without delay. Within one month of notification, the European Parliament, by an absolute majority of its members, or the Council, by the majority provided for by Article 205(2), may raise objections. In this case, the Commission may either withdraw the adopted measure and present a proposal for an instrument in accordance with the procedure under Article 251 of the Treaty or uphold the measure, possibly with amendments to take account of the objections expressed.
 8. This Decision does not affect safeguard and emergency procedures provided for in the event of a serious risk for safety, human or animal health or the environment by a basic instrument adopted under the procedure in Article 251 of the Treaty.”
5. Article 7 is amended as follows:
- a) Paragraph 3 is replaced by the following:

“3. The European Parliament and the Council shall be informed by the Commission of committee proceedings on a regular basis. To this end, they shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure under Article 251 of the Treaty, the results of voting, summary records of the meetings and lists of the authorities and organisations to which the persons designated by the Member States to represent them belong. The European Parliament shall also be informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.”
 - b) The last sentence of paragraph 4 is replaced by the following:

“The Commission shall also publish an annual report on the committees’ proceedings.”
 - c) Paragraph 5 is replaced by the following:

“5. The references of all documents sent to the European Parliament pursuant to paragraph 3 shall be made public in a register to be set up to this end by the Commission.”
6. Article 8 is deleted.

Article 2

The European Parliament and the Council shall review the procedures provided for by the basic instruments adopted by the procedure under Article 251 of the Treaty, upon a proposal from the Commission, on the basis of a report to be prepared by the Commission, at the latest one year following the entry into force of the present Decision.

Article 3

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

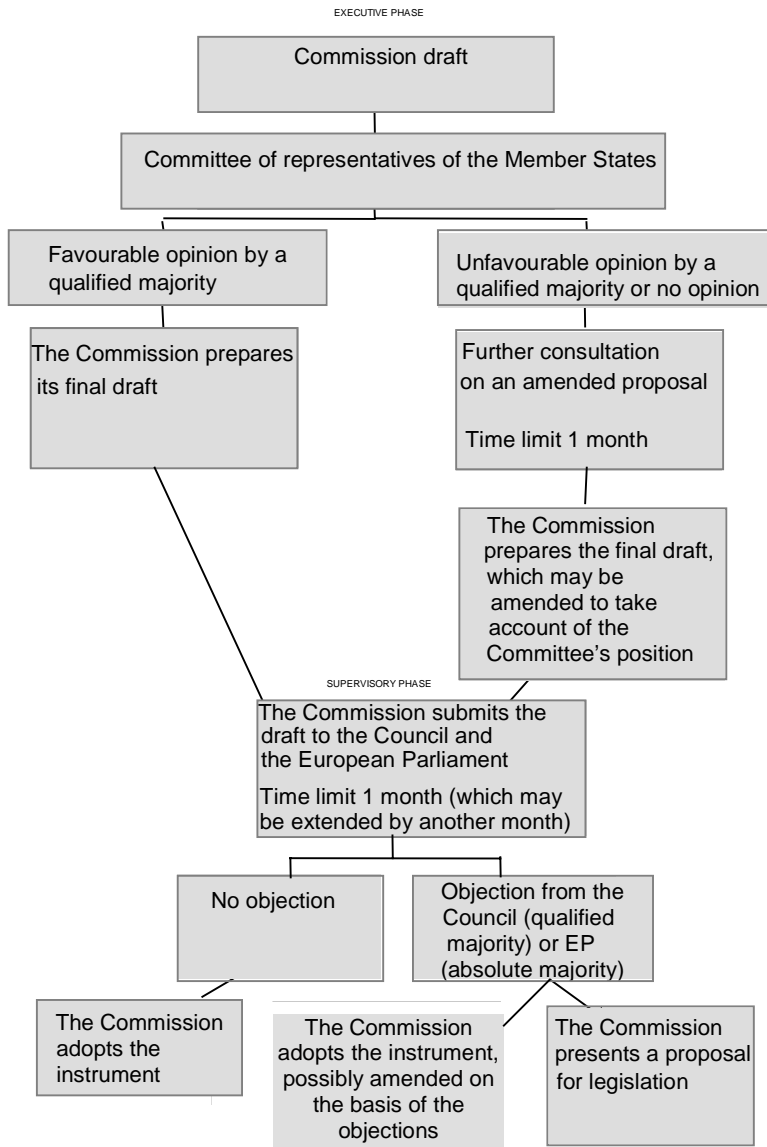
Done at Brussels,

For the Council
The President

ANNEX

Revised regulatory procedure

Prior to the procedure, the legislative phase (basic instrument adopted under the co-decision procedure)



Subsequently, it is possible for an application to be made to the Court of Justice to have the measure struck down