

Mechanisms for control by Member States of the Commission's exercise of implementing powers, 'Comitology Regulation'

2010/0051(COD) - 09/03/2010 - Legislative proposal

PURPOSE: to establish the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the Treaty of Lisbon substantially modifies the framework for implementing powers that are conferred upon the Commission by the legislator. Contrary to the provisions of the Treaty establishing the European Community ("the EC Treaty"), the new Treaty makes a clear distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (delegated acts), on the one hand, and the powers conferred on the Commission to adopt implementing acts, on the other hand. They are subject to entirely different legal frameworks:

- the provisions of the new Treaty on **delegated acts**, which are set out in Article 290 of the Treaty on the Functioning of the European Union ("the Treaty"), provide for the legislator to control the exercise of the Commission's powers by means of a right of revocation and/or a right of objection. These provisions are sufficient in themselves and do not require any legally binding framework to make them operational.
- the provisions of the new Treaty on **implementing acts**, which are set out in Article 291, do not provide any role for the European Parliament and the Council to control the Commission's exercise of implementing powers. Such control can only be exercised by the Member States. A legal framework is required to establish the mechanisms of such control.

The provisions of the new Treaty also put the co-legislators on an equal footing in relation to the conferral of delegated and implementing powers. Under the EC Treaty it was the Council that could confer implementing powers on the Commission. The Council could also reserve implementing powers to itself in specific cases. Under the new Treaty provisions it is a direct obligation deriving from the Treaty that acts must confer implementing powers on the Commission where this is needed in view of ensuring uniform implementation of these acts. Those acts can also, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, confer implementing powers on the Council instead of the Commission. This does not imply, however, that the Council has any role in controlling the exercise of implementing powers when these are conferred on the Commission. The new Treaty clearly entails that it is the Member States, and they alone, that control the implementation by the Commission where such control is required by a legally binding Union act.

As regards the implementation of Article 290 of the Treaty, the Commission has set out its views on the scope of delegated acts in a [Communication](#).

IMPACT ASSESSMENT: no impact assessment was undertaken.

LEGAL BASIS: Article 291(3) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal is guided by the new provisions of the Treaty and the new institutional context described above. However, the proposal also draws on Council Decision 1999/468/EC ("the Comitology Decision") and experience gained in implementing that Decision, whilst simplifying its provisions taking into account in particular the following general principles: (i) it is the Member States that are responsible for controlling the Commission's exercise of implementing powers; and (ii) procedural requirements should be proportionate to the nature of implementing acts.

The key elements of the proposal that include similarities and innovations in comparison with the 'Comitology' Decision are as follows:

- the proposal maintains the Committee structure provided for in the Comitology Decision (Article 3), but rationalises it ; there are only two procedures: the advisory procedure, which mirrors the existing advisory procedure, and a new examination procedure, which will replace - the existing management and regulatory procedures (Articles 4 and 5);

the advisory procedure is the general rule and can be applied to all policy domains and for all types of binding implementing measures (Article 2(3));

- the criteria for the choice of the examination procedure mirror those provided for in the Comitology Decision. Nevertheless, these criteria are binding in the sense that only when the criteria are met can the examination procedure in question be used (Article 2(2));

- the examination procedure (Article 5): the main provisions are as follows:

- where the Committee delivers a negative opinion on the draft measures, the Commission may not adopt them. The Commission may re-submit the draft to the committee for a second deliberation, or table an amended draft. In very exceptional circumstances, the Commission would be able to adopt the draft measures despite a negative opinion but in such a case the committee would have the last word within a time-period which will not exceed one month;
- where no opinion is reached, the Commission may ultimately decide whether to adopt the measures or not, taking into account inter alia the positions expressed within the committee;
- in the case of a positive opinion of the committee, the Commission will adopt the measures unless exceptional circumstances or new elements justify them not being adopted.

- there are specific procedures for measures to apply immediately on imperative grounds of urgency and where this is provided for in a basic act (Article 6);

- the proposal maintains provisions relating to the rules of procedures of committees (Article 7) and regarding public access to information on committee proceedings (Article 8(3));

- building on experience gained with the implementation of the Comitology Decision, the proposal also includes a number of important provisions that are common practice but were not covered by the Decision. These include the provisions for the use of written procedures (Article 3 (5)) in order to obtain the committee's opinion and the possibility for amending draft measures in order to take into account discussions in the committee prior to it delivering its formal opinion (Article 3 (4));

- both legislators should be properly and continuously informed of committee proceedings through the continued use of the existing Comitology Register, which would be adapted to the new procedures;

- lastly, for reasons of clarity, consistency and efficiency, the proposal provides for an automatic alignment of the existing acquis to the new procedures (Article 10).

The adaptation to the new system will not affect pending procedures in which an opinion has already been delivered.

BUDGETARY IMPLICATION: The proposal has no implications for the Community budget.