



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.06.1998
COM(1998) 380 final

98/0219 (CNS)

Proposal for a
COUNCIL DECISION
laying down the procedures for the exercise of implementing powers
conferred on the Commission

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Article 145 of the EEC Treaty as amended by the Single European Act lays down three principles for the implementation of Community instruments:

- except in specific cases, the Council confers implementing powers on the Commission in the instruments it adopts;
- certain requirements may be imposed in respect of the exercise of these powers;
- any such requirements must be consonant with rules and principles laid down in advance by the Council.

The Council Decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission¹ covers this third aspect. The major benefit of this Decision was to reduce the choice of implementing procedures to three committee formulas (two of them each involving two variants) plus a further procedure for the adoption of safeguard measures (also involving two variants).

2. The Decision was hedged around, either at the time of adoption or subsequently, by various statements and undertakings, including:

- confirmation by the Council of the undertaking given by the conference on the Single Act that the advisory committee procedure (I) would be the one predominantly used in matters covered by Article 100a of the EEC Treaty;
- a statement by the Commission undertaking not to propose the regulatory committee procedure with double safety net (III-b), which involves the risk of no decision being taken;
- the 1988 Plumb-Delors agreement on informing the European Parliament about implementing measures (transmission of draft decisions concerning instruments of general scope submitted to a committee with the exception of routine management instruments of limited validity or minor importance and those whose adoption poses problems of confidentiality or urgency). This agreement was followed by another on structural policies² and by undertakings as to transparency in management and regulatory committee proceedings³.

¹ OJ L 197, 18.7.1987, p. 33.

² "Klepsch-Millan" agreement of 13 July 1993 concerning the code of conduct on the implementation of structural policies by the Commission, OJ C 255, 20.9.1993, p. 19.

³ "Samland-Williamson" agreement, 25.9.1996.

3. Overall, the implementing procedures set up by the 1987 Decision have operated well, but the system is complex and rather opaque. In particular, the many types of procedures available have often prompted discussions of principle between the institutions on the choice of procedure, thereby holding up the legislative process.
4. The co-decision procedure introduced by the Treaty on European Union gave Parliament new legislative powers. As regards implementation, however, the Maastricht Treaty did not alter the system set up following the Single Act.

The European Parliament, the Council and the Commission concluded a *modus vivendi* concerning the implementing measures for acts adopted by the co-decision procedure⁴ temporarily overcoming these difficulties pending a review of the matter by the Intergovernmental Conference.

5. At the Intergovernmental Conference, Member States did not wish to reform the provisions of the Treaty relating to implementing measures. However, a declaration was annexed to the final act calling on the Commission to submit to the Council by the end of 1998 a proposal for a new decision laying down the procedures for the exercise of implementing powers conferred on the Commission. The Commission undertook to present its proposal in June 1998.
6. The main objectives of this proposal are to:
 - facilitate adoption of basic legislation by setting criteria to guide the choice of implementing procedure;
 - simplify these procedures and reduce the number of possible formulas, while at the same time guaranteeing the effectiveness of decision-making; the Commission will in this context adopt a model set of rules of procedure to be proposed to the committees;
 - adapt existing procedures and align them on the formulas of this Decision; this reform will therefore entail repeal of the 1987 Decision;
 - enhance monitoring of the exercise of implementing powers by the Community legislative authority - whether it be the Council or, under the codecision procedure, the Council and Parliament - with due respect for the separation between executive and legislative powers;
 - ensure that proposals for the adoption of legislative decisions may go to the legislative authority.
7. The Commission attaches great importance to rapid adaptation of existing procedures. It will make proposals accordingly as soon as this Decision is adopted. The Council and Parliament should undertake to adopt these proposals without delay.

⁴ OJ C 102, 4.4.1996, p. 1.

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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 145 thereof,

Having regard to the proposal from the Commission⁵;

Having regard to the opinion of the European Parliament⁶,

Whereas, in accordance with Article 145 of the Treaty, in the instruments which it adopts, the Council confers on the Commission powers for the implementation of the rules which the Council lays down; whereas the Council may impose certain requirements in respect of the exercise of these powers; whereas it may also reserve to itself the right, in specific and duly substantiated cases, to exercise directly implementing powers;

Whereas the Council adopted Decision 87/373/EEC of 13 July 1987-laying down the procedures for the exercise of implementing powers conferred on the Commission⁷; whereas that decision has limited the number of procedures for the exercise of such powers;

Whereas Declaration No 31 annexed to the Final Act of the Intergovernmental Conference which adopted the Amsterdam Treaty calls on the Commission to submit to the Council a proposal amending Decision 87/373/EEC;

Whereas the first purpose of the proposed amendments is to clarify the criteria determining the choice of one or other of the procedures provided for the adoption of implementing measures;

Whereas, in this regard, implementing measures and management measures must be taken by a procedure ensuring decision-making within suitable periods;

Whereas measures of general scope designed to implement, adapt or update essential provisions of basic legislative instruments should be adopted by a procedure allowing involvement of the legislative authority, be it the Council or the European Parliament and the Council;

Whereas the advisory procedure should be followed where the management or regulatory procedure is not or is no longer considered appropriate; whereas account should be taken of experience already gained in the implementation of the relevant instruments;

⁵ O J C

⁶ O J C

⁷ O J L 197, 18.7.1987, p. 33.

Whereas the second purpose of the proposed amendments is to simplify the set of requirements for the exercise of implementing powers conferred on the Commission; whereas it is accordingly necessary to reduce the number of procedures and to adjust them in line with the respective powers of the institutions involved;

Whereas, in this spirit, the European Parliament should be informed of committee proceedings on a regular basis;

Whereas simplification of the exercise of implementing powers means that this Decision should apply to the implementing rules in force prior to the adoption of this Decision; whereas it follows that all such instruments will need to be adjusted in accordance with this Decision;

Whereas certain provisions of Community legislation, particularly health protection, require a decision to be taken rapidly; whereas, therefore, it is necessary to provide that those cases are to be subject to a decision-making process which allows the fundamental objectives of the legislation to be observed;

Whereas Committees set up by the Council otherwise than in accordance with the third indent of Article 145 are not affected by this Decision; whereas the same applies to the specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties;

Whereas Decision 87/373/EEC should be repealed,

HAS DECIDED AS FOLLOWS:

Article 1

Other than in specific, duly substantiated cases where the Council reserves the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument.

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3 to 6, and determined in accordance with the criteria laid down by Article 2.

Article 2

Implementation and management measures, and in particular those relating to common policies such as the common agricultural policy, to the implementation of programmes with significant budgetary implications, or to the grant of substantial financial support, shall be adopted by use of the management procedure.

Measures of general scope designed to apply, update or adapt essential provisions of basic instruments shall be adopted by the use of regulatory procedure.

The advisory procedure shall be applied where the management or regulatory procedure is not or is no longer considered appropriate.

The safeguard procedure may be applied where the power to decide on such measures is conferred on the Commission.

Article 3

Advisory procedure

The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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, if necessary by taking a vote.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 4

Management procedure

The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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 148(2) of the Treaty. The chairman shall not vote.

The Commission may adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for not more than three months from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time-limit provided for by the third paragraph.

Article 5

Regulatory procedure

The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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 148(2) of the Treaty. The chairman shall not vote.

The Commission may adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall not adopt the measures envisaged. In that event, it may present a proposal relating to the measures to be taken, in accordance with the Treaty.

Article 6

Safeguard procedure

The Commission shall notify the Council and the Member States of any decision regarding safeguard measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case.

Any Member State may refer the Commission's decision to the Council within a time-limit to be determined in the instrument in question.

The Council, acting by a qualified majority, may take a different decision within the time-limit determined by the instrument in question.

Article 7

Each committee shall adopt its own Rules of Procedure on the proposal of its chairman.

The European Parliament shall be informed of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 189b of the EC Treaty, and the results of voting. It shall also be kept informed wherever the Commission transmits to the Council measures or proposals for measures to be taken.

Article 8

The Council, or the European Parliament and the Council, acting on a proposal from the Commission, shall without delay adjust provisions relating to committees assisting the Commission in the exercise of implementing powers provided for by instruments predating this Decision in order to align them on it.

Such adjustment shall be made in compliance with the obligations incumbent on the Community institutions. It shall not have the effect of jeopardizing attainment of the objectives of the basic instrument or the effectiveness of Community action.

Article 9

Decision 87/373/EEC is repealed.

Done at Brussels,

For the Council
The President

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