

# COMMISSION OF THE EUROPEAN COMMUNITIES

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CORRIGENDUM  
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**DRAFT**  
**INTERINSTITUTIONAL AGREEMENT**  
**BETWEEN THE EUROPEAN PARLIAMENT, THE COUNCIL**  
**AND THE COMMISSION**

**ON**

**THE RULES FOR EXERCISING THE POWERS TO IMPLEMENT**  
**ACTS ADOPTED JOINTLY BY**  
**THE EUROPEAN PARLIAMENT AND THE COUNCIL**  
**IN ACCORDANCE WITH THE PROCEDURE**  
**LAI D DOWN IN ARTICLE 189b**  
**OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY**

## EXPLANATORY MEMORANDUM

1. The Commission has already informed Parliament, both in the joint declaration on the 1994 legislative programme and at the time Parliament approved the report on committee procedures of its Committee on Institutional Affairs, presented by Mr De Giovanni, that it was prepared to look into the possibility of revising existing rules for the exercise of implementing powers under the Treaty establishing the European Community.

Without seeking to gloss over the difficulties in this area, which are due *inter alia* to the absence from the Treaty of provisions drawing specific conclusions from the introduction of the co-decision procedure, the Commission agrees with Parliament that the situation is unsatisfactory and should be remedied.

2. The Commission's main concern in the area has always been to reconcile the need for effective decision-making with the need to reinforce democratic legitimacy. This was why, at the time when the Treaty on European Union was being drafted, it presented contributions - in the context of a clarification of the hierarchy of Community acts - with a view to improving the rules for the exercise of implementing powers; those ideas broadly coincide with Parliament's.

At present, several dossiers at a fairly advanced stage in both Parliament and Council which now come under the co-decision procedure seem to be held up because of differences of opinion between the three institutions participating in the legislative process. It would be contrary to the general interest, and indeed to the manifest interests of the institutions, to run the risk of allowing disparate formulas to evolve in different cases, or of delaying Community legislation in certain areas, which could lead to a real interinstitutional conflict.

3. Although in the Commission's view the Council Decision of 13 July 1987 on committee procedures (87/373/EEC)<sup>(1)</sup> is imperfect in certain respects, it has the merit at least of restricting the number of usable formulas and setting out definitive procedures. What now needs to be done, for the period up to the 1996 review of the Union Treaty, is to determine with equal care appropriate procedures for the adoption of measures to implement acts adopted under the Article 189b procedure, bearing in mind Parliament's role as joint legislator.

4. As Parliament resolved, implementing acts with a legislative content which are not urgent, and which are defined as such in the basic act providing for their adoption, should be subject to review by Parliament and the Council. Within a given time, an act adopted by the Commission should be repealable by Parliament and the Council. At a stage prior to its adoption, the Commission draft could be submitted for an opinion both to an advisory committee composed of representatives of the Member States and to Parliament, which, if it so wished, could refer it to one of its committees.

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<sup>(1)</sup> OJ No L 197, 18.7.1987, p. 33.

In the case of non-legislative acts, on the other hand, simpler formulas should be available which ensure that a decision can be adopted within a stated time; these can be taken over from the 1987 Council Decision, with the exception of the legislation on committee procedure, which would be inappropriate for the adoption of acts of this nature.

5. The Commission is fully aware that, if this exercise is to be completed, the full agreement of both Parliament and the Council needs to be secured; for its part, regardless of the difficulties, the Commission is determined to use its best efforts to bring the matter to a successful conclusion.

Also, the Commission considers that the prospect of an overall solution for proposals under the co-decision procedure which are in the process of being adopted should make it possible to make do with the solutions imposed by the 1987 Decision, while putting it on record that they are without prejudice to a future revision, and that they should be changed to conform to the new procedures, once adopted.

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THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND  
THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Whereas it is only in respect of acts adopted by the Council in accordance with the procedure under which the Council acts unanimously on a proposal from the Commission after obtaining the opinion of the European Parliament that the third indent of Article 145 of the Treaty, which was not amended by the Treaty on European Union, expressly provides that rules are to be laid down for the exercise of implementing powers conferred on the Commission;

Whereas, however, to ensure the effectiveness of the Community decision-making process, it is essential that all three institutions participating in the legislative process should agree on how the powers to implement acts adopted jointly by the European Parliament and the Council in accordance with the procedure laid down in Article 189b of the Treaty establishing the European Community, as inserted by the Treaty on European Union, should be exercised, so as to preclude the adoption of disparate formulas which could cause difficulties when such acts are adopted or implemented;

Whereas the rules in question must be such that measures to implement acts adopted by the European Parliament and the Council can be taken without any delay detrimental to the application of such acts; whereas the rules must therefore be framed in such a manner as to ensure that a decision can be taken within an appropriate time but also to ensure that the two arms of the legislative authority can review any implementing measures with a legislative content and recast them if they think fit, particularly in cases where they consider that the Commission has acted ultra vires,

HAVE AGREED AS FOLLOWS:

1. The European Parliament and the Council shall confer on the Commission, in acts which they adopt jointly under the procedure laid down in Article 189b, powers to implement the rules which they determine.

Without prejudice to the substantive conditions laid down in any such act the exercise of implementing powers shall be subject only to the rules set out below.

2. The advisory committee procedure described under Procedure I of Article 2 of Council Decision 87/373/EEC<sup>(1)</sup>, or the management committee procedure set out under Procedure II, Variant (a) of the Decision, may be followed for the adoption of acts containing non-legislative measures.

The procedure set out at 3.1, 3.2, 3.3 and 3.4 shall apply for the adoption of acts containing legislative measures.

- 3.1 The Commission shall be assisted by a committee of an advisory nature 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 opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

- 3.2 Where the advisory committee referred to at 3.1 is consulted, the Commission shall transmit a draft of the measures to be taken to the European Parliament so that it can deliver an opinion if it thinks fit.

Any time limit which the advisory committee has been set shall also apply to the opinion of the European Parliament.

The Commission shall take full account of the opinions delivered by the advisory committee and, where applicable, by the European Parliament. It shall notify both bodies of the manner in which account has been taken of their opinion.

The Commission shall adopt an act which is immediately applicable. The Commission shall communicate the act to the European Parliament and the Council without delay. The Commission may defer the application of the act for two months from the date of communication.

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<sup>(1)</sup> OJ No L 197, 18.7.1987, p.33.

3.3 The European Parliament, acting by a majority of its members, or the Council, acting by a qualified majority, may request the other institution to agree to the repeal of the implementing act adopted by the Commission within one month following its adoption.

If Parliament or the Council, acting by the majority specified in the first subparagraph, agrees to such a request within one month, the act adopted by the Commission shall stand repealed, without retrospective effect.

3.4 In the eventuality referred to in the second subparagraph of 3.3 the Commission may adopt a new act to which the procedure set out at 3.1, 3.2 and 3.3 shall apply, or it may without delay present to Parliament and the Council a proposal for measures to be adopted under the procedure laid down in Article 189b.

4. The Commission undertakes to propose, and the European Parliament and the Council undertake to adopt, any amendments to acts adopted under the Article 189b procedure before the entry into force of this agreement which may be needed to make them consistent with this agreement.

Done at Brussels,

For the  
European Parliament

For the Council

For the Commission