

Brussels, 17 July 2002

**OPINION**

of the Economic and Social Committee  
on the

*Proposal for a Council Regulation adapting the provisions relating to committees  
which assist the Commission in the exercise of its implementing powers  
laid down in Council instruments adopted under the assent procedure*

*Proposal for a Regulation of the European Parliament and of the Council  
adapting the provisions relating to committees which assist the Commission in the exercise of its  
implementing powers laid down in European Parliament and Council instruments adopted in  
accordance with the procedure laid down in Article 251 of the Treaty*

*Proposal for a Council Regulation adapting the provisions relating to committees  
which assist the Commission in the exercise of its implementing powers laid down in Council  
instruments adopted in accordance with the consultation procedure (qualified majority)*

*Proposal for a Council Regulation adapting the provisions relating to committees  
which assist the Commission in the exercise of its implementing powers laid down in Council  
instruments adopted in accordance with the consultation procedure (unanimity)*

(COM(2001) 789 final - 2001/0313 (AVC) – 2001/0314 (COD) – 2001/0315 (CNS) –  
2001/0316 (CNS))

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On 26 and 27 February 2002, the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Proposal for a Council Regulation adapting the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted under the assent procedure*

*Proposal for a Regulation of the European Parliament and of the Council adapting the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in European Parliament and Council instruments adopted in accordance with the procedure laid down in Article 251 of the Treaty*

*Proposal for a Council Regulation adapting the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (qualified majority)*

*Proposal for a Council Regulation adapting the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity)*

*(COM(2001) 789 final - 2001/0313 (AVC) – 2001/0314 (COD) – 2001/0315 (CNS) – 2001/0316 (CNS)).*

The Economic and Social Committee decided to appoint **Mr Hernández Bataller** as rapporteur-general for this opinion.

At its 392<sup>nd</sup> plenary session of 17 and 18 July 2002 (meeting of 17 July 2002), the Economic and Social Committee adopted the following opinion by 41 votes in favour, with four abstentions.

## 1. Introduction

1.1 Article 211 of the EC Treaty stipulates that, in order to ensure the proper functioning and development of the common market, the Commission "*shall exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter*". Application of the article led to the adoption of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>, the objectives of which are – inter alia - to adopt non-binding criteria relating to the choice of committee procedures, simplify the requirements for the exercise of implementing powers conferred on the Commission, and involve and inform the European Parliament more effectively with regard to these procedures.

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<sup>1</sup> OJ L 184 of 17.7.1999, p. 23.

1.2 Council and Commission Statement (2) of the Declarations on Decision 1999/468/EC<sup>2</sup> provides that procedures of type I (advisory procedure); II a) and II b) (management procedure); and III a) and III b) (regulatory procedure) should be automatically brought into line, whereas the amendment of the safeguard procedures should be done on a case-by-case basis, in the course of normal revision of legislation.

1.3 The European Councils of Lisbon (23-24 March 2000), Stockholm (23-24 March 2001) Laeken (14-15 December 2001) and Barcelona (15-16 March 2002) stressed the need to draw up a "coordinated strategy" to simplify the existing regulatory environment at Community level and asked the Commission to draft an action plan on the matter.

1.4 The *White Paper on European Governance*<sup>3</sup> contains a number of proposals on the issue, most of which are included and developed in the recent Commission communications on *Better lawmaking*<sup>4</sup> and *Action Plan. Simplifying and improving the regulatory environment*<sup>5</sup>, as requested by the European Council.

In this context, the proposed legislation under examination here is particularly relevant.

## 2. The Commission proposal of 27 December 2001, COM(2001) 789 final

2.1 The proposal concerns the comitology procedure of a considerable number of legislative acts in force:

- I. Two acts adopted under the assent procedure.
- II. One hundred and fifty two acts adopted under the co-decision procedure.
- III. Seventy-eight acts adopted under the consultation procedure (qualified majority).
- IV. Seventy-two acts adopted under the consultation procedure (unanimity).

2.2 However, it does not affect either the substantive provisions of the amended legislative acts or the application of the latter, or the nature of the committees provided for by the basic act.

2.3 The aim of the proposal is merely to bring into line the legislative acts which establish the committees and the legislative acts which refer to these committees, and does not therefore apply to the legislative acts which have already been brought into line by an act amending the basic act.

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<sup>2</sup> OJ C 203 of 17.7.1999.

<sup>3</sup> COM(2001) 428 final.

<sup>4</sup> COM(2002) 275 final of 5.6.2002.

<sup>5</sup> COM(2002) 278 final of 5.6.2002.

### 3. General comments

3.1 We welcome the proposal in question since, as well as the expected improvements to the decision-making machinery currently in force at Community level, it enriches the current political debate of constitutional scope about the institutional and legislative reform of the EU.

3.2 However, there is a need to discuss its content.

3.2.1 The legislative acts affected by the proposal seem to have been chosen on the basis of strictly formal considerations, while ignoring other significant considerations that affect the Community legislative procedure and, in particular, the ESC's role as an advisory body in this process. There is a need for criteria relating to the choice of committee procedures, in order to achieve greater consistency and predictability when choosing the type of committee.

3.2.2.1 More specifically, the list of procedures was drawn up on the basis of the list of committees which assist the Commission in the exercise of its implementing powers, published at the time in accordance with Article 7(4) of Council Decision 1999/468/EC of 28 June 1999<sup>6</sup>.

3.2.2.2 This list was drawn up according to the criteria of publication and registration of a long list of comitology procedures, but fails to clearly establish the constitutional criteria according to which the Commission assigns a committee to a given type of procedure.

3.2.2.3 The most immediate consequence of this is that only thirty-five of the more than three hundred acts covered by the proposal have been referred to the consultative committees for discussion.

3.3.1 Of course, owing to their very composition and objectives, the only comitology framework in which the views of socio-economic sectors affected by a legislative proposal can be represented is that of the Consultative Committees.

3.3.2 Furthermore, this residual role to which the Consultative Committees may be definitively confined is even more paradoxical given that, in its White Paper on European Governance, the Commission itself proposes abolishing the regulatory and management committees (p.32).

3.4.1 Institutional commitments have already been made, in accordance with the objective of transparency laid down in the aforementioned Council Decision 1999/468/EC, to involve and inform the European Parliament more effectively on how comitology operates<sup>7</sup>. However, the fact that the act in question involves purely technical codification means that the Commission steers clear of any commitment to inform the Economic and Social Committee, although this would be desirable.

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<sup>6</sup> OJ C 225 of 8.8.2000, p. 2.

<sup>7</sup> Agreement between the European Parliament and the Commission of 17.2.2000, OJ L 256 of 10.10.2000, p. 19.

3.4.2 This would be particularly useful as – even in the case of new implementing acts – their content and implementation may sometimes be of interest to the objective and functioning of the "single market observatory".

3.5.1 The Committee is aware of the limited and immediate nature of the proposal in question, which only addresses 304 acts out of the 1400 acts that provide for the comitology procedure. However, while considering that this is a constitutional matter, the Committee stresses the need to address certain unresolved issues in the short term – either in the context of the Convention or in a future legislative proposal from the Commission.

3.5.2 Inter alia, the Committee calls on the main players in the Community legislative procedure to address the aforementioned questions and issues such as the role of agencies in executive decision-making procedures and, more specifically, its compatibility with the range of comitology procedures currently in force.

3.5.3 In addition, criteria should be established to ensure that the decision-making procedure matches the nature of the committee responsible, giving preference to criteria such as efficiency, transparency and participation over and above inter-institutional disputes about the exercise of responsibilities.

3.5.4 Finally, guarantees of transparency should be provided in order to ensure that, whenever legally applicable, ancillary bodies are fully informed about the forecasts and progress of legislative procedures with implications for comitology, and to encourage the dissemination of their decisions and – if possible – the involvement of civil society representatives in these bodies.

Brussels, 17 July 2002

The President  
of the  
Economic and Social Committee

The Secretary-General  
of the  
Economic and Social Committee

**Göke Frerichs**

**Patrick Venturini**