



HANDBOOK ON DELEGATED AND IMPLEMENTING ACTS

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**Directorate-General for Internal Policies of the Union
Directorate for Legislative Coordination and Conciliations
Conciliations and Codecision Unit**

This handbook contains administrative guidance for Parliament's staff, drafted by CODE (Conciliations and Codecision Unit) in cooperation with the Legal Service, and as such is without prejudice to any position expressed by the Parliament.

CONTENTS

INTRODUCTION	1
SUMMARY OF THE "STEP BY STEP APPROACH"	3
1 AN INTRODUCTION TO DELEGATED AND IMPLEMENTING ACTS	9
1.1 Before the Treaty of Lisbon - Comitology	9
1.2 The Treaty of Lisbon - a new hierarchy of norms	10
1.3 Alignment	11
1.4 The importance of choosing the right instrument	12
1.5 Political guidance	13
1.6 Rule 37a - opinion by the Committee on Legal Affairs (JURI)	15
2 DRAFTING LEGISLATION - DECIDING ON THE RIGHT PROCEDURE	16
2.1 Step 1 - Basic legislative act or delegated / implementing acts?	16
2.2 Step 2. Are the criteria for delegated acts fulfilled?	17
2.2.1 Legislative acts	18
2.2.2 General application	18
2.2.3 Essential versus non-essential elements	19
2.2.4 Supplementing / amending versus implementing	20
2.2.5 "Amending"	20
2.2.6 "Supplementing"	20
2.2.7 Binding or non-binding	22
2.2.8 Former RPS measures	22
2.2.9 Special legislative procedures	22
2.3 Step 3 - Delegated acts - drafting the provision	23
2.3.1 Objectives, content, scope and duration	23
2.3.2 Conditions	23
2.3.3 Common Understanding	23
2.4 Step 4 - Are the "criteria" for implementing acts fulfilled?	26
2.4.1 Article 291	26
2.4.2 Control by Member States and scrutiny by Parliament	27
2.4.3 No control by the Member States	27
2.4.4 Uniform conditions	27

2.4.5	Former 'droit de regard' or 'RoS' procedure	28
2.5	Step 5. Implementing acts - examination or advisory procedure?	28
2.5.1	Examination procedure (Article 5 of the Regulation).....	28
2.5.2	Advisory procedure (Article 4 of the Regulation).....	29
2.6	Step 6 - Implementing acts - examination procedure - with or without appeal committee in case of "no opinion"?	29
2.6.1	The appeal committee	30
2.6.2	No involvement of appeal committee in case of no opinion	30
2.6.3	Involvement of appeal Committee in case of no opinion (Article 5, para 4 and Article 6 of the Regulation)	30
2.7	Step 7 - Implementing acts - drafting the provision	31
2.7.1	Exceptional circumstances and immediately applicable measures:	31
3	HOW DOES PARLIAMENT EXERCISE ITS POWERS REGARDING DELEGATED ACTS, IMPLEMENTING ACTS AND RPS MEASURES?	33
3.1	Introduction	33
3.2	Access to information and to the relevant meetings.....	34
3.3	Need for cooperation between the European Parliament and the Commission	36
3.4	Transmission of the documents to Parliament and announcement in plenary.....	37
3.5	Periods of recess (European elections/summer/winter recess) ...	38
3.6	Concrete exercise of the powers after the measure has been received.....	39
3.6.1	Committee responsible, associated committees and joint committee meetings	39
3.6.2	Legal consequences of an objection by Parliament	40
3.6.3	Adoption of a motion for a resolution to propose an objection or a revocation.....	41
3.6.4	Possible criteria for expressing an "objection"	43
3.6.5	Time period for scrutiny	43
3.6.6	'Early non-objection'	45
3.6.7	Urgency procedures.....	47
3.7	Various practices in parliamentary committees	48

ANNEXES

Annex A: Common Understanding	50
Annex B: Regulation (EU) No 182/2011	57
Annex C: Templates for implementing acts	71
Annex D: Framework agreement on relations between the European Parliament and the European Commission - paragraph 15 and Annex 1.....	76
Annex E: Agreement between Parliament and Commission on comitology procedures	78
Annex F: The Rules of Procedure of the European Parliament.....	83
Annex G: Table with practical implications of the new rules of procedure	87
Annex H: Standard rules of procedure for committees	100
Annex I: Rules of Procedure for the appeal committee	106
Annex J: Comitology decision (Decision 1999/468/EC as amended by Decision 2006/512/EC)	113

INTRODUCTION

Delegated and implementing acts replaced the pre-Lisbon regime formerly known as comitology. The term "comitology" was shorthand for the way the Commission exercised the implementing powers conferred on it by the EU legislator. Sometimes the powers conferred on the Commission were very large, containing "politically sensitive decisions". This is why Parliament has, in particular since the introduction of the co-decision procedure, sought to gain more control over the way these implementing powers were used by the Commission. The first fruit of these efforts was the amendment of the Comitology decision of 2006, which introduced the Regulatory Procedure with Scrutiny (RPS). With the Treaty of Lisbon, the RPS was replaced by a new category of legal acts: delegated acts. These are a lower category of legal acts, distinct from legislative acts which are adopted by the European Parliament and the Council as co-legislators (under the ordinary (former co-decision) or the special legislative procedure). Delegated acts are used, among others, to complement legislative acts with further secondary rules. On the other hand, as in the pre-Lisbon regime, Union legislation is implemented by the Member States and/ or by the Commission. Implementing acts are used in this latter case. In both cases, it is the legislator itself (Parliament and Council) who decides whether to delegate power to the Commission to adopt delegated and/or implementing acts and who chooses, in each specific case, which of two procedures will be used.

At first sight the issue of delegated and implementing acts might appear rather technical, complex and of minor political importance. In reality, however, decisions taken under delegated and implementing acts, albeit often of a detailed and technical nature, can be politically important as they usually have great impacts on health, the environment and the economy and can directly impact citizens, enterprises and complete sectors. Deciding whether for a specific measure delegated or implementing acts will be used determines whether the Parliament will have a say on these measures (delegated acts) or not (implementing acts). This is why - as was the case with comitology in the pre-Lisbon regime - the choice between delegated and implementing acts has given rise to great inter-institutional discord.

This handbook is a tool provided to Parliament staff dealing with the drafting of legislation. It aims at helping to decide whether a delegation of power is necessary or relevant, to choose the appropriate legal instrument, to draft the provisions necessary to ensure Parliament's prerogatives while fully respecting the Treaty, and to exercise the Parliament's right of scrutiny. However, it does not aim at providing a full legal analysis of the two relevant articles of the Treaty (article 290 TFEU on delegated acts and article 291 TFEU on implementing acts).

The handbook is divided in three chapters. The first chapter provides an introduction to delegated and implementing acts, by briefly describing the history, the new hierarchy of norms since the entry into force of the Lisbon Treaty, the importance of choosing the right instrument and the existing political guidance. The second chapter provides explanations and guidance to legislative drafting and contains a "step by step approach" in relation to the different choices to be made. This approach is summarised at the beginning of this handbook. The third part deals with exercising control and scrutiny over delegated and implementing acts. As the Parliament continues for the moment to receive measures under the RPS Procedure resulting from the *acquis communautaire* adopted before the entry into force of the Lisbon Treaty, the third part also describes how this specific category of measures is scrutinised.

The handbook is updated on a regular basis. However, any new information (letters, decisions, objections, examples etc.) which becomes available before an update of this handbook will be made available on the CODE intranet site:

www.ipolnet.ep.parl.union.eu/ipolnet/cms/pid/2335

SUMMARY OF THE "STEP BY STEP APPROACH"

- deciding on the right procedure -

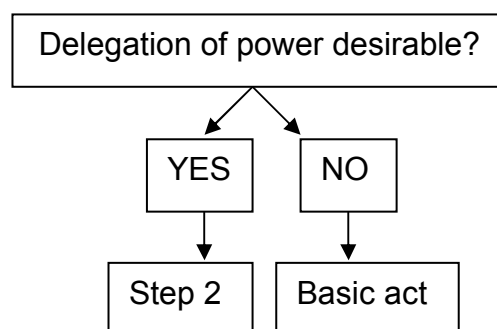
General guidance:

- The co-legislators (Parliament and Council) are not obliged to delegate powers to the Commission. The legislator is free to decide which provisions will remain under the ordinary legislative procedure.
- It is advisable to involve the Legal Service and the CODE unit as early as possible, for instance at the stage of preparing the draft report.

Step 1. Basic legislative act or delegated / implementing acts?

Would the proposed delegation of power be **desirable** (e.g. in terms of flexibility, speed, need for further technical work, need to ensure uniform application)?

- ✓ If **yes**, it should be assessed whether the criteria for delegated acts (DA) apply (article 290 TFEU) or whether implementing acts (IA) should be used (article 291 TFEU) - **go to step 2**.
- ✓ If **no**, it is preferable to **keep the issue in the basic act**, so that Parliament maintains its full role as co-legislator under the ordinary legislative procedure.

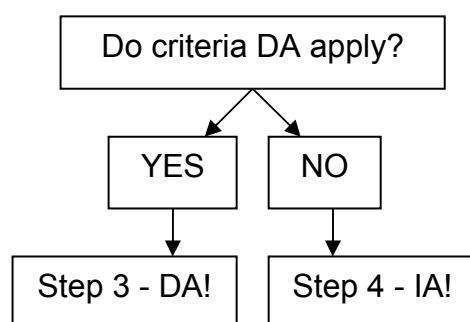


Note. If the issue concerns an **essential element** (see para 2.2.3) it can only be dealt with in the basic act and shall not be the subject of any delegation of power.

Step 2. Are the criteria for delegated acts fulfilled?

Does the proposed delegation of power cover acts of **general application** (see *para 2.2.2*) and does it allow the Commission to **amend** (see *para 2.2.5*) or **supplement** (see *para 2.2.6*) certain **non-essential** elements (see *para 2.2.3*)?

- ✓ If **yes** to **both** the criterion of general application **and** the **criterion of amending or supplementing non-essential elements**, Parliament should insist on the use of delegated acts - **go to step 3**.
- ✓ If **no** to "general application", delegated acts can **not** be used and implementing acts can be considered- **go to step 4**.
- ✓ Also if **yes** to "general application" and **no** to both "amend" and "supplement", delegated acts can **not** be used and implementing acts can be considered - **go to step 4**.



Note1. "Amending" can for example mean that the provision amends the annexes. With regard to **"supplementing"**, a rule of thumb could be that in case of a new set of rules or criteria implying further political orientation/policy choices, or in case of a considerable margin of discretion, the measure "supplements" the basic act and consequently falls under the scope of delegated acts (provided it is of general application and concerns non-essential elements).

Note2. If the issue, or a comparable issue, was dealt with under the **RPS procedure** (see *para 2.2.8*) before the entry into force of the Lisbon Treaty, this in general means that Parliament should argue for the use of delegated acts, due to the similarity of the criteria and in order to preserve its prerogatives.

Step 3. Delegated acts - drafting the provision

In case the choice for delegated acts is made, the objectives, content, scope and duration of the delegation of power shall be explicitly defined in the basic act. The non-binding Common Understanding (see para 2.3.3 and Annex A) with its **templates** provides valuable help thereto.

Note. The following issues are often relevant:

- **Consultation of experts/stakeholders** (see para 2.3.3.c)
- **Duration of delegation** (see para 2.3.3.e) - normally a determined period of time (3 or 5 years), tacitly extended
- **Period for objection** (see para 2.3.3.f)- normally 2+2 months
- **Urgency Procedure** (see para 2.3.3.g) - only for exceptional cases

Step 4. Are the "criteria" for implementing acts fulfilled?

In case the criteria for delegated acts are not met and if the provision only **implements** a legally binding Union act, implementing acts would be appropriate.

Note1. In case it has been decided to use implementing acts, it is also possible to have **no control by the Member States** (see para 2.4.3) and to have the decision taken by the Commission alone. In that case regulation 182/2011 does not apply and there is no examination or advisory committee (for the templates, see Annex C). See for instance Article 3 of the proposed Regulation on guidelines for trans-European energy infrastructure, (COD)2011/0340: the Commission is mandated to establish a Union-wide list of projects of common interest.

Note2. The argument that "**uniform conditions** are needed for the application of the basic act, and therefore implementing acts should be used to decide on them" should not be accepted. As uniform application of Union law is always required, this does not mean that everything should automatically fall under implementing acts (see para 2.4.4).

Note3 If the issue, or a comparable issue, was dealt with under the RoS procedure (Right of Scrutiny / droit de regard; see para 2.4.5) before the entry into force of the Lisbon Treaty, it is likely

to be covered by implementing acts (to be assessed on a case by case basis).

Step 5. Implementing acts - examination or advisory procedure?

If a choice has been made for implementing acts subject to control by Member States, the next step is to choose between the **examination procedure**, where the Commission can adopt the draft act if it is supported by a qualified majority of the committee composed of the representatives of the Member States (*the committee*), and the **advisory procedure**, where the Commission only needs to take "utmost account" of the committee's opinion (adopted by simple majority), as defined in the **implementing acts regulation 182/2011** (see *para 2.5 and Annex B*):

- ✓ **Examination procedure** (see *para 2.5.1*): in particular if it concerns an implementing act of general scope, or relates to programmes with substantial implications, the common agricultural and common fisheries policies, the environment, security and safety or protection of the health or safety of humans, animals or plants, or to the common commercial policy - **go to step 6.**
- ✓ **Advisory procedure** (see *para 2.5.2*): if it does not fall within any of the categories specified above under the examination procedure. However, the advisory procedure may apply for the adoption of the implementing acts concerning one of those categories in duly justified cases, if the legislator so decides - **go to step 7.**

Step 6. Implementing acts - examination procedure - with or without appeal committee in case of no opinion?

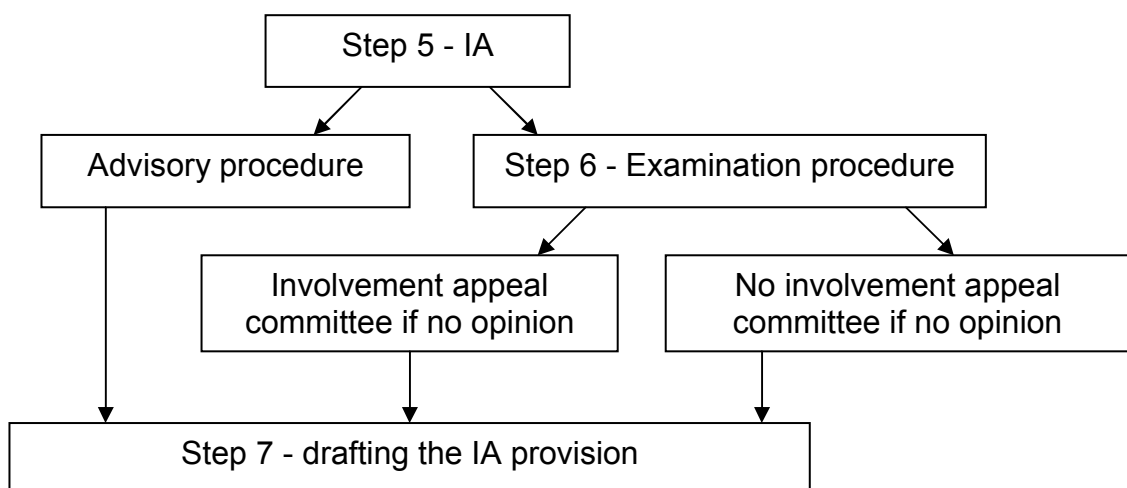
A choice needs to be made by the legislator as to what happens in case the committee cannot obtain the necessary majority to adopt an opinion in favour or against a draft implementing act ("**no opinion**"). The Regulation provides for the possibility to define in the basic act that the draft act may not be adopted in case of no opinion and that the appeal committee (see *para 2.6.1*) should be involved (see *option b*) in note below). It is important to Parliament to assess for each specific implementing act, whether it prefers to grant a more powerful

role to the Commission or to the Member States (appeal committee).

- ✓ **No involvement of appeal committee** (see para 2.6.2): If Parliament prefers to grant the Commission a more powerful role, it should argue that the Commission may adopt the draft measure in case of no opinion - **go to step 7.**
- ✓ **Involvement of appeal committee** (see para 2.6.3): If Parliament prefers to see a more powerful role for the Member States, it should accept that the draft measure be submitted to the **appeal committee** in case of no opinion. After that the Commission can only adopt it in case the appeal committee has a positive opinion or again no opinion (though politically it might be difficult to adopt the act). - **go to step 7.**

Note. According to the Regulation the appeal committee is involved:

a) if the draft implementing act concerns taxation, financial services, the protection of health or safety of humans, animals or plants, or definitive multilateral safeguard measures, b) if the basic act provides that the draft act may not be adopted in case of no opinion, or c) if a simple majority of the committee opposes it. However, the chair of the committee may instead of submitting the act to the appeal committee submit an amended version of the act.



Step 7. Implementing acts - drafting the provision

The templates for the provisions on implementing acts can be found in Annex C.

Note. *In addition to the issues raised above, the following issues might be relevant for a decision by the legislator (see para 2.7.1):*

- ***Adoption in exceptional cases***
- ***Urgency procedure - only if really necessary***

1 AN INTRODUCTION TO DELEGATED AND IMPLEMENTING ACTS

Members and staff will be confronted with Commission proposals foreseeing the delegation of powers to the Commission. It is important to assess carefully if this delegation is relevant and desirable and if the right instrument has been proposed. The choice of the instrument can have significant impact, not only on the possibility of the Parliament to exercise its right of control or scrutiny, but also on the validity of the legal act itself.

This chapter begins with a brief introduction to delegated and implementing acts and their history. It furthermore addresses the alignment of the existing legislation to these instruments and the political guidance provided by the Conference of Presidents.

1.1 Before the Treaty of Lisbon - Comitology

The Treaty of Lisbon abolished the old comitology system, which consisted of the "Right of Scrutiny" (RoS) or "droit de regard" procedure where Parliament did not have the right to "veto", as well as the Regulatory Procedure with Scrutiny (RPS), where Parliament did have the right to "veto" under certain conditions. The different comitology procedures are categorised in the 1999 Comitology decision¹. Comitology (or 'committee procedure') referred to the procedures under which the European Commission executed its implementing powers delegated to it with the assistance of so called 'comitology committees'. These committees were chaired by a Commission official and composed of Member State representatives at expert level. It needs to be noted that until all already existing legislation containing RPS provisions is aligned to the Treaty of Lisbon, Parliament will continue to receive RPS measures (see also para 3.1).

The former comitology procedure has over the years progressed from a system that was developed to take technical decisions quickly and efficiently to a system involving more important and sensitive "political" decisions. The more politically sensitive

¹ Council Decision 1999/468/EC of 28 June 1999, as amended by Decision 2006/512/EC of 22 July 2006, laying down the procedures for the exercise of implementing powers conferred on the Commission - OJ L200, 22.7.2006, p11 (comitology decision - see Annex J).

comitology decisions were, the more important it was to the Parliament to have a say and to have the power to "veto" the measure if needed. Parliament in particular considered it unacceptable that a legislative act adopted in codecision could be further amended without any involvement of the Parliament.

1.2 The Treaty of Lisbon - a new hierarchy of norms

The Treaty of Lisbon has introduced a new hierarchy of norms consisting of three distinct levels:

I. **Legislative acts:** The first level is the legislative act (regulations, directives or decisions). Legislative acts are adopted by the co-legislators on the basis of Treaty provisions in accordance with the ordinary¹ or a special legislative procedure² and include the fundamental policy choices in a given policy field.

II. **Delegated acts:** The second level concerns delegated acts, which are non-legislative acts of general application foreseen to amend or supplement certain non-essential elements of the legislative act. Within these limits, the legislator is sovereign in deciding to allow for such delegation of power to the Commission and shall define the objectives, content, scope and duration of the delegation of power in the legislative act itself.

As delegated acts amend or supplement the basic act and as the basic act has been adopted by the co-legislators under the ordinary legislative procedure³, it is logical and legitimate for the legislator to control how the powers it has delegated are exercised. The Parliament and the Council therefore have two important powers. They may decide to revoke the delegation completely (Article 290, paragraph 2(a)) and they can also 'veto' a particular delegated act. Article 290, paragraph 2(b) specifies that the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council.

III. **Implementing Acts:** Member States are responsible for the implementation of Union legislation. However, when uniform

¹ The ordinary legislative procedure, detailed in article 294 of the Treaty is still commonly designated by its former name "codecision procedure".

² Article 289 TFEU

³ or in the case of a special legislative procedure by the legislator.

conditions for implementation of legally binding Union acts are needed, the power to adopt implementing acts can be conferred on the Commission with subsequent control by Member States, or in some cases, without such control (see para 2.4.3). In duly justified cases the power can be conferred on the Council instead of the Commission.

1.3 Alignment

At some point all comitology provisions in legislative acts that already existed before the entry into force of the Lisbon Treaty have to be aligned to delegated and implementing acts. This includes legislative acts that before Lisbon were not subject to codecision (inter alia in the area of agriculture and fisheries policies, and international trade) and thus did not contain so called RPS provisions (Regulatory Procedure with Scrutiny) but only "droit de regard" or "Right of Scrutiny" (RoS) provisions, and legislative acts that were subject to codecision but that were not aligned to the RPS procedure (which only entered into force in 2006).

In a statement attached to the adoption by Parliament of the first reading agreement on Regulation 182/2011 on implementing acts¹ the Commission indicated that it will proceed to an examination of all legislative acts in force which were not yet adapted to the RPS procedure before the entry into force of the Lisbon Treaty, in order to assess if those instruments need to be adapted to the regime of delegated acts. In an attachment to this statement the Commission provided a calendar indicating when the Commission would make the legislative proposals. The alignment of these legislative acts has proven to be difficult, and is not yet finalised for several files, in particular in the areas of agriculture and fisheries policies.

As regards legislative acts which contain RPS provisions, the Commission would review these provisions in each instrument it intended to modify, in order to adapt them according to the criteria laid down in article 290 TFEU. The overall objective of the Commission is that, by the end of the 7th term of the Parliament, all provisions referring to the RPS procedure would have been removed from all legislative acts. Given the general difficulties in several negotiations with the issue of delegated and implementing

¹ Adopted on 16 December 2010

acts (see above and para 1.5), it might take longer before this objective is achieved.

While RPS provisions remain in several acts until these acts are aligned to the new regime of delegated and implementing acts, Regulation 182/2011 on implementing acts provides for an automatic transitional alignment of the former "droit de regard" or "right of scrutiny" provisions.

Article 13 of the Regulation foresees that, for all legislative acts adopted before 1 March 2011, the advisory procedure is kept as advisory and the management and regulatory procedure are replaced by the examination procedure. Even if the Commission and Council argue that this alignment is definitive, it is important to underline that Article 13 clearly states that **this automatic transitional adaptation does not prejudice the nature of the act concerned**. Consequently, when having a legislative act under revision, the co-legislators can decide otherwise, if they are of the opinion that the choice of the procedure is not adequate.

1.4 The importance of choosing the right instrument

To safeguard Parliament's prerogatives it is important to delegate powers to the Commission only where desirable and to ensure that, when the criteria provided for in Article 290 TFEU are fulfilled, delegated acts are used, and not implementing acts. Where the basic legislation provides for delegated acts Parliament has the power of "veto". In the case of implementing acts the powers of the European Parliament are limited.

Indeed, in some cases it might be desirable to delegate powers to the Commission, for example to create the required flexibility to update the legislation to scientific or other relevant developments or to allow for speedier decisions on technical details. If, however, the issue concerns an **essential element** (see para 2.2.3), it can only be dealt with in the basic act and cannot be the subject of any delegation of power.

An erroneous application of articles 290 and 291 could affect not only the **validity of the legislative act** itself, but **also the validity of the acts subsequently adopted** by the Commission. The European Commission has already indicated in a statement,

during the conclusion of an agreement, that it had doubts concerning the legality of the agreed text and that it reserved its right to bring the matter before the Court of Justice¹. Indeed, the Commission recently brought an action against the Parliament and the Council for partial annulment of a legislative act (Case C-427/12). The case is pending.

Furthermore, an erroneous choice of procedure might also impair the proper application of Union legislation. In one case, the Commission has for instance declared that it will not use the power to adopt implementing acts as it considered that the appropriate instrument should have been delegated act (see example on cross border healthcare²). It is evident that a situation, where a number of provisions necessary for the application of the legislation by Member States is not adopted, is problematic.

For both delegated acts and implementing acts it is important that the legislator is very precise in what exactly the Commission is tasked to do.

1.5 Political guidance

In several negotiations under the ordinary legislative procedure the Parliament faces considerable difficulties in obtaining delegated acts for provisions where the criteria of Article 290 are clearly met. The issue has been discussed several times in the Conference of Committee Chairs (CCC) and the Conference of Presidents. In its meeting of 13 January 2011 the Conference of Presidents endorsed a common line that EP negotiators should always insist, in all interinstitutional negotiations, on the inclusion of delegated

¹ See statement by Commissioner Potočnik during the plenary debate on 18 January 2012, preceding the adoption of Regulation 528/2012 on biocidal products: "Firstly, the Commission considers that, to be consistent with the Treaty, the regulation setting the fees to be paid to the chemical agency should be in the form of a delegated act rather than an implementing measure. The Commission therefore informs Parliament that it reserves its right to pursue the legal remedies provided by the Treaty in order to seek clarification by the Court of Justice."

² The Commission made the following declaration in the context of the adoption of Directive 2011/24/EC of 9 March 2011 on the application of patients' rights in cross border healthcare: "The Commission has certain doubts that some of the future acts, which the Commission has been given the power to adopt by the legislative act, would be implementing acts. When exercising its implementation powers, the Commission will not adopt, on the basis of the powers granted, acts that it considers as being delegated acts within the meaning of Article 290."

acts, when the criteria of Article 290 TFEU are fulfilled and their use would be desirable. Moreover, in its meeting on 19 April 2012 the Conference of Presidents further elaborated on this approach as follows:

- files, in which the institutional rights of Parliament as regards the inclusion of delegated acts are not safeguarded, **will not be put on the plenary agenda for a vote leading to a first reading agreement**;
- to be able to assess whether this is the case the CCC should, in close cooperation with the competent Parliament services, undertake a screening of pending proposals as well as legislative acts already adopted;
- the provisions of **Rule 37a of the Rules of Procedure**, which foresee that the Committee on Legal Affairs can take up questions in relation to delegation of legislative powers, can be used on a systematic basis (see para 1.6);
- other possible steps at least on a temporary basis until a horizontal solution has been found, could be to accept a **reinforced role for national experts** in the preparatory phase of delegated acts, in order to allay Council's concerns on this front (please note that any step in that direction should be checked with the Legal Service and the CODE unit, in order to ensure a horizontal approach that is in line with Article 290 TFEU and that safeguards the prerogatives of the Parliament).
- another possibility would be **to include as many provisions as possible in the basic legislative act adopted under co-decision**, which would help to secure Parliament's prerogatives. This solution in many cases proves to be acceptable for both the Parliament and Council, and does not raise legal concerns. It can however be questionable in terms of better lawmaking and in terms of political and practical implications, in particular if the flexibility allowed by Article 290 TFEU is indispensable in the specific case.

All decisions taken by the Conference of Presidents on this subject, including any future update, can be found on the CODE intranet: www.ipolnet.ep.parl.union.eu/ipolnet/cms/pid/2335

1.6 Rule 37a - opinion by the Committee on Legal Affairs (JURI)

In case the choice between delegated or implementing acts poses a problem in the negotiations with the other institutions, it can be useful for the committee responsible in the Parliament to request the opinion of the Committee on Legal Affairs (JURI) in accordance with Rule 37a of the Rules of Procedure (see Annex F). This rule also provides for the possibility for JURI to take up questions, on its own initiative, concerning the delegation of legislative powers.

Examples of opinions under Rule 37a can be found on the CODE intranet site: www.ipolnet.ep.parl.union.eu/ipolnet/cms/pid/2335

2 DRAFTING LEGISLATION - DECIDING ON THE RIGHT PROCEDURE

It is clear from the provisions of Articles 290 and 291 (TFEU) that delegated acts and implementing acts are **answering different needs and therefore cannot be substituted** by one for another. As already indicated, practice shows, unfortunately, that the distinction between the two procedures is not always clear. Consequently, negotiations with the other institutions are **not always easy** and the outcome of such negotiations is not always coherent.

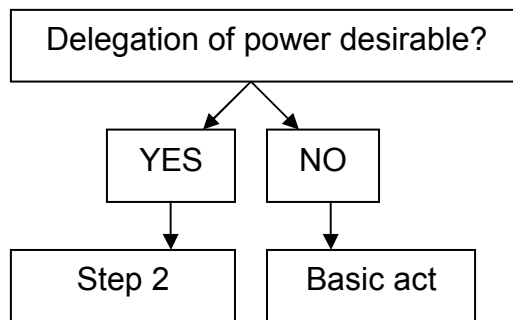
In the light of the aforementioned considerations a 'step-by-step' approach is advisable in order to deal with these issues in a systematically coherent way. This section describes in detail the choices to be made in order to ensure that the right instrument is used and provides the necessary background information for each instrument.

2.1 Step 1 - Basic legislative act or delegated / implementing acts?

The starting principle is that the legislator (Parliament and Council) is never obliged to delegate powers to the Commission. The legislator is always free to decide which provisions will remain under the ordinary legislative procedure.

The first question to answer is therefore, whether the proposed delegation of power is **desirable** (e.g. in terms of flexibility, speed, need for further technical work, need to ensure uniform application)?

- ✓ If **yes**, it should be assessed, whether the criteria for delegated acts apply (Rule 290 TFEU) or whether implementing acts should be used (Rule 291 TFEU) - **go to step 2**.
- ✓ If **no**, it is preferable to **keep the issue in the basic act**, so that Parliament maintains its full role as co-legislator under the ordinary legislative procedure.



If the issue concerns an **essential element** (see para 2.3.3), it can only be dealt with in the basic act and shall not be the subject of any delegation of power.

2.2 Step 2. Are the criteria for delegated acts fulfilled?

Box 1 - Article 290 on Delegated Acts

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

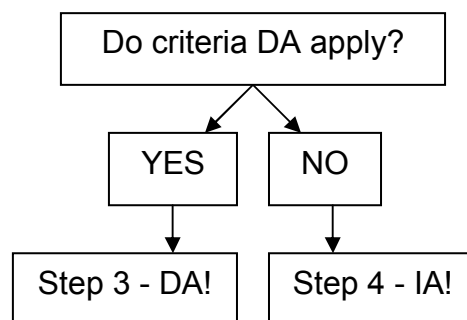
(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective 'delegated' shall be inserted in the title of delegated acts.

The question is whether the proposed delegation of power cover acts of **general application** and whether it allows the Commission to **amend** or **supplement** certain **non-essential** elements?

- ✓ If **yes to both** the criterion of general application **and the criterion of amending or supplementing non-essential elements**, Parliament should insist on the use of delegated acts - **go to step 3**.
- ✓ If **no** to "general application", delegated acts can **not** be used and implementing acts can be considered- **go to step 4**.
- ✓ Also if **yes** to "general application" and **no** to both "amend" and "supplement", delegated acts can **not** be used and implementing acts can be considered - **go to step 4**.



The different criteria and considerations on whether Parliament should insist on Delegated Acts are described below:

2.2.1 Legislative acts

The delegation of power pursuant to Article 290 TFEU is possible **only in a legislative act**. Legislative acts are regulations, directives and decisions adopted by either the ordinary or the special legislative procedure as laid down in Article 289 TFEU. As delegated acts are not legislative acts themselves, they cannot delegate power pursuant to Article 290 TFEU themselves.

2.2.2 General application

Delegated acts only cover acts of general application; individual measures cannot be subject to a delegated act. Examples of acts of general application are:

- Measures designed to lay down conditions, thresholds or criteria to be fulfilled for placing on the market certain products or in order to obtain an authorisation;
- Measures establishing the required criteria for granting of financial aid that the Commission is obliged to comply with when taking individual decisions granting aid to a project /programme.
- Decisions to grant an authorisation if such authorisations are of general application.
- Amendments of the basic act.
- A list of countries eligible for financing can also be subject to a delegated act¹.

The fact that a delegated act may result in costs for Member States is not a criterion to exclude delegated acts.

2.2.3 Essential versus non-essential elements

Delegated acts only concern non-essential elements of a legislative act. The essential elements of an area shall be reserved for the legislative act and shall accordingly not be the subject of a delegation of power.

The distinction between 'essential' and 'non-essential' elements of a legislative act becomes thus of crucial importance, considering that only the latter can be subject to a delegation of power. Although the European Court of Justice has not yet dealt with the interpretation of article 290, the limits of the concept of essential elements have been defined in an earlier case law of the Court of Justice as *"rules which (...) are essential to the subject-matter envisaged"* and *"which are intended to give concrete shape to the fundamental guidelines of Community policy."* *"[R]ules being merely of an implementing nature may be delegated to the Commission."*²

Recently, the Court of Justice has further clarified its previous case-law by specifying that essential elements of a basic are those that *"entail political choices falling within the responsibilities of the*

¹ Decision No 1080/2011/EU of the European Parliament and of the Council of 25 October 2011 granting an EU guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Union and repealing Decision No 633/2009/EC - OJ L 280. 27.10.2011, p. 1.

² Judgment of 27 October 1992, C-240/90, Germany v Commission "German sheep meat", paragraphs 36 and 37.

European Union legislature, [by requiring] the conflicting interests at issue to be weighed up on the basis of a number of assessments".¹ Thus, depending on the political choices made, the measures taken could vary significantly. This is especially the case when the fundamental rights of persons may be interfered with to such an extent that the involvement of the Union legislator is required. In any case, the Court has made clear that the assessment of certain elements as essential or not is not just a choice for the legislator alone, "but must be based on objective factors amenable to judicial review".

It is therefore advisable always to check carefully, with the help of the Legal Service and the CODE unit, whether a provision concerns an essential element (for example when it is related to the scope or the fundamental basics of an act, such as the main definitions and the key policy choices), which means that the powers cannot be delegated to the Commission.

2.2.4 Supplementing / amending versus implementing

Delegated acts are non-legislative acts designed to "**supplement or amend** (see para 2.2.5. and 2.2.6) *certain non-essential elements of the legislative act*". *A contrario*, implementing acts aim at **implementing** legally binding Union acts.

2.2.5 "Amending"

Measures amending non-essential elements of the basic act are not difficult to identify. A clear example is the adoption of formal amendments to annexes of the basic act to take into account scientific and/or technical progress. In this case the wording of the annexes is formally amended via a delegated act.

2.2.6 "Supplementing"

Measures supplementing non-essential elements are more difficult to identify and to distinguish from implementing acts (which are to be used only where "*uniform conditions*" for implementation are needed). A rule of thumb could be that implementing acts should **not** add any **further political orientation or policy choices** and should **not** leave a **considerable margin of discretion** to the

¹ Judgment of 5 September 2012, Case C-355/10, European Parliament v. Council, paragraphs 63, 76 to 78.

Commission. In case of such further policy choices or considerable margin of discretion it could be considered that a measure "supplements" the basic act and consequently falls under the scope of delegated acts. The following additional clarifications might be useful:

- In general terms, measures intended to further define the exact content of the obligations spelt out in the legislative act can be considered as designed to **supplement** the basic act by adding non-essential elements.
- Against the policy shaping role of legislation, the elements that can be supplemented via a delegated act are those provisions that express **some kind of secondary political orientation**, while the fundamental political orientations have to be included in the essential elements of the legislative act. On the contrary, **implementing acts should not add any further political orientation**.
- As a consequence, the creation of further rules or criteria should take place through delegated acts, while the implementation of the rules or criteria already established in the basic act or in a future delegated act without modifying the substance of the rights or obligations stemming from these rules or criteria can take place through implementing acts.
- In legislative acts, setting up financial programmes, measures intended to supplement the basic act with choice of priorities, objectives, expected results, etc., could be adopted **either by the legislator in the legislative act itself or by the Commission via delegated acts**¹.
- On the other hand, **measures determining the format and the procedures for the transmission of data, reports or other documents, or determining the practical arrangements for the exchange of information are of implementing nature**. While being of general scope, they do not usually express any political orientation at all, nor do they amend or supplement non-essential elements. Therefore Article 290 TFEU does not apply, and implementing acts could be used. The same applies for those measures which aim at putting into effect the existing rules without creating new rules, as for example, the establishment of the "format" of certain documents.

¹ See letter by Mr Lehne to the Conference of Presidents (CoP) of 25 October 2012 on the MFF legislative proposals - General principles for the use of Delegated Acts, as endorsed by the CoP at its meeting on 15 November 2012.

2.2.7 Binding or non-binding

While the Commission and the Council might argue that delegated acts should concern legally binding measures, the only really determining factor is whether the act to be adopted is appropriate for a regulation, a directive or a decision. It should be underlined that it is not always easy or uncontroversial to determine whether an act is binding or non-binding and that the Treaty does not make any reference to this issue. **What is important is an assessment of the actual nature of the measure concerned, not its title.** For instance, the mere fact that a measure is called "guideline" is not a guarantee that it is not binding (see recent Case C-355/10, referred to above, under paragraph 2.2.3).

2.2.8 Former RPS measures

If the proposed delegation of power concerns an issue which was dealt with, or which is similar to a provision which was dealt with under the Regulatory Procedure with Scrutiny (RPS) procedure¹ in the past, i.e. before the entry force of the Lisbon Treaty, it should be covered by delegated acts or, as explained above, by the basic legislative act, unless exceptionally justified. For more information on RPS see para 1.1 and chapter 3.

2.2.9 Special legislative procedures

The wording of article 290 allows for the delegation of power in every legislative act, thus also in those adopted under a special legislative procedure (e.g. consultation). In the case of a legislative procedure where only the Council adopts the legislative act, after consultation of the Parliament, the question arises whether Parliament can still exercise the rights foreseen by Article 290 TFEU, considering in particular that the wording of article 290 refers to 'the Parliament and the Council'.² In consent procedures the Parliament should have the same rights as in ordinary legislative procedures.

¹ Article 5a of the comitology decision (see Annex J).

² Council Regulation (EU) No 973/2010 of 25 October 2010 temporarily suspending the autonomous Common Customs Tariff duties on imports of certain industrial products into the autonomous regions of the Azores and Madeira, OJ L 285 30.10.2010, p. 4.

2.3 Step 3 - Delegated acts - drafting the provision

In case the choice for delegated acts is made, the objectives, content, scope and duration of the delegation of power shall be explicitly defined in the basic act. The non-binding Common Understanding (see *para 2.3.3 and Annex A*) with its **templates** provides valuable help thereto.

2.3.1 Objectives, content, scope and duration

The legislative act should explicitly define the objectives, content, scope and duration of the delegation of powers.

2.3.2 Conditions

The Treaty stipulates two conditions: the Parliament and the Council may revoke the delegation of powers¹, and the delegated acts will enter into force if no objections have been raised by the European Parliament or the Council. The Parliament considers that the **list of conditions for a delegation is non-exhaustive** and that the legislator has the option to include other conditions in a legislative act. It is to be noted that both political and legal controversy must be expected with the other institutions, which in general do not share this approach.

2.3.3 Common Understanding

As the Treaty does not require the procedure of delegated acts to be further clarified in secondary legislation (as is the case for implementing acts), a Common Understanding was agreed² (see Annex A) between the Commission, the European Parliament and the Council aiming at **streamlining practices and clarifying provisions applicable to delegations of legislative power**³. The wording of the Common Understanding offers **the necessary flexibility** to the legislator. The following elements are important:

¹ This is a new feature in comparison to the RPS where the colegislators were not empowered to revoke the implementing powers of the Commission.

² Following the Communication from the Commission to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union (COM/2009/0673 final) of 9 December 2009 and the subsequent European Parliament resolution of 5 May 2010 on the power of legislative delegation (2010/2021(INI); Rapporteur Mr Szajer).

³ First paragraph of the Common Understanding (see Annex A).

a) The Institutions "*undertake to refer as far as possible to the standard clauses annexed*"¹.

b) The Common Understanding is a non-binding document for the legislator.

c) **Consultation**: the Common Understanding requests the Commission to ensure that the Parliament is **properly consulted and informed** when drafting delegated acts.

d) **Recess period**: the recess period (period during which the Commission cannot send any draft delegated acts to the European Parliament) for delegated acts is fixed, from **22 December till 6 January** in the winter, and from **15 July till 20 August** in the summer.²

e) **Duration of delegation**: either **indeterminate, or if determined, tacitly extended** for an equal period of time, unless the co-legislators oppose the extension not later than three months before the end of each period.

f) **Period for objection**: the period for objection should be determined on a case-by-case basis but should **not be less than 2 months, renewable once**. This period could be adapted, for example, to the length and complexity of the expected draft delegated act.

g) **Early non-objection and urgency procedure**: a delegated act may be **published and enter into force before the expiry of the objection period** if the European Parliament and the Council have both informed the Commission that they will not object³. This procedure is commonly called the "early non-objection".

In some well-justified cases and restricted areas, an **urgency procedure**⁴ may be foreseen in the legislative act. This procedure places additional information requirements on the Commission in terms of forward planning. Under this procedure a draft delegated act enters into force immediately and applies as

¹ Third paragraph of the Common Understanding (see Annex A).

² It is renegotiated every year in the case of RPS.

³ Paragraphs 10 and 11 of the Common Understanding.

⁴ Paragraphs 12 to 15 of the Common Understanding

long as no objections have been raised by the Parliament or the Council within the objection period¹.

h) **Standard clauses ("templates")**: Proposals for standard clauses are annexed to the Common Understanding. They provide **basic wording**, adapted to most situations, and enable the institutions to avoid renegotiating technically complex clauses. However, they are non-binding. They are proposed **as an example and can be adapted** to the needs of each legislative provision if necessary.

i) **Case-by-case approach**: As stated in the previous paragraph, the Common Understanding is a non-binding instrument, proposed in order to facilitate the work of the Commission when drafting legislative proposals and the task of the co-legislators, and in particular negotiators in trilogues, when amending these provisions.

However, it should be pointed out that, as long as it is in line with the provisions of the Treaty, **a case-by-case approach prevails**, allowing the adaptation of each delegation of powers to the particular needs and aim of the legislative provision at hand.

Some legislative acts have already deviated from the proposed wording:

- by **adapting the scrutiny period** (hence 3 months, renewable once is the norm in the fields of financial services, banking and insurance),
- by **providing for an active role of another body** than the Commission (e.g. technical standards in the field of financial services, banking and insurance)².

¹ In case the Commission or the Council are requesting an urgency procedure in a field not justifying it, the European Parliament could argue in the negotiations in favour of the early non-objection. This latter procedure allows for the European Parliament and the Council to decide on a case-by-case approach if the matter at hand is urgent, and to act accordingly.

² Article 10 to 14 of the following regulations:

- Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12;

- Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance

2.4 Step 4 - Are the "criteria" for implementing acts fulfilled?

Box 2 - Article 291 on Implementing Acts

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

Implementing acts would be appropriate in case the criteria for delegated acts are **not** met and if the provision only **implements** a legally binding Union act,

2.4.1 Article 291

Article 291(1) of the Treaty (see Box 2) provides that Member States shall adopt all measures of national law necessary to implement legally binding Union act, thus bearing the principal responsibility for the implementation of EU law. However, the Treaty foresees that "*when uniform conditions for implementing legally binding Union acts are needed*", **implementing powers could be conferred on the Commission** and in some cases also on the Council. Article 291 is further clarified in a separate regulation defining the rules and principles for its application.

and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC, OJ L 331, 15.12.2010, p. 48;
- Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84.

2.4.2 Control by Member States and scrutiny by Parliament

In most cases the implementing acts are subject to control by Member States and **Regulation (EU) No 182/2011** (see Annex B) applies. The latter lays down the general principles to be followed for the exercise of such control¹. It obliges the Commission to make the draft and the final draft implementing acts available to the Parliament, at the same time as to the members of the implementing acts committee. In the case of implementing acts **Parliament does not have the possibility to 'veto'**. It can only indicate that in its view the implementing powers provided for in the basic act have been exceeded (article 11 of the Regulation). In such a case the Commission can choose to amend, withdraw, but also to maintain the draft implementing act.

2.4.3 No control by the Member States

In some cases the conferral of powers on the Commission is not subject to the control of Member States and the Commission takes the decisions alone (e.g. when the Commission is tasked to undertake controls within Member States, to conduct studies, to allocate tasks between different European laboratories, to develop action plans etc.). This means that regulation 182/2011 does not apply and there is neither an examination nor advisory committee (for the templates, see Annex C).

2.4.4 Uniform conditions

The argument that "uniform conditions are needed for the application of the basic act, and therefore implementing acts should be used to decide on them" should not be accepted. As uniform application of Union law is always required, this doesn't mean that everything should automatically fall under implementing acts. The **basic act can organise in detail the uniform conditions for its implementation, or it can delegate their creation under Article 290**. The uniform conditions are not necessarily established by implementing acts; they are the justification for the implementing powers given. Often implementing acts do not provide for uniform conditions for implementation but do ensure them in practice (for example, calls for tenders, attribution of grants or subsidies).

¹ Article 291, paragraph 3 TFEU provides for such a regulation, laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (see Box 2).

2.4.5 Former 'droit de regard' or 'RoS' procedure

Generally all elements surviving from the old advisory, management and regulatory procedures (the so-called 'droit de regard' or 'RoS' procedure) are covered by implementing acts (although a case-by-case examination should always take place). For legislative acts where codecision did not apply before the Lisbon Treaty, the proposed choice of procedure needs to be thoroughly scrutinised when revising the basic act.

2.5 Step 5. Implementing acts - examination or advisory procedure?

If a choice has been made for implementing acts subject to control by Member States, **Regulation (EU) No 182/2011** (Annex B) applies. It replaces the old advisory, management and regulatory procedures (the so-called 'droit de regard' or 'RoS' procedure as defined in the comitology decision¹) by two procedures: the advisory and the examination procedure. Article 2 of the Regulation provides for the criteria to be used to choose between the advisory and the examination procedures. Nevertheless, in duly justified cases, the legislator can choose the procedure he considers most relevant. The advisory and examination procedures both involve committees composed of Member States' representatives and are chaired by the Commission. However, the powers of these committees differ depending on the chosen procedure.

2.5.1 Examination procedure (Article 5 of the Regulation)

The committee adopts an opinion by **qualified** majority. The Commission can only adopt an implementing act supported by a **qualified majority of the committee**. If the committee opposes an implementing act or if it does not adopt an opinion, the Commission may only adopt the implementing act under specific conditions; **there are several possibilities, including an appeal committee** (see point 3). Specific rules apply for trade policy. In other words, **Member States have the possibility to impede, as a first step, the Commission from adopting an implementing act.**

¹ Comitology decision (see Annex J)

The examination procedure should be used in particular if it concerns an implementing act of general scope, or relates to programmes with substantial implications, the common agricultural and common fisheries policies, the environment, security and safety or protection of the health or safety of humans, animals or plants, the common commercial policy. The examination procedure should in principle apply for the adoption of acts of general scope designed to implement basic acts and specific implementing acts with a potentially important impact¹. **If a choice is made for the examination procedure go to step 6.**

2.5.2 Advisory procedure (Article 4 of the Regulation)

The committee (composed of one representative per Member States), adopts an opinion by a **simple** majority of its component members. The Commission adopts the implementing act "*taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered*". In other words, the **Commission is free to adopt any implementing act it considers most appropriate.**

The advisory procedure can be used if it does not fall within any of the categories specified above under the examination procedure. However, the advisory procedure may apply for the adoption of the implementing acts concerning one of these categories in duly justified cases, if the legislator so decides - **If a choice is made for the advisory procedure go to step 7.**

2.6 Step 6 - Implementing acts - examination procedure - with or without appeal committee in case of "no opinion"?

The legislator needs to make a choice as to what happens in case the committee cannot obtain the necessary majority to adopt an opinion in favour or against a draft implementing act ("**no opinion**"). The Regulation provides for the possibility to define in the basic act that the draft act may not be adopted in case of no opinion and that the appeal committee should be involved (see option b in para 2.6.3). It is important to Parliament to assess for each specific implementing act whether it prefers to grant a more

¹ Recital 11 of Regulation (EU) No 182/2011, OJ L 55, 28.2.2011, p. 13. (see Annex B)

powerful role to the Commission or to the Member States (appeal committee).

2.6.1 The appeal committee

The Regulation creates an appeal committee which is composed of one representative of each Member State and chaired by the Commission. The appeal committee is consulted under the examination procedure when the examination committee delivers a negative opinion or no opinion on a draft implementing act in a number of specific cases (see para 2.6.3). The Rules of Procedure of the appeal committee can be found in Annex I.

2.6.2 No involvement of appeal committee in case of no opinion

If Parliament prefers to grant the Commission a more powerful role, it should argue that the Commission may adopt the draft measure in case of no opinion - **go to step 7**.

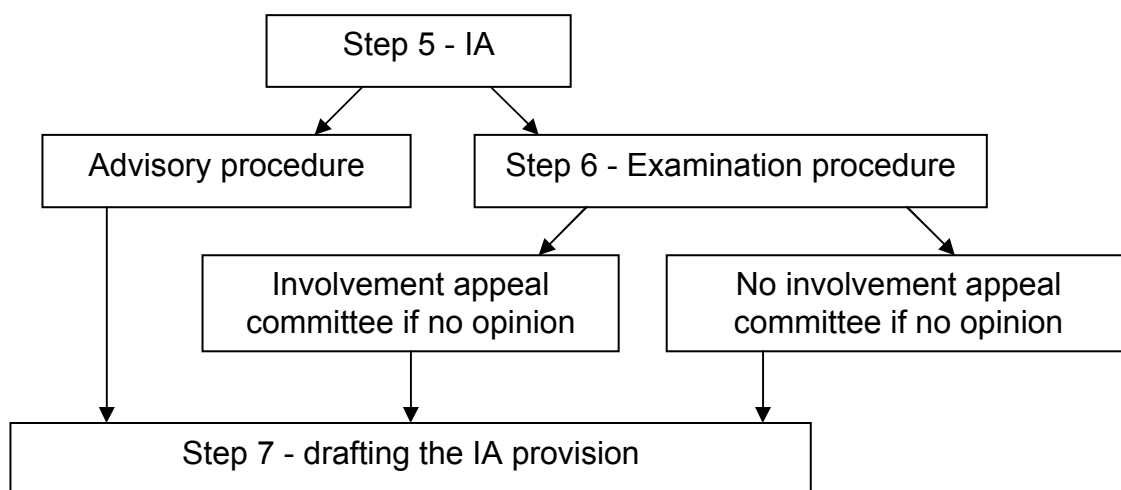
2.6.3 Involvement of appeal Committee in case of no opinion (Article 5, para 4 and Article 6 of the Regulation)

In case no opinion is adopted under the examination procedure the Commission may adopt the draft implementing act or may submit an amended version of the act, unless:

- a) that act concerns taxation, financial services, protection of health or safety of humans, animals or plants, or definitive multilateral safeguard measures;
- b) the basic act provides that the draft act may not be adopted in case of no opinion;
- c) a simple majority of the component members of the committee opposes it.

In any of these three cases the Commission needs, however, to submit an amended version of the act within 2 months of the vote, or submit the draft implementing act within 1 month of the vote to the appeal committee. In practice, this provision only entails a delay since after the procedure in the appeal committee, if the result is again that no opinion is adopted, the Commission "may" still adopt the draft. However, politically, it is expected that two failures to adopt an opinion (in the normal and in the appeal committee) might put the Commission under considerable political

pressure not to adopt the draft, despite the fact that legally it would still be able to do so. This is why the Commission is of the opinion that the possibility offered by Article 5, paragraph 4, subparagraph 2(b) should only be used as an exception and that the rule is contained in Article 5, paragraph 4, subparagraph 1 (the Commission "may" adopt the measure, see paragraph 1.6.3 point 3). - **go to step 7 - para 2.7.**



2.7 Step 7 - Implementing acts - drafting the provision

The templates for the provisions on implementing acts can be found in annex x. In addition to the issues raised above, the following issues might be relevant for a decision by the legislator:

2.7.1 Exceptional circumstances and immediately applicable measures:

The Regulation¹ foresees two special procedures in the case of exceptional circumstances (article 7) and in case measures should apply immediately (article 8). In order to avoid a significant disruption of the markets in the area of agriculture or a risk for the financial interests of the Union, the Commission can adopt an implementing act directly and should, in this case, submit it directly to the appeal committee.

¹ Article 7 and Article 8 of Regulation (EU) No 182/2011 (see Annex B).

On duly justified grounds of urgency foreseen in the basic act, the Commission can adopt a measure with immediate effect. This measure would then remain in force up to 6 months and should be submitted to the Committee within 14 days after its adoption.

3 HOW DOES PARLIAMENT EXERCISE ITS POWERS REGARDING DELEGATED ACTS, IMPLEMENTING ACTS AND RPS MEASURES?

3.1 Introduction

After the entry into force of the Lisbon Treaty and of the Regulation on Implementing Acts the Parliament receives the following types of acts/measures:

- **Delegated acts:** resulting from legal acts adopted after the entry into force of the Lisbon Treaty;
- **Implementing acts:** resulting from legal acts adopted after the entry into force of the Lisbon Treaty or from the transitional replacement of the 'droit de regard' provisions in the legislative acts already existing before the entry into force of the Treaty, pursuant to Article 13 of the Implementing Act Regulation¹ (Annex B);
- **Measures falling under the Regulatory Procedure with Scrutiny (RPS):** resulting from legislative acts adopted before the entry into force of the Treaty, but which are not yet aligned.

The Parliament furthermore receives several additional documents for information, such as draft measures, voting results and summary records of meetings. In this chapter it is explained (inter alia) how Parliament receives the relevant documents and the information related to these acts/measures, how Parliament can be better involved in the preparatory phase, and how the European Parliament committees exercise their powers.

Rules 87a, 88 and 88a (see Annex F)² of the Rules of Procedure of the European Parliament govern the main internal arrangements for dealing with delegated and implementing acts and RPS measures. The other relevant documents are the non binding Common Understanding (Annex A), the framework agreement between the European Commission and the Parliament (see para 3.2), the Implementing Act regulation³ (Annex B) and the

¹ Regulation (EU) No 182/2011 (see Annex B).

² See Annex G for the practical implications of each rule.

³ Regulation (EU) No 182/2011.

Comitology decision¹, which still applies for RPS measures (Annex J).

3.2 Access to information and to the relevant meetings

Box 3 - Point 15 of the new framework agreement between the European Commission and the Parliament²:

"the Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. If so requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings."

In order to enable Parliament to exercise its powers and prepare the period of scrutiny, it is important that it has access to the full information and documentation at the same time as the national experts. Parliament has always insisted on the need to be involved in the preparatory phase and to be able to attend meetings of national experts where necessary.

Delegated acts and access to information and expert group meetings

The Parliament has the possibility of attending meetings of national experts involved in the preparation of delegated acts. The new framework agreement between the European Commission and the Parliament (see box above) states that the Commission commits to providing Parliament with full information on the national experts' meetings in the preparatory and implementation phase, including the meetings on delegated acts. If requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings.

Several committees have started to request such invitations. In most cases the meetings are attended by staff from the committee secretariats. More detailed provisions are laid down in Annex I to the framework agreement (inter alia on the need to send the same information at the same time to Parliament as it is sent to the

¹ Comitology decision (see Annex J).

² Framework agreement on relations between the European Parliament and the European Commission, Annex XIV to the Rules of Procedure of the European Parliament, OJ L 304, 20.11.2010, p. 47 (see Annex D).

national experts; Annex E). The Committees concerned receive all the relevant documents in their own functional mailbox from the Unit for the Reception and Referral of Official Documents (DG PRES), after which they may forward the information to their Members. In addition to receiving this information in the functional Parliament mailbox(es), Parliament has also requested full access to the CIRCA¹ database.

Implementing acts/RPS measures and access to information and committee meetings

There is no arrangement for Parliament's experts to attend the committees dealing with implementing acts or RPS measures. There have, however, been examples of Parliament's representatives attending meetings of stakeholders organised by the Commission to consult on draft RPS measures.

The Comitology Register for implementing acts and RPS measures

The Implementing Acts Regulation contains provisions on the transmission of documents and information. Article 10 indicates which documents need to be sent simultaneously to the Parliament and the committee members². As was the case for Right of Scrutiny (RoS or 'droit de regard') measures and still is the case for RPS measures, the Commission includes the implementing acts in the register which also contains voting results, agendas, summary records of the meetings and lists of the authorities and organisations to which the persons representing the Member States belong. In the interinstitutional agreement between the Parliament and the Commission on procedures for implementing the comitology decision (Annex F) it was agreed that the register will enable inter alia:

¹ CIRCA (Communication & Information Resource Centre Administrator) is a Government solution supporting the online collaborative activities of the EU's public administrations. This IT tool is developed by the Commission as an on-line register for sharing information and documents, and for participating in discussion on various issues. It is intended to be extended to Business and Citizens (CIRCABC): <http://circa.europa.eu/>.

² Article 10, paragraph 4 of Regulation No 182/2011 states that "*at the same time as they are sent to the committee members*", the Commission shall make available to the Parliament and the Council the agendas of the committee meetings, the draft implementing acts on which the committees are asked to deliver an opinion and the final draft implementing acts following the delivery of the opinion of the committees, whilst also informing them of the availability of such documents (see Annex B).

- a clear identification of the documents and of any changes to the implementing measure;
- an indication of the stage of the procedure and the timetable, including the time limits¹;
- a clear distinction between the draft measures received by the Parliament at the same time as the committee members in accordance with the right to information, and the final draft following the committee's opinion that is forwarded to the Parliament;

The agreement furthermore specifies that in addition to the summary records, the European Parliament may request access to minutes of committee meetings (paragraph 6). The Commission will examine each request, on a case-by-case basis under the applicable confidentiality rules.

The comitology register does not apply to delegated acts, nor to RPS measures transmitted under Article 5a(4) of the Comitology decision (see Annex J).

3.3 Need for cooperation between the European Parliament and the Commission

Despite the formal procedures described above, it is crucial that the committee secretariats of the Parliament create good working relations with their counterparts in the Commission, including already at the drafting stage of the act. As to the delegated acts, the Common Understanding specifies that appropriate contacts at administrative level shall be established (paragraph 2).

In order to avoid objections to the act, the informal contacts with the Commission services could be used to try to influence the drafting of the act. It is in the interest of the Commission to take Parliament's position on board at this stage, as it reduces the chances that Parliament vetoes the measure at the next stage of the relevant procedure.

¹ Point 3 and point 15 of Agreement between the Parliament and the Commission on procedures for implementing the comitology decision, OJ C 143, 10.06.2008, p. 1 (see Annex E).

3.4 Transmission of the documents to Parliament and announcement in plenary

Delegated acts: Delegated acts are officially transmitted to the Parliament by a letter from the Secretary General of the European Commission to the Deputy Secretary General of the Parliament, after which the Unit for Reception and Referral of Official Documents (DG PRES) refers the delegated act to the Committee responsible for the basic legislative act from which it derives. In practice this means that the act is sent through GEDA to the committee which was responsible for the basic legislative act and to the committees which were associated in accordance with Rule 50 of the Rules of Procedure¹. As delegated acts are not uploaded in the "comitology register", the Secretariat of the responsible parliamentary committee will not receive an automatic notification as is the case for implementing acts and RPS measures. At the first plenary following the transmission of the documents, the President will announce to the Parliament the date on which the act was received in all the official languages and the period during which objections may be raised. The announcement will be published in the minutes of the plenary together with the name of the committee responsible.

Implementing acts and RPS measures: Both implementing acts and RPS measures are uploaded by the Commission in the so-called "comitology register" (see para 3.2). The Unit for Reception and Referral of Official Documents in DG PRES receives a notification through the comitology register, after which the relevant document is uploaded on Epades and the committee responsible for the basic legislative act and the committees associated pursuant to Rule 50 of the Rules of Procedure of the European Parliament¹ receive an e-mail in their specific comitology e-mail box, with inter alia:

- a link to the relevant document or documents in Epades;
- a link to the relevant document or documents in the comitology register;

¹ In case of codifications, changes in the competences of committees or the creation of a new committee, automatic referral of the document is not always possible. In those cases the referral is done on the basis of Annex VII of the Rules of Procedure describing the actual competences of standing committees.

- information on the dossier name, title, procedure, stage of the procedure, and deadlines for the Parliament.

3.5 Periods of recess (European elections/summer/winter recess)

- **Delegated acts:** To ensure that the Parliament and the Council are able to exercise their rights within the time limits laid down in each basic act, the Common Understanding specifies that the Commission shall not transmit any delegated acts during the following periods¹:
 - from 22 December until 6 January;
 - from 15 July until 20 August.

These periods do not apply to delegated acts adopted under the urgency procedure². The three institutions have to agree by October 2013 on an arrangement for the notification of delegated acts during the European Elections in 2014.

- **Implementing acts:** As there is no specified time limit for the Parliament to scrutinise implementing acts, there is no recess period for these acts.
- **RPS measures:** Parliament's periods of recess must be taken into account by the Commission when sending documents, except in cases of urgency or where shorter time limits apply³. In those cases the Commission services have to informally warn the secretariat of the responsible committee(s), as soon as they foresee that such documents might need to be submitted. The Parliament and the Commission services agree every year on the specific dates for the period⁴. This agreement has to be formally endorsed by the Conference of Committee

¹ Paragraph 6 of the Common Understanding (see Annex A).

² Part VI of the Common Understanding.

³ The 2008 agreement between the Parliament and the Council on procedures for implementing the comitology decision (see para 16 and 18 of Annex E). In cases of urgency the basic act should refer to Article 5a(6) and where shorter time limits apply it should refer to Article 5(a)(6) of the comitology decision (see Annex J).

⁴ For the summer recess in 2012 it was agreed that no final draft RPS measures shall be transmitted between 21 May and 23 July 2012 and between 30 July and 20 August 2012 and for the winter recess 2012/2013 between 10 December and 6 January 2013.

Chairs. These dates are published on the CODE site on intranet and can always be communicated to the committee concerned by the CODE unit.

3.6 Concrete exercise of the powers after the measure has been received

As soon as the European Parliament has received a delegated act, a draft implementing act or a draft RPS measure, it has the possibility to assess the act or measure and to object if considered necessary (though such an objection will block the measure only for delegated acts and RPS measures, see para 3.6.2).

3.6.1 Committee responsible, associated committees and joint committee meetings

As described in paragraph 2.4. the act or measure is referred to the committee responsible for the relevant basic act.

- In cases where the procedure with **associated committees (Rule 50)** was applied to the basic act, Rule 88a, paragraph 1 states that the delegated act, draft implementing act or RPS measure shall also be forwarded to the associated committee. The chair of the committee responsible shall set a deadline by which the associated committee may draw up proposals, which according to the Rules should only concern matters falling within its exclusive competence or the two committees' joint competence. If the act or measure falls mainly within the exclusive competence of the associated committee, the responsible committee needs to accept the proposal by the associated committee without a vote. Failing to do so, the President may authorise the associated committee to table a motion for a resolution in Plenary.
- If the basic act was adopted under the procedure with **joint committee meetings (Rule 51)** the President shall, in accordance with Rule 88a, paragraph 2, determine which committee is responsible or whether committees are jointly responsible for the consideration, in accordance with the agreements reached between the chairs of the committees concerned. Each of the committees concerned may request a joint meeting to consider a motion for a resolution. If the chairs of the committees concerned fail to agree, it will be the Chair of

the Conference of Committee Chairs who will convene the joint meeting.

3.6.2 Legal consequences of an objection by Parliament

- **Delegated acts:** A delegated act can only enter into force *"if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act"*; The Parliament therefore has the power to "veto" a delegated act.
- **Implementing acts:** Parliament or Council *"may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft implementing act, taking account of the positions expressed, and shall inform the European Parliament and Council whether it intends to maintain, amend or withdraw the draft implementing act"*¹. Parliament does not have the power to veto an implementing act. The Commission can still adopt the implementing act despite the opinion of the Parliament that an act exceeds the implementing powers provided for in the basic act. If such an "objection" to an implementing act is ignored by the Commission, the European Parliament might consider bringing the matter before the European Court of Justice.
- **RPS measures:** for RPS measures *"the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the [...] draft by the Commission, subject to certain criteria"*. In case of such an opposition, the draft measure shall not be adopted by the Commission. The Commission may either submit an amended draft or present a new legislative proposal².

¹ Article 11 of Regulation (EU) No 182/2011 (see Annex B).

² Comitology decision (see Annex J).

3.6.3 Adoption of a motion for a resolution to propose an objection or a revocation

The procedures for objecting to a delegated act, a draft implementing act or a RPS measure or for revoking a power delegated to the Commission are different:

- **Delegated acts:** The **committee responsible** may table a motion for a resolution objecting to the delegated act for which it may consult any committees concerned. Pursuant to Rule 87a, paragraph 3, the motion for a resolution shall state that Parliament objects, state the reasons for the objection (possibly in the recitals) and may also incorporate a request to the Commission to submit a new delegated act, which shall take account of Parliament's recommendations. The motion for a resolution therefore can also contain more general or detailed recommendations.

If the committee responsible has not tabled a motion for a resolution by 10 working days prior to the start of the part-session the Wednesday of which falls before and closest to the day of expiry of the scrutiny period, **a political group or at least 40 Members** may table a motion for a resolution on the matter for inclusion in the agenda of the part-session. It is possible, in theory, that both the responsible committee and a political group or at least 40 Members table a motion for a resolution in the last 10 days. While all resolutions would result in a veto, the justification and the recommendation might be different. In order for a resolution to be adopted in plenary it needs to be supported by a **majority of Parliament's component Members**, i.e. at least 378 Members¹.

Revocation: In accordance with Rule 87a, paragraph 7 the committee responsible may submit a **reasoned** motion for a resolution revoking, **in full or in part**, the delegation provided for by the basic act. To be adopted in plenary it needs to be supported by a **majority of Parliament's component Members**, i.e. at least 378 Members¹.

- **Implementing acts:** The committee responsible may table a **reasoned** motion for a resolution stating that a draft

¹ After the elections in 2014 the Parliament will consist of 751 instead of 754 members and the majority of the component Members will therefore be 376.

implementing act or measure goes beyond the implementing powers provided for in the basic legislative act or is not consistent with Union law in other respects. It may incorporate a request to the Commission to withdraw the act, to amend it in keeping with the objections raised by Parliament, or to submit a new legislative proposal. For resolutions on implementing acts a **simple majority** in plenary is sufficient.

- **RPS measures:** The committee responsible may table a **reasoned** motion for a resolution objecting to the draft RPS measure, stating the reason for such an objection. It may incorporate a request to the Commission to withdraw the act, to amend it in keeping with the objections raised by Parliament, or to submit a new legislative proposal. In order for a resolution objecting to an RPS measure to be adopted in plenary it needs to be supported by a **majority of Parliament's component Members, i.e. at least 378 Members.**

While in several occasions the parliamentary committees had discussions and / or votes on whether to object to RPS measures, so far only four resolutions for an objection were adopted by plenary by a majority of the component Members. It concerns the following measures:

- "The capital requirements directive", resolution adopted on 16 December 2008
- "The energy labelling of TV's", resolution adopted on 6 May 2009
- "Meat glue (bovine and porcine thrombin)" resolution adopted on 9 May 2012
- "List of nutrition claims", resolution adopted on 2 February 2012

With regard to a RPS measure on "body scanners" a normal resolution objecting to the measure tabled by a group of Members was adopted by the plenary on 23 October 2008. This was not a formal "RPS objection". For political reasons the Commission did, however, choose to withdraw the measure.

New objections to RPS measures and delegated acts will be put on the CODE intranet:

www.ipolnet.ep.parl.union.eu/ipolnet/cms/pid/2335

3.6.4 Possible criteria for expressing an "objection"

The possible criteria for an objection by the responsible committee are different for the various procedures:

- **Delegated acts:** Article 290 TFEU does not contain criteria for expressing an objection as is the case for implementing acts and RPS measures. The legislator is thus free to object for whichever reason it considers that the act should not enter into force. In several basic legislative acts the provisions on delegated acts do, on the other hand, specify that *"the institution which objects shall state the reason for objecting to the delegated act"*¹.
- **Implementing acts:** Parliament *"may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act"*². The Parliament can thus "object" only if it considers that the Commission exceeded its implementing powers, after which the Commission can still adopt the implementing act (despite such an objection).
- **RPS measures:** Parliament can object to draft measures under the RPS procedure if it estimates that³:
 - the Commission has exceeded its implementing powers, or
 - the draft measure is not compatible with the aim or content of the basic instrument, or
 - the draft measure does not respect the principles of subsidiarity or proportionality

3.6.5 Time period for scrutiny

Parliament's new Rules of Procedure⁴ no longer specify that the Chair of the Committee responsible shall set a deadline for Members to propose that the committee object to the draft measures. In practice setting such a deadline might still prove to be useful to ensure that a vote in committee and plenary can be

¹ For example in Article 22, paragraph 3 of Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

² Article 11 of Regulation (EU) No 182/2011 (see Annex B).

³ RPS procedure: Article 5a of comitology decision (see Annex J).

⁴ Rule 87a, 88 and 88a, which entered into force on 21 May 2012 (see Annex F).

done within the scrutiny period. The internal deadline would normally need to be quite short in order to allow for a decision on the procedure, a discussion in committee, a vote in committee and a vote in plenary on the motion for a resolution opposing the measure or act. The period for scrutiny varies for the different measures:

- **Delegated acts:** The period for expressing an objection shall start when all official language versions of the delegated act have been received by the European Parliament¹. The period for expressing an objection is defined on a case-by-case basis in each basic act. It is stated in the non-binding Common Understanding that it should in principle be at least two months, extendable by two months at the initiative of the European Parliament or the Council². The President will announce the date on which the act was received in all languages and the period during which objections may be raised³.

Extension of the deadline: Where the committee responsible considers that it is appropriate to extend the deadline for raising objections in accordance with the basic act, the committee chair, on behalf of Parliament, shall notify the Commission and the Council of that extension. This could take place through a standard letter from the Committee Chair to the Commissioner responsible (and with copy to the Head of Unit responsible in the relevant DG) and to the Chair of the Coreper responsible (and with copy to the responsible Head of Unit in the Council Secretariat). This standard letter should be notified to the Chairman of the Conference of Committee Chairs. Templates of such standard letters can be obtained from the CODE unit. In order to ensure that all necessary steps are followed (such as the extended deadline in ITER and informing all relevant services) it is advisable to contact the CODE unit.

- **Implementing acts:** For implementing acts there is no clearly defined time period for scrutiny⁴. Article 11 of the implementing act regulation specifies that Parliament may "*at any time*

¹ Paragraph 7 of the Common Understanding (see Annex A) and Rule 87a, paragraph 2 of the Rules of Procedure (see Annex F).

² Paragraph 10 of the Common understanding.

³ Rule 87a paragraph 2 of the Rules of Procedure.

⁴ The one month scrutiny period that was applied to the former 'RoS' or 'droit de regard' measures does not apply to implementing acts.

*indicate to the Commission that [...] a **draft implementing act exceeds the implementing powers**". This means that a Parliament resolution under Article 11 would only make sense as long as the implementing act has not yet been adopted by the Commission. In many cases there is not much time between the vote in the implementing acts committee on the draft act and the adoption of the implementing act by the Commission (after the vote and before the formal adoption it is called the "final draft"), which is why several committees in the Parliament put an internal deadline for objection as soon as they have received the first version of the draft act.*

- **RPS measures:** Parliament has **three months** to oppose a draft measure if the RPS committee voted in favour of the draft RPS measure¹. As is the case for delegated acts the period for expressing an objection shall start when all official language versions have been received by the Parliament². If there was no qualified majority in the RPS committee, the Parliament has in practice more time to react, as the Commission then has to submit a proposal to the Council (and to inform the Parliament), after which the Council has two months to scrutinise the measure. If the Council envisages adopting the measure, or if the Council does not act, the Parliament can have up to **four months** to oppose a measure from the moment it has been forwarded to the Council.

Shorter time limits/Urgency procedure: Where shorter time limits apply (Article 5a(5)(b) of the comitology decision) and in case of urgency (article 5a(6)), the time limit starts to run from the date the European Parliament receives the final draft in the language versions submitted to the RPS committee, **unless the Chair of the parliamentary committee objects**³.

3.6.6 'Early non-objection'

For both delegated acts and RPS measures Parliament may declare prior to the expiry of the deadline that it has no objections

¹Article 5a of the comitology decision (see Annex J).

² Paragraph 15 of the 2008 agreement between the Parliament and the Council on procedures for implementing the comitology decision (see Annex E).

³ Article 5a(5)(b) and 5a(6) of the comitology decision.

to the delegated act¹ or the draft RPS measure. For this so-called "early non-objection" the following steps are relevant:

- **Request from Commission:** The committee responsible normally starts considering an early non-objection on the basis of a duly substantiated request from the Commission. Such justification is obligatory in the case of RPS and good practice in the case of delegated acts;
- **Decision by committee responsible:** It is good practice to ensure that all Members are involved in the decision on whether or not to recommend an early non-objection. This can take place through a discussion and if necessary a vote in committee or through a written procedure;
- **Letter to the CCC and a recommendation to the plenary:** In case the committee responsible approves the early non-objection, the Chairman should write a letter to the Chair of the Conference of Committee Chairs (CCC) setting out its reasons. It is good practice to attach the request by the Commission and the act to the letter. In addition the Committee should table a recommendation to plenary, which should preferably be attached to the letter to the CCC.
- **Written procedure CCC:** Because of the urgent character of the act or measure the CCC will normally use the written procedure to assess the early non-objection before the first upcoming plenary. **If one of the Chairs objects on behalf of his or her committee, the procedure comes to an end and there will be no "early non-objection".**
- **Announcement in Plenary:** If none of the Chairs raises an objection during this written procedure, the Chair of the CCC shall inform the President of Parliament, who shall in turn inform the plenary as soon as possible.
- **24 hours for political group or 40 Members to react:** If, within 24 hours following the announcement in plenary, a political group or at least 40 Members object to the recommendation, it shall be put to the vote. **For the approval of such a recommendation a simple majority of Members voting in favour is sufficient.** If, within the 24 hours after the announcement by the President in plenary, no objections are raised, the proposed recommendation shall be deemed to have been approved.

¹ The procedure for delegated acts is described in Rule 87a, paragraph 6 of the Rules of Procedure. Rule 88a, paragraph 4 (d) states that for RPS measures the same procedure as for delegated acts applies (see Annex F).

- **In case of approval of the recommendation** any subsequent proposal objecting to the delegated act will be inadmissible. There will be no longer a possibility to object.
- **In case the recommendation is rejected**, the Parliament will continue to use the full scrutiny period as provided for in the basic act to decide whether or not to object.

3.6.7 Urgency procedures

An urgency procedure has been established in principle for each of the procedures. As it is very difficult for the Parliament to scrutinise the act or measure, to draft a resolution, and to discuss and vote in the committee and in the plenary within a very short period of time, Parliament has always insisted on having the urgency procedure only for exceptional cases. For other urgent cases the possibility of an 'early non-objection' can be used (see para 3.6.6).

- **Delegated acts:** The urgency procedure should only be used for exceptional cases¹. The Commission has to keep the Parliament and the Council fully informed about the possible use of the urgency procedure, and they shall informally warn the secretariats of the Parliament and the Council via the functional mailbox. A delegated act adopted under the urgency procedure enters into force without delay and applies as long as no objection is expressed by the Parliament and/or Council within the period provided for in the basic act. In the case of an objection the Commission shall repeal the act without delay following the notification by the Parliament or the Council of the decision to object. When notifying a delegated act under the urgency procedure to the Parliament and the Council, the Commission shall state the reasons for its use.
- **Implementing acts:** Immediately applicable implementing acts can only be used in case of "duly justified imperative grounds of urgency"². These implementing acts are adopted by the Commission without their prior submission to the implementing acts committee and are in force for a period not exceeding 6 months, unless the basic act provides otherwise. Within 14 days

¹ Paragraph 12 to 15 of the Common Understanding specify that the urgency procedure should only be used for exceptional cases, such as security and safety matters, the protection of health and safety, or external relations, including humanitarian crises (see Annex A).

² Article 8 of Regulation (EU) No 182/2011 (see Annex B).

the act has to be sent to the relevant implementing act committee. If the examination procedure applies and if the implementing act committee delivers a negative opinion, the Commission has to repeal the act. Special provisions apply for anti-dumping or countervailing measures.

- **RPS measures:** The comitology decision provides for the possibility of extending or curtailing the scrutiny period¹. Any extension must be justified by the 'complexity' of the measures. Any curtailment must be justified on grounds of 'efficiency'. In cases of 'imperative grounds of urgency' the Commission is entitled to make use of the specific procedure², which allows the Commission to adopt and implement the measure immediately after the vote in the RPS committee, in the case of a favourable opinion. The Parliament and Council can oppose the measure within a time-limit of one month from the moment the adopted measure has been submitted to them. In the event of opposition the Commission may provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. Provisional measures remain in force until they are repealed by a definitive instrument.

3.7 Various practices in parliamentary committees

The procedures described above are implemented differently in various committees. Some good current practices are laid out in this paragraph.

- **Preparatory phase** - Some Committees are already involved in the preparatory phase of the delegated/implementing acts. The ECON secretariat participates on a regular basis in experts meeting. Under the old Lamfalussy procedure it has established close relationships with its Commission counterparts and still meets on a regular basis with the services in order to plan the work ahead. The secretariat informs coordinators as well as the negotiating team of the basic act of any significant documents and calls for appropriate meetings on receipt of drafts, in order to enable the Members to influence the content at an early stage. Comments are sent to the Commission and often taken on board before the adoption of the act.

¹ Paragraph 5 of Article 5a of the comitology decision (see Annex J).

² Paragraph 6 of Article 5a of the comitology decision.

- **Newsletter** - Some Committees (for example ENVI and TRAN) inform their Members through a comitology newsletter. In some cases these newsletters are used to set an internal deadline for the Members of the responsible committee to propose an objection. The newsletters are also sent to other Committees for information purposes and to enable associated committees (Rule 50) to draw up proposals on matters falling within its exclusive competence or the two committees' joint competence in accordance with Rule 88a of the Rules of Procedure.

- **Standing Rapporteur** - At least one Committee has appointed two comitology rapporteurs who are responsible for comitology in the Committee. Some other Committees only appoint a Rapporteur if an objection is raised, or invite the Member(s) who objected to draft a resolution. A possibility is to appoint the same Rapporteur (or one of the Shadow Rapporteurs) as for the basic act.

ANNEXES

Annex A: Common Understanding

I. Scope and general principles

Taking into account the commitments referred to by the Commission in its communication of 9 December 2009, this Common Understanding builds further on that communication and streamlines the practice established thereafter by the European Parliament and the Council. It sets out the practical arrangements and agreed clarifications and preferences applicable to delegations of legislative power under Article 290 of the Treaty on the Functioning of the European Union (TFEU), in accordance with which the objectives, content, scope and duration of a delegation must be expressly defined in each legislative act making a delegation ("the basic act").

In exercising their powers and in compliance with the procedures laid down in the TFEU, the European Parliament, the Council and the Commission ("the three Institutions") shall cooperate throughout the procedure with a view to a smooth exercise of delegated power and an effective control of that power by the European Parliament and the Council. To this effect, appropriate contacts at administrative level shall be established.

The Institutions concerned, depending on the procedure for the adoption of the basic act, undertake to refer as far as possible to the standard clauses annexed to this Common Understanding when proposing or making delegations of power under Article 290 TFEU.

II. Consultations during the preparation and drawing up of delegated acts

The Commission, when preparing and drawing up delegated acts, shall ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council and shall carry out appropriate and transparent consultations well in advance, including at expert level. The European Parliament and the Council shall indicate to the Commission their respective functional mailboxes to be used for the transmission of documents relating to those consultations.

III. Arrangements for the transmission of documents and calculation of time periods

By means of an appropriate mechanism, the Commission shall officially transmit the delegated acts to the European Parliament and the Council. Classified documents shall be processed in accordance with internal administrative procedures drawn up by each Institution with a view to providing all the requisite guarantees.

In order to ensure that the European Parliament and the Council are able to exercise the rights provided for in Article 290 TFEU within the time limits laid down in each basic act, the Commission shall not transmit any delegated acts during either of the following periods:

- from 22 December until 6 January;
- from 15 July until 20 August.

Those periods shall only apply when the period of objection is based on paragraph 10.

Those periods shall not apply for delegated acts adopted under the urgency procedure, as set out in paragraphs 12 to 15. In the event that a delegated act is adopted under the urgency procedure during one of those periods, the time limit for objection provided for in the basic act shall start only when that period is finished.

The three Institutions shall agree, by 1 October 2013, on an arrangement for the notification of delegated acts during the Elections to the European Parliament in 2014.

The period for objection shall start when all official language versions of the delegated act have been received by the European Parliament and the Council.

IV. Duration of the delegation

The basic act may empower the Commission to adopt delegated acts for a determined or an indeterminate period of time.

Where a determined period of time is provided for, the basic act should in principle provide for the delegation of power to be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. The Commission shall draw up a report in respect of the delegated power not later than nine months before the end of each period. This paragraph does not affect the European Parliament or the Council's right of revocation.

V. Periods for objection by the European Parliament and the Council

Without prejudice to the urgency procedure, the period for objection defined on a case-by-case basis in each basic act should in principle be of two months, and not less than that, extendable by two months at the initiative of the European Parliament or the Council.

However, the delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission that they will not object.

VI. Urgency procedure

The urgency procedure should be reserved for exceptional cases, such as security and safety matters, the protection of health and safety, or external relations, including humanitarian crises. The European Parliament and the Council should justify the choice of the urgency procedure in the basic act. The basic act shall specify the cases in which the urgency procedure shall be used.

The Commission undertakes to keep the European Parliament and the Council fully informed about the possibility of a delegated act being adopted under the urgency procedure. As soon as the Commission services foresee such a possibility, they shall informally forewarn the secretariats of the European Parliament and the Council via the functional mailboxes referred to in paragraph 4.

A delegated act adopted under the urgency procedure shall enter into force without delay and shall apply as long as no objection is expressed within the period provided for in the basic act. If an objection is expressed, the Commission shall repeal the act without delay following notification by the European Parliament or the Council of the decision to object.

When notifying a delegated act under the urgency procedure to the European Parliament and the Council, the Commission shall state the reasons for its use.

VII. Publication in the *Official Journal of the European Union*

Except where paragraph 11 applies, delegated acts shall be published in the L series of the *Official Journal of the European Union* only after the expiry of the period for objection. Delegated acts adopted under the urgency procedure shall be published without delay.

Without prejudice to Article 297 TFEU, decisions by the European Parliament or the Council to revoke a delegation, to object to a delegated act adopted under the urgency procedure or to oppose the tacit renewal of a delegation of power shall also be published in the L series of the *Official Journal of the European Union*. A decision to revoke shall enter into force the day following its publication in the *Official Journal of the European Union*.

The Commission shall also publish in the *Official Journal of the European Union* decisions repealing delegated acts adopted under the urgency procedure.

VIII. Mutual exchange of information, in particular in the event of a revocation

When exercising their rights in applying the conditions laid down in the basic act, the European Parliament and the Council will inform each other and the Commission.

When either the European Parliament or the Council initiates a procedure which could lead to the revocation of a delegation, it will inform the other two Institutions at the latest one month before taking the decision to revoke.

Annex to Common understanding

STANDARD CLAUSES

Recital:

In order to [objective], the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of [content and scope]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Article(s) delegating power:

The Commission shall [be empowered to] adopt delegated acts, in accordance with Article a, concerning [content and scope].

Supplementary paragraph to be added where urgency procedure applies:

Where, in the case of [content and scope], imperative grounds of urgency so require, the procedure provided for in Article b shall apply to delegated acts adopted pursuant to this Article.

Article a Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. [duration]

Option 1:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for an indeterminate period of time from*.

* Date of entry into force of the basic legislative act or any other date set by the legislator.

Option 2:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for a period of X years from*. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the X-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Option 3:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for a period of X years from*.

3. The delegation of power referred to in Article[s] ... may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article[s] ... shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

* Date of entry into force of the basic legislative act or any other date set by the legislator.

Supplementary article to be added where urgency procedure applies:

Article b
Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
 2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.
-

Annex B: Regulation (EU) No 182/2011 (OJ L 55, 28.2.2011, p. 13)

**Regulation (EU) No 182/2011 of the European Parliament and of the Council
of 16 February 2011
laying down the rules and general principles concerning mechanisms for control
by Member States of the Commission's exercise of implementing powers**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(3) thereof,

Having regard to the proposal from the Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure [¹],

Whereas:

(1) Where uniform conditions for the implementation of legally binding Union acts are needed, those acts (hereinafter "basic acts") are to confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

(2) It is for the legislator, fully respecting the criteria laid down in the Treaty on the Functioning of the European Union ("TFEU"), to decide in respect of each basic act whether to confer implementing powers on the Commission in accordance with Article 291(2) of that Treaty.

(3) Hitherto, the exercise of implementing powers by the Commission has been governed by Council Decision 1999/468/EC [²].

(4) The TFEU now requires the European Parliament and the Council to lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

(5) It is necessary to ensure that the procedures for such control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the TFEU as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.

¹ Position of the European Parliament of 16 December 2010 (not yet published in the Official Journal) and decision of the Council of 14 February 2011.

² OJ L 184, 17.7.1999, p. 23.

(6) In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate, for the purposes of such control, that committees composed of the representatives of the Member States and chaired by the Commission be set up.

(7) Where appropriate, the control mechanism should include referral to an appeal committee which should meet at the appropriate level.

(8) In the interests of simplification, the Commission should exercise implementing powers in accordance with one of only two procedures, namely the advisory procedure or the examination procedure.

(9) In order to simplify further, common procedural rules should apply to the committees, including the key provisions relating to their functioning and the possibility of delivering an opinion by written procedure.

(10) Criteria should be laid down to determine the procedure to be used for the adoption of implementing acts by the Commission. In order to achieve greater consistency, the procedural requirements should be proportionate to the nature and impact of the implementing acts to be adopted.

(11) The examination procedure should in particular apply for the adoption of acts of general scope designed to implement basic acts and specific implementing acts with a potentially important impact. That procedure should ensure that implementing acts cannot be adopted by the Commission if they are not in accordance with the opinion of the committee, except in very exceptional circumstances, where they may apply for a limited period of time. The procedure should also ensure that the Commission is able to review the draft implementing acts where no opinion is delivered by the committee, taking into account the views expressed within the committee.

(12) Provided that the basic act confers implementing powers on the Commission relating to programmes with substantial budgetary implications or directed to third countries, the examination procedure should apply.

(13) The chair of a committee should endeavour to find solutions which command the widest possible support within the committee or the appeal committee and should explain the manner in which the discussions and suggestions for amendments have been taken into account. For that purpose, the Commission should pay particular attention to the views expressed within the committee or the appeal committee as regards draft definitive anti-dumping or countervailing measures.

(14) When considering the adoption of other draft implementing acts concerning particularly sensitive sectors, notably taxation, consumer health, food safety and protection of the environment, the Commission, in order to find a balanced solution, will, as far as possible, act in such a way as to avoid going against any predominant position which might emerge within the appeal committee against the appropriateness of an implementing act.

(15) The advisory procedure should, as a general rule, apply in all other cases or where it is considered more appropriate.

(16) It should be possible, where this is provided for in a basic act, to adopt implementing acts which are to apply immediately on imperative grounds of urgency.

(17) The European Parliament and the Council should be promptly informed of committee proceedings on a regular basis.

(18) Either the European Parliament or the Council should be able at any time to indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act, taking into account their rights relating to the review of the legality of Union acts.

(19) Public access to information on committee proceedings should be ensured in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [¹].

(20) A register containing information on committee proceedings should be kept by the Commission. Consequently, rules relating to the protection of classified documents applicable to the Commission should also apply to the use of the register.

(21) Decision 1999/468/EC should be repealed. In order to ensure the transition between the regime provided for in Decision 1999/468/EC and this Regulation, any reference in existing legislation to the procedures provided for in that Decision should, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, be understood as a reference to the corresponding procedures provided for in this Regulation. The effects of Article 5a of Decision 1999/468/EC should be provisionally maintained for the purposes of existing basic acts which refer to that Article.

(22) The Commission's powers, as laid down by the TFEU, concerning the implementation of the competition rules are not affected by this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down the rules and general principles governing the mechanisms which apply where a legally binding Union act (hereinafter a "basic act") identifies the need for uniform conditions of implementation and requires that the adoption of implementing acts by the Commission be subject to the control of Member States.

¹ OJ L 145, 31.5.2001, p. 43.

Article 2

Selection of procedures

1. A basic act may provide for the application of the advisory procedure or the examination procedure, taking into account the nature or the impact of the implementing act required.
2. The examination procedure applies, in particular, for the adoption of:
 - (a) implementing acts of general scope;
 - (b) other implementing acts relating to:
 - (i) programmes with substantial implications;
 - (ii) the common agricultural and common fisheries policies;
 - (iii) the environment, security and safety, or protection of the health or safety, of humans, animals or plants;
 - (iv) the common commercial policy;
 - (v) taxation.
3. The advisory procedure applies, as a general rule, for the adoption of implementing acts not falling within the ambit of paragraph 2. However, the advisory procedure may apply for the adoption of the implementing acts referred to in paragraph 2 in duly justified cases.

Article 3

Common provisions

1. The common provisions set out in this Article shall apply to all the procedures referred to in Articles 4 to 8.
2. The Commission shall be assisted by a committee composed of representatives of the Member States. The committee shall be chaired by a representative of the Commission. The chair shall not take part in the committee vote.
3. The chair shall submit to the committee the draft implementing act to be adopted by the Commission.

Except in duly justified cases, the chair shall convene a meeting not less than 14 days from submission of the draft implementing act and of the draft agenda to the committee. The committee shall deliver its opinion on the draft implementing act within a time limit which the chair may lay down according to the urgency of the matter. Time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views.

4. Until the committee delivers an opinion, any committee member may suggest amendments and the chair may present amended versions of the draft implementing act.

The chair shall endeavour to find solutions which command the widest possible support within the committee. The chair shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the committee.

5. In duly justified cases, the chair may obtain the committee's opinion by written procedure. The chair shall send the committee members the draft implementing act and shall lay down a time limit for delivery of an opinion according to the urgency of the matter. Any committee member who does not oppose the draft implementing act or who does not explicitly abstain from voting thereon before the expiry of that time limit shall be regarded as having tacitly agreed to the draft implementing act.

Unless otherwise provided in the basic act, the written procedure shall be terminated without result where, within the time limit referred to in the first subparagraph, the chair so decides or a committee member so requests. In such a case, the chair shall convene a committee meeting within a reasonable time.

6. The committee's opinion shall be recorded in the minutes. Committee members shall have the right to ask for their position to be recorded in the minutes. The chair shall send the minutes to the committee members without delay.

7. Where applicable, the control mechanism shall include referral to an appeal committee.

The appeal committee shall adopt its own rules of procedure by a simple majority of its component members, on a proposal from the Commission.

Where the appeal committee is seised, it shall meet at the earliest 14 days, except in duly justified cases, and at the latest 6 weeks, after the date of referral. Without prejudice to paragraph 3, the appeal committee shall deliver its opinion within 2 months of the date of referral.

A representative of the Commission shall chair the appeal committee.

The chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States and the Commission to ensure an appropriate level of representation. By 1 April 2011, the Commission shall convene the first meeting of the appeal committee in order to adopt its rules of procedure.

Article 4

Advisory procedure

1. Where the advisory procedure applies, the committee shall deliver its opinion, if necessary by taking a vote. If the committee takes a vote, the opinion shall be delivered by a simple majority of its component members.

2. The Commission shall decide on the draft implementing act to be adopted, taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered.

Article 5

Examination procedure

1. Where the examination procedure applies, the committee shall deliver its opinion by the majority laid down in Article 16(4) and (5) of the Treaty on European Union and, where applicable, Article 238(3) TFEU, for acts to be adopted on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in those Articles.

2. Where the committee delivers a positive opinion, the Commission shall adopt the draft implementing act.

3. Without prejudice to Article 7, if the committee delivers a negative opinion, the Commission shall not adopt the draft implementing act. Where an implementing act is deemed to be necessary, the chair may either submit an amended version of the draft implementing act to the same committee within 2 months of delivery of the negative opinion, or submit the draft implementing act within 1 month of such delivery to the appeal committee for further deliberation.

4. Where no opinion is delivered, the Commission may adopt the draft implementing act, except in the cases provided for in the second subparagraph. Where the Commission does not adopt the draft implementing act, the chair may submit to the committee an amended version thereof.

Without prejudice to Article 7, the Commission shall not adopt the draft implementing act where:

(a) that act concerns taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures;

(b) the basic act provides that the draft implementing act may not be adopted where no opinion is delivered; or

(c) a simple majority of the component members of the committee opposes it.

In any of the cases referred to in the second subparagraph, where an implementing act is deemed to be necessary, the chair may either submit an amended version of that act to the same committee within 2 months of the vote, or submit the draft implementing act within 1 month of the vote to the appeal committee for further deliberation.

5. By way of derogation from paragraph 4, the following procedure shall apply for the adoption of draft definitive anti-dumping or countervailing measures, where no opinion is delivered by the committee and a simple majority of its component members opposes the draft implementing act.

The Commission shall conduct consultations with the Member States. 14 days at the earliest and 1 month at the latest after the committee meeting, the Commission shall inform the committee members of the results of those consultations and submit a draft implementing act to the appeal committee. By way of derogation from Article 3(7), the appeal committee shall meet 14 days at the earliest and 1 month at the latest after the submission of the draft implementing act. The appeal committee shall deliver its opinion in accordance with Article 6. The time limits laid down in this paragraph shall be without prejudice to the need to respect the deadlines laid down in the relevant basic acts.

Article 6

Referral to the appeal committee

1. The appeal committee shall deliver its opinion by the majority provided for in Article 5(1).

2. Until an opinion is delivered, any member of the appeal committee may suggest amendments to the draft implementing act and the chair may decide whether or not to modify it.

The chair shall endeavour to find solutions which command the widest possible support within the appeal committee.

The chair shall inform the appeal committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards suggestions for amendments which have been largely supported within the appeal committee.

3. Where the appeal committee delivers a positive opinion, the Commission shall adopt the draft implementing act.

Where no opinion is delivered, the Commission may adopt the draft implementing act.

Where the appeal committee delivers a negative opinion, the Commission shall not adopt the draft implementing act.

4. By way of derogation from paragraph 3, for the adoption of definitive multilateral safeguard measures, in the absence of a positive opinion voted by the majority provided for in Article 5(1), the Commission shall not adopt the draft measures.

5. By way of derogation from paragraph 1, until 1 September 2012, the appeal committee shall deliver its opinion on draft definitive anti-dumping or countervailing measures by a simple majority of its component members.

Article 7

Adoption of implementing acts in exceptional cases

By way of derogation from Article 5(3) and the second subparagraph of Article 5(4), the Commission may adopt a draft implementing act where it needs to be adopted without delay in order to avoid creating a significant disruption of the markets in the area of agriculture or a risk for the financial interests of the Union within the meaning of Article 325 TFEU.

In such a case, the Commission shall immediately submit the adopted implementing act to the appeal committee. Where the appeal committee delivers a negative opinion on the adopted implementing act, the Commission shall repeal that act immediately. Where the appeal committee delivers a positive opinion or no opinion is delivered, the implementing act shall remain in force.

Article 8

Immediately applicable implementing acts

1. By way of derogation from Articles 4 and 5, a basic act may provide that, on duly justified imperative grounds of urgency, this Article is to apply.
2. The Commission shall adopt an implementing act which shall apply immediately, without its prior submission to a committee, and shall remain in force for a period not exceeding 6 months unless the basic act provides otherwise.
3. At the latest 14 days after its adoption, the chair shall submit the act referred to in paragraph 2 to the relevant committee in order to obtain its opinion.
4. Where the examination procedure applies, in the event of the committee delivering a negative opinion, the Commission shall immediately repeal the implementing act adopted in accordance with paragraph 2.
5. Where the Commission adopts provisional anti-dumping or countervailing measures, the procedure provided for in this Article shall apply. The Commission shall adopt such measures after consulting or, in cases of extreme urgency, after informing the Member States. In the latter case, consultations shall take place 10 days at the latest after notification to the Member States of the measures adopted by the Commission.

Article 9

Rules of procedure

1. Each committee shall adopt by a simple majority of its component members its own rules of procedure on the proposal of its chair, on the basis of standard rules to be drawn up by the Commission following consultation with Member States. Such standard rules shall be published by the Commission in the Official Journal of the European Union.

In so far as may be necessary, existing committees shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents and the rules on data protection applicable to the Commission shall apply to the committees.

Article 10

Information on committee proceedings

1. The Commission shall keep a register of committee proceedings which shall contain:

- (a) a list of committees;
- (b) the agendas of committee meetings;
- (c) the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong;
- (d) the draft implementing acts on which the committees are asked to deliver an opinion;
- (e) the voting results;
- (f) the final draft implementing acts following delivery of the opinion of the committees;
- (g) information concerning the adoption of the final draft implementing acts by the Commission; and
- (h) statistical data on the work of the committees.

2. The Commission shall also publish an annual report on the work of the committees.

3. The European Parliament and the Council shall have access to the information referred to in paragraph 1 in accordance with the applicable rules.

4. At the same time as they are sent to the committee members, the Commission shall make available to the European Parliament and the Council the documents referred to in points (b), (d) and (f) of paragraph 1 whilst also informing them of the availability of such documents.

5. The references of all documents referred to in points (a) to (g) of paragraph 1 as well as the information referred to in paragraph 1(h) shall be made public in the register.

Article 11

Right of scrutiny for the European Parliament and the Council

Where a basic act is adopted under the ordinary legislative procedure, either the European Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft implementing act, taking account of the positions expressed, and shall inform the European Parliament

and the Council whether it intends to maintain, amend or withdraw the draft implementing act.

Article 12

Repeal of Decision 1999/468/EC

Decision 1999/468/EC is hereby repealed.

The effects of Article 5a of Decision 1999/468/EC shall be maintained for the purposes of existing basic acts making reference thereto.

Article 13

Transitional provisions: adaptation of existing basic acts

1. Where basic acts adopted before the entry into force of this Regulation provide for the exercise of implementing powers by the Commission in accordance with Decision 1999/468/EC, the following rules shall apply:

- (a) where the basic act makes reference to Article 3 of Decision 1999/468/EC, the advisory procedure referred to in Article 4 of this Regulation shall apply;
- (b) where the basic act makes reference to Article 4 of Decision 1999/468/EC, the examination procedure referred to in Article 5 of this Regulation shall apply, with the exception of the second and third subparagraphs of Article 5(4);
- (c) where the basic act makes reference to Article 5 of Decision 1999/468/EC, the examination procedure referred to in Article 5 of this Regulation shall apply and the basic act shall be deemed to provide that, in the absence of an opinion, the Commission may not adopt the draft implementing act, as envisaged in point (b) of the second subparagraph of Article 5(4);
- (d) where the basic act makes reference to Article 6 of Decision 1999/468/EC, Article 8 of this Regulation shall apply;
- (e) where the basic act makes reference to Articles 7 and 8 of Decision 1999/468/EC, Articles 10 and 11 of this Regulation shall apply.

2. Articles 3 and 9 of this Regulation shall apply to all existing committees for the purposes of paragraph 1.

3. Article 7 of this Regulation shall apply only to existing procedures which make reference to Article 4 of Decision 1999/468/EC.

4. The transitional provisions laid down in this Article shall not prejudice the nature of the acts concerned.

Article 14

Transitional arrangement

This Regulation shall not affect pending procedures in which a committee has already delivered its opinion in accordance with Decision 1999/468/EC.

Article 15

Review

By 1 March 2016, the Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation, accompanied, if necessary, by appropriate legislative proposals.

Article 16

Entry into force

This Regulation shall enter into force on 1 March 2011.

This Regulation is binding in its entirety and directly applicable in all Member States.

STATEMENT BY THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION

Article 5(2) of this Regulation requires the Commission to adopt a draft implementing act where the committee delivers a positive opinion. This provision does not preclude that Commission may, as is the current practice, in very exceptional cases, take into consideration new circumstances that have arisen after the vote and decide not to adopt a draft implementing act, after having duly informed the committee and the legislator.

STATEMENTS BY THE COMMISSION

The Commission will proceed to an examination of all legislative acts in force which were not adapted to the regulatory procedure with scrutiny before the entry into force of the Lisbon Treaty, in order to assess if those instruments need to be adapted to the regime of delegated acts introduced by Article 290 of the Treaty on the Functioning of the European Union. The Commission will make the appropriate proposals as soon as possible and no later than at the dates mentioned in the indicative calendar annexed to this declaration.

While this alignment exercise is underway, the Commission will keep the European Parliament regularly informed on draft implementing measures related to these instruments which should become, in the future, delegated acts.

As regards legislative acts in force which currently contain references to the regulatory procedure with scrutiny, the Commission will review the provisions attached to this procedure in each instrument it intends to modify, in order to adapt them in due course according to the criteria laid down in the Treaty. In addition, the European Parliament and the Council will be entitled to signal basic acts they consider important to adapt as a matter of priority.

The Commission will assess the results of this process by the end of 2012 in order to estimate how many legislative acts containing references to the regulatory procedure with scrutiny remain in force. The Commission will then prepare the appropriate legislative initiatives to complete the adaptation. The overall objective of the Commission is that, by the end of the 7th term of the Parliament, all provisions referring to the regulatory procedure with scrutiny would have been removed from all legislative instruments.

The Commission notes that it has recently launched a study which will provide a complete and objective review of all aspects of the EU's trade defence policy and practice, including an evaluation of the performance, methods, utilisation and effectiveness of the present TDI scheme in achieving its trade policy objectives, an evaluation of the effectiveness of the existing and potential policy decisions of the European Union (e.g., the Union interest test, the lesser duty rule, the duty collection system) in comparison with the policy decisions made by certain trading partners and an examination of the basic anti-dumping and anti-subsidy regulations in light of the

administrative practice of the EU institutions, the judgments of the Court of Justice of the European Union and the recommendations and rulings of the WTO Dispute Settlement Body.

The Commission intends, in the light of the results of the study and of developments in the Doha Development Agenda negotiations to explore whether and how to further update and modernize the EU's trade defence instruments

The Commission also recalls the recent initiatives it has taken to improve the transparency of the operation of trade defence instruments (such as the appointment of a Hearing Officer) and its work with Member States to clarify key elements of trade defence practice. The Commission attaches substantial importance to this work, and will seek to identify, in consultation with the Member States, other initiatives which could be taken in this respect.

Under the comitology rules based on Council Decision 1999/468/EC, where a Common Agricultural Policy (CAP) management committee has delivered an unfavourable opinion, the Commission must submit the draft measure in question to the Council which may take a different decision within a month. However, the Commission is not barred from acting but has the choice to either put the measure in place or defer its application. Hence, the Commission may take the measure where it considers on balance that suspending its application would for instance provoke irreversible negative market effects. When afterwards the Council decides otherwise the measure put in effect by the Commission becomes of course redundant. Thus the current rules equip the Commission with an instrument that allows protecting the common interest of the whole Union by adopting a measure at least on an interim basis.

Article 7 of this Regulation pursues the objective of maintaining this approach within the new comitology arrangements but limited to exceptional situations and on the basis of clearly defined and restrictive criteria. It would allow the Commission to adopt a draft measure despite the unfavourable opinion of the examination committee provided that its 'non adoption within an imperative deadline would create a significant disruption of the markets (...) or for the financial interests of the Union.' The provision refers to situations where it is not possible to wait until the committee votes again on the same or another draft measure because in the meantime the market would be significantly disrupted e.g. due to the speculative behaviour of operators. To ensure the Union's ability to act it would give Member States and the Commission the opportunity to have another informed discussion on the draft measure without leaving things undecided and open to speculation with the negative consequences for the markets and the budget.

Such situations may namely arise in the context of the day-to-day management of the CAP (e.g. fixing of export refunds, management of licences, special safeguard clause) where decisions need often to be taken quickly and can have significant economic consequences for the markets and thus farmers and operators but also for the budget of the Union.

In cases where the European Parliament or the Council indicate to the Commission that they consider a draft implementing act to exceed the implementing powers

provided for in the basic act, the Commission will immediately review the draft implementing act taking into account the positions expressed by the European Parliament or the Council.

The Commission will act in a manner which takes duly into account the urgency of the matter.

Before deciding whether the draft implementing act shall be adopted, amended or withdrawn, the Commission will inform the European Parliament or the Council of the action it intends to take and of its reasons for doing so.

Annex C: Templates for implementing acts

TEMPLATES FOR PROVISIONS ON IMPLEMENTING ACTS SUBJECT TO CONTROL BY MEMBER STATES

These templates are intended to provide guidance for the drafting of provisions on implementing acts to be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹, and, as such, are non binding. The different elements of the templates may be used and combined on a case-by-case basis.

RECITALS

1) Recital that must always be present where the basic legal act provides for implementing powers which are subject to control by the Member States²

"(...) *[Further justification of the need for uniform conditions may be included by the legislator on a case-by-case basis]* In order to ensure uniform conditions for the implementation (of this ...) *[the basic legal act]* (of ...) *[the relevant provisions of the basic legal act]*, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers*.

* OJ L 55, 28.2.2011, p. 13."

2) Recitals that must be present in specific cases

A) Choice of procedure

"(...) The (advisory) (examination) procedure should be used for the adoption of ... *[relevant implementing acts]* (in order to ...) (given that those acts ...) *[justification of the exception to Article 2(2) or 2(3) taking into account the nature or the impact of the implementing act]*."

¹ OJ L 55, 28.2.2011, p. 13.

² *In some cases the legislator confers implementing powers on the Commission which are not subject to control by the Member States; in such cases the recital (or a separate recital) should reflect this, without any reference to Regulation (EU) No 182/2011.*

B) Immediately applicable implementing acts

"(...) The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to ... *[implementing powers as described in the relevant provisions of the basic legal act]*, imperative grounds of urgency so require."

ARTICLES

1) Article X

A) Compulsory Article (Article conferring implementing powers on the Commission¹)

"Article X

... *[description of the implementing acts]*. Those implementing acts shall be adopted in accordance with the (advisory) (examination) procedure referred to in Article Y(y)."

B) Possible Article (providing also for immediately applicable implementing acts)

"Article X

... *[description of the implementing acts]*. Those implementing acts shall be adopted in accordance with the (advisory) (examination) procedure referred to in Article Y(y).

On duly justified imperative grounds of urgency (relating to ...), the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article Y(z)."²

Where the legislator decides to use the possibility referred to in Article 8(2) of Regulation (EU) No 182/2011 to provide in the basic legal act for an alternative maximum period of validity of the immediately applicable implementing acts, the following option could be used for the second paragraph:

"Article X

... *[description of the implementing acts]*. Those implementing acts shall be adopted in accordance with the (advisory) (examination) procedure referred to in Article Y(y).

On duly justified imperative grounds of urgency (relating to ...), the Commission shall adopt immediately applicable implementing acts in accordance with the

¹ Such a provision is to be inserted for each implementing power.

² In this case, those immediately applicable implementing acts will remain in force for a period not exceeding six months.

procedure referred to in Article Y(z). Those acts shall remain in force for a period not exceeding"

2) *Article Y*

"Article Y

Committee procedure

[Text to be used where the committee is already established under existing legislation:]

1. The Commission shall be assisted by the ... *[name of the committee]* established by ... *[reference to the legal act which created the committee]*. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.]

[Text to be used where the committee is a new one:]

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.]

[Where the advisory procedure is provided for in the basic legal act:]

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

(Where the legislator decides to use the possibility referred to in the second subparagraph of Article 3(5) of Regulation (EU) No 182/2011, a possible option, among those that could be covered by that provision, might be:

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or (...) *[number of members]* (a ... majority of) *[majority to be specified: simple, two-thirds, etc.]* committee members so request.)]

[Where the examination procedure is provided for in the basic legal act:]

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(Where the legislator decides to use the possibility referred to in the second subparagraph of Article 3(5) of Regulation (EU) No 182/2011, a possible option, among those that could be covered by that provision, might be:

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or (...) [*number of members*] (a ... majority of) [*majority to be specified: simple, two-thirds, etc.*] committee members so request.)

(Where the legislator decides to use the possibility referred to in point (b) of the second subparagraph of Article 5(4) of Regulation (EU) No 182/2011 to provide in the basic legal act that a draft implementing act is not to be adopted if no opinion is delivered, the following subparagraph is to be added:

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.)]

[Where the urgency procedure is provided for in the basic legal act:

4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with (Article 4) (Article 5) thereof, shall apply.]

**TEMPLATES FOR PROVISIONS ON IMPLEMENTING ACTS
WHICH ARE NOT SUBJECT TO CONTROL BY MEMBER STATES**

In Regulation (EU) No 182/2011, the European Parliament and the Council laid down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers. Templates were drafted in order to provide guidance for the drafting of provisions on implementing acts to be adopted in accordance with that Regulation.

In some cases, however, in the basic legal act, the legislator also confers implementing powers on the Commission which are not subject to control by Member States¹; in such cases a specific recital (or recitals) should reflect this, by not referring to Regulation (EU) No 182/2011 in respect of powers which are not subject to such control.

The following template is intended to be used together with those on implementing acts which are subject to control by Member States.

¹ For example, implementing acts concerning competition issues in the field of agriculture, call for tenders, etc.

RECITALS

Recitals that must always be present:

1) where none of the implementing powers conferred on the Commission in the basic legal act are subject to control by the Member States:

"(...) *[Further justification of the need for uniform conditions may be included by the legislator on a case-by-case basis]* In order to ensure uniform conditions for the implementation (of this ...) *[the basic legal act]* (of ...) *[the relevant provisions of the basic legal act]*, implementing powers should be conferred on the Commission."

2) where some of the implementing powers conferred on the Commission in the basic legal act are not subject to control by the Member States while other implementing powers conferred are subject to such control:

"(...) *[Further justification of the need for uniform conditions may be included by the legislator on a case-by-case basis]* In order to ensure uniform conditions for the implementation (of this ...) *[the basic legal act]* (of ...) *[the relevant provisions of the basic legal act]*, implementing powers should be conferred on the Commission.

(...) The implementing powers relating to ... *[the relevant provisions of the basic legal act conferring implementing powers on the Commission which are subject to control by the Member States]* should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers*.

* OJ L 55, 28.2.2011, p. 13."

Annex D: Framework agreement on relations between the European Parliament and the European Commission - paragraph 15 and Annex 1¹

Paragraph 15

15. The Commission will provide full information and documentation on its meetings with national experts within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. If so requested by Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The relevant provisions are laid down in Annex I.

ANNEX I

Commission meetings with national experts

This Annex lays down the modalities for implementation of point 15 of the Framework Agreement.

1. Scope

The provisions of point 15 of the Framework Agreement concern the following meetings:

- (1) Commission meetings taking place within the framework of expert groups established by the Commission to which national authorities from all Member States are invited, where they concern the preparation and implementation of Union legislation, including soft law and delegated acts;
- (2) ad hoc Commission meetings to which national experts from all Member States are invited, where they concern the preparation and implementation of Union legislation, including soft law and delegated acts.

¹ Framework agreement on relations between the European Parliament and the European Commission, Annex XIV to the Rules of Procedure of the European Parliament, OJ L 304, 20.11.2010, p. 47.

Meetings of comitology committees are excluded, without prejudice to existing and future specific arrangements concerning the provision to Parliament of information concerning the exercise of the Commission's implementing powers¹.

2. Information to be transmitted to Parliament

The Commission commits to send Parliament the same documentation it sends to national authorities in relation to the abovementioned meetings. The Commission will transmit those documents, including agendas, to a functional Parliament mailbox at the same time as they are sent to the national experts.

3. Invitation of Parliament's experts

Upon being requested by Parliament, the Commission may decide to invite Parliament to send Parliament experts to attend Commission meetings with national experts as identified in point 1.

¹ The information to be provided to Parliament on the work of comitology committees and Parliament's prerogatives in the operation of comitology procedures are clearly defined in other instruments: (1) Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers (OJ L 184, 17.7.1999, p. 23); (2) the interinstitutional agreement of 3 June 2008 between Parliament and the Commission on comitology procedures; and (3) instruments necessary for the implementation of Article 291 TFEU.

Annex E: Agreement between Parliament and Commission on comitology procedures (OJ C 143, 10.06.2008, p. 1)

AGREEMENT BETWEEN THE EUROPEAN PARLIAMENT AND THE COMMISSION

on procedures for implementing Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Decision 2006/512/EC

Information to the European Parliament

1. Pursuant to Article 7(3) of Decision 1999/468/EC¹, the European Parliament is to be informed by the Commission on a regular basis of proceedings of committees² in accordance with arrangements which ensure that the transmission system is transparent and efficient and that the information forwarded and the various stages of the procedure are identified. To that end, it is to receive, at the same time as the members of the committees and on the same terms, the draft agendas for committee meetings, the draft implementing measures submitted to those committees pursuant to basic instruments adopted in accordance with the procedure provided for by Article 251 of the Treaty, the results of voting, summary records of the meetings and lists of the authorities to which the persons designated by the Member States to represent them belong.

Register

2. The Commission will establish a register containing all documents forwarded to the European Parliament³. The European Parliament will have direct access to this register. In accordance with Article 7(5) of Decision 1999/468/EC, references of all documents transmitted to the European Parliament will be made public.

3. In accordance with the undertakings given by the Commission in its statement on Article 7(3) of Decision 1999/468/EC⁴, and once the appropriate technical arrangements have been made, the register provided for in paragraph 2 will enable, in particular:

- a clear identification of the documents covered by the same procedure and of any changes to the implementing measure at each stage of the procedure;

¹ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

² Throughout this Agreement, the word "committee" shall be taken to refer to committees established in accordance with Decision 1999/468/EC, except where it is specified that another committee is referred to.

³ The target date for the establishment of the register is 31 March 2008.

⁴ OJ C 171, 22.7.2006, p. 21.

- an indication of the stage of the procedure and the timetable;
- a clear distinction between the draft measures received by the European Parliament at the same time as the committee members in accordance with the right to information and the final draft following the committee's opinion that is forwarded to the European Parliament;
- a clear identification of any modification in comparison to documents already forwarded to the European Parliament.

4. When, after a transitional period starting from the entry into force of this Agreement, the European Parliament and the Commission conclude that the system is operational and satisfactory, the transmission of documents to the European Parliament shall be made by electronic notification with a link to the register provided for in paragraph 2. This decision shall be taken through an exchange of letters between the presidents of both institutions. During the transitional period, the documents will be forwarded to the European Parliament as an attachment to an electronic mail.

5. Furthermore, the Commission agrees to forward to the European Parliament, for information and at the request of the parliamentary committee responsible, specific draft measures implementing basic instruments which, although not adopted in accordance with the procedure provided for by Article 251 of the Treaty, are of particular importance to the European Parliament. These measures shall be entered in the register provided for in paragraph 2 with a notification thereof to the European Parliament.

6. In addition to the summary records referred to in paragraph 1, the European Parliament may request access to minutes of committee meetings¹. The Commission will examine each request, on a case by case basis, under the confidentiality rules set out in Annex 1 to the Framework Agreement on relations between the European Parliament and the Commission².

Confidential documents

7. Confidential documents will be processed in accordance with internal administrative procedures drawn up by each institution with a view to providing all the requisite guarantees.

European Parliament resolutions under Article 8 of Decision 1999/468/EC

8. Pursuant to Article 8 of Decision 1999/468/EC, the European Parliament may indicate, in a resolution setting out the grounds on which it is based, that draft measures implementing a basic instrument adopted in accordance with the procedure

¹ See the judgment of the Court of First Instance of the European Communities of 19 July 1999 in Case T-188/97 *Rothmans v Commission* [1999] ECR II-2463.

² OJ C 121, 24.4.2001, p. 122.

provided for by Article 251 of the Treaty would exceed the implementing powers provided for in that basic instrument.

9. The European Parliament is to adopt such resolutions in accordance with its Rules of Procedure; it is to have a period of one month in which to do so, beginning on the date of receipt of the final draft of the implementing measures in the language versions submitted to the members of the committee concerned.

10. The European Parliament and the Commission agree that it is appropriate to establish a shorter time limit on a permanent basis for some types of urgent implementing measures on which a decision must be taken within a shorter period of time in the interests of sound management. This applies in particular to some types of measure relating to external action, including humanitarian and emergency aid, to health and safety protection, to transport security and safety and to exemptions from public procurement rules. An agreement between the Member of the Commission and the Chair of the parliamentary committee responsible will lay down the types of measure concerned and the applicable time limits. Such an agreement may be revoked at any time by either side.

11. Without prejudice to the cases referred to in paragraph 10, the time limit will be shorter in urgent cases and in the case of measures relating to day-to-day administrative matters and/or having a limited period of validity. That time limit may be very short in extremely urgent cases, in particular on public health grounds. The Member of the Commission responsible is to set the appropriate time limit and to state the reason for that time limit. The European Parliament may in such cases use a procedure whereby application of Article 8 of Decision 1999/468/EC is delegated to the parliamentary committee responsible, which may send a response to the Commission within the relevant time limit.

12. As soon as the Commission's services foresee that draft measures covered by paragraphs 10 and 11 might have to be submitted to a committee, they will informally warn the secretariat of the parliamentary committee or committees responsible thereof. As soon as initial draft measures have been submitted to the members of the committee, the Commission's services will notify the secretariat of the parliamentary committee or committees of their urgency and of the time limits that will apply once the final draft has been submitted.

13. Following the adoption by the European Parliament of a resolution as referred to in paragraph 8 or a response as referred to in paragraph 11, the Member of the Commission responsible is to inform the European Parliament or, where appropriate, the parliamentary committee responsible of the action the Commission intends to take thereon.

14. Data pursuant to paragraphs 10 to 13 will be entered in the register.

Regulatory procedure with scrutiny

15. Where the regulatory procedure with scrutiny applies, and following the vote in the committee, the Commission will inform the European Parliament of the applicable time limits. Subject to paragraph 16, these time limits will start to run only once the European Parliament has received all language versions.

16. Where shorter time limits apply (Article 5a(5)(b) of Decision 1999/468/EC) and in cases of urgency (Article 5a(6) of Decision 1999/468/EC), the time limits shall start to run from the date of receipt by the European Parliament of the final draft implementing measures in the language versions submitted to the members of the committee, unless the Chair of the parliamentary committee objects. In any event, the Commission will endeavour to forward all language versions to the European Parliament as soon as possible. As soon as the Commission's services foresee that draft measures covered by Article 5a(5)(b) or (6) might have to be submitted to a committee, they will informally warn the secretariat of the parliamentary committee or committees responsible thereof.

Financial services

17. In accordance with its statement on Article 7(3) of Decision 1999/468/EC, in respect of financial services the Commission undertakes to:

- ensure that the Commission official chairing a committee meeting informs the European Parliament, at its request, after each meeting, of any discussions concerning draft implementing measures that have been submitted to that committee;
- give an oral or written reply to any questions regarding discussions concerning draft implementing measures submitted to a committee.

Finally, the Commission will ensure that the undertakings made at Parliament's plenary sitting of 5 February 2002¹ and restated at its plenary sitting of 31 March 2004² and those referred to in points 1 to 7 of the letter of 2 October 2001³ from Commissioner Bolkestein to the Chair of the European Parliament's Committee on Economic and Monetary Affairs are honoured in respect of the entire financial services sector (including securities, banks, insurance, pensions and accounting).

Calendar of parliamentary work

18. Except where shorter time limits apply or in cases of urgency, the Commission will take into account, when transmitting draft implementing measures under this Agreement, the European Parliament's periods of recess (winter, summer and European elections) in order to ensure that Parliament is able to exercise its

¹ OJ C 284 E, 21.11.2002, p. 19.

² OJ C 103 E, 29.4.2004, p. 446 and Verbatim Report of Proceedings (CRE) for Parliament's plenary sitting of 31 March 2004, under 'Vote'.

³ OJ C 284 E, 21.11.2002, p. 83.

prerogatives within the time limits laid down in Decision 1999/468/EC and this Agreement.

Cooperation between the European Parliament and the Commission

19. The two institutions express their readiness to assist each other in order to ensure full cooperation when dealing with specific implementing measures. To this effect, appropriate contacts at administrative level will be established.

Preceding agreements

20. The 2000 Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC¹ is hereby replaced. The European Parliament and the Commission consider the following agreements superseded and thus of no effect in so far as they are concerned: the 1988 Plumb/Delors Agreement, the 1996 Samland/Williamson Agreement and the 1994 *modus vivendi*².

¹ OJ L 256, 10.10.2000, p. 19.

² OJ C 102, 4.4.1996, p. 1.

Annex F: The Rules of Procedure of the European Parliament¹

Rule 37a : Delegation of legislative powers

1. When scrutinising a proposal for a legislative act which delegates powers to the Commission as provided for in Article 290 of the Treaty on the Functioning of the European Union, Parliament shall pay particular attention to the objectives, content, scope and duration of the delegation, and to the conditions to which it is subject.
2. The committee responsible for the subject-matter may at any time request the opinion of the committee responsible for the interpretation and application of Union law.
3. The committee responsible for the interpretation and application of Union law may also, on its own initiative, take up questions concerning the delegation of legislative powers. In such cases it shall duly inform the committee responsible for the subject-matter.

Rule 87a: Delegated acts

1. When the Commission forwards a delegated act to Parliament, the President shall refer it to the committee responsible for the basic legislative act, which may decide to appoint a rapporteur to consider one or more delegated acts.
2. The President shall announce to Parliament the date on which the act was received in all the official languages and the period during which objections may be raised. The period in question shall commence on that date.
The announcement shall be published in the minutes of the sitting together with the name of the committee responsible.
3. In accordance with the provisions of the basic legislative act and – if the committee responsible considers it appropriate to do so – after consulting any committees concerned, the committee responsible may table a reasoned motion for a resolution. That motion for a resolution shall state the reasons for Parliament's objections and may incorporate a request to the Commission to submit a new delegated act which takes account of Parliament's recommendations.
4. If, 10 working days prior to the start of the part-session the Wednesday of which falls before and closest to the day of expiry of the deadline referred to in paragraph 5, the committee responsible has not tabled a motion for a resolution, a political group or at least 40 Members may table a motion for a resolution on the matter for inclusion on the agenda for the part-session referred to above.

¹ The amended Rules 87a, 88 and 88a entered into force on 21 May 2012

5. Parliament shall take a decision – by the deadline laid down in the basic legislative act and by the majority stipulated in Article 290 of the Treaty on the Functioning of the European Union – on any motion for a resolution tabled.

Where the committee responsible considers that it is appropriate to extend the deadline for raising objections to the delegated act in accordance with the basic legislative act, the committee chair shall notify the Council and the Commission, on behalf of Parliament, of that extension.

6. If the committee responsible recommends that, prior to the expiry of the deadline set in the basic legislative act, Parliament should declare that it has no objections to the delegated act:

– it shall inform the Chair of the Conference of Committee Chairs by means of a letter setting out its reasons and table a recommendation to that effect;

– if no objections are raised at the next meeting of the Conference of Committee Chairs, or, on grounds of urgency, by written procedure, the Chair of that body shall inform the President of Parliament, who shall in turn inform the plenary as soon as possible;

– if, within 24 hours following the announcement in plenary, a political group or at least 40 Members object to the recommendation, it shall be put to the vote;

– if, within the same period, no objections are raised, the proposed recommendation shall be deemed to have been approved;

– the adoption of such a recommendation shall render inadmissible any subsequent proposal objecting to the delegated act.

7. The committee responsible may, in accordance with the provisions of the basic legislative act, submit to Parliament a reasoned motion for a resolution revoking, in full or in part, the delegation of powers provided for by that act. Parliament shall take a decision by the majority stipulated in Article 290 of the Treaty on the Functioning of the European Union.

8. The President shall inform the Council and Commission of the positions taken under this Rule.

Rule 88: Implementing acts and measures

1. When the Commission forwards a draft implementing act or measure to Parliament, the President shall refer it to the committee responsible for the basic legislative act, which may decide to appoint a rapporteur to consider one or more draft implementing acts.

2. The committee responsible may table a reasoned motion for a resolution stating that a draft implementing act or measure goes beyond the implementing powers provided for in the basic legislative act or is not consistent with Union law in other

respects.

3. The motion for a resolution may incorporate a request to the Commission to withdraw the act, the measure or the draft act or measure, to amend it in keeping with the objections raised by Parliament, or to submit a new legislative proposal. The President shall inform the Council and the Commission of the decision taken.

4. If the implementing acts envisaged by the Commission fall under the regulatory procedure with scrutiny provided for by Council Decision 1999/468/EC laying down procedures for the exercise of the implementing powers conferred on the Commission, the following additional provisions shall apply:

(a) the time for scrutiny shall start to run when the draft of measures has been submitted to Parliament in all the official languages. Where the shorter time limit for scrutiny provided for in Article 5a(5)(b) of Council Decision 1999/468/EC applies, and in the urgent cases provided for in Article 5a(6) of Decision 1999/468/EC, the time for scrutiny shall, unless the Chair of the committee responsible objects, start to run from the date of receipt by Parliament of the final draft implementing measures in the language versions submitted to the members of the committee set up in accordance with Decision 1999/468/EC. Rule 146 shall not apply in this case;

(b) if the draft implementing measure is based on paragraph 5 or 6 of Article 5a of Decision 1999/468/EC, which prescribes curtailed time limits for opposition by Parliament, a motion for a resolution opposing the adoption of the draft measure may be tabled by the chair of the committee responsible if that committee has not been able to meet in the time available.

(c) Parliament, acting by a majority of its component Members, may oppose the adoption of the draft implementing measure by indicating that the draft exceeds the implementing powers provided for in the basic act, is not compatible with the aim or the content of the basic act or does not respect the principles of subsidiarity or proportionality;

(d) if the committee responsible, in response to a duly substantiated request from the Commission, recommends, by means of a letter to the Chair of the Conference of Committee Chairs setting out its reasons, that Parliament should declare that it has no objections to the proposed measure prior to the expiry of the normal time limit laid down in Article 5a(3)(c) and/or Article 5a(4)(e) of Decision 1999/468/EC, the procedure provided for in Rule 87a(6) shall apply.

Rule 88 a: Consideration under the procedure with associated committees or the procedure with joint committee meetings

1. If the basic legislative act was adopted by Parliament under the procedure provided for in Rule 50, the following additional provisions shall apply to the consideration of delegated acts and draft implementing acts or measures:

– the delegated act or draft implementing act or measure shall be forwarded to the committee responsible and the associated committee;

– the chair of the committee responsible shall set a deadline by which the associated committee may draw up proposals on matters falling within its exclusive competence or the two committees' joint competence;

– if the delegated act or draft implementing act or measure falls mainly within the exclusive competence of the associated committee, the latter's proposals shall be accepted without a vote by the committee responsible; failing that, the President may authorise the associated committee to table a motion for a resolution in plenary.

2. If the basic legislative act was adopted by Parliament under the procedure provided for in Rule 51, the following additional provisions shall apply to the consideration of delegated acts and draft implementing acts or measures:

– upon receipt of the delegated act or draft implementing act or measure, the President shall determine which committee is responsible or which committees are jointly responsible for its consideration, in accordance with the criteria laid down in Rule 51 and any agreements reached between the chairs of the committees concerned;

– if a delegated act or a draft implementing act or measure has been forwarded for consideration under the procedure with joint committee meetings, each committee may request that a joint meeting be convened to consider a motion for a resolution. If the chairs of the committees concerned fail to reach agreement, the joint meeting shall be convened by the Chair of the Conference of Committee Chairs.

Annex G: Table with practical implications of the new rules of procedure¹

Introduction

- This note aims at identifying the practical implications of the new rules on delegated and implementing acts, which entered **into force on 21 May 2012**, in order to help the colleagues in the committee secretariats with the implementation of these rules.
- Rule 87a is a new rule concerning **delegated acts**. Important issues are:
 - The **deadline** starts running at the moment the Parliament has received all language versions (para 2);
 - The committee responsible may table a reasoned motion for a resolution **objecting** to the delegated act (para 3) or **revoking** the delegation of power (para 7);
 - A **political group or 40 members** can table a motion for a resolution objecting to the delegated act, in case the responsible committee has not tabled such a motion 10 days prior to the Plenary closest to the day of expiry of the deadline (para 4);
 - The Chair of the committee responsible can ask for an **extension of the deadline** (para 5);
 - The procedure for an **early non-objection** has been included in the Rules of Procedure (para 6), and does from now on involve both the CCC and the Plenary. Adoption of a recommendation for an early non-objection in Plenary means that Parliament can no longer raise an objection, even if the deadline has not expired yet. In the past Parliament maintained its rights to object within the scrutiny period even if it was communicated to the Commission that Parliament did not have the intention to object.
- Rule 88 amends the earlier rule on comitology and concerns **implementing acts** (para 1 to 3) and **RPS measures** (para 4). The changes are relatively minor. For RPS measures the early non-objection procedure is more or less the same as for delegated acts (para 4d).
- Rule 88a is a completely new rule and concerns the consideration of delegated acts, implementing acts and RPS measures under the procedure with **associated committees** (Rule 50) or the procedure with **joint committee meetings** (Rule 51):
 - The acts and measures will go to both the responsible and associated committee (para 1);
 - The associated committee may draw up proposals on matters falling within its exclusive competence (which shall be adopted without a vote) or the two committees joint competence. This means that it is

¹ Table of 3 October 2012 prepared by the CODE Unit

important to know what arrangements were made in the past in relation to the basic act (para 1);

- In case of Rule 51 each committee may request that a joint meeting be convened to consider a motion for a resolution (para 2).

- For a more detailed assessment of the changes see the table below.

Rule, para, description	Content Rule	Practical implications / further clarification
87a, para 1 <i>"Referral to responsible Committee"</i>	When the Commission forwards a delegated act to Parliament, the President shall refer it to the committee responsible for the basic legislative act, which may decide to appoint a rapporteur to consider one or more delegated acts.	
87a, para 2 <i>"Announcement in Plenary of start deadline"</i>	The President shall announce to Parliament the date on which the act was received in all the official languages and the period during which objections may be raised. The period in question shall commence on that date.	<ul style="list-style-type: none"> • <i>"That date"</i> in the second phrase refers to <i>"the date"</i> in the first phrase, which means that the period for objection starts running on the date on which the act was received in all the official languages.
<i>"Announcement published in minutes"</i>	The announcement shall be published in the minutes of the sitting together with the name of the committee responsible.	<ul style="list-style-type: none"> • In case the President decides, in accordance with Rule 88a, para2, that committees are jointly responsible, this should also be mentioned.
87a, para 3 <i>"Reasoned motion for a resolution by Committee"</i>	In accordance with the provisions of the basic legislative act and – if the committee responsible considers it appropriate to do so – after consulting any committees concerned, the committee responsible may table a reasoned motion for a resolution. That motion for a resolution shall state the reasons for Parliament's objections and may incorporate a request to the Commission to submit a	<ul style="list-style-type: none"> • The relevant services will develop a model for such a reasoned motion for a resolution. • The motion for a resolution: <ul style="list-style-type: none"> – shall state that Parliament objects; – shall state the reasons for the objections (possibly in the recitals); – <u>may</u> incorporate a request to the Commission to submit a new delegated act which takes account of Parliament's recommendations. This means that in addition to

Rule, para, description	Content Rule	Practical implications / further clarification
	new delegated act which takes account of Parliament's recommendations.	reasons for the objection the resolution can also contain recommendations (possibly in the recitals).
<p>87a, para 4</p> <p><i>"Motion for a resolution by a group or 40 Members"</i></p>	<p>If, 10 working days prior to the start of the part-session the Wednesday of which falls before and closest to the day of expiry of the deadline referred to in paragraph 5, the committee responsible has not tabled a motion for a resolution, a political group or at least 40 Members may table a motion for a resolution on the matter for inclusion on the agenda for the part-session referred to above.</p>	<ul style="list-style-type: none"> • In theory it is still possible that the committee responsible tables a resolution within the 10 days prior to the start of the part session, which could mean that there are more resolutions submitted to plenary. While the authors of the different resolutions could try to merge them, it would also be possible to put the different resolutions to the vote. • While all resolutions will state that Parliament objects, they can contain different reasons for the objection, they may or may not contain the request to table a new act and can contain different recommendations. • Merging the resolutions would prevent the situation that none of the resolutions gets the required majority because MEPs support an objection for different reasons.
<p>87a, para 5</p> <p><i>"Decision on motion for a resolution before deadline by majority of its component Members"</i></p>	<p>Parliament shall take a decision – by the deadline laid down in the basic legislative act and by the majority stipulated in Article 290 of the Treaty on the Functioning of the European Union – on any motion for a resolution tabled.</p>	<ul style="list-style-type: none"> • In line with Article 290(2) TFEU the motion for a resolution objecting to a delegated act requires a majority of the component Members, i.e. currently at least 378 Members.
<p><i>"Extension of the deadline notified by the Chair of the responsible committee"</i></p>	<p>Where the committee responsible considers that it is appropriate to extend the deadline for raising objections to the delegated act in accordance with the basic</p>	<ul style="list-style-type: none"> • The notification could take place through a standard letter from the Committee Chair to the Commissioner responsible (and with copy to the SG, Ms Catherine Day) and to the Chair of the Coreper

Rule, para, description	Content Rule	Practical implications / further clarification
	legislative act, the committee chair shall notify the Council and the Commission, on behalf of Parliament, of that extension.	<p>responsible. It is advisable to informally forward this letter to the responsible HoU in the Commission and in the Council secretariat.</p> <ul style="list-style-type: none"> • The President of the European Parliament and the Chairman of the Conference of Committee Chairs should be put in cc. The CODE unit can provide a standard list of who should be notified in GEDA. • The extended deadline needs to be announced in the Plenary, as it means that a political group or 40 Members need to wait longer before being able to table a motion for a resolution (see para 4).
<p>87a, para 6</p> <p><i>"Early non-objection"</i></p>	If the committee responsible recommends that, prior to the expiry of the deadline set in the basic legislative act, Parliament should declare that it has no objections to the delegated act:	<ul style="list-style-type: none"> • This paragraph leaves it up to the committee responsible to decide on which basis it can recommend an "early non-objection". It is best practice to ensure that all Members are involved, through a discussion and if necessary vote in committee or through a written procedure.
<p><i>"Letter to CCC and tabling of a recommendation"</i></p> <p><i>"Need to inform President, who will inform the Plenary"</i></p>	<p>– it shall inform the Chair of the Conference of Committee Chairs by means of a letter setting out its reasons and table a recommendation to that effect;</p> <p>– if no objections are raised at the next meeting of the Conference of Committee Chairs, or, on grounds of urgency, by written procedure, the Chair of that body shall inform the President of Parliament, who shall in</p>	<ul style="list-style-type: none"> • In case the committee responsible approves the early non-objection, the Chairman should write a letter to the Chair of the Conference of Committee Chairs (CCC), setting out its reasons. It is good practice to attach the justification by the Commission requesting an early non-objection and to attach the act (or at least to indicate where the act can be found). • In addition the Committee should table a recommendation to plenary, which should preferably be

Rule, para, description	Content Rule	Practical implications / further clarification
	turn inform the plenary as soon as possible;	<p>attached to the letter to the CCC.</p> <ul style="list-style-type: none"> • As the deadline for tabling the recommendation to the Plenary will likely be the Wednesday before the Plenary, it should be possible to announce both the letter to the Chairman of the CCC and the attached recommendation in the IPOL-EXPO Heads of Unit meeting preceding the meeting of the CCC. This gives the other committee secretariats time to verify whether there might be a need to react. • The relevant services will develop a model for the recommendation for an early non-objection • If one of the Chairs objects, the procedure stops and there will be no "early non-objection".
<p><i>"Vote if a group or 40 Members object"</i></p> <p><i>"Recommendation approved if no objections"</i></p> <p><i>"Subsequent proposals objecting are inadmissible"</i></p>	<p>– if, within 24 hours following the announcement in plenary, a political group or at least 40 Members object to the recommendation, it shall be put to the vote;</p> <p>– if, within the same period, no objections are raised, the proposed recommendation shall be deemed to have been approved;</p> <p>– the adoption of such a recommendation shall render inadmissible any subsequent proposal objecting to the delegated act.</p>	<ul style="list-style-type: none"> • It might be preferable for the Chairman of the CCC to <u>always use the written procedure</u> (the Chairman of the CCC informs all Committee Chairs and gives them a deadline which expires before the start of the Plenary), so that the recommendation can be announced at the beginning of the Plenary session and the vote can take place at the end of the session. This allows political groups to prepare the vote. • In case the written procedure is not used, the timing could be as follows: <ul style="list-style-type: none"> – no objection is raised in the CCC on Tuesday of the plenary week – the Chair of the CCC

Rule, para, description	Content Rule	Practical implications / further clarification
		<p>informs the President on the same day, who then announces the recommendation in Plenary on Wednesday morning</p> <ul style="list-style-type: none"> – the political groups or 40 Members have until Thursday morning to object (by a signed letter transmitted to the tabling desk), which shall be put to the vote on Thursday. • A recommendation is approved if a simple majority of Members votes in favour (as there is no reference to article 290, as is the case in para 5). • The 24 hours deadline means that a recommendation cannot be completely dealt with within a mini-Plenary. • Contrary to the old situation the new procedure for an early non-objection means that if the recommendation for an early non-objection is adopted Parliament can no longer object to the delegated act and can therefore no longer write in its letter to the Commission and Council that <i>"the 'informal early non-opposition' does not formally pre-empt Parliament's rights during the [three]-month scrutiny period."</i>
<p>87a, para 7</p> <p><i>"Revocation on basis of resolution by the responsible committee"</i></p>	<p>The committee responsible may, in accordance with the provisions of the basic legislative act, submit to Parliament a reasoned motion for a resolution revoking, in full or in part, the delegation of powers provided for by</p>	<ul style="list-style-type: none"> • The relevant services will develop a model for such a resolution revoking the delegation of powers. • In line with Article 290(2) TFEU the motion for a resolution revoking, in full or in part, the delegation of powers requires a majority of the component Members, i.e.

Rule, para, description	Content Rule	Practical implications / further clarification
	that act. Parliament shall take a decision by the majority stipulated in Article 290 of the Treaty on the Functioning of the European Union.	currently at least 378 Members.
87a, para 8 <i>"The President informs Council and Commission on the positions"</i>	The President shall inform the Council and Commission of the positions taken under this Rule.	<ul style="list-style-type: none"> • CODE will prepare the necessary letters in case a motion for an objection, revocation or an recommendation for an early non-objection has been adopted by the Plenary.
88, title	Implementing <i>acts and</i> measures	
88, para 1 <i>"Referral of IA to the committee responsible"</i>	When the Commission forwards a draft implementing <i>act or measure</i> to Parliament, the President shall refer <i>it</i> to the committee responsible for the <i>basic legislative act, which may decide to appoint a rapporteur to consider one or more draft implementing acts.</i>	<ul style="list-style-type: none"> • No significant changes compared to the old rules; the text has been reworded and part of the text has been moved to Rule 88a.
88, para 2 <i>"Reasoned motion for a resolution - exceeding implementing powers or not consistent with Union law"</i>	The committee responsible <i>may</i> table a <i>reasoned</i> motion for a resolution <i>stating that a draft implementing act or measure goes beyond the implementing powers provided for in the basic legislative act or is not consistent with Union law in other respects.</i>	<ul style="list-style-type: none"> • The Rule does no longer state that the Chair of the committee responsible shall set a deadline for Members to propose an objection. In practice setting such a deadline might still prove to be useful to ensure that a vote in committee and plenary can be done within the scrutiny period.
88, para 3 <i>"Resolution may request Commission to withdraw, amend, or submit a proposal"</i>	<i>The motion for a resolution may incorporate a request to the Commission to withdraw the act, the measure or the draft act or measure, to amend it in keeping with the objections raised by</i>	

Rule, para, description	Content Rule	Practical implications / further clarification
	<p><i>Parliament, or to submit a new legislative proposal. The President shall inform the Council and the Commission of the decision taken.</i></p>	
<p>88, para 4</p> <p><i>"Provisions for RPS measures"</i></p> <p><i>"Deadlines"</i></p>	<p>If the implementing acts envisaged by the Commission fall under the regulatory procedure with scrutiny <i>provided for by Council Decision 1999/468/EC of 28 June 1999 laying down procedures for the exercise of the implementing powers conferred on the Commission, the following additional provisions shall apply :</i></p> <p>(a) the time for scrutiny shall start to run when the draft of measures has been submitted to Parliament in all the official languages. Where <i>the shorter time limit for scrutiny provided for in Article 5a(5)(b) of Council Decision 1999/468/EC applies, and in the urgent cases provided for in Article 5a(6) of Decision 1999/468/EC, the time for scrutiny shall, unless the Chair of the committee responsible objects, start to run from the date of receipt by Parliament of the final draft implementing act in the language versions submitted to the members of the committee set up in accordance with Decision</i></p>	<ul style="list-style-type: none"> • No significant changes compared to the old text. • In case of para 4b it is best practice to consult at least the coordinators.

Rule, para, description	Content Rule	Practical implications / further clarification
	1999/468/EC. Rule 146 shall not apply in this case;	
<i>"In case of curtailed time limits the Chair may table the motion for a resolution, if no committee meeting possible"</i>	<i>(b) if the draft implementing measure is based on paragraph 5 or 6 of Article 5a of Decision 1999/468/EC, which prescribes curtailed time limits for opposition by Parliament, a motion for a resolution opposing the adoption of the draft measure may be tabled by the chair of the committee responsible if that committee has not been able to meet in the time available.</i>	
	(c) Parliament, acting by a majority of its component Members, may oppose the adoption of the draft <i>implementing measure</i> by indicating that the draft exceeds the implementing powers provided for in the basic <i>act</i> , is not compatible with the aim or the content of the basic <i>act</i> or does not respect the principles of subsidiarity or proportionality;	
<i>"For RPS same procedure as for delegated acts as regards "early non-objection""</i>	<i>d) If the committee responsible, in response to a duly substantiated request from the Commission, recommends, by means of a letter to the Chair of the Conference of Committee Chairs setting out its reasons, that Parliament should declare that it has no objections to the proposed act prior to the</i>	<ul style="list-style-type: none"> • See practical implications for "early non-objections" (Rule 87a para 6). For RPS measures the Rule specifies that there needs to be a "duly substantiated request" from the Commission, while for delegated acts this is not provided for in the Rules but is still considered to be best practice. • It is no longer possible to have an early non-objection without having a plenary, which may

Rule, para, description	Content Rule	Practical implications / further clarification
	<i>expiry of the normal time limit laid down in Article 5a(3)(c) and/or Article 5a(4)(e) of Decision 1999/468/EC, the procedure provided for in Rule 87a(6) shall apply.</i>	cause problems around the summer recess.
88a (new) <i>"Title"</i>	Consideration under the procedure with associated committees or the procedure with joint committee meetings.	
88a, para 1 <i>"Provisions in case Rule 50 on associated committees applies"</i>	If the basic legislative act was adopted by Parliament under the procedure provided for in Rule 50, the following additional provisions shall apply to the consideration of delegated acts and draft implementing acts or measures:	
<i>"DA/IA goes to responsible and associated committee"</i>	– The delegated act or draft implementing act or measure shall be forwarded to the committee responsible and the associated committee;	<ul style="list-style-type: none"> • At this moment RPS measures and implementing acts are sent to the committee responsible and to opinion giving committees. In the e-mail forwarding the measure it is not clearly indicated whether it concerns a "normal" opinion giving committee under Rule 49 or whether it concerns an associated committee under Rule 50. • Therefore the Reception and Referral of Official Documents Unit will from now on only refer acts or measures to other committees (than the responsible committee) if they are subject to Rule 50.
<i>"Chair responsible committee sets a deadline for associated committee - exclusive/joint"</i>	– The chair of the committee responsible shall set a deadline by which the associated committee may draw up proposals on matters	<ul style="list-style-type: none"> • In some responsible committees they give the Members a deadline of 2 weeks to indicate an objection, after which the remaining time is used for a discussion, vote

Rule, para, description	Content Rule	Practical implications / further clarification
<i>competence"</i>	falling within its exclusive competence or the two committees' joint competence;	<p>in committee and vote in Plenary.</p> <ul style="list-style-type: none"> • Setting a deadline for associated committee, allowing them to draw up proposals, could mean a longer deadline (1 month?) within the responsible committee. • The associated committee can only draw up proposals on matters falling within its exclusive competence or the two committees' joint competence. This makes it essential to carefully store the precise arrangements as approved by the CoP with regard to joint and exclusive competence, as delegated acts, implementing acts and RPS measures can be received many years after the entry into force of the basic act. • Coordleg can be consulted regarding the exact arrangements that were made in the past in relation to each basic act under Rule 50 or 51.
<i>"If exclusive competence to be accepted without vote, or motion for a resolution"</i>	– If the delegated act or draft implementing act or measure falls mainly within the exclusive competence of the associated committee, the latter's proposals shall be accepted without a vote by the committee responsible; failing that, the President may authorise the associated committee to table a motion for a resolution in plenary.	

Rule, para, description	Content Rule	Practical implications / further clarification
<p>88a, para 2</p> <p><i>"Joint committees"</i></p>	<p>If the basic legislative act was adopted by Parliament under the procedure provided for in Rule 51, the following additional provisions shall apply to the consideration of delegated acts and draft implementing acts or measures:</p>	
<p><i>"In case of Rule 51 the President shall decide which committee is responsible or jointly responsible in line with criteria and agreements"</i></p>	<p>– Upon receipt of the delegated act or draft implementing act or measure, the President shall determine which committee is responsible or which committees are jointly responsible for its consideration, in accordance with the criteria laid down in Rule 51 and any agreements reached between the chairs of the committees concerned;</p>	
<p><i>"In case of Rule 51 possibility of joint meetings - CCC can decide in case of disagreement"</i></p>	<p>– If a delegated act or a draft implementing act or measure has been forwarded for consideration under the procedure with joint committee meetings, each committee may request that a joint meeting be convened to consider a motion for a resolution. If the chairs of the committees concerned fail to reach agreement, the joint meeting shall be convened by the Chair of the Conference of Committee Chairs.</p>	<ul style="list-style-type: none"> • For the practical issues regarding how such a meeting is organised, the voting rules, etc, Rule 51 applies.

Annex H: Standard rules of procedure for committees (OJ C 206, 12.7.2011, p. 11)

STANDARD RULES OF PROCEDURE FOR COMMITTEES RULES OF PROCEDURE FOR THE [NAME OF THE COMMITTEE] COMMITTEE

(2011/C 206/06)

THE [NAME OF THE COMMITTEE] COMMITTEE,

Having regard to [full title of the basic act] ⁽¹⁾ and in particular Article ... [Article establishing the committee] thereof,

Having regard to Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽²⁾, and in particular Article 9(1) thereof,

Having regard to the standard rules of procedure published by the Commission ⁽³⁾,

[Having regard to the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU)] ^(*)

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1

Convening a meeting

1. A meeting of the committee shall be convened by the chair, either on his/her own initiative, or at the request of a simple majority of members of the committee.
2. In the case referred to in the second subparagraph of Article 3(5) of Regulation (EU) No 182/2011, where the written procedure is terminated without result, the chair shall convene a committee meeting within a reasonable time.
3. Joint meetings of the committee with other committees may be convened to discuss issues coming within their respective areas of responsibility ^(**).

⁽¹⁾ OJ L [...], [...], p. [...].

⁽²⁾ OJ L 55, 28.2.2011, p. 13.

⁽³⁾ OJ C [...], [...], p. [...].

^(*) *N.B.* This citation may be used only for the rules of procedure of specific committees of external action instruments identified in the Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU).

^(**) *N.B.* The rules of procedure of a specific committee may detail in what particular areas and/or with what other committees the joint meetings may be convened.

Article 2

Agenda

1. The chair shall draw up the agenda and submit it to the committee.
2. The agenda shall make a distinction between:
 - (a) draft implementing acts to be adopted by the Commission on which the committee is asked to give an opinion, in accordance with the [advisory/examination] procedure provided for in Article ... () of ... [basic act] (**);
 - (b) other issues put to the committee for information or a simple exchange of views, either on the chair's initiative, or at the written request of a member of the committee [or in accordance with specific provisions of Article ... (...) of [basic act] ...].

Article 3

Documentation to be submitted to members of the committee

1. For the purpose of the second subparagraph of Article 3(3) of Regulation (EU) No 182/2011, the chair shall submit the invitation, the draft agenda and the draft implementing act on which the committee is asked to give an opinion to the members of the committee well in advance of the meeting, taking into account the urgency and the complexity of the matter, and no later than 14 calendar days before the date of the meeting (***). Other documents related to the meeting, in particular documents accompanying the draft implementing act, shall, as far as possible, be submitted within the same time limit.

All documents shall be submitted in accordance with Article 12(2).

2. In duly justified cases, the chair may, on his/her own initiative or at the request of a member of the committee, shorten the time limit for submission of documents referred to in paragraph 1. Except in cases of extreme urgency (****), the time limit shall not be shorter than five calendar days.

Article 4

Opinion of the committee

1. The committee shall deliver its opinion on a draft implementing act within the time limit laid down by the chair in accordance with the second subparagraph of Article 3(3) of Regulation (EU) No 182/2011.

(**)N.B. If the committee is called upon to give its opinion according to *several* committee procedures, this point must be repeated in the rules of procedure of the committee concerned, with appropriate references to the relevant basic acts.

(***)N.B. In particular areas where rapid action is required on a regular basis, or where the basic act includes specific obligatory time frames for action, a shorter time limit may be foreseen in the rules of procedure of the committee concerned. Such cases can be considered as 'duly justified cases' in the sense of the second subparagraph of Article 3(3) of Regulation (EU) No 182/2011.

(****)N.B. The rules of procedure of a specific committee may provide that this applies in particular where the environment or public, animal or plant health or the financial interests of the Union within the meaning of Article 325 of the TFEU are at risk, in the case of a humanitarian crisis, or in order to avoid significant disruptions of the markets in the area of agriculture.

2. Where the advisory procedure leads to a vote, the outcome of the vote shall be decided by a simple majority of the component members of the committee, in accordance with Article 4(1) of Regulation (EU) No 182/2011.

Where the committee's opinion is required under the examination procedure, the outcome of the vote shall be decided by a qualified majority, in accordance with Article 5(1) of Regulation (EU) No 182/2011.

3. Unless a member of the committee objects, the chair may, without proceeding to a formal vote, establish that the committee has delivered a positive opinion, by consensus, on the draft implementing act.

4. The chair, in consultation with the members of the committee, may, on his/her own initiative or at the request of a member of the committee, postpone a vote until the end of the meeting or to a later meeting.

5. In accordance with the second subparagraph of Article 3(4) of Regulation (EU) No 182/2011, the chair shall endeavour to find solutions which command the widest possible support within the committee. Before the vote, the chair shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the committee.

Article 5 **Representation**

1. Each Member State shall be considered to be one member of the committee. Each member of the committee shall decide on the composition of its delegation and inform the chair. With the chair's permission, the delegations may be accompanied by experts who are not part of the delegation.

2. Within a reasonable time and no later than five calendar days before the date of a committee meeting, the following information shall be communicated to the chair:

- (a) the composition of each delegation, except where such composition is already known to the chair;
- (b) the names and functions of any experts accompanying the delegations and the reasons for which their presence is required.

If the chair does not object to the participation of an expert in advance of the committee meeting, the permission referred to in paragraph 1 is considered to be granted.

3. The reimbursement of travel expenses by the Commission shall be paid in accordance with the applicable rules, subject to budgetary funds provided for this purpose.

4. A Member State delegation may represent a maximum of one other Member State. The Member State that is being represented shall inform the chair of this before the meeting, or, at the latest, before the vote.

Article 6
Working groups

1. The committee may create working groups to examine particular issues. The working groups shall be chaired by a representative of the Commission.
2. The working groups shall report back to the committee under the responsibility of their chair.

Article 7
Third parties and experts

1. The representatives of [specify the third country or organisation in question] shall be invited to attend the meetings of the committee, in accordance with [specify the legal act, such as an agreement made by the Union, an Association Council decision or other basic act that provides for the presence of these observers].
2. Representatives of acceding countries shall be invited to attend the meetings of the committee as from the date of signature of the Treaty of Accession.
3. The chair may decide to invite representatives of other third parties or other experts to talk on particular matters, on his/her own initiative or at the request of a member of the committee. However, a simple majority of the component members of the committee may oppose their participation in the meeting.
4. Representatives of third parties and experts referred to in paragraphs 1, 2 and 3 shall not be present at and shall not participate in voting of the committee.

Article 8
Written procedure

1. The chair may obtain the committee's opinion by written procedure in accordance with Article 3(5) of Regulation (EU) No 182/2011 (*). In particular, the chair may use the written procedure to obtain the committee's opinion in cases where the draft implementing act has already been discussed during a committee meeting.
2. The chair shall inform the members of the committee of the outcome of a written procedure without delay, and no later than 14 calendar days after the expiry of the time limit.

Article 9
Secretarial support

The Commission shall provide secretarial support for the committee and, if necessary, the working groups created pursuant to Article 6(1).

(*).N.B.: In particular areas where rapid action is required on a regular basis, or where the basic act includes specific obligatory time frames for action, the rules of procedure of the committee concerned may provide that, as a rule, the committee's opinion is obtained by written procedure. Such cases can be considered as 'duly justified cases' in the sense of the first subparagraph of Article 3(5) of Regulation (EU) No 182/2011.

Article 10

Minutes and summary record of meetings

1. For the purpose of Article 3(6) of Regulation (EU) No 182/2011, the minutes of each meeting shall be drawn up under the responsibility of the chair. Committee members shall have the right to ask for their position to be recorded in the minutes. The chair shall send the minutes to the committee members without delay and no later than one month after the meeting.

The members of the committee shall send any comments they may have on the draft minutes to the chair in writing. If there is any disagreement, the matter shall be discussed by the committee. If the disagreement persists, the relevant comments shall be annexed to the final minutes.

2. For the purpose of Article 10 of Regulation (EU) No 182/2011, the chair shall be responsible for drawing up a summary record briefly describing each item on the agenda and the results of the vote on any draft implementing act submitted to the committee. The summary record shall not mention the individual position of the members in the committee's discussions.

Article 11

Attendance list and conflicts of interest

1. At each meeting, the chair shall draw up an attendance list specifying the authorities and organisations to which the persons designated by the Member States to represent them belong.

2. At the beginning of each meeting, any person designated by the Member States, as well as experts who have been authorised by the chair to participate in the meeting in accordance with Article 5(1) and Article 7(3), and representatives of third parties who have been invited to attend the meeting in accordance with Article 7, shall inform the chair of any conflict of interest ⁽¹⁾ with regard to a particular item on the agenda.

In the event of such a conflict of interest, the person concerned shall, at the request of the chair, withdraw from the meeting whilst the relevant items of the agenda are being dealt with.

Article 12

Correspondence

1. Correspondence relating to the committee shall be submitted to the Commission, for the attention of the chair of the committee.

2. Correspondence for members of the committee shall be submitted to the Permanent Representations of the Member States, preferably by electronic means. Where a Permanent Representation indicates to the Commission a specific central electronic address for correspondence related to work of the committees, that address shall be used for correspondence. In addition, correspondence may be submitted

⁽¹⁾ As an example, Article 52(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1) contains a specific definition of a conflict of interest.

directly to the persons designated by the Member States to represent them in the committee.

Article 13

Access to documents and confidentiality

1. Requests for access to committee documents shall be handled in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽¹⁾. It is for the Commission to take a decision on requests for access to those documents pursuant to its Rules of Procedure as amended by Decision 2001/937/EC, ECSC, Euratom ⁽²⁾. If the request is addressed to a Member State that Member State shall apply Article 5 of Regulation (EC) No 1049/2001.
2. The committee's discussions shall be confidential.
3. Documents submitted to members of the committee, experts and representatives of third parties shall be confidential ⁽³⁾, unless access is granted to those documents pursuant to paragraph 1 or they are otherwise made public by the Commission.
4. The members of the committee, as well as experts and representatives of third parties, shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.

Article 14

Protection of personal data

The processing of personal data by the committee and its working groups shall be in conformity with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽⁴⁾, under the responsibility of the chair acting as the controller, within the meaning of point (d) of Article 2 of that Regulation.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 345, 29.12.2001, p. 94.

⁽³⁾ In accordance with Article 339 TFEU, '[t]he members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components'.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

Annex I: Rules of Procedure for the appeal committee (OJ C183, 24.6.2011, p. 13)

**Rules of procedure for the appeal committee (Regulation (EU) No 182/2011)
Adopted by the appeal committee on 29 March 2011
(2011/C 183/05)**

THE APPEAL COMMITTEE,

Having regard to Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁽⁹⁰⁾, and in particular Article 3(7) thereof,

Having regard to the proposal from the Commission,

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1

General rules for convening a meeting

1. Without prejudice to Article 2, where the chair of a committee decides, in accordance with Article 5(3) and (4) of Regulation (EU) No 182/2011, to refer a case to the appeal committee, the chair shall immediately inform the members of the committee and the Permanent Representations of the Member States (hereinafter: 'the Permanent Representations') of that decision. The date of that communication shall be considered as the date of referral. The communication on the referral shall be accompanied by the final draft implementing act as submitted to the vote of the committee.
2. In the cases foreseen in Article 7 of Regulation (EU) No 182/2011, the chair of the committee shall immediately submit the implementing act to the appeal committee. The date of that submission shall be considered as the date of referral.
3. In accordance with the third subparagraph of Article 3(7) of Regulation (EU) No 182/2011, the appeal committee shall meet at the earliest 14 calendar days and at the latest six weeks after the date of referral.

⁽⁹⁰⁾ OJ L 55, 28.2.2011, p. 13.

4. Except in duly justified cases, the chair shall convene a meeting not less than 14 days from the submission of the draft implementing act and of the draft agenda to the committee.

5. In accordance with the fifth subparagraph of Article 3(7) of Regulation (EU) No 182/2011, the Commission shall set the date of the appeal committee meeting in close cooperation with the Member States, in order to enable Member States and the Commission to ensure an appropriate level of representation.

To this effect, the Commission shall consult Member States on various options for date of the meeting. Member States may make suggestions on this regard and indicate the level of representation that they consider appropriate which should be of a sufficiently high and horizontal nature, including at Ministerial level. As a general rule, representation should not be below the level of members of the committee of Permanent Representatives of the governments of the Member States. The Commission shall take the utmost account of such suggestions.

Article 2

Convening a meeting in cases of draft definitive anti-dumping or countervailing measures

1. In the cases referred to in Article 5(5) of Regulation (EU) No 182/2011, the Commission shall start consultations with the Member States immediately after the vote.

2. The chair shall inform the members of the committee and the Permanent Representations of the results of the consultations provided for in paragraph 1 and, on that basis, shall submit to the appeal committee either:

(a) the version of the draft implementing act on which the committee voted; or

(b) an amended version of the draft implementing act.

The date of submission pursuant to the first subparagraph shall be considered as the date of referral. It shall be 14 calendar days at the earliest and one month at the latest after the committee meeting.

3. In accordance with the second subparagraph of Article 5(5) of Regulation (EU) No 182/2011, the appeal committee shall meet 14 calendar days at the earliest and one month at the latest after the referral.

4. In accordance with the second subparagraph of Article 5(5) of Regulation (EU) No 182/2011, the time-limits referred to in this Article shall be without prejudice to the need to respect the deadlines laid down in the relevant basic acts.

Article 3

Documentation to be submitted to members of the appeal committee

1. The chair of the appeal committee shall draw up the agenda and submit it to the appeal committee.
2. The chair of the appeal committee shall submit the invitation, the draft implementing acts and other documents for the meeting to the members of the appeal committee well in advance of the meeting, taking into account the urgency and the complexity of the matter, and no later than 14 calendar days before the date of the meeting in accordance with Article 1(4). The documents shall be submitted in accordance with Article 11(2).

Article 4

Opinion of the appeal committee

1. The appeal committee shall deliver its opinion on the draft implementing act or in the cases of Article 7 of the Regulation (EU) No 182/2011, on the implementing act, within the time-limit laid down by the chair of that committee in accordance with Article 3(3) and the third subparagraph of Article 3(7) of Regulation (EU) No 182/2011.
2. In accordance with Article 3(4) and Article 6(2) of Regulation (EU) No 182/2011, the chair shall endeavour to find solutions which command the widest possible support within the appeal committee. Before the vote, the chair shall inform the appeal committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the appeal committee.
3. The appeal committee shall deliver its opinion by a qualified majority, in accordance with Article 6(1) of Regulation (EU) No 182/2011.

By way of derogation from the first subparagraph, until 1 September 2012, in accordance with Article 6(5) of Regulation (EU) No 182/2011, the appeal committee shall deliver its opinion on draft definitive anti-dumping or countervailing measures by a simple majority of its component members.

4. Unless a member of the appeal committee objects, the chair may, without proceeding to a formal vote, establish that the appeal committee has delivered a positive opinion, by consensus, on the draft implementing act.

5. The chair, in consultation with the members of the appeal committee, may, on his/her own initiative or at the request of a member of the appeal committee, postpone a vote until the end of the meeting or to a later meeting.

6. Where no opinion is delivered by the appeal committee, the chair shall, as soon as possible, inform the members of that committee whether the Commission intends to adopt the draft implementing act.

Article 5

Representation and quorum

1. Each Member State shall be considered to be one member of the appeal committee. Each member of the appeal committee shall decide on the composition of its delegation and inform the chair and the other Member States with a view to achieving a level of representation as homogenous as possible at the meeting of the appeal committee. The composition of each delegation shall be communicated to the chair of the appeal committee within a reasonable time and no later than five calendar days before the date of a meeting of the appeal committee.

2. The reimbursement of travel expenses by the Commission shall be limited to one person per Member State.

3. A Member State delegation may represent a maximum of one other Member State. The Member State that is being represented shall inform the chair of this before the meeting, or, at the latest, before the vote.

4. The presence of a majority of the Member States is required to enable the appeal committee to vote. This rule also applies when the appeal committee delivers an opinion by consensus. However, when the time-limit for the appeal committee to deliver an opinion has expired by application of Article 3(3) or (7) of Regulation (EU) No 182/2011, it is to be considered, for the purposes of Article 6(3) of the Regulation, that the appeal committee did not deliver an opinion.

Article 6

Third parties and experts

1. The representatives of third countries or organisations who are entitled by a binding legal act to be present in the committee meeting shall be invited to attend the meetings of the appeal committee.

2. Representatives of acceding countries shall be invited to attend the meetings of the appeal committee as from the date of signature of the Treaty of accession.

3. If a simple majority of the members of the appeal committee support a request for the presence of representatives of Union's bodies or offices, as well as agencies of the Union to which the basic act gives a role in adoption of the implementing act, they shall be invited to the meeting. The chair may also decide to invite such representatives on his/her own initiative. However, a simple majority of Member States may oppose their participation in the meeting.

4. Representatives of third parties referred to in paragraphs 1, 2 and 3 shall not be present at and shall not participate in voting of the appeal committee.

5. No other third parties or experts who are not part of a delegation of a Member State shall attend the meetings of the appeal committee.

Article 7

Written procedure

1. The chair may obtain the appeal committee's opinion by written procedure in accordance with Article 3(5) of Regulation (EU) No 182/2011. In particular, the chair may use the written procedure to obtain the appeal committee's opinion in cases where the draft implementing act has already been discussed during a meeting of the appeal committee.

2. The chair shall inform the members of the appeal committee of the outcome of a written procedure without delay, and no later than 14 calendar days after the expiry of the time-limit.

Article 8

Secretarial support

The Commission shall provide secretarial support for the appeal committee.

Article 9

Minutes and summary record of meetings

1. For the purpose of Article 3(6) of Regulation (EU) No 182/2011, the minutes of each meeting shall be drawn up under the responsibility of the chair. Members of the appeal committee shall have the right to ask for their position to be recorded in the minutes. The chair shall send the minutes to the members of the appeal committee without delay, and no later than one month after the meeting.

The members of the appeal committee shall send any comments they may have on the draft minutes to the chair in writing. If there is any disagreement, the matter shall be discussed by the appeal committee. If the disagreement persists, the relevant comments shall be annexed to the final minutes.

2. For the purpose of Article 10 of Regulation (EU) No 182/2011, the chair shall be responsible for drawing up a summary record briefly describing each item on the agenda and the results of the vote on any draft implementing act submitted to the appeal committee. The summary record shall not mention the individual position of the members in the appeal committee's discussions.

Article 10

Attendance list

At each meeting, the chair shall draw up an attendance list specifying the authorities and organisations to which the persons designated by the Member States to represent them belong.

Article 11

Correspondence

1. Correspondence relating to the appeal committee shall be submitted to the Commission, for the attention of the chair of the appeal committee.

2. Correspondence for members of the appeal committee shall be submitted to the Permanent Representations. In addition, correspondence may be submitted directly to the persons designated by the Member States to represent them in the appeal committee.

3. The Permanent Representations and the Commission may indicate a specific central electronic address for correspondence.

Article 12

Access to documents and confidentiality

1. Requests for access to appeal committee documents shall be handled in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁽⁹¹⁾. It is for the Commission to take a decision on requests for access to those documents pursuant to its Rules of Procedure as amended by Decision 2001/937/EC,

⁽⁹¹⁾ OJ L 145, 31.5.2001, p. 43.

ECSC, Euratom ⁽⁹²⁾. If the request is addressed to a Member State that Member State shall apply Article 5 of Regulation (EC) No 1049/2001.

2. The appeal committee's discussions shall be confidential.

3. Documents submitted to members of the appeal committee and representatives of third parties shall be confidential, unless access is granted to those documents pursuant to paragraph 1 or they are otherwise made public by the Commission.

4. The members of the appeal committee, as well as representatives of third parties shall be required to respect the confidentiality obligations set out in this Article. The chair shall ensure that representatives of third parties are made aware of the confidentiality requirements imposed upon them.

Article 13

Protection of personal data

The processing of personal data by the appeal committee shall be in conformity with Regulation (EC) No 45/2001 of the European Parliament and

of the Council ⁽⁹³⁾, under the responsibility of the chair acting as the controller, within the meaning of point (d) of Article 2 of that Regulation.

Article 14

Review

By April 2014, the Commission shall evaluate how the present Rules operated in practice and may present a proposal for their revision.

⁽⁹²⁾ OJ L 345, 29.12.2001, p. 94.

⁽⁹³⁾ OJ L 8, 12.1.2001, p. 1.

Annex J: Comitology decision (Decision 1999/468/EC as amended by Decision 2006/512/EC)

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

► B

COUNCIL DECISION

of 28
June
1999

laying down the procedures for the exercise of implementing powers conferred on the Commission (*)

(19
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EC
)

(OJ L 184,
17.7.1999, p. 23)

Amended

by:

	No	Official page	Journal date
► <u>M1</u> Council Decision 2006/512/EC, of 17 July 2006	L 200	11	22.7.2006

(*) Three statements in the Council minutes relating to this Decision are set out in OJ C 203 of 17 June, page 1.

▼ B

COUNCIL DECISION

of 28 June 1999

laying down the procedures for the exercise of implementing powers conferred on the Commission (*)

(1999/468/EC)

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 Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) in the instruments which it adopts, the Council has to confer on the Commission powers for the implementation of the rules which the Council lays down; the Council may impose certain requirements in respect of the exercise of these powers; it may also reserve to itself the right, in specific and substantiated cases, to exercise directly implementing powers;

(2) the Council adopted Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾; that Decision has provided for a limited number of procedures for the exercise of such powers;

(3) 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;

(4) for reasons of clarity, rather than amending Decision 87/373/EEC, it has been considered more appropriate to replace that Decision by a new Decision and, therefore, to repeal Decision 87/373/EEC;

(5) the first purpose of this Decision is, with a view to achieving greater consistency and predictability in the choice of type of committee, to provide for criteria relating to the choice of committee procedures, it being understood that such

(*) Three statements in the Council minutes relating to this Decision are set out in OJ C 203 of 17 June, page 1.

⁽¹⁾ OJ C 279, 8.9.1998, p. 5.

⁽²⁾ Opinion delivered on 6 May 1999 (not yet published in the Official Journal).

⁽³⁾ OJ L 197, 18.7.1987, p. 33.

criteria are of a non-binding nature ► M1 with the exception of those governing the regulatory procedure with scrutiny ◀;

(6) in this regard, the management procedure should be followed as regards management measures such as those relating to the application of the common agricultural and common fisheries policies or to the implementation of programmes with substantial budgetary implications; such management measures should be taken by the Commission by a procedure ensuring decision-making within suitable periods; however, where non-urgent measures are referred to the Council, the Commission should exercise its discretion to defer application of the measures;

(7) the regulatory procedure should be followed as regards measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, as well as measures designed to adapt or update certain non-essential provisions of a basic instrument; such implementing measures should be adopted by an effective procedure which complies in full with the Commission's right of initiative in legislative matters;

▼ M1

(7a) it is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new nonessential elements. This procedure should enable the two arms of the legislative authority to scrutinise such measures before they are adopted. The essential elements of a legislative act may only be amended by the legislator on the basis of the Treaty;

▼ B

(8) the advisory procedure should be followed in any case in which it is considered to be the most appropriate; the advisory procedure will continue to be used in those cases where it currently applies;

(9) the second purpose of this Decision is to simplify the requirements for the exercise of implementing powers conferred on the Commission as well as to improve the involvement of the European Parliament in those cases where the basic instrument conferring implementation powers on the Commission was adopted in accordance with the procedure laid down in Article 251 of the Treaty; it has been accordingly considered appropriate to reduce the number of procedures as well as to adjust them in line with the respective powers of the institutions involved and notably to give the European Parliament an opportunity to have its views taken into consideration by, respectively, the Commission or the Council in cases where it considers that, respectively, a draft measure submitted to a committee or a proposal

submitted to the Council under the regulatory procedure exceeds the implementing powers provided for in the basic instrument;

▼ M1

(10) the third purpose of this Decision is to improve information to the European Parliament by providing that the Commission should inform it on a regular basis of committee proceedings, that the Commission should transmit to it documents related to activities of committees and inform it whenever the Commission transmits to the Council measures or proposals for measures to be taken; particular attention will be paid to the provision of information to the European Parliament on the proceedings of committees in the framework of the regulatory procedure with scrutiny, so as to ensure that the European Parliament takes a decision within the stipulated deadline;

▼ B

(11) the fourth purpose of this Decision is to improve information to the public concerning committee procedures and therefore to make applicable to committees the principles and conditions on public access to documents applicable to the Commission, to provide for a list of all committees which assist the Commission in the exercise of implementing powers and for an annual report on the working of committees to be published as well as to provide for all references to documents related to committees which have been transmitted to the European Parliament to be made public in a register;

(12) the specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties that are not currently based upon Decision 87/373/EEC are not in any way affected by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Other than in specific and substantiated cases where the basic instrument reserves to the Council 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. These provisions shall stipulate the essential elements of the powers thus conferred.

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, 4, 5 ► M1 , 5a ◀ and 6.

Article 2

► M1 1. Without prejudice to paragraph 2, ◀ the choice of procedural methods for the adoption of implementing measures shall be guided by the following criteria:

- (a) management measures, such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programmes with substantial budgetary implications, should be adopted by use of the management procedure;
- (b) measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, should be adopted by use of the regulatory procedure; where a basic instrument stipulates that certain non-essential provisions of the instrument may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure;
- (c) without prejudice to points (a) and (b), the advisory procedure shall be used in any case in which it is considered to be the most appropriate.

▼ M1

2. Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.

▼ B

Article 3

Advisory procedure

1. 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.

2. 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.

3. 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.

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

Article 4

Management procedure

1. 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.

2. 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 205(2) ► M1 and (4) ◀ of the Treaty, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, 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 a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of such communication.

4. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 3.

Article 5

Regulatory procedure

1. 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.

2. 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 205(2) ► M1 and (4) ◀ of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the

representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

5. If the European Parliament considers that a proposal submitted by the Commission pursuant to a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.

6. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

▼ M1

Article 5a

Regulatory procedure with scrutiny

1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. 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 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:

(a) the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;

(b) the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft

measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality;

(c) if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

(d) if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.

4. If the measures envisaged by the Commission are not in accordance with the opinion of the Committee, or if no opinion is delivered, the following procedure shall apply:

(a) the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;

(b) the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;

(c) if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;

(d) if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures for scrutiny by the European Parliament;

(e) the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal in accordance with point (a), may oppose the adoption of the measures in question, justifying their opposition by indicating that the proposed measures exceed the implementing powers provided for in the basic instrument or are not compatible with the

aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;

- (f) if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;
- (g) if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.

5. By way of derogation from paragraphs 3 and 4, a basic instrument may in duly substantiated exceptional cases provide:

- (a) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be extended by an additional month, when justified by the complexity of the measures; or
- (b) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be curtailed where justified on the grounds of efficiency.

6. A basic instrument may provide that if, on imperative grounds of urgency, the time limits for the regulatory procedure with scrutiny referred to in paragraphs 3, 4 and 5 cannot be complied with, the following procedure shall apply:

- (a) if the measures envisaged by the Commission are in accordance with the opinion of the Committee, the Commission shall adopt the measures, which shall immediately be implemented. The Commission shall without delay communicate them to the European Parliament and to the Council;
- (b) within a time-limit of one month following that communication, the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the measures adopted by the Commission, on the grounds that the measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;
- (c) in the event of opposition by the European Parliament or the Council, the Commission shall repeal the measures. It may however provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. In that event, it shall without delay submit to the Committee an amended draft of the measures or a legislative proposal on the basis of the Treaty. The provisional measures shall remain in force until they are replaced by a definitive instrument.

▼ B

Article 6

Safeguard procedure

The following procedure may be applied where the basic instrument confers on the Commission the power to decide on safeguard measures:

- (a) 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;
- (b) Any Member State may refer the Commission's decision to the Council within a time-limit to be determined within the basic instrument in question;
- (c) the Council, acting by a qualified majority, may take a different decision within a time-limit to be determined in the basic instrument in question. Alternatively, it may be stipulated in the basic instrument that the Council, acting by qualified majority, may confirm, amend or revoke the decision adopted by the Commission and that, if the Council has not taken a decision within the abovementioned time-limit, the decision of the Commission is deemed to be revoked.

Article 7

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules of procedure which shall be published in the Official Journal of the European Communities.
2. Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.
3. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.
4. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis ► M1 following arrangements which ensure that the transmission system is transparent and that the information forwarded and the various stages of the procedure are identified ◀. 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 251 of the Treaty, and the results of voting and 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 kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.
5. The Commission shall, within six months of the date on which this Decision takes effect, publish in the Official Journal of the European Communities, a list of all

committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. From 2000 onwards, the Commission shall also publish an annual report on the working of committees.

6. 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 by the Commission in 2001.

Article 8

If the European Parliament indicates, in a Resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic instrument adopted under Article 251 of the Treaty, would exceed the implementing powers provided for in the basic instrument, the Commission shall re-examine the draft measures. Taking the Resolution into account and within the time-limits of the procedure under way, the

Commission may submit new draft measures to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty.

The Commission shall inform the European Parliament and the committee of the action which it intends to take on the Resolution of the European Parliament and of its reasons for doing so.

Article 9

Decision 87/373/EEC shall be repealed.

Article 10

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