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

REGULATION (EU) No 182/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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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.

(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.

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(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.

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(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[(3)].

(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.

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:

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(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.

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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.