

II

(Acts whose publication is not obligatory)

COUNCIL

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 criteria are of a non-binding nature;

- (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;
- (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

(*) 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.

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;

- (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;
- (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 and 6.

Article 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.

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) 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) 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.

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*.

Insofar as necessary existing committees shall adapt their rules of procedure to the standard rules of procedure.

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

3. The European Parliament shall be informed by the Commission of committee proceedings on a regular basis. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 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.

4. 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.

5. 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*.

Done at Luxembourg, 28 June 1999.

For the Council

The President

M. NAUMANN
