

Working Group IX

Working document 27

Working Group IX on Simplification

Subject: Answers of the Commission's representative to the questions asked by the members of the group

Members of Working Group IX "Simplification" will find hereafter answers of the Commission's representative to the questions asked by the members of the group.



EUROPEAN COMMISSION
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Task Force Future of the Union and institutional matters
Director

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WORKING DOCUMENT

Subject: Working group on « simplification »

- **Answers of the Commission's representative to the questions asked by the members of the group**

I. Mr De Vries' questions

- a) Is the introduction of a « call-back » procedure compatible with the maintaining of the regulation committees?*
- b) Should the executive activity of the Commission and the works of the committees assisting it not be more transparent?*

Answers

a) In the Commission's opinion, the answer should be negative. A « call-back » procedure (i.e., either the power of the legislator to withdraw the delegation of competence conferred to the Commission or the veto by the legislator against the adoption by the Commission of a concrete measure on that basis) is not compatible with maintaining a committee procedure that allows only the Council to « quash » the Commission's measure following a negative opinion issued by the committee of Member States' representatives. This procedure would be contrary to the Commission's aim to place both legislative branches on an equal footing with regard to the Commission's executive activity (at least as far as acts adopted by co-decision are concerned). Consequently, a « call-back » procedure could only function with purely consultative committees that would supply the Commission with expertise and opinions concerning the concrete application of executive measures at national level.

b) The Commission is aware of the need to improve the transparency of its executive activity. It has undertaken, therefore, to transmit, as far as co-decided matters are concerned, to the European Parliament all draft implementing measures before the final adoption. In addition, from the beginning of 2003 onwards the Commission will set up, for the matters in question, a register for all implementing acts adopted according to a committee procedure as well as a « repository » of these acts. As for the works of other expert committees assisting the Commission in exercising its tasks, the action plan « better regulation » aims at increasing transparency through guidelines concerning gathering and use of expertise.

II. Mrs Dybkjær's question

Would the use of a large delegation of powers not deprive the legislator of the possibility to adopt more detailed directives when it deems it necessary (in the case of, for instance, environmental legislation)?

Answer

The answer is negative. It is up to the legislator to decide, when adopting a directive, whether it prefers to regulate the matter in detail or whether it accepts to delegate to the Commission wider implementation powers, including the power to further develop or modify certain elements of the legislative act concerned. It is true that environmental legislation is often quite detailed. Nevertheless, even very detailed environmental directives comprising numerous annexes (for instance directive 67/548 on dangerous substances, as amended) foresee the possibility for the Commission to modify the annexes following a committee procedure. Otherwise, the legislator would regularly be faced with new proposals aiming at adapting the annexes of the environmental directives to the technical or scientific progress.

III. Mr. Bonde's question

Has the Commission not exceeded its powers by authorising the marketing of genetically modified products against the will of Member States and national Parliaments?

Answer

The answer of the Commission can only be negative. The basic legislation adopted by the European Parliament and the Council (directive 90/220, as amended) explicitly delegates to the Commission the competence to deal with - Member States' - requests aiming at authorising the marketing of GMO products. Consequently, when the Commission was presented with several requests aiming at authorising the marketing of genetically modified products (e.g., corn), it was legally bound to take a decision. Despite of that legal constraint, the Commission has delayed the adoption of measures authorising the marketing of a product in order to collect new scientific opinions. Following the political guidance given by the Environment Council in favour of a «moratorium», the Commission has refrained from taking certain individual decisions and has awaited the definitive decision of the legislator. It follows that the Commission has certainly not exceeded its powers.

IV. Mr Speroni's question

Should the provision of Article 250 of the Treaty, requiring an unanimous Council decision for modifying a Commission's proposal, not be abolished?

Answer

The Commission considers the requirement of unanimous Council decision for modifying a Commission's proposal to be the very essence of the institutional equilibrium. In no way does this procedure make the adoption of decisions by majority more difficult. Indeed, the Commission has only used the possibility to oppose changes proposed by the Council in very exceptional – actually, no more than 10 – cases, i.e., in less than 1% of all decisions taken by majority). The purpose of this provision is to prevent some Member States from being outvoted by a Council's decision that would alter the Commission's proposal or would not, according to its opinion, reflect the general

interest of the Community. Here are some examples of the Commission opposing majority decisions in the Council:

a) the pension funds directive

In this case, a majority of Member States wished to fundamentally modify the Commission's proposal against the interests of three Member States that held the very large majority of the pension funds in the Community and were in favour of the proposed liberalisation. The Commission has consequently withdrawn that proposal.

b) the free movement of road transport services

In this case, a majority of Member States was ready to accept a sharing of fret quotas that would have penalised the « peripheral » countries of the Union. The Commission opposed the compromise found by the Presidency and obtained its modification in a sense that better corresponded to both the general interest of the Union and the jurisprudence of the Court of Justice on free movement of services.