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COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny

**Adaptation to the regulatory procedure with scrutiny
Part Five**

EXPLANATORY MEMORANDUM

1. COUNCIL DECISION 2006/512/EC AND THE NEW REGULATORY PROCEDURE WITH SCRUTINY

Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹ was amended by Council Decision 2006/512/EC of 17 July 2006².

Article 5a of Decision 1999/468/EC, as amended, introduces a new regulatory procedure with scrutiny (hereinafter 'PRAC') for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, including by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.

2. PRIORITY ALIGNMENT AND GENERAL ALIGNMENT

In a joint statement³, the Parliament, the Council and the Commission listed a number of basic instruments that should be adapted to the amended Decision as a matter of urgency in order to incorporate the PRAC (priority alignment). The Commission presented all the proposals regarding priority alignment in December 2006. These were examined and adopted by the Parliament and the Council⁴.

For the PRAC to be applicable to the other instruments adopted under the codecision procedure that were already in force at the time Decision 2006/512/EC came into effect, the joint statement also called for these instruments to be adjusted in accordance with the applicable procedures (general alignment). In a statement not published in the Official Journal⁵, the Commission has undertaken to examine all these instruments, in order to adapt them, if necessary, to the PRAC.

The Commission decided to carry out the alignment by means of proposals for 'omnibus' regulations. Each regulation brings together and amends several dozen instruments. The aim of this method is to ensure that alignment is managed in a rational and consistent manner. It encourages a more effective and speedier examination by legislators and facilitates consistent and horizontal treatment. As the content of the basic instruments is not changed in any way, this method makes it possible to concentrate on the legal aspects of the texts.

Following a communication from the Commission to the European Parliament and the Council which it adopted on 23 November 2007⁶, the Commission adopted the first three proposals on 23 November⁷ and 19 December 2007⁸. It adopted the last of the proposals on 11 February 2008⁹.

The purpose of the adjustment is to incorporate the PRAC, as provided for in Article 5a of Decision 1999/468/EC as amended, into the instruments in force. In this connection, where it

¹ OJ L 184, 17.7.1999, p. 23.

² OJ L 200, 22.7.2006, p. 11.

³ OJ C 255, 21.10.2006, p. 1.

⁴ OJ L 76, 19.3.2008, pp. 33-38 and 42-55; OJ L 81, 20.3.2008, pp. 38-72; OJ L 97, 9.4.2008, pp. 60-71.

⁵ PE 376.314v01-00 – A6-0236/2006 (declaration annexed to the Parliament's report).

⁶ COM (2007) 740 final.

⁷ COM (2007) 741 final.

⁸ COM(2007) 822 final and COM(2007) 824 final.

⁹ COM (2008) 71 final.

appears justified particularly in the light of the nature of the measures envisaged, the adaptation may contain provisions relating to the extension or curtailment of the time limits normally applicable in the context of the PRAC, in accordance with paragraph 5 of the abovementioned Article 5a. Where circumstances so warrant, provision may be made for application of the urgent procedure in accordance with paragraph 6 of the abovementioned Article 5a.

3. EUROPEAN PARLIAMENT RESOLUTION

On 23 September 2008, the European Parliament adopted a resolution with recommendations to the Commission on the alignment of legal acts to the new Comitology Decision¹⁰.

In the resolution, the Parliament called on the Commission to present it with new legislative proposals to complete the general alignment. To this end, it provided the Commission with a list of instruments which it deemed to require adaptation to the new Comitology Procedure but which were not covered by the Commission communication of 23 November 2007¹¹.

4. COMMISSION POSITION ON THE FOLLOW-UP TO THE EUROPEAN PARLIAMENT RESOLUTION

Before presenting its communication, the Commission had carefully examined all the instruments adopted under the codecision procedure in order to identify those which authorise it to adopt measures of general scope designed to amend non-essential elements of the basic instrument in question. As a result, the Commission was able to draw up a list, which it recognised could be amended subsequently, of over 200 instruments requiring adaptation.

The Commission has looked particularly closely at the 14 instruments to which its attention was drawn in the Parliament's resolution of 23 September 2008. All provisions in these basic instruments that delegate implementing powers to the Commission have been carefully examined.

4.1. On the basis of this examination, the Commission does not deem it necessary to present proposals for all these basic instruments. In the Commission's view, the following instruments do not require adaptation to the new Comitology Procedure:

INSTRUMENTS FOR WHICH ALIGNMENT HAS ALREADY BEEN CARRIED OUT OR PROPOSED

- Directive 2000/25/EC of the European Parliament and of the Council of 22 May 2000 on action to be taken against the emission of gaseous and particulate pollutants by engines intended to power agricultural or forestry tractors and amending Council Directive 74/150/EEC

This instrument has already been aligned to the PRAC by Article 19 of Directive 2003/37/EC, which is one of the basic instruments adapted to the new procedure by the 'Omnibus Part I' Regulation adopted on 22 October 2008 (see point 1 of Section 3.7 of the Annex to Regulation (EC) No 1137/2008, OJ L 311 of 21 November 2008).

Under Article 19 of Directive 2003/37/EC, as amended by 'Omnibus' Part I, the PRAC applies to any amendment, for the purposes of technical adaptation, of the Directives specified in Annex II, Section B. Directive 2000/25/EC is one of these Directives.

¹⁰ A6-0345/2008.

¹¹ See footnote 6.

- Directive 2001/43/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 92/23/EEC relating to tyres for motor vehicles and their trailers and to their fitting
- Directive 2004/3/EC of the European Parliament and of the Council of 11 February 2004 amending Council Directives 70/156/EEC and 80/1268/EEC as regards the measurement of carbon dioxide emissions and fuel consumption of N1 vehicles

These two directives became automatically subject to the PRAC as a result of their being included in Annex IV to Directive 2007/46/EC of 5 September 2007 (OJ L 263 of 9 October 2007). All amendments to the 'separate directives' in Annex IV to that Directive are covered by the PRAC, in accordance with Article 39(2) and (9) of the Directive. It is therefore no longer necessary to align these two basic instruments.

- Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC
- Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending Council Directive 70/156/EEC

These two instruments also appear in Annex IV to Directive 2007/46/EC as a result of the annex having been amended by Commission Regulation (EC) No 1060/2008 of 7 October 2008. Therefore, any amendments to these two Directives are now covered by the PRAC by virtue of the abovementioned Article 39 of Directive 2007/46/EC. It is therefore no longer necessary to align them.

- Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC

Directive 1999/32/EC is included in the proposal for the 'Omnibus' Part II Regulation (COM(2007) 824 final). In preparing its proposal, the Commission took due account of the amendments to this instrument made by Directive 2005/33/EC. The Commission therefore considers that all provisions that need to be adapted to the PRAC are covered by its 'Omnibus II' proposal and that it is not necessary, as regards this instrument, to present another proposal.

INSTRUMENT NOT COVERED BY CODECISION

- Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999

The legal basis for this instrument is not covered by Article 251 of the Treaty; therefore the PRAC does not apply.

INSTRUMENT ADOPTED AFTER ENTRY INTO FORCE OF THE 2006 REFORM

- Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation

This instrument was adopted after 23 July 2006, i.e. after the entry into force of the reform establishing the PRAC, and therefore does not require any kind of adaptation; when it was adopted, the European Parliament and the Council did not consider that the delegation of powers to the Commission was such as to come under the new Comitology Procedure.

The Commission is unaware of any factor that would now allow the considered judgment of the legislator to be called into question; this instrument contains no provision conferring on the Commission the power to adopt general measures liable to amend or supplement it.

INSTRUMENTS CONTAINING NO PROVISIONS COVERED BY THE PRAC

- Directive 2001/46/EC of the European Parliament and of the Council of 23 July 2001 amending Council Directive 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and Council Directives 70/524/EEC, 96/25/EC and 1999/29/EC on animal nutrition

This Directive amends the delegation of powers conferred on the Commission by Directive 95/53/EC. However, it does not confer on the Commission the power to adopt general measures liable to amend or supplement the basic instrument. The powers conferred on the Commission relate to the adoption of (non-binding) guidelines (Article 4a(3)), taking individual measures (Article 15a(1) and (2)) and setting up a system for the rapid exchange of information (Article 16c(3)).

- Directive 2002/33/EC of the European Parliament and of the Council of 21 October 2002 amending Council Directives 90/425/EEC and 92/118/EEC as regards health requirements for animal by-products

This Directive amends Directive 92/118/EC and requires the Commission to draw up a list of establishments which may supply products authorised for importation into the Community. Including an establishment in this list is an individual measure not covered by the PRAC.

- Directive 2004/41/EC of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC

The Commission considers that this Directive neither contains nor amends the slightest delegation of power and thus that it does not affect the provisions of the amended instruments as regards comitology.

- Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)

In the Commission's view, the implementing powers conferred on it under this instrument, in Article 4(2), (3), (4) and (6), are not covered by the PRAC. The measures covered by Article 4(2) are purely executive measures and are not general in scope. In the framework of Article 4(3), (4) and (6), the Commission can only implement the provisions of the basic instrument; it has no power to amend or supplement them. Therefore, the criteria for applying the new procedure are not fulfilled.

4.2. On the other hand, the Commission acknowledges, with the European Parliament, that the following basic instruments contain a number of provisions which do have to be adapted to the PRAC:

- Directive 2000/15/EC of the European Parliament and of the Council of 10 April 2000 amending Council Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine

- Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97

The purpose of the present proposal is to adapt these two basic instruments to the regulatory procedure with scrutiny.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

Having regard to the proposal from the Commission¹²,

Having regard to the opinion of the European Economic and Social Committee¹³,

Following consultation of the Committee of the Regions¹⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁵,

Whereas:

- (1) Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁶ was amended by Council Decision 2006/512/EC¹⁷, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements.
- (2) In accordance with the statement by the European Parliament, the Council and the Commission¹⁸ on Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.
- (3) The amendments to be made to instruments for this purpose concern only the committee procedures and so, in the case of Directives, do not require transposition by the Member States,

¹² OJ C [...], [...], p. [...].

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ C [...], [...], p. [...].

¹⁶ OJ L 184, 17.7.1999, p. 23.

¹⁷ OJ L 200, 22.7.2006, p. 11.

¹⁸ OJ C 255, 21.10.2006, p.1.

HAVE ADOPTED THIS REGULATION:

Article 1

The instruments listed in the Annex are hereby adapted, in accordance with that Annex, to Decision 1999/468/EC, as amended by Decision 2006/512/EC.

Article 2

References to provisions of the instruments listed in the Annex shall be understood to be references to those provisions as adapted by this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Strasbourg, [...]

For the European Parliament
The President

For the Council
The President

ANNEX

1. Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine¹⁹

As regards Council Directive 64/432/EEC, the Commission should be authorised to adopt rules on the information that the national computer databases are to contain in respect of porcine animals. Since those measures are of general scope and are designed to amend non-essential elements of that Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Accordingly, Directive 64/432/EEC is amended as follows:

1. In Article 14(3)(C), point (4) shall be replaced by the following:
 - '4. In order to ensure the operation of the national computer databases concerning porcine animals, the Commission shall adopt the rules concerning the information that the national computer databases must contain. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 17a(2). The other detailed rules of application, as appropriate, shall be adopted in accordance with the procedure laid down in Article 17.'
2. Article 17a(2) and (3) are replaced by the following:
 - '2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'

2. Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97²⁰

As regards Regulation (EC) No 1760/2000, the Commission should be authorised to take measures to apply certain provisions in Title I, in particular those concerning the extension of maximum periods, ear tags, passports, the register and the minimum level of controls to be carried out, as well as the transitional measures of general scope required to facilitate application of Title I. Since those measures are of general scope and are designed to amend non-essential elements of that Regulation by supplementing it, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Accordingly, Regulation (EC) No 1760/2000 is amended as follows:

1. The second subparagraph of Article 4(2) is replaced by the following:

'However, at the request of a Member State, the Commission may determine the circumstances in which Member States may extend the maximum period. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(4).'

¹⁹ OJ L21, 29.7.1964, p. 1977.

²⁰ OJ L 204, 11.8.2000, p. 1.

2. In Article 6(1), the fourth subparagraph is replaced by the following:
'However, at the request of a Member State, the Commission may determine the circumstances in which the maximum period may be extended. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(4).'
3. In Article 7(1), the second indent is replaced by the following:
'— once the computerised database is fully operational, report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, within a period fixed by the Member State of between three and seven days of the event occurring. However, at the request of a Member State, the Commission may determine the circumstances in which Member States may extend the maximum period and provide for special rules applicable to movements of bovine animals when put out to summer grazing in different mountain areas. That measure, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(4).'
4. Article 10 is replaced by the following:

Article 10

1. The following measures necessary for the implementation of this Title shall be adopted by the Commission :
 - (a) provisions concerning ear tags;
 - (b) provisions concerning the passport;
 - (c) provisions concerning the register;
 - (d) minimum level of controls to be carried out;

These measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(4).
2. The transitional measures of a general scope and designed to amend non-essential elements of this Regulation, including those supplementing it with new non-essential elements, in particular further details as regards the requirements established by this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(4).
3. The following measures necessary for the implementation of the provisions of this Title shall be adopted in accordance with the management procedure referred to in Article 23(2):
 - (a) application of administrative sanctions;
 - (b) the transitional measures necessary to facilitate the application of this Title, other than those referred to in paragraph 2.'
5. Article 23 is amended as follows:
 - (a) Paragraph (1)(a) is replaced by the following:

- '(a) for the implementation of Article 10, by the Management Committee for Direct Payments referred to in Article 141 of Council Regulation (EC) No 73/2009;'
- (b) Paragraph 4 is replaced by the following:
 - '4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'