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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.2.2008
COM(2008) 105 final

2008/0038 (COD)

Adaptation to the regulatory procedure with scrutiny

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**Amending, as regards the implementing powers conferred on the Commission, Council
Directive 79/409/EEC on the conservation of wild birds**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 Reform of committee procedures

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 amended Decision 1999/468/EC introduces a new regulatory procedure with scrutiny 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.

1.2. Priority alignment and general alignment

In a joint statement³, 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 new regulatory procedure with scrutiny (priority alignment). For the regulatory procedure with scrutiny to be applicable to the other instruments adopted under the codecision procedure and already in force at the time when Decision 2006/512/EC took effect, the joint statement also calls for the adaptation of these instruments, in accordance with the procedures applicable (general alignment).

The Commission has undertaken to conduct an examination of all these instruments in order to present, before the end of 2007, the legislative proposals intended to adapt them, where necessary, to the new regulatory procedure with scrutiny⁴.

1.3. Method used

As mentioned in the Communication from the Commission to the European Parliament and the Council of 23 November 2007⁵, the Commission conducted a close examination of all the instruments adopted under the codecision procedure in order to identify those which empower the Commission to adopt measures of a general scope which seek to amend non-essential elements of the basic instrument in question. The Commission has thus been able to identify more than 200 instruments requiring adaptation.

Some of these instruments are included in the Commission's codification programme. This is the case for Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁶. Depending on the stage reached in the codification procedure, these instruments will be

¹ OJ C 203, 17.7.1999, p. 1.

² OJ L 200, 22.7.2006, p. 11.

³ OJ C 255, 21.10.2006, p. 1.

⁴ PE 376.314v01-00 – A6-0236/2006 (Commission declaration annexed to report by Parliament).

⁵ COM(2007)740 final.

⁶ OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

adapted to the new procedure either by conversion of the codified proposal into a recast, or, in this case, by means of legislative amendment.

2. LEGAL ELEMENTS OF THE PROPOSAL

The purpose of the adaptation is to incorporate the regulatory procedure with scrutiny as structured by Article 5a of amended Decision 1999/468/EC.

In particular, Article 15 shall be adjusted to the regulatory procedure with scrutiny since it provides for adoption of measures that are of general scope and are designed to amend non-essential elements of Directive 79/409/EEC, *inter alia* by supplementing it.

Article 17 shall be amended to introduce a reference to Article 5a of Decision 1999/468/EC.

As the basic instrument is a directive, adaptation must be performed by means of an equivalent instrument.

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Amending, as regards the implementing powers conferred on the Commission, Council Directive 79/409/EEC on the conservation of wild birds

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission⁷,

Having regard to the opinion of the European Economic and Social Committee⁸,

Having regard to the opinion of the Committee of the Regions⁹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁰,

Whereas:

- (1) Council Directive 79/409/EEC¹¹ provides that certain measures are to be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹².
- (2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced a regulatory procedure with scrutiny 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.
- (3) In accordance with the joint statement of the European Parliament, the Council and the Commission¹³ on Decision 2006/512/EC, for this new procedure to be applicable to instruments adopted in accordance with the procedure laid down in Article 251 of the

⁷ OJ C [...], [...], p. [...].

⁸ OJ C [...], [...], p. [...].

⁹ OJ C [...], [...], p. [...].

¹⁰ OJ C [...], [...], p. [...].

¹¹ OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

¹² OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

¹³ OJ C 255, 21.10.2006, p. 1.

Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

- (4) As regards Directive 79/409/EEC, power should be conferred on the Commission in particular to amend certain Annexes in the light of scientific and technical progress. Since those measures are of general scope and are designed to amend non-essential elements of Directive 79/409/EC and to supplement it by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (5) Directive 79/409/EEC should therefore be amended accordingly.
- (6) Since the amendments to be made to Directive 79/409/EEC by this Directive are adaptations which concern only the committee procedures, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 79/409/EEC is amended as follows:

- (1) Article 15 is replaced by the following:

"Article 15

Such amendments as are necessary for adapting Annexes I and V to technical and scientific progress and the amendments referred to in the second subparagraph of Article 6(4) shall be adopted by the Commission. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 17(2)."

- (2) Article 17 is replaced by the following:

"Article 17

1. The Commission shall be assisted by the Committee for the Adaptation to Technical and Scientific progress.

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."

Article 2

This Directive shall enter into force on [...].

Article 3

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]