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(Information)

EUROPEAN PARLIAMENT
COUNCIL
COMMISSION

INTERINSTITUTIONAL AGREEMENT

of 28 November 2001

on a more structured use of the recasting technique for legal acts

(2002/C 77/01)

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

- (1) The European Council, meeting in Edinburgh in December 1992 underlined the importance for the Community of making Community legislation more accessible and comprehensible.
- (2) On 20 December 1994, following the guidelines drawn up by the European Council, the European Parliament, the Council and the Commission concluded an Interinstitutional Agreement on an accelerated working method for official codification of legislative texts ⁽¹⁾ with a view to substantially improving the readability of legal acts which have been extensively amended.
- (3) Experience shows, however, that despite the use of the accelerated method, the Commission's submission of official codification proposals and the legislature's adoption of official codification acts are often delayed, in particular because new amendments to the legal act in question have been adopted in the meanwhile, which leads to the codification work having to start all over again.
- (4) It is therefore advisable, in particular with regard to frequently amended legal acts, to use a legislative technique which enables amendments to, and codification of, acts to be carried out within the framework of a single legislative text.
- (5) In that context, where a substantive amendment has to be made to an earlier legal act, the recasting technique permits the adoption of a single legislative text which simultaneously makes the desired amendment, codifies that amendment with the unchanged provisions of the earlier act, and repeals that act.
- (6) Consequently, in so far as it prevents the proliferation of isolated amending acts which often make regulations difficult to understand, the recasting technique is an appropriate means of ensuring the readability of Community legislation on a permanent and universal basis.
- (7) A more structured use of the recasting technique forms part of the measures undertaken by the institutions to make Community legislation more accessible, such as the adoption of the accelerated working method for official codification and the establishment of common guidelines for the quality of drafting of Community legislation through the Interinstitutional Agreement of 22 December 1998 ⁽²⁾.
- (8) The European Council meeting in Helsinki in December 1999 wished an Interinstitutional Agreement on the use of the recasting technique to be concluded as quickly as possible by the European Parliament, the Council and the Commission,

HAVE AGREED AS FOLLOWS:

1. The aim of this Agreement is to lay down procedural rules enabling a more structured use to be made of the recasting technique pursuant to the Community's normal legislative process.

⁽¹⁾ OJ C 102, 4.4.1996, p. 2.

⁽²⁾ OJ C 73, 17.3.1999, p. 1.

2. Recasting shall consist in the adoption of a new legal act which incorporates in a single text both the substantive amendments which it makes to an earlier act and the unchanged provisions of that act. The new legal act replaces and repeals the earlier act.

3. A proposal for recasting submitted by the Commission shall deal with the substantive amendments which it makes to an earlier act. On a secondary level, the proposal shall include the codification of the unchanged provisions of the earlier act with those substantive amendments.

4. For the purposes of this Agreement:

— 'earlier act' shall mean a legal act which is in force, and which may have been amended by one or more amending acts,

— 'substantive amendment' shall mean any amendment which affects the substance of the earlier act as opposed to purely formal or editorial changes,

— 'unchanged provision' shall mean any provision of the earlier act which, although it may be affected by purely formal or editorial changes, has not undergone any substantive amendment.

A new legal act shall not constitute a recast act if, with the exception of standardised provisions or wordings, it makes substantive amendments to all the provisions of the earlier act, which it replaces and repeals.

5. The Community's normal legislative process shall be complied with in full.

6. A proposal for recasting shall satisfy the following criteria:

(a) The explanatory memorandum accompanying the proposal shall:

(i) state expressly that it relates to a proposal for recasting and explain the reasons for adopting such an approach;

(ii) state the reasons for each proposed substantive amendment;

(iii) specify which provisions of the earlier act remain unchanged.

(b) The proposed legislative text shall be presented in a way which:

(i) enables the substantive amendments and new recitals to be clearly distinguished from the provisions and recitals which remain unchanged;

(ii) with regard to the provisions and recitals which remain unchanged, is similar to the method used for presenting proposals for the official codification of legislative acts.

7. To ensure clarity and legal certainty, all recasting acts shall comply *inter alia* ⁽¹⁾ with the following rules of legislative drafting:

(a) The first recital shall indicate that the new legal act constitutes a recasting of the earlier act.

(b) The article repealing the earlier act shall provide that references to that act shall be regarded as references to the recasting act and should be read in accordance with a correlation table annexed to the recasting act.

(c) Moreover, in an act recasting a Directive:

(i) the repealing article shall provide that Member States' obligations arising from the transposition period ⁽²⁾ and, where appropriate, the implementation period as set out in the Directive repealed by the recasting act shall not be affected by such repeal;

(ii) the periods referred to in point (i) shall be set out in an annex in the form of a table;

(iii) the article relating to the obligation to transpose ⁽³⁾ into national law a recast Directive shall refer only to those provisions which have undergone substantive amendment and which have been precisely identified as such. Those provisions which remain unchanged in the recast Directive shall be transposed in accordance with the earlier Directives.

⁽¹⁾ See, in particular, the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p. 1).

⁽²⁾ That is, the period laid down for implementing the laws, regulations and administrative provisions necessary for complying with the provisions of the Directive.

⁽³⁾ That is, the obligation to implement the laws, regulations and administrative provisions necessary for complying with the provisions of the Directive.

8. Where, in the course of the legislative procedure, it appears necessary to introduce substantive amendments in the recasting act to those provisions which remain unchanged in the Commission's proposal, such amendments shall be made to that act in compliance with the procedure laid down by the Treaty according to the applicable legal basis.

9. A Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission shall examine the proposal for recasting. It shall deliver an opinion as soon as possible for submission to the European Parliament, the Council and the Commission to the effect that the proposal does not comprise any substantive amendments other than those identified as such.

10. This agreement shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply to any proposal for recasting submitted from the date of its entry into force.

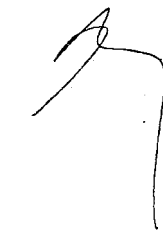
An assessment of the application of this Agreement shall take place three years after its entry into force. For this purpose the Legal Services of the institutions signatory to the Agreement shall submit an assessment report and propose, where appropriate, any changes required.

Done at Brussels on the twenty-eighth day of the year two thousand and one.

For the European Parliament
The President



For the Council
The President



For the Commission
The President



DECLARATIONS

Joint Declaration on point 2

The European Parliament, the Council and the Commission note that recasting may be either 'vertical' (whereby the new legal act replaces a single earlier act) or 'horizontal' (whereby the new legal act replaces several parallel earlier acts relating to the same subject).

Joint Declaration on point 4

The European Parliament, the Council and the Commission agree that, where an isolated amendment within a provision in fact amends the substance of that provision, such a provision shall be identified as having been amended in its entirety.

Declaration of the European Parliament and the Council on point 6(b)

The European Parliament and the Council take note of the fact that the Commission provides for substantive amendments and any new recital to be identified by the use of 'shaded' type in any COM document which it submits.

Joint Declaration on point 9

The European Parliament, the Council and the Commission note that, for the purpose of giving proper effect to this Agreement, their Legal Services should have access to the appropriate human resources so that they have a sufficient number of representatives within the Consultative Working Party to enable the proposals for recastings submitted by the Commission to be considered rapidly with a view to delivery of an opinion to the institutions as soon as possible.