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'I/A' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	5623/17 + ADD 1 REV 1
Subject:	Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts providing for the use of regulatory procedure with scrutiny to article 290 and 291 of the Treaty on the Functioning of the European Union - Presidency Progress Report

I. INTRODUCTION

1. At the time of the adoption of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, the Commission made a commitment to review the provisions attached to this procedure, in order to adapt them in due course according to the criteria laid down in the Treaty on the Functioning of the European Union. In line with this commitment, the Commission made three horizontal alignment legislative proposals in 2013 (Omnibus I, II and III)¹. However, due to the stagnation of the interinstitutional negotiations on these files, the Commission, as announced in its 2015 Work Programme², withdrew them³.
2. In the Inter-Institutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making⁴ (hereafter 'the IIA'), *“the three institutions acknowledged the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny.”*⁵

¹ Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny (COM(2013) 451 final); Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny (COM(2013) 452 final); and Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny (COM(2013) 751 final).

² COM(2014) 910 final

³ (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17.

⁴ OJ L 123, 12.5.2016, p. 1

⁵ Ibid, at point 27.

3. The Regulatory Procedure with Scrutiny (hereafter ‘RPS’), still appears in a number of existing basic acts and continues to apply (in line with Article 12 of Regulation 182/2011) in those acts until they are formally amended and adapted to the Lisbon Treaty. In this regard, the Commission submitted two Proposals which cover the adaptation to the Lisbon Treaty of all remaining acts that still refer to RPS. COM (2016)799⁶ proposes the adaptation of 168 acts covering 13 different sections, whilst COM (2016)798⁷ proposes the adaptation of 3 acts in the area of Justice. Acts referring to the RPS which are currently subject to a separate revision or for which a revision is envisaged, are not included in the Proposals⁸. The technique consists in textual amendments for each and every empowerment.
4. The Proposals were issued by the Commission on 14 December 2016 in the English language version, while the other language versions were issued for COM (2016) 799 on 7 March 2017 and for COM (2016)798 on 13 March 2017.
5. In order to maintain an appropriate degree of coordination and consistency of approach, the Maltese Presidency decided to activate the Friends of the Presidency group to examine the proposals and assess, for each legal act concerned, the adaptation proposed by the Commission. The Friends of the Presidency group (“RPS Adaptation”) was activated by COREPER on 1 February 2017⁹.

⁶ Proposal for a Regulation of the European Parliament and of the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union. Document 5623/17 + ADD 1 REV 1

⁷ Proposal for a Regulation of the European Parliament and of the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the Functioning of the European Union. Document 5705/17 + ADD 1

⁸ The Commission has provided a list of these acts in point 3 of the Explanatory Memorandum of COM (2016) 799 final.

⁹ Sec Doc 5707/17

6. The Friends of the Presidency (RPS Adaptation) (hereafter ‘FoP’) started formal discussions on COM (2016)799 (hereafter, ‘RPS Adaptation Proposal’), on 20 March 2017. Five FOP meetings were dedicated to discussions on the RPS Adaptation Proposal on 20 March, 7 April, 2 May, 29 May and 9 June 2017.
7. Council consulted the European Central Bank (ECB), the European Economic and Social Committee (EESC) and the Committee of the Regions on 13 March 2017. The ECB replied to the Council on 24 April 2017 that it does not intend to submit an opinion on the Commission's proposals, and the EESC submitted its opinion on 2 June 2017.
8. The Maltese Presidency has focussed its work on the General Articles, as well as 10 out of 13 sections of the Annex, namely:
 - I. Climate Change
 - II. Communication Networks, Content and Technology
 - III. Humanitarian Aid and Civil Protection
 - IV. Employment, Social Affairs and Inclusion
 - V. Energy
 - VI. Environment
 - VII. Financial Stability, Financial Services and Capital Markets Union
 - VIII. Internal Market, Industry, Entrepreneurship and SMEs
 - IX. Justice and Consumers
 - X. Taxation and Customs Union

9. Given the volume of the RPS Adaptation Proposal, prior to each FOP meeting, the Maltese Presidency asked delegations to provide positions on the basis of a legal assessment provided by the Presidency, with Council Legal Service (CLS) input, assessing whether each empowerment present in the Commission proposal with respect to the Sections in question, is acceptable from a legal point of view. Delegations submitted comments in writing.
10. The meetings focused on the provisions for which a discussion was deemed necessary. With regard to provisions on which there was broad support for the Presidency's initial assessment in the written comments, no discussion took place during the meetings¹⁰. After each meeting, the Presidency reverted back to the delegations with drafting suggestions for amendments which were necessary following the provisional conclusions reached during the meetings on the basis of the positions of delegations, both in writing and in the FOP meetings.

II. STATE-OF-PLAY ON THE THREE GENERAL ARTICLES

11. With regard to the General Articles of the RPS Adaptation Proposal i.e. Articles 1 to 3, no Member State had comments on the three main articles and hence the Presidency concluded that there is agreement to move forward by not introducing any amendments to the proposal from the Commission.

¹⁰ Although Member States were able to raise specific provisions that were not proposed to be discussed at the end of each Section.

III. STATE-OF-PLAY OF THE ANNEX

SECTION I – CLIMATE ACTION:

12. **Act 1**, Directive 2009/31/EC, on the geological storage of carbon-dioxide: Member States agreed to remove this act from the RPS adaptation proposal as it is being amended through a separate proposal (COM (2016)789 final).
13. **Act 2**, Decision 406/2009/EC on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020: Member States agreed to postpone discussions on the act. The reason is that they do not want to prejudge the ongoing discussions on the Commission's proposal for an Effort Sharing Regulation for the period 2021-2030 (COM (2016)482 final/2) which includes similar empowerments.
14. **Act 3**, Regulation 1005/2009 on substances that deplete the ozone layer: For many of the empowerments proposed by the Commission, a clear preference for delegated acts (DAs) was expressed by delegations. The Presidency provisionally concluded that the delegation of power should be limited to 5 years, with the possibility of a tacit renewal in line with Option 2 of the IIA of April 2016 (Option 2). For some other empowerments, the Presidency provisionally concluded to come back with drafting suggestions, amending the Commission proposal to provide for implementing acts (IAs) or to remove the empowerment.
15. The Presidency reverted back with drafting suggestions reflecting the changes outlined above for Section I, Climate Action, on 28 April 2017 and delegations were asked to submit their comments. While taking into account a specific drafting recommendation on Act 3, in particular its recital and Articles 23 and 24, the Presidency noted the support of the Member States to the drafting suggestions as submitted to delegations on 28 April 2017.

SECTION II – COMMUNICATION NETWORKS, CONTENT AND TECHNOLOGY

16. **Act 4**, Directive 2002/58/EC on privacy and electronic communications: This Act has been superseded by a separate proposal (COM (2017) 10 final) and the Presidency thus concluded on the removal of this Act from the RPS adaptation exercise.
17. **Act 5**, Regulation (EC) No 733/2002 on the implementation of the .eu Top Level Domain: There was a general agreement with the empowerments proposed by the Commission for DAs. Moreover, the Presidency provisionally concluded that the delegation should be limited to 5 years, with the possibility of a tacit renewal (Option 2).
18. **Act 6**, Decision No 626/2008/EC on the selection and authorisation of systems providing mobile satellite services (MSS Decision): Since there were no comments from the Member States, no amendments to the Commission proposal were suggested.
19. The Presidency reverted back with drafting suggestions reflecting the changes outlined above for Section II, Communication Networks, Content and Technology on 28 April 2017 and delegations were asked to submit their comments. Noting the broad support of the Member States to the proposed wording, the Presidency considered that no further changes were necessary.

SECTION III – HUMANITARIAN AID AND CIVIL PROTECTION

20. With regard to Section III, after examining the positions of the Member States submitted in their written comments, the Presidency concluded that there is agreement to move forward by not introducing any amendments to the proposal from the Commission.

SECTION IV – EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

21. Since the acts under Section IV have a similar structure, horizontal comments were discussed during the FOP meeting and the Presidency provisionally concluded as follows:
- a) the empowerments under this section should be further defined.
 - b) the delegation of power should be limited to five years with a tacit renewal (Option 2).
 - c) the current practice of consulting the Advisory Committee on Safety and Health at Work should be maintained.
22. **Act 8**, Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work: It was considered appropriate to delete the empowerment proposed by the Commission under this act as it goes beyond the scope of alignment to the Lisbon Treaty.
23. **Act 9**, Council Directive 89/654/EEC concerning the minimum safety and health requirements for the workplace: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
24. **Act 10**, Council Directive 89/656/EEC on the minimum health and safety requirements for the use by workers of personal protective equipment at the workplace: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
25. **Act 11**, Council Directive 90/269/EEC on the minimum health and safety requirements for the manual handling of loads where there is a risk particularly of back injury to workers: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.

26. **Act 12**, Council Directive 90/270/EEC on the minimum safety and health requirements for work with display screen equipment: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
27. **Act 13**, Council Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
28. **Act 14**, Council Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
29. **Act 15**, Council Directive 92/58/EEC on the minimum requirements for the provision of safety and/or health signs at work: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
30. **Act 16**, Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.

31. **Act 17**, Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
32. **Act 18**, Council Directive 93/103/EC concerning the minimum safety and health requirements for work on board fishing vessels: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
33. **Act 19**, Council Directive 94/33/EC on the protection of young people at work: There was general agreement with the Commission's proposal and hence only the horizontal amendments referred to above were considered necessary in relation to this act.
34. **Act 20**, Council Directive 98/24/EC on the protection of the health and safety of workers from the risks related to chemical agents at work: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerments to adopt DAs while removing references to the urgency procedure.
35. **Act 21**, Directive 1999/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.

36. **Act 22**, Directive 2000/54/EC on the protection of workers from risks related to exposure to biological agents at work: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment with regard to Annexes I, V, VI, VIII and IX. The possibility for the Commission to adopt DAs to amend Annexes II, III, IV and VII was maintained while removing references to the urgency procedure.
37. **Act 23**, Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
38. **Act 24**, Directive 2003/10/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
39. **Act 25**, Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.

40. **Act 26**, Directive 2006/25/EC on the minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs while removing references to the urgency procedure.
41. **Act 27**, Directive 2009/104/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
42. **Act 28**, Directive 2009/148/EC on the protection of workers from the risks related to exposure to asbestos at work: There was general agreement with the Commission's proposal and hence only the horizontal amendments referred to above were considered necessary in relation to this act.
43. The Presidency reverted back with drafting suggestions reflecting the changes outlined above for Section IV, Employment, Social Affairs and Inclusion on 12 May 2017 and delegations were asked to submit their comments. Noting the broad support of the Member States to the proposed wording, the Presidency considered that no further changes were necessary.

SECTION V – ENERGY

44. **Act 29**, Directive 2009/73/EC concerning common rules for the internal market in natural gas: It was considered that the discussion on this Act in the RPS adaptation exercise should be postponed until there is more clarity on the ongoing negotiations on legislative proposals in the electricity sector, which are part of the Clean Energy for all Europeans Package.
45. **Act 30**, Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks: It was considered that the discussion on this Act in the RPS adaptation exercise should be postponed until there is more clarity on the ongoing negotiations on legislative proposals in the electricity sector, which are part of the Clean Energy for all Europeans Package.
46. **Act 31**, Regulation (EC) No 1222/2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs, with the delegation of power limited to five years with a tacit renewal (Option 2).
47. The Presidency reverted back with drafting suggestions reflecting the changes outlined above for Section V, Energy on 19 May 2017 and delegations were asked to submit their comments. Noting the broad support of the Member States to the proposed wording, the Presidency considered that no further changes were necessary.

SECTION VI - ENVIRONMENT

48. **Act 32**, Council Directive 91/271/EEC concerning urban waste-water treatment: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
49. **Act 33**, Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs in relation to Annexes I, II and III while maintaining the empowerment to adopt DAs in relation to Annexes IV and V with the delegation of power limited to five years with a tacit renewal (Option 2).
50. **Act 34**, Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).

51. **Act 35**, Council Directive 96/59/EC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT): For this act which contains only one empowerment for RPS, the Commission proposed DAs. The Presidency provisionally concluded to come back with drafting suggestions amending the Commission Proposal to provide for IAs.
52. **Act 36**, concerning Council Directive 98/83/EC on the quality of water intended for human consumption, given that the Commission will present a REFIT revision of this Directive in the fourth quarter of 2017: The Presidency provisionally concluded that this Act should be postponed until further clarity on the REFIT revision is obtained.
53. **Act 37**, Directive 2000/53/EC on end of life vehicles: This Directive is currently being amended as part of the circular economy package (COM/2015/0593 final). In this regard, the Presidency concluded that the Act will be taken out of the RPS Adaptation exercise. The relevant provisions will be discussed in the Working Party on Environment which deals with the Circular Economy Package.
54. **Act 38**, Directive 2000/60/EC establishing a framework for Community action in the field of water policy: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs in relation to Annexes III and V; while maintaining the empowerment to adopt DAs in relation to Annex I, with the delegation of power limited to five years with a tacit renewal (Option 2). For two other empowerments, the Presidency provisionally concluded to come back with drafting suggestions, amending the Commission proposal to provide for IAs.
55. **Act 39**, Directive 2002/49/EC relating to the assessment and management of environmental noise: The Presidency provisionally concluded that there was agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
56. **Act 40**, Directive 2004/42/EC on the limitations of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).

57. **Act 41**, Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
58. **Act 42**, Directive 2006/7/EC concerning the management of bathing water quality: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2). For one other empowerment, the Presidency provisionally concluded to come back with drafting suggestions, amending the Commission proposal to provide for IAs.
59. **Act 43**, Directive 2006/21/EC on the management of waste from extractive industries: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs to adapt the Annexes to scientific and technical progress, with the delegation of power limited to five years with a tacit renewal (Option 2); the Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the other empowerments to adopt DAs.
60. **Act 44**, Directive 2006/118/EC on the protection of groundwater against pollution and deterioration: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerments to adopt DAs.
61. **Act 45**, Regulation 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
62. **Act 46**, Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (Inspire): The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal to provide for IAs for four empowerments and to remove one other empowerment to amend the description of the existing data themes

63. **Act 47**, Directive 2007/60/EC on the assessment and management of flood risks: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
64. **Act 48**, Directive 2008/50/EC on ambient air quality and cleaner air for Europe: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
65. **Act 49**, Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs to amend Annexes III, IV and V, with the delegation of power limited to five years with a tacit renewal (Option 2); and to come back with drafting suggestions amending the Commission Proposal to provide for IAs for the two remaining empowerments.
66. **Act 50**, Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2); and reverted back with drafting suggestions to specify that one empowerment will no longer be used to add an Annex, but to amend the Annex that has recently been adopted.
67. **Act 51**, Directive 2009/126/EC on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).

68. **Act 52**, Directive 2009/147/EC on the conservation of wild birds: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal by deleting the empowerment to adopt DAs.
69. **Act 53**, Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2) for some empowerments; and IAs for some others.
70. **Act 54**, Regulation (EC) No 66/2010 on the EU Ecolabel: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission Proposal to provide for IAs for two empowerments; and that there was an agreement to keep the empowerment to adopt DAs to amend the Annexes with the delegation of power limited to five years with a tacit renewal (Option 2).
71. The Presidency reverted back with drafting suggestions reflecting the changes outlined above for Section VI, Environment on 19 May 2017 and delegations were asked to submit their comments. Having assessed the comments received from the Member States, the Presidency considers that no further changes are necessary.

SECTION VIII – FINANCIAL STABILITY, FINANCIAL SERVICES and CAPITAL MARKETS UNION

72. **Act 79**, Regulation (EC) No 1606/2002 on the application of international accounting standards: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission Proposal to provide for IAs.
73. **Act 80**, Council Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs amending the Directive, with the delegation of power limited to five years with a tacit renewal (Option 2) ; and to come back with drafting suggestions amending the Commission's proposal to provide for IAs, for the other empowerment.

74. The Presidency aims to circulate the required drafting suggestions reflecting the changes outlined above on Section VIII, shortly.

SECTION IX – INTERNAL MARKET

75. **Act 81**, Council Directive 75/324/EEC on the approximation of the laws of the Member States relating to aerosol dispensers: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
76. **Act 82**, Council Directive 76/211/EEC on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain pre-packaged products: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
77. **Act 83**, Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs to amend the Annex with the delegation of power limited to five years with a tacit renewal (Option 2); and to come back with drafting suggestions amending the Commission's proposal to provide for IAs for the other empowerment.
78. **Act 84**, Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs to amend Annex II with the delegation of power limited to five years with a tacit renewal (Option 2); and to come back with drafting suggestions amending the Commission's proposal to provide for IAs for the other empowerment.

79. **Act 85**, Directive 2000/14/EC on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
80. **Act 86**, Regulation (EC) No 2003/2003 relating to fertilisers: The Commission has proposed to repeal this Regulation in its Proposal for a Regulation laying down rules on the making available on the market of CE marked fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 (COM/2016/0157 (Article 47)) and hence these empowerments will be replaced. For this reason, it was considered that Regulation 2003/2003 should be removed from the RPS Adaptation Proposal.
81. **Act 87**, Directive 2004/9/EC on the inspection and verification of good laboratory practice (GLP): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerments to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
82. **Act 88**, Directive 2004/10/EC on the harmonisation of laws, regulations and administrative provisions relating to the application of the principles of good laboratory practice and the verification of their applications for tests on chemical substances: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerments to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
83. **Act 89**, Directive 2006/42/EC on machinery, and amending Directive 95/16/EC: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2) for one empowerment and IAs for one other.

84. **Act 90**, Directive 2006/123/EC on services in the internal market: The Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal to provide for IAs.
85. **Act 91**, Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC: For this Act, the Presidency provisionally concluded to remove it from the RPS Adaptation Exercise given the difficulties expressed by Member States with these empowerments. This file will need to be dealt with individually, and not as part of the adaptation exercise.
86. **Act 92**, Directive 2009/34/EC relating to common provisions for both measuring instruments and methods of metrological control: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
87. **Act 93**, Directive 2009/43/EC simplifying terms and conditions of transfers of defence-related products within the Community: The Presidency provisionally concluded not to propose changes at this stage to the Commission's proposal for the empowerment to adopt DAs however the delegation of power will be limited to five years with a tacit renewal (Option 2) and the proposal to use the urgency procedure will be removed.
88. **Act 94**, Directive 2009/48/EC on the safety of toys: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2) for all empowerments except the empowerment amending Annex I, where it will come back with drafting suggestions amending the Commission proposal by deleting that empowerment.

89. **Act 95**, Regulation (EC) No 79/2009 on type-approval of hydrogen-powered motor vehicles, and amending Directive 2007/46/EC: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
90. **Act 96**, Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
91. **Act 97**, Directive 2009/125/EC establishing a framework for the setting of eco-design requirements for energy-related products: For the empowerments to adopt eco-design requirements, the Presidency provisionally concluded to come back with drafting suggestions amending the Commission proposal to provide for IAs. For the other empowerment, following further reflection after the meeting, the Presidency proposed to delete it given that the applicable time-period for the use of the empowerment had elapsed.
92. **Act 98**, Regulation (EC) No 661/2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefore: Given that the discussions on the empowerments under this Act might prejudice the ongoing discussions on the Euro 5/6 file (Proposal for a Regulations (EC) No 715/2007 and (EC) No 595/2009 as regards the reduction of pollutant emissions from road vehicles - COM(2014) 28 final), the discussion on this Act has been postponed to a later stage.

93. **Act 99**, Regulation (EC) No 1223/2009 on cosmetic products: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2)) for some of them. For some other empowerments, the Presidency provisionally concluded to come back with drafting suggestions, amending the Commission proposal to provide for implementing acts (IAs) or to remove the empowerment.
94. The Presidency aims to circulate the required drafting suggestions reflecting the changes outlined above on Section IX, Internal Market, shortly.

SECTION X: JUSTICE AND CONSUMERS

95. **Act 100**, Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC): The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs, maintaining the urgency procedure. Moreover, the horizontal comments that applied to Section IV: Employment, Social Affairs and Inclusion also applied for this act.
96. **Act 101**, Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EC¹⁰⁴: The Presidency provisionally concluded that there was an agreement with the Commission's proposal for the empowerment to adopt DAs with the delegation of power limited to five years with a tacit renewal (Option 2).
97. The Presidency aims to circulate the required drafting suggestions on Section X, Justice and Consumers, shortly.

SECTION XIII: TAXATION AND CUSTOMS UNION

98. **Act 168**, Decision No 70/2008/EC on a paperless environment for customs and trade: The Presidency provisionally concluded that there is agreement to move forward by not introducing any amendments to the proposal from the Commission to delete the empowerment.

IV. CONCLUSIONS

99. The Presidency considers that significant head way has been made on the Proposal for a Regulation of the European Parliament and the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union, with provisional support for an approach on the general articles of the Proposal, as well as the abovementioned 10 Sections of its Annex.
100. This is a substantial step towards achieving the objectives of the IIA on Better Law-making, in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny, a need acknowledged by the three institutions (paragraph 27 of the IIA).

COREPER and Council are invited to take note of the above Presidency progress report.
