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'I/A' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)/Council
No. prev. doc.:	ST 5705/17; ST 5705/17 ADD 1; ST 6932/18
No. Cion doc.:	COM(2016) 798 FINAL
Subject:	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 - General Approach

1. On 14 December 2016 the Commission adopted a 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 - COM(2016) 798 final¹.

¹ On the same date the Commission adopted also a 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 - COM(2016) 799 final, subsequently corrected as COM(2016) 799 final/2. An I/A note for the purposes of obtaining a partial general approach with regard to that proposal is submitted in parallel as ST 6933/18.

2. The examination of the proposal was assigned to the dedicated Friends of the Presidency Group ("RPS Adaptation") in accordance with a mandate, endorsed by Coreper².
3. On 25 January 2018 and on 26 February 2018, the Friends of the Presidency Group held two meetings in which it completed the examination of the proposal. The examination included the following stages: discussions at the Working Party level, redrafting of the proposal by the Presidency following the outcome of the discussions, and, finally, provisional endorsement of the redrafting at the Working Party level. As a result, a text was established which reflects the support of delegations in the Friends of the Presidency Group.
4. On 20 March 2018, the Presidency obtained a partial General Approach to enter into trilogues on the file³. The partial General Approach did not cover acts 1 and 3 from Annex 1 to the Commission proposal on which the Friends of the Presidency had postponed the discussions because of new Commission proposals that were expected.
5. Given the need to complete the General Approach in view of the negotiations with the EP and the Commission and that there is sufficient clarity about the way forward on acts 1 and 3, the Friends of the Presidency Group completed the examination of those acts and supported their removal from Annex 1 to the Commission proposal. The Presidency redrafted accordingly the text of the proposal in order to remove acts 1 and 3 and received the support of the Friends of the Presidency Group on that redrafting.
6. The Annex to this note contains the Commission proposal (preamble, enacting terms and Annex 1 to the proposal), as redrafted in the partial General Approach of 20 March 2018 and subsequently as regards acts 1 and 3. The only differences between the text of the partial General Approach of 20 March 2018 and the text annexed to this note are the removal of acts 1 and 3 from Annex 1 to the proposal and the consequential technical adjustments in the preamble and in Article 1. As regards the marking used, all changes consisting in new text inserted in the Commission proposal are marked in **bold** and all changes consisting in deletion of text in the Commission proposal are presented by [...].

² ST 5707/17.

³ ST 6932/18.

The acts which the Friends of the Presidency Group has agreed to remove from the Commission proposal are presented by the number given to them in Annex 1 to the Commission proposal, followed by [...].

7. The United Kingdom and Ireland have notified their wish to take part in the adoption and application of the proposed Regulation in accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union.

8. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.

9. The proposed Regulation is subject to ordinary legislative procedure. On 7 February 2018 the European Parliament approved the decision of the Legal affairs committee to start trilogues on the proposal.

10. The kick-off trilogue on the negotiations on this proposal took place on 28 June 2018. Since then three technical meetings between the EP, the Council and the Commission took place.

11. In the light of the above, the Presidency wishes to bring the proposal, as appearing in the Annex to this note, to Coreper and Council in order to obtain a complete General Approach for the negotiations on this file.

2016/0399 (COD)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Treaty of Lisbon introduced a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (delegated acts), and the powers conferred upon the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts).

- (2) The measures which may be covered by [...] **conferral** of powers, as referred to in Article 290(1) **or in Article 291(2)** of the Treaty on the Functioning of the European Union (TFEU), correspond [...] to those covered by the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC⁴.
- (3) Earlier proposals relating to the alignment of legislation referring to the regulatory procedure with scrutiny with the legal framework introduced by the Lisbon Treaty⁵ were withdrawn⁶ due to the stagnation of the interinstitutional negotiations.
- (4) The European Parliament, the Council and the Commission subsequently agreed on a new framework for delegated acts in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁷ and acknowledged the need to align all existing legislation to the legal framework introduced by the Lisbon Treaty. In particular, they agreed on the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. The Commission gave a commitment to prepare a proposal for that alignment by the end of 2016.
- (5) The empowerments in the basic acts **referred to in the Annex to this Regulation** which provides for the use of the regulatory procedure with scrutiny fulfils the criteria in Article 290 of the TFEU and should be adapted to that provision.
- (6) This Regulation should not affect pending procedures in which the committee has already delivered its opinion in accordance with Article 5a of Decision 1999/468/EC before the entry into force of this Regulation.

⁴ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁵ COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final.

⁶ (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17.

⁷ OJ L 123, 12.5.2016, p. 1.

- (7) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.**
- (8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.**
- (9) The acts concerned should therefore be amended accordingly.**

HAVE ADOPTED THIS REGULATION:

Article 1

The acts ~~referred to~~ listed in the Annex ~~is~~ are amended as set out therein.

Article 2

This Regulation shall not affect pending procedures in which a committee has already delivered its opinion in accordance with Article 5a of Decision 1999/468/EC.

Article 3

This Regulation shall enter into force on the 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 Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

1. [...]
2. **Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims**⁸

In order to update Regulation (EC) No 805/2004 the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to amend the Annexes to that Regulation in order to update the standard forms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making [...]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Accordingly, Regulation (EC) No 805/2004 is amended as follows:

⁸ OJ L 143, 30.4.2004, p. 15.

(1) Article 31 is replaced by the following:

"Article 31

Amendment of the Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 31a amending the Annexes in order to update the standard forms.";

(2) the following Article 31a is inserted:

"Article 31a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 31 shall be conferred on the Commission for **a period of five years** [...] from [the entry into force of this Regulation]. **The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**
3. The delegation of power referred to in Article 31 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of **13 April 2016** on Better Law-Making [...]*.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 31 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

* OJ L 123, 12.5.2016, p.1.";

(3) Article 32 is deleted.

3. [...]