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## PROPOSAL

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 14 December 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: COM(2016) 799 final

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Subject: 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

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Delegations will find attached document COM(2016) 799 final.

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Encl.: COM(2016) 799 final

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5623/17

**EN**



Brussels, 14.12.2016  
COM(2016) 799 final

2016/0400 (COD)

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**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The Treaty of Lisbon has substantially modified the structure as regards the powers that can be conferred on the Commission by the legislator. It provides a clear distinction between acts of a quasi-legislative nature, on the one hand, and, on the other hand, acts which implement the provisions of a basic act. It also provides an entirely different legal framework for each type of act.

The two provisions in question are Articles 290 and 291 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”), as introduced by the Treaty of Lisbon that entered into force on 1 December 2009<sup>1</sup>. They entail substantial modifications of the procedures known so far as the “comitology procedures”.

In terms of the wording, the definition of delegated acts in Article 290(1) is very similar to that of acts which, under Decision 1999/468/EC<sup>2</sup>, as amended by Council Decision 2006/512/EC, (“the Comitology Decision”), are subject to the regulatory procedure with scrutiny (RPS) established in Article 5a of that Decision. In both cases, the acts in question are of general application and seek to amend or supplement certain non-essential elements of the legislative instrument.

For this reason, the revision of the Comitology Decision by Regulation 182/2011<sup>3</sup> (“the Comitology Regulation”), which was adopted on the basis of Article 291(3) TFEU on implementing powers, left out of its scope Article 5a of the Comitology Decision. Article 5a establishing the RPS had therefore to be provisionally maintained for the purposes of existing basic acts referring to this Article.

Consequently, the RPS still appears in the 168 existing basic acts covered by this proposal and continues to apply (in line with Article 5a of the Comitology Decision) in those acts until they are formally amended and adapted to the Lisbon Treaty.

At the time of adoption of Regulation 182/2011 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<sup>4</sup>. In line with this commitment the Commission made three horizontal alignment legislative proposals in 2013 (Omnibus I, II and III)<sup>5</sup>.

The European Parliament adopted its legislative resolutions on these proposals on 25 February 2014<sup>6</sup>, proposing a number of amendments to Omnibus I and III, but broadly agreeing with the proposals by the Commission. The Council in contrast did not support the Commission proposals, in particular because the approach to foresee an automatic alignment from RPS to delegated acts was rejected in the absence of stronger guarantees that Member State experts would be systematically consulted in the preparation of delegated acts.

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<sup>1</sup> OJ C 306, 17.12.2007

<sup>2</sup> OJ L 184, 17.7.1999, p. 23.

<sup>3</sup> OJ L 55, 28.2.2011, p. 13.

<sup>4</sup> OJ L 55 of 28.2.2011, p. 19.

<sup>5</sup> COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

<sup>6</sup> A7-0010/2014, P7\_TA-PROV(2014)0114, A7-0011/2014, P7\_TA-PROV(2014)0112

Due to the stagnation of the interinstitutional negotiations on these files, the Commission, as announced in its 2015 Work Programme<sup>7</sup>, withdrew them<sup>8</sup>.

The question of the alignment was taken up again in the discussions on the revision of the Interinstitutional Agreement on Better Law-Making<sup>9</sup>. All institutions acknowledged the need for the alignment and the Commission committed to submit by the end of 2016 a new proposal for the alignment of legislative acts which still contain references to the regulatory procedure with scrutiny. The present proposal responds to this commitment.

At the same time, the Interinstitutional Agreement and the Common Understanding on delegated acts annexed to it also improve the framework for delegated acts and thereby respond to the key concern that often prevented acceptance of delegated acts on the Council side, namely the consultation of Member State experts. The Agreement now provides for a clear commitment to a systematic consultation of experts from the Member States in the preparation of delegated acts, including on the draft text, thereby fulfilling a key condition for a successful second attempt to align the old RPS provisions to the Lisbon Treaty. This commitment is now explicitly included in the new standard clauses that are to be used in the drafting of empowerments for the Commission. The Agreement also clearly recognises the important role of early cooperation and exchange of views with the European Parliament in relation to delegated acts. It confirms that the European Parliament must receive all documents at the same time as Member State experts, including the draft delegated acts, and provides for systematic and facilitated access of European Parliament experts to the meetings of Commission expert groups preparing delegated acts. Finally, the Agreement envisages that the Commission may be invited to meetings in the European Parliament (or the Council) in order to have further exchange of views in the preparation of delegated acts.

## **2. METHOD OF THE ALIGNMENT AND MAIN ELEMENTS OF THE PROPOSAL**

The starting point for determining the **scope** of this proposal is the legal acts covered in the three legislative alignment proposals adopted by the Commission in 2013. Acts on which individual legislative proposals have been made in the meantime are not included in the present proposal<sup>10</sup>. In one case an act which was not covered by the 2013 proposal, but which requires alignment, has been added to this proposal.

This proposal does not concern eight pieces of legislation in the area of pesticides and food<sup>11</sup>. As these basic acts are currently structured, alignment to delegated acts as the Commission

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<sup>7</sup> COM(2014) 910 final

<sup>8</sup> (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17.

<sup>9</sup> OJ L 123, 12.05.2016, p.1.

<sup>10</sup> Those acts are listed for information under point 3.

<sup>11</sup> Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings (OJ L 354, 31.12.2008, p. 1); Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (OJ L 354, 31.12.2008, p. 7); Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16); Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34); Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come

had proposed in 2013 would be the correct approach. The Commission has not however at this stage included these acts in the present proposal as it is reflecting on whether there is a more appropriate way to structure these acts as concerns individual authorisations/setting of values/listing of specific substances based on the specific criteria set out in the act, bearing in mind the improved approach recently adopted by the co-legislators in the novel food legislation<sup>12</sup> and the ongoing REFIT review of the pesticides basic acts, as well as pending work to assess the democratic legitimacy of existing procedures for the adoption of certain secondary acts (as announced in the Commission Work Programme 2017).

In the 2013 alignment proposals, the **legislative approach** chosen was not to amend the basic acts in question individually, but to generally provide that the references to the RPS contained in the basic acts are to be read as references to Article 290, respectively Articles 290 or 291. Under this approach each individual basic act would have always had to be read together with the relevant Omnibus regulation, had it been adopted.

Given the difficulties that notably the Council had with that technique, the approach chosen in this proposal is different. It is now proposed to amend each basic act concerned. This is similar to the approach chosen when the RPS provisions were introduced in a similar exercise in 2007<sup>13</sup>. Accordingly, to each basic act a number of amendments are made. The empowering provision, i.e. the text containing the substantive empowerment for the RPS, is reworded and follows the wording agreed in the standard clauses for articles delegating powers. The standard article on the exercise of the delegation, so the procedural article, is inserted in each basic act and references to the RPS are deleted. It is for each act explicitly mentioned if the empowerment allows for an amendment of the basic act. The new standard clauses providing for consultation of Member State experts in the preparation of delegated acts are now included in each basic act. No empowerments provide for amendments of other acts.

As regards the **choice between delegated and implementing acts empowerments**, the 2013 alignment proposals started from the assumption that the measures covered by the regulatory procedure with scrutiny in principle correspond to those which can be covered by delegations of power as referred to in Article 290 TFEU. Only in a few cases in Omnibus III, on the basis of a case-by-case assessment carried out at the time, the alignment to Article 291 instead of Article 290 was proposed.

The general assumption underlying the new proposal is that the assessment made in the 2013 Omnibus proposals remains valid. Neither the negotiations on the 2013 Omnibus, nor the

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into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4); Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food (OJ L 37, 13.2.1993, p. 1); Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1) and Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

<sup>12</sup> Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ L 327, 11.12.2015, p. 1).

<sup>13</sup> Regulation (EC) No 1137/2008, OJ L 311, 21.11.2008, p.1.

case-law on the topic<sup>14</sup>, nor the outcome of the Interinstitutional Agreement on Better Law-Making resulted in new criteria that would have called for a global reassessment.

In case of alignment to implementing acts an introductory remark is added. In addition to the cases in which already in 2013 alignment to implementing acts was proposed only few further cases are added in this proposal. This concerns empowerments for determining formats in the field of statistics.

**Table 1: Overview of acts for which alignment to implementing acts is proposed for certain empowerments**

<b>Number Annex</b>	<b>Title Act</b>
2	Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 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*
6	Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS Decision)*
53	Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC*
58	Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs
59	Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics*
60	Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air
61	Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003 concerning the labour cost index*
64	Regulation (EC) No 1552/2005 of the European Parliament and of the Council of 7 September 2005 on statistics relating to vocational training in enterprises*
67	Regulation (EC) No 716/2007 of the European Parliament and of the Council of 20 June 2007 on Community statistics on the structure and activity of foreign affiliates*
69	Regulation (EC) No 1445/2007 of the European Parliament and of the Council of 11 December 2007 establishing common rules for the provision of basic information on Purchasing Power Parities and for their calculation and dissemination*
70	Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008 establishing a common framework for business registers for statistical purposes and repealing Council Regulation (EEC) No 2186/93*
73	Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008

<sup>14</sup> Case C-88/14 Commission v European Parliament and Council, Case C-286/14 European Parliament v Commission and Case C-472/12 Commission v European Parliament and Council

	concerning the production and development of statistics on education and lifelong learning
74	Regulation (EC) No 453/2008 of the European Parliament and of the Council of 23 April 2008 on quarterly statistics on Community job vacancies*
89	Directive 2006/42/EC of the European Parliament and of the Council on machinery, and amending Directive 95/16/EC*
99	Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products*
104	Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 meters in length and over*
114	Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security*
143	Directive 2002/46/EC of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements*
144	Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and amending Directive 2001/83/EC*
147	Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed*
151	Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003 on the control of salmonella and other specified food-borne zoonotic agents
154	Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells*
158	Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods*
159	Regulation (EC) No 1925/2006 of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods*
165	Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council*
166	Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed, amending European Parliament and Council Regulation (EC) No 1831/2003 and repealing Council Directive 79/373/EEC, Commission Directive 80/511/EEC, Council Directives 82/471/EEC, 83/228/EEC, 93/74/EEC, 93/113/EC and 96/25/EC and Commission Decision 2004/217/EC*
167	Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation)*

\* for these acts alignment to implementing acts of some provisions was already proposed in 2013.

Empowerment are proposed to be deleted in cases in which they have become obsolete, either time-wise (e.g. when they allowed for transitional measure, but the basic act is now already in full application for several years) or where experience showed that they were not needed.

Table 2: Overview of acts for which deletion of certain empowerments in foreseen

Number Annex	Title Act
2	Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 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
7	Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid*
36	Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption
54	Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel*
57	Council Regulation (EC) No 1165/98 of 19 May 1998 concerning short-term statistics
66	Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007 on the European system of integrated social protection statistics (ESSPROS)
92	Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control
133	Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC
168	Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008 on a paperless environment for customs and trade

\* for these acts deletion of some provisions was already proposed in 2013.

As regards the **duration of the empowerment** the Commission proposes empowerments with an indeterminate duration. In the negotiations of the 2013 proposals both the Council and the European Parliament had favoured a fixed duration of 5 years with automatic renewal following a Commission report to be presented before the expiry of the delegation. In the new proposal the Commission maintains its position that an indeterminate duration of the empowerment is justified because the legislator has the possibility to revoke an empowerment in all cases and at any time. Moreover, imposing a reporting requirement before the automatic renewal would require the Commission to issue reports five years after the adoption of this proposal time on 174 different acts, which would create a significant administrative burden. Finally, with the Interinstitutional Agreement comes also more transparency in relation to delegated act, notably through the joint Register for Delegated Acts that the institutions agreed to set up by the end of 2017. This Register will allow an easy overview of the delegated acts adopted under all instruments.

The proposal provides, in some cases, for the introduction of the **urgency procedure**. This is done where currently the existing urgency procedure under Article 5a(6) in Decision 1999/468/EC is envisaged and this possibility was considered necessary. In such case the

respective standard clause allowing for the use of the urgency procedure is introduced in each act providing for an explicit justification for the use of this procedure in each case.

### 3. LIST OF BASIC ACTS REFERRING TO THE RPS WHICH ARE CURRENTLY SUBJECT TO A SEPARATE REVISION OR FOR WHICH A REVISION IS ENVISAGED

**Table 3: Proposals adopted by the Commission**

Field	Instrument	Reference of the Proposal
CLIMA	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC	COM(2015) 337
CNECT	Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive).	COM(2016) 0590
CNECT	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive).	COM(2016) 0590
CNECT	Directive No 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).	COM(2016) 0590
ENER	Directive 2008/92/EC of the European Parliament and of the Council of 22 October 2008 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users (recast)	COM (2015) 496
GROW	Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC	COM (2014) 28 final
GROW	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive)	COM (2016) 31 final
GROW	Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997 on the approximation of the laws of the Member States relating to measures against the emission of gaseous and particulate pollutants from internal combustion engines to be installed in non-road mobile machinery	COM (2014) 581 final
GROW	Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light	COM (2014) 28 final

	passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information	
ENV	Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Waste Framework Directive)	COM(2015)595
ENV	Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste	COM(2015)594
ENV	European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste	COM(2015)593
ENV	Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein	COM(2012)0403
ESTAT	Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC)	Repeal proposed by COM(2016)551
MOVE	Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2016 laying down technical requirements for inland waterway vessels	COM (2013) 0622
MOVE	Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise related operating restrictions at Community airports	COM (2011) 0828
MOVE	Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community	COM (2016) 82 final
MOVE	Council Directive 91/672/EEC of 16 December 1991 on the reciprocal recognition of national Boatmasters' certificates for the carriage of goods and passengers by inland waterway	COM (2016) 82 final
MOVE	Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (Recast)	COM (2016) 0369
MOVE	Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services	COM(2016)371
MOVE	Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community	COM(2016)370
SANTE	Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency	COM(2014)0557

The instruments listed hereunder referring to the RPS for which a separate substantial revision is envisaged, but not yet adopted. Their alignment will be part of those envisaged revisions.

**Table 4: Acts for which proposals are planned**

Field	Instrument
AGRI	Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC)

	No 1576/89
CLIMA	Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006
ENER	Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators
ENER	Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003
ENER	Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC
ENV	Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC
ENV	Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture
ESTAT	Regulation (EC) No 1166/2008 of the European Parliament and of the Council of 19 November 2008 on farm structure surveys and the survey on agricultural production methods and repealing Council Regulation (EEC) No 571/88
ESTAT	Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS)

#### 4. LEGAL BASIS, SUBSIDIARITY

This proposal is based on the legal bases of all the basic acts amended.

This initiative exclusively relates to the procedures to be applied at Union level in adopting acts based on conferred powers.

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**

(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 33, Article 43(2), Article 53(1), Article 62, Article 64(2), Article 91, Article 100(2), Article 114, Article 153(2)(b), Article 168(4) (a), Article 168(4)(b), Article 172, Article 192(1), Article 207, Article 214(3), and Article 338(1) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>15</sup>,

Having regard to the opinion of the Committee of the Regions<sup>16</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Treaty of Lisbon introduced a distinction between 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 delegations of powers, as referred to in Article 290(1) of the Treaty on the Functioning of the European Union (TFEU), correspond in principle to those covered by the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC<sup>17</sup>.

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<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ C , , p. .

<sup>17</sup> 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).

- (3) Earlier proposals relating to the alignment of legislation referring to the regulatory procedure with scrutiny with the legal framework introduced by the Lisbon Treaty<sup>18</sup> were withdrawn<sup>19</sup> 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 2016<sup>20</sup> 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 majority of empowerments in basic acts which provide for the use of the regulatory procedure with scrutiny fulfil the criteria in Article 290(1) TFEU and should be adapted to that provision.
- (6) Other empowerments in basic acts which provide for the use of the regulatory procedure with scrutiny fulfil the criteria in Article 291(2) of the TFEU and should be adapted to that provision.
- (7) Where implementing powers are conferred on the Commission, those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>21</sup>.
- (8) In a few basic acts which currently provide for the use of the regulatory procedure with scrutiny certain empowerments have become obsolete and should therefore be deleted.
- (9) 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.
- (10) Since the adaptations and amendments to be made concern procedures at Union level only, they do not, in the case of directives, need to be transposed by the Member States.
- (11) The acts concerned should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

The acts listed in the Annex are amended as set out therein.

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<sup>18</sup> COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

<sup>19</sup> (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17.

<sup>20</sup> OJ L 123, 12.5.2016, p. 1.

<sup>21</sup> 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 (OJ L 55, 28.2.2011, p. 13).

*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*