



Council of the
European Union

Brussels, 9 March 2018
(OR. en)

6933/18

Interinstitutional File:
2016/0400 (COD)

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'I/A' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)/Council
No. prev. doc.:	ST 5623/17; ST 5623/17 ADD 1 REV1
No. Cion doc.:	COM (2016) 799 FINAL ; COM(2016) 799 FINAL/2
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 - Partial 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 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 final¹, subsequently corrected as COM(2016) 799 final/2.
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. In the period between 20 March 2017 and 26 February 2018, the Friends of the Presidency Group held 12 meetings in which it completed the examination of the proposal. The examination included the following stages in relation to each Section of Annex 1 to the proposal, as well as in relation to the preamble and the enacting terms: discussions at Working Party level, redrafting of the proposal by the Presidency following the outcome of the discussions and, finally, provisional endorsement of the redrafting at Working Party level. As a result, a text was established which reflects the support of delegations in the Friends of the Presidency Group.
4. The Annex to this note contains the preamble and the enacting terms of the redrafted Commission proposal. The Sections of Annex 1 to the Commission proposal are presented in the form of addenda to this note and are grouped in the way they were discussed and their redrafting reviewed by the Friends of the Presidency Group.
5. 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 [...].

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 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 final. An I/A note for the purposes of obtaining a partial general approach with regard to that proposal is submitted in parallel as ST 6932/18.

² ST 5707/17.

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

For a few acts the Friends of the Presidency Group requested to postpone the discussions. Those acts are presented by the number given to them in Annex 1 to the Commission proposal, followed by their title and proposed amending text surrounded by [...]. They will be subject to a discussion in the Friends of the Presidency Group later depending on the evolution on other Commission proposals which are forthcoming or are under negotiation. Consequently, the acts from Annex 1 to the Commission proposal on which the discussions have been postponed are not covered by this partial general approach and will be brought to the attention of Coreper and Council at a later stage.

6. 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.

7. The European Committee of the Regions and the European Economic and Social Committee adopted their opinions on the proposals on 1 December 2017 and on 1 June 2017 respectively. In addition, the European Central Bank was also consulted on the proposal and submitted its reply on 24 April 2017.

8. In the light of the above, the Presidency wishes to bring the proposal, as appearing in the Annex and in the addenda to this note, to Coreper and Council in order to obtain a partial general approach for entering into trilogues.

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)

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 Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

³ OJ C , , p. .

⁴ OJ C , , p. .

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 [...] **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/EC .
- (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 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 Council⁸.

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.

⁸ 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).

- (8) In [...] **some** basic acts which currently provide for the use of the regulatory procedure with scrutiny certain empowerments [...] should [...] 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.

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

For the Council

The President The President