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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of the
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Regulation (EC) No 805/2004 as regards the use of
the regulatory procedure with scrutiny in order to adapt it to Article 290 of
the Treaty on the Functioning of the European Union
– Draft Statement of the Council's reasons

I. INTRODUCTION

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 Union¹.
2. On 20 March 2018, the Council (General Affairs) adopted a partial general approach² that did not cover acts 1 and 3 of the proposal on which Commission parallel proposals were expected. Taking into account that parallel proposals were made for acts 1 and 3³, on 20 December 2018 the Council adopted its general approach⁴ covering the adaptation of the only remaining act, Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims⁵.
3. The European Parliament adopted its position at first reading at its plenary session on 17 April 2019⁶.
4. Interinstitutional discussions at technical level on the proposal started on 5 December 2019, under the Finnish Presidency. Since then, three meetings at technical level have taken place: two under the Croatian Presidency, on 30 January 2020 and on 20 February 2020, and a third one on 10 March 2022, under the French Presidency. At this meeting, a provisional agreement was found at technical level.
5. The Permanent Representatives Committee, at its meeting on 25 May 2022, confirmed this final compromise text with a view to agreement⁷.

¹ ST 5705/17.

² ST 6932/18.

³ ST 9620/18, ST 9622/18.

⁴ ST 14955/18.

⁵ OJ L 143, 30.4.2004, p. 15.

⁶ P8_TA(2019)0411.

⁷ ST 9280/22.

6. On 2 June 2022, the European Parliament's Committee on Legal Affairs endorsed the final compromise text. Subsequently, on 3 June 2022 the Chair of the Committee on Legal Affairs sent a letter to the Chair of the Permanent Representatives Committee indicating that, should the Council formally transmit to the European Parliament its position at first reading in line with the compromise text agreed at technical level, the Committee on Legal Affairs would recommend to the Plenary that the Parliament approves in second reading the Council's position without any amendment, subject to legal-linguistic verification.

II. OBJECTIVE

7. The proposal concerned the alignment to the legal framework foreseen by the Treaty of Lisbon of three legislative acts in the area of Justice which at the time of the proposal were still referring to the regulatory procedure with scrutiny (RPS) established by Article 5a of Council Decision 1999/468/EC⁸. In the meantime, Act 1 (Council Regulation (EC) No 1206/2001) and Act 3 (Regulation (EC) No 1393/2007) of the Commission proposal were aligned via separate parallel proposals. The objective is therefore to bring in line with the Treaty of Lisbon the remaining act (Regulation (EC) No 805/2004) by adapting the empowerments referring to the RPS procedure to either delegated or implementing acts.
8. This Regulation is in keeping with the commitment taken by the European Parliament, the Council and the Commission in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁹ to align existing legislation to the legal framework introduced by the Treaty of Lisbon.

⁸ 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).

⁹ OJ L 123, 12.5.2016, p. 1.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General observations

9. The Council and the European Parliament conducted negotiations with the aim of concluding an early second reading agreement on the basis of a Council first reading position that the European Parliament could approve as such. The text of the Council first reading position fully reflects the compromise reached between co-legislators.

B. Specific observations

10. From the beginning of the discussions, there was agreement between the co-legislators that the empowerment in Regulation (EC) No 805/2004 making reference to the RPS procedure had to be adapted to delegated powers since it gave the Commission the power to amend the Annexes to this Regulation. The positions diverged on the period of objection to the delegated act: while the Council could accept the standard duration proposed by the Commission (2 months extendable by another 2 months at the initiative of the Parliament or of the Council), the Parliament proposed a 3 months objection period, extendable by another 2 months. At the technical meeting of 10 March 2022, the Parliament indicated that it was ready to move away from its diverging position on the duration of the objection period, paving the way for a compromise text.

11. In substance, the Council's position at first reading corresponds largely to the Council's general approach, with minor changes to the wording of the empowerment to reflect already agreed language in Regulation 2019/1243 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 Union¹⁰. The format of the text is significantly different compared to the Commission proposal to better reflect that only one act remains to be aligned by this Regulation, following the removal of the other two acts which were part of the Commission's initial proposal. Hence, the Annex has been removed and its content incorporated in the body of the act.

IV. **CONCLUSION**

12. The Council's position at first reading on a Regulation of the European Parliament and of the Council amending Regulation (EC) No 805/2004 as regards the use of the regulatory procedure with scrutiny to align it to Article 290 of the Treaty on the Functioning of the European Union fully reflects the compromise reached in the negotiations between representatives of the Council and of the European Parliament, facilitated by the Commission. This compromise is confirmed by the letter that the Chair of the Committee on Legal Affairs addressed to the Chair of the Permanent Representatives Committee on 3 June 2022.
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¹⁰ OJ L 198, 25.7.2019, p. 241.