



Council of the
European Union

Brussels, 20 May 2022
(OR. en)

9280/22

LIMITE

INST 193
JUR 354
CODEC 741
JUSTCIV 72

**Interinstitutional File:
2016/0399(COD)**

'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	COM(2016) 798 FINAL
No. prev. doc.:	ST 5705/17; ST 5705/17 ADD 1; ST 6932/18; ST 14955/18
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 - Confirmation of the final compromise with a view to agreement

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 final.
2. The proposal concerned the alignment 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).¹

¹ In the meantime, Act 1 (Council Regulation (EC) No 1206/2001) and Act 3 (Regulation (EC) No 1393/2007) were aligned via separate parallel proposals.

3. The examination of the proposal was assigned to the Friends of the Presidency Group ("RPS Adaptation") in accordance with the mandate endorsed by Coreper².
4. On 20 March 2018, the Council (General Affairs) adopted a partial general approach³ that did not cover acts 1 and 3 on which the discussions had been postponed on account of expected Commission parallel proposals⁴. After the Friends of the Presidency Group completed the examination of acts 1 and 3, supporting their removal, on 20 December 2018 the Council adopted its general approach⁵ that covers the adaptation of the only remaining act, Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims⁶.
5. In the European Parliament, the Committee on Legal Affairs (JURI) adopted its report on 30 January 2018 which was confirmed by a plenary vote on 17 April 2019 as the European Parliament's position at first reading⁷.
6. Inter-institutional 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 current Presidency. At this meeting, the Parliament expressed willingness to move away from its diverging position on the duration of the objection period, paving the way for a compromise on this text.

² ST 5707/17.

³ ST 6932/18.

⁴ COM(2018)0378, COM(2018)0379.

⁵ ST 14955/18.

⁶ OJ L 143, 30.4.2004, p. 15.

⁷ P8_TA(2019)0411.

7. A provisional agreement was found at technical level on the text in the Annex to this note. In substance, the text 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 Union⁸. 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.
8. In the light of the above, the Permanent Representatives Committee is invited to:
- (a) confirm its agreement on the final compromise text as set out in the Annex to this note;
 - (b) agree in principle to the submission, at a later date, of this final compromise text as I/A item (following legal-linguistic review) for its adoption as the Council's first-reading position. This approval would be conditional upon the receipt of an offer letter from the Chair of the European Parliament's Committee on Legal Affairs (JURI) confirming that the text set out in the Annex is acceptable to the Parliament and that, should the Council adopt the agreed text as its first-reading position, the Parliament would not adopt any amendments to it in its second reading.

⁸ OJ L 198, 25.7.2019, p. 241.

**REGULATION (EU) 2022/... OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

of ...

**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**

(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 procedure¹,

Whereas:

- (1) The Treaty of Lisbon modified the legal framework governing the powers conferred on the Commission by the legislator, introducing 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 on the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts).

¹ Position of the European Parliament of 17 April 2019 [(OJ ...)/(not yet published in the Official Journal)] and position of the Council at first reading of ... [(OJ ...)/(not yet published in the Official Journal)]. Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)].

- (2) Legislative acts adopted before the entry into force of the Treaty of Lisbon confer powers on the Commission to adopt measures under the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC².
- (3) Earlier proposals relating to the alignment of legislation referring to the regulatory procedure with scrutiny with the legal framework introduced by the Treaty of Lisbon were withdrawn³ 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 of 13 April 2016 on Better Law-Making⁴, and acknowledged the need to align all existing legislation to the legal framework introduced by the Treaty of Lisbon. 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 empowerment for the Commission to amend the standard forms set out in the Annexes to Regulation (EC) No 805/2004 of the European Parliament and of the Council⁵ provides for the use of the regulatory procedure with scrutiny. As that empowerment fulfils the criteria under Article 290 TFEU, it should be adapted to that provision.

² 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 OJ C 80 of 7.2.2015, p. 17.

⁴ OJ L 123, 12.5.2016, p. 1.

⁵ 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 (OJ L 143, 30.4.2004, p. 15).

- (6) In order to update Regulation (EC) No 805/2004, the power to adopt acts in accordance with Article 290 TFEU 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.
- (7) 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.
- (8) 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 TFEU, Ireland has notified its wish to take part in the adoption and application of this Regulation.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (10) Regulation (EC) No 805/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 805/2004

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

- (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 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 ... [date of entry into force of this amending 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.

Article 2

Pending procedures

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

Entry into force

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 the Member States in accordance with the Treaties.

Done at ..., ...

For the European Parliament
The President

...

For the Council
The President

...

