

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)

Green: The text can be deemed as provisionally agreed at technical level, subject to confirmation at the trilogue

Yellow: technical level wording proposal.

Red: The issue needs further discussion at trilogues

Note:

Differences between the EP's position and the Commission's proposal are highlighted in Bold/Italics on EP text.

Differences between the Council's position and the Commission's proposal are highlighted in Bold/[...] on Council text.

Modifications by lawyer-linguists are in Italics.

Compromise wording is in Bold/Italics/Underline.

	COMMISSION PROPOSAL	EP TEXT	COUNCIL TEXT	COMPROMISE TEXT PROPOSAL following technical meetings on 10-11.01.2019
1.	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,			THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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2.	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,			<p>NB: Still subject to final verification, need to cover all acts that will be included in Annex.</p> <p>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,</p>
3.	Having regard to the proposal from the European Commission,			Having regard to the proposal from the European Commission,

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4.	After transmission of the draft legislative act to the national parliaments,			After transmission of the draft legislative act to the national parliaments,
5.	Having regard to the opinion of the European Economic and Social Committee [*] ,			Having regard to the opinion of the European Economic and Social Committee [†] ,
6.	Having regard to the opinion of the Committee of the Regions [‡] ,			Having regard to the opinion of the Committee of the Regions [§] ,
7.	Acting in accordance with the ordinary legislative procedure,			Acting in accordance with the ordinary legislative procedure,
8.	Whereas			Whereas
9.	(1) The Treaty of Lisbon introduced a distinction between	(1) The Treaty of Lisbon <i>has substantially modified the legal</i>		NB: Council and Commission do not agree with EP

* OJ C , , p. .

† OJ C , , p. .

‡ OJ C , , p. .

§ OJ C , , p. .

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	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).	<i>framework governing the powers conferred on the Commission by the legislator, introducing a clear</i> 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).		amendment; the adjectives “substantially” and “clear” are particularly problematic.
10.	(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		(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	NB: EP and COM do not accept Council amendment. Council compromise proposal at technical level to delete the recital and replace it with the following:

	COMMISSION PROPOSAL	EP TEXT	COUNCIL TEXT	COMPROMISE TEXT PROPOSAL following technical meetings on 10-11.01.2019
	regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC** .		by the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC††.	<u>“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/EC.”</u>
11.	(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‡‡ were			(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*** were

** 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).

†† 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).

‡‡ COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

*** COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

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	withdrawn ^{§§} due to the stagnation of the interinstitutional negotiations.			withdrawn ^{†††} due to the stagnation of the interinstitutional negotiations.
12.	(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 ^{‡‡‡} 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			(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 ^{§§§} 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

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

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

‡‡‡ OJ L 123, 12.5.2016, p. 1.

§§§ OJ L 123, 12.5.2016, p. 1.

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	procedure with scrutiny. The Commission gave a commitment to prepare a proposal for that alignment by the end of 2016.			procedure with scrutiny. The Commission gave a commitment to prepare a proposal for that alignment by the end of 2016.
13.	(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.			(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.
14.	(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.			(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.

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15.	(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****.			(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††††.
16.	(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.		(8) In [...] some basic acts which currently provide for the use of the regulatory procedure with scrutiny certain empowerments [...] should [...] be deleted.	(8) In <i>a limited number of</i> basic acts which currently provide for the use of the regulatory procedure with scrutiny the respective empowerments <i>are no longer needed</i> and should therefore be deleted.
17.		<i>(8a) Bundling and presenting empowerments that are not closely linked with each other</i>		NB: needs further discussion at a trilogue; Commission's reservations with any

**** 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).

†††† 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).

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		<p><i>within a single delegated act of the Commission impedes the exercise of Parliament's right of scrutiny, as it is forced to simply accept or refuse the entire delegated act, which leaves no room to express an opinion on each empowerment individually.</i></p>		<p>wording that goes beyond the IIA-BLM; EP compromise wording proposal at technical level:</p> <p><u><i>“(8a) As agreed in point 31 of the Interinstitutional Agreement on Better Law-Making of 13 April 2016, bundling of empowerments should only be allowed on the condition that the Commission provides an objective justification therefore, which is based on the existence of a substantive link between two or more empowerments within a single legislative act, and where the legislative act does not provide otherwise. Bundling of empowerments should not impede the exercise of the right of scrutiny of the Parliament and of the Council.”</i></u></p>

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18.	(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.			(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.
19.	(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.			(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.
20.	(11) The acts concerned should therefore be amended accordingly.			(11) The acts concerned should therefore be amended accordingly.
21.	HAVE ADOPTED THIS REGULATION:			HAVE ADOPTED THIS REGULATION:

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22.	<p><i>Article 1</i></p> <p>The acts listed in the Annex are amended as set out therein.</p>			<p><i>Article 1</i></p> <p>The acts listed in the Annex are amended as set out therein.</p>
23.	<p><i>Article 2</i></p> <p>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.</p>			<p><i>Article 2</i></p> <p>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.</p>
24.	<p><i>Article 3</i></p> <p>This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i>.</p>			<p><i>Article 3</i></p> <p>This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i>.</p>
25.	<p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>			<p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>