

Adapting a number of legal acts to Articles 290 and 291 TFEU (Commission delegated and implementing acts)

2016/0400A(COD) - 14/12/2016 - Legislative proposal

PURPOSE: to align a number of legal acts to the Treaty on the Functioning of the European Union (Article 290 and 291, powers delegated to the Commission).

LEGISLATIVE ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the Treaty of Lisbon introduced a distinction between the following:

- 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), as referred to in **Article 290** of the Treaty on the Functioning of the EU; and
- powers conferred upon the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts) as referred to in **Article 291** of the Treaty.

The measures which may be covered by delegations of powers correspond in principle to those covered by the **regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC**. This procedure still appears in the basic acts covered by this proposal and continues to apply in those acts until they are formally amended and adapted to the Lisbon Treaty.

The Commission made three horizontal alignment legislative proposals in 2013 ([Omnibus I](#), [Omnibus II](#) and [Omnibus III](#)). The European Parliament adopted its [legislative resolutions](#) on 25 February 2014, broadly agreeing with the proposals by the Commission. The Council, however, **did not support** the Commission proposals, due to the absence of stronger guarantees that Member State experts would be systematically consulted in the preparation of delegated acts.

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 (IAA) 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 that still refer to the regulatory procedure with scrutiny.

CONTENT: this proposal concerns **170 basic acts**. The Commission proposes to amend each of these basic acts set out in the proposal in order to adapt the acts in question to the Lisbon Treaty. The scope of the proposal broadly covers the legal acts covered in the three Omnibus 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.

The alignment clauses reflect the following points in the IAA:

- they now provide for a clear commitment to a **systematic consultation of experts from the Member States** in the preparation of delegated acts. This fulfils a key condition for a successful second attempt to align the old regulatory procedure with scrutiny 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;
- they recognise the important role of **early cooperation and exchange of views with the European Parliament** in relation to delegated acts. The European Parliament must **receive all documents** at the same time as Member State experts, including the draft delegated acts. The alignment clauses provide for systematic access of European Parliament experts to the meetings of Commission expert groups preparing delegated acts.

Accordingly, to each basic act a number of amendments are made, and references to the regulatory procedure with scrutiny are deleted.

This proposal does not concern eight pieces of legislation in the area of pesticides and food, since the Commission is reflecting on whether there is a more appropriate way to structure these acts.

Delegate or implementing acts: as regards the choice between delegated and implementing acts, 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 was the alignment to Article 291 instead of Article 290 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 case-law on the topic, nor the outcome of the Interinstitutional Agreement on Better Law-Making resulted in new criteria that would have called for a global reassessment.

Lastly, it should be noted that the IAA 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.

This proposal is linked to [the proposal](#) on adapting a number of legal acts in the area of justice to Article 290 TFEU.