Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

2016/0399(COD) - 14/12/2016 - Legislative proposal

PURPOSE: to adapt a number of legal acts in the area of justice to the Treaty on the Functioning of the European Union (Article 290, 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 pf 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: the proposal aligns three basic acts to Article 290 of the Treaty on the Functioning of the EU, these acts being:

- Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims;

- Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation No 1348/2000.

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**;
- 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, and 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.

As regards the duration of the empowerment the Commission proposes **empowerments with an indeterminate duration**, since the legislator has the possibility of revoking an empowerment in all cases and at any time.

Acts on which individual legislative proposals have been made in the meantime are not included in the proposal. This concerns two acts in the area of justice:

- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of creating a European order for payment procedure;
- Regulation (EC) No. 861/2007 establishing a European small claims procedure. These have been aligned in the meantime been aligned by Regulation (EU) 2015/2421.

This proposal is linked to the proposal on adapting a number of legal acts to Article 290 and 291 of the TFEU.