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**'I/A' ITEM NOTE**

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To: Permanent Representatives Committee (Part 2)/Council

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Subject: 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

- Partial general approach
- Section I "Climate Action" and Section II "Communication Networks, Content and Technology"

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**I. CLIMATE ACTION**

1. [...]
2. **Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020<sup>1</sup>**

In order to ensure the accurate accounting of transactions under Decision No 406/2009/EC, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement that Decision with requirements applicable to Member States' registries and the Central Administrator as regards the handling of transactions. 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.

In order to ensure uniform conditions for the implementation of Decision No 406/2009/EC, implementing powers should be conferred on the Commission in order to determine the annual emission allocations. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

Experience has shown that an empowerment relating to the modalities of certain transfers is not needed.

Accordingly, Decision No 406/2009/EC is amended as follows:

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<sup>1</sup> OJ L 140, 5.6.2009, p. 136.

(1) Article 3 is amended as follows:

(a) in paragraph 2, the fourth and fifth subparagraphs are replaced by the following:

"When the relevant reviewed and verified emission data are available, the Commission shall determine the annual emission allocations for the period from 2013 to 2020 in terms of tonnes of carbon dioxide equivalent by means of implementing act. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 13(2)."

(b) paragraph 6 is deleted;

(2) in Article 11, paragraph 3 is replaced by the following:

"3. The Commission is empowered to adopt delegated acts in accordance with Article 12a concerning the application of paragraphs 1 and 2 of this Article.";

(3) the following Article 12a is inserted:

*"Article 12a*

**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 11(3) shall be conferred on the Commission for [...]a period of **five years** [...] from [date of entry into force of **this 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 11(3) 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 11(3) 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.

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\* OJ L 123, 12.5.2016, p.1.";

(4) in Article 13, paragraph 2 is replaced by the following:

"2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council\* shall apply."

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\*Regulation (EU) No 182/2011 of the European Parliament and 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)."

### 3. Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer<sup>2</sup>

In order to ensure compliance with the Union's obligations as party to the Montreal Protocol on Substances that Deplete the Ozone Layer and to ensure the proper functioning of intra-Union and external trade in substances that deplete the ozone layer and products and equipment containing or relying on those substances, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to:

- amend Regulation (EC) No 1005/2009 to include certain substances in Part A and Part B of Annex II;
- amend that Regulation to make the necessary technical adaptations to Annex III and to the maximum amounts of controlled substances;
- amend Annex V to that Regulation in order to meet the commitments under the Montreal Protocol;
  
- [...]
- amend the list of items on licensing of imports and exports;
- amend Annex VII to that Regulation to take new technological developments into account;
- amend the reporting requirements;
- supplement that Regulation with a list of products and equipment for which the recovery of controlled substances or destruction of products and equipment without prior recovery of controlled substances is to be considered technically and economically feasible;
- [...];
- [...];
- [...];
- supplement that Regulation as regards the release for free circulation in the Union of certain products and equipment imported from States not party to the Protocol;
- [...];
- supplement that Regulation with a list of technologies or practices to be used by undertakings to prevent and minimise leakage and emissions of controlled substances.

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<sup>2</sup> OJ L 286, 31.10.2009, p. 1.

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.

**In order to ensure uniform conditions for the implementation of Regulation (EC) No 1005/2009, implementing powers should be conferred on the Commission in order to determine the form and content of labels of containers for certain controlled substances, to determine a mechanism for the allocation of quotas to producers and importers and to adopt measures for the monitoring of illegal trade, and to establish minimum qualification requirements for the personnel involved in the recovery, recycling, reclamation and destruction of controlled substances and for the personnel involved in refrigeration, air conditioning, heat pump equipment and fire protection systems containing controlled substances. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.**

**There is no need to empower the Commission to amend Annex VI to Regulation (EC) No 1005/2009. Therefore, the possibility to adopt those implementing measures in accordance with the regulatory procedure with scrutiny should be removed from Regulation (EC) No 1005/2009, without replacing it with an empowerment conferred in accordance with Article 290(1) or Article 291(2) of the Treaty.**

Accordingly, Regulation (EC) No 1005/2009 is amended as follows:

(1) in Article 7(2), the second subparagraph is replaced by the following:

**"The Commission may determine, by means of implementing acts, [...] the form and content of the label to be used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3)";**

(2) Article 8 is amended as follows:

(a) in paragraph 3, the second subparagraph is replaced by the following:

"The Commission **may determine, by means of implementing acts**, [...] the form and content of the label to be used. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3)**";

(b) paragraph 5 is replaced by the following:

"5. The Commission is empowered to adopt delegated acts in accordance with Article 24a amending the following, in the light of new information or technical developments or decisions taken by the Parties:

(a) Annex III;

(b) the maximum amount of controlled substances that may be used as process agents or emitted from process agent uses as referred to in the second and third subparagraphs of paragraph 4.";

(3) Article 10 is amended as follows:

(a) in paragraph 3, the second and third subparagraphs are replaced by the following:

"The Commission **may determine, by means of implementing acts**, [...] the form and content of the label to be used. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3)**."

Controlled substances referred to in the first subparagraph shall only be placed on the market and further distributed under the conditions set out in Annex V.

The Commission is empowered to adopt delegated acts in accordance with Article 24a amending **the conditions set out in Annex V** in order to **ensure compliance with []**-the commitments under the Protocol.";

(b) in paragraph 6, the third subparagraph is replaced by the following:

"The Commission **shall determine, by means of implementing acts, [...]** a mechanism for the allocation of quotas to producers and importers. **Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).**";

(4) [...]Article 13,[...]is **amended as follows** [...]:

(a) **paragraph 2 is deleted;** [...]

(b) **paragraph 4 is replaced by the following:**

**"4. The Commission may, at the request of the competent authority of a Member State and in accordance with the management procedure referred to in Article 25(2), grant derogations from end dates for existing applications or cut-off dates for new applications, provided those dates have been specified in Annex VI, for specific cases where it is demonstrated that no technically and economically feasible alternative is available. "**

(5) in Article 18, paragraph 9 is replaced by the following:

"9.The Commission is empowered to adopt delegated acts in accordance with Article 24a amending the list of items mentioned in paragraph 3 of this Article and in Annex IV in order to meet the commitments under the Protocol or to facilitate their application.";

(6) Article 19 is replaced by the following:

*"Article 19*  
**Measures for monitoring of illegal trade**

**"In order to ensure uniform conditions for implementing the obligations laid down under this Regulation in relation to illegal trade, the Commission may, by means of implementing acts, [...] adopt [...] measures for the monitoring of controlled substances or new substances and of products and equipment containing or relying on controlled substances placed under temporary storage, customs warehousing or free zone procedure or in transit through the customs territory of the Union and subsequently re-exported, on the basis of an evaluation of the potential risks of illegal trade linked to such movements, taking into account the environmental benefits and socio-economic impacts of such measures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3)."**

(7) in Article 20, paragraph 2 is replaced by the following:

"2. The Commission is empowered to adopt delegated acts in accordance with Article 24a **by supplementing this Regulation with [...]** the rules, in line with decisions taken by the Parties, applicable to the release for free circulation in the Union of products and equipment imported from any State not party to the Protocol which were produced using controlled substances but do not contain substances which can be positively identified as controlled substances. The identification of such products and equipment shall comply with periodical technical advice given to the Parties."

(8) Article 22 is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. The Commission is empowered to adopt delegated acts in accordance with Article 24a amending Annex VII in order to **meet commitments under the Protocol resulting from new technological developments in the field of destruction technologies [...]**;

(b) in paragraph 4, the second and third subparagraphs are replaced by the following:

"The Commission is empowered to adopt delegated acts in accordance with Article 24a **by supplementing this Regulation with [...] a list of products and equipment**, in line with decisions taken by the Parties, for which the recovery of controlled substances or destruction of products and equipment without prior recovery of controlled substances shall be considered technically and economically feasible, specifying, if appropriate, the technologies to be applied.

Any draft delegated act establishing such a list shall be accompanied and supported by a full economic assessment of costs and benefits, taking into account the individual circumstances of Member States.";

(c) in paragraph 5, the second and third subparagraphs are replaced by the following:

"The Commission shall evaluate the measures taken by the Member States and [...], in the light of that evaluation and of technical and other relevant information, **may establish, by means of implementing acts, minimum qualification requirements for the personnel involved in the activities referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).**";

(9) Article 23 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) in the first subparagraph, the second sentence is replaced by the following:

"In the light of an evaluation of those measures taken by the Member States and of technical and other relevant information, the Commission [...] **may establish, by means of implementing acts, [...] minimum qualification requirements for the personnel carrying out those activities. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).**";

(ii) the second subparagraph is deleted.

(b) paragraph 7 is replaced by the following:

"7. The Commission is empowered to adopt delegated acts in accordance with Article 24a **in order to supplement this Regulation** by establishing a list of technologies or practices to be used by undertakings to prevent and minimise any leakage and emissions of controlled substances.";

(10) in Article 24, paragraphs 2 and 3 are replaced by the following.

"2. The Commission is empowered to adopt delegated acts in accordance with Article 24a amending Part A of Annex II to include substances that are included in Part B of that Annex that are found to be exported, imported, produced or put on the market in significant quantities and that are found by the Scientific Assessment Panel under the Protocol to have a significant ozone-depleting potential, and, if appropriate, to determine possible exemptions from paragraph 1.

3. The Commission is empowered to adopt delegated acts in accordance with Article 24a amending Part B of Annex II to include any substances that are not controlled substances but that are found by the Scientific Assessment Panel under the Protocol or another recognised authority of equivalent stature to have a significant ozone-depleting potential, in the light of relevant scientific information.";

(11) after the title of Chapter VII, the following Article-[...] is inserted:

"Article 24a

**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 8 [...] (5), Article 10(3) [...], Article 18(9), [...], Article 20(2), Article 22(3), **and** (4), [...], Article 23[...] (7), Article 24(2) and (3), Article 26(3) and Article 27(10) shall be conferred on the Commission for [...] **a period of five years from [date of entry into force of this 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 8[...] (5), Article 10(3) [...], Article 18(9), [...] Article 20(2), Article 22(3) **and** (4)[...], Article 23[...] (7), Article 24(2) and (3), Article 26(3) and Article 27(10) 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 Inter-institutional 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 8[...] (5), Article 10(3) [...], Article 18(9), [...]; Article 20(2), Article 22(3), **and** (4) [...] Article 23[...] (7), Article 24(2) and (3), Article 26(3) and Article 27(10) 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.

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\* OJ L 123, 12.5.2016, p. 1";

**(11a) the following Article [...] is inserted:**

*"Article 24b*

*Separate delegated acts for different delegated powers*

**The Commission shall adopt a separate delegated act in respect of each power delegated to it pursuant to this Regulation. "**

(12) in Article 25, paragraph 3 is [...] **replaced by the following;**

**"3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council\* shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply[...].**

\*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* );

(13) in Article 26, paragraph 3 is replaced by the following:

"3. The Commission is empowered to adopt delegated acts in accordance with Article 24a amending the reporting requirements laid down in paragraph 1 of this Article in order to meet the commitments under the Protocol or to facilitate their application.";

(14) in Article 27, paragraph 10 is replaced by the following:

"10. The Commission is empowered to adopt delegated acts in accordance with Article 24a concerning amendments to the reporting requirements laid down in paragraphs 1 to 7 of this Article in order to meet the commitments under the Protocol or to facilitate their application.".

## II. COMMUNICATION NETWORKS, CONTENT AND TECHNOLOGY

4. [...]

5. **Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain**<sup>3</sup>

In order to set out the conditions for the implementation of the .eu country code Top Level Domain (ccTLD) established by Regulation (EC) No 733/2002, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement that Regulation with the criteria and the procedure for the designation of the Registry, and with public policy rules concerning the implementation and function of the .eu Top Level Domain (TLD) and the public policy principles on registration. 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 on Better Law-Making of 13 April 2016. 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.

Accordingly, Regulation (EC) No 733/2002 is amended as follows:

(1) in Article 3(1), point (a) is replaced by the following:

"(a) adopt delegated acts in accordance with Article 5a establishing the criteria and the procedure for the designation of the Registry.

Where, in the case of establishing the criteria and the procedure for the designation of the Registry imperative grounds of urgency so require, the procedure provided for in Article 5b shall apply to delegated acts pursuant to this Article;"

(2) Article 5 is amended as follows:

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<sup>3</sup> OJ L 113, 30.4.2002, p. 1.

(a) in paragraph 1, the first subparagraph is replaced by the following:

"After consulting the Registry, the Commission is empowered to adopt delegated acts in accordance with Article 5a setting out public policy rules on the implementation and function of the .eu TLD and public policy principles on registration.";

(b) in paragraph 2, the third subparagraph is replaced by the following:

"Where a Member State or the Commission within 30 days of publication raises an objection to an item included in a notified list, the Commission is empowered to adopt delegated acts, in accordance with Article 5a, to remedy the situation.";

(3) the following Articles 5a and 5b are inserted:

*"Article 5a*

**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 3(1) and Article 5(1) and (2) shall be conferred on the Commission [...] **for a period of 5 years from [date of entry into force of this 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 5 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 3(1) and Article 5(1) and (2) 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 on Better Law-Making of 13 April 2016\*.

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 3(1) and Article 5(1) and (2) shall enter into force only if no objection has been expressed either by the European Parliament or 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.

#### *Article 5b*

#### **Urgency procedure**

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 5a(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

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\* OJ L 123, 12.5.2016, p. 1.";

(4) in Article 6, paragraphs 3 and 4 are deleted.

**6. Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008 on the selection and authorisation of systems providing mobile satellite services (MSS Decision)<sup>4</sup>**

In order to ensure uniform conditions for the implementation of Decision No 626/2008/EC, implementing powers should be conferred on the Commission concerning appropriate modalities for coordinated application of the rules on enforcement. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

Accordingly, Decision No 626/2008/EC is amended as follows:

(1) in Article 9, paragraph 3 is replaced by the following:

"3. The Commission may adopt, by means of implementing act, measures defining any appropriate modalities for coordinated application of the rules on enforcement referred to in paragraph 2 of this Article, including rules for the coordinated suspension or withdrawal of authorisations for breaches of the common conditions provided for in Article 7(2). Those implementing acts shall be adopted in accordance with the procedure referred to in Article 10(3).";

(2) in Article 10, paragraph 4 is deleted.

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<sup>4</sup> OJ L 172, 2.7.2008, p. 15.