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'I/A' ITEM NOTE

From: Presidency

To: Permanent Representatives Committee (Part 2)/Council

No. prev. doc.: ST 5623/17; ST 5623/17 ADD 1 REV1; ST 6933/18

No. Cion doc.: COM (2016) 799 FINAL ; COM(2016) 799 FINAL/2

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

- General Approach

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 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 - COM(2016) 799 final¹, subsequently corrected as COM(2016) 799 final/2.

2. The examination of the proposal was assigned to the dedicated Friends of the Presidency Group ("RPS Adaptation") in accordance with a mandate, endorsed by Coreper².

3. In the period between 20 March 2017 and 26 February 2018, the Friends of the Presidency Group held 12 meetings in which it completed the examination of the proposal. The examination included the following stages in relation to each Section of Annex 1 to the proposal, as well as in relation to the preamble and the enacting terms: discussions at Working Party level, redrafting of the proposal by the Presidency following the outcome of the discussions and, finally, provisional endorsement of the redrafting at Working Party level. As a result, a text was established which reflects the support of delegations in the Friends of the Presidency Group.

4. On 20 March 2018, the Presidency obtained a partial General Approach to enter into trilogues on the file³. The partial General Approach did not cover three acts from Annex 1 to the Commission proposal (acts 29, 30 and 98) on which the Friends of the Presidency Group had postponed the discussions because of other Commission proposals dealing with the same issues.

5. Given the need to complete the General Approach in view of the negotiations with the EP and the Commission and that there is sufficient clarity about the way forward on acts 29, 30 and 98, the Friends of the Presidency Group completed the examination of those acts. In addition, the Friends of the Presidency Group reviewed the situation with regard to act 126, covered by the partial General Approach, in the light of a new Commission proposal adopted in May 2018. The

¹ On the same date the Commission adopted also 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. An I/A note for the purposes of obtaining a partial general approach with regard to that proposal is submitted in parallel as ST 6932/18.

² ST 5707/17.

³ ST 6933/18 + ADD 1, ADD 2 REV 1, ADD 3, ADD 4, ADD 5, ADD 6 REV 1, ADD 7 and ADD 8.

Presidency redrafted accordingly the text of the proposal with regard to acts 29, 30, 98 and 126 and received the support of the Friends of the Presidency Group on that redrafting.

6. The Annex to this note contains the preamble and the enacting terms of the Commission proposal, as redrafted in the partial General Approach of 20 March 2018 and subsequently as regards acts 29, 30, 98 and 126. The only difference between the text of the partial General Approach of 20 March 2018 and the text annexed to this note is the removal of acts 98 and 126 and the redrafting concerning acts 29 and 30. The Sections of Annex 1 to the Commission proposal are presented in the form of addenda to this note and are grouped in the way they were discussed and their redrafting reviewed by the Friends of the Presidency Group.

7. As regards the marking used, all changes consisting in new text inserted in the Commission proposal are marked in **bold** and all changes consisting in deletion of text in the Commission proposal are presented by [...].

The acts which the Friends of the Presidency Group has agreed to remove from the Commission proposal are presented by the number given to them in Annex 1 to the Commission proposal, followed by [...].

8. The proposed Regulation is subject to ordinary legislative procedure. On 7 February 2018 the European Parliament approved the decision of the Legal affairs committee to start trilogues on the proposal.

9. The European Committee of the Regions and the European Economic and Social Committee adopted their opinions on the proposals on 1 December 2017 and on 1 June 2017 respectively. In addition, the European Central Bank was also consulted on the proposal and submitted its reply on 24 April 2017.

10. The kick-off trilogue on the negotiations on this proposal took place on 28 June 2018. Since then three technical meetings between the EP, the Council and the Commission took place.

11. In the light of the above, the Presidency wishes to bring the proposal, as appearing in the Annex and in the addenda to this note, to Coreper and Council in order to obtain a complete General Approach for the negotiations on this file.

2016/0400 (COD)

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)

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 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,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴,

Having regard to the opinion of the Committee of the Regions⁵,

Acting in accordance with the ordinary legislative procedure,

⁴ OJ C , , p. .

⁵ OJ C , , p. .

Whereas:

- (1) The Treaty of Lisbon introduced 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 upon the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts).
- (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 by the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC .
- (3) Earlier proposals relating to the alignment of legislation referring to the regulatory procedure with scrutiny with the legal framework introduced by the Lisbon Treaty⁶ were withdrawn⁷ 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 on Better Law-Making of 13 April 2016⁸ 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 procedure with scrutiny. The Commission gave a commitment to prepare a proposal for that alignment by the end of 2016.
- (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.
- (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.
- (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 Council⁹.

⁶ COM(2013) 451 final, COM(2013) 452 final and COM(2013) 751 final

⁷ (2015/C 80/08), OJ C 80 of 7.02.2015, p. 17.

⁸ OJ L 123, 12.5.2016, p. 1.

⁹ 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).

- (8) In [...] **some** basic acts which currently provide for the use of the regulatory procedure with scrutiny certain empowerments [...] should [...] be deleted.
- (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.
- (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.
- (11) The acts concerned should therefore be amended accordingly.

HAVE ADOPTED THIS REGULATION:

Article 1

The acts listed in the Annex are amended as set out therein.

Article 2

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

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 all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President The President