



REPUBLIC OF  
AUSTRIA  
Bundesrat  
The President

Vienna, 4 December 2013  
Ref: 27000.0040/33-L2.1/2013

Dear Mr Barroso,

At its meeting on 3 December 2013, the EU Committee of the Bundesrat, during the course of its discussions concerning the EU document

COM (2013) 751 final

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny

adopted the attached Communication under Article 23f(4) of the Federal Constitution (B-VG).

Yours sincerely,

(Reinhard Todt)

Annex

To the  
President of the European  
Commission  
Mr José Manuel Barroso

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C O M M U N I C A T I O N

TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

under Article 23f(4) of the Federal Constitution (B-VG)

of the EU Committee of the Bundesrat of 3 December 2013

COM (2013) 751 final

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny

Following the proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 TFEU a number of legal acts providing for the use of the regulatory procedure with scrutiny (RPS) and the proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 TFEU a number of legal acts in the area of Justice providing for the RPS, the present proposal concerns the alignment of the remaining basic acts referring to the RPS.

These adjustments have prompted us to submit this position statement concerning delegated and implementing acts. The main reason for establishing a procedure of delegated and implementing acts was the greater speed and flexibility of decision-making as compared with the standard European legislative procedure. The procedure of delegated or implementing acts also involves experts to deal with the many technical aspects of legislation, which makes good sense in view of the complexity of the technical issues. The Treaty of Lisbon brought changes to the rules concerning the committee procedure by providing for delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU. In the case of delegated acts, the rules govern the transfer of quasi-legislative powers by the Parliament and the Council, or by the Council alone, to the executive. Under Article 290 TFEU, such a transfer must be based on a binding legislative act adopted under the ordinary or special legislative procedure pursuant to Article 289 TFEU. In the case of implementing acts, executive powers may be transferred to the Commission under Article 291 TFEU. The exercise of those powers is governed by Regulation No 182/2011. Under Article 291(3) TFEU, control over the Commission's power to issue implementing acts is exercised only by the Member States; the European Parliament no longer

has any direct influence at that stage. Although the Parliament's influence has increased since the Treaty of Lisbon entered into force, its extent remains unsatisfactory. The influence of national parliaments on delegated and implementing acts is also insufficient.

In principle, we do not dispute the purpose of delegated acts, but we object to the frequency with which they are used. The European Commission introduces large batches of rules within individual proposals, which go on to become delegated or implementing acts. On the one hand, this detracts from the readability and clarity of Commission proposals, which is not in the spirit of proximity to ordinary citizens. On the other hand, Member State competences are being delegated to the European Commission so frequently and in such quantities that, although their temporal and substantive scope is clearly defined, even experts find it difficult to keep track. Therefore these legal acts are problematic in terms of democratic policy, since it is not clear how the members of committees are selected, what rules are being made, who the experts appointed to the committees are or on what basis their legitimacy rests. In any case, it is important for the Commission to set up expert committees that include representatives of the Member States during the preparation of delegated acts, following which appropriate national coordination could take place. Many concepts have still not been clearly defined, such as the meaning of 'certain non-essential elements' in Article 290(1). The Treaty of Lisbon does not alter the fact that the lack of transparency in decision-making prevents national parliaments and the public from exercising control over decision-making. In the future a discussion should be held on issues such as reducing the use of delegated or implementing acts, how expert committees which include representatives of the Member States could aid the preparation of delegated acts and how delegated and implementing acts should be managed in terms of democratic legitimacy and proximity to citizens.