



EUROPEAN COMMISSION

Brussels, 26.03.2014

C(2014) 1949 final

Dear President,

The Commission would like to thank the Sénat for its Opinion on the proposals for Regulations adapting to Articles 290 and 291 a number of legal acts providing for the use of the regulatory procedure with scrutiny {COM(2013) 451} and {COM(2013) 751 final}.

The Commission would like to make the following remarks.

The Commission fully agrees on the importance of a rigorous approach concerning the use of delegated powers. Indeed, this approach needs to be followed by both the Commission and the legislator.

The Commission would like to underline that, when developing legislative proposals, it carefully considers whether to propose any empowerments, be it for delegated or implementing acts. The decision is made on a case-by-case basis. Empowerments are proposed only when they are legally feasible and when they are necessary for the efficient implementation of a policy, in accordance with the principles of smart regulation.

In line with Article 290(1) TFEU, a legislative act granting delegated powers to the Commission must clearly and precisely define the framework within which those powers are exercised. In addition, delegated acts – as already was the case with the empowerments under the regulatory procedure with scrutiny – can only be used to supplement or amend non-essential elements of legislation. Therefore, before proposing delegated powers, the Commission analyses them in the light of the settled relevant case-law of the Court of Justice of the European Union, including the judgment of the Court of 5 September 2012 in case C-355/10 Parliament v Council.

The empowerments proposed by the Commission are then, during the legislative procedure, subject to an analysis and possible amendment by the legislator. In addition, since Article 290 TFEU conceives the delegation of powers as an option of the legislator, the latter is free to decide whether or not to grant certain powers to the Commission or to keep them for itself.

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In relation to the on-going alignment of the legislative acts referring to the regulatory procedure with scrutiny, the Commission would like to clarify that the relevant proposals are strictly limited to procedural adaptation and thus no new empowerments are proposed. This adaptation is done on the basis of the decision taken originally by the legislator: The substance of the existing empowerments remains untouched, while the regulatory procedure with scrutiny is being transformed into the corresponding post-Lisbon legal framework.

On the selection and composition of expert groups, the Commission would like to recall that it has repeatedly committed to gathering all the necessary expertise before adopting delegated acts, notably through the consultation of experts from the Member States. This commitment and the principles governing the consultation are confirmed in several publicly available documents, in particular in the Commission communication on Article 290 TFEU {COM(2009) 673 final} and in the Guidelines for the Commission services {SEC(2011) 855 final}. This consultation always involves experts from all the Member States. To this end, the Commission uses existing expert groups composed of Member States (all expert groups are listed in a public register: <http://ec.europa.eu/transparency/regexpert/index.cfm>), creates new expert groups or organises ad hoc meetings of national experts. In practice, invitations to meetings to prepare delegated acts are sent to all the Permanent Representations, as Member States are responsible for the designation of their experts.

The Commission hopes that these clarifications address the comments raised by the Sénat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*