



EUROPEAN COMMISSION

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Dear Chair,

The Commission would like to thank the Sénat for its Opinion concerning the alignment of Regulation (EC) No 1223/2009 on cosmetic products to delegated act empowerments in the context of the 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 final}. The Commission shares the Sénat's concerns as regards the need for a rapid update of the annexes to Regulation (EC) No 1223/2009 to reflect technical and scientific progress.

The Commission proposed the alignment of all but one of the empowerments in Regulation (EC) No 1223/2009 currently making references to the regulatory procedure with scrutiny to delegated act empowerments. The one exception concerns the empowerment in Article 18(2), where the Commission considered that implementing powers should be conferred on the Commission to adopt decisions authorising derogations from the prohibition on animal testing. These are individual decisions which cannot be taken by a delegated act, given that in line with Article 290 of the Treaty on the Functioning of the European Union delegated acts must be of general application.

The legislative process on the Commission proposal is still ongoing. The European Parliament supports the alignment as proposed by the Commission, but considers that also Article 18(2) should be aligned to delegated act empowerments. The Council in its General Approach removed the act from the Commission proposal, which would mean that the regulatory procedure with scrutiny would continue to apply. An earlier reflection on the Council side was to delete the respective empowerments in this act altogether, which would have meant that the ordinary legislative procedure would apply to any amendments and that it would have been no longer possible to react to scientific and technical progress and to potential risks to human health in a timely manner.

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The Commission agrees with the Sénat that removing the act from the exercise means that it will remain un-aligned for many years. This is not in line with the prompt alignment agreed by the institutions in the Interinstitutional Agreement on Better Law-Making. The Commission will therefore continue to defend its proposal in the ongoing negotiations.

The Commission thanks the Sénat for its support and looks forward to continuing our political dialogue in the future.

Yours faithfully,

Frans Timmermans

First Vice-President