



EUROPEAN COMMISSION

Brussels, 10.3.2014
C(2014) 1432 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 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 {COM (2013) 451 final} and on the 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 {COM (2013) 751 final}.

The Bundesrat makes reference to an earlier opinion of the Bundesrat of 12 February 2010 (BR-Drucksache 875/09 (Beschluss)), as well as to its Opinion 97/11, on which the Commission reacted by letter of 28 September 2011 (C(2011) 349). The Commission would like to thank the Bundesrat for its general comments on the issue of delegated and implementing acts, as well as for its specific comments in relation to several of the legal acts covered by the above mentioned proposals.

The Commission would like to make the following remarks:

In relation to the general suggestion of the Bundesrat to keep the use of delegated acts to a strict minimum, the Commission would like to clarify that the relevant alignment proposals are strictly limited to procedural adaptation. 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 appropriate post-Lisbon legal framework. The proposals are based on a careful analysis of the nature of the powers already conferred on the Commission, having regard to the criteria set out in Article 290 and 291 TFEU. The starting points for the analysis were the legal criteria established by the Treaty itself. Those criteria are also referred to in the Communication COM (2009)673. Accordingly, in particular, the power to amend an annex to the basic act will always fall under the scope of delegated acts and cannot be transformed into an implementing power in the present proposals. Furthermore, clearly, 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, the existing empowerments were also analysed in the light of settled 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.

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On the duration of the delegation of powers, the Commission would like to reiterate that, while acknowledging the concerns raised by the Bundesrat, it is the common understanding of the institutions that the basic act may empower the Commission for an undetermined or determined period of time. It is also important to note that under Article 290(2)(a) TFEU the legislator can include in the basic instrument an option to revoke the delegation of power, and the effects of the revocation are exactly the same as those of a sunset clause. In line with this logic, both above referenced proposals provide that the delegation of power may be revoked at any time by the European Parliament or by the Council.

In relation to the suggestion to prolong the period for objections to three months, the three institutions agreed in the Common Understanding that two months, extendable by two months at the initiative of the European Parliament or the Council, is in principle the appropriate period. Given that the period is set on a case-by-case basis, specific needs can be taken account of in the basic act.

The Commission agrees with the Bundesrat that the alignment of acts containing references to the regulatory procedure with scrutiny should be based on a detailed analysis of all basic acts being aligned. When preparing the proposals, the Commission carried out a careful individual examination of all legislative instruments concerned in order to analyse whether the measures covered by Article 5a of the Decision 1999/468/EC meet the criteria of Article 290 TFEU. Now that the proposals have entered the course of an ordinary legislative procedure, it is appropriate that the legislators assess, one-by-one, the provisions of the legal acts concerned against the criteria laid down in the Treaty.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*