



Brussels, 16.7.2014
C(2014) 5001 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 715/2007 and (EC) No 595/2009 as regards the reduction of pollutant emissions from road vehicles {COM (2014) 28 final}.

The Commission welcomes the support shown by the Bundesrat for this proposal and the measures contained therein aiming at a reduction of pollutant emissions from road vehicles, thus improving the health of the citizens in urban areas.

However, in its Opinion, the Bundesrat raises some concerns regarding the provisions on delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU), asking that the amendments proposed do not weaken the voice and decision-making right of Member States in the legislative process of the EU.

The Commission takes due note of these concerns and would like to give the following comments.

Delegated acts in general

Following the entry into force of the Treaty of Lisbon it became necessary to align the different legislative acts that provided for measures to be adopted by the Commission under the Regulatory Procedure with Scrutiny (PRAC) to the new provisions laid down in the Treaty. Therefore, the provisions of these acts giving the Commission the power to adopt implementing acts through the PRAC procedure need to be replaced either by provisions delegating powers to the Commission or by provisions allowing the Commission to adopt implementing acts. This required each and every provision attributing implementing powers to the Commission to be carefully analysed.

Article 290 TFEU allows the legislator to delegate to the Commission the power to adopt legal acts of general application to supplement or amend certain non-essential elements of a legislative act. A delegated act which supplements a legislative act takes the form of a separate act imposing new non-essential rules.

Cases in which the Commission is empowered formally to amend a basic instrument might relate to the text of one or more articles in the enacting terms or to the text of an annex that legally forms part of the legislative instrument. It makes little difference whether the annex contains purely technical measures; as soon as the Commission is empowered to amend an annex containing measures of general application, the regime of delegated acts must be applied.

*Mr Stephan WEIL
President of the Bundesrat
Leipziger Straße 3 - 4
D – 10117 BERLIN*

In order to determine whether a measure "supplements" the basic instrument, the legislator should assess whether the future measure specifically adds new non-essential rules which change the framework of the legislative act, leaving a margin of discretion to the Commission. If it does, the measure could be deemed to "supplement" the basic instrument.

It should be noted that the concept of the delegated act is defined in terms of its scope and consequences – as a general measure that supplements or amends non-essential elements – whereas that of the implementing act is determined by its rationale - the need for uniform conditions for implementation. This distinction is due to the very different nature and scope of the powers conferred on the Commission by the two provisions. When it receives the power to adopt delegated acts under Article 290 the Commission is authorised to supplement or amend the work of the legislator.¹

The premise of a delegation is that the legislators have decided not to legislate comprehensively: they have established the essential elements and thereafter, by way of delegated powers, they leave it to the Commission to supplement these essential elements.

Conversely, measures intended only to give effect to the existing rules of the basic instrument should not be deemed to be supplementary measures. Consequently, article 291 TFUE envisages the situations in which there is no need to establish any new rules or norms; the legislative act is complete and the sole purpose of any subsequent implementing act is to give effect to the rules which have already been laid down. An implementing act brings into life the legislation without changing its contents; it merely gives effect to the existing rules.

The provisions in Regulation (EC) NO 715/2007

As most acts in the automotive sector, Regulation No 715/2007 provides only for PRAC implementing acts. In the logic of the split-level approach, it sets the basic rules and leaves all the specific requirements for implementing legislation. As a consequence, and taking into consideration the above mentioned distinction between delegated and implementing acts, most of the current PRAC provisions should be replaced by delegated acts.

Article 4 of Regulation No 715/2007 provides for PRAC for the act establishing the specific procedures and requirements for the implementation of paragraphs 2 and 3. As for paragraph 2 regarding conformity of production, durability of pollution control devices and in-service conformity, this provision already seems to contain the basic rules, so the remaining measures could be set in an implementing act. Paragraph 3 concerns the information document and therefore falls in the category of implementing acts. Therefore, the Commission suggests replacing the empowerment in paragraph 4 of Article 4 by an empowerment to adopt implementing acts in accordance with the examination procedure.

Article 5 lists a number of subjects for which the Commission is to set the specific procedures, tests and requirements for type approval. The requirements must therefore be set out in a delegated act, as there is the need for the Commission to establish new rules for the implementation of this Article.

Article 8 provides for implementing powers regarding Articles 6 and 7. Also here the Commission act would establish a set of substantive rules of general application, which belongs to the legislative sphere and thus falls within the scope of Article 290.

¹ COM(2009) 673

Article 14 contains several PRAC provisions which should be changed to delegated acts as the current empowerment of the legislator requires the Commission to amend existing rules (Article 14 (2), (3) and (5)).

Article 15 regarding the Committee procedure must be adapted to the above mentioned changes.

In addition, the new rules provided for in this proposal would require the corresponding attribution of delegated or implementing powers to the Commission. Hence, in Article 2, the new paragraph 2 would empower the Commission to adopt delegated acts concerning the detailed rules on the application of the Regulation to vehicles of categories M1, M2, N1 and N2 with a reference mass exceeding 2 610 kg but with a maximum vehicle mass not exceeding 5 000 kg. As this would require the establishment of new rules supplementing the essential elements contained in the Regulation, this should be done by a delegated act. However, the Commission tried to limit as much as possible its discretion in the setting up of these rules, stating that the delegated acts shall ensure in particular that at chassis dynamometer tests the actual operational mass of the vehicle is appropriately considered for determining the equivalent inertia as well as other default power and load parameters.

In Article 14, paragraph 1 would be amended in order to include a new empowerment enabling the Commission to set an alternative path for measurement of methane and include it as a CO₂ equivalent. Information on the mass of CO₂ emissions in the certificate of conformity would be replaced by the information on total mass of CO₂ emissions equivalents, which shall be the sum of the mass of CO₂ emissions and methane emissions, expressed as equivalent mass of CO₂ emissions with regard to their greenhouse gas effects. This step would also require an increase or removal of the limit value of total hydrocarbons (THC) emissions for positive ignition vehicles, a change, for which a delegated act is required.

In addition, in paragraph 4, a new empowerment would be added, allowing the Commission to adopt delegated acts to set out, in addition to the existing limit value for emissions of nitrogen oxides (NO_x), a limit value for emissions of nitrogen dioxide (NO₂) for vehicles approved as complying with the Euro 6 emission limits set out in table 2 of Annex I. In order to ensure that this empowerment would be properly limited by the legislator, this provision would require that the limit for emissions of NO₂ be set on the basis of an impact assessment and take into consideration the technical feasibility and should reflect the air quality objectives set out in Directive (EC) No 2008/50 of the European Parliament and of the Council.

Still in Article 14, paragraph 5 would contain an empowerment for the Commission to adopt delegated acts to amend and supplement table 4 of Annex I in order to revise limits for tailpipe emissions at cold temperatures for positive ignition vehicles approved as complying with the Euro 6 emission limits set out in table 2 of Annex I and to set out new NO_x emission limits for compression ignition engines. This empowerment should be for delegated acts as it requires the amendment of the Annex. However, again the Commission tried to ensure that this empowerment is properly limited by the legislator, by requiring that the limits for emissions of THC, carbon monoxide (CO) and NO_x be set on the basis of an impact assessment, take into consideration the technical feasibility and reflect the air quality objectives set out in Directive (EC) No 2008/50 of the European Parliament and of the Council.

In view of the above, the Commission believes that the empowerments contained in the Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EC) No 715/2007 and (EC) No 595/2009 as regards the reduction of pollutant

emissions from road vehicles respect the distinction between delegated and implementing acts and are in line with the current empowerments adopted by the legislator in Regulation (EC) No 715/2007.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*