



EUROPEAN COMMISSION

*Brussels, 28.7.2017
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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Commission 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}.

The Commission has taken due note of the remarks relating to the proposal in general and to specific acts covered by the proposal and would like to make the following comments in this regard.

As regards the comments of the Bundesrat on the proposal in general, the Commission shares the view of the Bundesrat that the consultation of Member State experts as agreed in the Interinstitutional Agreement on Better Law-Making fully meets the concerns of the Council.

As regards the Bundesrat's view that the use of delegated acts should be limited to an absolute minimum, the Commission would like to point out that the alignment exercise concerns existing empowerments only, so empowerments that the legislator has already considered to be necessary; no empowerment is added. The proposal is in the Commission's view a technical exercise to align these existing empowerments to either delegated or implementing acts empowerments.

The Commission agrees with the Bundesrat that empowerments should explicitly and clearly define their objectives, content and scope. This is explicitly set out in the Treaty. In some cases, where needed and possible, the Commission has better defined empowerments in its proposal. In addition, the legislative technique chosen now, which entails an amendment of each empowering provision, allows the legislator to better define empowerments during the legislative process.

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President of the Bundesrat
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As regards the Bundesrat's view that transparent and objective criteria to differentiate between essential and non-essential elements are needed, the Commission would like to point out that the concept of 'essential elements' is not new; the powers conferred on the Commission before the entry into force of the Lisbon Treaty, and subject to the regulatory procedure with scrutiny, have also always been limited to non-essential elements. The case law of the Court of Justice has defined the concept of essential elements, but has not provided for specific areas that would always be considered as essential. Also, while the institutions agreed that non-binding criteria for the delineation between delegated and implementing acts are needed and work on them is about to begin, no such need was identified in relation to the delineation between essential and non-essential elements.

As regards the Bundesrat's view that empowerments should always be limited in duration, the Commission would like to underline that it is the common understanding of the institutions that the basic act may empower the Commission for an undetermined or determined period of time. Also, the revocation right in line with Article 290(2)(a) of the Treaty on the Functioning of the European Union has been included in all cases, so that the empowerments can in any case be revoked at any time by the European Parliament or by the Council. The Commission would also like to point out that the upcoming register on delegated acts will allow an easy and simple overview of how empowerments have been used.

The Bundesrat also makes specific comments on a total of fourteen of the individual basic acts covered by the alignment proposal, underlining that in its view some of the empowerments in these acts cover issues of an essential nature and should therefore not be addressed by delegated acts, but in most cases by the ordinary legislative procedure. There is in the Commission's view no indication why these issues should now have become essential compared to when the legislator first empowered the Commission. The Commission considers that the alignment proposal is a mere technical alignment of existing empowerments to delegated or implementing acts, without in itself assessing the need for empowerments from the perspective of the relevant policies. The Commission therefore takes the view that the deletion of existing empowerments falls outside the scope of the alignment exercise, as defined in the Interinstitutional Agreement. The deletion of empowerments would also mean that in the areas concerned, the Union would be no longer in a position to adapt the acquis in an effective and efficient way and within reasonable timeframes to new technological developments or scientific findings.

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

Yours faithfully,

*Julian King
Member of the Commission*