

TRANSLATION

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SENATE OF THE REPUBLIC

XVII TERM

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RESOLUTION OF THE 14TH STANDING COMMITTEE

(European Union Policies)

(Rapporteur: MARAN)

approved at the session of 7 August 2013

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 (RPS)

(COM(2013) 451)

AND 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 (RPS)

(COM(2013) 452)

pursuant to Article 144(1) and (6) of the Rules of Procedure

Communicated to the President's Office on 5 September 2013

The Committee has examined documents COM(2013) 451 and COM(2013) 452.

Given that:

- these proposals are intended to amend European Union legislative acts in force which provide for the use of the 'regulatory procedure with scrutiny', empowering the European Commission instead to adopt delegated acts pursuant to Article 290 of the Treaty on the Functioning of the European Union (TFEU);
- this change would take place automatically for all 165 acts listed in the Annexes to the above Proposals for Regulations;

whereas:

- the streamlining of European legislation which resulted from the entry into force of the Lisbon Treaty makes it possible to use a series of legislative acts in order to comply with regulatory requirements in specific areas: in addition to the actual legislative acts (Article 289 of the TFEU) it is now possible to introduce implementing acts (for the uniform implementation of legal acts all over the Union, Article 291) and delegated acts (Article 290);

- the use of delegated acts provided for in Article 290 of the TFEU is limited to the circumstances set out in that Article, the aim being to 'adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act' (paragraph 1);

it must be noted that the amendment process started by the two above-mentioned proposals is incomplete, according to the explanatory memorandum of COM(2013) 451, which states that there will be three proposals on the amendment of the regulatory procedure with scrutiny; 'a third proposal will cover the remaining basic acts referring to the RPS which are subject to an on-going analysis';

having examined the report by the Ministry for Foreign Affairs on COM(2013) 452 forwarded by the Prime Minister's Office on 31 July 2013 in accordance with Article 6(4) of Law No 234 of 24 December 2012,

we wish to issue a favourable opinion, within the limits of our remit, in accordance with Protocol No 2 on the application of the principles of subsidiarity and proportionality, with the following comments:

since the reason for the acts in question is to bring current legislation into line with the range of legislative instruments made available by the Lisbon Treaty, it seems reasonable not to specify a single legal basis but to refer to the legal bases of the acts that are to be amended. As regards the acts referred to in proposal COM(2013) 452 which come under judicial cooperation in civil matters, the choice of Article 81(2) of the TFEU as a legal basis is mandatory. It provides for the adoption of measures in this area using the ordinary legislative procedure;

the proposals appear to be in line with the principle of subsidiarity as regards:

- the need for intervention by the Union institutions as they alone are competent to amend EU legislation;

- added value for the Union in terms of the proper application of the legislative instruments set out in the Lisbon Treaty. However, we wish to underline the fact that this added value will be effective only if, and to the extent that, the most appropriate legislative instrument is used in each individual case;

as for the principle of proportionality, the proposal appears to be in line with the objectives pursued.

As regards the substantive nature of the acts in question, we wish to reiterate our opposition to the granting of powers for an indeterminate period (Article 2(2) of both proposals) since, as already stated in the resolution of the 14th Senate Committee of 23 November 2010, (Doc. XVIII, n. 66), the conferring of a power without limitation in time or detailed specification undermines the legitimacy of the act, which is therefore detrimental to the prerogatives of national parliaments, in effect preventing them from monitoring compliance with the principles of subsidiarity and proportionality.

Moreover, the European Parliament itself, in its decision of 5 May 2010 on the power of legislative delegation, highlights the delicate nature of delegation operations, stating that 'the objectives, content, scope and duration of a delegation pursuant to Article 290 TFEU must be expressly and

meticulously defined in each basic act', and goes on to say that 'a delegation of a limited duration could provide for the possibility of periodic renewal'. This would allow national parliaments to take back ownership of their own prerogatives and functions in the context of the European legislative procedure.

In this context, we wish to reiterate our opposition to the interinstitutional agreement between the European Parliament, the Council and the Commission of 30 March 2011. In effect it legitimises the practice of conferring powers for an indeterminate period, and makes proceedings at the Court of Justice the only remedy against any infringement of Article 290 of the TFEU. We would therefore ask the European legislator to prevent abuses in the granting of powers for an indeterminate period in order to avoid disrupting the balance between the scrutiny exercised by the European Parliament and that exercised by the national parliaments.

Moreover, the delegation of powers must take place only in the case of a need to 'adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act' (Article 290 of the TFEU). Where, however, the acts to be adopted are of a purely executive nature, implementing acts should be used (Article 291 TFEU). In cases involving the 'essential elements of an area' (which according to Article 290(1), second paragraph, are 'reserved for the legislative act and accordingly shall not be the subject of a delegation of power'), it would be necessary to have recourse to the ordinary legislative procedure involving the tabling of a proposal for a regulation, directive or decision.

As regards the complex operation of adapting regulatory procedures with scrutiny to the procedures set out in Article 290 TFEU, we are not in a position to provide an overall assessment as we were not provided with a simultaneous presentation of all the relevant proposals. Given that the relevant elements are not all available, it is not possible to provide a proper assessment of the proposals, in particular from the point of view of the suitability of the instrument (especially the delegation of power under Article 290 TFEU) which the Commission is intending to use.

In the light of the above, we would ask the Union legislator to carry out a subsequent, detailed assessment of all the legal acts of the European Union contained in these proposals during the negotiations. The scope of such an assessment should cover the verification of the legal instruments available (in the TFEU and referred to in the recital of this resolution - Articles 289, 290 and 291 TFEU), to see which is best suited to the additional regulation required in each case.