



*Brussels, 24.8.2017
C(2017) 5951 final*

Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the Commission proposals for a Regulation of the European Parliament and of the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the Functioning of the European Union {COM(2016) 798 final} and 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 welcomes the favourable opinion of the Senato della Repubblica regarding the compliance of both proposals with the principles of subsidiarity and proportionality, and would like to make the following comments in response to two observations made by the Senato della Repubblica in its opinion.

First, the Senato della Repubblica considers that empowerments should always be limited in duration and not be of an unlimited duration as proposed by the Commission. 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 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.

Second, the Senato della Repubblica suggests that in some cases empowerments may concern essential elements, notably when they relate to definitions, the scope of the instrument or sanctions, and points to some of the acts included in the exercise. 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, as suggested by the Senato della Repubblica.

*Mr Pietro Grasso
President of the Senato della Repubblica
Piazza Madama, 1
IT – 00186 ROMA*

In the Commission's view this concept has to be defined in each policy area by the legislator, which enjoys a margin of appreciation in this regard. The empowerments in question here have been twice considered by the legislator as covering non-essential elements and tasks that are best delegated to the Commission to ensure simple and up-to-date legislation - once when they were given in the first place and the second time when they were aligned to the regulatory procedure with scrutiny. The Commission, when preparing the proposals, did not encounter any cases that would have led to a different assessment.

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

Yours faithfully,

*Christos STYLIANIDES
Member of the Commission*