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OPINION

From: European Economic and Social Committee
On: 21 January 2014
To: Council of the European Union

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No. Cion prop.: COM(2013) 751 final

Subject: Proposal for a regulation of 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
– Opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached the Opinion of the European Economic and Social Committee 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.



European Economic and Social Committee

INT/723
Adapting RPS acts to
Articles 290 and 291 TFEU

Brussels, 21 January 2014

OPINION

of the
European Economic and Social Committee
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 – 2013/0365 (COD)

Rapporteur-general: **Mr Pezzini**

INT/723 – EESC-2013-07440-00-00-AC-TRA – 2013/0365 (COD)

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On 10 December 2013 the Council and, on 18 November 2013, the European Parliament decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, 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 – 2013/0365 (COD).

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pezzini as rapporteur-general at its 495th plenary session, held on 21 and 22 January 2014, and adopted the following opinion by 112 votes in favour with 2 abstentions.

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1. CONCLUSIONS AND RECOMMENDATIONS

- 1.1 The Committee supports the Commission's initiative insofar as it protects the sources of law in the EU, makes for simpler and more efficient procedures, and ensures that full democratic scrutiny can be exercised and all interested parties can access clear and transparent information.
- 1.2 The Committee welcomes the fact that the Commission has taken account of various points that it raised in its previous opinions when drawing up these proposals.
- 1.3 The Committee notes that the Commission's proposal involves changes to over 80 legal acts, including regulations and directives, and regrets that it is not in a position to assess each act individually, given the wide range of topics covered in the areas of:
 - networks;
 - communications content and technology;
 - climate action;
 - energy;
 - enterprise and industry;
 - the environment;

- statistics;
- internal market and services;
- mobility and transport;
- health and consumers; and
- humanitarian aid.

1.4 The Committee recommends that further in-depth assessments be carried out as regards the objectives, content, scope and duration of the delegations, which should allow for full democratic scrutiny at EU level, and also provide for the prerogatives and functions guaranteed to national parliaments in the EU legislative process to be exercised. The Committee considers that the concepts of "non-essential measures" and "the Commission's delegated competence" should be defined unambiguously, taking account of the interpretations of the European Court of Justice.

1.5 The Committee stresses the importance of:

- fully involving the EP;
- streamlining and simplifying the committee procedures;
- more information, both on the terms of delegations to committees and on the relevant measures that are established at all stages of the procedure; and
- making the information fully accessible to the public and civil society.

1.6 The Committee reiterates that committee procedures should be as transparent as possible and more accessible to all Europeans, especially those affected by the acts in question.

1.7 The Committee highlights the need to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as closely as possible to the people, while information must be fully accessible to the public and civil society.

1.8 Finally, the Committee calls for the impact of implementing the new regulatory framework to be assessed; a periodic report should be presented to the European Parliament, the Council and the Committee itself regarding effectiveness, transparency and the dissemination of information.

2. INTRODUCTION

2.1 The Treaty of Lisbon introduced a distinction between the powers delegated to the Commission to adopt delegated acts, i.e. non-legislative acts of general application to supplement or amend non-essential elements of a legislative act under Article 290 TFEU (the delegation procedure), and the powers conferred upon the Commission under Article

291 to adopt so-called implementing acts, i.e. uniform conditions for implementing legally binding EU acts.

2.1.1 *The arrangements for use of the power of delegation are set out in non-mandatory acts, including:*

- the Communication from the Commission on the implementation of Article 290 of the Treaty on the Functioning of the European Union¹;
- the 2006 Common Understanding on delegated acts; and
- Rules 87a and 88 of the European Parliament's Rules of Procedure, as amended by the Decision of 10 May 2012².

2.2 As the Committee pointed out in its 2008 opinion on the regulatory procedure with scrutiny³, back in July 2006⁴, the Council amended the decision laying down the procedures for the exercise of implementing powers conferred on the Commission⁵, adding a new regulatory procedure with scrutiny.

2.2.1 *This procedure allows the legislator to oppose the adoption of quasi-legislative measures, namely measures of general scope "amending" non-essential elements of basic acts adopted by co-decision, if it considers that the draft exceeds the implementing powers provided for in the basic act, is incompatible with the aim or the content of that act or fails to respect the principles of subsidiarity or proportionality.*

2.2.2 *These are measures typical of the committee procedure, regulated by Council Decision 1999/468/EC, as amended by Decision 2006/512/EC, which oblige the Commission to submit draft implementing measures to a committee made up of Member State officials, in accordance with the five committee procedures: consultation, management, regulation, regulation with scrutiny and safeguard. In December 2006, the Commission adopted the 25 proposals concerned⁶, on which the Committee expressed its views⁷.*

2.3 The regulatory procedure with scrutiny has been used to adopt implementing measures which amend non-essential elements of basic legislative acts. Between 2009 and 2014,

¹ COM(2009) 673 final, 9.12.2009.

² Doc. A7-0072/2012.

³ [OJ C 224, 30.8.2008, p.35](#).

⁴ Decision 2006/512/EC (OJ L 200, 22.7.2006).

⁵ Decision 1999/468/EC ([OJ L 184, 17.7.1999](#)).

⁶ COM(2006) from 901 to 926 final.

⁷ [OJ C 161, 13.7.2007, p. 45](#).

Article 5a of the Decision on Committee Procedure and the regulatory procedure with scrutiny have provisionally remained in force, pending the adaptation of existing provisions to the delegated acts regime, involving the alignment of a series of regulations, directives and decisions.

- 2.4 Recently, the Committee issued an opinion¹ on two proposals for omnibus regulations covering 12 different areas. It supported the initiative in that it was "necessary in order to protect the sources of law in the European Union" and would make for "simpler and more efficient procedures". However, it advised the Council and the Parliament "to exercise maximum vigilance and to conduct a detailed evaluation of all the acts included in this alignment", which comprises 165 legal acts that were initially subject to the regulatory procedure with scrutiny and are now subject to the new delegated act regime.
- 2.5 The Committee notes that its detailed report on the delegation procedure was recently adopted and recommends that it be taken into account as it will make the present opinion more readily comprehensible.

3. THE COMMISSION'S PROPOSALS

- 3.1 This proposal takes the same approach as the previous ones, with a regulatory framework.
- 3.2 The proposed regulatory framework covers changes to 76 legal acts, including regulations and directives on a range of subjects. As part of the alignment to the provisions of the TFUE, the proposals include the deletion of certain provisions of the following legislation: Regulations (EC) Nos 66/2010 and 1221/2009 on the environment; Directive 97/70/EC on transport; Regulation (EC) No 1333/2008 and Directive 2002/46/EC on health and consumers²; and Council Regulation (EC) No 1257/96 on humanitarian aid.

4. GENERAL COMMENTS

- 4.1 The Committee supports the Commission's initiative insofar as it protects the sources of law in the EU, makes for simpler and more efficient procedures and ensures that the European Parliament and the Council can fully exercise their powers of democratic scrutiny.

¹ EESC opinion of 16.10.2013 on COM(2013) 451 final and COM(2013) 452 final (not yet published in the OJ).

² For example, further clarification would be desirable regarding the deletion of part (i) of Article 29 ("Community procedure for notifying serious adverse reactions and events and notification format") in *Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components*.

- 4.2 While the Committee is pleased that certain elements of its previous opinions have been taken up in the drafting of the proposals under consideration here, it reiterates the point it made recently that "in accordance with Article 290 TFEU, the duration of the delegation of power must be explicitly defined in the basic legislative act, and that until now, with very few exceptions, delegations have in principle always been granted for a specific period, renewable where necessary, with a requirement for a report on the implementation of the delegation"¹.
- 4.3 The Committee points out that the European Parliament itself in its Resolution of 5 May 2010 on the power of legislative delegation highlighted the delicate nature of the delegation procedure, stressing 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". In the Committee's view, these elements should also allow for the prerogatives and functions guaranteed to national parliaments in the EU legislative process to be fully exercised.
- 4.4 Moreover, the Committee believes that adaptation to the delegation procedure should be approved only where there is a need to "adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act" under Article 290 and, in the case of purely implementing acts, the provisions of Article 291 TFEU must be applied, while "the essential elements of an area" should never be subject to delegation. Furthermore, the concept of "non-essential elements" has yet to be defined and a precise evaluation of how the mechanism actually works in practice needs to be carried out.
- 4.5 Here, the Committee would reiterate its own recommendations to the Commission "to tailor this collective alignment more closely to the individual contents of some of the basic legislative acts"² and to take account of the interpretations by the European Court of Justice of the concepts of "non-essential measures" and "the Commission's delegated competence".
- 4.6 The Committee stresses the importance of:
- fully involving the EP, which would in the last instance have the right to reject a decision;
 - keeping the EP and the Council more informed, both on the committees and on the measures that come before them at all stages of the procedure;
 - an EP-Council consultation procedure to be followed where the EP has issued a negative opinion, giving the EP a greater role.

¹ See footnote 8.

² See footnote 8.

- 4.7 The Committee stresses, as it has in the past, that "[committee] procedures, involving only representatives of the Commission and Member State governments and tasked (...) with the management, consultation or regulation flowing from the follow-up and implementation of legislative acts, should be more transparent and accessible to (all Europeans) and especially to those affected by these acts"¹.
- 4.8 The Committee considers it important that a periodic assessment be carried out of the impact of the implementation of the proposed new regulatory framework; a periodic report should be submitted to the European Parliament, the Council and the Committee regarding effectiveness, transparency and the dissemination of user-friendly information which is accessible to all on delegated Community acts, so that this operation, which combines regulation and actual implementation, can be monitored.
- 4.9 In this regard, the Committee highlights the need – here, too – to fully comply with Article 8(a) of the Lisbon Treaty, which stipulates that decisions are to be taken as closely as possible to the people, while information must be fully accessible to the public and civil society.

Brussels, 21 January 2014

The president
of the
European Economic and Social Committee

Henri Malosse

¹ See footnote 7.