

Opinion of the European Economic and Social Committee on the ‘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 final — 2016/0400 (COD)]

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Section responsible	Section for the Single Market, Production and Consumption
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Plenary session No	526
Outcome of vote (for/against/abstentions)	156/0/1

1. Conclusions and recommendations

1.1 The European Economic and Social Committee (EESC) regrets that the Commission has not followed up points made in previous EESC opinions and has had to resume negotiations with a view to adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny (RPS) to Articles 290 and 291 TFEU.

1.2 It points out that its previous opinions set out the approach which it deemed best able to safeguard the fundamental values at stake in this exercise in terms of legal certainty, respect for fundamental rights, and effective, balanced and democratic use of the institutions’ powers.

1.3 The Committee believes that these principles should guide the new procedure to align legal acts that are still subject to the RPS with the new regime of delegated and implementing acts set out in Articles 290 and 291 TFEU.

1.4 Without prejudice to a more specific analysis when reviewing each measure submitted to it for an opinion, the EESC here summarises the observations it considers should be made with regard to each of the legislative proposals announced in the proposal.

2. Commission proposal

2.1 In its proposal, the Commission notes that a significant number of basic legislative acts that are subject to the rules of Council Decision 2006/512/EC (‘Comitology Decision’) still need to be adapted to Articles 290 and 291 TFEU, in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (‘Comitology Regulation’).

2.2 It had pledged to adapt them by 2013, and to this end proposed three horizontal alignments in 2013: ‘Omnibus I, II and III’.

2.3 After a long discussion with the EP and many amendments to these proposals, the Council refused to support this automatic and collective alignment of all RPS acts to delegated acts, due to the absence of a guarantee that Member States' experts would be systematically consulted during the preparatory phase of delegated acts. This caused the proposals to get bogged down in institutional issues, and the Commission withdrew them.

2.4 After the revision of the Interinstitutional Agreement on Better Regulation (IIA) and the adoption of the Common Understanding on Delegated Acts appended to that agreement, the Commission presented a new proposal addressing the Council's objections. This new proposal takes into account the changes introduced by the new interinstitutional agreement as regards the consultation of Member States' experts when preparing delegated acts and simultaneous consultation with the EP.

2.5 The proposal is structured around the 13 chapters found in the annex, which lists the 168 acts in chronological order. The Commission groups them into four tables:

Table 1 — Overview of acts for which alignment to implementing acts is proposed for certain empowerments;

Table 2 — Overview of acts for which deletion of certain empowerments is foreseen;

Table 3 — Proposals adopted by the Commission;

Table 4 — Acts for which proposals are planned.

3. Background — EESC opinions and reports

3.1 In July 2013 the EESC adopted a very detailed information report that aimed 'to highlight the realities of the delegated legislative procedure introduced by the Lisbon Treaty'.

3.2 It noted that 'the precise legal nature of delegated acts remains somewhat undefined; the concept of "non-essential" measures is interpreted by the Court in a variety of ways depending on the areas concerned; and the Commission's leeway seems to be quite extensive since it is up to the Commission to propose the scope and duration of delegations'.

3.2.1 The EESC stated that 'there are [...] a number of [...] questions about the transparency of the prior consultation system originating in a document which is not legally binding, entitled *Common Understanding on practical arrangements for the use of delegated acts* of 4 April 2011'.

3.2.2 It further noted that 'the implementation of TFEU Article 290 is provided for in a Communication from the Commission to the European Parliament and the Council of 9 December 2009, an act which is not legally binding, while the rules on exercising implementation powers flow from a regulation of the European Parliament and the Council on 16 February 2011, a legal act of general application, all elements of which are mandatory and of direct application'.

3.2.3 The information report concluded that 'there are still doubts as to the simplicity of the procedure, how the European public really perceives what is at stake here, the "correct" usage of this procedure and the effectiveness of the control mechanisms'. Thus the EESC proposed drawing up an own-initiative opinion on the subject to enable it to express a position on the observations and conclusions arrived at in all objectivity in the report, with a view to possibly improving the EU's legislative process.

3.3 In July and September 2013, two proposals for regulations were referred to the EESC: on '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' [COM(2013) 451 final] and on 'adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny' [COM(2013) 452 final]; on 18 November and 10 December, yet another proposal for a regulation was referred to the Committee: on 'adapting to Article(s) 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]. These regulations were called Omnibus I, II and III.

3.3.1 In its opinions of 16 October and 2 January, the EESC stressed in particular that this collective alignment of 165 legal instruments (regulations, directives and decisions) in 12 different areas, although necessary, raised a number of legal and practical issues.

3.3.2 Thus, 'some aspects of the delegation procedure are still far from clear [...] the concept of "non-essential elements"' has yet to be defined. A precise evaluation of how the mechanism actually works in practice also needs to be carried out.'

3.3.3 It also noted that 'some proposals for regulations contain options which misinterpret the framework established by the basic legislative acts, going so far as to allow for delegation to be exercised for a period of unspecified length or setting very short deadlines for scrutiny by the Parliament and the Council'.

3.3.4 After a systematic analysis of all the proposals, the EESC advised the Commission 'to tailor this collective alignment more closely to the individual contents of some of the basic legislative acts' and advised 'the Council and the Parliament to exercise maximum vigilance and to conduct a detailed evaluation of all the acts included in this alignment'.

3.3.5 If the exercise was to go ahead as proposed by the Commission, the EESC stressed the importance of:

- fully involving the EP in the process;
- streamlining and simplifying the comitology procedures;
- providing more information, both with regard to delegations to committees and to the relevant measures at all stages of the procedure;
- making the information fully accessible to the public and to civil society.

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

3.4 In the meantime, as part of the 'Better Regulation' package, the Commission issued a proposal for a binding interinstitutional agreement, based on Article 295 TFEU, which addressed delegated acts in two specific annexes.

3.4.1 In its opinion of July 2015, the EESC stated that it 'is [...] pleased to note the Commission's efforts to achieve a fair balance between the fundamental values of respect for the rule of law, democratic participation, transparency, proximity to the public and the right to wide-ranging information on legislative procedures, on the one hand, and legislative simplification, more flexible rules that are better geared to the interests involved, and simplified procedures for updates and revision, on the other'.

3.4.2 In the same opinion, it also welcomed the fact that 'the Commission is committed "to gathering, prior to the adoption of delegated acts, all necessary expertise [...] through the consultation of experts from the Member States and through public consultations" and that it is proposing the same method of consultation for the adoption of implementing acts'.

3.4.3 The EESC nevertheless feared that all these consultations could cause the time taken to prepare acts to be prolonged excessively and unnecessarily.

3.4.4 It was not in favour of the case-by-case approach to distinguishing between matters that should be subject to delegated or implementing acts, as the criteria used were ambiguous and left too much room for discretion in interpretation.

3.4.5 The EESC particularly objected to:

- a) the absence of prior information on Member States' experts and their technical competence;

- b) the absence of an appropriate timeframe for consulting experts, stakeholders, the European Parliament and the Council, except in urgent cases;
- c) the fact that consulting and sending meetings schedules to the EP and stakeholders was optional;
- d) the inconsistency of the information relating to the adoption of delegated acts, which should be systematic, automatic, up-to-date and online;
- e) the principle of an unlimited timeframe for delegations: the EESC called for a precise duration, potentially renewable for the same duration, except in duly justified exceptional cases.

3.4.6 The EESC wanted guidelines to provide explicitly for all aspects of the delegations to be clearly defined, in terms of:

- a) their stated objectives;
- b) their precise content;
- c) their exact scope;
- d) a strictly defined duration.

3.4.7 It considered that 'the wording of Articles 290 and 291 TFEU is less than perfect and that, in the event of a treaty change, it should be improved. The framework within which they are applied should also be improved so as to prevent decisions on the choice of legal instrument from being more political than technical.'

3.5 The lack of agreement between the Parliament and Council regarding the collective alignment procedure meant that the Commission had to withdraw its proposals and submit the proposal in hand.

4. General comments

4.1 In light of its previous opinions, the EESC questions whether a delay of over four years in such a sensitive area is justified.

4.2 Indeed, it had clearly set out the following guidelines:

- a) the use of delegated acts should be the exception rather than the rule;
- b) where there is doubt as to the essential nature of the elements concerned, or in the case of a 'grey area', the Commission should refrain from proposing delegated acts and legislate within the basic legislative act;
- c) where there is doubt as to the type of measure to be taken, the Commission should preferably adopt implementing acts rather than delegated acts.

4.3 The Committee also disagreed with the Commission on the principles set out in point 3.3.5 above.

4.4 Many of these negative aspects have been rectified in this proposal. However, there continue to be some points where the EESC would disagree:

- a) The Commission is insisting on an unlimited duration for delegated acts. The EESC considers that the duration of the delegation should, as a rule, always be fixed, with the possibility of renewal, except in duly justified exceptional cases;
- b) The EESC is still concerned that the Parliament and the Council will have no real possibility to exercise timely and effective scrutiny of the content of delegated acts;
- c) It continues to be dubious about the clear distinction between implementing and delegated acts, in particular with regard to 'essential and non-essential measures' relating to fundamental rights;

- d) Finally, the EESC reaffirms that rewording Articles 290 and 291 TFEU could resolve all the ambiguities that are at the root of the current problems once and for all.

5. Specific comments

A detailed analysis of each of the 168 proposals in the Annex enables us to raise the following concerns:

Table 1

Overview of acts for which alignment to implementing acts is proposed for certain empowerments

Number Annex	Title Act ⁽¹⁾	EESC comments
2	Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009	<p>Article 12a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> in 2013, both the Council and the European Parliament had favoured a fixed duration of five years with automatic renewal following a Commission report to be presented before the expiry of the delegation. Here, the Commission believes that an indeterminate duration of the empowerment is justified because the legislator has the possibility to revoke an empowerment in all cases and at any time (see p. 7 of the Commission proposal COM(2016) 799 final).</p>
6	Decision No 626/2008/EC of the European Parliament and of the Council of 30 June 2008	<p>This decision concerns the implementing powers conferred on the Commission.</p> <p><u>Comment:</u> regarding the choice between delegated and implementing acts empowerments, the Commission assumes that the 2013 evaluation (Omnibus proposals) remains valid, since neither the negotiations on those proposals, nor the case-law on this topic, nor the outcome of the IIA resulted in new criteria that would have called for a global reassessment (see pp. 4-5 of Commission proposal COM(2016) 799 final).</p>
53	Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009	<p>The new Article 17(3) does not set out the duration of the Commission's empowerment to adopt delegated acts.</p> <p>The new Article 48a specifies that the power to adopt delegated acts referred to in Article 17(3) and Article 48 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Omnibus.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The new Article 17(3) stipulates that <u>appeals procedures</u> against decisions taken as a result of the evaluation of the EMAS Competent Bodies will be adopted via empowerment. This appears to come under the right to an effective remedy and access to an impartial tribunal as set out in Article 47 of the Charter of Fundamental Rights. However, the Commission cannot be empowered to adopt provisions relating to the protection of fundamental rights or the exercise thereof via delegation.

Number Annex	Title Act ⁽¹⁾	EESC comments
58	Council Regulation (EC) No 530/1999 of 9 March 1999	<p>The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
59	Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002	<p>The new Article 5b stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p>
60	Regulation (EC) No 437/2003 of the European Parliament and of the Council of 27 February 2003	<p>The new Article 3(1)(1) states that each Member State shall collect statistical data. The new Article 5 on the accuracy of statistics requires the collection of data to be based on '<u>complete returns</u>'. Finally, Article 10a on the exercise of the delegation states that this will continue for an indeterminate period of time from a date to be decided later.</p> <p><u>Comment:</u> the EESC notes that the concept of 'complete returns' can be applied to personal data as defined in Article 8 of the Charter of Fundamental Rights, and emphasises that the Court of Justice of the EU has ruled that this data cannot be subject to the delegation procedure (see Case C-355/10, Parliament v Council, and the EESC opinion in OJ C 67/104 of 6.3.2014).</p>
61	Regulation (EC) No 450/2003 of the European Parliament and of the Council of 27 February 2003	<p>The new Article 11a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
64	Regulation (EC) No 1552/2005 of the European Parliament and of the Council of 7 September 2005	<p>The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
67	Regulation (EC) No 716/2007 of the European Parliament and of the Council of 20 June 2007	<p>The new Article 9a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
69	Regulation (EC) No 1445/2007 of the European Parliament and of the Council of 11 December 2007	<p>The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>

Number Annex	Title Act ⁽¹⁾	EESC comments
70	Regulation (EC) No 177/2008 of the European Parliament and of the Council of 20 February 2008	<p>The new Article 15a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p>
73	Regulation (EC) No 452/2008 of the European Parliament and of the Council of 23 April 2008	<p>The new Article 6a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p>
74	Regulation (EC) No 453/2008 of the European Parliament and of the Council of 23 April 2008	<p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the new Article 7 states that the Commission is empowered to adopt delegated acts [...] for the establishment of a series of feasibility studies [...] undertaken by those Member States that have difficulties in providing data. <p>It wonders whether the nature of data on human health focuses on the health of job applicants, in which case this would constitute personal data that cannot be included in the delegation procedure (see Case C-355/10 cited above).</p>
89	Directive 2006/42/EC of the European Parliament and of the Council	<p>The new Article 21a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
99	Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009	<p>The new Article 31a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
104	Council Directive 97/70/EC of 11 December 1997	<p>The new Article 8a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>

Number Annex	Title Act (¹)	EESC comments
114	Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004	<p>The new Article 10a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
143	Directive 2002/46/EC of 10 June 2002	<p>The new Article 12a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that Directive 2002/46/EC harmonises the rules on food supplements in order to protect consumers from potential health risks and to ensure that the information on these products does not mislead consumers. It therefore relates to the application of Article 38 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must, therefore, be as extensive as possible.
144	Directive 2002/98/EC of the European Parliament and of the Council of 27 January 2003	<p>The new Article 27a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the directive sets standards of quality and safety for the collection of human blood and blood components for therapeutic purposes. It therefore contributes to implementing the fundamental right to health care as set out in Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must, therefore, be as extensive as possible.
147	Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003	<p>The new Article 34 stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the regulation states that 'A high level of protection of human life and health should be ensured in the pursuit of Community policies'. It therefore relates to the application of Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must be as extensive as possible.

Number Annex	Title Act (¹)	EESC comments
151	Regulation (EC) No 2160/2003 of the European Parliament and of the Council of 17 November 2003	<p>The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the regulation aims to 'ensure the detection and control of Salmonella at every stage, particularly during primary production (in this context, the breeding and raising of poultry and other livestock) and in animal feed, to reduce its prevalence and the risk to public health'. It therefore relates to the application of Article 35 of the Charter of Fundamental Rights. Scrutiny by Member States' experts and the European Parliament must be as extensive as possible.
152	Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004	<p>The new Article 28a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the directive relates to the protection of health as set out in Article 35 of the Charter of Fundamental Rights, and that it delegates to the Commission the power to adopt acts in accordance with Article 290 TFEU to supplement the directive with traceability requirements. The EESC is of the view that this delegation is too broad and that it risks affecting essential elements. It therefore appears to infringe the case-law of the Court of Justice of the EU (see Case C-355/10 cited above).
158	Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006	<p>The new Article 24a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the regulation relates to the application of Articles 35 and 38 of the Charter of Fundamental Rights and that the delegation encompasses 'measures determining the foods or categories of foods for which nutrition or health claims are to be restricted or prohibited'. The EESC believes that the terms used are liable to include essential measures which cannot be the subject of a delegation under Article 290 TFEU.

Number Annex	Title Act ⁽¹⁾	EESC comments
159	Regulation (EC) No 1925/2006 of 20 December 2006	<p>The new Article 13a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the regulation relates to the application of Articles 35 and 38 of the Charter of Fundamental Rights and that it aims to improve consumer protection by setting additional labelling rules. 3. In this regard, scrutiny by Member States' experts and the European Parliament in connection with amendments to Annexes I and II to this regulation must be as extensive as possible.
165	Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009	<p>The new Article 24a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u></p> <ol style="list-style-type: none"> 1. See box 2 of the table. 2. The EESC notes that the regulation relates to the application of Article 35 of the Charter of Fundamental Rights and that the delegation encompasses the Commission's power to adopt rules on actions in case of confirmed presence of a prohibited non-authorised substance. This delegation seems to be too broad and risks affecting essential elements. It therefore appears to infringe the case-law of the Court of Justice of the EU (see Case C-355/10 cited above).
166	Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009	<p>The new Article 27a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>
167	Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009	<p>The new Article 51a stipulates that the power to adopt delegated acts shall be conferred on the Commission for an indeterminate period of time from a given date.</p> <p><u>Comment:</u> See box 2 of the table.</p>

⁽¹⁾ For these acts, alignment to implementing acts of some provisions was already proposed in 2013.

Table 2

Overview of acts for which deletion of certain empowerments is foreseen

Number Annex	Title Act ⁽¹⁾	EESC comments
2	Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009	Article 12a OK. Against indeterminate period of time.

Number Annex	Title Act ⁽¹⁾	EESC comments
7	Council Regulation (EC) No 1257/96 of 20 June 1996	OK.
36	Council Directive 98/83/EC of 3 November 1998	Article 11a OK. Against indeterminate period of time.
54	Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009	OK. Against indeterminate period of time.
57	Council Regulation (EC) No 1165/98 of 19 May 1998	NO. The delegation is too broad and affects essential elements.
66	Regulation (EC) No 458/2007 of the European Parliament and of the Council of 25 April 2007	OK. Against indeterminate period of time.
92	Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009	OK. Against indeterminate period of time.
133	Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009	NO. The definition of infringements and of the loss of good repute falls under individual rights.
168	Decision No 70/2008/EC of the European Parliament and of the Council of 15 January 2008	OK.

⁽¹⁾ For these acts, deletion of some provisions was already proposed in 2013.

Table 3

Proposals adopted by the Commission

Field	Instrument	Reference of the Proposal	EESC comments
CLIMA	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003	COM(2015) 337	New Article 23. Too many delegations in sensitive and essential areas — review. Against indeterminate period of time.
CNECT	Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002	COM(2016) 590	New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes — review. Systems with different durations (Article 73(7) and Article 109).

Field	Instrument	Reference of the Proposal	EESC comments
CNECT	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002	COM(2016) 590	New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes. Systems with different durations (Article 73(7) and Article 109).
CNECT	Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002	COM(2016) 590	New Article 109 with reference to Articles 40, 60, 73, 102 and 108. Too many delegations in sensitive and essential areas, even in the annexes — review. Systems with different durations (Article 73(7) and Article 109).
ENER	Directive 2008/92/EC of the European Parliament and of the Council of 22 October 2008	COM(2015) 496	Article 10. Delegation OK. Against indeterminate period of time.
GROW	Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009	COM(2014) 28 final	<p>The Commission wishes to use delegated acts (about 10) in accordance with Article 290 TFEU, which amounts to reducing the practical content of the regulation.</p> <p>Some of the issues in the proposal where delegated acts are planned concern vehicle emissions and limits on these emissions. These issues — precisely because they are so important — have always been decided by the co-legislators.</p> <p>In its opinions, the EESC has repeatedly raised the issue of excessive use of delegated acts. It questions the transparency of the system, the correct use of procedures and the effectiveness of control mechanisms.</p>
GROW	Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007	COM(2016) 31 final	Article 88. Too many delegated acts touching on essential points. Against indeterminate period of time.
GROW	Directive 97/68/EC of the European Parliament and of the Council of 16 December 1997	COM(2014) 581 final	Article 55. Delegations and the period of five years OK.

Field	Instrument	Reference of the Proposal	EESC comments
GROW	Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007	COM(2014) 28 final	<p>New Article 15a. The Commission wishes to use delegated acts (about 10) in accordance with Article 290 TFEU, which amounts to reducing the practical content of the regulation.</p> <p>Some of the issues in the proposal where delegated acts are planned concern vehicle emissions and limits on these emissions. These issues — precisely because they are so important — have always been decided by the co-legislators.</p> <p>In its opinions, the EESC has repeatedly raised the issue of excessive use of delegated acts. It questions the transparency of the system, the correct use of procedures and the effectiveness of control mechanisms.</p>
ENV	Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008	COM(2015) 595	New Article 38a. Delegations OK. Against indeterminate period of time.
ENV	Council Directive 1999/31/EC of 26 April 1999	COM(2015) 594	Opposed to the delegation. New Article 16 is too vague. Against indeterminate period of time.
ENV	European Parliament and Council Directive 94/62/EC of 20 December 1994	COM(2015) 593	OK.
ENV	Council Regulation (EC) No 338/97 of 9 December 1996	COM(2012) 403	Implementing acts and delegated acts (Articles 19 and 20) OK. Against indeterminate period of time.
ESTAT	Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003	Repeal proposed by COM(2016) 551	Repeal OK.
MOVE	Directive 2006/87/EC of the European Parliament and of the Council of 12 December 2006	COM(2013) 622	NO to delegations. Concept of technical and scientific progress is too vague. Against indeterminate period of time.
MOVE	Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002	COM(2011) 828	Article 12. Delegations OK. Against indeterminate period of time.
MOVE	Council Directive 96/50/EC of 23 July 1996	COM(2016) 82 final	Delegations (Article 29) OK. Against indeterminate period of time.

Field	Instrument	Reference of the Proposal	EESC comments
MOVE	Council Directive 91/672/EEC of 16 December 1991	COM(2016) 82 final	Delegations (Article 29) OK. Against indeterminate period of time.
MOVE	Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009	COM(2016) 369	Delegations and indefinite period OK, on an exceptional basis.
MOVE	Council Directive 1999/35/EC of 29 April 1999	COM(2016) 371	Article 13. Delegations and indefinite period OK, on an exceptional basis.
MOVE	Council Directive 98/41/EC of 18 June 1998	COM(2016) 370	Article 12a. Delegations and indefinite period OK, on an exceptional basis.
SANTE	Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004	COM(2014) 557	Delegations (Article 87a) OK. Against indeterminate period of time.

Table 4

Acts for which proposals are planned

Field	Instrument	EESC comments
AGRI	Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008	No comments on any of these instruments due to the texts being unavailable.
CLIMA	Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009	
ENER	Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009	
ENER	Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009	
ENER	Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009	
ENV	Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004	
ENV	Council Directive 86/278/EEC of 12 June 1986	
ESTAT	Regulation (EC) No 1166/2008 of the European Parliament and of the Council of 19 November 2008	
ESTAT	Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003	

Brussels, 1 June 2017.

The President
of the European Economic and Social Committee
Georges DASSIS