

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 2/2022 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 805/2004 as regards the use of the regulatory procedure with scrutiny in order to adapt it to Article 290 of the Treaty on the Functioning of the European Union

Adopted by the Council on 28 June 2022

(Text with EEA relevance)

(2022/C 280/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) The Treaty of Lisbon modified the legal framework governing the powers conferred on the Commission by the legislator, introducing a distinction between powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act (delegated acts) and powers conferred on the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts).
- (2) Legislative acts adopted before the entry into force of the Treaty of Lisbon confer powers on the Commission to adopt measures under the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC ⁽²⁾.
- (3) Earlier proposals relating to the alignment of legislation referring to the regulatory procedure with scrutiny with the legal framework introduced by the Treaty of Lisbon were withdrawn ⁽³⁾ due to the stagnation of the interinstitutional negotiations.

⁽¹⁾ Position of the European Parliament of 17 April 2019 (OJ C 158, 30.4.2021, p. 832) and position of the Council at first reading of 28 June 2022. Position of the European Parliament (not yet published in the Official Journal).

⁽²⁾ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23).

⁽³⁾ OJ C 80, 7.3.2015, p. 17.

- (4) The European Parliament, the Council and the Commission subsequently agreed on a new framework for delegated acts in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁴⁾, and acknowledged the need to align all existing legislation to the legal framework introduced by the Treaty of Lisbon. In particular, they agreed on the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny. The Commission gave a commitment to prepare a proposal for that alignment by the end of 2016.
- (5) The empowerment for the Commission to amend the standard forms set out in the Annexes to Regulation (EC) No 805/2004 of the European Parliament and of the Council ⁽⁵⁾ provides for the use of the regulatory procedure with scrutiny. As that empowerment fulfils the criteria under Article 290 of the Treaty on the Functioning of the European Union (TFEU), it should be adapted to that provision.
- (6) In order to update Regulation (EC) No 805/2004, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission so that it can amend the Annexes to that Regulation in order to update the standard forms. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (7) This Regulation should not affect pending procedures in which the committee has already delivered its opinion in accordance with Article 5a of Decision 1999/468/EC before the entry into force of this Regulation.
- (8) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Regulation.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (10) Regulation (EC) No 805/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 805/2004

Regulation (EC) No 805/2004 is amended as follows:

- (1) Article 31 is replaced by the following:

'Article 31

Amendments to the Annexes

The Commission is empowered to adopt delegated acts in accordance with Article 31a to amend the Annexes, in order to update the standard forms.;

⁽⁴⁾ OJ L 123, 12.5.2016, p. 1.

⁽⁵⁾ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15).

(2) the following article is inserted:

Article 31a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 31 shall be conferred on the Commission for a period of five years from ... [date of entry into force of this amending Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 31 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (*).
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 31 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

(*) OJ L 123, 12.5.2016, p. 1.;

(3) Article 32 is deleted.

Article 2

Pending procedures

This Regulation shall not affect pending procedures in which a committee has already delivered its opinion in accordance with Article 5a of Decision 1999/468/EC.

Article 3

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ..., ...

For the European Parliament
The President

For the Council
The President
