Adapting legal acts to Articles 290 and 291 TFEU

By introducing delegated and implementing acts, the Lisbon Treaty (2007) reformed the system of conferring upon the Commission the power to adopt non-legislative measures. However, a certain category of pre-Lisbon acts, referred to as 'regulatory procedure with scrutiny' (RPS) measures, remained unaligned to the new system. Following Commission proposals of December 2016, a number of acts referring to RPS are now to be aligned with the Lisbon Treaty, while others remain to be negotiated. Having reached an agreement with the Council on 64 acts, the Parliament is expected to vote on the proposals during its April II plenary session.

Background

The Lisbon Treaty introduced an explicit distinction between delegated and implementing acts (Articles 290 and 291 respectively of the Treaty on the Functioning of the European Union (TFEU)). Each type of act serves a different purpose and has differing implications when it comes to the institutions’ prerogatives. For example, in the case of delegated acts, the European Parliament (as well as the Council) has the right of veto and may revoke the delegation, but, in the case of implementing acts, Parliament’s scrutiny rights are more restricted. Following the Lisbon Treaty coming into force, many pre-Lisbon acts were automatically aligned to the new system with the adoption of Regulation 182/2011 on the Commission’s implementing powers. However, acts containing a reference to the regulatory procedure with scrutiny (RPS) remained unaligned, and the procedure was maintained provisionally. Almost 10 years after the entry into force of the Lisbon Treaty, the alignment process remains a work in progress.

European Commission proposal

Back in 2013, the Commission submitted three proposals aimed at aligning a number of legal acts providing for the use of the RPS to the provisions of the Lisbon Treaty. Lack of progress on that package led the Commission to withdraw these proposals in 2015. The three institutions discussed the issue further during the negotiations on the 2016 Interinstitutional Agreement (IIA) on Better Law-Making. In that agreement, the institutions acknowledged the need to align all existing legislation to the legal framework introduced by the Lisbon Treaty and, in particular, the need to give high priority to the prompt alignment of all basic acts that still referred to the RPS. Keeping in line with the commitments made in the IIA, in December 2016, the Commission presented a new proposal for this alignment (the 'horizontal' proposal, covering some 168 acts) and a separate proposal concerning three acts with RPS measures in the area of justice.

European Parliament position

Generally, the Parliament’s long-standing position has been that most RPS measures should fall under the delegated acts regime. In January 2018, the Parliament’s Committee on Legal Affairs (JURI) adopted reports on the above proposals and decided to enter into interinstitutional negotiations with the Council. In February 2019, the institutions reached a provisional agreement and the JURI committee approved it on 4 March 2019. The agreement provides for RPS measures from 64 basic acts from the horizontal proposal to be aligned to delegated acts. However, no agreement could yet be reached on the other 104 acts covered by that proposal, nor with regard to acts in the area of justice. Negotiations on these acts will continue during the new legislative term.

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