



**2015/0027(COD)**

11.11.2015

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom (recast)  
(COM(2015)0048 – C8-0039/2015 – 2015/0027(COD))

Committee on International Trade

Rapporteur: David Martin

(Recast – Rule 104 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom (recast) (COM(2015)0048 – C8-0039/2015 – 2015/0027(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0048),
  - having regard to Article 294(2) and Articles 64, 207(2) and 352 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0039/2015),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of ...<sup>1</sup>,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>2</sup>,
  - having regard to the letter of ... from the Committee on Legal Affairs to the Committee on International Trade in accordance with Rule 104(3) of its Rules of Procedure,
  - having regard to Rules 104, 59 and 39 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinion of the Committee on Legal Affairs (A8-0000/2015),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

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<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> OJ C 77, 28.3.2002, p. 1.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## **Amendment 1**

### **Proposal for a regulation**

#### **Citation 1**

##### *Text proposed by the Commission*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 64, Article 207(2) **and Article 352** thereof,

##### *Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 64(2) **and** Article 207(2) thereof,

Or. en

##### *Justification*

*Amendment follows the opinion on the legal basis of the Committee on Legal Affairs adopted pursuant to Rule 39 of the Rules of Procedure.*

## **Amendment 2**

### **Proposal for a regulation**

#### **Recital 12**

##### *Text proposed by the Commission*

**(12) For the adoption of certain provisions of this Regulation the TFEU does not provide powers other than those of Article 352,**

##### *Amendment*

**deleted**

Or. en

## EXPLANATORY STATEMENT

The Commission proposal concerns recast of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom<sup>1</sup>. This regulation enables the Union to counteract the effects of extra-territorial legislation and rules adopted by third countries which can affect the interests of the Union, such as the Cuban Liberty and Democratic Solidarity Act of 1996 and the Iran and Libya Sanctions Act of 1996.

The purpose of the recast technique is to consolidate a piece of legislation that has been amended several times into a single legislative act, thereby making it more accessible and reader friendly, whilst at the same time making substantive modifications to the text. Since its adoption Regulation 2271/96 has been amended twice, including the post-Lisbon alignment exercise to the provisions of Article 290 and 291 TFEU under the "Trade Omnibus I" (Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures<sup>2</sup>).

When adopting the "Trade Omnibus I" the Commission made a statement: "[...] *In order to improve the legibility of the acts concerned, the Commission will propose a codification of the acts as expeditiously as possible once those two Regulations are adopted, and at the latest by 1 June 2014.*" The current proposal follows up on this Commission commitment. The recast technique has been used instead of codification because the Commission proposes two substantive amendments to Article 5 and 12 of Regulation 2271/96. These amendments empower the Commission to adopt delegated acts establishing the criteria for the application of the second paragraph of Article 5 which concerns situations where persons may be authorised to comply fully or partially with third country laws producing extraterritorial effects where the non-compliance would seriously damage their or the Union's interests. It should be noted that until now such criteria have never been adopted.

The rapporteur considers that this Commission proposal respects Article 290 and 291 TFEU on the delimitation between delegated and implementing acts and recommends that it be followed. This is particularly supported by the latest case-law of the EU Court of Justice which recognises the important margin of discretion that the EU legislature has in making a choice between the recourse to delegated or implementing acts.

The rapporteur proposes, however, one substantive amendment to the un-amended part of the proposal, namely, regarding the legal basis. The Commission has proposed Articles 64, 207(2) and 352 TFEU as the legal basis which cover the movement of capital to and from third countries, the common commercial policy and the so-called "flexibility clause" respectively and which were also the legal basis for Regulation 2271/96. Following a request by the Committee on International Trade, this proposed legal basis was examined by the Committee of Legal Affairs which concluded on 18 June 2015 that Articles 64(2) and 207(2) TFEU should be the appropriate legal basis and Article 352 TFEU should be excluded. Therefore an amendment has been proposed in this respect.

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<sup>1</sup> OJ L 309, 29.11.1996, p. 1–6.

<sup>2</sup> OJ L 18, 21.1.2014, p. 1–51.

## **ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS**

Note: The content of this annex is not yet available and will be added at a later stage.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 11 November 2015

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom (recast)  
COM(2015)0048 of 5.11.2015 – 2015/0027(COD)**

Note: The content of this annex is not yet available and will be added at a later stage.