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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN

PARLIAMENT AND THE COUNCIL

Proposal for an Interinstitutional Agreement on Better Regulation

Proposal for an

**INTERINSTITUTIONAL AGREEMENT
ON BETTER REGULATION**

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION
AND THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular to Article 295 thereof,

Whereas:

- (1) In exercising the powers and in compliance with the procedures laid down in the treaties, the three institutions recall the importance which they attach to the Community method, transparency of the legislative process, democratic legitimacy, subsidiarity, proportionality and legal certainty as well as simplicity, clarity and consistency in the drafting of laws.
- (2) The three institutions recognise their joint responsibility in delivering better regulation, ensuring that EU legislation focuses on areas where it has most value-added, is as efficient and effective as possible in delivering the common policy objectives sought, is as simple and as clear as possible, implies the least possible burdens for stakeholders, and is designed with a view to facilitating its transposition and practical application and to strengthening the competitiveness and sustainability of the EU economy.
- (3) The three institutions consider that the use of stakeholder consultation, ex-post evaluation of existing legislation and impact assessments of new initiatives will help achieve the objective of better regulation.
- (4) The three institutions recall the EU's obligation to legislate only where and to the extent it is necessary, in accordance with the Protocol on the application of the principles of subsidiarity and proportionality.
- (5) The three institutions affirm that the goals of simplifying EU legislation and reducing regulatory burden should be pursued without prejudice to the achievement of the policy objectives of the EU as specified in the treaties or the integrity of the internal market.
- (6) The present Agreement complements the following existing Agreements and declarations on better regulation, to which the three institutions remain fully committed:
 - Interinstitutional Agreement of 20 December 1994 Accelerated working method for official codification of legislative texts¹;
 - Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting Community legislation²;

¹ *OJ C 102, 4.4.1996*

- Interinstitutional Agreement on a more structured use of the recasting technique for legal acts³;
 - Joint Declaration on practical arrangements for the co-decision procedure⁴;
 - Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents⁵,
- (7) This Agreement is without prejudice to the Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission⁶.

HAVE AGREED AS FOLLOWS:

I. Common commitments and objectives

1. The European Parliament, the Council of the European Union and the Commission hereby agree to pursue better regulation by means of a series of initiatives and procedures set out in this Interinstitutional Agreement which replaces the 2003 Interinstitutional Agreement on Better Law-Making and the 2005 Interinstitutional Common Approach to Impact Assessment.

II. Programming and planning

2. The three institutions agree to reinforce the EU's annual and multiannual programming in line with Article 17(1) TEU which provides that the Commission is to initiate annual and multiannual programming.
3. The Commission will exchange views with the European Parliament and the Council ahead of the adoption of its annual Work Programme, based on a written contribution from the President of the Commission setting out the main elements guiding the preparation of the Commission Work Programme. To facilitate longer-term planning, the three institutions will exchange views on multiannual priorities on the basis of the Political Guidelines of the President of the Commission.
4. The Commission will give serious consideration to the requests made by the European Parliament or the Council for the submission of legislative proposals. If the Commission does not submit a proposal, it will inform the institution concerned of the reasons.
5. On the basis of the Commission Work Programme, the three institutions will agree annually a list of proposals, including proposals to update or simplify existing legislation and reduce the regulatory burden, which will receive priority treatment in the legislative process.

² *OJ C 73 17.3.1999*

³ *OJ C 77 28.3.2002*

⁴ *OJ C 145 30.6.2007*

⁵ *OJ C 369 17.12.2011*

⁶ *OJ L 304/47 20.11.2010*

6. The Commission will provide sufficient detail on each point in its Work Programme and provide regular updates on planning throughout the year. The Commission undertakes to report to the Conference of Presidents and the General Affairs Council regularly on implementation of the Commission Work Programme for the year in question.

III. Application of Better Regulation tools

Impact assessment

7. The three institutions agree on the positive contribution of impact assessment in improving the quality of EU legislation. They consider that an impact assessment should address the existence, scale and consequences of a problem and whether EU action is needed, and map out alternative solutions assessing the economic, environmental and social impacts, using both qualitative and quantitative analysis. Impact assessments should be based on best available evidence and be proportionate with regard to their scope and focus.
8. The Commission will carry out impact assessments of its initiatives expected to have significant economic, environmental or social impacts. In its own impact assessment process it will consult stakeholders in line with the Commission's minimum standards for consultation⁷. The Commission's Regulatory Scrutiny Board will carry out a quality check of its impact assessments. The final results of the assessments will be made available to the European Parliament, the Council and national parliaments and will be made public along with the opinion(s) of the Regulatory Scrutiny Board at the time of adoption of the Commission proposal.
9. The European Parliament and the Council will start their consideration of Commission proposals by examining the Commission's impact assessment.
10. The European Parliament and the Council will carry out impact assessments prior to the adoption at any stage of the legislative process of any substantive amendment to the Commission proposal. As a general rule, the Commission's impact assessment will be the starting point for that further impact assessment work. The Commission may, on its own initiative or at the invitation of the European Parliament or the Council, decide to assist the European Parliament and the Council in their impact assessment work by explaining its assessment and sharing the data used, or in duly justified cases complementing its original impact assessment.
11. Each institution is responsible for determining how to organise its impact assessment work, including internal organisational resources and quality control. Impact assessment aims to inform decision making of each institution, in full respect of each institution's roles and responsibilities.
12. The European Parliament, the Council and the Commission agree that legislation should be comprehensible and clear, allow parties to easily understand their rights and obligations, include adequate reporting, monitoring and evaluation requirements, avoid disproportionate costs, and be practical to implement. Each institution has the right to call for an independent panel to carry out an assessment of these factors following any substantive amendment to the Commission proposal. Such an assessment should be finalized and made public within a reasonable amount

⁷ COM(2002) 704 final

of time and take into account any existing impact assessment work. Each institution would appoint a member to the panel.

13. Through their respective impact assessment work and collaboration, the three institutions aim to ensure that information on the impacts of the final piece of legislation will be made available, and can be used as a basis for subsequent evaluation work.

Stakeholder consultation and feed-back

14. Stakeholder consultation is an integral component of the approach to better regulation. The Commission will conduct consultations in accordance with its established minimum standards. This will include public internet-based consultations to elicit views and relevant information from interested parties. The results of each consultation will be made public.
15. Stakeholders will be given the opportunity to voice their opinions following the adoption by the Commission of its proposal and the related impact assessment during an eight week period, in parallel to the consultation established for national parliaments to submit their opinions on issues related to the principle of subsidiarity. The collected views will be presented to the legislators at the start of the legislative process.

Ex-post evaluation

16. Commission evaluation programming will respect the timing for reports and reviews set out in EU regulation. It will inform the European Parliament and the Council of its multiannual planning.
17. The three institutions confirm the importance of the greatest possible consistency and coherence in the organisation of work evaluating the performance of EU measures, including related public and stakeholder consultations.
18. The three institutions agree that proposals for significant amendment or development of EU legislation should be rooted in strong prior evaluation of the efficiency, effectiveness, relevance, coherence and added value of the existing law and policy. Such evaluations should provide the basis for impact assessment of options for further action. To support these processes, the European Parliament, the Council and the Commission agree to establish monitoring, evaluation and reporting arrangements in legislative proposals, including where appropriate measurable indicators as a basis to collect evidence of the outcomes of legislation on the ground.
19. The European Parliament, the Council and the Commission agree that any significant area of EU legislation should be subject to evaluation in principle every 5 years from the commencement of its application. Therefore, the three institutions commit to systematically consider the use of review clauses. In cases where legislation should only apply for a fixed period of time, sunset clauses will apply.

IV. Legislative instruments

20. The Commission will explain and justify to the European Parliament and to the Council its choice of legislative instrument in the explanatory memoranda attached to its proposals. The Commission will also explain in its explanatory memoranda how the measures proposed are justified in the light of the principles of subsidiarity and proportionality and are compatible with the need to respect fundamental rights,

and will give an account of the scope and the results of stakeholder consultation, ex-post evaluation and the impact assessment that it has undertaken.

V. Delegated and implementing acts

21. The three institutions underline the important role played by delegated and implementing acts in legislation. They are an integral tool of better regulation, contributing to simple and up to date legislation and its efficient and speedy implementation.
22. The three institutions have agreed on a “Common Understanding on Delegated Acts” (of xx/xx/2015). Through that Common Understanding and with a view to enhancing transparency and consultation, the Commission commits to gathering all necessary expertise prior to the adoption of delegated acts, including through the consultation of experts from the Member States and through public consultations. Moreover and whenever broader expertise is needed in the early preparation of draft implementing acts, the Commission will make use of expert groups, consult targeted stakeholders and/or carry out public consultations.
23. The three institutions agree to refrain from adding procedural requirements, sui generis procedures or additional roles for the committees in the legislative process other than those set out in Regulation (EU) No 182/2011 of the European Parliament and of the Council⁸ which lays down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

VI. Coordination of the legislative process

24. The three institutions agree to ensure that coordination of their legislative activity is improved.
25. In line with the Joint Declaration of 13 June 2007 on practical arrangements for the co-decision procedure, the three institutions agree to improve the coordination of their preparatory and legislative work in the context of the ordinary legislative procedure and to publicise it in appropriate fashion.
26. In particular, the European Parliament and the Council will seek to establish with the Commission, for each legislative proposal, an indicative timetable for the various stages leading to the final adoption of that proposal. This will include the appropriate use of second reading agreements. Where appropriate, the three institutions may agree to coordinate efforts to accelerate, for each of the institution's internal preparatory steps and during the interinstitutional negotiations, the legislative adoption process.
27. The three institutions will keep each other regularly informed about their work throughout the legislative process and about ongoing negotiations among them. This information will be based on appropriate procedures, including dialogue between the European Parliament, in committee and plenary, and the Council Presidency and the Commission.

⁸ OJ L 55, 28.2.2011, p. 13.

28. The three institutions will ensure an appropriate degree of transparency of the legislative process, including of trilateral negotiations between the three institutions.
29. The three institutions will, in the interests of efficiency, ensure as far as possible a better synchronisation of the treatment of common dossiers by the preparatory bodies of each branch of the legislative authority.

VII. Implementation and application of EU law

30. The three institutions call upon the Member States to swiftly and correctly apply EU law. They will recommend in appropriate cases the use of common national commencement dates, on a limited number of dates in the year. They will insert into directives a time limit for transposition which should be as short as possible, and generally not exceed two years.
31. The three institutions call upon the Member States, when they adopt measures to transpose or implement EU legislation or to implement the EU budget, to make a clear distinction in their public communication on the national measures and, where possible, in the text of the said measures, between those aspects that are the necessary consequence of EU legislation or budget implementation rules, and any additional element, normative and/or procedural, which they decide to add at national, regional or local level. Before adopting such additional rules or procedures, Member States should commit to assess their impact, in particular as regards the administrative burden on businesses, administrations and citizens, and provide a motivation which addresses specifically these additional elements. Directives may contain an invitation to the Member States to distinguish, in their transposition notifications, between rules, guidelines and procedures required by the transposition and additional rules, guidelines and procedures.
32. The Commission will report annually to the European Parliament and Council on the state of play of the application of EU law.
33. The three institutions recall and stress the importance of the two Joint Political Declarations on explanatory documents of 28 September and 27 October 2011 which accompany the notification of transposition measures.

VIII. Simplification

34. The three institutions agree to cooperate continuously to update and simplify legislation and to reduce regulatory burden to business, administrations and citizens. They will take the Commission's Regulatory Fitness and Performance (REFIT) Programme, or any other future programme with a similar objective, as a basis for this task. The Commission will identify areas of current law for simplification and burden reduction and make proposals to that effect, inter alia through the repeal of obsolete acts, and by recasting or replacing acts where necessary. The potential for regulatory burden reduction will be quantified wherever possible as part of REFIT, on the basis of input from the Member States and stakeholders. Those proposals, as well as pending proposals to be withdrawn, will be presented in the Commission Work Programme.

IX. Implementation and monitoring of the Agreement

35. The three institutions will take the necessary steps to ensure that their staff have the means and resources required for the proper implementation of the provisions of this Agreement.

36. The three institutions will monitor the implementation of this Agreement regularly, including through annual discussions in the Conference of Presidents and the General Affairs Council.

Common Understanding on Delegated Acts

I. Scope and general principles

1. This Common Understanding builds upon, and replaces, the 2011 Common Understanding and streamlines the practice established thereafter by the European Parliament and the Council. It sets out the practical arrangements and agreed clarifications and preferences applicable to delegations of legislative power under Article 290 of the Treaty on the Functioning of the European Union (TFEU), which requires that the objectives, content, scope and duration of a delegation are expressly defined in each legislative act making the delegation (hereinafter "the basic act").
2. In exercising their powers and in compliance with the procedures laid down in the TFEU, the three institutions shall cooperate throughout the procedure with a view to a smooth exercise of delegated power and an effective control of this power by the European Parliament and the Council. To this effect, appropriate contacts at administrative level shall be maintained.
3. The institutions concerned, depending on the procedure for the adoption of the basic act, undertake to refer as far as possible to the standard clauses annexed to this Common Understanding when proposing or making delegations of power under Article 290 TFEU.

II. Criteria for the application of Article 290 TFEU versus Article 291 TFEU

4. The following criteria shall be used in deciding whether an empowerment shall be given under Article 290 TFEU for the adoption of a delegated act or pursuant to Article 291(2) TFEU for the adoption of an implementing act. In each case the nature, content and context of the envisaged measure must be taken into account. These criteria should not be considered as exhaustive.
5. Only the power to adopt legally binding acts may be conferred under Articles 290 and 291 TFEU.
6. A legislative act may only confer on the Commission the power to adopt non-legislative acts of general application. Measures of individual application may not be adopted by means of delegated acts, but can be adopted by implementing acts. An act is of general application if it applies to objectively determined situations and produces legal effects with respect to certain categories of persons or generally.
7. Legislative acts can only be amended by means of legislative or delegated acts. This includes amendments of annexes to the legislative act, as such annexes are an integral part of the legislative act. Annexes are not to be added to or deleted with the aim of triggering or avoiding the use of delegated acts; if the legislator considers that a text should be an integral part of the basic act, it may decide to include that text in an annex.
8. The essential elements of legislation must be determined by the legislator and cannot be the subject of a delegated or implementing act. Measures designed to lay down additional substantive rules and criteria to be met – the fulfilment of which must be ensured by the Member States or other persons or entities directly

concerned by the legislation – will, by definition, alter the content of the legislation and add new rules of general application. Consequently, the creation of such further rules or criteria may be accomplished only by means of a delegated act.

9. By contrast, the implementation of the rules or criteria already established in the basic act, without modifying the substance of the rights or obligations stemming from it can take place through implementing acts. In particular authorisations in cases in which the Commission decision is fully based on criteria contained in the basic act are to be considered implementing acts.
10. Measures establishing a procedure (i.e. a way of performing or giving effect to something) can be laid down either in a delegated or in an implementing act (or even be an essential element of the basic act), depending on their content, context and the nature of the provisions set out in the basic act. Measures establishing elements of procedures involving further non-essential policy choices in order to supplement the legislative framework laid down in the basic act should in general be laid down in delegated acts. Measures establishing details of procedures in order to ensure uniform conditions for the implementation of an obligation laid down in the basic act should in general be implementing measures.
11. As with procedures, an empowerment to determine methods (i.e. ways of doing something in particular in a regular and systematic way) or methodology (i.e. rules to determine the methods) can provide for delegated or implementing acts depending on the content and the context.
12. A measure that determines the types of information to be provided under the basic act (i.e. the exact content of information required by the basic act) generally supplements the obligation to provide information and should be carried out by means of a delegated act.
13. A measure determining arrangements for the provision of information (i.e. the format) does not generally add to the obligation to provide information. Instead, such a measure enables uniform implementation. This should therefore be carried out, as a general rule, by means of an implementing act.
14. As regards financial instruments, annual and multiannual work programmes should be adopted by means of implementing acts.

III. Consultations in the preparation and drawing-up of delegated acts

15. The Commission will systematically consult experts designated by all Member States in the preparation of draft delegated acts. Draft delegated acts will be prepared by the Commission services in view of these consultations. They will be shared with the Member State experts. These consultations will take place via existing expert groups, or via ad hoc meetings with representatives of all Member States. The Commission will send invitations to such meetings via the Permanent Representations. It is for the Member States to decide on the experts to participate. Experts will be provided with the relevant documents in sufficient time to prepare.
16. At the end of any meeting with Member State experts or in the follow-up to such meetings, the Commission services will explain the conclusions they have drawn from the discussions and how they intend to proceed. These conclusions will be recorded in the minutes of the meeting.

17. The preparation and drawing-up of delegated acts may also include consultations with stakeholders. In case the draft changes after such consultations in any way Member State experts will be given the opportunity to react to the final version of the draft delegated act, where appropriate in written form.
18. A summary of the consultation process will be included in the explanatory memorandum of the delegated act.
19. The Commission will make indicative lists of planned delegated acts available at regular intervals.
20. The Commission, when preparing and drawing up delegated acts, will ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
21. In line with point 15 of the Framework Agreement on relations between the European Parliament and the European Commission, if so requested by the European Parliament the Commission may also invite European Parliament's experts to expert group meetings. To facilitate this process the Chairperson of the competent parliamentary committee can request the Commission to provide the planning of meetings of expert groups scheduled for the following months, on the basis of which the Chairperson can then ask, through a single letter, that European Parliament's experts be allowed to attend a number of forthcoming meetings.
22. The European Parliament and the Council shall indicate to the Commission their respective functional mailboxes to be used for the transmission of documents relating to these consultations.

IV. Arrangements for the transmission of documents and computation of time periods

23. By way of an appropriate mechanism, the Commission shall officially transmit the delegated acts to the European Parliament and the Council. Classified documents shall be processed in accordance with internal administrative procedures drawn up by each institution with a view to providing all the requisite guarantees.
24. In order to ensure that the European Parliament and the Council are able to exercise the rights provided for in Article 290 TFEU within the time limits laid down in each basic act, the Commission shall not transmit any delegated acts during the following periods:
 - From 22 December until 6 January.
 - From 15 July until 20 August.

These periods shall only apply when the period of objection is based on paragraph 28.

These periods shall not apply for delegated acts adopted under the urgency procedure, as set out in part VII of this Common Understanding. In the event that a delegated act is adopted under the urgency procedure during these periods, the time limit for objection provided for in the basic act shall start to run only when this period is finished.

The three institutions shall agree by October of the year preceding the elections of the European Parliament on an arrangement for the notification of delegated acts during the election recess.

25. The period for expressing objections shall start when all official language versions of the delegated act have been received by the European Parliament and the Council.

V. Duration of the delegation

26. The basic act may empower the Commission to adopt delegated acts for an undetermined or determined period of time.
27. Where a determined period of time is provided, the basic act should in principle provide for the delegation of power to be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes the extension not later than three months before the end of each period. The Commission shall draw up a report in respect of the delegated power not later than nine months before the end of each period. This paragraph does not affect the European Parliament or the Council's right of revocation.

VI. Periods for objection by the European Parliament and Council

28. Without prejudice to the urgency procedure, the period for objection defined on a case-by-case basis in each basic act should in principle be of two months, and not less than that, extendable by two months at the initiative of the European Parliament or the Council.
29. However, the delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission that they will not object.

VII. Urgency procedure

30. An urgency procedure should be reserved for exceptional cases, such as security and safety matters, the protection of health and safety, or external relations, including humanitarian crises. The European Parliament and the Council should justify the choice of an urgency procedure in the basic act. The basic act shall specify the cases in which the urgency procedure shall be used.
31. The Commission undertakes to keep the European Parliament and the Council fully informed about the possibility of a delegated act being adopted under the urgency procedure. As soon as the Commission services foresee such a possibility, they shall informally forewarn the secretariats of the European Parliament and the Council via the functional mailboxes mentioned in point 22.
32. A delegated act adopted under the urgency procedure shall enter into force without delay and apply as long as no objection is expressed within the period provided for in the basic act. If an objection is expressed, the Commission shall repeal the act without delay following the notification by the European Parliament or the Council of the decision to object.
33. When notifying a delegated act under the urgency procedure to European Parliament and the Council, the Commission shall state the reasons for its use.

VIII. Publication in the Official Journal

34. Delegated acts shall be published in the L series of the *Official Journal of the European Union* only after the expiry of the period for objection, with the

exception of paragraph 29 above. Delegated acts adopted under the urgency procedure shall be published without delay.

35. Without prejudice to Article 297 TFEU, decisions by the European Parliament or Council to revoke a delegation, to object to a delegated act adopted under the urgency procedure or to oppose the tacit renewal of a delegation of power shall also be published in the L series of the *Official Journal of the European Union*. A decision to revoke shall enter into force the day following its publication in the *Official Journal of the European Union*.
36. The Commission shall also publish in the *Official Journal of the European Union* the decisions repealing delegated acts adopted under the urgency procedure.

IX. Mutual exchange of information, in particular in the event of a revocation

37. When exercising their rights in applying the conditions laid down in the basic act, the European Parliament and the Council will inform each other and the Commission.
38. When either the European Parliament or the Council initiates a procedure which could lead to the revocation of a delegation, it will inform the other two institutions at the latest one month before taking the decision to revoke.

Recital:

In order to [objective], the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of [content and scope]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Article(s) delegating power

The Commission shall [be empowered to] adopt delegated acts in accordance with Article a concerning [content and scope].

Supplementary paragraph to be added where urgency procedure applies:

Where, in the case of [content and scope], imperative grounds of urgency so require, the procedure provided for in Article b shall apply to delegated acts adopted pursuant to this Article.

Article a

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. [duration]

Option 1:

The delegation of power referred to in Article[s]... shall be conferred on the Commission for an indeterminate period of time from the (*)

Option 2:

The delegation of power referred to in Article[s]... shall be conferred on the Commission for a period of X years from the (*). The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the X-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.

Option 3:

The delegation of power referred to in Article[s]... shall be conferred on the Commission for a period of X years from the (*)

(*) date of entry into force of the basic legislative act or from any other date set by the legislator.

3. The delegation of power referred to in Article[s]... may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article[s] ... shall enter into force only if no objection has been expressed either by the European Parliament or 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 the Council.

Supplementary article to be added where urgency procedure applies:

Article b

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article a(5). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or the Council.