

# Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2016/0399(COD)	Procedure completed	
Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)			
<b>Subject</b> 7.90 Justice and home affairs 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology 8.50.02 Legislative simplification, coordination, codification			
Key players			
European Parliament	Committee responsible <b>JURI</b> Legal Affairs	Rapporteur  POSPÍŠIL Jiří	Appointed 18/03/2021
		Shadow rapporteur  VOLLATH Bettina	
		 DURAND Pascal	
		 TOUSSAINT Marie	
		 DZHAMBASZKI Angel	
		 MAUREL Emmanuel	
Former committee responsible			
Council of the European Union European Commission	JURI Legal Affairs	 SZÁJER József	12/01/2017
Council of the European Union European Commission			
	Commission DG <u>Justice and Consumers</u>	Commissioner JOUROVÁ Věra	
Key events			
14/12/2016	Legislative proposal published	<u>COM(2016)0798</u>	Summary
16/03/2017	Committee referral announced in Parliament, 1st reading		

24/01/2018	Vote in committee, 1st reading		
24/01/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
30/01/2018	Committee report tabled for plenary, 1st reading	<a href="#">A8-0012/2018</a>	Summary
05/02/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
07/02/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)		
17/04/2019	Results of vote in Parliament		
17/04/2019	Decision by Parliament, 1st reading	<a href="#">T8-0411/2019</a>	Summary
09/01/2020	Committee decision to open interinstitutional negotiations after 1st reading in Parliament		
13/01/2020	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
02/06/2022	Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations		
14/07/2022	Council position published	09279/1/2022	Summary
15/09/2022	Committee referral announced in Parliament, 2nd reading		
03/10/2022	Vote in committee, 2nd reading		
07/10/2022	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A9-0237/2022</a>	Summary
18/10/2022	Decision by Parliament, 2nd reading	<a href="#">T9-0358/2022</a>	Summary
19/10/2022	Final act signed		
25/10/2022	Final act published in Official Journal		

#### Technical information

Procedure reference	2016/0399(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 081-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/9/02172

#### Documentation gateway

Legislative proposal	<a href="#">COM(2016)0798</a>	14/12/2016	EC	Summary
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Committee draft report	<a href="#">PE613.398</a>	13/11/2017	EP	
Amendments tabled in committee	<a href="#">PE615.474</a>	18/12/2017	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0012/2018</a>	30/01/2018	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T8-0411/2019</a>	17/04/2019	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2019)440</a>	08/08/2019	EC	
Commission communication on Council's position	<a href="#">COM(2022)0339</a>	11/07/2022	EC	
Council position	09279/2022	14/07/2022	CSL	
Committee draft report	<a href="#">PE736.604</a>	21/09/2022	EP	
Committee recommendation tabled for plenary, 2nd reading	<a href="#">A9-0237/2022</a>	07/10/2022	EP	Summary
Text adopted by Parliament, 2nd reading	<a href="#">T9-0358/2022</a>	18/10/2022	EP	Summary
Draft final act	00055/2022/LEX	19/10/2022	CSL	

### Final act

[Regulation 2022/2040](#)  
[OJ L 275 25.10.2022, p. 0030](#)

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

PURPOSE: to adapt a number of legal acts in the area of justice to the Treaty on the Functioning of the European Union (Article 290, powers delegated to the Commission).

LEGISLATIVE ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND : the Treaty of Lisbon introduced a distinction between the following:

- 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), as referred to in Article 290 of the Treaty on the Functioning of the EU; and
- powers conferred upon the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts) as referred to in Article 291 of the Treaty.

The measures which may be covered by delegations of powers correspond in principle to those covered by the regulatory procedure with scrutiny established by Article 5a of Council Decision 1999/468/EC. This procedure still appears in the basic acts covered by this proposal and continues to apply in those acts until they are formally amended and adapted to the Lisbon Treaty.

The Commission made three horizontal alignment legislative proposals in 2013 ([Omnibus I](#), [Omnibus II](#) and [Omnibus III](#)). The European Parliament adopted its [legislative resolutions](#) on 25 February 2014, broadly agreeing with the proposals by the Commission. The Council, however, did not support the Commission proposals, due to the absence of stronger guarantees that Member State experts would be systematically consulted in the preparation of delegated acts.

The European Parliament, the Council and the Commission subsequently agreed on a new framework for delegated acts in the [Interinstitutional Agreement on Better Law-Making](#) of 13 April 2016 (IAA) and acknowledged the need to align all existing legislation to the legal framework introduced by the Lisbon Treaty. In particular, they agreed on the need to give high priority to the prompt alignment of all basic acts that still refer to the regulatory procedure with scrutiny.

CONTENT: the proposal aligns three basic acts to Article 290 of the Treaty on the Functioning of the EU, these acts being:

- Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;
- Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims;
- Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation No 1348/2000.

The alignment clauses reflect the following points in the IAA:

- they now provide for a clear commitment to a systematic consultation of experts from the Member States in the preparation of delegated acts. This fulfils a key condition for a successful second attempt to align the old regulatory procedure with scrutiny provisions to the Lisbon Treaty. This commitment is now explicitly included in the new standard clauses;
- they recognise the important role of early cooperation and exchange of views with the European Parliament in relation to delegated acts. The European Parliament must receive all documents at the same time as Member State experts, including the draft delegated acts, and the alignment clauses provide for systematic access of European Parliament experts to the meetings of Commission expert groups preparing delegated acts.

Accordingly, to each basic act a number of amendments are made, and references to the regulatory procedure with scrutiny are deleted.

As regards the duration of the empowerment the Commission proposes empowerments with an indeterminate duration, since the legislator has the possibility of revoking an empowerment in all cases and at any time.

Acts on which individual legislative proposals have been made in the meantime are not included in the proposal. This concerns two acts in the area of justice:

- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of creating a European order for payment procedure;
- Regulation (EC) No. 861/2007 establishing a European small claims procedure. These have been aligned in the meantime been aligned by Regulation (EU) 2015/2421.

This proposal is linked to [the proposal](#) on adapting a number of legal acts to Article 290 and 291 of the TFEU.

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

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The Committee on Legal Affairs adopted the report by József SZÁJER (EPP, HU) on the proposal for a regulation of the European Parliament and of the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the Functioning of the European Union.

Members welcomed the Commissions proposal to adapt three basic acts where the regulatory procedure with scrutiny (RPS) applies in order to make them into delegated acts.

Building on Parliaments [resolution of 25 February 2014](#), the report proposed to amend the Commission proposal to focus on the duration of the delegation of powers (which shall not exceed five years and shall be accompanied by a reporting obligation on the Commission).

In addition, the deadline to object to a delegated act shall be three months (and not two months as proposed by the Commission).

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

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The European Parliament adopted by 564 votes to 24, with 22 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council adapting a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny to Article 290 of the Treaty on the Functioning of the European Union.

The Treaty of Lisbon substantially 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 the powers conferred on the Commission to adopt acts to ensure uniform conditions for implementing legally binding Union acts (implementing acts).

The proposed Regulation aims to adapt a series of basic instruments where the regulatory procedure with scrutiny (RPS) applies to make them evolve into delegated acts.

The European Parliaments position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal to clarify that the power to adopt delegated acts would be conferred on the Commission for a period of five years.

The Commission shall prepare a report on the delegation of authority no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of the same duration, unless the European Parliament or the Council objects to such an extension no later than three months before the end of each period.

In a recital, Parliament pointed out that bundling and presenting empowerments that are not closely linked with each other within a single delegated act of the Commission impedes the exercise of Parliament's right of scrutiny, as it is forced to simply accept or refuse the entire delegated act, which leaves no room to express an opinion on each empowerment individually.

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

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The Council adopted its position 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.

The initial proposal aims at adapting three EU acts in the field of justice to Article 290 of the Treaty on the Functioning of the European Union, which still refer to the regulatory procedure with scrutiny.

The Council's position concerns only the alignment of Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims. The other two acts, Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters and Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, have in the meantime been repealed and are therefore not included in the final agreed text.

The only provision in Regulation (EC) No 805/2004 providing for the use of the regulatory procedure with scrutiny is amended to provide for the use of delegated acts to amend the annexes to update the standard forms.

The power to adopt delegated acts is conferred on the Commission for renewable periods of five years, with the obligation for the Commission to report, nine months before the expiry of each period, on how it has used the empowerment. The delegation of power referred to may be revoked at any time by the European Parliament or the Council.

An adopted delegated act will 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 will be extended by two months at the initiative of the European Parliament or of the Council. The Council's position clarifies that Ireland has notified its wish to participate in the adoption and application of the Regulation. Denmark is not taking part in the adoption of the Regulation and is not bound by it or subject to its application.

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

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The Committee on Legal Affairs adopted the recommendation for second reading contained in the report by Jiří POSPÍŠIL (EPP, CZ), on the Council position 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.

The committee responsible recommended that the plenary approve the Council's position at first reading, without amendment.

The Council position concerns the alignment of Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims. The only provision of Regulation (EC) No 805/2004 that provides for the use of the regulatory procedure with scrutiny is amended to provide for the use of delegated acts to amend the annexes in order to update the standard forms.

Parliament's prerogatives have been fully preserved through the replacement of the former regulatory procedure with scrutiny with a delegated act under Article 290 of the Treaty on the Functioning of the European Union.

## Adapting a number of legal acts in the area of justice to Article 290 TFEU (Commission delegated acts)

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The European Parliament adopted a legislative resolution approving the Council's position 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.

The Council's position aims at adapting Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims to Article 290 of the Treaty on the Functioning of the European Union. The only provision of Regulation (EC) No 805/2004 that provides for the use of the regulatory procedure with scrutiny is amended to provide for the use of delegated acts.

The power to adopt delegated acts is conferred on the Commission for renewable periods of five years, with the obligation for the Commission to report, nine months before the expiry of each period, on the manner in which it has made use of this power.

An adopted delegated act will enter into force only if the European Parliament or the Council has not objected within two months of its notification 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 of their intention not to object. This period will be extended by two months at the initiative of the European Parliament or the Council.

Ireland has notified its wish to participate in the adoption and application of the Regulation. Denmark is not taking part in the adoption of the Regulation and is not bound by it or subject to its application.