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ANNEXES 1 to 2

ANNEXES

to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Proposal for an Interinstitutional Agreement on Better Regulation

Annex 1

Common Understanding between the European Parliament, the Council and the Commission 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). This article requires that the objectives, content, scope and duration of a delegation are expressly defined in each legislative act that includes such a 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 legislative 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. When proposing or making delegations of power under Article 290 TFEU, 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.

II. CRITERIA FOR THE APPLICATION OF ARTICLE 290 TFEU VERSUS ARTICLE 291 TFEU

4. The criteria set out in the following points shall be used in deciding whether an empowerment should be given pursuant to Article 290 of the Treaty for the adoption of a delegated act or pursuant to Article 291(2) of the Treaty 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 of the Treaty.
6. A legislative act may only confer on the Commission the power to adopt non-legislative acts of general application by means of delegated acts. Measures of individual application may not be adopted by means of delegated acts, but may be adopted by implementing acts. An act is of general application if it applies to objectively determined situations and produces legal effects, either with respect to certain categories of persons or in general terms.
7. Legislative acts can only be amended by means of legislative or delegated acts. This includes amendments of annexes to legislative acts, as such annexes are an integral part of the legislative act. Annexes are not to be added to or deleted from an act 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 – by the Member States or by 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 only be laid down by means of a delegated act.
9. By contrast, the implementation of the rules or criteria already established in the basic act or a delegated 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 (that is to say 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 the nature, content and context 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 (that is to say ways of doing something in particular in a regular and systematic way) or methodology (that is to say 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 (that is to say 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 (that is to say the format) does not generally add to the obligation to provide information, but it enables uniform implementation. This should therefore, as a general rule, be taken as an implementing act.
14. Annual and multiannual work programmes implementing financial instruments should be adopted by means of implementing acts.

III. CONSULTATIONS IN THE PREPARATION AND DRAWING-UP OF DELEGATED ACTS

15. The Commission will consult experts designated by each Member State in the preparation of draft delegated acts. The Member State experts will be consulted on

draft delegated acts prepared by the Commission services. They will be shared with the Member State experts. These consultations will take place via existing expert groups, or via ad hoc meetings with experts from the Member States, for which the Commission will send invitations via the Permanent Representations. It is for the Member States to decide which experts will 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 state the conclusions they have drawn from the discussions and how they intend to proceed. Those 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. Where the material content of a draft delegated act changes in any way after such consultations Member State experts will be given the opportunity to react to the amended 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. When preparing and drawing up delegated acts, the Commission will ensure a timely and simultaneous transmission of the draft acts 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 Commission¹, if so requested by the European Parliament the Commission may also invite experts designated by the European Parliament to expert group meetings. To facilitate this process the Chairperson of the competent parliamentary committee may ask the Commission to provide the planning of meetings of expert groups dealing with draft delegated acts scheduled for the following months, on the basis of which the Chairperson can then ask, in a single letter, that European Parliament 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 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

¹ OJ L 304, 20.11.2010, p. 47

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.

By October of the year preceding the elections of the European Parliament, the three institutions shall agree 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 for each institution (the European Parliament or the Council) by two months at its initiative.

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 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.

Annex 2

Standard clauses

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*].

The following 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 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 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.

The following 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 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.