Alignment of the EU Ecolabel Regulation to the Lisbon Treaty

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Article 289 of the Treaty provides for Regulations, Directives and Decisions "of the Council and the European Parliament", by ordinary legislative procedure ("co-decision").

Article 290 of the Treaty provides for "Commission Delegated" Regulations, Directives or Decisions.

Article 291 of the Treaty provides for "Commission Implementing" Regulations, Directives or Decisions.
A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The legislative act specifies the objective, content, scope and duration of the delegated acts on a case-by-case basis.

EP/Council may decide to object to an individual delegated act or to revoke the delegated powers in the legislative act.

NOTE:

✓ No Committee role.
✓ Definition of delegated act is almost identical to the regulatory procedure with scrutiny.
In 2013, an attempt to align "old" RPS to delegated acts through three Commission OMNIBUS proposals failed during co-decision negotiations. The Commission withdrew the proposals.

The INTER-INSTITUTIONAL AGREEMENT ON BETTER LAW-MAKING (IIA-BL) was signed by COM/Council/EP, entered in force on 13 April 2016 and contains a Common Understanding on Delegated acts.

- Systematic consultation of MS experts (through Commission expert groups) based on draft texts
- Standing invitation to EP/Council to attend expert group meetings on preparation of DA
- Alignment of existing legislation which refers to regulatory procedure with scrutiny (RPS) – Commission Proposals by the end of 2016, then adoption by EP/Council via ordinary legislative procedure ("codecision").

A joint register for delegated acts to be set up by COM/Council/EP by the end of 2017.
The use of the Regulatory Procedure with Scrutiny is mentioned in the EU Ecolabel Regulation in the following articles:

✓ Article 6(5) – Food & Feed product groups

The Commission shall decide, taking into account the outcome of the study and the opinion of the EUEB, for which group of food and feed, if any, the development of EU Ecolabel criteria is feasible, in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).
References to RPS in the EU Ecolabel Regulation

✔ Article 6(7) – Derogations for classified substances or preparations/mixtures excluded in Article 6(6)

For specific categories of goods containing substances referred to in paragraph 6, and only in the event that it is not technically feasible to substitute them as such, or via the use of alternative materials or designs, or in the case of products which have a significantly higher overall environment performance compared with other goods of the same category, the Commission may adopt measures to grant derogations from paragraph 6. No derogation shall be given concerning substances that meet the criteria of Article 57 of Regulation (EC) No 1907/2006 and that are identified according to the procedure described in Article 59(1) of that Regulation, present in mixtures, in an article or in any homogeneous part of a complex article in concentrations higher than 0,1 % (weight by weight). Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).
References to RPS in the EU Ecolabel Regulation

- Article 8(2) – Establishment of EU Ecolabel criteria

  Those measures, designed to amend non-essential elements of this Regulation, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).

- Article 15 – Amendment of Annexes

  The Commission may amend the Annexes, including modifying the maximum fees provided for in Annex III taking into account the need for fees to cover the costs of running the scheme. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).
The delegated act cannot enter into force. The Commission may prepare and adopt a new one.

- **Time-limit**: generally 2 months with possible extension for the same period

If neither EP nor Council has objected or if they have both informed Commission that they don’t want to raise objections.

**RIGHT TO OBJECT**

If EP or Council expresses objections.

**Publication and entry into force of the delegated act**

**Commission Draft act**

Consultation of Commission expert group/EP/Council

Adoption of the delegated act

Notification of the delegated act

Parliament

Council
At any moment after the entry into force of the legislative act:

Parliament or Council may make use of the RIGHT TO REVOKE.

The decision to revoke puts an end to the delegation of powers specified in that decision.

It does not affect the validity of delegated acts already in force.
How do EP and Council exercise their right to object/revoke?

Either EP or Council can **object** to an **individual delegated act** or can **revoke** the **delegated powers** in the legislative act on any grounds.

- Council adopts a Decision to object/revoke which requires a qualified majority vote in favour of the objection/revocation.

- EP adopts a Resolution – ENVI Committee submits a motion for a resolution to object/revoke which requires an absolute majority in EP Plenary.