

Wednesday 5 May 2010

Power of legislative delegation

P7_TA(2010)0127

European Parliament resolution of 5 May 2010 on the power of legislative delegation (2010/2021(INI))

(2011/C 81 E/02)

The European Parliament,

- having regard to Article 290 of the Treaty on the Functioning of the European Union (‘TFEU’),
 - having regard to its resolution of 23 September 2008 with recommendations to the Commission on the alignment of legal acts to the new Comitology Decision ⁽¹⁾,
 - having regard to its resolution of 7 May 2009 on Parliament’s new role and responsibilities in implementing the Treaty of Lisbon ⁽²⁾,
 - having regard to its position of 24 November 2009 on the proposal for a regulation of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny – Adaptation to the regulatory procedure with scrutiny – Part Five ⁽³⁾,
 - having regard to the Commission Communication of 9 December 2009 on the implementation of Article 290 of the Treaty on the Functioning of the European Union (COM(2009)0673),
 - having regard to the letter of 29 January 2010 from the President of the European Parliament to the President of the European Commission on Articles 290 and 291 TFEU,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on the Environment, Public Health and Food Safety (A7-0110/2010),
- A. whereas the Treaty of Lisbon consecrates legislative power and introduces a hierarchy of norms in the Union’s legal order, thus reinforcing the democratic character of the Union and rationalising its legal order; whereas the Treaty of Lisbon introduces the novel concept of a legislative act, with far-reaching consequences,
- B. whereas one of the elements of legislative power is the possibility, provided for in Article 290 TFEU, for the Legislator to delegate part of its own power to the Commission in a legislative act (hereinafter ‘the basic act’),
- C. whereas delegation is a delicate operation in which the Commission is instructed to exercise a power which is intrinsic to the Legislator’s own role; whereas the starting-point in examining the issue of delegation must therefore always be the freedom of the Legislator,

⁽¹⁾ OJ C 8 E, 14.1.2010, p. 22.

⁽²⁾ Texts adopted, P6_TA(2009)0373.

⁽³⁾ Texts adopted, P7_TA(2009)0083.

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- D. whereas this delegated power can only consist in supplementing or amending parts of a legislative act which the Legislator does not consider to be essential; whereas the resulting delegated acts adopted by the Commission will be non-legislative acts of general scope; whereas the basic act must explicitly define the objective, content, scope and duration of that delegation, and must lay down the conditions to which the delegation is subject,
- E. whereas delegated acts will have important implications in many areas; whereas it is therefore of paramount importance, in particular with regard to delegated acts, that they are developed and decided upon in a fully transparent manner which effectively enables the co-legislators to democratically control the exercise of the power delegated to the Commission, including by public debate in Parliament, where necessary,
- F. whereas Parliament should be on an equal footing with the Council with respect to all aspects of the power of legislative delegation,
- G. whereas the 'Lamfalussy procedure' paved the way for the present mechanism of delegation with full control by the Legislator; whereas Declaration 39 of the Conference of the Representatives of the Governments of the Member States of 23 July 2007, annexed to the Treaty of Lisbon, recognised the specific nature of the financial services area; whereas the new regime for delegated acts cannot in any way undermine Parliament's existing rights in that area, especially concerning the early transmission of documents and information,
- H. whereas delegation can be seen as a tool for better law-making, the objective of which is to ensure that legislation can at the same time remain simple and be completed and updated without needing to have recourse to repeated legislative procedures, whilst also allowing the Legislator to maintain its ultimate power and responsibility,
- I. whereas, by contrast with the approach taken in Article 291 TFEU concerning implementing measures, Article 290 TFEU does not contain a legal basis for the adoption of a horizontal act setting out the rules and general principles applicable to delegations of power; whereas those conditions must therefore be set out in each basic act,
- J. whereas the Commission is accountable to Parliament; whereas the Commissioner responsible for inter-institutional relations and administration made a commitment, at his hearing before the Committee on Constitutional Affairs on 18 January 2010, to work very closely with Parliament to ensure that the Commission's exercise of delegated power was to Parliament's satisfaction,

Aspects to be defined in the basic act

1. Considers that the objectives, content, scope and duration of a delegation pursuant to Article 290 TFEU must be expressly and meticulously defined in each basic act;
2. Stresses that Article 290 TFEU gives the Legislator the freedom to choose which control mechanism(s) to put in place; considers that the two examples enumerated in Article 290(2), objection and revocation, are purely illustrative and that one could envisage subjecting a delegation of power to other means of control, such as an express approval by Parliament and the Council of each delegated act or a possibility of repealing individual delegated acts already in force;
3. Takes the view, however, that the two examples of possible conditions mentioned in Article 290(2) TFEU, objection and revocation, may be regarded as the most usual ways to control the Commission's use of delegated powers and should both be included in every basic act;

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4. Is of the opinion that the control mechanisms set out by the Legislator must respect certain general principles of Union law and that, in particular, they must:

- be simple and easily understandable,
- safeguard legal certainty,
- enable the Commission to exercise the delegated power effectively, and
- enable the Legislator to monitor properly the use made of delegated power;

5. Considers that Parliament's exercise of the right of objection is necessarily conditioned by its parliamentary role and places of work; considers that a fixed period for objection applicable to all legal acts is not warranted, and that that period should be fixed on a case-by-case basis in each basic act taking into account the complexity of the issues and must be sufficient to permit effective control of the delegation, without unduly delaying the entry into force of uncontroversial delegated acts;

6. Considers that an urgency procedure provided for in the basic act itself should be introduced for particularly exceptional cases, for example relating to security matters, health or humanitarian crises;

7. Believes, however, that the vast majority of situations requiring the speedy adoption of delegated acts could be dealt with by a flexible procedure for early non-objection by Parliament and the Council, following a request by the Commission in duly justified cases;

8. Maintains that the duration of a delegation can be indefinite, taking into account the fact that the delegation can be revoked at any time; is of the opinion, however, that a delegation of a limited duration could provide for the possibility of periodic renewal following an express request by the Commission; considers that the delegation can only be renewed if neither Parliament nor the Council expresses any objections within a specified deadline;

9. Strongly rejects the insertion in basic acts of provisions imposing on the Legislator additional obligations over and above those already contained in Article 290 TFEU;

Practical arrangements

10. Considers that certain practical arrangements could be better coordinated in a Common Understanding between the institutions, which may take the form of an inter-institutional agreement covering inter alia:

- consultations in the preparation and drawing-up of delegated acts,
- mutual exchanges of information, in particular in the event of a revocation,
- arrangements for the transmission of documents,
- minimum periods for objection by Parliament and the Council;
- computation of time periods,
- the publication of acts in the *Official Journal* at different stages in the procedure;

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11. Stresses that, when preparing and drawing up delegated acts, the Commission must:
- ensure an early and continuous transmission of information and relevant documents to Parliament's relevant committees, including successive drafts of delegated acts and any contributions received; to this end, the current comitology register could be used as a model for an improved digital information system,
 - give Parliament access to related preparatory meetings, exchanges of views and consultations;
12. Is of the opinion that the exchange of information prior to a revocation should take place as a matter of transparency, courtesy and loyal cooperation between the institutions concerned thereby ensuring that all institutions are fully aware of the possibility of revocation in good time; however, deems it redundant and confusing to introduce a specific legal obligation in basic acts requiring a statement of reasons for the adoption of certain legal acts in addition to the general requirement laid down in Article 296 TFEU which is applicable to all legal acts;
13. Proposes that a minimum period for objection be fixed in any future Agreement, it being made clear that this should be understood not as a straitjacket but merely as a minimum below which Parliament's democratic control would become nugatory; considers that the minimum period for objection should be two months, with a possibility of its being extended by a further two months at the initiative of Parliament or the Council; stresses, however, that the period for objection should depend on the nature of the delegated act;
14. Insists, in the context of any future Agreement, that the various periods for scrutiny of delegated acts must only start on transmission by the Commission of all language versions, and must properly take account of Parliament's recess and electoral periods;
15. Stresses, in the context of any future Agreement, that delegated acts subject to a right of objection can only be published in the Official Journal and thus enter into force after the expiry of the period for objection, except where an early non-objection is granted; considers that an express obligation requiring Parliament and the Council in each basic act to publish decisions taken in controlling the Commission's exercise of delegated power is superfluous;

Final remarks

16. Calls on each of its committees to exchange and regularly update best practice and establish a mechanism to ensure that Parliament's practices under Article 290 TFEU are as coherent as possible; underlines the need for each parliamentary committee to organise its work in a way that is consistent with its specific nature and takes advantage of its accumulated expertise;
17. Requires Parliament's administration to reallocate resources as a (budget-neutral) means of providing the posts needed to deliver appropriate support for the performance of tasks connected with Article 290 TFEU; calls for an institutional approach to assess the administrative structures and human resources available to develop delegated competences;
18. *acquis* to the provisions of Articles 290 and 291 TFEU; considers, in respect of Article 290 TFEU, that this alignment should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny but should cover all appropriate measures of general scope independently of the decision-making procedure or comitology procedure applicable to them prior to the entry into force of the Treaty of Lisbon;

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19. Insists that the first priority must be to adapt the *acquis* in policy areas which, prior to the entry into force of the Treaty of Lisbon, were not subject to the codecision procedure; calls for them to be dealt with on a case-by-case basis in such a way as to ensure that, in particular, all appropriate measures of general scope which were previously adopted under Articles 4 and 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ are defined as delegated acts;

20. Considers that, in order to fully preserve the Legislator's prerogatives, special attention should be given to the relative use of Articles 290 and 291 TFEU and to the practical consequences of having recourse to one article or the other, be it during the above-mentioned alignment or when dealing with proposals under the ordinary legislative procedure; insists that the co-legislators have the power to decide that the matters previously adopted under the regulatory procedure with scrutiny can be adopted either under Article 290 TFEU or under the ordinary legislative procedure;

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21. Instructs its President to forward this resolution to the Council and the Commission.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Strategic goals and recommendations for the EU's maritime transport policy until 2018

P7_TA(2010)0128

European Parliament resolution of 5 May 2010 on strategic goals and recommendations for the EU's maritime transport policy until 2018 (2009/2095(INI))

(2011/C 81 E/03)

The European Parliament,

- having regard to the Commission communication of 21 January 2009 on strategic goals and recommendations for the EU's maritime transport policy until 2018 (COM(2009)0008) ('communication on the EU's maritime transport policy until 2018'),
 - having regard to the Commission communication of 10 October 2007 on an integrated maritime policy for the European Union (COM(2007)0575),
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Transport and Tourism (A7-0114/2010),
- A. whereas European ship owners make an important contribution to the European economy but have to compete in a global environment,
- B. whereas structural and integrated measures to preserve and develop the thriving maritime sector in Europe are important and ought to enhance the competitiveness of maritime transport and related sectors, integrating the requirements of sustainable development and fair competition,