Power of legislative delegation

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The Committee on Legal Affairs adopted an own-initiative report by József SZÁJER (EPP, HU) on the power of legislative delegation.

The report underlines that the Lisbon Treaty consecrates legislative power and introduces a new concept of the legislative act, with wide-ranging consequences. 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'), This delegated power can only consist in supplementing or amending parts of a legislative act which the Legislator does not consider to be essential. The resulting delegated acts which are adopted by the Commission will be non-legislative acts of general scope.

With respect to **aspects to be defined in the basic act**, the report puts forward the following recommendations:

- the objectives, content, scope and duration of a delegation pursuant to Article 290 TFEU must be expressly and meticulously defined in each basic act;
- 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. One could, however, 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;
- 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;
- a fixed period for objection applicable to all legal acts is not warranted. The 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 enable effective control of the delegation, without unduly delaying the entry into force of uncontroversial delegated acts;
- an urgency procedure with a shorter period for objection provided for in the basic act itself should be reserved for particularly exceptional cases, for example relating to security matters or humanitarian crises;
- 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;
- the duration of a delegation cannot be indefinite. However, Members consider that a delegation of a limited duration could provide for the possibility of periodic renewal.

The committee is of the opinion 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**: when preparing and drawing-up delegated acts, the Commission must give Parliament access to related preparatory meetings, exchanges of views and consultations in regard to delegated acts;
- **mutual exchanges of information, in particular in the event of a revocation:** it must be ensured that all institutions are fully aware of the possibility of revocation in good time;
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arrangements for the transmission of documents: the Commission must ensure an early and continuous transmission of information and relevant documents to Parliament's relevant committees,

- **minimum periods for objection by Parliament and the Council**: 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. It recalls that a longer period for objection can be set depending on the nature of the delegated act;
- **computation of time periods:** 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;
- **the publication of acts in the Official Journal at different stages in the procedure:** 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.

The report 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.

Members urge the Commission to present, as a matter of priority, the legislative proposals needed to adapt the acquis communautaire to the provisions of Articles 290 and 291 TFEU. They consider, 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.