Follow-up on the delegation of legislative powers and the control by Member States of the Commission's exercise of implementing powers

2012/2323(INI) - 04/12/2013 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted an own-initiative report by József SZÁJER (EPP, HU) on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers.

The Lisbon Treaty introduced the possibility for Parliament and the Council to delegate part of its own powers to the Commission in a legislative act. The adoption of provisions requiring political decisions that fall within the responsibility of the legislator cannot be delegated. The delegated power can only consist in supplementing or amending parts of a legislative act considered non-essential by the legislator.

The **delineation of delegated and implementing acts**, and the correct and most appropriate choice of provisions to be included in the basic act, constitute issues which **become an integral part of most negotiations** on legislative proposals.

That is why the report contained a number of practical proposals to **safeguard Parliament’s prerogatives** in order to ensure a sufficient level of democratic legitimacy for the delegated acts, taking into account the different positions taken by Parliament, the ‘horizontal approach’ endorsed by the Conference of Presidents and the regular screening exercises conducted by Parliament's services.

Members called on the Commission and the Council to enter into negotiation with the Parliament with a view to **reaching an agreement on a set of criteria for the application of articles 290 and 291 TFEU** listed in the report. These negotiations could take place within the framework of a revision of the interinstitutional agreement on Better Law Making, including these criteria:

The report made the following recommendations:

- the Commission must provide an **explicit justification** as to why it is proposing a delegated or implementing act in a particular legislative proposal and why it considers its regulatory content to be non-essential;
- to strengthen the position of its rapporteurs in legislative negotiations, greater recourse should be had to the possibility of requesting **an opinion from the Committee on Legal Affairs** under Rule 37a of the Rules of Procedure;
- all cases previously dealt with under **regulatory procedure with scrutiny (RPS)** should now be aligned to Article 290 TFEU, as RPS measures are also measures of general scope designed to amend non-essential elements of a basic act; this procedure is expected to be finalised before the end of the current legislature;
- despite the fact that it can be a good solution in certain cases, Members did not support systematically keeping all policy elements in the basic act as this could, in due course, prevent recourse to Article 290 TFEU as a valuable means of rationalisation of the legislative process;
- in those cases where it has been decided to use **implementing acts**, the Parliament's negotiating team should carefully assess what kind of control by Member States is needed and whether the advisory or the examination procedure should be used;

- the Commission must not **misuse delegated acts** in order to reopen discussions on matters agreed at political level in trilogues; the power to adopt delegated acts should preferably be conferred on the Commission only for **a limited period of time**;
- to enable the committees to monitor the use of delegated acts and implementing acts, the Commission should improve its **transmission of documents related to delegated acts** in order to ensure at least the same level of information and transparency as for the existing register of implementing acts and to guarantee a simultaneous flow of information to Parliament and to the Council as the legislator;
- Parliament should be regularly and in a timely manner **associated with the preparatory phase of delegated acts**; it should be informed of the planned timetable, the scheduled meetings of expert groups and the content of envisaged delegated acts;
- in the context of the preparation of delegated acts, the Commission must fully respect the Framework Agreement on relations between the European Parliament and the European Commission, inter alia by simplifying the **procedure for inviting Parliament's experts** to meetings with national experts, if so requested by the responsible Parliamentary committee;
- the time between the transmission of final draft implementing acts and their adoption by the Commission is often **too short** to allow for adequate oversight by Parliament; the Commission, therefore, must fully respect the Parliament's right to scrutinise final draft implementing acts within **a period of one month**.

Members recommended that, in each committee, permanent **rapporteurs be appointed for delegated and implementing acts**, guaranteeing coherence within the committee concerned and with other committees.

Finally, the report commented on specific subject-matters:

- ***Agriculture and fisheries***: the report deplored the fact that the alignment dossiers on essential agricultural and fisheries legislation were blocked by the Council after the failure of negotiations in informal trilogues and Parliament's first reading.
- ***Development cooperation***: since implementing acts are often based on prior consultations with third parties, Members stressed that earlier notification of and dialogue with Parliament would allow a more effective use of Parliament’s power of scrutiny.
- ***Economic and monetary affairs***: given the technical expertise and specialist skills of the ESAs, delegated acts should take the form of RTS rather than ordinary delegated acts wherever possible. For certain legislative acts, Members considered that the period for scrutinising may be extended by a further month, given their volume and complexity.