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

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The European Parliament adopted a resolution 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 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.

Accordingly, the resolution 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.

Application criteria: Parliament considers that certain criteria should be followed by Parliament in applying Articles 290 and 291 TFEU. In general, delegated acts should be used where the basic act leaves a considerable margin of discretion to the Commission to supplement the legislative framework laid down in the basic act.

The Commission may only amend legislative acts by means of delegated acts. This includes amendment of annexes, as annexes are an integral part of the legislative act. **Annexes are not to be added to or deleted with the aim of triggering or avoiding the use of delegated acts**.

The following should be adopted through delegated acts:

- measures leading to a choice of priorities, objectives or expected results, if the legislator decides not to include them in the legislative act itself;
- measures designed to lay down (further) conditions, criteria or requirements to be met;
- additional binding rules of general scope that affect in substance the rights or obligations laid down in the basic act, further defining the Union policy;
- measure that determines the type of information to be provided under the basic act (i.e. the exact content of the information).

The following should be carried out by means of **an implementing act:**

- measures determining arrangements for the provision of information (i.e. the format);
- elements that do not reflect any further political or policy orientation

An empowerment to determine methods (i.e. ways of doing something in particular in a regular and systematic way) or methodology (i.e. rules to determine the methods) can provide for **delegated or implementing acts depending on the content** and the context.

Interinstitutional agreement: 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 resolution**. These negotiations could take place within the framework of a revision of the interinstitutional agreement on Better Law Making, including the criteria set out.

Parliament 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; this procedure is expected to be finalised before the end of the current legislature;

- 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 ;**

- Parliament should be regularly and in a timely manner associated with the **preparatory phase of delegated acts**; the procedure for inviting Parliament's experts to meetings with national experts, if so requested by the responsible Parliamentary committee should be simplified;

- 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.

Lastly, Parliament commented on specific subject-matters:

- **Agriculture and fisheries**: Parliament 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 thanordinary 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.