






Procedure file

Basic information		
INI - Own-initiative procedure	2010/2021(INI)	Procedure completed
Power of legislative delegation		
Subject 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 JURI Legal Affairs		27/01/2010
		PPE SZÁJER József	
	Committee for opinion	Rapporteur for opinion	Appointed
	 ECON Economic and Monetary Affairs		03/03/2010
		ALDE BOWLES Sharon	
	 ENVI Environment, Public Health and Food Safety		11/02/2010
		S&D LEINEN Jo	
European Commission	Commission DG	Commissioner	
	Legal Service		
	Secretariat-General		

Key events			
10/12/2009	Non-legislative basic document published	COM(2009)0673	Summary
08/02/2010	Committee referral announced in Parliament		
23/03/2010	Vote in committee		Summary
29/03/2010	Committee report tabled for plenary	A7-0110/2010	
19/04/2010	Debate in Parliament		
05/05/2010	Results of vote in Parliament		
05/05/2010	Decision by Parliament	T7-0127/2010	Summary
05/05/2010	End of procedure in Parliament		

Technical information	
Procedure reference	2010/2021(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Other legal basis	Rules of Procedure EP 159

Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/02156

Documentation gateway					
Non-legislative basic document		COM(2009)0673	10/12/2009	EC	Summary
Committee draft report		PE439.171	02/03/2010	EP	
Amendments tabled in committee		PE439.855	11/03/2010	EP	
Committee opinion	ENVI	PE439.162	16/03/2010	EP	
Committee opinion	ECON	PE439.425	18/03/2010	EP	
Committee report tabled for plenary, single reading		A7-0110/2010	29/03/2010	EP	
Text adopted by Parliament, single reading		T7-0127/2010	05/05/2010	EP	Summary
Commission response to text adopted in plenary		SP(2010)4415	06/09/2010	EC	

Power of legislative delegation

PURPOSE: Communication on delegated acts following entry into force of Article 290 of the Lisbon Treaty.

CONTENT: Article 290 of the Treaty on the Functioning of the European Union, as laid down in the Treaty of Lisbon allows the legislator to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. Legal acts adopted by the Commission in this way are referred to in the terminology used by the new Treaty as "delegated acts" (Article 290(3)).

This provision does not require the adoption of any binding instrument of secondary legislation to ensure its implementation. It is sufficient in itself and contains all the elements required by the legislator for defining, case by case, the scope, content and practical arrangements for delegating power. However, the Commission believes it is useful and necessary to define the general framework within which such delegations of power should operate. The European Parliament, although stressing that this measure should preserve the freedom of the legislator, has reached a similar conclusion and has suggested that the institutions agree on a standard formula for delegations that would be regularly inserted by the Commission in the draft legislative act itself (see [INI/2008/2063](#)).

Without challenging the freedom of the European Parliament and the Council to set the limits and conditions of a delegation of powers at the point when a legislative act is adopted, the principles of better regulation and the smooth running of the interinstitutional process plead for a coordinated and coherent approach. Both the Commission, which is responsible for preparing and adopting delegated acts, and the European Parliament and Council, which are responsible for scrutinising them, should promote the introduction of a system that is as homogeneous and predictable as possible.

The purpose of this communication is to set out the Commission's views on the scope of the delegated acts, the framework for delegations of power, the working methods the Commission intends to use for preparing the adoption of delegated acts and, lastly, the conditions under which the legislator might exercise control over the way the powers conferred on the Commission are implemented.

In line with the ideas set out in the Communication, the Commission sets out several models for articles in future legislative acts conferring on it the power to adopt delegated acts in the Annex.

Power of legislative delegation

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;
- 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.

Power of legislative delegation

The European Parliament adopted a resolution on the power of legislative delegation.

The resolution 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.

Parliament should be on an equal footing with the Council with respect to all aspects of the power of legislative delegation.

With respect to aspects to be defined in the basic act, the Parliament 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, health 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 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. The delegation can only be renewed if neither Parliament nor the Council expresses any objections within

a specified deadline.

The Parliament 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;
- 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 stresses that the period for objection should depend 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. Parliament 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.

The resolution 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.

Parliament urges 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. It 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.