



Background

Legislating more efficiently: questions & answers on new delegated acts

To avoid making EU legislation over-complicated and technical the Lisbon Treaty introduced a new system for delegating to the Commission limited powers to make minor changes to laws, provided these do not affect the "core" legislation decided by Parliament and the Council.

Such changes may be needed to take account of scientific or technical progress or specific events, or to update quantitative values. For example Parliament has decided that the Commission may change the technical requirements for a rabies vaccination to be deemed valid for a "pet passport", in order to take account of scientific progress.

The EU "institutional triangle" - European Parliament, Council and Commission - produces policies and laws that apply throughout the EU.

The European Parliament shares legislative power with the Council. The Commission is the main executive body, which proposes legislation and ensures that EU policies are properly implemented.

Under the Lisbon Treaty, any delegation of power to the Commission must be decided by Parliament and the Council, as legislators, and be subject to limits, conditions and control mechanisms laid down in the legislative act (regulation, directive or decision) itself.

Before the Lisbon Treaty took effect, the Commission's implementation of much EU legislation was overseen by committees of Member State experts, via a so-called "comitology" system. This system has now been abolished, and the Treaty instead distinguishes between "delegated" acts and "implementing" acts. This Q&A focuses on delegated acts, on which Parliament is to state its position at the April plenary session, in Strasbourg.

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Background

1. What are "delegated" acts?

The new Treaty introduces a distinction between legislative acts and non-legislative ones.

Article 290 allows Parliament and the Council 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". Non-legislative acts adopted by the Commission in this way are called "delegated acts".

Only "non-essential" parts of a legislative act may be supplemented or amended by the Commission. The "essential" parts cannot be delegated.

A Commission amendment to a legislative act might, for example, alter an annex to that act. Where the Commission is empowered to amend an annex, and those changes contain measures of general application, the "delegated acts" system applies.

For example, if Parliament or the Council wish to empower the Commission to amend an annex to a regulation, they should specify that the Commission may amend all or part of this annex by means of a delegated act and also what conditions must be met, e.g. scientific or technical progress has been made, a particular event has taken place or a certain amount of time has elapsed.

The legislator might also set limits on how the Commission may amend the annex. For example, if the annex relates to setting quantitative values, then the Commission might be required not to exceed certain thresholds.

Parliament and the Council may also choose to regulate the field in question only partially, leaving to the Commission the responsibility of "supplementing" laws by means of delegated acts. However, these delegated acts must only refer to non-essential elements. Essential elements must be governed by the legislative act itself.

Background

2. What happens to the old comitology system?

The need to delegate some legislative power was previously met through the "comitology" procedures laid down by Council Decision 1999/468/EC (Comitology Decision).

The legal basis both for adopting the Comitology Decision and for using the procedures provided therein was Article 202 EC. This article was repealed by the Lisbon Treaty. Instead, articles 290 and 291 of the new Treaty on the Functioning of the European Union (TFEU) provide for a completely new and different system. The new legal framework will have to be constructed on the basis of articles 290 and 291 TFEU to replace the comitology system established under the previous Treaty.

This work is still in progress. The Commission presented a communication on delegated acts on 9 December 2009 and a legislative proposal on implementing acts on 9 March 2010 (a legal framework for implementing acts is required under Article 291).

Background

3. What happens to the old comitology provisions of legislative acts already in force?

The Comitology Decision will continue to apply to acts adopted before the Lisbon Treaty's entry into force, so long those acts are not amended.

Background

4. How is power to be delegated?

Power may be delegated solely by means of a legislative act. Within a legislative act, Parliament or the Council may empower the Commission to adopt delegated acts and determine the forms of control. In each legislative act, Parliament and the Council must define "expressly and meticulously" the objectives, content, scope and duration of the delegation of power.

A report by Parliament's Legal Affairs Committee on delegated acts, drawn up by József Szájer (EPP, HU) and unanimously approved in committee on 23 March 2010, underlines that delegated acts will have important implications in many areas and that Parliament should be on an equal footing with the Council with respect to all aspects of the power of legislative delegation.

Background

5. How can Parliament or the Council control the Commission's use of delegated power?

The legislative act can provide that either Parliament or the Council may revoke the entire delegation and/or prevent the implementing measure from entering into force by objecting to the draft measure.

An agreement between Parliament and the Council is not necessary to revoke a delegation or to object to an individual delegated act. An objection from either would prevent it from entering into force.

In the report to be put to a vote at the April plenary session, the Legal Affairs Committee says that the two examples 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". The committee adds, however, that 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".

Background

6. Parliament's right to object: is there a deadline?

"A fixed period for objection applicable to all legal acts is not warranted", says the Legal Affairs Committee. That period "should be fixed on a case-by-case basis" in each legislative act and must be "sufficient to enable effective control" of the delegation. It should also take into account the complexity of the issues.

However, 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 or the Council, following a request by the Commission "in duly justified cases".

An urgent procedure with a shorter period for objections should be reserved for particularly exceptional cases, for example relating to security matters or humanitarian crises, adds the committee.

The committee proposes that a minimum period for objection be fixed in any future common understanding between the institutions (see Question 7). "This should be understood not as a straightjacket but merely as a minimum below which Parliament's democratic control would become nugatory", it underlines.

MEPs consider that the minimum period should be two months, which could be extended by a further two months at the initiative of Parliament or the Council. A longer period for objections could also be stipulated, depending on the nature of the delegated acts. MEPs also stress that delegated acts that are subject to a right of objection may only enter into force after the expiry of the period for objections, except where an early non-objection is granted.

Background

7. In its Communication on delegated acts of 9 December 2009 the Commission suggests model texts to show delegation. Does Parliament have to use those texts?

No. These are only suggestions, to help streamline the texts. They have no legal force and are not required by the Treaty. Parliament is developing its own position on the various alternatives. Parliament acknowledges that it may be useful for the institutions to agree on a standard formula. However, it has also stressed that the freedom of the legislature should be preserved.

In the meantime, MEPs call on parliamentary committees to exchange and regularly update best practices and establish a mechanism to ensure that Parliament's practices on delegated acts are "as coherent as possible". In the area of financial services, "when possible the rapporteur in charge of the ordinary legislative act should also lead for the Parliament on the delegated acts, to ensure expert subject matter knowledge based on dialogue and information exchange from the beginning of the legislative process", they add.

Moreover, MEPs consider that "certain practical arrangements could be better co-ordinated in a common understanding between the institutions, which may take the form of an inter-institutional agreement", covering, for example, 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, etc.

Background

8. What are the main issues at stake in negotiations with the Council?

Both "model texts" proposed by the Commission in its communication on delegated acts and the wording proposed by the Council contain elements which are problematic for Parliament. This concerns, in particular, the role of national experts in preparatory work for the adoption of delegated acts.

The Commission intends systematically to consult experts from the national authorities of all the Member States, which will be responsible for implementing the delegated acts once they have been adopted. The Council also insists on the inclusion of a recital on consultation of national experts by the Commission during the preparatory phase. According to Parliament's committee chairs, no recital on this matter should be included in the legislative act.

Parliament categorically rejects any formal role of national experts having the effect of a "control mechanism" on the Commission as being contrary to the treaties. "Control of the power delegated by the legislator should in all logic remain the preserve of the legislator (...). Member States, and a fortiori committees composed of experts from the Member States, have no role to play in this area", says Parliament's rapporteur.

No reference to consultations should therefore be made in legislative acts, but this question could be dealt with as part of a common understanding.

Background

9. What are the advantages of a delegation of powers?

Delegation can be seen as a tool for better law-making, the aim of which is to ensure that legislation can remain simple and be supplemented and updated without needing to resort to repeated adoption of legislation, whilst also allowing the legislator to maintain its ultimate power and responsibility.

Background

10. What about implementing acts?

The Lisbon Treaty introduces another new concept which is related to the delegated acts. This is the implementing act.

The "delegated act" is defined in terms of its scope and consequences – as a general measure that supplements or amends non-essential elements – whereas the "implementing act" is determined by its rationale - the need for uniform conditions for implementation.

In the system introduced by Article 291 TFEU (implementing acts) the Commission does not exercise any "quasi-legislative" power; its power is purely executive.

Primary responsibility for implementing EU law lies with the Member States, but because it is necessary to have uniform implementing conditions, the Commission must exercise its executive power.

Under Article 291 TFEU, rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers must be laid down in advance by a regulation adopted by Parliament and the Council under the ordinary legislative procedure (co-decision).

The Commission tabled this proposal on implementing acts on 9 March 2010. A new legal framework for these acts is urgently needed, because the Comitology Decision is partly incompatible with the new regime established under Article 291 TFEU (see also Question 2). The three institutions have said in a joint declaration that they wish to achieve a speedy agreement on the new regulation, with a view to its entry into force during the EU's Spanish Presidency.

Background

11. Has this new system for delegating powers to the Commission been used since the Lisbon Treaty entered into force?

Yes, in a regulation on animal health requirements applicable to the non-commercial movement of pet animals (De Brún report). This states that, "in order to take account of technical progress" and "developments regarding anti-rabies vaccination", the Commission may adopt delegated acts "in respect of preventive health measures regarding diseases other than rabies, and modifications of technical requirements for the identification of species of animals and for the anti-rabies vaccination as laid down in the Annexes" of the regulation. The text also includes provisions on the exercise of the delegation, revocation and objections to delegated acts.

In a statement, the Parliament, Council and Commission declare, however, that "the provisions of this regulation shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions".

Background

12. What is the timetable?

For delegated acts: the Legal Affairs Committee report will be put to a vote by Parliament as a whole in April. The final report will then become Parliament's position on delegated acts.

Meanwhile, Parliament is negotiating wording with the Council on provisions for delegated acts in urgent proposals for legislation in areas including the environment, agriculture, industry and transport), which cannot wait until the report. The first agreement on such wording for delegated acts was reached in the file "Animal health requirements: non-commercial movement of pet animals" (see Question 10).

For implementing acts: the proposal for a regulation to lay down the rules for implementing acts was presented by the Commission on 9 March 2010. This regulation must be co-decided by Parliament and the Council - a process which necessarily requires a certain amount of time. In order to prevent any legislative log jam and allow the legislative process to advance, the institutions decided to opt for an interim solution: the old comitology system (excluding the regulatory procedure with scrutiny) would exceptionally continue to apply until the new regulation on implementing acts is adopted.

Moreover, to ensure certainty as to the law, Parliament's services suggested including, in all pending legislative proposals with provisions on implementing acts, a recital that stresses the exceptional and interim character of the solution agreed.