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*Committee on Legal Affairs*

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**2012/2323(INI)**

01.10.2013

# **AMENDMENTS**

## **1 - 28**

**Draft report**  
**József Szájer**  
(PE510.803v01-00)

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))

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**EN**

*United in diversity*

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**Amendment 1**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Recital A**

*Motion for a resolution*

A. whereas the Lisbon Treaty introduced the possibility for Parliament and the Council ('the legislator') to delegate part of its own power to the Commission in a legislative act ('the basic act'); whereas delegation is a delicate operation in which the Commission is instructed to exercise a power which is intrinsic to the legislator's own role; whereas the starting-point in examining the issue of delegation must therefore always be the freedom of the legislator; whereas according to settled case-law, the adoption of rules essential to the subject matter envisaged is reserved to the legislator; whereas therefore that delegated power can only consist in supplementing or amending parts of a legislative act that are not essential; whereas the resulting delegated acts adopted by the Commission will be non-legislative acts of general scope; whereas the basic act must explicitly define the objective, content, scope and duration of that delegation, and must lay down the conditions to which the delegation is subject;

*Amendment*

A. whereas the Lisbon Treaty introduced the possibility for Parliament and the Council ('the legislator') to delegate part of its own power to the Commission in a legislative act ('the basic act'); whereas delegation is a delicate operation in which the Commission is instructed to exercise a power which is intrinsic to the legislator's own role; whereas the starting-point in examining the issue of delegation must therefore always be the freedom of the legislator; whereas according to settled case-law, the adoption of rules essential to the subject matter envisaged is reserved to the legislator, ***which means that the adoption of provisions requiring political decisions that fall within the responsibility of the legislator cannot be delegated; whereas a law is always essential as a matter of principle;*** whereas therefore that delegated power can only consist in supplementing or amending parts of a legislative act that are not essential; whereas the resulting delegated acts adopted by the Commission will be non-legislative acts of general scope; whereas the basic act must explicitly define the objective, content, scope and duration of that delegation, and must lay down the conditions to which the delegation is subject;

Or. de

**Amendment 2**  
**József Szájer**

**Motion for a resolution**  
**Recital D a (new)**

*Motion for a resolution*

*Amendment*

***D a. whereas the delegation of power to the Commission is not merely a technical issue but can involve questions of considerable political importance for Union citizens and consumers, enterprises and complete sectors because of their possible socio-economic, environmental and health impacts;***

Or. en

**Amendment 3**  
**Sajjad Karim**

**Motion for a resolution**  
**Recital E**

*Motion for a resolution*

*Amendment*

E. whereas legislative negotiations on many files have shown divergent interpretations among the institutions on certain issues; whereas, in accordance with Rule 37a of its Rules of Procedure, Parliament's committees may request an opinion from the Committee on Legal Affairs when scrutinising a proposal which contains delegated acts; whereas the Conference of Presidents on 13 January 2012 endorsed a common line, and on 19 April 2012 endorsed a horizontal approach to be followed by individual committees in order to overcome differences of opinion; ***whereas that common line needs to be taken one step further by Parliament setting out its own criteria for the application of Articles 290 and 291 TFEU and by endeavouring to agree on such criteria with the Council and the Commission;***

E. whereas legislative negotiations on many files have shown divergent interpretations among the institutions on certain issues; whereas, in accordance with Rule 37a of its Rules of Procedure, Parliament's committees may request an opinion from the Committee on Legal Affairs when scrutinising a proposal which contains delegated acts; whereas the Conference of Presidents on 13 January 2012 endorsed a common line, and on 19 April 2012 endorsed a horizontal approach to be followed by individual committees in order to overcome differences of opinion;

**Amendment 4**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – introductory part**

*Motion for a resolution*

1. Considers that *the following* criteria *should be followed by Parliament in applying Articles 290 and 291 TFEU:*

*Amendment*

1. Considers that *Parliament and Council should assess the appropriateness of either delegated or implementing acts on the basis of legal criteria, rather than a political judgement; nevertheless, where the legal parameters of delegated and implementing acts allow, considers that the choice of delegated or implementing acts may be made on a case-by-case basis, reflecting policy needs; in this regard, believes the following criteria may be helpful:*

Or. en

**Amendment 5**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 1 – introductory part**

*Motion for a resolution*

1. Considers that the following criteria should be followed by Parliament in applying Articles 290 and 291 TFEU:

*Amendment*

1. Considers that the following *non-binding* criteria should be followed by Parliament in applying Articles 290 and 291 TFEU; *this list of criteria should not be considered as exhaustive:*

Or. en

**Amendment 6**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 1 – indent 2**

*Motion for a resolution*

- 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; if the legislator considers that a text should be an integral part of the basic act, it may decide to include that text in an annex.

*Amendment*

- 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; if the legislator considers that a text should be an integral part of the basic act, it may decide to include that text in an annex. ***This is particularly true regarding Union lists or registers of authorised products or substances which should remain, in the interests of legal certainty, an integral part of the basic act, if appropriate, in the form of an Annex.***

Or. en

**Amendment 7**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 4**

*Motion for a resolution*

***- Measures leading to a choice of priorities, objectives, expected results should be adopted by means of delegated acts, if the legislator decides not to include them in the legislative act itself.***

*Amendment*

*deleted*

Or. en

**Amendment 8**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 5**

*Motion for a resolution*

- Measures designed to lay down (further) conditions, criteria or requirements to be met - the fulfilment of which must be ensured by the Member States *or other persons or entities directly concerned by the legislation - will, by definition*, alter the content of the legislation and add new rules of general application. Consequently, the creation of such further rules or criteria may be accomplished only by means of a delegated act. By contrast, the implementation of the rules or criteria already established in the basic act (or in a future delegated act), without modifying the substance of the rights or obligations stemming from them and without making further policy choices, can take place through implementing acts.

*Amendment*

- Measures designed to lay down (further) conditions, criteria or requirements to be met - the fulfilment of which must be ensured by the Member States - *may* alter the content of the legislation and add new rules of general application. Consequently, the creation of such further rules or criteria may be accomplished only by means of a delegated act. By contrast, the implementation of the rules or criteria already established in the basic act (or in a future delegated act), without modifying the substance of the rights or obligations stemming from them and without making further policy choices, can take place through implementing acts.

Or. en

**Amendment 9**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 1 – indent 6 a (new)**

*Motion for a resolution*

*- In acts establishing financial programmes, measures that serve to supplement the basic act with regard to specific technical provisions, strategic interests, objectives, expected results, etc. can be adopted either by the legislator or, under certain conditions and where sufficiently justified, by the Commission by means of delegated acts. Other*

*Amendment*

*measures that do not express any political orientation (technical arrangements for exchanging information, exchange of data, etc.) may be of implementing nature, without prejudice to confirmation by the legislator.*

Or. de

**Amendment 10**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 7**

*Motion for a resolution*

*Amendment*

*- A measure that determines the type of information to be provided under the basic act (i.e. the exact content of the information) generally supplements the obligation to provide information and should be carried out by means of delegated acts.*

*deleted*

Or. en

**Amendment 11**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 1 – indent 9**

*Motion for a resolution*

*Amendment*

- Measures establishing a procedure (i.e. a way of performing or giving effect to something) can either be a delegated or implementing act (or even an essential element of the basic act) depending on their content, context and the nature of the provisions set out in the basic act. Measures establishing details of procedures in order to ensure uniform conditions for

- Measures establishing a procedure (i.e. a way of performing or giving effect to something) can either be a delegated or implementing act (or even an essential element of the basic act) depending on their content, context and the nature of the provisions set out in the basic act.  
*Measures establishing elements of procedures involving further non-*



the implementation of an obligation laid down in the basic act should in general be implementing measures.

*essential policy choices in order to supplement the legislative framework laid down in the basic act should in general be delegated acts.* Measures establishing details of procedures in order to ensure uniform conditions for the implementation of an obligation laid down in the basic act should in general be implementing measures.

Or. en

**Amendment 12**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 11**

*Motion for a resolution*

*Amendment*

*- 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.*

*deleted*

Or. en

**Amendment 13**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 1 – indent 12**

*Motion for a resolution*

*Amendment*

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the

Commission decision is fully based on criteria contained in the basic act, it should be an implementing act, provided that the legislator did not choose to keep the authorisations as an integral part of the basic act in the form of an Annex; ***if it adds new normative content affecting the substance of the rights and obligations and thereby adding secondary political orientation or policy choices to the basic act, thus supplementing it, it should be a delegated act.***

Commission decision is fully based on criteria contained in the basic act, it should be an implementing act, provided that the legislator did not choose to keep the authorisations as an integral part of the basic act in the form of an Annex.

Or. de

#### **Amendment 14** **József Szájer**

#### **Motion for a resolution** **Paragraph 1 – indent 12**

##### *Motion for a resolution*

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the Commission decision is fully based on criteria contained in the basic act, it ***should*** be an implementing act, ***provided that the legislator did not choose to keep the authorisations as an integral part of the basic act in the form of an Annex; if it*** adds new normative content affecting the substance of the rights and obligations and thereby adding secondary political orientation or policy choices to the basic act, thus supplementing it, it should be a delegated act.

##### *Amendment*

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the Commission decision is fully based on criteria contained in the basic act, it ***could*** be an implementing act; ***if, however, the Commission decision*** adds new normative content affecting the substance of the rights and obligations and thereby adding secondary political orientation or policy choices to the basic act, thus supplementing it, it should be a delegated act.

Or. en

**Amendment 15**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 12**

*Motion for a resolution*

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the Commission decision is fully based on criteria contained in the basic act, it should be an implementing act, provided that the legislator did not choose to keep the authorisations as an integral part of the basic act in the form of an Annex; if it adds new normative content affecting the substance of the rights and obligations and thereby adding secondary political orientation or policy choices to the basic act, thus supplementing it, it should be a delegated act.

*Amendment*

- Authorisations can be measures of general application. This is for instance the case where decisions concern the authorisation or prohibition of the inclusion of a specific substance in food, cosmetics etc. Those decisions are general because they concern any operator willing to use such substance. In such cases, if the Commission decision is fully based on criteria contained in the basic act, it should be an implementing act, provided that the legislator did not choose to keep the authorisations as an integral part of the basic act in the form of an Annex; if it adds new normative content affecting the substance of the rights and obligations and thereby adding secondary political orientation or policy choices to the basic act, thus supplementing it, it should be a delegated act, ***subject to a time-limited period and review.***

Or. en

**Amendment 16**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 1 – indent 13**

*Motion for a resolution*

- A legislative act may only delegate to the Commission the power to adopt non-legislative acts of general application. Measures of individual application may

*Amendment*

- A legislative act may only delegate to the Commission the power to adopt non-legislative acts of general application. Measures of individual application may

not, therefore, be adopted by means of delegated acts. An act of general *scope is an act that establishes rules that are intended to apply to an indeterminate number of addressees.*

not, therefore, be adopted by means of delegated acts. An act *is* of general *application if it applies to objectively determined situations and produces legal effects with respect to categories of persons generally and in the abstract.*

Or. en

**Amendment 17**  
**Sajjad Karim**

**Motion for a resolution**  
**Paragraph 1 – indent 14**

*Motion for a resolution*

*Amendment*

*- Implementing acts should not add any further political orientation and the powers given to the Commission should not leave any significant margin of discretion.*

*Deleted*

Or. en

**Amendment 18**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 1 – indent 15**

*Motion for a resolution*

*Amendment*

*- Measures implying temporary deviation from the rules established by the basic act to be applied in a specific situation, under specific clearly defined conditions and for a limited period of time do not amend or supplement the basic act. They should therefore be adopted by means of implementing acts. They should therefore be adopted by means of implementing acts. However, when those measures imply a more permanent deviation from*

*deleted*

*the rules established in the basic act, going beyond a limited period of time, they should be adopted by means of delegated acts.*

Or. de

**Amendment 19**  
**Eva Lichtenberger**

**Motion for a resolution**  
**Paragraph 1 – indent 15**

*Motion for a resolution*

- Measures implying temporary deviation from the rules established by the basic act *to be applied in a specific situation, under specific clearly defined conditions and for a limited period of time do not amend or supplement the basic act. They should therefore* be adopted by means of *implementing acts. However, when those measures imply a more permanent deviation from the rules established in the basic act, going beyond a limited period of time, they should be adopted by means of delegated acts.*

*Amendment*

- Measures implying temporary deviation from the rules established by the basic act should be adopted by means of *delegated acts, where the basic act is adopted in the ordinary legislative procedure.*

Or. en

**Amendment 20**  
**Klaus-Heiner Lehne**

**Motion for a resolution**  
**Paragraph 2 a (new)**

*Motion for a resolution*

*2 a. Reiterates the decisions taken by the Conference of Presidents in its meetings on 13 January 2011 and 19 April 2012 in relation to delegated and implementing acts, and stresses that Parliament should*

*Amendment*

*always insist on the use of delegated acts for all powers delegated to the Commission fulfilling the criteria set out in Article 290 TFEU, and that files in which the institutional rights of Parliament as regards the inclusion of delegated acts are not safeguarded should not be put on the plenary agenda for a vote leading to an agreement; emphasises that Parliament should, already at the start of the negotiations, flag the issue of delegated and implementing acts as a key institutional issue for the Parliament;*

Or. en

**Amendment 21**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 2 a (new)**

*Motion for a resolution*

*Amendment*

*2 a. Calls on the Commission in future to provide an explicit and sustainable justification of 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;*

Or. de

**Amendment 22**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 3**

*Motion for a resolution*

*Amendment*

3. Expresses serious concern that the alignment of the acquis to the Treaty of

3. Expresses serious concern that the alignment of the acquis to the Treaty of

Lisbon is only partly a reality four years after its entry into force; ***calls on*** the Commission ***to present any outstanding alignment proposals; calls on the Council Presidency to do its utmost to progress with talks on those packages that are currently stalled in the Council, including proposals in the fields of agriculture and fisheries;*** considers that at least all cases previously dealt with under RPS should now be aligned to Article 290 TFEU;

Lisbon is only partly a reality four years after its entry into force; ***welcomes the presentation by*** the Commission ***of the recent proposals for alignment of the remaining legislative acts providing for the use of the regulatory procedure with scrutiny (RPS); stresses however the need to start negotiations on these proposals as soon as possible, in order to finalise this exercise before the end of this legislature;*** considers that at least all cases previously dealt with under 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 that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements; at the same time, calls on the Council to progress with talks on those specific alignment proposals that are still stalled in the Council, including proposals in the fields of agriculture and fisheries;***

Or. en

**Amendment 23**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 4 a (new)**

*Motion for a resolution*

*Amendment*

***4 a. Emphasises that 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; stresses that Parliament's negotiation teams, in case the examination procedure is used, should only accept the so-called "no opinion clause" in exceptional well justified cases,***

*as it prevents the Commission from adopting the draft implementing act in case of "no opinion" by the committee composed of representatives of the Member States and chaired by the Commission;*

Or. en

**Amendment 24**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 4 b (new)**

*Motion for a resolution*

*Amendment*

*4 b. Calls for clear rules governing Parliament's representation and participation and the information to be forwarded to Parliament; points, accordingly, to the political responsibility of the legislator and the need for the regular and timely involvement of the political authorities in the discussions on delegated acts;*

Or. de

**Amendment 25**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 5**

*Motion for a resolution*

*Amendment*

5. Encourages its committees to closely monitor the use of delegated and implementing acts within their respective spheres of responsibility;

5. Encourages its committees to closely monitor the use of delegated and implementing acts within their respective spheres of responsibility, *bundle issues together in order to develop a common approach for the whole Parliament, and at the same time preserve the necessary*



*flexibility on the part of the committees in each individual case; recommends, to this end, that a permanent rapporteur be appointed in each committee for delegated and implementing acts; continues to call on the members of negotiating teams in particular to pay particular attention to this matter when reporting to the competent committee following each trilogue pursuant to Rule 70(4) of the Rules of Procedure of the European Parliament;*

Or. de

**Amendment 26**  
**József Szájer**

**Motion for a resolution**  
**Paragraph 5**

*Motion for a resolution*

5. Encourages its committees to closely monitor the use of delegated and implementing acts within their respective spheres of responsibility;

*Amendment*

5. Encourages its committees to closely monitor the use of delegated and implementing acts within their respective spheres of responsibility; *to that purpose, requests the Commission to enhance the administrative arrangements for transmission and filing of documents related to delegated acts, in order to ensure at least the same level of information and transparency as for the existing register for implementing acts;*

Or. en

**Amendment 27**  
**Bernhard Rapkay**

**Motion for a resolution**  
**Paragraph 5 a (new)**

*Motion for a resolution*

*Amendment*

***5 a. Calls for sufficient technical and personal resources to be assigned for delegated and implementing acts, inter alia in order to ensure an efficient internal flow of information;***

Or. de

**Amendment 28**  
**Klaus-Heiner Lehne**

**Motion for a resolution**  
**Paragraph 5 b (new)**

*Motion for a resolution*

*Amendment*

***5 b. Urges the Commission to fully respect paragraph 15 of 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; recognises that as a result of attending those meetings the Commission can be invited to the Parliament to have a further exchange of views on the preparation of delegated acts; urges the Commission to apply paragraph 15 of the Framework Agreement also for the parts of meetings of Member States and the Commission where matters other than implementing acts in the sense of Regulation (EU) N° 182/2011 are discussed;***

Or. en