



Committee on Legal Affairs
The Chair

2.9.2020

Mr Pascal Canfin

Chair

Committee on the Environment, Public Health and Food Safety

BRUSSELS

Subject: Opinion on the legal basis of the proposal for a decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (COM(2020)0220 – C9-0160/2020 – 2020/0097(COD))

Dear Mr Chair,

By letter dated 13 July 2020,¹ you requested, pursuant to Rule 40(2) of the Rules of Procedure, the opinion of the Committee on Legal Affairs on the appropriateness of the legal basis for the Commission's proposal for a decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism.²

The committee considered the above question at its meeting of 2 September 2020.

I - Background

The Commission proposal is based on Article 196 and Article 322(1)(a) of the TFEU.

The request is made with regards to the amendment tabled by the rapporteur in ENVI deleting the reference to Article 322(1)(a) of the TFEU on the basis of, according to ENVI letter, *“technical considerations and in particular on the fact that this article concerns the adoption of financial rules through regulations and therefore does not seem applicable to the decision”*.

Prior to the current proposal that was adopted in June 2020, the Commission adopted a proposal for a decision amending Decision No 1313/2013/EU on a Union Civil Protection

¹ D 307296

² Proposal for a Decision of the European Parliament and of the Council amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism (COM(2020)0220 – C9 0160/2020 – 2020/0097(COD)).

Mechanism in March 2019 which was based on Article 196 TFEU only. The ENVI Committee adopted a report on this proposal in March 2020. In the explanatory memorandum, the Commission states that “*This proposal builds on the progress achieved to date by the European Parliament and the Council in their consideration and deliberations on Commission proposal COM(2019) 125 final*”. According further to the Commission proposal’s financial statement, “[t]he decision amends an existing action (Union Mechanism) and is to be considered in parallel to the pending proposal also amending the Union Mechanism, which was adopted by the Commission in 2019”.

In reply to ENVI’s concern about the appropriateness of adding Article 322(1)(a) TFEU as a legal basis for the proposed decision, put into question by the tabling of the amendment deleting this Article, this note only assesses the appropriateness of Article 322(1)(a) TFEU as a legal basis.

II - The relevant Treaty Article

Under Title II on “Financial provisions”:

Article 322(1)(a)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations:

(a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;

III - CJEU case law on the choice of legal basis

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferral of powers (Article 5 TEU) and determining the nature and scope of the Union’s competence.³ The choice of a legal basis is therefore not discretionary. According to the Court’s settled case law, the choice of legal basis for a Union measure must rest on objective factors which are amenable to judicial review including, in particular, the aim and the content of the measure.⁴ The Court also considers that it is not possible to determine the legal basis for a measure in light of the legal basis used for the adoption of other Union measures which might, in certain cases, display similar characteristics.⁵ The choice of an incorrect legal basis may therefore justify the annulment of the act in question. In this context, an institution’s wish for more active participation in the adoption of a given measure, the circumstances in which a measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the correct legal basis.⁶

In principle, only a single, appropriate legal basis should be chosen. If the examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of

³ Opinion 2/00, ECLI:EU:C:2001:664, para 5.

⁴ See Case C-411/06 *Commission v Parliament and Council*, 8 September 2009, EU:C:2009:518, paragraph 45

⁵ See Case 131/86 *United Kingdom v Council* [1988] ECR 905, paragraph 29, and Case C-91/05 *Commission v Council* [2008] ECR I-0000, paragraph 106

⁶ Judgment in *Commission v Council*, C-269/97, ECLI:EU:C:2000:183, para 44.

which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.⁷ Exceptionally, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases.⁸ This would however only be possible if the procedures laid down for the respective legal bases are not incompatible with each others and do not undermine the right of the European Parliament.⁹ Further, the measure chosen has to comply with the prescribed type of the legislative act when specified in the Treaty.

IV - Appropriateness of Article 322(1)(a) as a legal basis

Article 322(1)(a) TFEU used as a legal base imposes a specific type of legislative act, without any discretion left to the EU legislator in this regard. Before even assessing whether Article 322(1)(a) TFEU could be, in light of the aim and content of the proposal, an appropriate legal basis, it must be noted that Article 322(1)(a) provides for the ordinary legislative procedure and requires that the act be adopted as a regulation. In the present case, the type of the proposed act is a decision, as is the case for the legislative act the proposal is meant to amend. Therefore, on formal grounds, the type of the act proposed is not compatible with Article 322(1)(a).

There is therefore no need to further assess whether, in light of the aim and content of the proposal, Article 322(1)(a) is an appropriate legal basis and could be used as a dual one with Article 196 TFEU.

V - Conclusion and recommendation

Without prejudice to any assessment of whether the proposed measure is, in light of the aim and content of the measure proposed, correctly based on Article 196 only or should be based on two or more legal bases, it appears sufficient to state that given the type chosen for the proposal for amending act (a decision), Article 322(1)(a) TFEU does not formally appear to be an appropriate legal basis for the proposal for a decision amending the Decision on Union Civil Protection Mechanism, as it provides for the adoption of a regulation whereas the amending act in question is a decision.

At its meeting of 2 September 2020, the Committee on Legal Affairs accordingly decided, unanimously¹⁰, to recommend to the Committee on the Environment, Public Health and Food Safety to remove Article 322(1)(a) TFEU from the legal basis of the proposed decision.

⁷ Judgment in *Commission v Council*, C-137/12, EU:C:2013:675, paragraph 53; C-411/06 EU:C:2009:518, paragraph 46 and the case-law cited therein; *Parliament v Council*, C 490/10, EU:C:2012:525, paragraph 45; *Parliament v Council*, C 155/07, EU:C:2008:605, paragraph 34.

⁸ Case C-211/01, *Commission v Council*, ECLI:EU:C:2003:452, para. 40; Case C-178/03 *Commission v European Parliament and Council*, ECLI:EU:C:2006:4, paras. 43-56.

⁹ Case C-300/89 *Commission v Council* ("Titanium dioxide"), ECLI:EU:C:1991:244, paras. 17-25; Case C-268/94 *Portugal v Council*, ECLI:EU:C:1996:461.

¹⁰ The following were present for the final vote: Adrián Vázquez Lázara (Chair), Ibán García Del Blanco (Vice-Chair), Raffaele Stancanelli (Vice-Chair), Patrick Breyer, Geoffroy Didier, Angel Dzhambazki, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Emmanuel Maurel, Karen Melchior, Emil Radev, Franco Roberti, Marcos Ros Sempere, Stéphane Séjourné, Axel Voss, Lara Wolters, Tiemo Wölken, Javier Zarzalejos.

Yours sincerely,

Adrián Vázquez Lázara