



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2012/2323(INI)

25.11.2013

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on the 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))

Rapporteur: Monika Flašíková Beňová

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SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- A. whereas the Treaty of Lisbon provides for a new hierarchy of norms consisting of legislative acts, in which the legislator decides on essential elements, delegated acts, to be adopted by the Commission under the control of the legislator to amend or supplement certain non-essential elements of legislative acts and implementing acts, which are normally to be adopted by the Commission under the control of Member States where uniform conditions for the implementation of Union acts are required;
 - B. whereas the vast majority of legal acts adopted in the field of police cooperation and judicial cooperation in criminal matters (the former third pillar) have not been amended since the entry into force of the Treaty of Lisbon and therefore continue to operate outside the system of delegated and implementing acts (Articles 290 and 291 TFEU) as well as – for a transition period of five years – the Commission being unable to launch infringement procedures and the Court of Justice holding the limited powers delegated under the former treaty (Article 10 of Protocol 36);
 - C. whereas the intergovernmental conference invited the institutions to seek to amend or replace the legal acts of the former third pillar in order to bring about the full applicability of the powers of the institutions as provided for in the Treaty of Lisbon (Declaration No. 50 concerning Article 10 of Protocol 36, and Article 10(2) of Protocol 36); whereas Parliament, in its resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme¹, requested a number of priority proposals from the Commission by 1 September 2010, of which several are outstanding;
1. Condemns as undemocratic and contrary to the principle of the rule of law the fact that, almost four years after the entry into force of the Treaty of Lisbon, procedures for the implementation of former third pillar acts which often exclude Parliament or provide only for consultation, irrespective of the nature of the decisions to be taken, continue to be used; calls on the Commission to include in its work programme for 2014, at the latest, proposals to amend all legal acts of the former third pillar in order to align them with the new hierarchy of norms and to respect Parliament's powers, competences and right to information with regard to the delegation of powers to the Commission under the Treaty of Lisbon; stresses that this will require an individual assessment of each legal act in order to identify decisions which – as essential elements – need to be taken by the legislator, particularly where they touch upon the fundamental rights of the persons concerned, and those that can be considered to be non-essential (see ruling of the Court of Justice in the case C-355/01); proposes the setting-up of an interinstitutional working party to this end in order to establish criteria for the use of delegated or implementing acts on the basis of Article 290 TFEU; calls on the Council and the Commission to enter into negotiations with Parliament with a view to reaching agreement on such criteria as quickly as possible;

¹ OJ C 285 E, 21.10.2010, p. 12.

2. Draws attention to the fact that the Council continues to adopt legal acts on the basis of provisions of the former third pillar, long after the entry into force of the Treaty of Lisbon, such that Parliament has been required to bring legal action before the Court of Justice;
3. Strongly condemns the Council's insistence, and often also that of the Commission, on implementing acts even in cases where the criteria for delegated acts, as laid down in Article 290 TFEU, including the stipulation that the power delegated to the Commission covers only the adoption of non-legislative acts to supplement or amend non-essential elements of a legislative act, are clearly met;
4. Believes that the choice between delegated acts or implementing acts needs to be made on a case-by-case basis. That choice requires careful consideration with reference, in each case, to the requirements of Articles 290 and 291 TFEU. Believes, in this regard, that indicative guidelines on the application of those articles could prove useful;
5. Insists on the correct use of delegated acts in the new financial programmes; believes that decisions such as the setting of priorities and the allocation of financial resources among those priorities clearly supplement the basic act and, therefore, require delegated acts.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.10.2013
Result of final vote	+: 38 -: 4 0: 0
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Monika Flašíková Beňová, Hélène Flautre, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Timothy Kirkhope, Juan Fernando López Aguilar, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu Houillon, Anthea McIntyre, Roberta Metsola, Claude Moraes, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Josef Weidenholzer, Tatjana Ždanoka, Auke Zijlstra
Substitute(s) present for the final vote	Alexander Alvaro, Ana Gomes, Stanimir Ilchev, Andrés Perelló Rodríguez, Marie-Christine Vergiat