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REPORT

on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers
(2012/2323(INI))

Committee on Legal Affairs

Rapporteur: József Szájer

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on follow-up on the delegation of legislative powers and control by Member States of the Commission's exercise of implementing powers (2012/2323(INI))

The European Parliament,

- having regard to Articles 290 and 291 of the Treaty of the Functioning of the European Union (TFEU),
- having regard to Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹,
- having regard to the Common Understanding on Delegated Acts, as approved on 3 March 2011 by the Conference of Presidents,
- having regard to the Framework Agreement on relations between the European Parliament and the European Commission², in particular point 15 thereof and Annex 1 thereto,
- having regard to the judgment of the Court of Justice of 5 September 2012 in Case C-355/10, Parliament v Council (not yet reported), and the pending Case C-427/12, Commission v European Parliament and Council of the European Union,
- having regard to its resolution of 5 May 2010 on the power of legislative delegation³,
- having regard to the information report of the European Economic and Social Committee, adopted on 19 September 2013, on Better regulation: implementing acts and delegated acts,
- having regard to the letter of 26 November 2012 from the President of Parliament to the Chair of the Conference of Committee Chairs concerning the horizontal principles for the use of delegated acts in relation to the legislative programmes covered by the Multiannual Financial Framework (MFF), as endorsed by the Conference of Presidents at its meeting of 15 November 2012,
- having regard to the letter of 8 February 2013 from the President of Parliament to the Presidents of the Council and of the Commission concerning the lack of progress in the Council with regard to the alignment proposals in the fields of agriculture and fisheries,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinions of the

¹ OJ L 55, 28.2.2011, p. 13.

² OJ L 304, 20.11.2010, p. 47.

³ OJ C 81 E, 15.3.2011, p. 6.

Committee on Development, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy, the Committee on Transport and Tourism, the Committee on Agriculture and Rural Development, the Committee on Fisheries, and the Committee on Civil Liberties, Justice and Home Affairs (A7-0435/2013),

- A. whereas the Lisbon Treaty introduced the possibility for Parliament and the Council (together referred to as 'the legislator') to delegate part of its own powers to the Commission in a legislative act ('the basic act'); whereas delegation is a delicate operation whereby the Commission is instructed to exercise a power which is intrinsic to the legislator's own role; whereas it is therefore necessary to ensure the correct application of the Treaty, so as to guarantee a sufficient level of democratic legitimacy for delegated acts as well; 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 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;
- B. whereas in order to set out the practical arrangements and agreed clarifications and preferences applicable to delegations of legislative power in accordance with Article 290 TFEU, Parliament, the Council and the Commission agreed on a Common Understanding on Delegated Acts with a view to a smooth exercise of delegated power and an effective control of that power by the European Parliament and the Council;
- C. whereas the Treaties provide that Member States are to adopt all measures of national law necessary to implement legally binding Union acts; whereas, however, where uniform conditions for implementing legally binding Union acts are needed, those acts are to confer implementing powers on the Commission (and in certain exceptional cases on the Council), as laid down in Article 291 TFEU; whereas where the basic act requires that the adoption of implementing acts by the Commission must be subject to control by the Member States, the basic act should confer those implementing powers on the Commission in accordance with Regulation (EU) No 182/2011; whereas a key commitment made by the Commission in a statement annexed to that Regulation was the urgent alignment of the *acquis* to the new system of delegated and implementing acts to be completed during the current legislative term, including basic acts referring to the regulatory procedure with scrutiny (RPS);
- D. whereas it is for the legislator to determine, on a case-by case basis, the level of detail of each legislative act and thereby also to decide whether to delegate any power to the Commission to adopt delegated acts as well as whether there will be any need for powers to ensure uniform conditions for implementing the legislative act; whereas the conferral of such delegated or implementing powers is never an obligation; whereas such conferral

should however be considered where flexibility and efficiency are needed and cannot be delivered by means of the ordinary legislative procedure; whereas the decision as to whether to confer delegated or implementing powers must be based on objective factors which must permit judicial review of the solution adopted; whereas the absence of case law on Article 290 TFEU and on the criteria laid down therein has made it more difficult for the European Parliament and Council to agree on a delimitation between implementing and delegated acts;

- E. 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 entire sectors, on account of their possible socio-economic, environmental and health impacts;
- F. 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 provides for 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;

Criteria for the application of Articles 290 and 291 TFEU

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:
 - The binding or non-binding character of a measure must be decided on the basis of its nature and content; only the power to adopt legally binding measures may be delegated under Article 290 TFEU.
 - 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 as regards 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. Measures intended to further define the exact content of the obligations spelt out in the legislative act are designed to supplement the basic act by adding non-essential elements.
 - Measures leading to a choice of priorities, objectives or expected results should be adopted by means of delegated acts, if the legislator decides not to include them in the legislative act itself.
 - 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.

- Under certain circumstances the Commission is empowered to adopt additional binding rules of general scope that affect in substance the rights or obligations laid down in the basic act. Those measures will, by definition, supplement those laid down in the basic act, further defining the Union policy. This can be achieved only by means of a delegated act.
- Depending on the structure of the financial programme in question, non-essential elements amending or supplementing the basic act, such as those concerning specific technical matters, strategic interests, objectives, expected results, etc. could be adopted by delegated acts to the extent that they are not included in the basic act. Only for elements that do not reflect any further political or policy orientation the legislator may decide to allow for their adoption through implementing acts.
- 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 a delegated act.
- A measure determining arrangements for the provision of information (i.e. the format) does not generally add to the obligation to provide information. Instead, such a measure enables uniform implementation. This should therefore be carried out, as a general rule, by means of an implementing act.
- Measures establishing a procedure (i.e. a way of performing or giving effect to something) can be laid down either in a delegated or in an implementing act (or even be 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-essential policy choices in order to supplement the legislative framework laid down in the basic act should in general be laid down in 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.
- As with procedures, an empowerment to determine methods (i.e. ways of doing something in particular in a regular and systematic way) or methodology (i.e. rules to determine the methods) can provide for delegated or implementing acts depending on the content and the context.
- 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.
- 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; where, however, the criteria still allow the Commission to make further non-essential/secondary political or

policy choices such authorisation should be a delegated act, because it would supplement the basic act.

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

General comments

2. Urges the Commission and the Council to enter into negotiations with Parliament in order to reach an agreement on the above-mentioned criteria; considers that this can be achieved within the framework of a revision of the Interinstitutional Agreement on Better Law-Making that would include such criteria;
3. Reiterates the decisions taken by the Conference of Presidents at its meetings on 13 January 2011 and 19 April 2012 in relation to delegated and implementing acts, and stresses that Parliament should always insist on the use of delegated acts for all powers delegated to the Commission that fulfil 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 Parliament;
4. Calls on the Commission in future to provide an explicit and sustainable justification as to 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; recalls that, as is clear from the provisions of Articles 290 and 291 TFEU, delegated and implementing acts are intended to address different needs and cannot therefore be substituted one for another;
5. Believes that, in order to strengthen the position of its rapporteurs in legislative negotiations, greater recourse should be had to the possibility of requesting an opinion from the Committee on Legal Affairs under Rule 37a of the Rules of Procedure;
6. 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; 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 those proposals as soon as possible, in order to finalise this exercise before the end of the current parliamentary term; 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 a basic act, *inter alia* by deleting some of those elements or by supplementing the basic act 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;

7. Expresses concern that, despite the fact that it can be a good solution in certain cases, systematically keeping all policy elements in the basic act could, in due course, deprive Article 290 TFEU of its use as a valuable means of rationalisation of the legislative process, which was its initial rationale in order to avoid micro-management and a heavy and lengthy co-decision procedure; stresses that this approach could be extremely difficult to apply in some cases, such as in sectors where technologies are still being developed;
8. 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 cases where the examination procedure is used, should accept the so-called "no opinion clause" only in exceptional, duly justified cases, as it prevents the Commission from adopting the draft implementing act in the event of "no opinion" by the committee composed of representatives of the Member States and chaired by the Commission;
9. Recommends that the Commission not misuse delegated acts in order to reopen discussions on matters agreed at political level in trilogues; points out that the power to adopt delegated acts should preferably be conferred on the Commission only for a limited period of time;
10. Encourages its committees to closely monitor the use of delegated and implementing acts within their respective spheres of responsibility; to that end, requests the Commission to improve the administrative arrangements for the transmission and filing of documents related to delegated acts, including preparatory documents, in order to ensure at least the same level of information and transparency as for the existing register of implementing acts and to guarantee a simultaneous flow of information to Parliament and to the Council as the legislator;
11. Considers that significant progress has been made in ensuring the swift transmission of the delegated acts to the lead committees, which in turn has positively influenced the exercise by Members' of their right of scrutiny;
12. Points to the political responsibility of the legislator and the need for the regular and timely involvement of Parliament in the preparatory phase of delegated acts; calls on the Commission to keep Parliament, including the Rapporteur responsible for the file in question, fully informed of the planned timetable, the scheduled meetings of expert groups and the content of envisaged delegated acts, including by providing access to the relevant Commission databases, such as CIRCA;
13. 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 Parliament's experts attending those meetings, the Commission may be invited to meetings in Parliament in order 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 those parts of meetings of Member States and the Commission where matters other than implementing acts within the meaning of Regulation (EU) No 182/2011 are

discussed;

14. Takes the view that the time between the transmission of final draft implementing acts and their adoption by the Commission is often too short, thereby not allowing for adequate oversight by Parliament; urges the Commission, therefore, to fully respect the Parliament's right to scrutinise final draft implementing acts within a period of one month in accordance with the 2008 agreement between Parliament and Commission on comitology procedures;
15. 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; considers that circulation of delegated acts to Members by means of a newsletter facilitates the scrutiny of such acts and allows Members to raise possible objections in due time;
16. Recommends that permanent rapporteurs be appointed in each committee for delegated and implementing acts, guaranteeing coherence within the committee concerned and with other committees; considers that similar issues must be dealt with in a coherent manner, while preserving the required flexibility;
17. Welcomes the availability of the Commission's experts to participate in information meetings with Members, as the organisation of such meetings, in good time before the adoption of the delegated acts, is useful for the purposes of clarifying key aspects of such acts and facilitating Parliament's work in assessing the acts concerned;
18. Continues to call on the members of negotiating teams in particular to pay particular attention to delegated and implementing acts when reporting to the competent committee following each trilogue pursuant to Rule 70(4) of Parliament's Rules of Procedure;

Comments concerning specific subject-matters

Agriculture and fisheries

19. Deplores the fact that the alignment dossiers on essential agricultural and fisheries legislation were blocked by the Council after the failure of negotiations in informal trilogues and Parliament's first reading; underlines that the reason for this situation often lies in the Council's unwillingness to make use of delegated acts; notes that only in the context of the full legislative procedures relating to the reform of the CAP and the CFP was it possible to find an alignment solution which was acceptable to both sides, although some provisions could be agreed upon only on condition that they would not constitute a precedent; urges the Council to make progress on the outstanding alignment dossiers, so that the procedures can be concluded before the end of the current parliamentary term;

Development cooperation

20. Recalls that, especially in the case of the Development Cooperation Instrument (DCI), Parliament has since 2006 practised a process of 'democratic scrutiny' in the form of a political dialogue with the Commission on draft measures; notes, however, that Parliament's experience with this practice has been mixed, and that its influence over Commission decisions has been limited;

21. Points out that in the sphere of development cooperation implementing acts are often based on prior consultations with third parties, rendering changes at a late stage of the formal comitology procedure more difficult; stresses, therefore, that earlier notification of, and dialogue with, Parliament would be an important step towards a more effective use of Parliament's power of scrutiny;

Economic and monetary affairs

22. Points out that in the area of financial services the regulations on the European Supervisory Authorities (ESAs) introduce regulatory technical standards (RTS) and implementing technical standards (ITS) under which ESAs submit draft RTS and ITS to the Commission for adoption; takes the view that, given the technical expertise and specialist skills of the ESAs, delegated acts should take the form of RTS rather than ordinary delegated acts wherever possible; also considers that, before adopting ordinary delegated acts the Commission should seek technical advice from the relevant ESA on the content of those acts;
23. Points out that, under certain legislative acts, the period for scrutinising RTS may be extended by a further month, given their volume and complexity, and considers that this kind of flexibility should become the norm; furthermore points out that the legislator has set a period of scrutiny of three months, extendable by three months, for all delegated acts in the area of financial services, and considers that this practice should be extended to other areas of a complex nature;
24. Emphasises that the arrangements whereby no delegated act may be submitted to Parliament during its recess periods should also apply to RTS;
25. Believes that the call for stakeholders to sit in the ESA stakeholder groups should last for a sufficient length of time (not less than two months), should be issued via a variety of channels and should follow a clear and streamlined process in order to ensure that applications are received from a broad base of candidates; recalls the need for balanced ESA stakeholder groups in line with the provisions of the respective regulations;

Employment and social affairs

26. Recalls that in the field of employment and social affairs, Parliament has challenged the validity of the EURES decision before the Court of Justice in order to defend its prerogatives;

Civil liberties, justice and home affairs

27. Calls on the Commission to include in its work programme 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 as non-essential elements (see ruling of the Court of Justice in Case C-355/10);

28. 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;

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29. Instructs its President to forward this resolution to the Council, the Commission and the Parliaments of the Member States.

EXPLANATORY STATEMENT

The purpose of this report is to take stock of the practical application of Articles 290 and 291 TFEU and provide the rapporteurs with a number of practical guidelines when dealing with delegated and implementing acts. Parliament received, as of 18 July 2013, 69 delegated acts (4 in 2010, 7 in 2011, 38 in 2012 and 20 so far in 2013) including 64 delegated regulations, 2 delegated directives and 3 delegated decisions, and neither co-legislator has objected so far to a delegated act.

The high hopes that were attached to the reports on the delegation of legislative power and the Implementing Acts Regulation in 2010 and 2011-for which I was the rapporteur-have not materialised in the way originally foreseen. These instruments were designed to further improving the control exercised by the co-legislators of secondary legislation and thereby reinforcing the democratic legitimacy of these acts. They also aimed to enhancing effectiveness and further simplifying legislation at European level.

To prepare for the drawing up of this report, an administrative project team comprising administrators from the opinion-giving committees and relevant Parliament services was set up, and a working document was prepared, which outlined the main issues, which could be broadly described as relating to two different areas:

1. The choice between the use of delegated or implementing acts causes difficulties in many negotiations on new legislative proposals by the Commission and proposals aligning the existing legislation to the Lisbon Treaty.
2. There are several issues related to the preparation and adoption by the Commission of delegated and draft implementing acts and their handling by the European Parliament, including the different ways in which Parliament exercises its scrutiny powers, the involvement of experts and the creation of an effective and efficient information flow between the institutions and within Parliament.

The delineation of delegated and implementing acts, and the correct and most appropriate choice of provisions to be included in the basic act, constitutes issues which become an integral part of most negotiations on legislative proposals. I therefore present a number of practical proposals to safeguard Parliament's prerogatives and to guide Members and staff in this work, taking into account the different positions taken by Parliament, the 'horizontal approach' endorsed by the Conference of Presidents and the regular screening exercises conducted by Parliament's services.

In this connection, it is essential that committees make increased use of the possibility of requesting an opinion from JURI under Rule 37a of the Rules of Procedure on the use of delegated acts.

The end-goal of this report is to consolidate the work which have taken place at both administrative and political level in the EU institutions, with a particular focus on the co-

legislators and the Commission, on issues relating to delegated and implementing acts over the last four years and to pave the way for these issues to become part of an upcoming review of the 2003 Interinstitutional Agreement on Better Lawmaking.

23.9.2013

OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Committee on Legal Affairs

on 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: Gay Mitchell

SUGGESTIONS

The Committee on Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- having regard to its legislative resolution of 1 December 2011 on the joint text approved by the Conciliation Committee for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1905/2006 establishing a financing instrument for development cooperation (PE-CONS 00059/2011 – C7-0379/2011 – 2010/0059(COD))¹,
- having regard to its resolution of 8 June 2011 on Regulation (EC) 1905/2006 establishing a financing instrument for development cooperation: lessons learned and perspectives for the future²,

On implementing acts

1. Recalls that, in the case of the Development Cooperation Instrument (DCI), as well as of other external financing instruments, Parliament has since 2006 practised a process of 'democratic scrutiny', alongside the formal scrutiny powers in place for implementing measures, in the form of a political dialogue with the Commission on draft measures; notes, however, that Parliament's experience with this practice has been mixed, and that its influence over Commission decisions has been limited;
2. Points out that in the sphere of development cooperation implementing acts are often based on prior consultations with third parties, rendering changes at a late stage of the

¹ OJ C 165 E, 11.6.2013, p. 109.

² OJ C 380 E, 11.12.2012, p. 51.

formal comitology procedure more difficult; stresses, therefore, that earlier notification of, and dialogue with, Parliament, as is currently being discussed by the institutions in anticipation of the new external financing instruments 2014-2020, would be an important step towards a more effective use of Parliament's scrutiny powers;

3. Takes the view that the often very short timeline between the presentation of draft implementing measures and their adoption by the Commission is difficult to reconcile with Parliament's working methods;

On delegated acts

4. With regard to external financing instruments, recalls its decision, in its legislative resolution of 1 December 2011 on the amendment of Regulation (EC) No 1905/2006, to insist on the use of delegated acts wherever strategic political decisions on financing and programming are involved; in anticipation of the DCI 2014-2020, reiterates that substantial policy choices, in particular those regarding priority areas and indicative financial allocations in broad terms, cannot be made at the level of implementing acts; underlines again the fact that involvement of the co-legislators in such choices cannot be viewed as micromanagement;
5. Holds that delegated acts are particularly useful in the sphere of external policy, as they combine enhanced democratic legitimacy with responsive, flexible decision making; stresses, however, that particularly in the case of broad and complex financing instruments such as the DCI, the potential areas of cooperation should be clearly defined in the basic act;
6. Objects to the argument advanced by the Commission in its Communication on the First Simplification Scoreboard for the MFF 2014-2020 (COM(2012)0 531), adopted on 20 September 2012, that the use of delegated acts, as proposed by the European Parliament for external financing instruments, would defeat the important objectives of efficiency, flexibility and simplification;
7. Notes that the absence of case law on Article 290 and on the criteria laid down therein has made it more difficult for co-legislators to agree on a delimitation between implementing and delegated acts in the case of external financing instruments, which do not have the classical features of legislation with a regulatory scope.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.9.2013
Result of final vote	+ : 26 - : 0 0 : 0
Members present for the final vote	Thijs Berman, Michael Cashman, Ricardo Cortés Lastra, Corina Crețu, Leonidas Donskis, Mikael Gustafsson, Filip Kaczmarek, Miguel Angel Martínez Martínez, Gay Mitchell, Norbert Neuser, Maurice Ponga, Jean Roatta, Birgit Schnieber-Jastram, Michèle Striffler, Keith Taylor, Patrice Tirolien, Ivo Vajgl
Substitute(s) present for the final vote	Philippe Boulland, Enrique Guerrero Salom, Edvard Kožušník, Krzysztof Lisek, Isabella Lövin, Judith Sargentini
Substitute(s) under Rule 187(2) present for the final vote	Emma McClarkin, Jarosław Leszek Wałęsa, Elżbieta Katarzyna Łukacijewska

11.10.2013

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on 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: Sharon Bowles

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Points out that in the area of financial services the regulations on the European Supervisory Authorities (ESAs)¹ introduce regulatory technical standards (RTS) and implementing technical standards (ITS) under which ESAs submit draft RTS and ITS to the Commission for adoption; takes the view that, given the technical expertise and specialist skills of the ESAs, delegation should take the form of RTS rather than ordinary delegated acts wherever possible; considers that also before adopting ordinary delegated acts the Commission should seek technical advice from the relevant ESA on the content of those acts;
2. Emphasises that the choice of the correct legal instrument (legislative, delegated or implementing act or delegated act based on RTS) is not only a technical question; points out that, in fact, it is of the utmost importance to ensure that the legislature assumes full responsibility with regard to the essential elements and to the effective scrutiny of political decisions; notes that it can also be of considerable importance for the balance of power, the correctness and proper functioning of the decision-making process and the enforcement of policies that these various instruments are used in a way which complies

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), OJ L 331, 15.12.2010, p. 12; Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), OJ L 331, 15.12.2010, p. 48; Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), OJ L 331, 15.12.2010, p. 84, in particular Articles 10 to 15 thereof.

with the criteria set out in the Treaty; stresses that the European Parliament should consequently pay particular attention to these aspects;

3. Stresses that the co-legislators should always aim to clarify and frame the purpose and necessity of any delegation in the level 1 text, setting out essential elements and policy guidance in the basic act and leaving only non-essential elements to be developed at the technical level;
4. Proposes that, in each parliamentary committee, the Chair, one of the Vice-Chairs or a relevant Member should be charged with supporting Members and guaranteeing coherence regarding delegated and implementing acts in co-ordination with the other committees; points out that the rapporteur for the basic act should, when available, automatically become the rapporteur for its follow-up and should report periodically to the committee; believes that, where appropriate, arrangements should be made to allow for continuity in the exercise of scrutiny by returning members who were involved in the level 1 text before the elections;
5. Considers that drafts of level 1 texts should always be accompanied by a full timeline – prepared in consultation with the relevant ESA – for essential delegated acts and RTS, including consultation periods and implementation time;
6. Emphasises that Parliament and the Council should be fully informed of the timeline and of the content of envisaged delegated measures; takes the view that the intention to endorse or reject a draft RTS should be sent in writing to the Chair of Parliament’s competent committee and to the rapporteur and shadow rapporteurs, giving reasons; holds that in the case of delegated acts the Commission must likewise inform Parliament and the Member States when it does not intend to follow ESA advice, specifying the areas in which it has chosen not to do so and why, and including, where appropriate, the result of public consultations and thorough cost-benefit and legal analyses to support its decision, as well as reasoned answers to any written comments raised by the co-legislators; considers that there should be full transparency on progress; observes that the Commission’s interpretation of the Framework Agreement¹ sometimes makes it difficult and cumbersome for Parliament experts to attend expert group meetings dealing with delegated acts and means that Parliament is not placed on an equal footing with the Council;
7. Calls on the Joint Committee to coordinate the ESAs’ work horizontally and requests that they attend ECON committee hearings to brief the Parliament on ongoing work in the field of delegated acts and ITS;
8. Points out that in the recently adopted Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD) the time period for scrutinising RTS may be extended by a further month given their volume and complexity, and considers that this kind of flexibility should become a general rule; considers that deadlines for objections by Parliament to delegated acts adopted by the Commission need to be sufficiently long to allow for the full exercise of Parliament’s rights of scrutiny, taking into account the

¹ Framework Agreement on relations between the European Parliament and the European Commission (OJ L 304, 20.11.2010, p. 47).

plenary calendar and workload; takes the view that the standard deadline of two months, extendable by two months, as provided for in the Common Understanding is not sufficiently long for complex matters and extensive delegated acts, which call for a longer scrutiny period to be set; recalls that the co-legislator has full discretion regarding the period of scrutiny to be set in the basic act; stresses, in this regard, that where the Common Understanding provides guidelines in relation to deadlines, it is in no way binding and therefore does not limit the legislator in this respect; points out that the legislator has set a period of scrutiny of three months, extendable by three months, for all delegated acts in the area of financial services, and considers that this practice should be extended to other areas of a complex nature;

9. Stresses that Parliament's recess periods during the summer break and at the end of the year, along with the end of the parliamentary term, need to be taken into account in the calendar for the adoption of delegated acts, so as to avoid situations where Parliament cannot exercise its scrutiny on account of a recess period or the end of the parliamentary term; considers that appropriate provisions to that effect should be included in the provisions empowering the Commission to adopt delegated acts; emphasises that the arrangements according to which no delegated act may be submitted during Parliament's recess periods should also apply to RTS; observes that, as an objection requires an absolute majority, votes in plenary on an objection to a delegated act should be carefully scheduled;
10. Considers it fundamental that procedures and measures are put in place for the period during which the 2014 elections are taking place, in particular on recently and soon-to-be adopted legislation including CRR, Solvency II, EMIR, Omnibus II and MiFID;
11. Considers that when ESAs need to be granted further time for consultation and for the development of RTS they should inform Parliament's competent committee of the reasons for any delay in the submission of draft RTS and when requested to do so, address Parliament's competent committee; considers that the Commission should inform Parliament's competent committee in the event of a new timeline for the submission of draft RTS being established;
12. Believes that the call for stakeholders to sit in the ESA stakeholder groups should last for a sufficient length of time (not less than two months), be issued via a variety of channels and follow a clear and streamlined process in order to ensure that a broad base of candidates apply; recalls the need for balanced ESA stakeholder groups in line with the provisions of the respective regulations.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	30.9.2013
Result of final vote	+: 32 -: 0 0: 0
Members present for the final vote	Marino Baldini, Jean-Paul Basset, Sharon Bowles, George Sabin Cutaş, Leonardo Domenici, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Jürgen Klute, Philippe Lamberts, Werner Langen, Ivana Maletić, Arlene McCarthy, Anni Podimata, Peter Simon, Ivo Strejček, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain
Substitute(s) present for the final vote	Fabrizio Bertot, Zdravka Bušić, Mojca Kleva Kekuš, Olle Ludvigsson, Catherine Stihler, Nils Torvalds, Oleg Valjalo
Substitute(s) under Rule 187(2) present for the final vote	Wim van de Camp

26.9.2013

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs

on 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: Pervenche Berès

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Stresses the importance of Parliament taking a horizontal approach to the implementation of powers relating to the MFF;
2. Criticises the fact that the delegation of legislative powers to the Commission involves significant political and strategic questions; stresses that it is important for Parliament committees to adopt a coherent approach in this context; points out, with regard to the MFF legislative proposals, that, when not included in the basic act, *'elements such as objectives and priorities, financial allocations in broad terms (...) should be adopted by delegated acts'*¹;
3. Criticises the Council and the Commission for systematically trying to give implementing powers precedence over delegated acts in legislative proposals; calls on those institutions to comply with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) regarding the distinct nature of delegated acts compared with implementing acts;
4. Recalls that in the field of employment and social affairs, Parliament has challenged the validity of the EURES decision² before the Court of Justice in order to defend its

¹ Minutes of the Conference of Presidents meeting of 15 November 2012, based on the letter of 25 October 2012 from the Chair of the Conference of Committee Chairs, Klaus-Heiner Lehne, to the President of the European Parliament.

² OJ L 328, 28.11.2012, p. 21, Commission Implementing Decision of 26 November 2012 implementing Regulation (EU) No 492/2011 of the European Parliament and of the Council as regards the clearance of

prerogatives, on the grounds that the Commission did not respect the limits arising from Article 291 TFEU;

5. Calls on the Council and the Commission to attempt to keep to a minimum the overall use of delegated acts pursuant to Article 290 TFEU and of implementing powers pursuant to Article 291 TFEU;
6. Emphasises that it is entirely within the discretion of Parliament to decide, among the non-essential elements of the basic act, which are or are not to be addressed through a delegation of powers; recognises that it should delegate powers with care, having regard to the need to safeguard its prerogatives and to ensure transparency in EU law-making;
7. Considers that in the context of the alignment of old comitology measures, the measures previously subject to the regulatory procedure with scrutiny should in principle become delegated acts; urges the Commission to speed up this alignment;
8. Believes that the current timeframe for scrutinising implementing acts is too short and thus does not allow adequate oversight by Parliament of implementing acts;
9. Stresses that the level of information and transparency regarding the transmission and preparation of delegated acts should be improved;
10. Calls on the Commission to inform the rapporteur with responsibility for a basic act about the preliminary work on a delegated act no later than during the preparatory stage of work on that delegated act.

vacancies and applications for employment and the re-establishment of EURES.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.9.2013
Result of final vote	+: 33 -: 2 0: 1
Members present for the final vote	Edit Bauer, Heinz K. Becker, Pervenche Berès, Vilija Blinkevičiūtė, Philippe Boulland, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Minodora Cliveti, Emer Costello, Frédéric Daerden, Sari Essayah, Richard Falbr, Danuta Jazłowiecka, Ādám Kósa, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Csaba Őry, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Ruža Tomašić, Traian Ungureanu
Substitute(s) present for the final vote	Françoise Castex, Philippe De Backer, Anthea McIntyre, Ria Oomen-Ruijten, Evelyn Regner, Birgit Sippel, Csaba Sógor, Tatjana Źdanoka

30.5.2013

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Legal Affairs

on 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: Matthias Groote

SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Notes that the delegation of power to the Commission is not merely a technical issue but can involve questions of political sensitivity of considerable importance to EU citizens and consumers, including the authorisation of health and nutrition claims, food additives and active chemical substances, food labelling, the definition of drinks and foodstuffs, and the functioning of the EU Emissions Trading System (ETS);
2. Emphasises that the delegation of power is a choice for Parliament as a co-legislator, which it should exercise with care on a case-by-case basis having regard to the need to safeguard its prerogatives and to ensure transparency, consistency and legal certainty in EU law-making;
3. Recalls that it is 'clear from the provisions of Articles 290 and 291 of the Treaty that delegated acts and implementing acts are answering different needs and therefore cannot be substituted by one for another'¹;
4. Insists that, in the context of any post-Lisbon alignment of a legislative act, those measures previously subject to the regulatory procedure with scrutiny should clearly become delegated acts, and not implementing acts, as delegated acts are foreseen for

¹ 'Handbook on Delegated Acts/Implementing Acts', DG IPOL, February 2013, p. 16.

exactly the same purpose as measures subject to the regulatory procedure with scrutiny (that is, to adopt measures of general scope/application designed to supplement or amend certain non-essential elements of the legislative act), unless exceptionally justified; considers that such justifications should be evaluated within a reasonable amount of time, bearing in mind the time limits applicable in legislative procedures;

5. Strongly criticises the Council for trying systematically not only to avoid delegated acts in new legislation at all costs, but even to roll back the pre-Lisbon alignment procedure by unduly trying to turn measures subject to the regulatory procedure with scrutiny into implementing acts in post-Lisbon alignment acts; calls on the Council to respect the provisions of the Treaty as regards the clearly distinct nature of delegated acts relative to implementing acts;
6. Considers that while a decision not to delegate certain non-essential elements – and to keep instead any changes thereto in the ordinary legislative procedure – may be an appropriate solution in some cases (in that it respects the prerogatives of both the Council and Parliament), it would not be appropriate in other cases where it would be disproportionate to the nature of the non-essential element to be amended, and would thus, de facto, act as a brake on what may well be important adaptations;
7. Considers that, in order to strengthen the position of its rapporteurs in legislative negotiations, more recourse should be made to Rule 37a of its Rules of Procedure; emphasises that it is entirely within the discretion of the legislator to decide, among the non-essential elements of the basic act, which are to be regulated through a delegation of powers to the Commission and which are to remain regulated at the legislative level; believes that politically important elements, such as Union lists or registers of products or substances, should remain an integral part of the basic act – where appropriate in the form of Annexes; stresses that the creation of self-standing lists should be avoided in the interests of legal certainty;
8. Requests the Secretary-General to prepare a study on the outcome of legislative negotiations between Parliament and the Council involving the issue of delegated and implementing acts, with a view to providing advice and best-practice guidelines for rapporteurs and others involved in future negotiations;
9. Takes the view that the current Commission practice as regards the transmission and filing of delegated acts and the agendas and documents concerning preparatory meetings is less well developed than for implementing acts and does not amount to an appropriate mechanism within the meaning of the Common Understanding on Delegated Acts; calls on the Commission to ensure as soon as possible that at least the same level of information and transparency is provided as in the case of the existing comitology register;
10. Is of the opinion that the current arrangements concerning its oversight of implementing acts are inadequate and should not be limited to draft acts; calls for Article 11 of the implementing acts Regulation to be amended so that (in principle and with the exception of acts adopted for reasons of urgency) Parliament has the right to scrutinise an implementing act within a period of one month following its adoption.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	29.5.2013
Result of final vote	+ : 36 - : 2 0 : 0
Members present for the final vote	Elena Oana Antonescu, Sophie Auconie, Sergio Berlato, Lajos Bokros, Franco Bonanini, Yves Cochet, Anne Delvaux, Jill Evans, Elisabetta Gardini, Matthias Groote, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Christa Kläß, Eija-Riitta Korhola, Jo Leinen, Corinne Lepage, Peter Liese, Zofija Mazej Kukovič, Linda McAvan, Miroslav Ouzký, Gilles Pargneaux, Pavel Poc, Frédérique Ries, Kārlis Šadurskis, Richard Seeber, Claudiu Ciprian Tănăsescu, Glenis Willmott, Sabine Wils
Substitute(s) present for the final vote	Margrete Auken, Philippe Juvin, Alda Sousa, Rebecca Taylor, Marita Ulvskog, Vladimir Urutchev
Substitute(s) under Rule 187(2) present for the final vote	Stanimir Ilchev

24.9.2013

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Legal Affairs

on 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: Amalia Sartori

SUGGESTIONS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Notes that significant progress has been made in terms of translating into practice Articles 290 and 291 of the Lisbon Treaty, and points out that importance is increasingly being given in inter-institutional negotiations to the choice between delegated and implementing acts;
2. Emphasises that while the co-legislators may not always share the same understanding of the essential elements of the two type of acts, Parliament should continue to stress that politically sensitive issues that could supplement the basic act cannot be dealt with by means of implementing acts, as this would affect Parliament's right of scrutiny in a negative way;
3. Underlines the increasing difficulties faced by Parliament in negotiating with the Council – as a result of the Council's unwillingness to consider the use of delegated acts – and the fact that, although the possibility of including all of the necessary elements in the basic act and only allowing implementing acts may be a legally sound option, the approach could be extremely difficult to apply in some cases, such as in sectors where technologies are still being developed; points out that, in addition, this approach may lead to law-making that is not in line with the principles of good legislation in the EU;
4. Stresses that the classification of information in certain areas of activity should not impede Parliament's right to scrutinise delegated acts; notes that should such type of information be the subject of a delegated act, the necessary arrangements for allowing Members' access to it should be made in accordance with the legislation in force;

5. Stresses that in many legal areas, such as energy or information and communication technologies, questions that at first appear to be rather technical may entail political choices carrying important consequences; underlines, therefore, that in order to ensure democratic legitimacy throughout the whole EU law-making process, Parliament should be provided with sufficient expertise so as to exercise its scrutiny rights in an independent way;
6. Considers that significant progress has been made in ensuring the swift transmission of the delegated acts to the lead Committees, which in turn has positively influenced the exercise of the Members' right of scrutiny;
7. Believes that the circulation of delegated acts to Members by means of a newsletter facilitates the scrutiny of such acts and allows Members to raise possible objections in due time;
8. Notes with concern that Parliament's experts are not systematically invited to preparatory meetings on delegated acts; calls on the Commission to take further steps to address this issue and to keep Parliament informed of the planned timetable for the adoption of such acts;
9. Welcomes the availability of the Commission's experts to participate in information meetings with Members, as the organisation of such meetings, well before the adoption of the delegated acts, is useful for clarifying key aspects of such acts and for facilitating Parliament's work in reaching a final agreement;
10. Notes the very substantial increase in the possibilities offered by delegated acts with regard to legislative acts; expresses its concern that Parliament lacks sufficient staff to assume fully its political responsibilities in scrutinising the process of delegation to the Commission, such as when it is called on to express its objections to the deadline stipulated in a basic legislative act; calls for a quantitative and qualitative assessment of staff needed by the European Parliament to assume properly its responsibility as co-legislator.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	18.9.2013
Result of final vote	+: 51 -: 0 0: 0
Members present for the final vote	Amelia Andersdotter, Josefa Andrés Barea, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Fabrizio Bertot, Jan Březina, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Pilar del Castillo Vera, Christian Ehler, Adam Gierek, Norbert Glante, András Gyürk, Edit Herczog, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Philippe Lamberts, Marisa Matias, Angelika Niebler, Jaroslav Paška, Aldo Patriciello, Herbert Reul, Michèle Rivasi, Paul Rübig, Francisco Sosa Wagner, Konrad Szymański, Patrizia Toia, Catherine Trautmann, Ioannis A. Tsoukalas, Claude Turmes, Vladimir Urutchev, Adina-Ioana Vălean, Alejo Vidal-Quadras
Substitute(s) present for the final vote	Maria Badia i Cutchet, Antonio Cancian, Yves Cochet, António Fernando Correia de Campos, Ioan Enciu, Elisabetta Gardini, Jolanta Emilia Hibner, Seán Kelly, Bernd Lange, Corinne Lepage, Marian-Jean Marinescu, Mario Pirillo
Substitute(s) under Rule 187(2) present for the final vote	María Irigoyen Pérez, Cecilia Wikström, Sabine Wils

5.9.2013

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on Legal Affairs

on 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: Werner Kuhn and Saïd El Khadraoui

SUGGESTIONS

The Committee on Transport and Tourism calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that rule-making in the European Union also takes place below the legislative level, in acts developing and implementing legislative acts and that it is necessary to ensure the correct application of the Treaty to guarantee a sufficient level of democratic legitimacy for these acts as well;
2. Emphasises that delegated and implementing acts should be limited to issues of a purely technical and/or administrative nature: political topics should be reserved to a democratic and transparent co-decision procedure, accessible to European citizens;
3. Recalls that according to Articles 290 and 291 of the Treaty, delegated acts and implementing acts serve different needs and therefore one cannot be substituted for the other; considers that the delineation of delegated and implementing acts, as well as the correct and most appropriate choice of provisions to be included in the basic act, is an important political question which should be addressed and discussed at an early stage in the preparation of draft legislative reports by rapporteurs and shadow rapporteurs with the help of the Committee Secretariats and, in particular, of the Legal Service;
4. Urges the Commission to propose a set of precise interinstitutional criteria for the use of delegated and implementing acts, including revision mechanisms, and based on the various stages of decision making that lead to these acts;
5. Underlines the increasing difficulties faced by Parliament in negotiating with the Council

as a result of the Council's unwillingness to consider the use of delegated acts and the fact that, although the solution of including in the basic act all the necessary elements to allow uniquely the use of implementing acts may be a legally sound option, this approach may be extremely difficult in some cases, for example in sectors where technologies are still being developed, and in many cases may lead to pieces of legislation which are not in line with the principles of Better Regulation in the EU; therefore urges the Commission, as guardian of the Treaties, to fulfil its commitments under Articles 290 and 291 of the Lisbon Treaty and fully support Parliament in defending its rights during negotiations with the Council;

6. Believes that, in order to strengthen the position of its rapporteurs in legislative negotiations, more recourse should be made to the possibility of requesting an opinion from the Legal Affairs Committee under Rule 37a of the Rules of Procedure;
7. Express its concerns about the alignment exercise in the current context of the Council's hostility towards the use of delegated acts, since it might lead to Parliament losing its rights of control and scrutiny, if regulatory procedure with scrutiny (RPS) measures were to become implementing acts in important and politically sensitive pieces of legislation, like those related to security; therefore calls on the Commission and the Council to comply with the Treaty and its goals and guarantee democratic control through Parliament's rights over delegated acts;
8. Stresses that in many legal areas, such as transport, questions that at first appear to be rather technical may entail political choices carrying important consequences; therefore underlines that in order to ensure democratic legitimacy throughout the whole EU law-making process, Parliament should be provided with sufficient expertise so as to exercise its rights of scrutiny in an independent way;
9. Underlines the importance of Parliament's involvement in the preparatory phase of delegated acts, given that the correct exercise of Parliament's scrutiny in relation to delegated acts may be difficult without an adequate follow-up to their preparatory phase and the necessary expertise to assess their content, given the limited time and resources provided for their scrutiny at Committee level;
10. Calls on the Commission to ensure that the same level of information and transparency is provided both to national experts and Parliament's experts;
11. Insists that, in the context of the post-Lisbon alignment of a legislative act, those measures previously subject to the regulatory procedure with scrutiny should become delegated acts rather than implementing acts, unless exceptionally justified.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.9.2013
Result of final vote	+ : 31 - : 1 0 : 3
Members present for the final vote	Magdi Cristiano Allam, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Philippe De Backer, Luis de Grandes Pascual, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Franco Frigo, Mathieu Grosch, Dieter-Lebrecht Koch, Georgios Koumoutsakos, Werner Kuhn, Jörg Leichtfried, Bogusław Liberadzki, Eva Lichtenberger, Gesine Meissner, Hubert Pirker, Dominique Riquet, Petri Sarvamaa, Olga Sehnalová, Brian Simpson, Keith Taylor, Patricia van der Kammen, Dominique Vlasto, Roberts Ziļe
Substitute(s) present for the final vote	Phil Bennion, Spyros Danellis, Michel Dantin, Geoffrey Van Orden, Janusz Władysław Zemke

25.11.2013

OPINION OF THE COMMITTEE ON AGRICULTURE AND RURAL DEVELOPMENT

for the Committee on Legal Affairs

on 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: de Paolo De Castro

SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Reiterates the importance of the alignment of the acquis, especially with regard to policy areas such as the Common Agriculture Policy, which were not adopted under the codecision procedure prior to the entry into force of the TFEU; deplores the fact that the alignment dossiers on essential agricultural legislation were blocked by the Council after the failure of negotiations in informal trilogues and Parliament's first reading; notes that only in the context of the full legislative procedures relating to the reform of the CAP was it possible to find a solution to alignment which was acceptable to both sides, although some provisions could be agreed upon only on condition that they would not constitute a prejudice;
2. Urges the Council to make progress on the outstanding alignment dossiers, so that the procedures can be concluded before the end of the legislative term;
3. Considers that the automatic alignment provided for in Article 10 of Regulation (EU) No 182/2011 created serious problems for the alignment procedures, as the absence of any time pressure was detrimental to the interinstitutional negotiation process and ultimately allowed the Council to block the alignment dossiers;
4. Notes that the transmission of documents to the European Parliament needs to be improved, especially with regard to draft delegated acts, in order to guarantee simultaneous flow of information to the European Parliament and the Council as co-legislators;

5. Recommends that the Commission not misuse delegated acts in order to reopen discussions on political agreements reached under trilogue arrangements;
6. Calls on the Commission to facilitate participation by Parliament's experts in expert group meetings without creating unnecessary bureaucratic hurdles.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	25.11.2013
Result of final vote	+ : 24 - : 3 0 : 0
Members present for the final vote	José Bové, Luis Manuel Capoulas Santos, Paolo De Castro, Hynek Fajmon, Mariya Gabriel, Iratxe García Pérez, Julie Girling, Sergio Gutiérrez Prieto, Elisabeth Jeggle, Jarosław Kalinowski, Elisabeth Köstinger, Agnès Le Brun, Gabriel Mato Adrover, Mairead McGuinness, Marit Paulsen, Ulrike Rodust, Alfreds Rubiks, Giancarlo Scottà, Alyn Smith, Ewald Stadler, Csaba Sándor Tabajdi, Marc Tarabella
Substitute(s) present for the final vote	Esther de Lange, Karin Kadenbach, Anthea McIntyre, Maria do Céu Patrão Neves, Dimitar Stoyanov

10.9.2013

OPINION OF THE COMMITTEE ON FISHERIES

for the Committee on Legal Affairs

on 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: Antolín Sánchez Presedo

SUGGESTIONS

The Committee on Fisheries calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Emphasises that the choice of the correct legal instrument (legislative, delegated or implementing act) is not only a technical question; points out that in fact it is of the utmost importance to ensure that the legislature assumes full responsibility with regard to the essential elements and to the effective scrutiny of political decisions; notes that it can also be of considerable importance for the balance of power, the correctness and proper functioning of the decision-making process and the enforcement of policies, such as the common fisheries policy, that these various instruments are used in a way that complies with the criteria set out in the Treaty; stresses that the European Parliament should consequently pay particular attention to these aspects;
2. Points out the importance of the coherent approach taken within the European Parliament by the Conference of Presidents concerning the choice of legal instrument and of the methods of scrutiny; in that respect, considers that this process should be relied on and further developed in order to build upon the existing *acquis*, to facilitate coordination and to organise the follow-up;
3. Proposes that, in each parliamentary committee, the Chair, one of the Vice-Chairs or a relevant Member should be charged with supporting Members and guaranteeing coherence regarding delegated and implementing acts in coordination with the other committees; points out that the rapporteur for the basic act should automatically become the rapporteur for its follow-up and should report periodically to the committee; points out as well that functional organisation will be needed within the secretariats if scrutiny is to be effective, and recommends, further, that an item given over to follow-up of delegated

acts be included on committee agendas;

4. Stresses that scrutiny is essential inasmuch as it enables Parliament to lay down predetermined criteria which, if fulfilled, would rule out the possibility that it would object to a delegated act;
5. Calls on the Commission to make the publication of its acts more transparent, enabling Parliament and European citizens alike to gain access to them; suggests, to that end, that the Commission create an IT tool with a view to setting up a database in which acts could be recorded in a form lending itself to democratic scrutiny;
6. Deplores the fact that, in the field of the common fisheries policy, as in other fields in which the co-decision procedure was not introduced until the entry into force of the current Treaty and the Regulatory Procedure with Scrutiny was previously not used, the process of aligning pre-Lisbon legislation with the new legal framework comprising legislative, delegated and implementing acts is facing considerable difficulties – entailing lengthy and dangerous delays – and is even stagnating, with the result that measures needed urgently in the fisheries sector cannot be implemented, and that the reason for this situation often lies in the Council's unwillingness to acknowledge and make effective use of the delegation of powers to the Commission to adopt delegated acts under Article 290 of the Treaty on the Functioning of the European Union (TFEU);
7. Maintains that the alignment of fisheries policy necessitated by the Treaty of Lisbon must not lead the Commission to assume powers exceeding the bounds of that Treaty; points out that the authorisation granted to the Commission to adopt delegated acts is not meant to be 'open-ended', but rather must be limited in time by agreement (as a rule, powers of this kind are delegated for three years);
8. Considers that the process of aligning pre-Lisbon fisheries and related legislation with the new legal framework should be fully concluded during the current parliamentary term;
9. Invites the Commission and the Council to engage in further negotiations with Parliament in order to find a common understanding on the interpretation and use of, and follow-up to, Articles 290 and 291 of the TFEU, in particular a workable demarcation between delegated and implementing acts, possibly with unquestionable specific examples of powers that are classified as legislative, delegated or implementing;
10. Recalls the importance of the delegation of executive powers to the Commission in certain policy areas in order to avoid micro-management and a heavy and lengthy co-decision procedure;
11. Stresses that the choice of instrument also has consequences as regards the follow-up control of the delegated power; supports, therefore, the line taken by the Conference of Presidents to opt for delegated acts in cases where the choice of conferral applying the rules of the Treaty of the Functioning of the European Union is not evident;
12. Is of the opinion that Parliament and the Council of Ministers lose credibility in the eyes of EU citizens if important policies cannot be introduced because the two institutions cannot agree among themselves on which administrative procedure is to be used.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	5.9.2013
Result of final vote	+: 21 -: 0 0: 0
Members present for the final vote	John Stuart Agnew, Antonello Antinoro, Kriton Arsenis, Chris Davies, Carmen Fraga Estévez, Dolores García-Hierro Caraballo, Marek Józef Gróbarczyk, Werner Kuhn, Isabella Lövin, Gabriel Mato Adrover, Guido Milana, Maria do Céu Patrão Neves, Crescenzo Rivellini, Raúl Romeva i Rueda, Struan Stevenson, Isabelle Thomas, Nils Torvalds, Jarosław Leszek Wałęsa
Substitute(s) present for the final vote	Jean Louis Cottigny, Iñaki Irazabalbeitia Fernández, Jens Nilsson, Nikolaos Salavrakos
Substitute(s) under Rule 187(2) present for the final vote	Jan Kozłowski

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

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 OJ C 285 E, 21.10.2010, p. 12.

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;
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

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.11.2013
Result of final vote	+: 21 -: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Eduard-Raul Hellvig, Eva Lichtenberger, Dagmar Roth-Behrendt, József Szájer, Axel Voss