

**COMMUNICATION**  
**from the European Affairs Committee of the Federal Council**  
**of 3 December 2013**

**to the European Parliament and the Council**  
**pursuant to Article 23 f (4) of the Austrian Constitution**

**COM (2013) 751 final**

**Proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny**

Following the proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny and the proposal for a Regulation of the European Parliament and of the Council adapting to Article 290 of the Treaty on the Functioning of the European Union a number of legal acts in the area of Justice providing for the use of the regulatory procedure with scrutiny, the present proposal concerns the alignment of the remaining basic acts referring to the regulatory procedure with scrutiny.

Using the occasion of these adaptations, the Federal Council wishes to make a statement of principle regarding the issue of delegated acts and/or implementing acts. The procedure with delegated acts and/or implementing acts is provided for mainly for reasons of speed and flexibility, as it allows decisions to be taken faster than on the basis of the normal European legislative procedure. Moreover, within the framework of delegated acts and/or implementing acts, numerous technical aspects of legislation are being dealt with by experts, an approach which certainly makes sense in view of the complexity of technical issues. The Treaty of Lisbon introduced new provisions regarding the Comitology Procedure through delegated acts pursuant to Art. 290 TFEU and/or implementing acts pursuant to Art. 291 TFEU. As regards delegated acts, the delegation of quasi-legislative powers by the Parliament and the Council, or by the Council alone, to the Commission is provided for. In the case of Art. 290 TFEU, this is possible only on the basis of a binding legal act adopted by the ordinary or special legislative procedure pursuant to Art. 289 TFEU. In the case of implementing acts pursuant to Art. 291 TFEU, executive powers are conferred upon the Commission, the exercise of which is governed by Regulation 182/2011. According to Art. 291(3) TFEU, the control of the Commission's exercise of implementing powers is solely with the Member States, whereas the European Parliament has no direct influence. Although the influence of the European Parliament has increased since the adoption of the Treaty of Lisbon, it is still not satisfactory. The influence of the national parliaments on delegated acts and/or implementing acts is insufficient.

The Federal Council does not deny the fundamental usefulness of delegated acts, but criticizes the frequency of application of this instrument. Some of the Commission's proposals contain an excessive number of provisions to be further elaborated within the framework of delegated acts and/or implementing acts. On the one hand, this makes proposals tabled by the European Commission less easily readable and comprehensible, which certainly does not serve the purpose of bringing the European Union closer to its citizens. On the other hand, if Member States' tasks are delegated to the European Commission very frequently and in large numbers, the issues concerned

may be difficult to grasp even for experts, regardless of the fact that their scope is clearly defined in terms of time and substance. Hence, when considered from the angle of democracy policy, such legal acts are problematic, as the mode of appointment to the committees, the rules to be applied, the selection of experts to serve on the committees and their legitimization remain unclear. At any rate, in the process of preparing delegated acts, the Commission has to make sure to set up expert committees comprising representatives of the Member States, whose work can then be followed up by appropriate coordination efforts at national level. Numerous definitions, such as the definition of “certain non-essential elements of the legislative act”, remain unclear. The Treaty of Lisbon notwithstanding, the lack of transparency of the decision-making process sometimes makes it impossible for the national parliaments, let alone the public at large, to understand what is going on. In the future, a discussion should be initiated about ways and means of reducing the number of delegated acts/implementing acts, the involvement of expert committees comprising representatives of the Member States in the preparation of delegated acts, and the issue of delegated acts or implementing acts against the background of democratic legitimacy and closer relations between the Union and its citizens.