

COURTESY TRANSLATION

the entry into force of the Treaty of Lisbon in December 2009 has introduced a new legal instrument: "delegated acts". Although non-legislative in nature, these are defined as acts "of general application" which may supplement or amend "certain" non-essential elements of the legislative act. Under the second subparagraph of Article 290(1) TFEU, "the objectives, content, scope and duration of the delegation of power shall be explicitly defined" in the basic instrument.

Contrary to this background, under Document COM (2009) 673 final of 9 December 2009 ("Communication from the Commission to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union"), the Commission has maintained that delegations of power should in principle be of indefinite duration, although under Article 290(2)(a) the European Parliament or the Council can include in the basic instrument an option to revoke the delegation of power. The practice of indefinite delegation has now developed, in terms of both duration (no deadline to the Commission's legislating power) and scope (recurring doubts on the "non essential" nature of the provisions is applied to).

The Senate 14th Committee (EU Policies), which I have the honour to chair, has expressed its criticism over this approach both to the Commission, in several opinions on individual documents, and to the Italian Government, which the Committee has urged – in its resolution of 23 November 2010 (Doc XVIII, n. 66) – to "take all possible initiatives, before all institutions of the Union" to ensure compliance with the spirit and letter of the Treaties". The Committee believes that indefinite delegation is flawed, makes an act unlawful and affects the prerogatives of national parliaments. For it is national parliaments that monitor – in matters of concurrent competence – the division of power between

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Union and Member States, through a subsidiarity and proportionality compliance check. A delegation empowering the Union to legislate indefinitely on matters of concurrent competence prevents parliaments for an equally indefinite period of time from overseeing the action of the Commission and assessing whether the principles and criteria of the delegation, and indeed the delegation itself, should stand or be changed.

Recently, the first paragraph of Article IV of the Common Understanding on the practice of indefinite delegation as contained in delegated acts, approved by the European Parliament's Conference of Presidents on 3 March 2011 following consultation with the Parliament, the Council and the Commission, has been agreed not just by Commission, but also by the co-legislators of the Union ("The basic act may empower the Commission to adopt delegated acts for an undetermined or determined period of time").

I therefore stand to propose that consideration is given to this topic by national parliaments, in order to assess all implications, both theoretical and procedural, of indefinite delegation.

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