

ITALIAN SENATE OF THE REPUBLIC
RESOLUTION OF THE 14TH STANDING COMMITTEE
(European Union Policies)

pursuant to Senate Rule 144(1) and (6)

(Rapporteur: BOLDI)

Rome,

Resolution on:

Proposal for a regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM (2010) 83 def)

The 14th Standing Committee,

following consideration of "Proposal for a regulation of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (COM (2010) 83 final)" in pursuance of Senate Rule 144;

Considering that the proposal for a regulation in question, implementing article 291 TFEU, is intended to introduce mechanisms for *a priori* control by the Member States of the Commission's exercise of its implementing powers in respect of all legislative act requiring uniform conditions of implementation throughout the whole of the Union;

Whereas in the course of the consideration of EU act no. 66 it was agreed that it would be appropriate simultaneously to analyse the general principles connected with the other type of acts introduced by the Treaty of Lisbon, the delegated acts, which are closely linked to the measures for implementation from the conceptual point of view;

Considering that the position of the European Commission regarding the scope of application of delegated powers was illustrated in the "Communication from the Commission to the European Parliament and to the Council: Implementation of

Article 290 other Treaty on the Functioning of the European Union" (COM (2009) 673 final);

Welcomes as a whole:

- The gradual establishment, with the entry into effect of the Treaty of Lisbon, of a structured and complex European legal system, which provides, in addition to primary sources ("legislative acts" in the strict sense of the term, as per article 289 of the Treaty on the Functioning of the European Union), also secondary acts (delegated acts under article 290, and implementing acts, pursuant to article 291);
- The current efforts being made by the Union's institutions to bring order into this new system;

Acknowledges the importance that secondary norms are bound to acquire, as already evidenced by the frequency with which delegated clauses have been incorporated into European Union legislation preparatory acts and by the intense debate that has developed between the institutions of the Union in relation to document COM (2010) 83;

With particular reference to the legislative proposal considered here, urges the government:

To support the establishment of an appeals committee to deal with particularly sensitive matters connected with the defence of trade in order to enable the Member States to exercise their prerogatives more effectively in relation to controlling the powers of implementation conferred on the Commission;

To make the maximum effort to ensure that on the appeals committee, all votes on trade protection issues, and in particular anti-dumping and anti-subsidy measures, are always and under all circumstances taken with a qualified majority, in order to protect the interests of European industry and to prevent any improper lobbying initiatives by third countries. In this connection, it would be unacceptable to introduce a three-year period of simple majority voting;

To support, in principle, any extension in the number of sectors for which implementation measures must be considered and voted on.

With regard to the institution of delegated legislation, the Committee refers primarily to the literal wording of Article 290 (1) of the TFEU, which provides that: "A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power";

Takes note of the tendency by the European Commission to make extensive use of delegated legislation both in the sense of the indeterminacy of the duration (conferring delegated powers without deadlines, save where there is opposition from the European Parliament or the Council, or where they revoke the measure), and in terms of the scope (as in the case of the legislative proposal COM (2010) 475 final establishing a single European railway area, in which article 60 authorises the Commission to adopt any acts to modify virtually all the annexes to the legislative act "in light of experience", without establishing *a priori* how that experience may guide the Commission when reviewing it);

Recalls the substance of the European Parliament's resolutions on the new powers and privileges of the Parliament in implementing the Treaty of Lisbon of 7 May, 2009, paragraphs 66-73, and on the power to issue delegated legislation, of 5 May, 2010, and the resolution agreed on 12 February 2010 by the German Bundesrat (no.875/09) on the Commission's Communication on delegated legislation, unambiguously stating that, "the solution advocated by the Commission, providing in general that any time limits on the delegation of powers be waived, would contradict the original intention sanctioned by article 290 (1)(2) of the TFEU to confer delegated powers only for a limited time";

Commits the government to take all possible initiatives, before all the institutions of the Union, with the aim of ensuring:

- The proper interpretation and implementation of the provisions of the TFEU rules in the procedure for adopting delegated acts, as they emerge from a mere textual analysis of article 290, and which consequently protect the prerogatives of the national parliaments within the Union's decision-making procedure pursuant to the Protocol on the Application of the Principles of Subsidiarity and Proportionality. For since it is the case that article 290 (1) (2) of the TFEU is not ambiguous when it lays down the obligation, in respect of legislative acts delegating powers, that "the objectives, content, scope and duration of the delegation of power shall be explicitly

defined in the legislative acts...", the conferral of delegated powers without a time limit and without adequate qualification would be flawed and make the act unlawful, rendering it liable to appeal using the procedures provided by the Treaties, and would affect the prerogatives of the national Parliaments. For it is the national parliaments that have the responsibility, in matters of concurrent competence, to supervise the distribution of competences between the Union and the Member States by controlling compliance with the principles of subsidiarity and proportionality. Any delegated instrument transferring to the Commission, for an indeterminate period of time, the power to legislate in sectors, even if non-essential, which are subject to concurrent competence, would also deprive the national Parliaments of some of their prerogatives, for they could no longer be able to control the work of the Commission or make any assessment of the appropriateness of renewing the principles and criteria for delegation or to renew the delegated powers;

- In the procedure for adopting delegating acts for which the rules provided in each individual act are the result of case-by-case appraisal of the subject matter, without uncritically repeating a predetermined model. For the 14th Standing Committee considers that the proposal of the European Parliament stating that the institutions shall agree on a standard formula for the delegated powers which would be routinely incorporated by the Commission into the proposal for a legislative act (see paragraph 68 of the resolution of 7 May, 2009) should be understood as indicating the *ratio* and the context, but not necessarily the specific substance.