

# SENATE OF THE REPUBLIC

16<sup>th</sup> LEGISLATURE

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No 77

## RESOLUTION OF THE 14<sup>TH</sup> STANDING COMMITTEE (European Union Policies)

(*Rapporteur* FONTANA)

*approved at the session of 1 August 2012*

ON THE

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL AMENDING DIRECTIVES 1999/4/EC, 2000/36/EC, 2001/111/EC,  
2001/113/EC AND 2001/114/EC AS REGARDS THE POWERS TO BE CONFERRED  
ON THE COMMISSION (COM(2012) 150 FINAL)**

*pursuant to Article 144(1), (5) and (6) of the Rules of Procedure*

**Sent to the President's Office on 3 August 2012**

16<sup>TH</sup> LEGISLATURE – DRAFT LEGISLATION AND REPORTS – DOCUMENTS

The Committee, having examined document COM(2012) 150 final,

agreeing with the aim of amending the Directives listed therein in order to bring them into line with Article 290 of the Treaty on the Functioning of the European Union (TFEU), thereby allowing the European Commission to adopt delegated acts in order to amend the annexes to those Directives;

having taken account of the reasoned opinion on failure to comply with the principles of subsidiarity and proportionality expressed on 24 May 2012 by the Austrian Federal Council, which held that the proposal in question was incompatible with Article 290 TFEU as it provided for the delegation of powers for an indefinite duration; the Federal Council held that the general principle of '*potestas delegata non delegatur*' (that delegated powers may not be delegated further) and the principle of the explicit delegation of power, which are the basis of the powers of the European Union, had been infringed;

agreeing with the note drafted by the Ministry of Agricultural, Food and Forestry Policy in respect of the document in question pursuant to Article 4-*quater* of Law No 11 of 4 February 2005;

recalling the resolutions that have been approved concerning powers delegated to the European Commission, including the resolution of the 9 March 2010 on the 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) (Community document No 66, document XVIII No 66);

comments favourably, for matters within its remit, on:

1) the legal basis of the proposal, which has been correctly identified as Article 43 ('The Commission shall submit proposals for working out and implementing the common agricultural policy...') and Article 114 ('The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market') of the Treaty on the functioning of the European Union;

2) the fact that the proposal complies with the principle of subsidiarity:

- in terms of the need for action by the institutions of the Union, as only they are able to bring Union legislation into line with the new instruments provided for by the Treaty of Lisbon;

- as far as value added for the Union is concerned, in terms of the full application and use of the legal instruments provided for by the legislation in force;

and comments negatively on the merits of the proposal and on compliance with the principle of proportionality, highlighting the following points:

1) with regard to the subject matter of the powers delegated to the European Commission, the proposal envisages empowering the Commission to amend the 'technical characteristics related to the product names and definitions' contained in the annexes to the Directives concerned. However, the names and definitions constitute the very subject of the legislation, and are thus an 'essential element' thereof. The second paragraph of Article 290(1) of the Treaty on the functioning of the European Union specifically states that essential elements are 'reserved for the legislative act and accordingly shall not be the subject of a delegation of power'. In this connection, it is worth recalling that Directive 2012/12/EU of the European Parliament and of the Council of 19 April 2012 amending Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption excluded Annexes I and II, which lay down 'Definitions', from the scope of the powers of amendment delegated to the Commission;

2) the indefinite duration of the delegation of powers infringes the express provision of the second paragraph of Article 290(1) TFEU, according to which 'The [...] duration of the delegation of power shall be explicitly defined in the legislative acts'. In this connection, Article 7 of the aforementioned Directive 2012/12/EU provides for a delegation of powers lasting five years 'tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period';

the European Commission is therefore asked to reformulate the delegations of power in the document under discussion, so as to bring their subject matter and duration into line with Directive 2012/12/EU;

at the same time, the Government is asked to do everything within its power to ensure that, during the negotiations on adopting the document in question, the text put forward is amended in such a way as to ensure that Article 290 TFEU is complied with to the letter.