Delegated (quasi-legislative) and implementing (executive) acts post-Lisbon

Brussels 14 March 2011
Unit A2 Legal affairs
A legislative act is established

Ordinary legislative procedure (co decision)

Subsequent decisions are needed

Special legislative procedure (Council with consultation or consent of Parliament)

To IMPLEMENT the legislative act

To SUPPLEMENT or AMEND the legislative act IN ITS NON ESSENTIAL ELEMENTS
Prior to Lisbon, the control of Commission’s post-legislative powers, regardless of their nature (purely executive or quasi legislative) was exercised only by the use of Comitology procedures:

COMITOLEGY PROCEDURES
(Council Decision 1999/468/EC)

Committees composed by representatives of Member States

Possibilities to refer to the Council

With an increasing role for the EP
Commission’s draft measures

Committee of representatives of Member States (issues an opinion)

Implementing measures

Advisory
Example: allocation of grants

Management
Example: common agricultural policy

Regulatory
Example: protection of animal health

Quasi legislative measures

PRAC
Example: adaptation of annexes to technical progress; other measures of general scope

If positive opinion: adoption.
If negative opinion or no opinion: Commission submits a proposal to Council.

Council may amend (unanimously), adopt (QM), oppose (QM), or fail to act.

If Council fails to act: Commission shall adopt the proposed measure.

If positive opinion: adoption.
If negative opinion or no opinion: Commission submits a proposal to Council.

Council shall act within 2 months.
If Council opposes: no adoption.
If Council envisages adoption or does not act: measures submitted to EP, which may oppose within 4 months. If no veto: adoption. If opposition: no adoption.

Parliament: “droit de regard” on each draft measure proposed by Commission pursuant a basic act adopted by co decision.
Treaty of Lisbon – New distinction of non-legislative acts

Delegated Acts – Article 290 TFEU

“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.”
- Control is exercised by the EP/Council
- E.g. amendment of annexes to basic acts

Implementing Acts – Article 291 TFEU

“Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission.”
- Subject only to the control of the Member States
- No normative rules – only application of existing rules, e.g. authorisations /safeguard measures
Delegated acts – Article 290 TFEU
[Only relevant when basic acts are formally amended or adopted post 1/12/2009]
Delegated Acts – Article 290 TFEU

Main features (modalities) of delegated acts*

- Systematic consultation of experts (preparation phase) – no vote
- Subject to the control of EP/Council:
  - Right of Opposition (to each delegated act) and/or
  - Right of Revocation (of the delegation powers in general) – at any time!

The delegated act cannot enter into force. The Commission may prepare and adopt a new one.

If EP or Council expresses objections:

- Time-limit (generally 2 months with possible extension for the same period)

If neither EP nor Council has objected or if they have both informed Commission that they don’t want to raise objections:

- Right to object
- Publication and entry into force of the delegated act

Consultation of experts
Implementing acts – Article 291 TFEU
Implementing acts

Criteria for implementing acts

- Uniform implementing conditions are needed
- Regardless of whether the measures are of individual or general scope

Examples:
- Marketing authorisations
- Safeguard measures
Implementing acts

- Article 291 TFEU required the adoption of a Regulation setting out the legal framework for implementing acts.

Regulation on Implementing acts - Main features (1)

- Maintains ‘committee’ structure (as in Decision 1999/468/EC) composed of representatives of MSs – Chaired by COM
- Reduces ‘comitology’ procedures to **only two**:  
  - Advisory procedure (corresponds to the existing ‘advisory’)  
  - Examination procedure (new) – (a mixture of existing ‘management’ and ‘regulatory’ procedures)
- Provides certain **common provisions**:  
  - A meeting may **only take place 14 days** after the submission of the draft agenda/draft measures to be voted upon, unless in duly justified cases  
  - Possibility for **written procedure** in duly justified cases
Regulation on Implementing acts - Main features (2)

- As of 1 March 2011, it **automatically repealed** Comitology Decision 1999/468/EC - no transitional period
- Pending procedures in which an opinion has already been delivered by the Committee **prior to** 1 March 2011 **were not** affected
- **Automatic (partial) alignment**: E.g. references to (old) regulatory procedures shall now be understood as references to the **examination** procedure - **HOWEVER, PRAC REMAINS APPLICABLE AS IT IS**, until basic act is amended through ‘ex codecision’
How to apply instruments adopted before March 1st, 2011?

Where there are references to the advisory procedure

- **Automatic transformation**
  - New advisory procedure (2011 Comitology Regulation) applies

Where there are references to the management and regulatory procedures

- **Automatic transformation**
  - New examination procedure (2011 Comitology Regulation) applies

Where there are references to the regulatory procedure with scrutiny

- **NO automatic transformation**
  - PRAC continues to apply
Examination procedure - Main features

- The Committee delivers an opinion by qualified majority.
- If **positive opinion**, the Commission shall adopt the draft measure (unless exceptional circumstances arise).
- If **negative opinion**, the Commission may (a) submit the draft measure to the appeal Committee within 1 month or (b) submit an amended version of the draft measure to the Committee within 2 months.
- If **no opinion**, the Commission shall not adopt the draft measure where it relates to the protection of the health or safety of humans, animals or plants. In that case, the Commission may (a) submit the draft measure to the appeal Committee within 1 month or (b) submit an amended version of the draft measure to the Committee within 2 months.
Appeal Committee – Novelty of the new regime (only for examination procedure)

- Appeal mechanism: 2nd level of control in cases of negative or no opinion for the SANCO files
- Composed of representatives of MSs - Chaired by COM
- Delivers its opinion with qualified majority within 2 months after referral:
  - If positive opinion, the Commission shall adopt
  - If no opinion, the Commission may adopt
  - If negative opinion, the Commission shall not adopt
Right of information/scrutiny of EP/Council

- No formal role of EP/Council to block implementing measures
- Right of information for both advisory/examination procedures
- Limited right of scrutiny without an automatic suspensive effect
Overview of new Comitology Procedures as of 1 March 2011

Parliament/Council: “droit de regard” on each draft measure proposed by Commission pursuant to a Union act, at any time during the procedure, but the Commission does not have to wait to adopt the measure.
Thank you for your attention!