

Working Group IX

Working document 11

Working Group IX "Simplification"

Members of Working Group IX "Simplification" will find attached a working document containing a proposal for a "legislative/executive" delimitation within the institutional system of the European Union.

Working document: proposal for a "legislative/executive" delimitation within the institutional system of the European Union

An important part of the Working Group's mandate is to delimit the legislative aspect of the decision-making process within the Union.

Although it is difficult to establish for the Union system a clear and definite delimitation between legislative and executive aspects similar to that for national systems, it is nonetheless possible to establish a delimitation which is clearer than the current one. This note attempts to clarify such a delimitation.

It is suggested that three levels be considered for the adoption of acts in the framework of the European Union's decision-making process:

- (1) Legislative acts: these are acts adopted on the basis of the Treaty and which define the essential elements of a given area.
- (2) "Delegated"/"subordinate" acts: these are acts which expand on elements of the legislative act within the framework outlined by the latter.
- (3) Implementing acts: these are acts which apply or implement the legislative or "delegated"/"subordinate" acts.

It is the legislative act which decides whether it is necessary to use "delegated"/"subordinate" acts and/or implementing acts.

(1) Legislative acts

- (a) Definition: legislative acts are those which define the essential elements of a given area, with the scope determined on a case-by-case basis by the legislator. Consequently, it is for the legislator to determine the degree of detail required for the essential elements in a specific area and to what extent those elements should be expanded on by "delegated"/"subordinate" acts.

Conversely, acts which do not contain the essential elements of an area cannot therefore be regarded as legislative acts.

(b) Adoption procedure: codecision should be the general rule for the adoption of "legislative acts". However, that should not preclude the Treaty providing for exceptions in certain cases depending on the nature of the area.

(c) Type of acts: laws and framework laws (or also "redefined decisions" ¹).

(2) "Delegated"/subordinate" acts

(a) Definition: "delegated"/"subordinate" acts are those acts which expand on the elements defined in legislative acts (or in the Treaty in certain cases) ², when the legislator considers it necessary and within the limits defined by the legislator in the legislative act.

(b) Adoption procedure: by the Council (qualified majority) or by the Commission depending on the case. It is also necessary to establish a mechanism for scrutiny by the legislator (i.e. by the Parliament and Council when the legislative act has been adopted under codecision) based on arrangements to be laid down (e.g. "call back"). Such a mechanism needs to be established, particularly for cases where the "delegated"/"subordinate" act goes further than the framework set out by the legislative act.

(c) Type of acts: regulations, framework regulations or decisions.

(3) Implementing acts

(a) Definition: these are acts which implement the legislative or the "delegated"/"subordinate" acts.

¹ See WD 5: contribution by Mr Piris.

² This category also corresponds to cases where it is the Treaty itself which establishes the essential elements in an area and instructs the Council or Commission to adopt the acts which expand on them.

(b) Procedure: the basic principle of the Treaty is that the adoption of implementing acts falls to the Member States (Article 10 TEC). When Union implementation of legislative or "delegated"/"subordinate" acts is necessary in accordance with the principle of subsidiarity, the procedure is currently that laid down in Article 202 of the TEC: adoption by the Commission (the rule), with or without a mechanism for scrutiny by the Member States (committee procedure) or by the Council (the exception).

(c) Type of acts: implementing regulation or implementing decision.

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