

Abstract

The rule-making power of the European Commission, dissertation

Mgr. Mgr. Jiří Lenfeld, M.A.; supervisor: doc. JUDr. Richard Král, Ph.D., LL.M.

Charles University, Faculty of Law, Department of European Law

Prague, March 2013

The aim of the dissertation is to analyse the role of the European Commission in the legislative process of the European Union with the focus on procedures for adoption of legally binding Union acts. The European Commission is one of the main institutions of the European Union. It represents and upholds the interests of the EU as a whole and manages the day-to-day business of implementing EU policies. However, to limit the role of the European Commission to that of an executive body would be misleading. Its role in the EU institutional system is much broader than that. The European Commission is the most important legislator among the EU institutions and is also empowered with an almost exclusive power to submit drafts of EU legal acts.

The rule-making power of the European Commission could be seen from two different points of view. In a narrow sense of the word it could be seen as a power conferred on the European Commission by the Treaties to propose drafts and to adopt EU legal acts implementing legally binding Union acts. However, the exercise of the rule-making power may not necessarily lead to an adoption of a legally binding act. Procedures for adopting legal acts laid down in the EU law include several stages: the recognition of a necessity to regulate, the presentation of the legislative intent and its subsequent implementation in the process of adoption of an intended legal act. In this broader sense, the European Commission's rule-making power could be seen as not only comprising the competence to propose drafts and to adopt binding legal acts in accordance with the Treaties but as any competence conferred on the European Commission by the Treaties influencing procedures resulting in an adoption of a legally binding act as well as interpretation, implementation and application of the EU law.

The rule-making power of the European Commission was substantially modified by the Treaty of Lisbon. The most visible amendment introduced by this Treaty in this respect is represented by creation of a new category of legal acts - delegated acts.

In accordance with Article 290 Treaty on functioning of the EU, the legislator (the Parliament and the Council) may delegate the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act to the European Commission. The Parliament is on an equal footing with the Council as regards to the power to delegate and the power to control conditions to which the delegation is subject. The Treaty of Lisbon also strengthened the implementing powers of the European Commission. Until the entry into force of the Treaty of Lisbon, implementing power was held by the Council, which delegated the adoption of implementing acts to the European Commission in compliance with the conditions laid down by the Treaties. From now on, where uniform conditions for implementing legally binding Union acts are needed, those acts shall normally confer implementing powers on the European Commission.

The power to adopt delegated and implementing acts forms a core of the rule-making power of the European Commission. However, there are other areas of competences conferred on the European Commission by the Treaties which significantly shape the form and content of legally binding Union acts and the legislative process of the EU in general. In this regard, it is appropriate to refer to an almost exclusive power of legislative initiative of the European Commission or its power to adopt soft-law.

The rule-making power of the European Commission is a complex matter and that is why a quality-based assessment of this matter requires careful consideration of all of its many aspects including the assessment of the role of the European Commission in the legislative process of the EU in the course of the European integration, institutional changes resulting from the amendments to the Treaties as well as the analysis of the regulations in force.

In order to fulfil the above mentioned objective the dissertation is divided into five chapters, the structure of the work is determined by the used methodology. The Chapter one forms a theoretical framework for the subsequent analysis of the rule-making power of the European Commission. The Chapter two focuses on the role of the European Commission in the legislative process of the EU in the course of institutional changes resulting from the previous amendments to the Treaties with the focus on phenomenon of comitology. The Chapter three analyses on the basis

of regulations in force the competences conferred on the European Commission by the Treaties to adopt delegated acts and implementing measures necessary to implement legally binding Union acts. The Chapter four focuses on the broader interpretation of the rule-making power with a primary focus on soft law adopted by the European Commission. The Chapter five reviews selected aspects of interpretation and application of legally binding acts adopted by the European Commission.