

Towards a legal framework for the delegation of powers in the EU legal system

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Valorisation Addendum

1. The Societal Relevance of this Research

In a historical period of growing scepticism in relation to the democratic nature of the European Union and criticism of its Institutions, a research on the legality of a legal mechanism which lies at the heart of the rule-making activities of the Institutions represents an important contribution to the reflections on the future of democracy in the European Union. As recognised by President Juncker in his State of the Union speech in 2017, one of the most compelling challenges for the European Union in the near future consists of building a more democratic Union, where the European citizens can benefit from more efficient and more transparent decision-making procedures. As democracy equally concerns politicians, academics and citizens, this issue affects not only academic scholars in the field of European studies, but it also affects the society and the general population in Europe as a whole. In this sense, the societal relevance of this dissertation is found firstly in its contribution to the debates on the state of democracy in the European Union, which has become particularly topical after the unprecedented crises which are currently challenging the foundations of EU legitimacy.

In this regard, the analysis carried out in this study has shown how the delegation of powers lies behind some of the most significant institutional developments which have characterised the evolution of EU governance and EU administration over 60 years of European integration and it still represents a fundamental legal mechanism for the organisation and functioning of the European Union as it is today. From the rise of the comitology system to the institutional arrangements established in the aftermath of the financial crisis, the delegation of powers to non-majoritarian bodies has often provided a solution for the need to deliver effective and often technically and scientifically sound responses to the compelling challenges the EU was - and still is - facing. In this context, the empowerment of non-majoritarian bodies and the adoption of acts pursuant to the delegation of powers, balancing between the need for an effective response to these challenges and the respect for democratic principles, plays a fundamental role in solving the political and institutional impasses that forthcoming crises may create.

In particular, this research set out to analyse the delegation of powers in the EU legal system and to define the characteristics and limits embedding this legal mechanism in the light of the constitutional principles of this legal system. The thesis develops a definition of delegation of powers which, building from the legal traditions of the Member States and considering the peculiarities of the EU institutional framework, is suitable for this legal system. It further identifies the forms of delegation that emerged in this context, namely the delegation to the European Commission pursuant to Articles 290 and 291 TFEU, to the Council of the EU, to the European Central Bank and to EU agencies. Together with the evolution, the structure and the powers delegated to these institutions and bodies, the legal framework applicable to these different systems of delegation was examined, focusing on the rules and the case law relating to the enabling act, the procedures for the exercise of the delegated powers, the position of the acts in the hierarchy of norms and their judicial review.

Thus, the research sheds light on some of the most controversial phenomena, such as comitology and the empowerment of agencies, which were often described as obscure and impenetrable in the eyes of the average citizen. Beyond the technicalities of the rule-making activities of these bodies, the research unveils their evolution and the reasons underlying the present institutional design, thus helping to understand their functioning better. In this sense, it contributes to bringing the EU institutions closer to the citizens since it discloses a power structure that has been for long unknown and this has contributed to the negative image of the EU as composed of unelected bureaucrats which, especially today, constitutes the root of the surge of Euroscepticism and populism. In fact, a deeper understanding of the democratic guarantees existing in EU law appears important, especially in light of the upcoming elections of the European Parliament in May 2019. From this perspective, the research clearly contributes to a more objective and legally-grounded discussion on crucial questions such as the legitimacy of the EU executive, the evolving nature of the Union as a polity and the necessity to reform its institutional structures, providing essential elements to aid in understanding the EU as it is today and as it will be in the future.

Furthermore, from an EU perspective this research is important as it identified, beyond the peculiarities of each delegation system, common principles and dynamics which show how the delegation of powers is bound to abide by a coherent legal framework horizontally applicable to the different forms of delegation. However, while the limits in the enabling act shows considerable homogeneity across the forms of delegation, the subsequent exercise of the delegated powers is embedded in different procedures and it results in the adoption of acts which partially diverge in their form and in their position within the hierarchy of norms. Moreover, the analysis of the application of the limits and principles identified in the different forms of delegation revealed a number of issues and a certain patchiness in their actual enforcement, shedding light on the blind spots in the democratic control of these phenomena and on the controversial tendencies emerging in practice. Therefore, in the light of the issues described, the thesis ends with some recommendations for strengthening the existing legal framework.

The results of the thesis, therefore, ultimately lead to suggestions for how to improve the described phenomena, guiding the reform of the different forms of delegation towards a stronger coherence and towards improved guarantees for the respect of the rule of law and the institutional balance in the EU legal system. Remarkably, the reflections developed in the thesis are directly relevant for some legislative proposals which are currently under discussion in the European Parliament and which were listed among the top priorities for the Commission in the upcoming year in the recent Letter of Intent attached to the State of the Union speech of 2018. Reference here is to the proposal for the amendment of the Comitology Regulation and the proposals on alignment of existing legislation providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 TFEU. Furthermore, a deeper understanding of the limits and conditions for the delegation of powers is particularly important also in the context of specific policy fields where a deeper European integration is sought through the creation or the further empowerment of EU agencies. Examples of this are the proposed strengthening of the EU Agency for Network and Information Security (ENISA) to support better Member States in tackling cybersecurity threats and attacks or the proposed

establishment of a new Asylum Agency as part of the European response to the impelling migration crisis. In the light of this continuous mushrooming of EU agencies, the topicality of the issue of the delegation of powers and its relevance for the European society is evident, highlighting once more the urgent need for a constitutionally sound legal basis for the agencification of EU administration and for the development of a common legal framework for the different forms of delegation which fully safeguards the respect of the rule of law and the institutional balance in the EU legal system.

2. The Beneficiaries of this Research

In addition to the academic community, the results of this research are also of interest to the broader public at both the national and the European level. Firstly, in the light of the identified shortcomings and the patchiness in the enforcement of the limits to the delegation of powers, the proposed recommendations are mainly addressed to regulators and policy-makers responsible for developing a legal framework for the delegation of powers. Thus, *in primis*, they may be particularly useful in the context of a future reform of the text of the Treaties, providing a basis for discussion by the national representatives in an Intergovernmental Conference or for the European Council in a simplified revision procedure. Moreover, members of the European Parliament and officials of the EU institutions directly involved in the adoption of the legislative proposals relating to phenomena of delegation of powers may benefit immediately from the findings and suggestions of this research, already shaping the evolution of the delegation systems in a direction more in line with the requirements of the rule of law and the institutional balance.

Secondly, the research may be useful for public interest representatives, since it highlights aspects relating to the transparency and participation of stakeholders in the procedures for the adoption of acts on the basis of a delegation of powers. Albeit incidentally, the importance of transparency and participation as a complementary means of enhancing legitimacy of EU secondary rule-making is underlined, advancing suggestions - such as the creation of a register for the acts adopted through a delegation of powers - which would directly improve the position of stakeholders before the EU institutions.

Thirdly, the citizens who would like to gain a deeper understanding of the rule-making procedures that exist in the EU, and civil society of the European Union as such, can benefit from the results of this research. On the one hand, as already mentioned, the thesis contributes to shedding light on complex procedures which have been developed at the EU level and it provides for a clear and systematic explanation of the legal mechanism of the delegation of powers. Especially in the light of the upcoming elections of the European Parliament in May 2019, the findings may contribute to the more general public debate on how to improve the democratic character of the EU decision-making, offering elements of discussion not biased by a generic accusation of technocratic empowerment of non-majoritarian bodies but based on constructive remarks on the application of the democratic principles to the existing institutional landscape. On the other hand, considering that the democratic principles of the rule of law and the institutional balance represent fundamental guarantees for the position of the individuals before the public power, the possible improvements in the legal framework for the delegation

of powers in the EU legal system ultimately result in benefitting the citizens, thus helping to build a more democratic Union where their rights are fully respected and enforced.

3. The Innovative Character of the Thesis

This research builds on extensive literature on the different forms of delegation, analysing their historical development, judicial assessment and accountability issues. This research is unique in its attempt to develop a unitary concept and legal framework for the delegation of powers. While the bulk of the existing studies tend to focus on one particular phenomenon of delegation, this research went beyond this fragmentation and it provided a clear and systematic analysis of the legal mechanism of the delegation of powers as such. This approach resulted in identifying common principles and criteria limiting the discretion and guiding the exercise of the delegated powers, thus drawing a more coherent picture of the existing legal framework and constituting the basis for suggestions of further improvements to the system. Moreover, the detailed examination of the different forms of delegation - in the light of the most recent case law, legislative evolution and relevant literature - offers a highly accessible and remarkably up-to-date discussion of the issues relating to EU secondary legislation, which represents a valuable contribution to the academic debate on the topic.

4. Translating the Results into Activities and Products

In addition to the thesis itself, which I am planning to publish in the form of a monograph, the results of the research will constitute the basis for the publication of chapters of edited volumes and of articles in academic journals. In order to reach the widest audience, such publications will be pursued in academic journals both in Italian and English. In this sense, the publications will target not only Italian or Dutch academia, but also the international academic community, aiming at contributing to the debate in the EU legal scholarship overall.

The dissemination of the results of the research will also be carried out in academic conferences and other public gatherings. In this regard, I already presented the research findings on a number of occasions, such as during the *Ius Commune* Conference in 2017. There, I co-organised a panel dedicated to the specific topic of the delegation of powers, where I discussed the findings of this research with top-scholars in this field and in the field of EU constitutional law in general. With particular regard to the aspect of the delegation of powers to EU agencies, I also participated in the conferences organised within the framework of the Academic Research Network on Agencification of EU Executive Governance (TARN). Interestingly, within this framework stakeholder dialogues were also organised to discuss the findings of the research with stakeholders.

Furthermore, in order to enhance the visibility of the issues addressed in this research and to provide an immediate reaction to the ongoing reforms of important phenomena analysed, I intend to publish blog posts on the forthcoming developments. In this regard, the Faculty of Law Blog of Maastricht University provides a lively platform to this end, which can be complemented by other websites which can reach a further audience both in Italian and English.

5. Implementing the Research Results

In order to obtain the maximum possible implementation of the research results, copies of the thesis and, in due time, of the published monograph will be sent not only to members of the academic community, but also to stakeholders and officials involved in the shaping of the legal framework for the different forms of the delegation of powers. I had some contact during the writing of the thesis with these stakeholders and officials and they already showed an interest in the research results and in the relating policy recommendations.

Finally, some reflections stemming from this research will be presented not only to the academic world - through conferences, book chapters and academic articles - but also to stakeholders in the regulatory process and to the general public. To this end, blog posts represent the most accessible means to provide concise information about the core arguments of this research, especially on topics concerning the ongoing legislative reforms on comitology and EU agencies. Through this array of dissemination of the research results, the suggested improvements to the legal framework for the delegation of powers in a direction more in line with the requirements of the rule of law and the institutional balance may be ultimately implemented, thus indirectly contributing to building more democratic secondary rule-making procedures in the EU legal system.