Lisbon Treaty: impact on EU decision-making

Daniela Weber-Rey

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Presentation to EIOPA Stakeholder Groups - joint meeting
Overview

- Before and after the Lisbon Treaty
- Hierarchy of legislation / rules
- Delegated acts and implementing acts
- Regulatory and implementing technical standards of EIOPA
- Guidelines and recommendations of EIOPA
The Lisbon Treaty

- New financial supervisory structure initiated by the de Larosière report, February 2009
- Entered into force in December 2009
- Introduced two new articles that allow EU Member States and European Parliament to delegate power to the European Commission to adopt
  - delegated acts
  and
  - implementing acts
Prior to Lisbon

- The Commission adopted implementing measures under *comitology* procedures
- The Commission was required to consult a committee composed of Member State representatives before adopting new measures
- Lamfalussy was a specific *comitology* procedure for the financial services sector
New post-Lisbon hierarchy of legislation

**Level 1:** Directives, Regulations, Decisions
Adopted by Council (and European Parliament)

**Level 2:** adopted by the European Commission
Delegated acts  Implementing acts

**Level 3:** Technical standards: prepared by the ESAs (EBA, EIOPA and ESMA)
Regulatory technical standards  Implementing technical standards

**Level 4:** Guidelines and recommendations of the ESAs
Delegated and implementing acts

- Procedures for adopting these acts are a balancing act between:
  - more efficient decision-making, and
  - a desire by Parliament and the Council to preserve some influence over Commission

- It is up to the legislators (Parliament and Council) to prescribe which of the two procedures is to be used by the Commission
Articles 290 and 291 Treaty
When does which apply?

New Directive or Regulation adopted by Parliament and Council, mandating non-legislative act

Act refers to Article 290 TFEU – delegated act

Commission prepares non-legislative act that amends or supplements Directive / Regulation

Act refers to Article 291 TFEU - implementing act

Commission prepares act in accordance with Regulation 182/2011

Examination procedure

Advisory procedure
# Delegated and implementing acts

<table>
<thead>
<tr>
<th>Delegated acts</th>
<th>Implementing acts</th>
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<tbody>
<tr>
<td>Article 290 TFEU; common understanding</td>
<td>Article 291 TFEU; Regulation 182/2011</td>
</tr>
<tr>
<td>Amends or supplements non-essential elements of Directive / Regulation</td>
<td>Implements Directive / Regulation</td>
</tr>
<tr>
<td>Parliament and Council regulate a particular field only partially, leaving the Commission to supplement / amend with quasi-legislative measures</td>
<td>Commission is entrusted by Parliament and Council to ensure the harmonised implementation of the Directive / Regulation</td>
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<tr>
<td>Advice of competent ESA</td>
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<td>Consultation of expert committees</td>
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<tr>
<td>Parliament and Council can revoke delegation and raise objections</td>
<td>Parliament and Council must be informed, but cannot prevent entry into force</td>
</tr>
<tr>
<td>Commission Regulations and Commission Directives</td>
<td>Implementing Regulations, Implementing Decisions or Implementing Directives adopted by Commission</td>
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</table>
Delegated act (Article 290)

Commission drafts act following relevant consultation

European Parliament and Council have no objections within set period

Commission adopts act

Commission Regulation
Commission Directive
Commission Decision

European Parliament and/or Council oppose act within set period

Act amended by Commission to take account of objections

Commission adopts act

Commission Regulation
Commission Directive
Commission Decision

Act replaced by new legislation
Implementing act (Article 291) Advisory procedure

Commission drafts act

Committee opinion (adopted by simple majority)

Commission adopts act (taking ‘utmost account’ of opinion)
Implementing act (Article 291)
Examination procedure

Commission drafts act

- Qualified majority of Committee against
  - Referral to Appeal Committee
    - Favourable opinion: Commission adopts act
    - No opinion: Commission may adopt act
    - Negative opinion: act falls
  - Committee Chair amends draft
- Favourable opinion of Committee
  - Commission adopts act incorporating comments
- Committee fails to reach agreement
  - Commission does not adopt act
    - Committee Chair amends draft
    - Referral to Appeal Committee
      - Favourable opinion: Commission adopts act
      - No opinion: Commission may adopt act
      - Negative opinion: act falls
## Regulatory and implementing technical standards of EIOPA

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<th>Implementing technical standards</th>
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<td>Article 10 and subsequent of Regulation establishing EIOPA (Regulation 1094/2010)</td>
<td>Article 15 of Regulation establishing EIOPA (Regulation 1094/2010)</td>
</tr>
</tbody>
</table>

**Technical, not political or strategic decisions**

Prepared by EIOPA

Public hearings, cost-benefit analyses, consultation of stakeholders

Parliament and Council can revoke delegation and raise objections

Parliament and Council must be informed, but cannot prevent entry into force

Regulation or Decision adopted by the European Commission
Roles & Responsibilities

- **Council & Parliament**
  - Adopt new Directive/Regulation mandating regulatory or implementing technical standard

- **Authority e.g. EIOPA**
  - Drafts technical standard

- **Council & Parliament**
  - Object / reject

- **European Commission**
  - Adopts technical standard (as Regulation or Decision)
# Guidelines and recommendations of EIOPA
## (Article 16 Regulation 1094/2010)

### Purpose
- Establish consistent, efficient and effective supervisory practices across the EU

### Addressees
- National supervisory authorities and market participants

### Comply-or-explain
- Within two months of issuance of guideline / recommendation, supervisors must indicate whether they meet the guideline / recommendation or explain why they do not meet them
- EIOPA will publish the fact that a supervisor does not comply and may also publish the reasons given for non-compliance
- Market participants may be required to report whether they comply with the guideline / recommendation
Powers of EIOPA in cases of breach of EU law
(Article 17 Regulation 1094/2010)

1. Breach of EU law by national supervisory authority
2. Investigation by EIOPA
3. EIOPA issues recommendation
4. European Commission issues formal opinion
5. EIOPA may issue individual decision addressed to financial market participant(s)
Further powers of intervention of EIOPA in relation to national supervisory authorities and market participants

Emergency situations
(Article 18 Regulation 1094/2010)

Settlement of disagreements between national supervisors in cross-border situations
(Article 19 Regulation 1094/2010)
Annexes
New European supervisory structure

European System of Financial Supervision - ESFS

Micro-prudential supervision
- European Securities and Markets Authority (ESMA) – Paris
- European Banking Authority (EBA) – London
- European Insurance and Occupational Pensions Authority (EIOPA) – Frankfurt
- Joint Committee
- National supervisors (including supervisory colleges)

Macro-prudential supervision
- European Systemic Risk Board
  - European Central Bank (ECB)
  - National central banks
  - European Supervisory Authorities (ESAs)
  - ATC, ASC
  - European Commission
- National supervisors (non-voting)
- President of the Economic and Financial Committee (non-voting)
EIOPA
New European supervisory structure
Micro-prudential supervision

Existing advisory committees

New ESAs
European Supervisory Authorities

CEBS
Committee of European Banking Supervisors

EBA
European Banking Authority
Continued base in London

CEIOPS
Committee of European Insurance and Occupational Pensions Committee

EIOPA
European Insurance and Occupational Pensions Authority
Continued base in Frankfurt

CESR
Committee of European Securities Regulators

ESMA
European Securities and Markets Authority
Continued base in Paris
European Systemic Risk Board (ESRB)

ECB Council
(with insurance and securities alternates where necessary)

Chairs of EBA, EIOPA & ESMA

European Commission

Exchange information on systemic risks

EBA
European Banking Authority
London

EIOPA
European Insurance and Occupational Pensions Authority
Frankfurt/Main

ESMA
European Securities Markets Authority
Paris

National Banking Supervisors

National Insurance Supervisors

National Securities Supervisors
Comparison Lamfalussy / Lisbon Treaty

Old World: original Lamfalussy process

Level 1
- Primary, framework legislation (directive or regulation)
- Proposed by European Commission, adopted by European Parliament and Council under ordinary legislative procedure

Level 2
- Secondary legislation (directive or regulation) to flesh out primary legislation
- Drafted by Commission and then adopted by Commission as “delegated” or “implementing” act (Articles 290 and 291 of the Treaty on the Functioning of the European Union)

Level 3
- Non-binding guidance issued by old Committees/new ESAs

Level 4
- Enforcement/compliance
- Led by European Commission

New World: additional ESA power

Level 2+
- ESAs will be able to create legally binding technical standards to flesh out Level 1 legislation
- Will co-exist with European Commission’s Level 2 legislation (see Articles 10-15 of the establishing regulations)
Lisbon Treaty Articles 290 and 291

Article 290
1. 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. The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.
2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:
   (a) the European Parliament or the Council may decide to revoke the delegation;
   (b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.
For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.
3. The adjective ‘delegated’ shall be inserted in the title of delegated acts.

Article 291
1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.
2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.
3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers.
4. The word ‘implementing’ shall be inserted in the title of implementing acts.
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Daniela Weber-Rey
Insurance and Reinsurance Stakeholder Group