

Eljalil Tauschinsky and Wolfgang Weiß (Eds.), *The Legislative Choice Between Delegated and Implementing Acts in EU Law*. Cheltenham: Edward Elgar Publishing, 2018. 272 pages. ISBN: 9781788115223. GBP 95.

This edited volume examines at length the distinction between delegated acts (Art. 290 TFEU) and implementing acts (Art. 291 TFEU), often considered a major innovation of the Lisbon Treaty.

The premise of the volume is that existing conceptualizations of the distinction are deficient. Such conceptualizations frequently rely on a traditional view of the separation of powers: delegation is thought to be a quasi-legislative activity, whereas implementing acts are considered akin to the executive implementation of norms. Yet in practice, delegated and implementing acts have become increasingly similar to the point of being virtually indistinguishable. That is so with respect to the procedures for their adoption, their content, and their legal effects. The editors conceptualize the different contributions to the book as a deconstruction and a reconstruction of the distinction between delegated and legislative acts.

The book is impressive due to the broad range of perspectives brought to bear on the topic. The reader will find doctrinal analyses of the topic as well as a more pragmatic, empirical examination of the legislative behaviour of Union institutions. Vincze and Zdobnõh offer a comprehensive account of the ECJ case law on this topic, and its implications for constitutional principles as well as legislative institutions. Both observe that the Court's case law fails to clarify the distinction question, and take a critical view of a conceptualization based on traditional views of the separation of powers. Chamon and Ott examine the question from a broader doctrinal angle; the former examines the meaning of the distinction in light of the reality of decentralized agencies in the EU, whereas the latter examines the Commission's "delegated treaty-making" powers. Röttger-Wirtz sheds light on the question from the perspective of the principle of subsidiarity. Lafarge examines the question from the perspective of the Union's commitment to a policy of "Better Regulation", examining in particular the actions of the European Commission but also the political agreements between Commission, Council and Parliament in implementing this policy and their significance for the distinction. Finally, the book also brings a rich policy perspective by examining this question from the perspective of specific policy areas: Karsten delves into institutional practice regarding food and agricultural law, Röttger-Wirtz examines Union policy with respect to pharmaceutical products and Ortino examines the regulation of financial markets. Karsten and Ortino do so predominantly with an eye towards the pragmatic question of institutional practice regarding the choice between delegated and implementing acts and its implications in the policy fields they analyse, whereas Röttger-Wirtz puts the emphasis on the question of subsidiarity.

The introduction to the book promises that after the "deconstruction", a "reconstruction" of the distinction between delegated and implementing acts will follow. This formulation is perhaps overly ambitious. Indeed, the book leaves the reader – in lieu of a conclusion – with more questions. Instead of a grand doctrinal reconstruction, the book wraps up with the modest suggestion that the delegated/implementing acts distinction might map onto a distinction between substantive and procedural questions. The latter distinction would leave sufficient flexibility for political actors to determine which type of act to adopt. But this remains a suggestion. And the volume should be applauded for it. If anything, the strength of this book lies in its frank conclusion that existing doctrinal distinctions have largely failed and that the institutions in charge of translating the law in the books into law in action might lack the lawyerly interest in doctrinal coherence.

If one had to find fault with this volume, one might point to the fact that the book sometime feels too rigidly wedded to a doctrinal question: the quest for "order, structure and principle" behind Articles 290 and 291 TFEU. This was the intent of the editors, and even the empirical analyses of the legislative behaviour of European institutions are ultimately driven by this concern. But the question of delegated and implementing acts is relevant not merely for a doctrinal restructuring of EU law. It has important implications for European constitutionalism more broadly. Does the ECJ's case law enhance or undermine the legitimacy of executive power

in the Union? How does the tension between delegated and implementing acts interact with the debate surrounding the European democratic deficit? Readers interested in these questions will be left wanting more.

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