THE ROLE OF PARLIAMENT IN DELEGATED LEGISLATION:

Principles for Safeguarding Legislative Transparency and Democratic Accountability

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EXECUTIVE SUMMARY

The classical doctrine of the separation of powers vests legislative functions exclusively in parliament. However, modern legal systems also necessitate the delegation of legislative powers to the executive. This is a practical response to the growing complexity of governance, where efficiency, flexibility, technical expertise and extensive regulation are increasingly important.

Delegated legislation is thus a practical necessity but a failure to properly manage such delegation poses a serious threat to democratic governance. Excessive reliance on executive rulemaking can erode transparency, create legal uncertainty, weaken democratic accountability and ultimately diminish public trust in government policies and laws that fail to meet citizens' needs. This dynamic makes the oversight of delegated powers a critical task for parliaments worldwide, as they are constitutionally bound to safeguard the integrity of the legislative function and protect the public interest.

Given that the scope and limits of delegation differ among parliamentary and presidential systems, federal and unitary states, and civil and common law traditions, there is no universal blueprint. However, there are fundamental distinctions between systems where delegated legislation is constitutionally regulated and those where it relies on parliamentary discretion. In the former, constitutional rules constrain the delegation process, imposing procedural and substantive limits. In the latter, while legislative sovereignty allows broader discretion in delegating powers, institutional and judicial controls are often used to monitor the executive rulemaking. Despite diverse practices, certain common principles can guide parliaments in improving the frameworks and

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procedures that regulate both the granting of delegated powers and the scrutiny and oversight of delegated acts.

The present brief provides a comparative outlook on how seven different parliamentary systems (France, Germany, India, Italy, Nepal, Spain and the United Kingdom) manage delegated legislation. By analysing the distinct constitutional and institutional approaches shaped by each nation's legal traditions, forms of government and administrative needs, the brief sets out seven guiding principles for parliaments to consider when addressing shortcomings in the regulation of delegated legislation—from initial authorization to the subsequent scrutiny of executive action.

This brief is designed as a practical resource for parliaments, offering comparative insights and guiding principles for strengthening their capacity to manage delegation effectively, ensuring that this essential feature of lawmaking complements rather than undermines parliament's constitutional role.

The brief was commissioned for the workshop 'Parliament's Role in the Legislative Process', held in Kathmandu on 23–25 May 2025, organized by Inter Pares in partnership with the Federal Parliament of Nepal. Its initial draft was circulated in advance to workshop participants, including members of parliament, parliamentary staff and administrators from France, Germany, Hungary, Ireland, Italy and Nepal, as well as local and international expert scholars. The final version of the brief incorporates insights, discussions and feedback received from participants during and following the workshop.

INTRODUCTION

The system of sources of law and the legislative power of the executive

A country's legal system and its sources of law are closely linked to its form of state and form of government. In federal systems, for example, the legislative powers of the federal parliament are usually more limited than in a unitary, centralized state.

Similarly, the form of government affects how legislative power is distributed. In presidential systems, where there is a strict separation between the executive and the legislature, the executive's lawmaking powers are generally limited or even non-existent. In contrast, parliamentary systems—based on a relationship of confidence between the executive and parliament—tend to give the executive broader legislative authority.

In these systems, the executive can issue legal instruments that have the same force as laws passed by parliament, often with some parliamentary involvement. The executive also has procedural powers that allow it to shape and direct the legislative process. In practice, this close relationship means that the executive has strong influence over legislative priorities and content, using lawmaking as the main way to implement its political agenda.

What is delegated legislation?

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According to the classical theory of the separation of powers, parliaments are typically entrusted with legislative functions. This principle is embedded in most contemporary democratic constitutions, whether presidential or parliamentary, and across both civil law and common law countries. Since the early 20th century, however, parliaments have increasingly delegated lawmaking powers to the executive. This trend is driven by factors such as the growing complexity of legislation, the need to address highly technical issues and an expansion of the regulatory demands of larger administrative systems.

Especially since the second half of the past century, many national constitutions have regulated the delegation of legislative powers. They have adopted various techniques, such as limiting the subject matter that can be delegated (for example, excluding areas like fundamental rights), setting time limits for exercising delegated powers, and creating ex ante and ex post oversight procedures so that parliaments can monitor the executive's use of these powers. Today, the term 'delegated legislation' covers a wide range of legal instruments, which include both delegated primary legislation and secondary legislation, such as regulations, bylaws and directives.

The scope and duration of delegation vary across legal systems, as do the required features of the delegating act (also called a 'parent' or 'enabling' act) and the delegated act. The delegated act itself is sometimes classified as a primary source of law, formally equivalent to laws passed by parliament, while

Country examples: **France and Spain**

In 2017, **France** undertook a major reform of its labour law. After some months of negotiations between the government and the unions, followed by hearings in the National Assembly and the Senate, the Parliament passed an enabling act, delegating authority to the government to move forward with the reforms. This approach, which was positively assessed by the Conseil Constitutionnel (Décision no. 2017-751 DC of 7 September 2017), was chosen to speed up the process and rapidly implement significant changes that would allow organizations greater flexibility to set their own rules through agreements with employees.[1]

Over the years, corporate enterprises in **Spain** have been regulated by multiple company laws, creating loopholes and inconsistencies. In 2009, rather than introduce yet another reform, Parliament chose to delegate to the government the task of clarifying, harmonizing and consolidating existing legislation into a single legal framework. Parliament defined the procedure and scope of the delegation by means of an enabling act. Acting under this authorization, the government enacted Royal Legislative Decree 1/2010, which later approved the consolidated Corporate Enterprises Act (Ley de Sociedades de Capital).[2]

1 Millet-Taunay, M., 'New ordinances bring in President Macron's reforms', Ogletree Deakins, March 2018, <https://ogletree.com/international-employment-update/articles/march-2018/france/2018-03-06/new-ordinances-bring-in-president-macrons-reforms>, accessed 20 January 2026.
2 Ministry of Justice, 'Royal Legislative Decree 1/2020, of 2 July, Approving the Consolidated Text of the Corporate Enterprises Act', Madrid, 25 November 2017, <https://www.mjusticia.gob.es/es/AreaTematica/DocumentacionPublicaciones/Documents/Royal%20Legislative%20decree%201%2C%20of%2002%20july.pdf>, accessed 20 January 2026.

in other cases it is considered a secondary source of law that is hierarchically subordinate to parliamentary laws and statutes.

Main models of delegated legislation

Two main models of delegated legislation emerge from the comparative analysis:

a. Constitutionally regulated model

Countries such as Germany, France, Italy and Spain strictly regulate delegation through constitutional norms. These systems limit executive discretion by specifying clear procedures, substantive limits and time constraints. In these contexts, delegated legislation is used for specific purposes—such as technical reforms, aligning with European Union law, or legal consolidation—and involves structured parliamentary and judicial oversight.

b. Parliamentary sovereignty model

In these systems, in the name of parliamentary sovereignty, broader and more discretionary delegation is allowed, governed by statutory rather than constitutional rules. Oversight is primarily procedural and often ineffective, due to the executive's dominance in parliament. Committees exist, but they lack binding authority, and much subordinate legislation goes largely unscrutinized.

Country example: **Germany**

In **Germany**, the government uses ordinances (*Rechtsverordnungen*) to set out detailed rules or technical requirements that are too complex for parliamentary debate but essential for implementing broader policy goals. For example, under the authority of the Occupational Safety and Health Act (1996), the government issued the Workplace Ordinance (*Arbeitsstättenverordnung*), which sets out comprehensive requirements for workplace safety and health, such as on employer obligations, workplace design and operational standards.[1]

1 Federal Ministry of Justice and Consumer Protection, 'Workplace Ordinance of 12 August 2004', <https://www.gesetze-im-internet.de/englisch_arbst_ttv/englisch_arbst_ttv.html>, accessed 20 January 2026.

ENHANCING THE ROLE OF PARLIAMENT IN DELEGATED LEGISLATION: GUIDING PRINCIPLES

There are two main features of parliamentary practice in relation to delegated legislation. The first is the creation of the law that gives powers to the executive (the *delegating act*). The second is how parliament participates in the executive's process of preparing and adopting the resulting rules (the *delegated act*). Such involvement can occur, depending on the case, either in plenary or in committees, and either before (ex ante) or after (ex post) the rules are made.

In both models, parliament plays a vital role. First, it is parliament that adopts the delegating act, which frames both the content and the procedure through which the delegated act will be issued. Second, the involvement of parliamentary bodies in the preparation and issuance of the delegated act is crucial to building political support for the delegation of a significant amount of legislative power to the executive. It also provides a safeguard by ensuring that the executive stays within the limits and guidelines set by parliament.

Although practices vary across countries, comparative analysis reveals several guiding principles. In this brief, the principles are provisionally divided into two groups, according to the stage at which they are applied. The principles are intended as general recommendations for parliaments and should be carefully adapted to each system's constitutional, legal and institutional framework.

1. Parliamentary authorization of delegated legislation

Delegated legislation always starts with a decision by parliament.

Delegated legislation always starts with a decision by parliament. Through a piece of legislation—often ad hoc—parliament gives the executive the authority to make certain rules.

In systems where parliament holds ultimate authority (known as parliamentary sovereignty), this law is the only legal basis for delegated legislation. In such cases, parliament, using its supreme authority, temporarily transfers part of its lawmaking power to the executive. In the constitutionally regulated model, parliamentary authorization is not exclusive. In these cases, the constitution itself defines the main steps and limits for both the delegating law and the delegated act.

In both models, however, the role of parliamentary authorization is fundamental. It marks the point when parliament decides to delegate to the executive the adoption of norms on a certain subject or matter, for a limited time, usually under defined conditions. The delegating act often includes guiding principles and criteria the executive must follow when drafting the delegated act. Comparative analysis reveals a number of common principles that assist parliaments in developing appropriate frameworks for the authorization of delegated legislation.

Guiding principle 1. Define the limits of delegation

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It is common for parliament to delegate the regulation of certain subjects or matters to the executive to better define their content, where this is not yet clear or politically mature. Even in such cases, however, some **substantive principles should be included in the delegation act** to prevent parliament from completely outsourcing its legislative authority.

Permanent delegation should never be allowed. The parent act must always set a deadline by which the executive must exercise its delegated power or on which that delegated power expires. That deadline might be extended by another piece of delegating legislation—ideally following the same procedure required for the first delegation—or could elapse without the authorization being fulfilled by the government. In the latter case, a new parent act would need to be approved by parliament if the will to delegate to the government persists.

It is also advisable that the **parent act specify whether the executive can sub-delegate.** If not specified, the general rule should be that sub-delegation is not allowed, especially for the elements that are deemed essential to implement, and to develop the principles indicated in the authorization set by parliament.

Guiding principle 2. Limit the subject matter of delegation

Parliaments are advised to limit the subject matter of the delegation.

Parliaments are advised to limit the subject matter of the delegation. This can be done through constitutional provisions (in the constitutionally regulated model) or through the accurate design and drafting of the parliamentary parent act.

The constitution may explicitly exclude some subjects or matters from those on which a delegation can be made to the executive, and/or try to identify a non-delegable 'core' of the parliamentary legislative function. While the former approach is relatively easy to implement, the latter is often more challenging, although it can be achieved, for instance, by referring to implementation of a part or section of the constitution.

Country example: **United Kingdom**

In 2015, the **UK** Government introduced the Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations. The new regulation (statutory instrument, SI) was criticized for negatively affecting low-income working families by substantially reducing tax credits. In response, the House of Lords voted to delay its implementation, arguing that the SI had significant financial consequences and should have been introduced through primary legislation to allow for parliamentary debate and scrutiny. Ultimately, the proposed SI was blocked, and the government abandoned the planned changes.[1]

[1] Russell, M., 'The Lords and tax credits: Fact and myth', Constitution Unit Blog, 22 October 2015, <https://constitution-unit.com/2015/10/22/the-lords-and-tax-credits-fact-and-myth>, accessed 20 January 2026; and Hansard, Column 1011, 26 October 2015, <https://publications.parliament.uk/pa/ld201516/ldhansrd/text/151026-0002.htm>, accessed 20 January 2026.

Limitations on the subject matter delegated to the executive can be set out directly in the delegation law. Parliaments, for example, can explicitly forbid the executive from regulating certain sub-topics that are reserved for parliamentary legislation.

Guiding principle 3. Classification of delegated acts

Parliament should establish a stringent, stable and clear procedural framework to ensure **mandatory classification of different delegated acts** and their procedural requirements. This includes specification of which acts need to be presented to parliament ex ante for approval. It is essential to clarify beyond any doubt the different timeframes and the parliamentary bodies—plenary or committees—that need to be involved.

In addition, the consequences of parliamentary inactivity, whether resulting from accidental factors or political decisions, should be clearly specified, as well as the mechanisms by which parliament can revoke the delegation, either implicitly or explicitly.

Guiding principle 4. Mandatory public registration of delegated legislation

Delegated legislation should be transparent and easy for everyone to access. This is important as the decision to use delegated legislation automatically reduces visibility and transparency. It is important that parliament establish a **mandatory public registry of delegated legislation** that is consistently updated and includes references to the approved parent acts, as well as to all the measures adopted for their implementation.

Country example: **United Kingdom**

In the **UK**, delegated legislation is published on the government's official website (Legislation.gov.uk). The site provides free public access to the full text of statutory instruments (SIs), explanatory notes, legislative histories and status indicators—such as 'in force' or 'revoked'—and references links to the parent act. For SIs with major public impact or political significance, explanatory notes also include their purpose, policy reasoning, and legal effects—provided in plain language and available on the Parliament's website.

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2. Parliamentary scrutiny and oversight of delegated legislation

Parliament rarely ends its involvement in delegated legislation at the stage of approving the parent act. In most cases, it is usually involved in follow-up scrutiny and oversight of the executive's legislative activity. The oversight mainly comprises verifying whether or to what extent the executive has acted in accordance with the directions set out in the parent act.

The parliamentary bodies involved and the procedural instruments used for this oversight can vary significantly, depending on the features of each parliament, on its relationship with the executive and on the delegated acts.

Nonetheless, comparative analysis reveals the following common principles for guiding the second stage of parliamentary procedures on delegated legislation. These principles are not universal and would need to be adapted to each country's context.

Guiding principle 5. A stronger role for parliamentary committees in the scrutiny and oversight of delegated legislation

It is recommended that parliaments **entrust parliamentary committees with responsibility for scrutinizing and overseeing delegated legislation**. Small collegial bodies are ideal for examining the content of delegated legislation, which is often highly technical and detailed.

Parliaments can decide which kind of committee should be involved; for instance, whether this should be the usual **standing/permanent committee**—normally the same one that examined the delegation bill—or an **ad hoc committee** specifically and exclusively dedicated to the task. The latter might be set up to scrutinize all kinds of delegated legislation or delegated legislation in a certain sector; set up to manage complex delegated acts; or established for a single piece of delegated legislation. Each option has its advantages and disadvantages, depending on the size, number and composition of parliamentary standing/permanent committees and the plenary, as well as the usual pace of parliamentary activity.

Another factor to be considered is the **unicameral or bicameral structure** of the parliament. In bicameral legislatures, assigning this task to a bicameral committee can reduce the risk of divergent views and opinions emerging from parallel scrutiny by the standing committees of each house. In case of asymmetric bicameralisms, it is often expected that one house and its committees might specialize in scrutinizing delegated legislation.

Country examples: **Germany and India**

In **Germany**, after the government approves a draft ordinance, it is sent to the president of the Bundestag. The president, together with the Bundestag's Council of Elders (the body that manages the Bundestag's internal affairs and defines the daily legislative agenda), decides which parliamentary committee will review it and sets a deadline for the committee to report back. Once the committee's report is ready, it is added to the Bundestag's agenda, and the full parliament votes on the ordinance.

In **India**, the Committees on Subordinate Legislation in both Houses review whether executive orders stay within the limits set by their parent act. These committees are usually chaired by opposition members to ensure more rigorous oversight. They provide recommendations on whether a government order should be annulled, amended or dealt with instead through an act of parliament.

Guiding principle 6. Responding to executive action ultra vires

Parliament should define in advance, in general but clear terms, **the political and judicial consequences the executive would face if it fails to comply with the requirements and principles set out in the parent act—and in the constitution itself**.

As noted above, the defining feature of delegated legislation is that parliament authorizes the legislation within certain boundaries set by parliament itself. It is therefore essential that each legal system specify the consequences if the executive exceeds or disregards these limits by acting *ultra vires*. These consequences should be clearly defined—and to a certain extent foreseeable—in advance, in terms of both political responses and judicial remedies.

Political responses may translate into various parliamentary initiatives, ranging from parliamentary questions and resolutions to legislative bills or amendments aimed at revoking the authorization previously granted or legislating directly on the issue. For instance, if the executive adopts a provision that does not align with the parliament's intent, parliament can respond. These dynamics have the potential to play a highly relevant role, depending on how each procedure is framed and governed.

Judicial remedies to address alleged violations of the limits imposed on the executive as delegated legislator are regarded as complementary to political responses and may be activated later. The appropriate judicial authority depends on the legal system and the nature of the alleged violation. Typically, allegations of direct (and sometimes also indirect) infringements of constitutional provisions are subject to constitutional adjudication, where this exists, whereas other types of violation fall under the jurisdiction of ordinary or administrative courts.

Procedures for activating judicial remedies can vary significantly and can intersect with political actions. For example, political actors (parliamentary minorities or speakers) may have the right to go to court if they believe that the executive's final decision has exceeded delegated authority, for instance by disregarding critical opinions expressed during parliamentary scrutiny.

Parliament authorizes a delegated legislation within certain boundaries. It is essential that each legal system specifies the consequences if the executive exceeds these limits by acting *ultra vires*.

Country example: **India and Nepal**

In **India**, judicial oversight provides a crucial check on executive power. In the case *Air India v Nargesh Meerza* (1981), the Supreme Court struck down a service regulation that mandated the termination of a female flight attendant's employment on her first pregnancy. The Court found the rule to be arbitrary, unreasonable and a violation of the constitutional right to equality. The case demonstrates how the judiciary can invalidate subordinate legislation that infringes on fundamental rights, even when the parent act is valid.[1]

In **Nepal**, a petitioner contested the Cabinet Secretariat's power to regulate retirement provisions through delegated legislation. The Supreme Court found that the Police Act (1955) lacked explicit provisions on retirement and emphasized that fundamental aspects of police administration, such as appointments, qualifications, pensions and retirement, must be set out directly in the act itself rather than left to subordinate legislation. The Court noted that this is essential to ensure legal clarity, legal certainty and effective implementation. As a result, the Court ordered a legislative review of the Police Act to incorporate clear and comprehensive provisions on these matters.[2]

1 DeFacto IAS, 'Judicial control of delegated legislation in India', 25 July 2024, <https://www.defactolaw.in/post/judicial-control-of-delegated-legislation-in-india>, accessed 20 January 2026.
2 Nepal Law Reporter (Nepal Kanoon Patrika, NKP) 2071, No. 1, Decision No. 9099, p. 1.

Guiding Principle 7. Developing a procedural toolbox and scrutiny mechanisms

Parliaments are encouraged to develop, in line with the political and institutional traditions, **a procedural toolbox and a set of scrutiny and oversight mechanisms for delegated legislation.** This will ensure effective parliamentary and public monitoring of the executive's legislative activity, increase the visibility of delegated legislation and enable the activation of political and judicial responses whenever applicable.

The availability of a procedural toolbox should allow meaningful parliamentary involvement in the executive's legislative activity, including participation by both the majority and the opposition. This helps prevent decisions from being made within a 'black box'. A parliamentary decision to delegate a portion of its legislative function to the executive does not mean that the deliberative process can be entirely bypassed, or that the formation of the delegated provisions should exclude any kind of participation or avoid any degree of publicity or transparency.

Country examples: Deep dive

1. FRANCE

Country snapshot

France's 1958 Constitution limits Parliament's lawmaking in specific areas (article 34) and gives remaining legislative powers to the executive (article 37). Under article 38, the executive can issue ordinances (*ordonnances*) in areas normally reserved for Parliament, but only with a time-limited delegation of authority. The enabling law sets the duration, subject and objectives of an ordinance. Once approved by the Council of Ministers and signed by the president, an ordinance has regulatory force until Parliament ratifies it. After this, it becomes law. A 2008 constitutional amendment abolished implicit ratification. Prior to ratification, ordinances can be challenged in administrative courts. This system allows Parliament to maintain ultimate control. However, the executive enjoys procedural autonomy and often initiates major reforms through ordinances.

1.1. Introduction

The 1958 Constitution of the Fifth Republic consolidates the autonomy of the executive's normative power vis-à-vis the legislative power of Parliament. In articles 34 and 37, the constituent fathers sought to rationalize parliamentarism by setting limits on the domain of ordinary law approved by the Parliament. The ex ante controls by the Constitutional Council (Conseil Constitutionnel) on these sources of law, before promulgation, can be activated only after explicit referral, which is restricted to the four highest authorities of the state—the president of the republic, the prime minister, the president of the National Assembly and the president of the Senate—and a certain number (60) of deputies or senators (article 61 of the Constitution).

Article 34 of the Constitution innovates a longstanding tradition regarding the general scope of the parliamentary legislative function by introducing the concept of a reserved domain (*domaine réservé*) for laws approved by Parliament, thereby enumerating the subject matters reserved to legislative authority. Beyond this list, other constitutional norms lay out additional reservations to the legislative domain, which typically concern issues of utmost importance. According to article 37 of the Constitution, the regulatory power of the executive is free to issue rules (*règlements*) on the remaining topics. This power belongs to the prime minister, who can enact rules in the form of decrees subject to countersignature by the responsible ministers.

1.2. Governmental ordinances under article 38

In addition, the 1958 Constitution provides a mechanism for temporary derogation of the allocation of competences between parliament and the executive. According to article 38 of the Constitution, the Parliament can

authorize the executive, for a limited period, to adopt ordinances (*ordonnances*) in areas normally reserved for statutory law through special enabling laws (*lois d'habilitation*). According to article 38.1 of the Constitution: 'In order to implement its programme, the Government may ask Parliament for authorization, for a limited period, to take measures by Ordinance that are normally the preserve of statute law'.

1.3. **Procedure for approving the enabling law**

Ordinances, which are widely used for reforms that require speed or technical detail, such as economic or labour law reforms, are enacted through a complex procedure. The executive must first submit a draft enabling law (*projet de loi d'habilitation*) to Parliament when it intends to regulate in a domain that is typically reserved for primary legislation. No special justifications must be provided, provided that the government intends to regulate a given issue as part of its political programme. In practice, this justification is equivalent to the concrete goal of the act. The enabling law contains the authorization for the government to legislate by ordinance in areas normally reserved to Parliament. According to a decision of the Constitutional Council of 5 January 1982, it is mandatory for such enabling laws to specify the duration of the authorization, the subject matter concerned and the objectives of the ordinances. It is not uncommon for the subject matter defined in the enabling law to be framed in broad terms.

Two deadlines must be established by the enabling law:

1. First, the *habilitation* period that the government has at its disposal to issue the required ordinances; once this period has expired, the power to regulate is regained by Parliament.

2. Second, the deadline by which a bill for ratification of the ordinances must be tabled; if no such bill is tabled before the set date, the ordinances become null and void.

1.4. **Procedure for adopting the governmental ordinances**

Once the enabling law has been approved and before its established deadline, the Council of Ministers adopts the ordinance. It is then signed by the president of the republic within the council itself, countersigned by the prime minister and the responsible ministers, and published in the *Journal Officiel*.

A refusal to sign by the president of the republic is politically possible and has occurred during periods of 'cohabitation', when the head of state and the prime minister are from different political parties. These refusals, however, only have the effect of a temporary 'veto', as the texts of the ordinances can be tabled in Parliament in the form of government bills. If adopted, these must be promulgated by the president.

At this stage, the ordinance has regulatory value (akin to executive regulations) but not statutory force. As outlined in article 38 of the Constitution, the

ordinance lapses if a ratification bill is not tabled in Parliament before the date set by the enabling law.

The ordinance can acquire the force of law only if the second piece of legislation, the ratification bill, is passed by Parliament (*loi de ratification*). Parliament, once seized of the ratification bill, may ratify the ordinances as adopted, ratify them with amendments or refuse to ratify them altogether. In all cases, it retains control of the substantive content of the text at this stage.

In the past, implicit ratification was tolerated according to case law (Constitutional Council, decision of 29 February 1972). However, frequent use of the ordinance procedure since the early 2000s conveyed the image of a Parliament constantly deprived of legislative powers. Consequently, a 2008 constitutional revision has prohibited implicit ratification.

If not ratified, the ordinance retains the value of a regulation and therefore remains a purely administrative act, despite operating in the domain of law. Therefore, non-ratified ordinances can be challenged before the Council of State (Conseil d'Etat), the supreme administrative judge in France, through an *ultra vires* review (decision of 3 November 1961, Damiani). Before ratification, as administrative acts, ordinances can be annulled by an administrative judge in the following instances: violation of the Constitution, violation of law, violation of a principle of international law or violation of a general principle of law. Conversely, the Constitutional Council can review the enabling law but not the ordinance itself, unless it has been ratified and has acquired legislative status. Thus, ratification is the only way to give ordinances full legislative force.

If not ratified, the legal nature of the ordinance is that of a mixed act: legislative for provisions falling within the remit of the law and regulatory for any other provisions. Thus, an unratified ordinance could potentially be subject to dual judicial review. According to a recent ruling by the Constitutional Council (decision of 28 May 2020, No. 2020–843), legal provisions that infringe on a right or freedom protected by the Constitution can be challenged before the Constitutional Council through the process of the 'priority question of constitutionality'. Outside this specific case, the provisions of an unratified ordinance are subject to the control of the Council of State. The Council of State is therefore responsible for ensuring that the ordinances comply with other rules and principles of constitutional value, France's international commitments, the limits set by the Parliament in the enabling act and general principles of law, as well as rules of jurisdiction, form and procedure. The Conseil d'Etat is therefore able to annul illegal provisions on any of these grounds, regardless of the fate reserved by the Constitutional Council for a priority question of constitutionality referred to it.

1.5. **Procedure of inadmissibility (irrecevabilité) under article 41 of the Constitution**

If Parliament tables a draft bill or discusses an amendment that does not fall within the domain of the law, or that interferes with a delegation granted to the government under article 38 of the Constitution, the executive may raise an

objection of inadmissibility. If the inadmissibility is confirmed by the president of the relevant assembly (National Assembly or Senate), the involvement of the Constitutional Council is not required. The Constitutional Council is called on only in cases of disagreement between the government and the president of the Assembly. In practice, this form of litigation is extremely rare. The government may also choose not to invoke inadmissibility when it is politically strategic to allow a debate to proceed.

1.6. **Concluding remarks**

In a legal system in which the executive holds, either directly or indirectly, important and intensive legislative power, governmental ordinances adopted following parliamentary authorization according to article 38 of the Constitution are no exception. Especially in the past two decades, they have been widely used to allow the executive to implement its political agenda and EU law, intervening in subject matter normally reserved to statutory law. The 2008 constitutional amendment was a reaction to the intensification of the use of ordinances, aiming to strengthen the role of Parliament and forbid implicit ratification. However, this constitutional reform does not seem to have decelerated the recourse to such instruments and has at the same time introduced a degree of uncertainty over the legal status of non-ratified ordinances and their judicial review.

2. **GERMANY**

Country snapshot

Germany's 1949 Basic Law (Grundgesetz) mandates that legislative delegation must be explicitly authorized by law (article 80). The delegation act must specify content, purpose and scope. The 'theory of essentiality' limits delegation by requiring Parliament to retain control over fundamental policy decisions.

Ordinances (*Rechtsverordnungen*), which are Germany's primary form of delegated legislation, may be issued by the federal government, a federal minister or Land governments. They must always reference their enabling acts. Although time limits are not required, Parliament can impose conditions or require approval. Depending on the subject matter, both the Bundestag and the Bundesrat can participate in the scrutiny of delegated legislation, with committees frequently reviewing proposed ordinances. Despite this procedural rigour, ordinances provide flexibility and efficiency while retaining legal accountability, including judicial review and public scrutiny.

2.1. **Introduction**

In line with its historical origins, the German constitutional system is, in principle, designed to impose limits on the normative powers of the executive. The principal form of normative acts of the executive envisaged by the 1949 Constitution (or Basic Law, Grundgesetz) is the issuance of ordinances (*Rechtsverordnungen*) grounded on a delegation law.

The classification of such ordinances has long been ambiguous. As they are issued by the executive rather than after a parliamentary lawmaking process, these measures cannot be regarded as laws in a formal sense. Although article 82 of the Constitution appears to treat laws and ordinances similarly with respect to the procedures for publication and entry into force, ordinances can be considered law only in a substantive sense.

According to article 82 of the Constitution, laws, after countersignature, must be certified by the federal president and promulgated in the Federal Official Journal, while ordinances need only to be certified by the authority that issues them: the federal government, the federal minister or the Land governments. The Act on Promulgation and Publication (Verkündungs- und Bekanntmachungsgesetz – VkBkmG) No. 114-8 of 20 December 2022 regulates and provides details on the certification and promulgation of ordinances.

2.2. **Constitutional provisions and limitations on delegated legislation**

Paragraph 1 of article 80 of the Grundgesetz, which governs delegated legislation, states that, 'The Federal Government, a Federal Minister or the *Land* governments may be authorized by a law to issue ordinances'. As in other legal systems, any deviation from a strict interpretation of the principle of the separation of powers necessitates a constitutional provision. Such a provision would require a federal law, specifically a legislative parliamentary act, authorizing the delegation of the exercise of legislative power.

The federal legislator may not delegate authority in areas beyond its constitutionally assigned competences. Accordingly, matters that fall under the exclusive competences of the *Länder*, as defined by the Basic Law, are excluded from the scope of federal delegation (Ziamou 2000).

This exemption from delegation also applies to domains for which the Basic Law requires the approval of a formal parliamentary law. These domains are thus subject to an absolute parliamentary reserve.

This is the case in article 23.1, second sentence 'Federation may transfer sovereign powers to the European Union by a law with the consent of the Bundesrat'; article 24.1 'The Federation may, by a law, transfer sovereign powers to international organizations'; article 29.2, first sentence 'Revisions of the existing division into *Länder* shall be effected by a federal law, which must be confirmed by referendum'; article 59.2, first sentence (requiring parliamentary consent by law for international treaties affecting federal legislation or political relations of the Federation); article 79.1, first sentence (mandating that amendments to the Basic Law may only be adopted by a law expressly amending or supplementing its text); article 104.1, first sentence (requiring a formal law to restrict personal liberty); and article 110.2, first sentence (requiring the federal budget to be adopted through a law). A formal law is also needed for the incorporation of EU norms (Kischel 1994; Mager and Bruckert 2025).

In this context, the so-called theory of essentiality, developed by the Federal Constitutional Tribunal, holds that matters deemed essential to the legal order must be reserved for determination by Parliament. Since Parliament is the direct representative of the people, it must retain authority over such fundamental decisions. The second sentence of article 80.1 of the Basic Law prohibits Parliament—in deliberate contrast to the practice of the Weimar state—from abdicating its responsibility as a legislative body. Consequently, any delegation of essential matters to non-legislative actors must be circumscribed by clear and precise boundaries. This principle underlies the same article 80 of the Constitution, when it affirms that Parliament cannot divest itself of its core responsibility as the legislative organ of the state (among many, BVerfG, 2 BvF 1/15 [2018]; BVerfG, 2BvF 2/16 [2016]; BVerfG 2 BvF 9/85 and 3/86 [1988]).

Such delegation as is expressly authorized by the legislative branch may be conferred on the federal executive, an individual federal minister or a Land executive. The final sentence of the first paragraph further clarifies that '[I]f the law provides that such authority may be further delegated, such sub-delegation shall be effected by ordinance'. The Constitution thus permits sub-delegation, provided that it is explicitly authorized by the delegation law and subsequently formalized through an ordinance issued by the originally delegated authority; for instance, a federal minister may sub-delegate to a Land government.

2.3. **The formal and substantive requirements of the delegation law and of the ordinances**

Pursuant to article 80 of the Constitution, the delegation law must define 'the content, purpose and scope of the authority conferred'. The Federal Constitutional Court has recognized the possibility of adopting a flexible interpretative approach in order to verify whether the enabling act fulfils the requirements set by article 80. Specifically, the so-called theory of foreseeability has been developed, alongside the principles of self-determination and legislative programming. According to this doctrine, it suffices that the substance of the delegated ordinance is reasonably foreseeable on the basis of the delegation law itself. In certain cases, particularly where the delegation pertains to highly technical matters, it may even be sufficient that only the purpose of the delegation is foreseeable, thus applying a teleological criterion.

Although it is within Parliament's competence to amend either the enabling act or the content of the resulting delegated ordinance through legislation, it is worth noting the absence of a requirement found in many other constitutional systems—the enabling act does not need to include a temporal limitation (Denninger 2009).

Furthermore, the Constitution does not require the delegated authority to implement the delegation in full; the delegated authority may refrain from acting entirely or may implement the delegation only partially. The delegation law may also authorize multiple federal ministers to jointly issue an ordinance. In such cases, the resulting instrument is referred to as a joint ordinance.

However, so-called mixed administrations, where delegation is shared between a federal minister and a Land government, are inadmissible under the current constitutional framework (Bauer 2006).

The ordinances must make explicit reference to their legal basis, underscoring their close connection to formal legislation (article 80.1, sentence 3 of the Constitution). Furthermore, ordinances can only be issued by the body designated in the delegation law and must respect all the requirements with regard to content, purpose and scope set by the delegation law. However, as they are not subject to traditional legislative procedures, these instruments are often preferred for their speed of implementation and the relative ease with which they can be negotiated within the government.

Pursuant to article 62 of the Constitution and article 24 of the Internal Rules of Procedure of the Federal Government (GGO), the executive acts as a collegial body and decides by a majority vote. Article 30 of the GGO stipulates that the competent minister, together with the chancellor, must sign the governmental ordinance. If only one minister is authorized by the delegation law, they are responsible for the preparation, decision making on and adoption of the act (article 67 of the GGO). However, the ordinance must be submitted for collegial approval by the executive if it concerns a politically significant measure (article 15 of the GGO).

The Common Internal Rules for Federal Ministers is another legal source regulating the preparation, drafting and promulgation of governmental regulations. Article 62 of these rules requires that government ordinances should be structured as a draft bill. This means that they must follow the procedures established by the Common Internal Rules for Ministers, particularly articles 42, 43 and 44. Specifically, they must include an ex ante impact assessment, an explanatory report, a justification for adoption and an analysis of potential system-wide impacts.

Once signed by the competent minister, the ordinance is promulgated and published in the Federal Official Journal. Delegated ordinances (*Rechtsverordnungen*) have sub-legislative status. Other secondary legal sources are also widely used, such as *Satzungen* (regulations) and *Verwaltungsvorschriften* (general administrative instructions), which do not require parliamentary authorization.

2.4. **The involvement of the Bundestag: Its rules of procedure**

The delegation law may provide for further parliamentary involvement in reviewing the governmental ordinances. If specified by the delegation law, the ordinance may require the consent of the Bundestag to be adopted. Article 92 of the Bundestag Rules of Procedure applies in such cases: ‘Ordinances issued by the Federal Government which require the consent of the Bundestag … shall be referred to the appropriate committees direct by the President in consultation with the Council of Elders’.

The delegation law may include legislative provisions that give the Bundestag the right to deny, consent to or demand alterations prior to an ordinance's promulgation. Following approval by the government, the draft ordinance is assigned directly to the president of the Bundestag. Acting in consultation with the Council of Elders, the president determines which parliamentary committee shall be entrusted with examining the draft ordinance. The president sets the time limit within which the committee must submit a report to the Bundestag. The report of the committee is placed on the agenda of the Plenary of the Bundestag, where the *Rechtsverordnungen* shall be voted on. Occasionally, the role of Parliament in the executive rulemaking process can compensate for the generality of the language used in wide delegation law (Oliver 2010).

In the German form of government, this role underscores two key principles: first, that the responsibility for the delegation law must ultimately lie with Parliament (Pünder 2013); and second, that the involvement of Parliament in reviewing the ordinance encourages and confers additional legitimacy on the delegation itself (Pünder 2009).

2.5. **The constitutional role of the Bundesrat**

In the German system, the Upper Chamber (the Bundesrat) represents the interests of the member states (*Länder*) of the federation. Article 80.2 of the Constitution explicitly provides for the approval of governmental regulatory ordinances by the Bundesrat, 'if the enabling provision is part of a principal act which is subject to the consent of the Bundesrat or which is executed by the Länder'. In these cases, the ordinance can only be promulgated with the approval of the Bundesrat. If the Bundesrat gives its consent subject to amendments, the federal government only has to enact the ordinances in the version amended by the Bundesrat.

However, article 80.2 of the Constitution allows federal laws to make exceptions, thereby bypassing the need for the consent of the Bundesrat. When a delegation law excludes the need for the Bundesrat's consent on the ordinances, this law must be approved by the Bundesrat. The Federal Constitutional Court has the authority to review, in cases of conflict arising from the allocation of powers, whether the exclusion of the Bundesrat is justified. The exclusion of the Bundesrat has been a subject of interest to constitutional jurisprudence, which has been called on to verify whether explicit provisions exist in the delegation law (BVerfG 2-BvF, 1/12 and 3/12 [2014], paragraphs 44 and following).

Article 80.3 of the Constitution, added by a constitutional amendment in 1994, introduces the right of the Bundesrat to submit ordinance proposals (Lücke 2003). The upper house may submit proposals to the executive for the issuance of ordinances on matters where its consent is required.

During the 20th legislative term (2021–2025), the Bundesrat examined 313 *Rechtsverordnungen*, denying its consent on three occasions. In the same period, the Bundestag examined 35 *Rechtsverordnungen*.

2.6. **Concluding remarks**

The ordinances of the executive represent a frequently used source of law in Germany. Undoubtedly, they serve as a means of circumventing both political and technical complexities, enabling swift action. In practice, however, these ordinances function materially as a highly relevant legal source, despite their formal classification as a secondary source of law. This is confirmed by the competence of administrative judges to review these instruments, as well as by the availability of direct challenge by citizens through constitutional complaints (*Verfassungsbeschwerde*).

3. **INDIA**

Country snapshot

India follows the British tradition, in which there is no explicit constitutional regulation of delegated legislation. Instead, delegated powers are granted through acts of Parliament and subject to parliamentary scrutiny and judicial review. The Indian Supreme Court has ruled that while Parliament may delegate detailed rulemaking to the executive, it must retain essential legislative functions.

Subordinate legislation comprises rules, bylaws and regulations issued under enabling statutes. Parliament reviews these instruments through a Committee on Subordinate Legislation in each House. Both committees assess compliance with the parent act, although in practice oversight is limited due to the high volume of delegated legislation and limited committee capacities. Ordinances adopted during parliamentary recesses also reflect executive lawmaking powers, but are subject to subsequent ratification.

3.1. **Introduction**

In line with the British constitutional tradition, there is no Indian constitutional provision specifically devoted to subordinate legislation. Article 245 of the 1949 Constitution establishes that: 'Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State'.

The primary legal sources of delegated legislation are found in acts of Parliament in matters of subordinate legislation and in the rules of procedures of both Houses of the Indian Parliament—the Lok Sabha (Lower House) and the Rajya Sabha (Upper House).

In the Indian constitutional framework, delegated legislation is known as 'subordinate legislation'. Subordinate legislation refers to the conferral of authority by parliament on executive authorities/agencies to adopt statutory instruments (SIs), within the limits of a parent act enacted by the legislative body.

3.2. **Executive orders and their parent act, as defined by the Federal Supreme Court**

According to rule 319 of the Lok Sabha, executive 'orders'—a term that encompasses regulations, rules, subrules and bylaws—are considered ancillary and subordinate to the parent act, since Parliament cannot delegate or abdicate its essential legislative function or the determination of legislative policy and its formulation. Accordingly, Parliament must set policy, guidelines and objectives through a parent act, while leaving the task of prescribing the necessary details on implementation to the executive.

This issue has been gradually clarified in a series of judgments by the Supreme Court, beginning with the landmark ruling *In Re* The Delhi Laws Act, 1912, which led to a compromise, often referred to as 'the Indian position', between the United States non-delegation doctrine and the UK tradition of statutory instruments ([1951] 1 S.C.R. 747). Provided that legislative policy is enunciated with sufficient clarity or a standard is established, the courts should not interfere with the discretion that rests with the legislature itself in determining the extent of delegation necessary in a particular case (Mukherjea, *In re* The Delhi Laws Act, 1912: 997).

The features of subordinate legislation in Indian constitutional law were further shaped by subsequent judgments, particularly in connection with the evolution of legislative–executive relations. Overall, the Supreme Court backed the practice of subordinate legislation along the lines traced by the 'middle way' doctrine, requiring that Parliament must retain the 'essential legislative function' (*Harshankar Bagla and Anr. v State of Madhya Pradesh* [1955] 1 S.C.R. 380. Examples of such judgments include *Rai Sahib Ram Jawaya Kapur and Ors. v The State of Punjab* [1955] 2 S.C.R. 225, and *Vasantlal Maganbhai Sanjanwala v State of Bombay and Ors*, [1961] 1 S.C.R. 341). Narrower interpretations have also been advanced during periods marked by an increasing volume of subordinated legislation adopted by the executive (*Avinder Singh Etc. v State of Punjab & Anr. Etc.* [1979] 1 S.C.R. 845). Nonetheless, the Supreme Court has accepted that such legislation must be placed or 'tabled' before Parliament as a sufficient safeguard to ensure the separation of powers (*Lohia Machines Ltd v Union of India, AIR* 1985 SC; *Quarry Owners Ass. v State of Bihar* (2000), 8SCC 655), a principle affirmed as a cornerstone of the Indian legal system (Singh 2014: 292 ff).

3.3. **Other forms of normative powers of the executive**

Delegated legislation should not be confused with the special legislative powers of the executive provided for in article 77.3 of the Constitution, according to which 'the President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business'. This provision grants the president the power to adopt rules that have statutory force and are binding.

Similarly, delegated legislation must be distinguished from the power of the executive to enact 'ordinances', which are regarded as a form of the original legislative authority vested in the central government. Ordinances have the

same force as parliamentary legislation and are regulated by article 123 of the Constitution. They can be enacted only during a parliamentary recess when immediate action is needed: 'If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require'. In this case, parliamentary control is maintained, since ordinances must be laid before both Houses when parliament is in session and must be enacted within six weeks from the date of reassembly. Otherwise, they cease to have legal force, as is the case following an explicit motion by Parliament against them (Dam 2017).

3.4. **Parliamentary oversight of subordinate legislation**

Parliamentary oversight of delegated legislation is exercised in various ways and stages (Kaul and Shakdher 2016). The parent act, which is introduced in one of the two Houses, must contain an explanatory memorandum that outlines the reasons for and scope of the delegation of the legislative power. The memorandum is considered crucial for debating the necessity of the orders, alongside their purposes which must be defined and limited (Kaul and Shakdher 2016: 607).

Although these purposes must be clear and defined, the executive has no more than six months to frame the orders from the date of approval of the parent act. In cases where the executive is unable to adopt the orders within six months, it may petition the Committee on Subordinate Legislation for an extension of no more than three months at a time (India MFA 2019, para. 11.3.1).

Once adopted, the orders must be laid on the table in both Houses within 15 days of their publication in the Official Gazette, if the Houses are in session, or from the date of commencement of the subsequent session, when the Houses are not convened (India MFA 2019, paras 11.3.1–11.5.1).

The parent act sets the period within which the orders must lay before the Houses. Originally, this requirement was not mandatory. It was only in 1971 that the Committees on Subordinate Legislation of both Houses recommended the adoption of the 'laying formula', which requires that delegated legislation must be placed before Parliament for a period of 30 days.

At this stage, the members of parliament can amend and even annul the orders enacted by the executive (see rules 234–39 of the Rules of Procedure in the Lok Sabha; similar provisions regulate the procedure in the Rajya Sabha) (Kaul and Shakdher 2016; Singh and Dash 2017; India MFA 2019, para. 11.6.1). The workload of parliament in scrutinizing subordinate legislation led to the establishment of the Committees on Subordinate Legislation in both chambers, in 1953 and 1954, to improve the efficiency of parliamentary oversight.

3.5. **The Committees on Subordinate Legislation**

The function of each Committee on Subordinate Legislation is to scrutinize and report to its respective House whether the orders enacted by the executive are framed within the limits set by the parent act. To improve the efficiency and effectiveness of oversight, the chair of each committee is drawn from the opposition. The committees provide their opinions regarding annulment or modification of the executive's orders. They can also recommend that matters regulated by such orders would be more appropriately addressed through an act of Parliament. (The matters to which the committees must draw attention are listed in rule 320 of the Rules of Procedure of the Lok Sabha.)

Thus, the committees are empowered to scrutinize all orders enacted by the executive or by any subordinate authority of the government, but not those made by state governments delegated by a parent act adopted by parliament.

The role of the committees is significant since they oversee and report on the activity of the executive (Kaul and Shakdher 2016: 710–11; Singh and Dash 2017: 237). In fulfilment of this role, the committees request statements from ministries regarding their recommendations made in relation to the orders adopted by the executive. At this stage, the committees may seek a continuation of the dialogue with the executive over the implementation of the recommendations made, while at the same time reporting to the House (rules 319–22 of the Rules of Procedure in the Lok Sabha; *Manual of Parliamentary Procedures in the Government of India* 2019, paras 11.8–11.15).

The role of the Committees on Subordinate Legislation has been important in 'standardizing' the oversight procedure and in broadening the typology of scrutinized orders. However, the workload of the committees has enormously increased, resulting in only a proportion of subordinate legislation being examined in practice. In addition, the executive often ignores requests in order to avoid delays in framing subordinate legislation. In addition, the formal powers of the two Houses to amend or annul orders made by the government are rarely used.

3.6. **Concluding remarks**

Overall, despite initial expectations, it cannot be said that the committees of both Houses have demonstrated an ability to provide significant of oversight or scrutiny of subordinate legislation. The proportion of subordinate legislation scrutinized is minimal. Between 2008 and 2012, only 101 of 6,985 orders were scrutinized by the committees (Singh and Dash 2017: 238). Similarly, requests for extensions of time have become almost routine and ministries have not been adhering to the six-month time limit for framing subordinate legislation (Lok Sabha, Committee on Subordinate Legislation 2022; Rajya Sabha, Committee on Subordinate Legislation 2023).

4. ITALY

Country snapshot

Italy's 1948 Constitution sets constraints on legislative delegation. Under article 76, the executive may issue legislative decrees (*decreti legislativi*) only if authorized by a delegation law that defines the subject, guiding principles and deadline. This framework ensures both substantive and procedural oversight by Parliament. In practice, delegation follows three phases: Parliament first passes the delegation law; the government then drafts the legislative decree, consulting Parliament and stakeholders; and finally, corrective decrees may be issued if needed. Legislative decrees are mainly used for complex reforms, especially to implement EU law. Parliamentary committees give non-binding but influential opinions. Italy also uses delegification—moving detailed rules from primary to secondary legislation—to reduce legislative overload, under continued parliamentary supervision.

4.1. Introduction

The 1948 Constitution of the Italian Republic refers cautiously to the normative powers of the executive. Only after some hesitation did the Constituent Assembly allow decree-laws (*decreti-legge*, sometimes also translated as 'law decrees', article 77) to be issued directly by the executive in 'extraordinary cases of necessity and urgency', requiring each of them to be converted into law by Parliament within a peremptory deadline of 60 days—or otherwise lose their efficacy *ex tunc*, 'from the beginning'. The Constitution (article 76) directly provides for legislative decrees (*decreti legislativi*, also known as 'delegated legislation') to be adopted by the executive following parliamentary approval of a delegation law, which must specify principles and criteria, and the time limit and objective of the delegation. Finally, the Constitution makes only indirect reference to regulations (*regolamenti*), the name currently used to refer to all secondary normative acts, which are traditionally issued by the executive when dealing with the powers of the president of the republic (article 87.5).

In a hierarchical system, although (government) regulations are placed among secondary sources of law and thus below primary sources (represented by ordinary laws), both decree-laws and legislative decrees are expressly qualified as acts with the force of law; that is, as primary sources of law or legislative acts. For this reason, both categories of legislative act need an explicit constitutional basis (articles 77 and 76, respectively) and must be accompanied by a proper parliamentary law to permanently enter the legal order—either before, as the delegation law (*legge delega*) for legislative decrees, or after, as the conversion law (*legge di conversione*) for decree-laws.

4.2. The delegation law and the legislative decree

In the case of delegation laws and legislative decrees, the primary act of the executive (the legislative decree) must be preceded by a parliamentary law (the delegation law, the parent act) that delegates the exercise of the relevant legislative function to the government.

Any delegation, however, cannot be '*en blanc*': the Constitution (article 76) requires the delegation law to specify: (a) the subject to be regulated by legislative decree, which needs to be specific; (b) the substantial principles and criteria to be followed by the executive in drafting the decree; and (c) the deadline by which the decree must be enacted—if this term expires, the delegation can no longer be exercised.

In addition, article 72.4 of the Constitution specifies that delegation laws are among the bills that must be examined in accordance with the ordinary lawmaking process, meaning that they are bills that cannot be approved directly by parliamentary committees. The Constitutional Court (judgment No. 32/1962) has interpreted this provision strictly, as applicable to any bill containing at least one delegation norm and even to a bill that seeks to postpone the deadline for adopting legislative decrees.

In cases where a legislative decree fails to comply with the principles and criteria established by the delegation law, in one of its first judgments (judgment No. 3/1957), the Constitutional Court clarified that such a legislative decree would infringe not only the delegation law, but also the Constitution, albeit indirectly. According to the Constitutional Court, articles 76 and 77.1 require that the constitutional legitimacy of the legislative decree is subordinate to its conformity with the delegation law. This is true for all the limitations it provides, including the procedural ones, as a violation of each of them constitutes an 'excess from the delegation' (*eccesso di delega*).

4.3. **Procedural limitation on the legislative decree and the opinions of parliamentary committees**

In addition to the limitations imposed by the Constitution, the delegation law is deemed free to provide for more constraints on the delegated legislative activity of the executive. It usually does this through the insertion of a series of procedural steps that the draft legislative decrees must follow before being adopted by the Council of Ministers and enacted by the president of the republic.

Among these further procedural limitations, the most frequent is the involvement of parliamentary committees, which are called on to issue their own preliminary opinions on the draft legislative decree. This is a mandatory opinion, but not normally legally binding. In this way, Parliament can verify in advance how the executive intends to implement the delegation law and signal where there seems to be a violation of the delegation law or a worrying development of the principles and criteria set by it.

The function exercised by parliamentary committees through their opinions can vary from case to case, usually swinging between two opposite poles: political scrutiny of the correct implementation of the principles and criteria on the one hand, and collaboration on the drafting of the legislative decree, which could be defined as a co-legislative function on the other. In any case, the ability to provide a preliminary parliamentary opinion on draft legislative decrees encourages Parliament to confer the delegation to the executive,

helping to overcome its natural reluctance to give away, albeit temporarily, its own legislative function (Lupo 1999).

Additional procedural limitations might comprise asking the government to collect preliminary opinions from other bodies or organizations, such as EU institutions, independent authorities, the Council of State, the Court of Accounts, trade unions and other associations or confederations, the State/Regions Conference and regional or local authorities. These procedural limitations are extremely telling of the constraints, interests and values that must be effectively considered by the delegated legislator, even more so when principles and criteria are almost absent or present only in a generic sense.

4.4. **A continuous dialogue between Parliament and the executive**

Overall, therefore, the process of delegated legislation seems to be designed as a complex or dual system of lawmaking, characterized by a continuous dialogue between Parliament and the executive and extended to other bodies according to the subject matter in question. In the first phase, which concludes with the approval of a delegation law that normally originates from a governmental initiative, the last word remains with Parliament. In the second phase, which ends with the adoption of the legislative decree, once the opinions of parliamentary committees and other bodies individuated by the delegation law have been collected, it is the executive that has the last word, and which defines the norms that enter into force.

A third and final phase has tended to be added to the previous two, almost systematically since the 1990s. The delegation law often delegates to the executive the power not only to adopt a legislative decree (more than one if the objects are multiple and articulated), but also—within a further deadline normally of one or two years—to correct and integrate its contents through further 'corrective' legislative decrees, which need to comply with the same principles and criteria and follow the same procedure. By adopting these corrective legislative decrees, the executive can take subsequent considerations into account and revise the legal provisions set out in the first series of legislative decrees in the light of their implementation (Cartabia 1997; Ruotolo 2009).

4.5. **Regulations**

While both decree-laws and legislative decrees are classified as primary sources of law, regulations (*regolamenti*) adopted by the government are included among secondary sources. This means that, according to the hierarchical principle, they are subordinate to laws and all other primary sources. Indeed, this principle was developed to deal with the relationship between law and regulation, and then extended and applied to the relationship between the (rigid) Constitution and law.

Originally, the typical legal denomination 'regulation' was mainly the outcome of doctrinal and judicial elaboration. It does not appear in the Constitution, except in highly specific cases regarding the powers of the president of the republic to enact 'decrees having the force of law and regulations' (article 87),

and regional regulations to be adopted, according to the original constitutional text, by the regional councils (article 121). It only became an official and mandatory legal denomination in 1988, when Law No. 400/1988 (article 17) required regulations to adopt this name when published in the Official Journal.

Law No. 400/1988 also defines the procedures to be followed for the adoption of governmental regulations and ministerial regulations. The former must be approved by the Council of Ministers while the latter—which are hierarchically subordinated to government regulations, being obliged not to conflict with them—are issued by the minister after communicating them to the president of the council. For both government and ministerial regulations, an opinion from the Council of State (to be delivered within 90 days) as well as screening and registration by the Court of Accounts are also required. All these regulations, as noted above, are published in the Official Journal.

4.6. **'Delegification' and the involvement of parliamentary committees in draft regulations**

Since the 1980s, there has been growing awareness of the excessive number of laws in force, which extend to the regulation of minor aspects of social and economic life. As in other European countries and in the European Union itself, a number of initiatives have been taken to combat legislative inflation. To this end, law No. 400/1988 conceived and designed a model of 'delegification', as a way to move certain subject matter from primary to secondary sources of law, that is, from being laws to being regulations.

Somewhat paradoxically, to achieve such a result, a new law is inevitably required that repeals the legislation previously in force, with the effect that such a repeal is postponed until the moment at which the new regulation enters into force. This is precisely the model specified by article 17.2, Law No. 400/1988, with the addition of two elements. First, in a similar way to the constitutional requirement that the principles and criteria are indicated by the delegation law, the law of delegification should specify the general norms regulating the subject matter. Second, the opinion of the parliamentary committees should also be heard, within 30 days, on every draft regulation determining a delegification. In institutional practice, the general norms in the law of delegification have been rather vague, when not completely absent, and so the procedural limitations have been more relevant than the substantial ones.

4.7. **Concluding remarks: Advantages and disadvantages**

The use of legislative decrees—as well as of regulations issued after a delegification—has been less intensive than decree-laws and more equally distributed between different executive and legislative terms. However, legislative decrees have been used frequently in relation to certain types of subject matter, such as new codes, administrative reforms and implementation of EU directives, that are often characterized by a high degree of complexity, either legal or 'political' (Cartabia and Lupo 2022).

The advantages of delegated legislation derive primarily from the organization of the decision-making process and its predefined timeframe: first, the main directions (the *ratio*); then, the provision to be applied (the *voluntas*) (Zagrebelsky 2009). The disadvantages relate to the fact that delegation laws may be too wide and vaguely defined, and sometimes are not implemented by the government at all (De Lungo 2017). In such cases, there are only political consequences because the government is not deemed to be legally bound to implement the delegation law.

5. **NEPAL**

Country snapshot

Nepal began developing a legal framework based on the principles of constitutionalism after the 1951 democratic revolution. Influences from the Westminster tradition, such as committee scrutiny, were incorporated into the 1962, 1990 and 2007 constitutions, and continue under the 2015 Federal Constitution. However, implementation has been uneven: some laws impose stricter oversight of government actions, while others allow broad executive discretion.

The 2015 Constitution and the 2024 Federal Legislation Act provide a clearer framework for delegated legislation, outlining what secondary instruments may or may not include. Still, challenges remain. Nepal lacks a dedicated delegated legislation act to standardize procedures, classifications and parliamentary approval. Parliamentary oversight, particularly in the Lower House, is limited. Common issues include executive overreach, vague or excessive delegation by Parliament, lack of regular record-keeping and limited ministerial accountability.

5.1. **Introduction**

Despite the influence of the United Kingdom during the colonial era and of other countries since, Nepal has experienced an uninterrupted history of autochthonous governance. Nepal became a modern, unified state at the end of the 18th century, but its transformation into a constitutional state with modern legislative institutions is relatively recent. Until 1950–1951, the principle of the separation of powers was neither accepted in theory nor practised in reality. Legislative, executive and judicial powers were concentrated in the monarch, or occasionally delegated to a powerful prime minister. The Government of Nepal Act (1948)—the country's first constitution—was a modest attempt at reform but was never properly implemented. Only after the 1951 democratic revolution did Nepal begin to build a legal framework consistent with the principles of constitutionalism, influenced by the British tradition as well as by the constitutional evolution in India (Ghai 2014; Malagodi 2022).

After the revolution, the Interim Government of Nepal Act (1951) served as a foundational legal instrument. Although not a constitution in the strict sense, it was adopted on the advice of the Nepali Congress Party and acted as the supreme law of the land. Section 2(l) of the 1954 Interpretation of Laws Act defined a 'Nepal Act' as any act promulgated by the King after 18 February

1951 or under the Interim Act. 'Nepal law' comprised rules, orders and regulations that carried the force of law. This implicitly recognized delegated legislation and subjected it to judicial review.

The Constitution of the Kingdom of Nepal (1959) clarified the supremacy of the Constitution and provided for judicial review of laws inconsistent with it. The 1959 Constitution authorized both parliamentary chambers to adopt its rules of procedure, paving the way for parliamentary oversight of legislative processes. Rules drawn from the Westminster traditions, including committee scrutiny, were introduced and continued under the 1962, 1990 and 2007 constitutions, as well as the current 2015 Federal Constitution with its three tiers of parliamentary institutions (Lecours 2014; Bhattacharyya 2021: 115–17). However, there has been no consistent standard in practice: some acts have imposed stricter government oversight while the others allow broader discretion (Adhikari 2020).

Under the 1990 Constitution, in particular, there was a fundamental change in the application of delegated legislation, removing constraints on the Supreme Court's power of judicial review. The Supreme Court was empowered not only to assess the constitutionality of acts of Parliament, but also to determine whether delegated legislation exceeded the scope of authority granted by its parent acts. In exercising this power, several provisions of parliamentary acts were declared unconstitutional and various items of delegated legislation were struck down as *ultra vires* (Malagodi 2022).

Today, approximately 350 acts are in force at the federal level, along with around 320 secondary legal instruments issued by the government, judiciary and constitutional bodies. These figures exclude regulations by public enterprises, universities and autonomous institutions. Seven provincial assemblies have enacted roughly 450 statutes, many of which authorize delegated legislation. The extent of primary laws and delegated legislation passed by the 753 local government bodies is not known, suggesting that the total volume of primary and secondary legislation exceeds by far what is officially recorded.

5.2. **Constitutional and legal framework for delegated legislation**

The Constitution of Nepal (2015) does not provide specifically for the regulation of delegated legislation. However, article 82 empowers the Cabinet to issue rules on governmental functions. Furthermore, articles 104 and 194 allow federal and provincial legislatures to establish procedural rules, which may be linked to the procedures regarding delegated legislation. Article 218 confers similar authority on local government.

The 2024 Federal Legislation Act is a significant development. It provides clearer definitions of secondary instruments such as rules, orders, directives and standards. It also establishes limitations, which aim to avoid delegated legislation overriding substantive matters that should be reserved for acts of Parliament, most notably: (a) institutional powers and their core functions; (b) financial matters and liabilities; (c) appointments and qualifications;

(d) taxation and penalties; (e) the creation of judicial or quasi-judicial bodies; (f) restrictions on fundamental rights; and (g) licensing and the regulation of conduct.

Moreover, according to the Federal Legislation Act (2024), secondary legislation must be explicitly authorized by primary legislation and cannot have retrospective effect or violate natural justice. Among the content deemed acceptable for secondary legislation are the rules regarding procedural flows, technical specifications, internal administration, procurement rules, pricing standards and service quality parameters.

Despite these provisions, Nepal lacks a foundational law in the form of a delegated legislation act for standardizing the process. There is no statutory classification of delegated legislation or standardized requirement for its publication or numbering, for systematic record-keeping or on compulsory submission to parliament. Nor are there any legal provisions on which instruments require affirmative approval and which are subject to negative resolution. These gaps weaken transparency, legal certainty and parliamentary oversight.

5.3. **Parliamentary scrutiny**

Scrutiny of delegated legislation is a parliamentary function that is shared by both houses. The Federal Parliament has 16 committees. In the House of Representatives (the lower house), 9 of the 10 subject committees are responsible for examining delegated legislation within their jurisdictions. However, few actively discharge this duty and there is little documentation of or reporting on their oversight of secondary laws.

By contrast, the National Assembly (the upper house) has a specialized body—the Public Policy and Delegated Legislation Committee, previously the Delegated Legislation and Government Assurance Committee—that actively reviews delegated legislation and produces relevant reports. Its roots go back to the parliamentary practices of the 1959 Constitution. While subject committees in the National Assembly have a mandate to review delegated legislation, their involvement is minimal.

In 2020, the Public Policy and Delegated Legislation Committee conducted a study with the support of the United Nations Development Programme (UNDP) on the status of delegated legislation in the agriculture, energy and telecommunications sectors. It revealed widespread violations of the principles of delegated legislation and highlighted the neglect of parliamentary committees in scrutinizing delegated authority in bills. It also emphasized the importance of monitoring the government's use of delegated powers and the potential for misuse when Parliament delegates excessively or in vague terms (UNDP 2021).

The Supreme Court of Nepal has played an important role in reinforcing the principles of delegated legislation. For example, in *Madan Bahadur Khadka v Cabinet Secretariat* (2012), it ruled that delegated legislation must not

restrict the rights and powers granted by primary laws. In other cases, it has declared that matters such as qualifications, retirement and pensions are substantive and should be governed by the parent act, not by subordinate rules. The judiciary has thus drawn a clear line between substantive law that requires parliamentary approval and procedural or technical regulation that is permissible under delegated authority. In particular, the Supreme Court has assumed a prominent role in shaping legislative–executive relations, as well as in rights adjudication (Malagodi 2022).

5.4. **Recurring critical issues**

Three recurring problems can be identified regarding the content and process of delegated legislation in Nepal. First, there is a tendency by the executive to exceed its mandates. Many delegated laws include matters beyond the scope authorized by the parent act. There have also been cases of unauthorized delegation (regulations enacted without clear legislative authority as their basis) and sub-delegation, or secondary laws sometimes delegating further powers to issue rules or directives without prior authorization from the parent act.

Second, a trend for over-delegation by Parliament, which has often delegated legislative powers too broadly or vaguely, without limitations or guiding standards. This can be linked to the lack of parliamentary scrutiny of delegation bills. Parliamentary committees rarely examine the scope of the delegated powers proposed in legislative acts. Later, parliamentary committees are often inactive in the scrutiny of delegated legislation. Despite their powers of oversight, most parliamentary committees do not actively monitor delegated legislation (Devkota 2022: 25–32; Manandhar, Chalaune and Khatiwada 2022: 48–49). Even the National Assembly committee on delegated legislation is often diverted from its primary role of scrutinizing delegated legislation, becoming involved in broader public policy issues—partly because the committee's name includes 'public policy'.

Third, there is poor record-keeping on the amount of delegated legislation. The Ministry of Law, Justice and Parliamentary Affairs does not maintain comprehensive records of delegated legislation. Consequently, ministries are often unaware of the number and content of delegated instruments under their jurisdiction.

These issues collectively highlight various weaknesses in the process. Despite formal mandates on delegated legislation, Parliament has limited capacities to oversee it effectively. However, the Nepal Parliament appears fully aware of these difficulties and willing to improve in all areas.

5.5. **Concluding remarks**

Nepal's experience with delegated legislation reflects the broader challenges of institutional consolidation in a young federal democracy. The absence of standardized procedures and enforcement mechanisms has hindered the proper development of delegated legislation. While the Federal Constitution and the recent Federal Legislation Act have introduced clarity and new

restrictions, significant gaps remain on the regulation, publication and oversight of secondary laws.

One way forward would be to enact a comprehensive delegated legislation act to codify standards, procedures and classifications. In particular, this act might improve record-keeping and publication of delegated legislation for the benefit of transparency and accessibility, ensure judicial enforcement of limitations on delegated authority and increase awareness within ministries and institutions about their responsibilities and constraints.

At the same time, it will be necessary to strengthen the capacity and activity of parliamentary committees, especially in the House of Representatives. It would also be useful if parent acts were made available for public consultation wherever appropriate in the delegated lawmaking process. Overall, Nepal's legislative evolution will remain incomplete without the establishment of robust mechanisms for regulating, supervising and enforcing standards on delegated legislation. On the basis of the comparative experiences summarized above, this will be essential to protect parliamentary sovereignty, constitutional integrity and the rule of law.

6. **SPAIN**

Country snapshot

Spain's 1978 Constitution allows the executive to issue legislative decrees in two ways: *texto articulado* for new legislation and *texto refundido* for consolidating existing laws. Delegation is limited in both scope and duration, with the enabling act setting out guiding principles. Certain areas, such as fundamental rights and budget laws, are excluded. Parliament can revoke delegation or introduce additional oversight measures. Legislative decrees must be reported to Parliament and may be scrutinized under internal procedures. If Parliament does not respond within a month, the decree is considered approved. In practice, legislative decrees are rare and mainly used for consolidation.

6.1. **Introduction**

The Spanish constitutional system permits delegated legislation as a mechanism that, under strict procedural constraints, entitles the executive to adopt primary normative acts. Although historically recognized in Spain since 1834, the mechanism of legislative delegation in the 1978 Constitution does not seek to grant full legislative power to the executive, but only the exercise of limited legislative functions through primary delegated acts explicitly called legislative decrees (*decretos legislativos*). As in other legal systems, a number of constitutional limits and requirements must always be respected, both by the Parliament in delegating legislation and by the executive in adopting it. In addition to delegating legislation, the executive is also entitled to adopt decree laws (*decretos-leyes*) in cases of extraordinary and urgent necessity, which must immediately be submitted to the Congress of Deputies (Congreso de los

Diputatos) for debate and to be voted on in their entirety (article 86 of the 1978 Constitution).

6.2. **The constitutional provision: The two types of delegated legislation and their limits**

Articles 82, 83, 84 and 85 of the 1978 Constitution regulate delegated legislation. Legislative delegation is excluded for some matters: those reserved by the Constitution to the 'organic laws', such as the implementation of fundamental rights and public liberties, approval of the Statutes of Autonomy and the general electoral system, as well as constitutional reforms, international affairs, the General State Budget, state of siege, basic laws and conferral of legislative functions to the Autonomous Communities.

Article 82 of the Constitution clarifies the content and limits—both formal and material—of the delegation, showing, from a comparative public law perspective, a clear reference to article 76 of the 1948 Italian Constitution (Pizzetti 1979). It follows from this that the only possible pathway to delegating legislation is by the adoption of a parliamentary law.

The Constitution outlines two types of delegation. The first aims for the adoption of a *texto articulado* with the goal of innovating the legal system. In this case, the delegation law (*ley de bases*) precisely defines the purpose and scope of the legislative delegation, as well as the principles and criteria to be followed in its exercise. The second is a form of delegation by an ordinary law (*ley ordinaria*) intended to authorize the executive to adopt *texto refundido*: a text that consolidates pre-existing legislative norms related to a specific sector.

Article 82.3 of the Constitution specifies that the delegation must be granted explicitly and limited to a clearly defined subject and determine a time limit for its exercise. It is therefore clear that any form of implicit delegation is not constitutionally allowed. Similarly, delegation can never result in an indefinite transfer of legislative power. From a general standpoint, the Constitution makes it clear that the only delegating body is parliament and the only delegating act is the law. Any other form of delegation is excluded. For example, it is excluded that the government may delegate powers to itself through an act with the force of law.

In the context of the 'objective and formal requirements' for delegation under article 82.3 of the Constitution, the Tribunal Constitucional (judgments Nos. 13/1992 and 205/1993) has clarified that the requirement for concrete and defined subject matter does not prevent delegation over broad sectors, provided that this pertains to a delimited legislative or administrative sector.

The delegation is conferred on the executive as a whole, not to the president of the government or individual ministers; no form of sub-delegation to authorities other than the government is permitted. The legislative decree must therefore be approved by the Council of Ministers, signed by the King (pursuant to article 62(f) and countersigned by the president of the government. The proposing minister also provides a countersignature (article 64) (Ruiz Ruiz

2025). The executive's delegated power ends once the legislative decree is published in the Official Gazette.

Article 82.5 of the Constitution sets less stringent requirements for the delegation laws aimed at adopting consolidated texts (*textos refundidos*). The *ley ordinaria* must determine the legal framework for and the scope of the delegation, specifying whether it is limited to the mere formulation of a consolidated text or whether it includes the reordering, clarification and harmonization of legal texts that need to be consolidated.

6.3. **The powers of the executive, including opposing bills or amendments that conflict with existing delegation**

Since the Parliament, as the delegating body, has the right to decide whether to delegate, what to delegate and when to delegate, it also has the right to revoke the delegation.

Prevention of tacit or implicit revocation of already approved delegation laws is facilitated by article 84 of the Constitution, which allows the executive to formally oppose bills or amendments that conflict with existing delegations. In this way, Parliament is required to examine and approve a bill for the total or partial repeal of a delegation and to explicitly declare its intention to revoke the delegation. Essentially, the executive's right to oppose the repeal obliges Parliament to approve an explicit revocation. This must be exercised within 10 days of the publication of the bill or the amendment, according to article 128 of the Senate's rules of procedure.

The delegated body (the executive, as the sole recipient of the delegation) is the primary agent of implementation of the delegation it receives, within the constitutionally established limits. The executive has full discretion to decide whether to exercise the delegated powers.

Symmetrically, under article 21.6 of Law No. 50/1997, the delegation is considered suspended in the case of a resigning government pending new general elections. The delegated authority is reactivated following the swearing-in of the new government. However, Parliament retains the power to revoke the delegation at any time.

Pursuant to the *ultra vires* doctrine (*contra* Espín Templado 1985; Freixes Sanjuan 1990), any violation of the limits set by the delegation laws in legislative decrees can be recognized directly by ordinary courts, without requiring the intervention of the Constitutional Court. Once the judge has determined that this is the case, there is no need for an intervention by the Constitutional Court to confirm the downgrading of the *status* (no longer legislative) of the norm, as the initial decision is already sufficient for the legislative decree to assume the force of a regulation (*rango reglamentario*).

6.4. **Parliamentary control: Rules of procedure of the Congreso de los Deputados**

Greater flexibility on parliamentary oversight is facilitated through article 82.6 of the 1978 Constitution, which provides that: '[T]he acts of delegation may establish additional control devices in each case, without prejudice to the jurisdiction of the courts'. In this way, Parliament can introduce various monitoring mechanisms to supervise the formulation of legislative decrees when approving the delegation law, or the enabling act. The constitutional provisions are complemented by the rules of procedure of the Congress and the Senate.

Specifically, Part IV of the Rules of Procedure of the Congress is entitled 'Control over Government provisions having the force of the law'. Article 151 states that 'the Government shall address the relevant notice to Congress containing the text in sections, or consolidated text drawn up as a result thereof, which shall be published in the Official Parliamentary Bulletin'. Thus, the first obligation imposed on the executive by parliamentary rules is notification of the draft legislative decree, which is the basis for exercising effective parliamentary control (Villacorta Mancebo 1999: 110).

Article 153 of the Rules of Procedure further operationalizes article 82.6 of the Constitution. According to article 153.1 of the Rules of Procedure, 'when, pursuant to the provisions of article 82.6 of the Constitution, the enabling Acts direct that additional control of delegated legislation shall be exercised by Congress, the provisions of this section shall be observed'. In the event of a discrepancy between the provisions of the enabling law and the procedure set by article 153.1 of the Rules of Procedure, the content of the enabling law prevails.

Subsequently, paragraph 2 establishes a time limit for parliamentary objections to the government's use of delegated powers. If no objections are raised within one month, this implies an implicit approval of the legislative decree. Therefore, a lack of parliamentary response is, according to the Rules of Procedure, equivalent to implicit approval.

More detailed procedures are outlined in paragraphs 3 and 4, which indicate that any objections must be addressed to the Bureau of Congress, which shall refer the document to the relevant committee. The committee is required to report on the issue within the designated timeframe and the report shall be debated on the floor of the House.

These procedural rules do not override the enabling act itself, since the final paragraph specifies that the 'legal effects of control shall be those contemplated in the enabling act'. Therefore, an explicit reference to the enabling act or, at most, an implicit reference to the parliamentary rules of procedure is required (Virgala Foruria 1991).

6.5. **Concluding remarks**

In practice, while decree laws are currently used extensively in Spain, legislative decrees are adopted only 'rarely' and 'sporadically' (Diez Picaso 2009). There have been several years in which no legislative decrees have been issued. Moreover, most of those that have been adopted are consolidated texts (*textos refundidos*) and therefore not aimed at reforming the regulation of specific subject matter.

7. **UNITED KINGDOM**

Country snapshot

The **British** system is rooted in the principle of parliamentary sovereignty. It allows wide discretion in delegation. Delegated legislation is prolific, primarily in the form of statutory instruments (SIs). Around 3,500 SIs are issued annually. SIs derive their authority from 'parent acts' (enabling acts), which outline the scope of executive powers.

Two main types of parliamentary scrutiny apply—negative and affirmative resolution procedures. Under the former, an SI becomes law unless annulled within 40 days; the latter requires express parliamentary approval. Parliamentary oversight is often superficial and most SIs pass without detailed examination or debate. Committees such as the Joint Committee on Statutory Instruments and the Delegated Legislation Committees offer formal scrutiny but rarely block or amend SIs due to procedural constraints and the dominance of the executive in parliamentary majorities. The UK's model demonstrates the de jure legislative supremacy of parliament but a de facto dominance of the executive.

7.1. **Introduction**

The United Kingdom's constitutional system is traditionally viewed as the home of the principle of parliamentary sovereignty. According to this principle, Parliament is the sole body authorized to adopt legislation or determine the procedures by which legislation may be approved. Within this constitutional framework, the statutory powers of the government may be exercised exclusively when grounded in Parliament's clear and explicit will to delegate such powers.

Historically, delegated legislation has played a crucial role in the British parliamentary system as a response to both technical and political complexities. Recent trends show an even more frequent reliance on this form of executive lawmaking in the UK, especially in the aftermath of Brexit.

The origins of delegated legislation are historically tied to the foundational principle of the 'King in Parliament' and date back as far as 1539 (Fox and Blackwell 2014). Over time, significant constitutional developments facilitated a growing use of delegated legislation to meet the expanding responsibilities associated with the welfare state, as well as the challenges posed by increased economic complexity and technological innovation. In the interwar period, an influential report by the Donoughmore Committee on Ministers' Powers,

published in 1932, clarified the rationale for resorting to delegated legislation. Among the reasons identified in the report were pressures on parliamentary time management, the technical nature of the subject matter, having to deal with unforeseen contingencies, the need for flexibility, the opportunity for experimentation and the requirement for emergency powers.

Many of these reasons retain their relevance in the current context. At the same time, however, the debate continues over the legitimacy of and necessity for delegated legislation (Ganz 1997; Fleming and Ghazi 2023). Nonetheless, the inevitability of delegation (Loveland 2021) has allowed the development of mechanisms aimed at ensuring its compatibility with the principle of parliamentary sovereignty. According to this principle, Parliament is expected to establish limits and criteria for the executive in the act of delegation. Even the nature of the acts produced by delegated authority remains subordinate to that of acts of Parliament, thereby reaffirming the principle of parliamentary sovereignty.

The 1932 report contained several recommendations. Today, the foremost legal source regulating delegated legislation—alongside the standing orders of both Houses of Parliament and various parliamentary papers and government guidelines—is the Statutory Instruments Act 1946, which incorporated numerous aspects of the committee's findings.

7.2. **The 'parent act' and the formation of statutory instruments**

An act of Parliament is an example of 'primary' legislation. Such an act may confer powers on ministers (or other entities) to make further laws. A law made by ministers under such authority is known as 'secondary' or delegated legislation (Ganz 1987). The powers enabling such lawmaking are thus often referred to as delegated powers. When Parliament chooses to confer legislative authority on ministers (or others), it does so by including this in an act, sometimes referred to as the 'parent act', with specific provisions that confer legislative powers.

The most common form of delegated legislation is represented by SIs. On average, around 3,500 SIs are issued each year, ranging in length from a single page to several hundred pages (Watson 2019). The relationship between an act of Parliament and an SI has been described in the academic literature as akin to the one between a parent and child (Fox and Fowler 2025), thus affirming the legitimacy of the latter as derived from the authority of the former.

The definition of an SI is provided in section 1 of the Statutory Instruments Act 1946. It states that:

> Where by this Act or any Act passed after the commencement of this Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown then, if the power is expressed: (a) in the case of a power conferred on His Majesty, to be exercisable by Order in Council; (b) in the case of

> a power conferred on a Minister of the Crown, to be exercisable by statutory instrument, any document by which that power is exercised shall be known as a 'statutory instrument' and the provisions of this Act shall apply thereto accordingly.

Despite this provision, the widespread and growing use of SIs (Page 2001)—sometimes accompanied by highly general delegations or even sub-delegations (Bradley and Ewing 2011)—has led to the conviction that delegated legislation is not merely a necessity, but to an increasing extent the standard form of lawmaking (Tucker 2018). In this regard, and in connection with the weak exercise of oversight powers, the British second chamber, the House of Lords, has expressed concern that the ongoing 'abuse of delegated powers is in effect an abuse of Parliament and an abuse of democracy' (Delegated Powers and Regulatory Reform Committee 2021).

Indeed, the Cabinet Office's *Guide to Making Legislation*—a key document on UK lawmaking procedure—contains a presumption in favour of rulemaking by SI. In theory, politically relevant matters ought to be dealt with by primary legislation. However, there is no pre-existing constitutional dividing line between 'acceptable' uses of secondary legislation—for instance, to make 'minor, technical or ancillary' provisions—and 'unacceptable' ones—to make 'substantive policy changes' (King 2020; Hooper 2023). In practice, there are no formal constitutional rules limiting Parliament's discretion to exercise delegation power. This permissiveness might explain the frequent acceptance of so-called Henry VIII clauses, or clauses in a bill that enable ministers to amend or repeal provisions in an act of Parliament using secondary legislation. These clauses are often created by a category of act of Parliament known as 'skeleton legislation', which is a specific form of delegation that can be defined as an act that sets out the general shape and structure of the intended law but leaves all the details to be provided in secondary legislation (see the Welfare Reform Act 2012).

The delegated act acquires legal force on being signed by the relevant minister or competent authority. It must be accompanied by an explanatory note that briefly outlines its objectives and an explanatory memorandum describing what the act does and why, referring to the delegated acts that will be necessarily subject to parliamentary scrutiny.

7.3. **Different kinds of parliamentary scrutiny**

Parliamentary scrutiny, when applicable, is determined by the provisions set out in the parent act. Usually, the first draft of a parent act is prepared by the ministerial department that will later be granted delegated powers through the enabling law. As a result, in practice, the executive itself frequently anticipates the kind of parliamentary scrutiny of the delegated act.

Unless otherwise explicitly provided, the exercise of parliamentary oversight is also affected by the UK's bicameral structure, meaning that both Houses of Parliament are generally empowered to scrutinize delegated legislation.

Section 5 of the Statutory Instruments Act 1946 establishes the general procedures for parliamentary scrutiny. The most frequently employed mechanism is the 'negative resolution' procedure. Under this procedure, each House of Parliament—or, in some cases, only the House of Commons—has the power to annul (force the government to revoke) the SI within a specified statutory scrutiny period (usually 40 days), starting on the day it is laid before Parliament. This type of SI can become law immediately as it is adopted and remains in force unless and until one of the Houses decides to annul it. However, a successful negative motion (known as a 'prayer') to annul such an SI through this procedure is extremely rare.

If Parliament is required to examine a draft, the SI will enter into force after the 40-day period has elapsed, provided that no negative resolution has been approved. In contrast, if Parliament scrutinizes an SI that has already come into force, it ceases to have legal effect only on the adoption of a motion of annulment and an Order in Council formally revoking it.

An alternative mechanism, provided for under section 6 of the Statutory Instruments Act 1946, is the 'affirmative resolution'. A comparatively smaller proportion of SIs require parliamentary approval before they can come into force. It is also extremely rare for draft affirmative SIs to be rejected: the last occurrence in the House of Commons was in 1978, concerning the Dock Labour Scheme.

Further procedures include those of 'enhanced scrutiny' (Hooper 2023), an exception provided for in the parent act. There are also procedures in which the parent act provides only for the laying of the instrument before Parliament, without requiring any active parliamentary scrutiny. Cases should also be mentioned in which the parent act does not foresee any form of parliamentary oversight, as this scenario appears to account for the majority of SIs.

Unlike primary legislation, SIs or draft SIs generally cannot be amended or adapted by either the House of Commons or the House of Lords. They may only be approved or rejected. This procedural limitation has been the subject of criticism because it effectively curtails the scope of parliamentary oversight, thereby reducing the extent to which Parliament can exercise meaningful control over the process.

7.4. **Parliamentary scrutiny by committees**

Parliamentary scrutiny in both chambers can address either technical issues or substantive political matters (Wheare 1955). The House of Commons, more than the House of Lords, generally tends to align with the executive's political direction, as a result of the specific structure and functioning of the UK's form of government.

The Standing Orders of each House (section 151 for the House of Commons and section 73 for the House of Lords) regulate the functioning of the Joint Committee on Statutory Instruments. The Joint Committee usually has seven members from each House and is typically chaired by a member of

the opposition. The committee's primary task is to examine delegated acts, particularly from a formal standpoint. For instance, it may draw to the attention of the House where there is doubt whether an instrument complies with the limits set by the delegation, where the drafting appears to be defective or where the instrument has fiscal implications on public funds or contains provisions requiring financial expenditures.

The work carried out by the Joint Committee on Statutory Instruments is undoubtedly significant. However, internal committees of each House play a decisive role in examining the political merits of such legislation. Section 118 of the Standing Orders of the House of Commons provides that there shall be one or more committees, to be called Delegated Legislation Committees, that consider statutory instruments (whether in draft or not). The instruments are distributed among the committees by the speaker of the House of Commons.

This is linked to the affirmative procedure, unless the relevant minister requires the committee's intervention on those acts subject to the negative procedure. The close alignment between the government and the parliamentary majority, which extends to committee membership, often facilitates the examination of these instruments by the House of Commons.

In the House of Lords, two committees carry out the significant role of scrutiny: the Secondary Legislation Scrutiny Committee and the Delegated Powers and Regulatory Reform Committee. The first committee has 11 members tasked with assessing whether instruments contain legally or politically significant policies, raise noteworthy policy issues, have effects that might be inappropriate due to changed circumstances or fail to effectively achieve their intended policy objectives. The second committee, which has 10 members, reviews every draft that contains legislative delegations, focusing on the purpose of and justification for such powers, as well as the adequacy and coherence of the proposed scrutiny mechanisms. The Constitution Committee also evaluates the constitutionality of each parent act.

7.5. **Transparency and accessibility**

In observance of the principle that legislation should be publicly available, information must be provided on how to access documents. Delegated legislation must be characterized by transparency and easy accessibility for citizens and public officials (Lock, de Londras and Grez Hidalgo 2023). Failure to make documents accessible is reported as a failure to comply with proper legislative practice (as part of the residual ground at the end of paragraph 1(B) of House of Commons Standing Order No. 151 and paragraph 73(2) of House of Lords Standing Order No. 73).

In the UK, the publicity regime governing SIs is characterized by a high degree of systematization, technological advances and institutional consolidation, aimed at ensuring both legal transparency and democratic accountability. The principal medium of dissemination is the government's official platform (legislation.gov.uk), operated by the National Archives on behalf of the UK Government. The platform provides unrestricted public access to the full text

of SIs, as well as—where available—explanatory notes, particularly for more technically complex SIs; legislative histories, indicating amendments and revocations; and status indicators such as 'in force', 'prospective' or 'revoked'. The platform also provides direct links to the enabling act under which each SI has been promulgated (the parent act), thereby facilitating contextual legal interpretation.

In 2018, the Joint Committee on Statutory Instruments repeatedly stressed its concern that documents useful for interpreting legislation should be available to citizens who do not have access (or ready access) to the Internet, as well as to those who do. According to the committee, 'it should not be made unnecessarily difficult for persons without easy access to the Internet to perform their legal obligations or assert their legal rights' (Joint Committee on Statutory Instruments 2018).

The legal foundation for this publicity framework is primarily set out in the Statutory Instruments Act 1946, which established the core procedural and formal requirements for the making, numbering and publication of delegated legislation. Complementarily, the Interpretation Act 1978 confers evidentiary status to the version of an SI as printed by His Majesty's Stationery Office (HMSO), thereby ensuring its admissibility and authority in judicial proceedings.

Although printed editions of SIs continue to be issued by the HMSO and The Stationery Office Ltd, their significance has waned due to the prevailing reliance on digital dissemination, which now constitutes the principal mode of publicity for secondary legislation.

Explanatory memorandums are routinely issued on SIs that have a significant impact or major political significance—especially those subject to parliamentary procedures. These documents illustrate, in accessible language, the objectives, policy rationale and intended legal effects of the instrument, and are typically made available on Parliament's website (often hyperlinked directly from legislation.gov.uk).

Moreover, where SIs address matters of broad public interest or political sensitivity, such as public health, immigration or national security, they may be accompanied by supplementary forms of communication, such as press releases, departmental guidance and official policy statements, that broaden their public visibility beyond formal legal channels.

7.6. **Concluding remarks: In search of more effective parliamentary scrutiny**

It has been remarked that the extensive use of SIs means that the UK system is characterized by a de jure sovereignty of Parliament and a de facto supremacy of the executive (Loveland 1998).

The sheer volume of delegated legislation means that the legislator *par excellence* has yet to identify an effective counter limit capable of adequately restraining the executive's normative ambitions. It must not be overlooked,

however, that the principle of parliamentary sovereignty remains a cornerstone of the UK constitutional order. By virtue of this principle, it is always Parliament that delegates to the government and not the government that may autonomously confer powers on itself. Within this framework, scrutiny and oversight functions may be designed differently, on a case-by-case basis.

Naturally, the UK's form of government permits the executive, within the limits of the constitutional system, to lead its parliamentary majority to support the resort to delegated legislation. It is the task of future legislators to develop new forms of control of government statutory power, further strengthening parliamentary scrutiny where needed, and reversing the trend for limited scrutiny on the exercise of this function, which has been widely criticized in recent years (Jones 2021).

CONCLUSIONS

Based on the analysis of the seven legal systems selected, two models of delegated legislation can be identified.

The first model, widely adopted in continental Europe, bases delegated legislation on constitutional authorization. Here, the constitution sets the main features of the delegated instrument and the procedures for its adoption, reflecting the legal system, form of government and form of state. Parliament cannot freely delegate parts of its legislative function to the executive; it must follow constitutional rules designed to prevent the executive from holding absolute legislative power. Within this framework, parliament may impose additional (particularly, procedural) requirements and define the scope and discretion available to the executive when drafting and enacting the delegated act.

In the second model, found in the UK and largely in India and Nepal, delegated legislation is not regulated by the constitution or by any constitutional document. Delegated legislation relies solely on parliament's sovereign choice to delegate part of its lawmaking function. Procedural limits are typically set by parliament itself—either in general or, more often, while adopting the parent act or delegation/enabling act—requiring parliamentary scrutiny of the text adopted by the executive. In India and Nepal, there have been attempts to define parts of the legislative function that cannot be delegated, though practical implementation is difficult, as these distinctions often depend on political judgement. Nonetheless, such efforts help raise parliamentary awareness during the drafting and approval of the parent act.

Arguably, the most important decision for parliament when drafting and approving a parent act is defining the procedure for adopting the delegated legislation. By specifying a timeframe, identifying the relevant actors to be consulted and establishing the order in which ministries, institutions or stakeholders must be heard before the adoption of the delegated act—

particularly through the design of parliamentary scrutiny and oversight—parliament clarifies key, often politically significant, objectives.

Parliaments require a sophisticated set of procedures and scrutiny mechanisms to prevent the executive from exceeding its delegated powers or upsetting the constitutional and political balance

The comparative analysis carried out in this study has confirmed the validity of the finding by Enzo Cheli (1959; see also Pizzorusso 2010 and Rosa 2025), who noted over 65 years ago that executives' legislative powers often expand in unforeseen ways, sometimes circumventing the limits set by the constitution or parliament.

Does this mean that constitutions should abandon their role in defining and limiting executive legislative powers? Or should constitutions, and in particular parliamentary rules and practice, evolve to ensure that the legislative initiatives of the executive align with the parliament's will, or at least that of its majority? The latter approach is preferable, but it requires a sophisticated set of procedures and scrutiny mechanisms, maintained primarily by parliament and potentially supported by a constitutional court, to prevent the executive from exceeding its delegated powers or upsetting the constitutional and political balance.

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