

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)’

COM(2010) 537 final — 2010/0266 (COD)

and on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers’

COM(2010) 539 final — 2010/0267 (COD)

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Rapporteur: **Mr Gilbert BROS**

On 11 November and 13 October 2010 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 42, 43(2) and 304 of the Treaty on the Functioning of the European Union, on the

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The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 February 2011.

At its 469th plenary session, held on 16 and 17 February 2011 (meeting of 16 February), the European Economic and Social Committee adopted the following opinion by 96 votes with 1abstention.

1. Conclusions and recommendations

1.1 The alignment of Regulation (EC) No 73/2009 (direct payments) and Regulation (EC) No 1698/2005 (rural development) with the Lisbon Treaty aims to replace the current comitology procedure with a distinction between delegated acts and implementing acts. The EESC believes firmly in the consultation of stakeholders and Member States during the preparation of EU legislation, and is convinced that it should be maintained.

1.2 The Council and the Commission interpret the dividing line between delegated acts and implementing acts differently. The EESC therefore believes that the choice of procedure for each act must be made on the basis of clear criteria.

1.3 The duration of delegation for delegated acts must always be for a specified period of time. Furthermore,

delegated acts should be reserved for areas where decisions need to be reached quickly.

1.4 Implementing acts should be used in cases where it would be better for Member States to harmonise their implementation. This harmonisation is particularly important in certain areas in order to avoid distortions of competition. The EESC thus considers that acts relating, for instance, to the specific conditions concerning the implementation of acts under the second pillar of the CAP, or acts relating to the implementation of environmental measures should be classified as implementing acts, contrary to what the Commission has proposed.

1.5 The EESC welcomes the fact that the Commission is taking advantage of the revision of these regulations in order to include simplifying measures. Nevertheless, these simplification efforts mainly concern administration whereas their main purpose should be to make matters simpler for farmers.

1.6 The EESC believes firmly that Member States should report regularly on progress in rural development. The Committee draws attention to the fact that reducing the number of progress reports Member States have to submit to the Commission on the implementation of their strategy plans could reduce the amount of information available on this subject.

1.7 The EESC welcomes the measure to exempt very small-scale farmers from declaring all their agricultural parcels. Nevertheless, the one-hectare threshold could be raised.

1.8 With regard to agricultural advice, the EESC is in favour of the flexibility proposed by the Commission. This will allow Member States to set up advisory services for farmers that are more suitable and not wholly restricted to cross-compliance.

2. Background to the opinion

2.1 Articles 290 and 291 of the Lisbon Treaty provide for amendments to the decision-making procedures between the European Commission, the Council and the European Parliament regarding conditions for implementing EU legislative acts.

2.2 The Commission's proposals to amend Regulation (EC) No 73/2009 (direct payments) and Regulation (EC) No 1698/2005 (rural development), foresee two types of amendments:

- amendments to ensure alignment with the Lisbon Treaty,
- amendments aimed at simplifying existing rules in various areas.

2.3 Under the rules currently in force, comitology is based on former Article 202 of the Treaty, according to which the Council may 'confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself.'

2.4 Thus, at present, on the basis of the so-called comitology decision, i.e. Council Decision 1999/468/EC, four types of committees deliver opinions on the Commission's proposals:

- advisory committees
- management committees
- regulatory committees
- regulatory committees with scrutiny.

2.5 The Lisbon Treaty's entry into force repeals former Article 202 and distinguishes between two types of acts, delegated acts and implementing acts.

2.6 Delegated acts (Article 290) are a new category of 'quasi-legislative' acts that supplement or amend certain 'non-essential' elements of a legislative act, which the legislator delegates to the Commission. No implementing measures are laid down for this Article. Indeed, the Treaty provides that in each legislative text, this delegation should take the form of a delegation mandate. The delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council.

2.7 Implementing acts (Article 291) are acts adopted by the Commission or the Council in duly justified specific cases, and in the case of the Common Foreign and Security Policy (CFSP), to ensure uniform conditions for implementing legally binding Union acts.

2.8 Thus, the Member States' involvement in implementing decisions is set to change profoundly. On the one hand, traditional comitology, giving Member States negotiating powers, is restricted exclusively to cases where the harmonisation of implementation by Member States is indispensable. On the other hand, other acts, currently dealt with by the committees (usually regulatory committees), will in the future be dealt with by the Commission alone.

3. General comments on the implications of Articles 290 and 291 for the two regulations

3.1 The Commission's proposals significantly modify the respective powers of the Commission, the Member States and the European Parliament in the implementation of European acts.

3.2 The EESC believes firmly in the consultation of stakeholders during the preparation of EU legislation. Thus, it is important for the Member States' experts to be consulted in relation to delegated acts, even if they do not have decision-making powers. This allows greater upstream familiarisation with the rules and feedback on any problems encountered.

3.3 Furthermore, although this does not concern alignment with the Lisbon Treaty, the EESC reiterates the importance of the forums represented by advisory groups in the consultation of civil society stakeholders. It is vital not to call into question these forums for exchange because they play an essential role in relaying the Commission's expertise and positions. They also facilitate the upstream familiarisation of stakeholders with legislation under preparation.

3.4 With regard to the duration of delegation for delegated acts, the EESC believes that this must always be for a specified period of time.

3.5 The EESC notes that the Council and the Commission interpret the dividing line between delegated acts and implementing acts differently. Consequently, the EESC believes that the choice of procedure for each act must be made on the basis of clear criteria. Three criteria are set out in points 3.6, 3.7 and 3.8.

3.6 Some acts require their implementation to be harmonised between the Member States, as differences in how they are applied could result in distortions of competition, which could seriously undermine the proper functioning of the single market in agricultural products. This harmonisation of implementation is particularly important in certain areas. On this point, it might be asked whether, for instance, acts relating to the specific conditions concerning the implementation of the acts under the second pillar of the CAP (Articles 20 and 36 of Regulation (EC) No 1698/2005) or measures relating to the implementation of environmental measures (for instance Article 38 of Regulation (EC) No 1698/2005 on the specific conditions concerning payments for disadvantages arising from the implementation of the framework directive on water) should not be classified as implementing acts, contrary to what the Commission has proposed.

3.7 Other decisions could necessitate prior consultation with the Member States for the purposes of good mutual understanding. This also gives the Commission the benefit of the Member States' expertise. In these cases too, classification as implementing acts is justified.

3.8 In some areas, it is vital to be able to react by reaching decisions quickly. In these cases, classification as delegated acts is appropriate.

4. Specific comments regarding the proposed simplifications in the amendment to Council Regulation (EC) No 1698/2005 (rural development)

4.1 The Commission intends to reduce the number of reports Member States are required to submit on progress made in implementing their strategy plans. This measure may constitute a significant simplification for Member State administrations. Nevertheless, the EESC draws attention to the importance of retaining the requirement for Member States to report regularly on progress made in implementation.

4.2 With regard to facilitating a more tailor-made use of the advisory services, the Commission's proposal appears to be a relevant simplification measure, since it relaxes requirements for accessing aid and specifies that advisory services need not

necessarily concern cross-compliance as a whole. Indeed, one of the main constraints on developing effective agricultural advice in the EU is the restriction to verifying the application of cross-compliance for support. As a result, farmers often equate agricultural advisors with inspectors.

4.3 With regard to facilitating the use of payments by Member States to provide for 'ecologically' connecting areas between Natura 2000 areas, the Committee considers that a clear connection between the specific measures proposed and the requirements of priority species and habitats at a national and European level should be made.

5. Specific comments regarding the proposed simplifications to Council Regulation (EC) No 73/2009 (direct payments)

5.1 The EESC considers that efforts to simplify cross-compliance should not just concern administration but should also simplify matters for farmers.

5.2 The European Court of Auditors criticised the cross-compliance policy for granting aid in a special report published in 2008. The ECA advocated simplifying the legal framework in particular. The EESC endorses this recommendation.

5.3 The Commission envisages not requiring farmers to declare all their agricultural parcels if the total area of the holding does not exceed one hectare. The EESC supports this simplification measure for very small holdings, for which the cost of controls can be disproportionate. Nevertheless, the one-hectare threshold could be revised upwards.

5.4 The EESC also believes that there should be some flexibility in control measures for farm holdings. In certain cases it should be possible to adapt the timing of the control inspection and the time spent on the holding by the inspector in line with the constraints on the farmer. In particular, it is unacceptable for a farmer to sustain financial losses because he is required to be available for a control inspection scheduled on an unsuitable date.

Brussels, 16 February 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
