

Brussels, 24 MAY 2011
C/2011/3623

Dear Marshal,

The Commission would like to thank the Sejm of the Republic of Poland for its opinion 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)537final}.

The Commission takes note that this opinion considers the above-mentioned proposal to breach the principle of subsidiarity.

With regard to the statement of the Sejm that the provisions of the Regulation empower the Commission to issue acts in areas not regulated or only partially regulated at EU level, and that the objectives of the proposed regulation would be better achieved at national level, the Commission would like to provide the following clarification:

The proposal aims to align the provisions of Regulation (EC) No 1698/2005 with the provisions of the Treaty of Lisbon and to introduce a limited number of modifications to existing provisions of the Regulation most of which result from the proposals made by Member States in the context of simplification of Community law. With respect to the empowerment of the Commission to adopt delegated or implementing acts, the proposed regulation merely takes account of the fact that the new Articles 290 and 291 TFEU introduce a new system of conferral of powers to the Commission to replace the one provided by the TEC. Consequently, the Commission after having proceeded to a classification of existing implementing acts as falling under the definition of either implementing acts in the sense of Article 291 TFEU or delegated acts in the sense of Article 290 TFEU has done nothing more than provide in the proposed regulation for the introduction in the text of Regulation (EC) No 1698/2005 of the required legal basis for these acts. Consequently, the proposed regulation does not grant the Commission any powers to adopt acts in areas not regulated at the EU level.

As for the Sejm's observations that the proposal would grant new powers to the Commission to adopt by way of delegated acts provisions on the exercise of controls, sanctions, exclusion and recovery of undue payments as well as of penalties for the non-timely submission of evaluation reports, it should be noted that the delegation in Article 74(4) does not concern the exercise of controls, sanctions etc but only the setting of the principles concerning these fields (e.g. what should be controlled; in which cases should sanctions be imposed etc). Article 74(4) clearly states that uniform conditions on the implementation of controls by the Member States shall be adopted by means of implementing acts.

With respect to the new second paragraph of Article 86, the aim of this delegation is to provide a legal basis in the basic act for the provision of Article 61 second paragraph of

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Regulation (EC) No 1974/2006 on the suspension of payments in case of non-timely submission of evaluation reports and not to allow the Commission to introduce any new penalties.

The Sejm raises reservations as to the fact that the proposal contains no indication as to the criteria used to determine whether a given subject shall be regulated through implementing or delegated acts. It states that the scope for delegated or implementing acts should be interpreted in a restrictive manner and considers that many provisions of the proposal do not respect this criterion by being too wide as to the delegation without at the same time offering a justification for this. Finally, it considers that in the absence of a Council and EP regulation on the implementation of executive powers of the Commission it is unacceptable that the Commission is empowered to adopt implementing acts.

Concerning the criteria used for the classification of Commission acts to be adopted as delegated or implementing, it should be pointed out that these criteria are included in Articles 290 and 291 TFEU and referred to also in the Commission Communication {COM(2009) 673} on the Implementation of Article 290 TFEU. Therefore, the Commission does not consider necessary to repeat the criteria in each and every proposal that aligns an existing regulation to the Treaty of Lisbon.

Also, the fact that the Treaty does not provide for a control by national parliaments on the compatibility of secondary acts, adopted as either delegated or implementing acts, with the principle of Subsidiarity does not appear to be, by itself, a sufficient reason to state that the scope of delegation or empowerment needs therefore to be restrictive. Nothing in the wording of Articles 290 and 291 TFEU indicates that this is the intention of the Treaty. With respect to the terms "detailed conditions" and "detailed rules" they are a formulation used to cover an array of already existing implementing rules (in Regulation (EC) No 1974/2006) that further specify the content of the various measures under the four Axes, without resorting to the addition of a long list that would name one by one the types of specifications.

It should also be recalled that the EP and Council regulation on the implementation of executive powers of the Commission has entered into force on 1 March 2011. Before that date, the previous Comitology decision was still in force and, therefore, no legal vacuum existed as to the control by Member States of the Commission's executive powers.

Finally, as regards the Sejm's concerns that the proposal does not contain any explanation, which could justify its compliance with the principle of subsidiarity, it should be pointed out that the proposal under discussion does not bring forward a new legislative initiative but is merely amending certain specific provisions of existing legislation, on the one hand in order to align the regulation to the provisions of the Treaty of Lisbon, and on the other hand to introduce certain amendments of substance mainly following from the 39 simplification proposals of the Member States. The subsidiarity justification is, by consequence, the same as the one provided for the original act and it was not considered necessary to repeat it under the proposal.

The Commission hopes that these clarifications address the concerns expressed in your opinion and looks forward to pursuing its political dialogue with the Sejm of the Republic of Poland.