

Brussels, 21/06/2011  
C/2011/4133

*Dear President,*

*Thank you for the opinion of the Senate of the Republic of Poland on the Commission proposal for a Regulation of the European Parliament and of the Council, amending Council Regulation (EC) No 1290/2005 on the financing of the common agricultural policy and repealing Council Regulation (EC) No 165/94 and Council Regulation (EC) No 78/2008 {COM (2010) 745}.*

*The Commission takes particular note of the fact that the Senate of the Republic of Poland has concluded that the proposal does not conform to the principle of subsidiarity as set forth in Article 5 Section 3 of the Treaty on the European Union ("TFEU"). This conclusion refers in particular to the fact that the power to adopt delegated acts shall be conferred on the European Commission for an indeterminate period of time, as well as to the scope of delegated acts which, in the view of the Senate, cover essential elements of the basic act.*

*Let me first assure you that the Commission takes its Treaty obligation to justify adequately each legislative proposal with regard to the principle of subsidiarity very seriously. In this respect, the Commission endeavors to ensure that the various justifications are reflected in detail in the respective explanatory memoranda of its proposals.*

*With regard to the specific issues raised in the opinion, the Commission would like to clarify that the aim of the alignment exercise is to adapt the Commission powers included in Council Regulation (EC) No 1290/2005 to the differentiation introduced by the Lisbon Treaty between delegated and implementing powers. In addition, the Commission powers included in Council Regulation (EC) No 1290/2005 that are subject to the proposed alignment require uniform application throughout the EU and can thus be better achieved at Union level than at Member State, regional or local level.*

*This division of existing Commission powers has been conducted on the basis of a thorough screening of the basic act and the relevant Commission implementing acts. Their delegated or implementing character has been determined using objective legal criteria on the basis of the definitions in Articles 290 and 291 of the TFEU.*

*Delegated acts have been provided in all cases of "quasi legislative acts" in the sense that they regulate non-essential elements of the legislative act, are of general application and amend or complete the legislative act. Implementing acts have been provided for all acts of an "executive" nature in the sense that Member States are responsible for their implementation and there is a need for a uniform application.*

*With regard to the types of expenses eligible for EU financing and conditions for their recovery, to the rules for calculation of payments and conditions for limitation and suspension of payments to Member States, empowerments were already given to the Commission by Article 42 points 4, 5 and 8a of the current Council Regulation (EC) 1290/2005.*

*Bogdan BORUSEWICZ  
President  
Senate of the Republic of Poland  
WARSZAWA*

*Finally, the Commission would like to emphasise that in the Commission Communication on Article 290 of the Treaty on the Functioning of the European Union (COM(2009) 673 final) the Commission committed to consulting, during the preparatory phase, experts from the Member States who will be responsible for implementing the delegated acts once adopted. As for the control of implementing acts, the new Comitology Regulation has entered into force on 1 March 2011.*

*I hope that these clarifications address in a satisfactory manner the issues raised in the opinion of the Senate of the Republic of Poland, and I am looking forward to further deepen our political dialogue with you.*

*/-/ Maroš Šefčovič*