



PARLIAMENT OF ROMANIA
EUROPEAN AFFAIRS COMMITTEE



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OPINION
of the European Affairs 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

and 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

The European Affairs Committee of the Romanian Parliament, joint committee of the Chamber of Deputies and the Senate, has examined 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) and 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.

The Committee has taken on the following examination tasks:

- Subsidiarity and proportionality check
- The possibility to evaluate Legislator's option on regulating by means of delegated or implementing acts
- The possibility to evaluate the “non-essential” attribute of provisions regulated through delegated acts
- The possibility to evaluate the need of “uniform conditions” in the fields regulated by implementing acts
- Identifying the areas where the delegation of regulating powers generates concerns and the circumstances allowing to appease such concerns by thorough explanation

Acting in line with art. 12 of the Treaty on European Union, with Protocol n^o. 1 and n^o. 2, annexed to the Treaty, with art. 4 (1) and art. 5 of the Decision n^o 52 of 20 December 2006, of the Parliament of Romania, empowering the European Affairs Committee of the Parliament of Romania to state the Parliament's standpoint, and enabling the Committee to directly relate with the European Union' Institutions, the Committee adopts the following

OPINION

1. Subsidiarity

There have not been identified breaches regarding the principles of subsidiarity for any of the two Proposals.

There have been though, certain challenges, grouped in the following categories:

1.1 The procedure *per se*, of delegating regulating competences to the European Commission

In theory, the act of delegating powers can be seen as a way of better law-making, employed to guarantee that legislation remains simple and can be amended and updated without starting complex legislative processes in every case, while the legislating authority can still preserve its decisive competences and responsibilities.

The delegation is a sensitive operation granting the Commission the task of performing competences belonging to the legislative authority. In fact, Article 290 TFEU does not mention a particular procedure of adopting delegated acts, the European Commission enjoying an autonomous status.

The core of the matter could, under certain circumstances, be transferred to the delegated acts, should the conditions laid down in the Treaty or the basic act be ignored. Such conditions refer to explicitly define the objective, the content, the goal and the period of the specific delegation.

1.2 The difficulty to evaluate the “non-essential” nature of the matter being regulated, or the necessity of implementing uniform conditions, including their formulation, as well as the difficulty to evaluate of the proper allocation of delegating or implementing competencies for each measure.

The delegated powers may refer only to parts of a legislative act, intended for amending or up dating issues seen as non-essential by the legislative authority. The legislative authority could go for unsuitable choices in the process. The Commission itself could be confronted by difficulties in assessing the repercussions of certain measures on which it offers to regulate with full authority.

Regarding the Member States, their fair assessment responsibility is amplified by the challenges shown in the present Opinion. Moreover, where the implementing power is concerned, we note that it is conferred to the Member States by the Treaty, while the Commission enjoys a lower task of unifying the implementing procedures. In this context, obviously, the national parliaments are in the same position of watching over and safeguarding the spirit of the Treaty and thus avoid an improper transfer of powers to the Commission.

1.3 The large amount and the complexity of provisions of technical nature

A successful scrutiny of the national parliament consists in identifying the provisions in the delegating power proposals allowing the Commission to unsuitably pursue powers exceeding the legal framework, by either imperfect definition and incomplete explanation, or pertaining to sensitive issues, where the legislating power should not be delegated at all.

We point out the difficulty of achieving an accurate analysis by the national parliament of the technical measures delegated to the Commission. Should questions be raised on the legitimacy of delegating, or the substance of the measure, the national parliament will seek external expertise. We expect instances where the national parliaments will have troubles in assessing the expert opinions, to be quite numerous.

1.4 The difficulty to analyze from a technical angle, the compliance with the principle of subsidiarity.

It seldom happens that a legislative proposal be in breach of subsidiarity, in its entirety. Although there is not uncommon that certain provisions be non-compliant.

Still, the attribution of competencies having a strong political nature, a technical analysis of subsidiarity compliance is very problematic.

1.5 The European Commission's autonomy quest

Both Proposals fail to state the period of the delegation of competences as requested Art. 290 (1), second paragraph TFEU, providing instead the delegation for an undetermined interval.

The European Commission seem to consider as optional the mentioned provision in the Treaty. The Commission has already stated in its Communication [COM (2009) 673] it favours the delegation without a time limit.

2. Proportionality

There have not been identified non-compliant provisions.

We stress the difficulty to assess the appropriateness of opting for the delegated act versus implementing act procedure, on each and every technicality.

3. Content Analysis

A. Referring to COM (2010) 537

The Regulation is adequate to the objective the European Commission has assumed.

The analysis revealed the following challenges:

- a) Some of the consulted stakeholders have expressed the opinion that most of the 39 Commission's proposals in the area of CAP, which are object to revision to adapt to Lisbon Treaty, should be adopted by implementing acts and not by delegate acts.

We do not share this opinion. We consider this approach would lead to a *de facto* revision of the Treaty, because it leaves the art 290 TFEU without any actual content. If a „great part” of the domains would be taken away from the procedure described in art. 290, the procedure mentioned in this article would fall into desuetude.

It should be also properly considered the risk of disregarding the principle of attribution, provided by the art. 4 (1) and art. 5 (1) and (2) TEU. This would impact the institutional balance at the level of the European Union. The worst case scenario would be that after delegating the decision to the Union, the Member States would proceed to diminishing this power of decision by later acts, to levels that modify the already established functional balances. This, because the Member States might be apprehensive on a supposed illegitimate increasing of the European Commission's power of decision.

- b) It has been expressed the opinion that amending the Regulation 1698/2005 shall be done only following the consultation of the expert pools from the Member States and only by legislative acts.

We consider that the „*right to act*” of the European Commission is not a discretionary right. Both the norms and the organization's culture provide for a number of control filters and mechanisms, which can stop abusive exercise of a right that is given to the EC by the Treaty or by legislative acts.

The EC committed itself¹ to systematically consult the experts from the national authorities of all Member States, who will be in-charge of enforcing the delegated acts after being adopted.

The fact that during the decision process the experts may have exclusively a consultative role and not an institutional one, is not of a nature that can modify the „*self-censorship*” essence. Simply speaking, the EC had to stay in the legal framework.

Since the Legislator opted for mutually exclusive procedures provided in the art. 290 and 291, one must accept this differentiation, unless the wish is not to amend the Treaty. In other words, one shall accept that the delegated acts should not be pressured to be transformed into implementing acts, one by one.

¹ See point 4.2. in the Communication regarding enforcement of the art 290 of the TFEU - COM (2009) 673

c) The European Commission's action to uniform the „presentation” of the National Rural Development Programs and their revision.

We consider that the art. 16 of the Regulation 1698/2005 is sufficiently descriptive to guarantee the uniformity of the National Rural Development Programs (NRDPs), including the presentation aspect.

We appreciate that there is currently sufficient normative framework and sufficient procedural experience to guarantee the uniformity. Consequently, art. 1 para. (1), (5) and (6) providing for the uniformity of the programs and for their approval by implementing acts, because of its imprecise statements, raises the risk of regulating beyond the necessity.

To avoid this risk, we propose to the EC to clarify and explain the aimed uniform presentation procedure in the given draft act's text, in order to accurately and unequivocally describe the targeted improvements.

We also propose to the EC to consider the following topics, regarding the technical assistance measures meant for the elaboration and application of the NRDP and for the support to implement the NRDP measures:

- to draft measures assessing the economic and social impact in a realistic manner, for the entire process of the elaboration and application of the Program;
- to draft provisions in the spirit of free market, in order to observe the independence of the entrepreneurial decision and to avoid financing unreal needs;
- to draft provisions aiming at ensuring realistic and accurate assessment of the value of the technical assistance contracts, to avoid their overestimation and make sure the public funds are efficiently spent.

Such provisions may be either included directly in the reviewed draft or be specified in other separate implementing or delegated acts.

d) Measures aimed at a better adapting of counseling to the specific needs of the farmers

The provided measures respond to the farmers request for the Common Agricultural Policy adapted to their real and immediate needs and are therefore welcome.

The agricultural activity must, however, still remain subject to the market requirements and laws, which are including the full independence of the economic operator's decision. European support through technical assistance should be limited to providing that information that is useful and the farmer can not otherwise obtain, than by direct guidance.

The desire for a successful direct technical advisory activity is legitimate, and when it is provided by commercial entities, it becomes acute. This advisory activity, can however, easily result in exceeding the actual financing needs when the payment of the counseling services is subject to the assessment as eligible and to the selection for funding of at least 70% of the submitted applications. We believe that technical assistance should be limited

to supporting the access to financing according to the identified needs and not to create false needs itself.

Moreover, the legitimate desire to support farmers as fully and effectively, as possibly, may end up exceeding the amount of useful information. This excess would lead to the unnecessary use of human and financial resources.

Therefore, the European Commission should show special attention to the limits up to which this counseling should go.

e) Other observations

Examples of provisions in which the delegation of powers to the European Commission may seem excessive, in the absence of the clarifications:

- Section (22) (e) amending Art. 51, amends the introductory sentence of the paragraph (4), attributing to the Commission the competence to establish, through delegated acts, implementing appropriate rules to put into effect the transparency and proportionality principles, with regard to reductions and the payment exclusions.

We believe that the action of setting up rules for the application of some principles is far too general to be the subject of a total empowerment of the European Commission to legislate; however, if the limits of this approach would be explained in the text, it is probable that our objection would be solved.

- Section (29) (c) amending Art. 71, replacing paragraph (5), refers to empowerment of the European Commission to adopt, through delegated acts, specific conditions for the co-financing of the interest rate subsidies and of other financial instruments.

We believe the given text does not allow to accurately assess the range and the implications of the delegated action; it is possible that the mentioned “*specific conditions*” may bring advantages/disadvantages, expressed in large sums of money, to certain beneficiaries; a clarification would eliminate such doubts.

Examples of provisions where the European Commission should regulate certain details, through delegate powers:

- section (18) adding a paragraph to Article 43 paragraph (1), defining the term “farmer” as “persons who devote a substantial part of their working time to agricultural activities, from which they get a significant part of their income, in accordance with the criteria defined by the member state”.

Since there are great differences concerning the characteristics of the agricultural systems of the member states, it may cause discrepancies and confusion, should member states be allowed to determine who is “farmer”.

It may be designated as “farmer” a big land owner, devoting a substantial part of his work time watching and supervising his employed managers, over “preserving the land in good agricultural and environmental conditions”²,

B. Referring to COM (2010) 539

The Regulation is adequate to the objective the European Commission has assumed. The reserves of general nature, mentioned above, are being maintained.

The only observation is linked to the significance of “scenery” concept, used in connection with eco-conditionalities.

In Romanian language this term is often interpreted as natural aesthetics; in consequence, the significance of “landscape” in common sense, means something totally different than an ecological unit, as is presumed in the text of the document. This confusion could affect the understanding and interpretation of the Romanian version of the text.

To avoid these confusions, we suggest to the European Commission to define and clarify the term “landscape”.

4. Conclusions

The two Proposals are compliant to the subsidiary and proportionality principles.

The new procedure introduced by Treaty, assure the democratic control of the implementing measures, when these measures have a quasi-legislative nature. The two co-legislators, the European Parliament and the Council, are treated as equal parties and thus, one of the most serious issue of the democratic deficit of the Union, is solved; the most technical provisions of the legislation and its modification will be delegated to the Commission, ensuring the focus of the legislation adopted by usual procedure, towards essential issues and improving the quality of the EU legislation, as well.

We note that there is no effective way to determine, if the European Commission’ proposal properly allocates the procedures of the delegated act or of the implementing act, to regulate each and every of the concrete measures.

We believe that is not the role of the National Parliament to check upon technical details, but to examine if the involved policies are not distorted by juridical or factual inadvertencies.

There are situations when the member states should transfer some of the powers to the Commission, in order to unify the definitions, the evaluation criteria and the procedures. A flexible approach referring to the power distribution between the Commission and the Member States, to regulate the details, is most desired.

² See the definition of the „agricultural activity”, as in art. 2, letter. c) of Regulation (CE) No. 73/2009 of the Council

The procedure itself, to delegate the regulatory powers to the European Commission, should not be disputed and discussed on the occasion of each proposal the Commission drafts. Those proposals must certainly be examined, but, in so doing, one should take into account the entirety of the EU law and the interconnections inside the EU law.

We often witness how concerns regarding a too high level of delegation of powers to the European Commission, are caused by the absence of clarifying provisions within the text of the proposal.

We deem that despite some challenges, the exercise of adapting the two Regulations to the Treaty provisions is accomplished accordingly to the Treaty, to the Union's interinstitutional arrangements and to the established role of the national parliaments.



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