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REPORT NO 8/2016 OF THE JOINT COMMITTEE FOR THE EUROPEAN UNION, OF 27 APRIL 2016, ON THE APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL FIXING THE ADJUSTMENT RATE PROVIDED FOR IN REGULATION (EU) NO 1306/2013 FOR DIRECT PAYMENTS IN RESPECT OF THE 2016 CALENDAR YEAR [COM (2016) 159 FINAL] [2016/0086 (COD)].

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality annexed to the 2007 Lisbon Treaty, which has been in force since 1 December 2009, established a control procedure for national parliaments to check whether draft European legislative acts comply with the principle of subsidiarity. This Protocol was transposed in Spain by Law 24/2009 of 22 December 2009 amending Law 8/1994 of 19 May 1994. In particular, the new Articles 3(j), 5 and 6 of Law 8/1994 constitute the legal basis for this report.

B. The Proposal for a Regulation of the European Parliament and of the Council fixing the adjustment rate provided for in Regulation (EU) No 1306/2013 for direct payments in respect of the 2016 calendar year has been approved by the European Commission and submitted to national parliaments, which have eight weeks – until 17 May 2016 – to examine the proposal's compliance with the principle of subsidiarity.

C. On 5 April 2016, the Bureau and Spokespersons of the Joint Committee for the European Union agreed to examine the draft European legislative acts in question, appointing Antonio Gómez-Reino Varela (MP) as rapporteur, and requesting from the Government the report provided for in Article 3(j) of Law 8/1994.

D. A report was received from the Government stating that the legislative proposal concerns an exclusive competence of the EU and it was therefore not appropriate to apply the subsidiarity principle.

E. At its meeting of 27 April 2016, the Joint Committee for the European Union approved this



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REPORT

1.- Article 5(1) of the Treaty on European Union states: *'The use of Union competences is governed by the principles of subsidiarity and proportionality'*. Article 5(3) of the same treaty states: *'Under the principle of subsidiarity [...] the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'*.

2.- The legislative proposal under examination is based on Articles 43(2) and 294 of the Treaty on the Functioning of the European Union, which states:

Article 43(2)

'2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy'.

Article 294

'1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading



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7. *If, within three months of such communication, the European Parliament:*

a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;

c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. *If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:*

a) approves all those amendments, the act in question shall be deemed to have been adopted;

b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. *The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.*

Conciliation

10. *The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.*

11. *The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.*

12. *If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.*

Third reading

13. *If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority,*



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shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Special provisions

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply. In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.'

3.- The legislative proposal under examination concerns fixing, in respect of the 2016 calendar year, the adjustment rate for direct payments to be granted to farmers for aid applications submitted under the support schemes listed in Annex I to Regulation (EU) No 1307/2013.

Article 25 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (CAP) provides for the establishment of a reserve intended to provide additional support for the agricultural sector in the event of major crises affecting agricultural production or distribution. This is known as '*the reserve for crises in the agricultural sector*'.

The total amount of the reserve is EUR 2 800 million with equal annual instalments of EUR 400 million (at 2011 prices) for the period 2014-2020 and is included under Heading 2 of the Multiannual Financial Framework as set out in the Annex to Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020.

The reserve is created by applying, at the beginning of each year, a reduction to direct payments with the financial discipline mechanism referred to in Article 26 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013. This Article provides that, in order to ensure that the annual ceilings set out in Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 for the financing of

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the market-related expenditure and direct payments are respected, an adjustment rate for direct payments (the '*adjustment rate*') must be determined when the forecasts for the financing of the measures under that sub-ceiling for a given financial year indicate that the applicable annual ceilings will be exceeded.

Under Article 8 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, the adjustment rate determined in accordance with Article 26 of Regulation (EU) No 1306/2013 only applies to direct payments in excess of EUR 2 000 to be granted to farmers in the corresponding calendar year.

Article 8 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 also provides that, since direct payments will be gradually introduced in Croatia up to 2022 in accordance with Article 17 of the Regulation, the adjustment rate will not apply to Croatia until 1 January 2022.

For the purpose of fixing this adjustment rate, the Commission has until 31 March of the calendar year in which the adjustment is to be applied to present a proposal to the European Parliament and the Council, which have until 30 June of that year to set the adjustment rate.

If, on 30 June, the European Parliament and the Council have not fixed the adjustment rate, the Commission will set it by means of an implementing act and immediately inform the European Parliament and the Council thereof.

This would be the legal framework covering the Proposal for a Regulation of the European Parliament and of the Council dealt with in this report.

4.- As regards the specific content of the Proposal for a Regulation in question, the Proposal fixes, in respect of the 2016 calendar year, the specific adjustment rate for direct payments to be granted to farmers for aid applications submitted under the support schemes listed in Annex I to Regulation (EU) No 1307/2013, applying the financial discipline mechanism referred to in Article 26 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013.

Calculating the financial discipline adjustment rate is part of the preparation of the 2017 Draft Budget.



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In order to establish this specific rate, the following details have been taken into account and appear in the Proposal for a Regulation:

- The amount of the reserve for crises in the agricultural sector provided for in the Commission's 2017 Draft Budget amounts to EUR 450.5 million in current prices.
- First estimates of budget appropriations for direct payments and market-related expenditure to be determined in the Commission's 2017 Draft Budget indicate that there is no need for any further financial discipline.
- The adjustment rate fixed will only apply to direct payments in excess of EUR 2 000.
- The adjustment rate will not apply to Croatia until 1 January 2022.

On the basis of the above, the Proposal for a Regulation in question sets the adjustment rate for direct payments in respect of the 2016 calendar year at 1.366744 %.

The application of this adjustment rate will result in the reduction of the amounts of direct payments for budget lines covering expenditure relating to aid applications submitted by farmers in respect of the 2016 calendar year (2017 financial year).

Considering that Member States have the possibility to make late payments to farmers outside the regulatory payment period applicable to direct payments and that the financial discipline adjustment rate varies from one calendar year to another, the amounts of direct payments to be granted to farmers should not be affected by the financial discipline differently, depending on when the payment is made to farmers by the Member States. Therefore, in order to ensure equal treatment between farmers, the adjustment rate should be applied to amounts of direct payments to be granted to farmers for aid applications submitted in the 2016 calendar year only, regardless of when the payment will actually be made to the farmer.

In any case, Article 26(4) of Regulation (EU) No 1306/2013 of the Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (CAP) provides that the Commission may, on the basis of new information in its possession, adopt implementing acts adapting the adjustment rate that has been set. The Commission will review its forecasts for market-related expenditure and direct payments when



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preparing the Amending Letter to the 2017 Draft Budget in October 2016, since it has to adopt the new adjustment rate, if appropriate by 1 December 2016.

5.- As regards the Proposal's compliance with the principle of subsidiarity, it should be noted that the calculation of the adjustment rate for direct payments to be granted to farmers for aid applications submitted under the support schemes listed in Annex I to Regulation (EU) No 1307/2013 is part of the preparation of the 2017 Draft Budget and is carried out in accordance with Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (CAP), and Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.

The aim of this report is not to assess the technical correctness of the specific adjustment rate calculation that has been carried out (in any case, we do not have enough information to do that), but is merely to determine whether or not the setting of the rate by the European Parliament and the Council complies with the principle of subsidiarity laid down in Article 5 of the Treaty on European Union.

Under the principle of subsidiarity, the Union will only act when the objectives of the proposed action cannot be sufficiently achieved by the Member States, or when they can be better achieved at Union level, by reason of the scale of effects of the proposed action.

Accordingly, the preparation of the budget and the common agricultural policy (CAP) are two areas that, by definition, must be addressed at Union level.

In the case in point, the fixing of the adjustment rate for direct payments to be granted to farmers for aid applications in respect of 2016 simply constitutes the fulfilment, for 2016, of the provisions laid down in other European laws such as Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020, Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (CAP), and Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy.



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This Joint Committee for the European Union also gave favourable opinions on the Proposals for Regulations of the European Parliament and of the Council fixing the adjustment rates for direct payments to farmers for the calendar years 2014 and 2015 respectively. The opinions in question were Report No 22/2014 of 13 May 2014 on the Proposal for a Regulation of the European Parliament and of the Council fixing the adjustment rate provided for in Council Regulation (EC) No 73/2009 for direct payments in respect of the 2014 calendar year, and Report No 4/2015 of 20 May 2015 on the Proposal for a Regulation of the European Parliament and of the Council fixing the adjustment rate provided for in Regulation (EU) No 1306/2013 for direct payments in respect of the 2015 calendar year.

CONCLUSION

For the above reasons, the Joint Committee for the European Union considers that the Proposal for a Regulation of the European Parliament and of the Council fixing the adjustment rate provided for in Regulation (EU) No 1306/2013 for direct payments in respect of the 2016 calendar year complies with the principle of subsidiarity set out in the current Treaty on European Union.