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Committee on Agriculture and Rural Development

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund
(COM(2010)0761 – C7-0002/2011 – 2010/0366(COD))

Committee on Agriculture and Rural Development

Rapporteur: Luis Manuel Capoulas Santos

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund
(COM(2010)0761 – C7-0002/2011 – 2010/0366(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0761),
 - having regard to Article 294(2) and Article 42 and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0002/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of [...] ¹,
 - having regard to Rules 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Agriculture and Rural Development (A7-0000/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation – amending act

Recital 3

Text proposed by the Commission

(3) *The Commission should have* the power to adopt *delegated* acts in accordance with Article 290 of the Treaty *in order to supplement or amend*** certain non-essential elements of Regulation (EC)**

Amendment

(3) *In order to ensure the proper functioning of the regime established by Regulation (EC) No 485/2008,* the power to adopt acts in accordance with Article 290 of the Treaty *on the Functioning of*****

¹ Not yet published in the Official Journal.

No 485/2008. The elements for which that power may be exercised should be defined, as well as the conditions to which that delegation is to be subject.

the European Union should be delegated to the Commission in respect of supplementing or amending certain non-essential elements of that Regulation . It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Or. en

Justification

Adaptation of legal text in accordance with the Common Understanding on practical arrangements for the use of delegated acts (Article 290 TFUE).

Amendment 2

Proposal for a regulation – amending act Recital 4

Text proposed by the Commission

(4) In order to **guarantee a uniform application** of Regulation (EC) No 485/2008 **in all Member States, the Commission should be empowered to adopt implementing acts in accordance with Article 291 of the Treaty. The Commission should in particular be empowered to adopt uniform rules on the exchange of information. The Commission should adopt those implementing acts with the assistance of the Committee on the Agricultural funds established by Article 41d(1) of Council Regulation (EC) 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁶ in accordance with the provisions of Regulation (EU) No XX/XXXX of the European Parliament and the Council on...**[to be completed

Amendment

(4) In order to **ensure uniform conditions for the implementation** of Regulation (EC) No 485/2008, **implementing powers should be conferred on the Commission. Those powers, save where explicitly provided otherwise, should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers¹.**

following the adoption of the regulation on control mechanisms, as referred to in Article 291(3) of the TFEU, currently the subject of discussion by the European Parliament and the Council]

¹ *OJ L 209, 11.8.2005, p. 1.*

Or. en

Justification

In accordance with the templates for provisions on implementing acts subject to control by Member States; in line with the Regulation (EU) No 182/2011 of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment 3

Proposal for a regulation – amending act

Article 1 – point 1

Regulation (EC) No 485/2008

Article 1 - paragraph 2

Text proposed by the Commission

In Article 1(2), the second sentence is replaced by the following:

In order to exclude from the application of this Regulation those measures which are by their nature unsuited for ex-post control by way of scrutiny of commercial documents, the Commission may, by means of delegated acts in accordance with the conditions referred to in Articles 13a, 13b and 13c of this Regulation, establish a list of other measures to which this

Amendment

Article 1(2) *is replaced* by the following:

2. This Regulation shall not apply to measures covered by the integrated administration and control system falling within Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers¹.

In order to exclude from the application of this Regulation those measures which are by their nature unsuited for ex-post control by way of scrutiny of commercial documents, the Commission may, by means of delegated acts in accordance with the conditions referred to in Articles 13a, 13b and 13c of this Regulation, establish a list of other measures to which this

Regulation does not apply.

Regulation does not apply.

¹ *OJ L 30, 31.1.2009, p. 16.*

Or. en

Justification

Regulation 73/2009 has since repealed Regulation 1782/2003.

Amendment 4

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 485/2008

Article 13 a (new)

Text proposed by the Commission

The ***powers*** to adopt ***the*** delegated acts ***referred to in this Regulation shall be*** conferred on the Commission ***for an indeterminate period of time.***

As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Amendment

1. The power to adopt delegated acts ***is*** conferred on the Commission ***subject to the conditions laid down in this Article.***

2. The delegation of power referred to in Article 1(2) shall be conferred on the Commission for a period of five years from ...*. The Commission shall draw up a report in respect of the delegated power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 1(2) may be revoked at any time by the European Parliament or by the Council. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following that of the publication of the decision in the Official Journal of the European Union or on a later date specified therein. It shall not affect the validity of any delegated acts

already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted under this Article shall enter into force only if no objection has been expressed either by the Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

****OJ Please insert the date of entry into force of this regulation***

Or. en

Justification

Adaptation of wording in accordance with the Common Understanding on practical arrangements for the use of delegated acts (Article 290 TFUE).

Amendment 5

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 485/2008

Article 13 b

Text proposed by the Commission

Amendment

The delegation of power referred to in Article 13a ***may be revoked by the European Parliament or by the Council.***

deleted

The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable

time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Or. en

Justification

Adaptation of wording in accordance with the Common Understanding on practical arrangements for the use of delegated acts (Article 290 TFUE).

Amendment 6

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 485/2008

Article 13c

Text proposed by the Commission

Amendment

The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

deleted

If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of

that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections

If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Or. en

Justification

Adaptation of wording in accordance with the Common Understanding on practical arrangements for the use of delegated acts (Article 290 TFUE).

Amendment 7

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 485/2008

Article 13 d (new)

Text proposed by the Commission

The Commission shall, *where necessary*, by means of implementing acts *in accordance with the procedure referred to in Article 42d(2) of Regulation (EC) No 1290/2005, adopt the provisions aiming at reaching a uniform application of this Regulation in the Union, in particular* relating to the following:

- (a) the coordination of joint actions referred to in Article 7(1);
- (b) details and specifications regarding the content, form and way of submission of requests, the content, form and way of notification and the submission in exchange of information required in the framework of this Regulation
- (c) conditions and means of publication or specific rules and conditions for the

Amendment

The Commission shall by means of implementing acts *adopt the specific provisions* relating to the following:

- (a) the coordination of joint actions referred to in Article 7(1);
- (b) details and specifications regarding the content, form and way of submission of requests, the content, form and way of notification and the submission in exchange of information required in the framework of this Regulation
- (c) conditions and means of publication or specific rules and conditions for the

diffusion of making available by the Commission to the competent authorities of the Member States of the information needed in the framework of this Regulation.

diffusion of making available by the Commission to the competent authorities of the Member States of the information needed in the framework of this Regulation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 13e(3).

Or. en

Justification

In accordance with the templates for provisions on implementing acts subject to control by Member States, in line with the proposed Regulation of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

Amendment 8

Proposal for a regulation – amending act

Article 1 – point 4

Regulation (EC) No 485/2008

Article 13 e (new)

Text proposed by the Commission

Amendment

Article 13e

1. The Commission shall be assisted by the Committee on the Agricultural Funds established by Regulation (EC) No 1290/2005.

2. That committee is a committee within the meaning of Regulation (EU) No 182/2011.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Or. en

Justification

In accordance with the templates for provisions on implementing acts subject to control by

Member States, in line with the proposed Regulation of the European Parliament and the Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

EXPLANATORY STATEMENT

The Treaty of Lisbon abolishes the old comitology system, which was based on the classic comitology procedures (advisory, management, regulatory) and the regulatory procedure with scrutiny. This system is now replaced with a two tier structure, consisting of delegated and implementing acts (the former including Parliament's right of veto), which enable the Commission to exert powers in implementation and execution. Thus, the existing body of legislation has to be aligned to this new legal reality.

One of the first proposals is the alignment of the present proposal for regulation amending Council Regulation (EC) No 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund.

The proposal is limited to modifications for the purpose of alignment only.

Alignment to TFUE provisions on implementing powers

Following the Lisbon Treaty, the powers conferred under Regulation (EC) No 485/2009 upon the Commission need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE), which distinguish two different types of Commission acts:

- Article 290 allows the legislator to delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act. Legal acts adopted by the Commission in this way are referred to in the terminology used by the Treaty as "delegated acts" (Article 290(3));
- Article 291 of the TFUE allows Member States to adopt all measures of national law necessary to implement legally binding Union acts. Those acts can confer implementing powers on the Commission where uniform conditions for implementing them are needed. Legal acts adopted by the Commission in this way are referred to in the terminology used by the Treaty as "implementing acts" (Article 291(4)).

Rapporteur proposals on alignment

The rapporteur supports the proposal of the Commission. Based on the criteria defined for each type of act, your rapporteur carefully scrutinized the Commission proposal and identified areas where the conditions for delegated acts were met. Consequently, the proposal was scrutinized on the conditions of implementing acts. Inconsistencies were not observed. The use of delegated and implementing acts provisions in these articles is appropriate.

In addition, the rapporteur proposes an updated version of the legal text, including the wording agreed to by Parliament and Council, as well as with regards to other conditions of the delegation (period of delegation, timeframe for objecting to a delegated act, extension of that period, committee procedure, etc.) following the recent conclusion of a Common Understanding on practical arrangements for the use of delegated acts (Article 290 TFUE), as well as the conclusion of the procedure on the Regulation of the European Parliament and the

Council laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers,

The proposal amends Regulation 485/2008 by adding one provision of delegated acts (Article 1(2) - establishment of a list of measures to which the regulation does not apply) First sentence of Article 1(2) of Regulation 485/2008 contains a reference to Regulation 1782/2003¹ which is no longer in force and has been replaced by Regulation 73/2009², this provision has not been modified by the proposal, an amendment is necessary this respect..

Article 13d regrouping all implementing acts provisions. Article 13d refers to an implementing acts procedure in "Article 42d(2) of Regulation 1290/2005" (i.e. the examination procedure). This article has been inserted in Regulation 1290/2005³ by the proposal COD 2010/0365 currently not adopted yet. If the present proposal is adopted before COD 2010/0365 it may create problems as to the correct reference to the applicable procedure. Therefore the procedure is also mentioned directly in the text.

Parts of the wording of articles relating to delegation (Article 13a-13c) do not correspond to the standard wording for these articles agreed in the draft Common understanding, nor to formulation that was agreed upon by the institutions in the Regulation 438/2010 therefore these need amending⁴.

¹ Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, OJ L 270, 21.10.2003, p. 1–69.

² Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, OJ L 30, 31.1.2009, p. 16–99.

³ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy, OJ L 209, 11.8.2005, p. 1–25.

⁴ Regulation (EU) No 438/2010 of the European Parliament and of the Council of 19 May 2010 amending Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals, OJ L 132, 29.5.2010, p. 3–10.