ADDENDUM

to the report


Committee on Agriculture and Rural Development
Rapporteur: Ulrike Müller
A8-0199/2019

Insert the following opinion:

1.10.2021

Mr Norbert Lins
Chair
Committee on Agriculture and Rural Development
BRUSSELS


Dear Mr Chair,
By letter of 6 July 2021 you asked the Committee on Legal Affairs pursuant to Rule 40(2) to consider whether Article 322(1), point (a) TFEU should be added to the legal basis of the above Commission proposal.

The committee considered the above question at its meeting of 30 September 2021.

I - Background

The proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy repealing Regulation (EU) No 1306/2013 (hereinafter “the proposal”) has been based on Article 43(2) TFEU. The proposal, along with the other two proposals forming part of the so-called package on the EU farm policy\(^1\), has until recently been discussed in inter-institutional negotiations. A provisional agreement has been reached on 28 June 2021. During these negotiations, a need to add Article 322(1) point (a) TFEU has been identified.

II - The relevant Treaty Articles

Article 43(2) TFEU on the Common Agricultural Policy provides that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the provisions necessary for the pursuit of the objectives of that policy.

Pursuant to Article 322(1) TFEU, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, are to adopt by means of regulations the financial rules which determine the procedure to be adopted for establishing and implementing the budget. Point (a) of that article refers to “financial rules which determine in particular the procedure for establishing and implementing the budget and for presenting and auditing accounts”.

III – CJEU case law on the choice of legal basis

As a preliminary point, the legal test for the choice of the legal basis should be recalled. According to the Court’s settled case law, the choice of legal basis for a Union legal act must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure. If examination of the act reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component. It is only exceptionally, if it is established that the act simultaneously pursues a

number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, that such an act will have to be founded on the various corresponding legal bases\(^2\), provided that they are procedurally compatible\(^3\).

**IV – Aim and content of the proposed measure**

The aim and content of the proposal becomes clear from its Article 1, which sets out that the proposed regulation lays down rules on the financing of expenditure under the Common Agricultural Policy (CAP), including expenditure on rural development, the management and control systems to be put in place by the Member States, and clearance and conformity procedures. The remaining articles, as well as the recitals, confirm that the aim and content of the proposal, in combination with the parallel proposals, is indeed to introduce new rules on the managing and financing of the Common Agricultural Policy as currently laid down in Regulation (EC) No 1306/2013\(^4\) (the current “CAP Horizontal Regulation”), also by introducing a series of updated financial provisions in line with Regulation 2018/1046 (hereinafter “the Financial Regulation”\(^5\)).

Among the provisions, of particular relevance for present purposes is Article 14 of the proposal. The latter establishes an “agricultural reserve”, endowed with funds to be used in cases of major crises of different nature, which the sector may run into over the programming period. In order to keep sufficient funds in the reserve and even to increase them over time, Article 14 provides for the carry-over of unused financial resources from one year to another without any time limit. Neither Parliament’s nor Council’s mandate have modified in substance Article 14 of the proposal, which reads:

*By way of derogation from point (d) of Article 12(2) of the Financial Regulation, non-committed appropriations of the agricultural reserve shall be carried over without time limitation to finance the agricultural reserve in the following financial years.*

Budgetary carry-overs are, however, primarily governed by the Financial Regulation. The latter has established the principle of “annuity” of the budget. Indeed, Article 3 of the Financial Regulation reads:


\(^3\) Where two or more legal bases would apply jointly, but the procedures set out therein are incompatible, it is excluded to jeopardise the effectiveness of either procedure by the joint application of both legal bases. See Judgment of 11 June 1991, Commission v Council [Titanium Dioxide], C-300/89, EU:C:1991:244, paragraphs 19-20.


1. Provisions concerning the implementation of the revenue and expenditure of the budget, and contained in a basic act, shall comply with the budgetary principles set out in Title II.

2. Without prejudice to paragraph 1, any proposal or amendment to a proposal submitted to the legislative authority containing derogations from the provisions of this Regulation other than those set out in Title II (...) shall clearly indicate such derogations and shall state the specific reasons justifying them in the recitals and in the explanatory memorandum of such proposals or amendments.

Title II of the Financial Regulation deals with “budget and budgetary principles” and covers Articles 6 to 38 of that Regulation. Article 12 (1) and (2), point (d) of the Financial Regulation reads:

1. Appropriations which have not been used by the end of the financial year for which they were entered shall be cancelled, unless they are carried over in accordance with paragraphs 2 to 8.

2. The following appropriations may be carried over (...), but only to the following financial year:

(...)  

It is thus clear, that, according to the “annuity” principle described above, unused appropriations are to be cancelled. The Financial Regulation includes however some limited exceptions to that “annuality” principle: one of them concerns precisely agriculture and namely expenditure of the European Agricultural Guarantee Fund (“EAGF”). Article 12(2)(d) of the Financial Regulation, quoted above, allows for non-committed appropriations to be carried over, but only to the following financial year. In Article 12(2)(d) of the Financial Regulation EAGF expenditure is referred to as actions referred to in Article 4(1) of Regulation (EU) No 1306/2013 since that specific article regulates the expenditure in question.

V – Analysis and establishment of the appropriate legal basis

Under Article 102(2) of the proposal, references to Regulation 1306/2013 contained in EU legislation are to be construed as references to the proposal itself. In the correlation table annexed to the proposal, Article 5 of the latter corresponds to Article 4 of Regulation 1306/2013. Therefore, the possibility of carry-overs but only to the following financial year, i.e. the one-year derogation from the principle of “annuity” contained in Article 12(2)(d) of the Financial Regulation, would also apply in the framework of the legal regime established by the proposal.

The only way to set out the possibility of carry-overs without any time limit would be to establish a lex specialis based on primary law. Therefore, the addition of Article 322(1) point (a) TFEU, empowering the legislator to establish rules on the implementation of the Union budget, to the legal basis of the proposal would be necessary.
The reason why Article 322(1) point (a) TFEU was not included in the legal basis of the original Commission proposal - which already contained the described article on the reserve in its present version - is not clear. It should also be noted that neither Parliament nor Council raised the issue of the legal basis in their respective mandates.

In terms of procedure, Article 322(1) TFEU provides for the consultation of the Court of Auditors as a procedural requirement. Despite the absence of Article 322(1) point (a) TFEU in the legal basis of the proposal, the Court of Auditors issued an opinion on the proposal at stake explicitly referring to that Article of the Treaty. It did so in the framework of an opinion covering all three CAP reform proposals. In that sense, the procedural requirement of consultation of the Court of Auditors can be presumed as fulfilled.

Finally, for reasons of completeness, it is also worth noting that similar reasons have led the Commission to add Article 322(1) TFEU to the sector-specific legal bases of a series of acts governing structural funds. The Union legislator has accepted this addition.

In the light of the foregoing, and having regard to its aim and content, the Legal Service has suggested that Article 322(1) point (a) TFEU be added to the legal basis of the proposal.

VI - Conclusion and recommendation

At its meeting of 30 September 2021 the Committee on Legal Affairs decided by 23 votes in favour, none against and 1 abstention, and having regard to the aim and content of the proposal in question, to recommend to add Article 322(1) point (a) TFEU to its legal basis.

Yours sincerely,

Adrián Vázquez Lázara

(Affects all language versions.)

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8 The following were present for the final vote: Adrián Vázquez Lázara (Chair), Sergey Lagodinsky (Vice-Chair), Marion Walsmann (Vice-Chair), Ibán García del Blanco (Vice-Chair), Raffaele Stancanelli (Vice-Chair), Pascal Arimont, Gunnar Beck, Isabel Benjumea Benjumea (for Javier Zarzalejos pursuant to Rule 209(7)), Patrick Breyer, Daniel Buda, Geoffroy Didier, Pascal Durand, Jean-Paul Garraud, Mislav Kolakušić, Gilles Lebreton, Emmanuel Maurel, Karen Melchior, Nacho Sánchez Amor, Stéphane Séjourné, Jiří Pospíšil, Marcos Ros Sempere, Axel Voss, Lara Wolters, Tiemo Wölken, Kosma Złotowski.