

RESOLUTION
of the Sejm of the Republic of Poland
of 25 November 2010
containing a reasoned opinion on non-compliance with the principle of
subsidiarity of 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)

The Sejm of the Republic of Poland, having considered 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), concludes that the proposal does not comply with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal is contrary to the principle of subsidiarity owing to the content of the proposed provisions and failure to provide reasons to substantiate its compliance with that principle.

1. The Sejm disagrees with the European Commission's view that the proposal is only aimed to align the Regulation with the Treaty of Lisbon. The provisions of the Regulation would empower the Commission to adopt acts in areas which are not regulated at EU level or are regulated only in part. In the Sejm's opinion, there are no reasons to believe that the objectives of the proposed Regulation cannot be sufficiently achieved by the Member States and that by reason of the scale or effects of the proposed action they can be better achieved at Union level. Hence, the proposal does not meet the subsidiarity criteria that mandate action by the EU instead of the Member States.

2. The Sejm expresses reservations about the new powers to be conferred on the Commission under COM(2010) 537 final. Firstly, the Commission would have the power to adopt, by means of delegated acts, provisions concerning e.g. the principles of controls, sanctions, exclusions and the recovery of undue payments by the Member States (new Article 74(4) of Regulation (EC) No. 1698/2005). Currently,

under Article 74 (1) of Regulation (EC) No. 1698/2005 in conjunction with Article 9(1) of Regulation (EC) No 1290/05, such issues are determined by the Member States, subject to the requirements set forth in EU law. No rationale has been provided to show that measures taken at the Member States' level are insufficient. Moreover, no reasons have been given to conclude that it is appropriate to further limit the procedural and organisational autonomy of the Member States in favour of the Commission. Secondly, the Commission would have the power to lay down penalties for the Member States' failure to meet their obligations concerning the evaluation of the implementation of rural development programmes (new Article 86(9) of Regulation (EC) No. 1698/2005). It has not been demonstrated that the Member States' failure to meet the obligation to evaluate the implementation of rural development programmes is a sufficiently serious breach to justify the imposition of penalties on the states concerned, fixed by the Commission. The above enumeration of the provisions that the Sejm finds inconsistent with the principle of subsidiarity is not exhaustive.

3. What also gives rise to objections from the Sejm is that no criteria are provided to determine whether an area would be regulated by means of delegated acts or implementing acts. These acts, adopted by the Commission on the basis of the Regulation, would not be subject to scrutiny by national parliaments for compliance with the principle of subsidiarity, as they are not legislative acts (Article 289(3) of the Treaty on the functioning of the European Union, TFEU). Therefore, the scope of powers conferred on the Commission under the proposed Regulation should be subject to special scrutiny for compliance with the principle of subsidiarity in order to rule out any future discretionary measures to be taken by the Commission.

With regard to delegated acts (Article 290 of the TFEU), the Sejm has reservations against excessively wide scope of competence provisions empowering the Commission to adopt such acts. Under the proposed Regulation, the Commission would be given the power to complete or modify measures taken by the EU legislator, i.e. the Council and the European Parliament. In the Sejm's opinion, the scope of powers conferred on the Commission on this basis requires a restrictive interpretation. The powers should be defined in a clear, precise and detailed manner, with specified limits which the acts adopted must not exceed. Meanwhile, many provisions of the proposed Regulation authorise the Commission to adopt, for an

indeterminate period of time, “detailed conditions” and “detailed rules” in regulated areas. In view of such a broad construction of the competence provisions and lack of explanation justifying this approach, the Sejm points out that the Commission would be able to adopt delegated acts in fields that are essential to the area concerned.

On the other hand, Article 291 of the TFEU requires that the exercise of implementing powers by the Commission be subject to control by the Member States based on regulations adopted in advance by the European Parliament and the Council. However, no such provisions have been adopted so far. The Sejm considers it unacceptable for the Commission to be empowered to adopt implementing acts under the Regulation in a situation where the procedure for their control by the Member States remains unknown.

The Sejm takes the view that the proposed Regulation does not comply with the principle of subsidiarity. An insufficiently defined scope of the Commission’s powers to adopt delegated acts, in conjunction with an unknown procedure for control by the Member States of the adoption of implementing acts would allow the Commission to take regulatory measures, while their objectives could be sufficiently achieved at national level.

4. The Sejm also notes that the Commission has declared that the proposed Regulation complies with the principle of subsidiarity without substantiating this statement, which is in breach of Article 5 of Protocol (No. 2) on the application of the principles of subsidiarity and proportionality. According to the established jurisprudence of the Court of Justice, a justification to an EU legal act should make it possible to understand the reasons for its adoption by the EU institutions and, subsequently, to examine its legality. It is the Commission’s responsibility to show to what extent the competence of a Member State and, consequently, its margin of freedom are limited. In the absence of explanation justifying compliance of the proposed Regulation with the principle of subsidiarity, the Sejm, as the chamber of the national parliament exercising scrutiny in this area, has no opportunity to evaluate the Commission’s arguments in support of declaring the proposal consistent with that principle.