Common organisation of agricultural markets and specific provisions for certain agricultural products (Single CMO Regulation)

2010/0385(COD) - 21/12/2010 - Legislative proposal

PURPOSE: to align Council Regulation (EC) No 1234/2007 on the Single Common Market Organisation with the differentiation between delegated and implementing powers of the Commission introduced by Articles 290 and 291 TFEU.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

LEGAL BASE: Article 42, first subparagraph and Article 43(2) TFEU.

CONTENT: Articles 290 and 291 TFEU establish a clear distinction between, on the one hand, the powers delegated to the Commission to adopt non-legislative acts and, on the other, the powers conferred on the Commission to adopt implementing acts:

Article 290 TFEU 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 291 TFEU requires 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 as implementing acts.

IMPACT ASSESSMENT: no need for an impact assessment since the proposal to align Council Regulation (EC) No 1234/2007 to the Lisbon Treaty is an inter-institutional matter that will concern all Council Regulations.

CONTENT: the Commission proposes to align Regulation (EC) No 1234/2007 to the new requirements of Articles 290 and 291 TFEU. The proposal is based on a careful qualification of the existing Commission powers under Regulation (EC) No 1234/2007 as "delegated" and "implementing". This was done against the background of the implementing measures adopted by the Commission on the basis of its current powers.

With regard to Article 290 TFEU, a Commission delegated act may determine the additional elements necessary for the proper functioning of the common market organisation established by the Legislator. For example, the Commission shall adopt delegated acts in order to lay down the conditions for operators for taking part in a scheme, the obligations deriving from the issue of a licence and, if necessary depending on the economic situation, whether it requires a guarantee for issue of licences. Similarly, the Legislator delegates to the Commission the power to adopt measures to establish eligibility criteria for products as regards market intervention. In addition, the Commission may adopt delegated acts regarding definitions.

With regard to Article 291 TFEU, the proposal specifies that in order to ensure that the CMO is implemented in Member States in a uniform manner and to avoid unfair competition or discrimination between operators, the Commission will be able to adopt implementing acts in accordance with Article 291

(2) of the Treaty. The Commission will, therefore, be granted implementing powers under that provision, in particular as regards the uniform conditions under which market intervention measures apply, the uniform conditions for implementing aid schemes and for applying rules concerning marketing and production, and rules related to trade with Third countries. The Commission should also define the minimum characteristics for checks which Member States must apply.

In this proposal, the Commission also deals with **Council powers under Article 43(3) TFEU**. This provision stipulates that the Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aids and quantitative limitations. The provision forms an exception to Article 43(2) TFEU which requires the ordinary legislative procedure to be used to establish the common organisation of agricultural markets and the other provisions necessary for the pursuit of the objectives of the common agricultural policy. This reflects the general trend in the Lisbon Treaty which has turned the ordinary legislative procedure into the standard procedure for the adoption of EU legislative acts.

As an exception **Article 43(3) TFEU needs to be interpreted restrictively** so as to ensure that the Legislator can exercise its legislative prerogatives under Article 43(2) TFEU. This includes the Legislator regulating the fundamental elements of the common agricultural policy and taking the political decisions that shape its structure, instruments and effects. Against this background the specific procedure laid down in Art. 43(3) TFEU should only be applied where an issue referred to in that provision does not form part of the fundamental policy decisions reserved to the Legislator under Article 43(2) TFEU. Therefore, where such an issue is inextricably linked with the political substance of the decisions to be taken by the Legislator, Article 43(3) TFEU should not be applied.

Consequently, the proposal is based on the following principles:

- the structural parameters and fundamental elements of the CAP may only be decided by the Legislator. For example, the public intervention (including the framework for the determination by the Commission of certain intervention prices by means of the tendering procedure) and milk and sugar quota schemes established by Regulation 1234/2007 should be decided by the Legislator, as these elements are inextricably linked to the definition of the content of the scheme established by the Legislator and the boundaries of this regime;
- measures on fixing prices, levies, aids and quantitative limitations as referred to in Article 43(3) which do not fall in the scope of Article 43(2) TFEU shall be taken by the Council. The Commission will submit a proposal for a Regulation based on Article 43(3) TFEU as regards the provisions in Article 21 on the conditions for mandatory aid for private storage of butter, in Article 99 on the production refund in the sugar sector, in Articles 101 and 102 on aids in the milk and milk products sector, in Article 108 on the supply of milk products to pupils, in Article 155 on aids in the silkworm sector, in Article 273 on export refunds and in Article 281 on live plants minimum export prices.

The proposed Regulations will, in respect of these provisions, provide that the conditions for fixing of aid amounts, export refunds and minimum export prices should be determined by the Council under Article 43 (3) TFEU and that amounts of such aids, refunds and price levels should be fixed by the Commission by means of implementing acts.

The Commission will submit the proposals that need to be made with regard to Article 43(3) TFEU in due course to the Council.

Lastly, the content of the **following proposals is integrated** into this proposal:

- European Parliament legislative resolution of 23 November on the proposal for a Regulation amending Council Regulation (EC) No 1234/2007 (Single CMO Regulation) as regards the aid granted in the framework of the German Alcohol Monopoly;
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- proposal for a Regulation amending Council Regulations (EC) No 1290/2005 and (EC) No 1234 /2007, as regards distribution of food products to the most deprived persons in the Union;
- proposal to amend Council Regulation (EC) No 1234/2007 as regards marketing standards;
- proposal to amend Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector.

BUDGETARY IMPLICATION: this measure does not involve any additional Union expenditure.