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EUROPEAN COMMISSION

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2010/0366 (COD)

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**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

- **Grounds for and objectives of the proposal**

To align The Commission implementing powers in Council Regulation (EC) No 485/2008<sup>1</sup> to the differentiation between delegated and implementing powers of the Commission introduced by Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE).

- **General context**

Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE) distinguish two different types of Commission acts:

- Article 290 of the TFUE 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))

- **Existing provisions in the area of the proposal**

Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFUE).

- **Consistency with the other policies and objectives of the Union**

Not applicable.

### **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

- **Collection and use of expertise**

There was no need for consultation of interested parties or for external expertise since the proposal to align Council Regulation (EC) No 485/2008 to the Lisbon Treaty is an inter-institutional matter that will concern all Council Regulations. The

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<sup>1</sup> OJ L 143, 3.06.2008, p. 1.

amendments aiming at simplification are of limited scope and purely technical nature.

- **Impact assessment**

No need of impact assessment since the proposal to align Council Regulation (EC) No 485/2008 to the Lisbon Treaty is an inter-institutional matter that will concern all Council Regulations. The amendments aiming at simplification are of limited scope and purely technical nature.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

Identify the delegated and implementing powers of the Commission in Council Regulation (EC) No 485/2008 and establish the corresponding procedure for adoption of these acts.

- **Legal basis**

Article 43 of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

Agricultural policy is of shared competence between the EU and the Member States. This means that as long as the EU does not legislate in the sector Member States maintain their competence. As regards controls, assistance and cooperation between the competent authorities of the Member States and the Commission, an European approach should be adopted, and it is justified to reinforce uniform rules on the exchange of information.

- **Proportionality principle**

The proposal complies with the proportionality principle.

- **Choice of instruments**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

### **4. BUDGETARY IMPLICATIONS**

This measure does not involve any additional EU expenditure.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission<sup>2</sup>,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Acting in accordance with the ordinary legislative procedure<sup>4</sup>,

Whereas:

- (1) Council Regulation (EC) No 485/2008<sup>5</sup> confers powers on the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred on the Commission under Regulation (EC) No 485/2008 need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (the Treaty).
- (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) 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.
- (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

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<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ L 143, 3.06.2008, p. 1..

Agricultural funds established by Article 41d(1) of Council Regulation (EC) 1290/2005 of 21 June 2005 on the financing of the common agricultural policy<sup>6</sup> in accordance with the provisions of Regulation (EU) No XX/XXXX of the European Parliament and the Council on...*[to be completed 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]*.

(5) Regulation (EC) No 485/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 485/2008 is amended as follows:

(1) 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 Regulation does not apply."

(2) Article 7 is amended as follows:

- (a) in the second subparagraph of paragraph 1, the second sentence is deleted;
- (b) paragraph 5 is deleted.

(3) Article 13 is deleted.

(4) The following Articles are inserted:

#### *"Article 13a*

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.

#### *Article 13b*

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

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<sup>6</sup> OJ L 209, 11.8.2005, p. 1.

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*.

#### *Article 13c*

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.

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.

#### *Article 13d*

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 and exchange of information required in the framework of this Regulation;
- (c) conditions and means of publication or specific rules and conditions for the diffusion or making available by the Commission to the competent authorities of the Member States of the information needed in the framework of this Regulation."

#### *Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...],

*For the European Parliament*  
*The President*

*For the Council*  
*The President*