

O P I N I O N
OF THE SENATE OF THE REPUBLIC OF POLAND

of 25 November 2010

concerning the incompatibility 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

Having examined 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, the Senate has concluded that the said proposal is not compatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union. The principle of subsidiarity has been breached in the following provisions of the proposal for a regulation:

- 1) Article 5(2), insofar as it envisages granting the European Commission the power to lay down, by means of delegated acts, the specific Union measures with which consistency of the assistance from the European Agricultural Fund for Rural Development with other Union support instruments is to be ensured - since the nature and scope of such EU measures have not been precisely defined and so they could refer to the criteria for access to such support; such criteria should be laid down by the Member States, as they have a better knowledge of the local conditions and needs as regards support;
- 2) Article 5(6), which envisages granting the European Commission the power to adopt, by means of delegated acts, exceptions from the rule of not granting support to schemes eligible for support under common market organisations, and such exceptions would be introduced in order to take into account the specific circumstances in programming areas - since the nature of such specific circumstances has not been defined, raising fears that the European Commission would deal with tasks which the Member States can perform more efficiently and effectively as they know the local conditions of particular agricultural markets;

- 3) Articles 20a, 36a, 52a, and 63a, under which the European Commission is granted the power to adopt, by means of delegated acts, specific conditions concerning the support instruments targeting:
 - a) the competitiveness of the agricultural and forestry sectors;
 - b) the improvement of the natural environment;
 - c) the diversification of the rural economy and the improvement of quality of life;
 - d) support for local action groups since the term 'specific conditions' has not been precisely defined, which may mean that the European Commission would have the right to lay down detailed support eligibility criteria, while they are currently specified by the Member States which have a better knowledge of the local conditions and are able to define such criteria in compliance with their own national legislation which also concerns areas not directly linked to support for rural and agricultural development;
- 4) Article 71(5), where the European Commission is granted the power to adopt, by means of delegated acts, specific conditions for the co-financing of interest rate subsidies and of other financial engineering instruments - since issues concerning levels of the co-financing of support instruments constitute a vital aspect of Regulation No 1698/2005 on support for rural development, hence they may not be covered by delegation of powers.

MARSHAL OF THE SENATE

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