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EUROPEAN COMMISSION

Brussels, 22.12.2010
COM(2010) 772 final

2010/0372 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 378/2007 as regards the rules for the
implementation of voluntary modulation of direct payments under the common
agricultural policy**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Alignment to the Treaty on the Functioning of the European Union (TFEU):

The Treaty on the Functioning of the European Union (the Treaty) makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the Treaty (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the Treaty (implementing acts).

In the case of delegated acts, the legislator delegates to the Commission the power to adopt quasi-legislative acts. In the case of implementing acts, the context is very different. Indeed, Member States are primarily responsible for the implementation of legally binding acts of the European Union. However, if the application of the legislative act requires uniform conditions for its implementation the Commission is authorised to adopt these acts.

The alignment exercise of Regulation (EC) No 378/2007 on new rules of the Treaty is based on a classification on the basis of the new philosophy of the current Commission implementing powers. The classification has shown that all powers conferred to the Commission by this regulation are to adopt implementing acts.

Following this exercise, a draft proposal for amendment of Regulation (EC) No 378/2007 has been prepared. The general principles, methods of calculation, regional application and the use of the modulated amounts are determined by the Legislator.

Member States are, in accordance with Article 291 of the Treaty, responsible for implementing the regime established by the Legislator. However, it seems necessary to ensure uniform implementation of the voluntary modulation scheme. Therefore, the Legislator gives the Commission powers to fix, in accordance with Article 291, paragraph 2 of the Treaty, the net amounts resulting from the voluntary modulation (Article 4(1)) and to adopt detailed rules on the integration of voluntary modulation in the rural development programming (Article 6(a)) and financial management of voluntary modulation (Article 6(b)).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**
- **Collection and use of expertise**

There was no need for consultation of interested parties or for external expertise.

- **Impact assessment**

No need of impact assessment.

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 378/2007 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**

The proposal complies with the subsidiarity principle.

- **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 IMPLICATION

This measure does not involve any additional Union expenditure.

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amending Council Regulation (EC) No 378/2007 as regards the rules for the implementation of voluntary modulation of direct payments under the common agricultural policy

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 Article 43(2) thereof,

Having regard to the proposal from the Commission¹,

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

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 378/2007 of 27 March 2007 laying down rules for voluntary modulation of direct payments provided for in Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁴ 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 under Regulation (EC) No 378/2007 upon the Commission need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union (the Treaty).
- (3) In order to guarantee a uniform application of voluntary modulation of direct payments in all Member States, the Commission should be empowered to adopt implementing acts in accordance with Article 291 of the Treaty. Save where explicitly provided otherwise, the Commission should adopt those implementing acts in

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ L 95, 5.4.2007, p. 1.

accordance with the provisions of Regulation (EU) No [xxxx/yyyy] 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*].

- (4) In order to ensure the efficient implementation of voluntary modulation the Commission should, by means of implementing acts, fix the net amounts resulting from the application of voluntary modulation. Given the nature of the envisaged implementing acts, the Commission should adopt those acts without the assistance of a committee.
- (5) For the same reason the Commission should be empowered to adopt implementing acts with the assistance of the Rural Development Committee established by article 91c of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)⁵ to ensure the integration of voluntary modulation in the rural development programming. Furthermore, the Commission should be empowered to adopt implementing acts with the assistance of the Committee on the Agricultural funds established by Article 42d(1) of Council Regulation (EC) 1290/2005 of 21 June 2005 on the financing of the common agricultural policy⁶, to ensure the financial management of voluntary modulation.
- (6) Regulation (EC) No 378/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 378/2007 is amended as follows:

- (1) In Article 4(1), the introductory phrase is replaced by the following:

"The net amounts resulting from the application of voluntary modulation shall be fixed by the Commission, by means of implementing acts without the assistance of a committee, based on:"

- (2) Article 6 is replaced by the following:

"Article 6

1. The Commission shall, by means of implementing acts in accordance with the procedure referred to in Article 91c of Regulation (EC) No 1698/2005, adopt specific provisions for the integration of voluntary modulation in the rural development programming.

⁵ OJ L 277, 21.10.2005, p. 1

⁶ OJ L 209, 11.8.2005, p. 1

2. The Commission shall, by means of implementing acts in accordance with the procedure referred to in Article 42d(3) of Regulation (EC) No 1290/2005, adopt specific provisions for the financial management of voluntary modulation."

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 Brussels,

For the European Parliament
The President

For the Council
The President

FINANCIAL STATEMENT

AGRI/I.1-D/852099(MB/tm)
6.15.2010.1

DATE: 03/11/2010

1.	BUDGET HEADING: 05 03 Direct Aids 05 04 Rural Development	APPROPRIATIONS			
2.	TITLE: Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 378/2007 as regards the rules for the implementation of voluntary modulation of direct payments under the common agricultural policy				
3.	LEGAL BASIS: Article 43 of the Treaty on the Functioning of the European Union (TFUE)				
4.	AIMS: To align the Commission implementing powers in Council Regulation (EC) No 378/2007 to the differentiation between delegated and implementing powers introduced by Article 290 and 291 of the Treaty on the Functioning of the European Union (TFUE)				
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2010 (EUR million)	FOLLOWING FINANCIAL YEAR 2011 (EUR million)	
5.0	EXPENDITURE - CHARGED TO THE EC BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-	
5.1	REVENUE - OWN RESOURCES OF THE EC (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-	-	
		2010	2011	2012	2013
5.0.1	ESTIMATED EXPENDITURE	-	-	-	-
5.1.1	ESTIMATED REVENUE	-	-	-	-
5.2	METHOD OF CALCULATION: -				
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?				YES NO
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?				YES NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?				YES NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?				YES NO
OBSERVATIONS: The proposal aims at aligning the Commission powers given in the Council Regulation (EC) No 378/2007 to the differentiation between delegated and implementing powers introduced by Article 290 and 291 of the Treaty on the Functioning of the European Union (TFUE). This does not entail any change to the community budget.					