



EUROPEAN COMMISSION

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2011/0290 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 3/2008 on information provision and promotion  
measures for agricultural products on the internal market and in third countries**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

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

Article 290 of the 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 290(3)).

Article 291 of the TFEU 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)).

The objective of the present proposal consists in aligning Council Regulation (EC) No 3/2008<sup>1</sup> of 17 December 2007 on information provision and promotion measures for agricultural products on the internal market and third countries with those provisions of the TFEU.

Under the present proposal, the objectives and principles and other essential elements of the policy on information provision and promotion measures for agricultural products on the internal market and in third countries are determined by the Legislator. Thus, the objectives of that particular policy and the principles of strategic approach, programming, complementarity, consistency and conformity with other policies of the Union are fixed by the Legislator. Similarly, the Legislator lays down the principles of partnership, subsidiarity and equality between men and women and non-discrimination.

The Commission should by means of delegated acts determine what is meant by an information and promotion programme (Article 1(1)). Similarly, the Commission shall adopt delegated acts to determine the characteristics with which information and promotion messages for programmes must comply in order to enhance the objectiveness of these messages as well as to protect consumers (Article 1(3)). In addition, the Commission shall draw up lists of the themes, products and third countries that may be covered by these measures (Article 4). It shall also adopt rules for information and promotion programmes (Article 5). Furthermore, it shall adopt detailed rules regarding programmes to be implemented in third countries in collaboration with international organisations in order to ensure their smooth running (Article 6). In order to ensure the most efficient use of Union funding, it may also define further priorities for the selection of programmes in addition to those already laid down by the Legislator (Article 8(1)).

Furthermore, the Legislator should grant the Commission the power to adopt implementing acts in accordance with Article 291 (2) of the Treaty, as regards the uniform conditions for the pre-selection of programmes by the Member States (Article 7) and their selection by the Commission (Article 8), the procedure in case of an absence of programmes (Article 9), the

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<sup>1</sup> OJ L 3, 5.1.2008, p. 1.

approval of implementing bodies (Article 11(4)), the use of material and the monitoring of programmes (Article 12(3)), the financing modalities of the programmes, the conclusion of contracts for the implementation of the programmes, the provision of securities, the payment modalities and the recovery of undue payments, the modalities of checks and penalties (Article 13(9)).

Finally, some of the powers that have so far been exercised by the Commission under the powers conferred on it by Regulation (EC) No 3/2008 have been considered of such importance that they should be incorporated into that Regulation. This regards (i) the exclusion from support under Regulation (EC) No 3/2008 of information and promotion measures on the internal market receiving support under Council Regulation (EC) No 1698/2005 on support for rural development in order to eliminate the risk of double financing (cf. Article 15[2] of Commission Regulation (EC) No 501/2008<sup>2</sup>); (ii) the principles that, in order to ensure the sound management of the Union's budget, proposing organisations should lodge securities in guarantee of a proper implementation of the programmes (cf. Article 16[3] of Regulation (EC) No 501/2008) and that (iii) they are liable to penalties if they fail to fulfil their obligations (cf. Article 27 of Regulation (EC) No 501/2008).

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

There was no need for consultation of interested parties or for an impact analysis since the proposal to align Council Regulation (EC) No 3/2008 with the TFEU is an inter-institutional matter that will concern all Council Regulations.

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

- Summary of the Proposal

Identify the delegated and implementing powers of the Commission in Council Regulation (EC) No 3/2008 and establish the corresponding procedure for the adoption of these acts.

Incorporate to Regulation (EC) No 3/2008 some of the powers that have so far been exercised by the Commission.

- Legal basis

Articles 42 and 43 of the Treaty on the Functioning of the European Union.

- The principle of subsidiarity

The EU promotion and information policy usefully supplements and reinforces the schemes run by Member States by boosting product image in the eyes of consumers in the EU and in third countries, in particular as regards the quality, nutritional value and safety of foodstuffs and the methods of production. By helping to open up new

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<sup>2</sup> OJ L 147, 6.6.2008, p. 3

markets in third countries, such action is also likely to have a multiplier effect on national and private initiatives.

The proposal falls under shared competence between the EU and the Member States and complies with the subsidiarity principle.

- The proportionality principle

Due to the increasing liberalisation of trade, including trade in agricultural and food products, the trade exchange between EU Member States and third countries becomes more and more important. At the same time, the support offered to EU producers competing in EU and global markets with non EU producers has been limited (e.g. export refunds). The regulation on information provision and promotion measures for agricultural products on the internal market and in third countries is therefore a crucial instrument that is consistent with the new framework of the WTO Agreement on agriculture.

It also naturally falls to the EU to promote the high quality standards of EU agricultural products and to encourage joint promotional programmes involving more than one EU country or more than one agricultural sector.

The proposal complies with the proportionality principle.

- Choice of legal instrument

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

#### **4. BUDGETARY IMPLICATIONS**

The proposal has no impact on budgetary expenditure.

#### **5. OPTIONAL ELEMENTS**

There are no optional elements.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries**

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>3</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>4</sup>,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

Whereas:

- (1) Council Regulation (EC) No 3/2008<sup>6</sup> confers competence on the Commission to adopt detailed rules for the application of that Regulation.
- (2) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred under Regulation (EC) No 3/2008 upon the Commission need to be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union (the Treaty).
- (3) In order to ensure the consistency and effectiveness of the measures provided for in Regulation (EC) No 3/2008, as well as their sound management and the most efficient use of Union funding, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the definition of an information and promotion programme, the determination of the characteristics with which information and promotion messages must comply, the drawing up of lists of the themes, products and third countries that may be covered by these measures, the adoption of rules defining the strategy for information and promotion programmes, the adoption of detailed rules regarding programmes to be implemented in third countries in collaboration with international organisations and the definition of further priorities for the selection of programmes in addition to those already laid down by Regulation

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

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

<sup>5</sup> OJ C , , p. .

<sup>6</sup> OJ L 3, 5.1.2008, p. 1.

(EC) No 3/2008. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

- (4) In order to ensure uniform conditions for the implementation of Regulation (EC) No 3/2008, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with the provisions of Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>7</sup>.
- (5) Some of the powers that have so far been exercised by the Commission under the powers conferred on it by Regulation (EC) No 3/2008 are considered of such importance that they should be incorporated into that Regulation. This regards (i) the exclusion from support under Regulation (EC) No 3/2008 of information and promotion measures receiving support under other Union schemes that could entail the risk of double financing; (ii) the principle that proposing organisations should lodge securities in guarantee of a proper implementation of the programmes; and (iii) the principle that, in order to ensure the sound management of the Union's budget, these proposing organisations are liable to penalties if they fail to fulfil their obligations.
- (6) Regulation (EC) No 3/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 3/2008 is amended as follows:

- (1) Article 1 is amended as follows:
  - (a) In paragraph 1, the following subparagraph is added:

"The Commission shall, by means of delegated acts, determine the characteristics of information and promotion programmes and the period of their implementation."
  - (b) The following paragraphs are added:
    - "3. The Commission shall, by means of delegated acts, determine the characteristics of information and promotion messages.
    4. The Commission shall, by means of implementing acts, adopt rules pertaining to the designation by the Member States of competent authorities responsible for the implementation of the measures referred to in paragraph 1."

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<sup>7</sup> OJ L 55, 28.2.2011, p.13.

- (2) In the first paragraph of Article 4, the first sentence is replaced by the following text:

"The Commission shall, by means of delegated acts, draw up lists of the themes and products under Article 3 and the third countries concerned."

- (3) Article 5 is replaced by the following:

*"Article 5*

**Strategy for information and promotion programmes**

1. The Commission shall, by means of delegated acts, adopt rules to be followed defining the strategy for information and promotion programmes on the internal market.

These rules shall provide general indications, in particular concerning:

- (a) objectives and targets to be reached;
- (b) one or more themes to be the subject of the measures selected;
- (c) the types of measures to be implemented;
- (d) the duration of programmes;
- (e) the indicative distribution, by market and type of measure envisaged, of the amount available for the Union's financial contribution to programmes.

With regard to the promotion of fresh fruit and vegetables, particular attention shall be paid to promotion measures intended for children in schools.

2. The Commission may, by means of delegated acts, adopt rules defining the strategy to be followed in proposals for information and promotion programmes in third countries for some or all of the products referred to in Article 3(2)."

- (4) Article 6 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. To implement the measures referred to in Article 2(1)(a), (b) and (c), Article 2(2) and Article 2(3)(a), (b) and (c), in accordance with the delegated acts referred to in Article 5(1) and subject to paragraph 2 of this Article, the trade and/or inter-trade organisation(s) representing the sector(s) concerned in one or more Member States or at Union level shall draw up proposals for information and promotion programmes of a maximum duration of three years."

- (b) in paragraph 2, the following subparagraph is added:

"The Commission shall, by means of delegated acts, adopt rules regarding the implementation of promotion measures in third countries implemented in collaboration with international organisations."

(5) Article 7 is amended as follows:

(a) In paragraph 1, the second subparagraph is replaced by the following:

"The Member State(s) concerned shall examine the suitability of proposals for programmes and shall verify conformity with this Regulation, the delegated acts referred to in Article 5 and the relevant specifications. They shall also check that the programme offers value for money."

(b) In paragraph 2, the second and third subparagraphs are replaced by the following:

"If the Commission finds that a programme which has been submitted or some of the measures therein are not in line with Union rules or, for the measures to be carried out on the internal market, with the delegated acts referred to in Article 5, or they do not offer value for money, it shall notify the Member State(s) concerned of the ineligibility of all or part of that programme, within a determined time limit. Once this time limit has been exceeded and no such notification is sent, the programme shall be deemed eligible.

Member State(s) shall take account of any observations made by the Commission and shall forward to it the revised programmes in accordance with the proposing organisation(s) referred to in Article 6(1) within a set time limit."

(c) The following paragraph 3 is added:

"3. The Commission shall, by means of implementing acts, define:

- (a) the rules relating to the submission of the proposals of programmes to the Member States,
- (b) the requirements with which the programmes must comply and the criteria against which the programmes must be checked,
- (c) rules pertaining to the procedure of pre-selection by the Member States and selection by the Commission and related time limits."

(6) Article 8 is replaced by the following text:

*"Article 8*

**Selection of information and promotion programmes**

1. When selecting programmes, priority shall be given to the programmes proposed by several Member States or providing for measures in several Member States or third countries.

The Commission may, by means of delegated acts, define further priorities for the selection of programmes.

2. The Commission shall, by means of implementing acts, decide which specific programmes are to be selected, any modifications thereof and the corresponding budgets."

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In the absence of programmes to be carried out on the internal market for one or more of the information measures referred to in Article 2(1)(b) submitted in accordance with Article 6(1), each Member State concerned shall draw up, on the basis of the delegated acts referred to in Article 5(1), a programme and its specification and shall select through a public call for tenders the implementing body for the programme it undertakes to co-finance."

(b) in paragraph 2, the first subparagraph is replaced by the following:

"In the absence of programmes to be carried out in third countries for one or more of the information measures referred to in Article 2(1)(a), (b) and (c), submitted in accordance with Article 6(1), each Member State concerned shall draw up, on the basis of the delegated acts referred to in Article 5(2), a programme and its specification and shall select through a public call for tenders the implementing body for the programme it undertakes to co-finance."

(c) in paragraph 3, point (b) is replaced by the following:

"b) the conformity of the programme and the proposed body with this Regulation and, where necessary, with the applicable delegated acts;"

(d) paragraph 4 is replaced by the following:

"4. For the purposes of the Commission's examination of the programmes, Article 7(2) and Article 8 shall apply."

(e) paragraph 5 is deleted.

(8) In Article 10, the introductory sentence is replaced by the following text:

"After informing the committee referred to in Article 16b(1) or, where necessary, the committee for organic farming set up by Article 38e of Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products\* or the Agricultural Product Quality Policy Committee set up by Article [54] of Regulation of the European Parliament and of the Council No XXX/201X of XX Xxxxx 201X on agricultural product quality schemes\*\*, the Commission may decide to carry out one or more of the following measures:

\* OJ L 189, 20.7.2007, p. 1.

\*\*OJ L ...."

(9) Article 11 shall be amended as follows:

- (a) In paragraph 2, the second subparagraph is deleted.
- (b) The following paragraph 4 is added:
- "4. The Commission shall, by means of implementing acts, define the conditions for the approval by the Member states of the selected implementing bodies as well as the conditions under which the proposing organisation may be authorised to implement certain parts of the programme itself."
- (10) In Article 12, the following paragraph 3 is added:
- "3. The Commission shall, by means of implementing acts, adopt rules pertaining to the use of information and promotion material and the monitoring of programmes."
- (11) Article 13 is amended as follows:
- (a) Paragraph 6 is replaced by the following:
- "6. By way of derogation from Article [XXX old 180 of Regulation 1234/2007] of Regulation (EU) XXXX/20.. of the European Parliament and of the Council\* of .... [establishing a common organisation of the market in agricultural products (Single CMO Regulation)] [aligned sCMO] and Article 3 of Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of and trade in certain agricultural products\*\*, Articles 107, 108 and 109 of the Treaty shall not apply to payments made by Member States, including their financial participations, nor to the financial participations from parafiscal charges or mandatory contributions of Member States or proposing organisations for programmes eligible for Union support under Article 42 of the Treaty, that the Commission has selected in accordance with Article 8 of this Regulation.
- \* OJ L.....
- \*\* OJ L 214, 4.8.2006, p. 7"
- (b) the following paragraphs are added:
- "7. Information and promotion operations receiving support under Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) \* shall not be eligible for a European Union financial contribution under this Regulation.
8. Securities shall be lodged by proposing organisations in order to ensure the proper implementation of the programmes and penalties shall be imposed on proposing organisations if they fail to fulfil their obligations.
9. The Commission shall, by means of implementing acts, adopt rules pertaining to:

- (a) the modalities of financing the programmes approved under this Regulation,
- (b) the conclusion of contracts for the implementation of the programmes approved under this Regulation,
- (c) the provision of securities by the proposing organisations and the modalities of their release,
- (d) the payment modalities and the recovery of undue payments,
- (e) the modalities of the checks to be performed by the Member States and the penalties to which proposing organisations are liable.

\* OJ L 277, 21.10.2005, p. 1."

(12) Articles 15 and 16 are deleted.

(13) The following Articles 15a, 16a and 16b are inserted:

*"Article 15a*

**Commission powers**

When powers are granted to the Commission to adopt delegated acts, Article 16a shall apply.

When powers are granted to the Commission to adopt implementing acts, it shall act in accordance with the examination procedure referred to in Article 16b.

*Article 16a*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in this Regulation shall be conferred for an indeterminate period of time.
3. The delegation of powers referred to in this Regulation may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European

Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

*Article 16b*

**Implementing acts - committee**

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets set up by Article 323(2) of Regulation (EU) XXXX/20.. of the European Parliament and of the Council\* of .... [establishing a common organisation of the market in agricultural products (Single CMO Regulation)] [*aligned sCMO*]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers\*\*.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

\* OJ L.....

\*\* OJ L 55, 28.2.2011, p.13."

(14) Article 17 is replaced by the following text:

*"Article 17*

**Consultation**

Before adopting delegated acts or implementing acts referred to in this Regulation, the Commission may consult:

- (a) the Advisory Group on Promotion of Agricultural Products set up by Commission Decision 2004/391/EC;
- (b) ad hoc technical working groups comprised of members of the committee or experts in promotion and advertising."

*Article 2*

This Regulation shall enter into force on the twentieth day following 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

<b>1. BUDGET HEADING:</b> Chapter 05: agriculture and rural development	<b>APPROPRIATIONS:</b> CA: EUR 57 292 184 763 PA: EUR 55 269 004 060
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**2. TITLE:**  
 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 3/2008 on information provision and promotion measures for agricultural products on the internal market and in third countries

**3. LEGAL BASIS:**  
 Article 43 TFEU

**4. AIMS:**  
 Identify the delegated and implementing powers of the Commission in Council Regulation (EC) No 3/2008 and establish the corresponding procedure for the adoption of these acts (alignment of the regulation with the Treaty of Lisbon).

5. FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR [2011] (EUR million)	FOLLOWING FINANCIAL YEAR [2012] (EUR million)
5.0 EXPENDITURE CHARGED TO - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL BUDGETS - OTHER	-	-	-
5.1 REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-	-
	[2013]	[2014]	[2015]
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 objective of this proposal is to align the Council Regulation with the Treaty of Lisbon; it is therefore without impact on budgetary expenditure.