

NEWSLETTER ON THE COMMON AGRICULTURAL POLICY

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THE DECISION-MAKING PROCESS FOR AGRICULTURE IN THE EUROPEAN COMMUNITY

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THE DECISION-MAKING PROCESS FOR AGRICULTURE
IN THE EUROPEAN COMMUNITY¹

I. The form of the legal act and its particular consequences

The great majority of legal acts take the form of regulations. Besides the regulations, Article 189 provides for directives, decisions, recommendations and opinions. Since the last two forms do not constitute legally binding acts and are scarcely used at all for agriculture, they will not be dealt with in detail here.

- (a) The regulation, as opposed to the other legal acts, has the invaluable advantage for agriculture in particular that, like a law, it lays down rights and obligations that are directly binding on every citizen in the Community. It is therefore the most effective tool offered by the Treaty. Naturally it also has a disadvantage, in that it is not only adequate but also indispensable, especially for urgent and ephemeral acts. This means that the Community has no means of making laws allowing it to fix certain temporary prices, levies, refunds and other sums without recourse to the somewhat elaborate form of the regulation, with its strictly legal character and the requirement that it be motivated and published. The problems this raises for the Commission will be treated in more detail later in this paper.
- (b) The decision has rather more the character of an administrative act. It binds those who are mentioned in it. In agriculture this generally means one, some, or all of the Member States; but it can also be an individual, an association or a national body. The effect of the decision therefore depends not on its promulgation and publication in the Official Journal of the Communities but on its communication to those to whom it is addressed.

¹This text derives from a paper presented by Mr Günter Weiss, of the EEC Commission's Directorate-General for Agriculture, on 6 September 1973, to the International Labour Week for Young Horticulture Contractors (ALPH) in Grünberg.

(c) Lastly, the directive is a kind of framework law and is therefore aimed towards the harmonization of legislation. It is addressed exclusively to Member States (though not necessarily all of them) and only defines the objective to be reached; the ways and means of achieving this objective are left to the Member State. This indicates that, in this case, Member States are not only entitled but also obliged to decree national regulations, for without them the directive will have no effect on the population.

However, the objectives to be attained are often set out in detail in the directive. One only needs to think of permissible colouring matter in foodstuffs, for example, or additives for animal feeds which covered twelve pages of tables in the Official Journal, or again of certificates for seeds, etc. Here the need for detailed description is obvious.

Since the directive as such does not affect individual citizens, the Treaty does not require its publication but merely its notification to the Member States before taking effect. But in fact directives are normally published in the Official Journal because the individual citizens concerned can thus familiarize themselves with the legal provisions which are shortly to be expected. Publication can, moreover, have some practical value in influencing Member States, which might be inclined to delay in transposing the directive into their national laws.

The preparation and enactment process of legal acts

At this point some explanation is necessary with regard to the legislation-making authority of the Council and the Commission. Article 43 of the Treaty lays down that only the Council, after a hearing in the European Parliament, can issue regulations. But in line with practical needs, the Council in its legal acts has regularly delegated authority to the Commission since 1962. It can generally be taken that politically significant decisions (on regulations, directives or decisions) are taken by the Council

after hearing Parliament; other decisions of far-reaching significance are taken by the Council without Parliament; finally, technical application measures and many highly urgent decisions are taken by the Commission.

II. Enactment of a regulation on the basis of Article 43

(a) Preparing the draft

According to the technical complexity of a draft to be prepared by the Commission departments, Member States' experts are already called in during the initial stages of the preparatory work.

This collaboration can take place at the level of government experts or with recognized specialists (directors of institutes, members of associations, etc.) from the Member States and proposed by them. It can also take place with the occupational circles concerned, who are represented on the Consultative Committees for the various products. For these specific problems the Committees form, where necessary, expert groups offering special knowledge.

In this way, the Commission departments prepare an advance draft which is put into legal form with the help of jurists and then finally checked by the legal departments. In addition, all departments with a legitimate interest in the draft are consulted (on questions of external trade, tariffs and competition, for example). When the Directorate-General for Agriculture considers the draft as complete and "ready", it will submit it to the Commission through the intermediary of the responsible Commissioner, who must of course approve it, and with the help of the Secretariat General.

(b) Commission procedure (Proposals)

The Commission has basically two decision procedures:

- (i) Treatment at meetings, usually held once a week on Wednesdays, or otherwise according to requirements, but which owing to the tremendous pressure of work are now being held twice a week;

(ii) Treatment by written circulation procedure

The written procedure, which should normally be the exception, has become more of a rule, at least for agricultural matters. The Secretariat-General duplicates the draft which, together with attached notes and comments, is sent to all the Commissioners to give them the chance to bring up any objections within a set deadline, which varies with the urgency of the matter. It can for instance happen that a member of the Commission asks for a debate in the Commission's session or that departments under his jurisdiction wish to make amendments or express other considerations in connection with other intentions, as yet unknown to the Directorate-General of Agriculture. The deadlines for approval of the written procedure can then be extended until agreement is reached.

(c) Council procedure (Deliberations)

After approval by the Commission the draft is sent to the Council as a proposal. The Commission's Secretariat prepares the final text to be transmitted to the Council. The text thus leaves the Commission's area of responsibility, although the latter still has an important role to play.

With the agreement of the Council President the Secretariat-General of the Council puts the proposal on the agenda of the Council, which in this case simply acknowledges its existence and decides on submitting it to the European Parliament. If time presses the Council will already delegate the Select Committee on Agriculture to make a technical review of the proposal. The Committee normally refers this review to a Working Party set up for the purpose and consisting of government experts qualified in the particular branch. At all three levels of Working Party, Select Committee and Council the Commission is of course represented. On the basis of its preparatory work, it elucidates the sense and content of the proposals, and defends it if necessary and appropriate, but also helps in working out compromise solutions with the aim of achieving the most suitable outcome. Here, if need be, it falls back on the instrument of the modified proposal, particularly with the aim of taking Parliament's Opinion into account. These deliberations are often extremely protracted.

(d) Parliamentary procedure

The European Parliament, which has mainly advisory functions, gives its Opinion after its Committee on Agriculture, supported when necessary by other Committees involved, has prepared a report. The Committee on Agriculture holds meetings to which the Commission is invited in order to answer questions.

As already mentioned, Parliament's Opinion can cause the Commission to submit an amended proposal. The Council on its own initiative takes this Opinion into account in its deliberations but, as already pointed out, does not have to act on it.

(e) The Economic and Social Committee

The Opinion of the Economic and Social Committee is also sought. This body is made up of non-State interest groups. It has formed specialized teams for scrutinizing proposals. Like the Parliamentary Committees, these teams prepare an Opinion and compile a report. Since they are based on the practical experience of members of the Economic and Social Committee, these Opinions often have a special significance, which affords the Commission and Council a deeper insight into market problems. Experience has shown that the Economic and Social Committee takes its task very seriously, and produces Opinions which are free of any opportunist considerations and subordinated to the overall objectives.

(f) Council procedure (Decision-making)

Council decisions are basically made only in session. Here a distinction can be drawn between proposals which still contain moot points and those on which agreement has been possible at earlier stages, particularly in the Select Committee on Agriculture (or within the Committee of Permanent Representatives, the "Ambassadors" of the Member States). In the latter case, Ministers are given a list of the proposals before the Council session begins, so that at the meeting they are only asked whether they wish to speak on the

"A Points". Should this not be the case, all the proposals in question are accepted without any special division. Otherwise the Council debates the proposal until agreement is reached and then, if no problems arise over the wording, it is accepted without more ado. If there are problems the text is rescrutinized on the basis of the agreement, put into its final version in the six official languages and then placed on the next Council agenda as an "A Point" for formal agreement.

But it can happen, particularly in such a case, that no further Council sitting is scheduled in the time available. The Council then makes use of the written procedure, but only after having declared itself in agreement with this procedure.

In the same way, but without hearing the Parliament and the Economic and Social Committee, a legal instrument is agreed by the voting procedure of Article 43. This procedure covers the decisions already mentioned of extensive but less fundamental significance.

III. Legal Acts of the Commission

(a) Management Committee Procedures

The market regulations of 1962 first of all set up for every field Management Committees which ensure a certain right of cooperation for Member States.

The Management Committees meet on the invitation of their chairman, a Director in the Directorate-General of Agriculture as the need arises or, where appropriate, at the request of a Member State. The Member States' delegations are made up of the responsible Heads of Division or deputies with usually up to four other officials from various departments. Collaboration on legal acts is founded on deliberations on the basis of the drafts sent in according to the procedure, and on the voting thereon, which of course amounts only to an opinion and does not accomplish the legal act. The votes are gauged according to the weighting required to reach a qualified majority in the Council, which, since the enlargement of

the Community means ten votes each for the four "big" countries, five each for Belgium and the Netherlands, three each for Ireland and Denmark and two for Luxembourg. So that the four big Member States cannot outvote the other five, the qualified majority is 41 votes out of a total of 58.

For the Management Committee this means that if at least 41 votes are cast for the draft, the opinion is positive. If at least 41 votes are cast against it, a negative opinion results. In any other case, no opinion is considered to have been reached. Apart from being mentioned at the end of the explanatory memo to every regulation, this only has a special consequence when a negative opinion is returned: the Commission transmits its contemplated measures to the Council, but can nevertheless enact them immediately or else defer them for a month. The Council has the opportunity to decide otherwise within a month.

In actual fact the negative opinion is extremely rare. Up to the end of 1972, 2 039 sittings of the Management Committees for market rules were held, to which 6 348 drafts were submitted for opinions. 5 836 of them were agreed to, in 505 cases no opinion was reached and only in 7 cases did a negative opinion emerge. It may be noted, as a matter of interest, that 5 of the negative Opinions came from the Management Committee for Poultrymeat and Eggs.

(b) Commission Decisions

The measures which the Commission can adopt on the authority delegated to it are of course usually implementing prescriptions of a technical nature or the fixing of amounts calculated by methods specified by the Council. On account of the Council's exclusive authority, as laid down in the Treaty, for decreeing legal acts, the Commission must remain confined in this field to purely technical application within the framework defined by the Council. But these decisions can still be basically significant, as for example with Regulation (EEC) 1767/68 on minimum export prices. Moreover, it can also be said in general that the "Commission" regulations can have particularly decisive significance for individuals, firstly because the framework laid down by the Council needs filling in by the Commission, so that it is

really only the Commission's regulation which affects the individual citizen's legal position, and secondly because the way in which the Commission discharges its tasks can have very varying consequences for the individual citizen.

(c) Procedures without Management Committees

In certain cases of the utmost urgency or which concern amounts to be fixed in the very short term, the Commission can decide alone, especially since the convening of Management Committees means loss of time. In many cases such decisions have only temporary effect. Then, if a Member State requests it, the decision is subject to vetting by the Council, or application of the Commission measure is limited to a three-day maximum and must, if required, be extended with the cooperation of the Management Committee.

(d) Accelerated procedures and "habilitation"

The Commission's agricultural legal instruments are normally issued through the written procedure, firstly owing to their great number, secondly in view of the opinions already rendered in the Management Committee (the grounds for non-agreement by a delegation are communicated to the Commission, allowing it to acknowledge objections to the draft immediately), and thirdly in many cases because of the urgency of the measures.

The fact of the matter is that many amounts must be fixed for the next day on the basis of the relevant information concerning the preceding days in order to have an effective influence on the market, especially on import and export. This means publication at extremely short notice in the Official Journal, which is the prerequisite for the legal validity of regulations. The Commission therefore found itself obliged to set up special procedures for such cases, which range from simultaneous telex distribution to the Commission and the editor of the Official Journal in Luxembourg to delegation of power to the responsible Member of the Commission and, in emergency, to certain senior officials of the Directorate-General of Agriculture.