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Summary

This paper is aimed at analysing the formal and informal requirements towards management system of the common agricultural policy that the New Member States entering the EU in 2004 were faced with. The focal point of this paper is the presentation of the EU regulations dealing with the shape of the CAP implementation system at the national level.

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I. The formal range of rules concerning management of CAP and rural development policy that are binding for New Member States

Speaking of CAP and rural development policy in the European Union it must be borne in mind that the system operating within these policies during the previous programming period – years 2000-2006 – was highly complicated. Numerous papers and publications have been devoted to the question of the place or even the existence of a *real* rural development policy in the EU.¹ It seems that the most satisfactory answer is given by the European Commission itself stating in the preamble to Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)²: "A rural development policy should accompany and complement the market and income support policies of the common agricultural policy and thus contribute to the achievement of that policy's objectives as laid down in the Treaty."

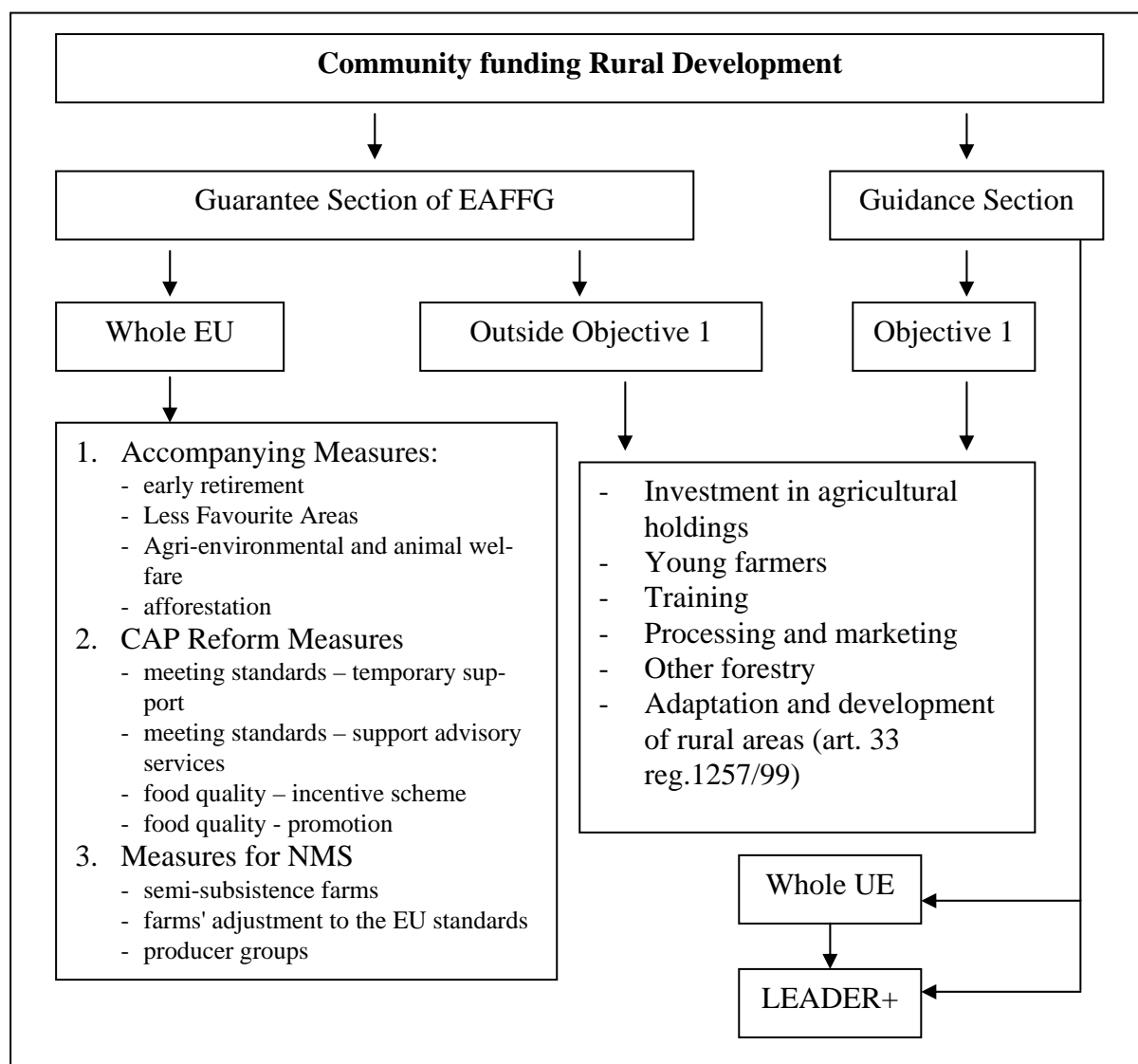
The tie interlinks between CAP and rural development policy are also emphasised in the Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209 of 11.8.2005) stating in the preamble that: "The common agricultural policy consists of a series of measures, some of which relate to rural development."

In the programming period 2007-2013 two new funds are to operate in the fields of rural and agricultural policy. The European Agricultural Guarantee Fund (EAGF), for the financing of market measures, and the European Agricultural Fund for Rural Development (EAFRD), dealing with the financing of rural development programmes. Thus, there should be no confusion and misunderstanding so typical in the previous period. During the period 2000-2006 the fund financing both agricultural and rural policy was the European Agricultural Guidance and Guarantee Fund (EAGGF). The common agricultural policy (CAP) was financed from the Guarantee Section of EAGGF, whereas the rural development policy from the Guidance Section of this fund. However, the actual source of financial support for a specific measure varied depending on the type of region it was implemented in (figure 1).

The Guidance Section was considered part of the EU structural funds and the regulations concerning it were a copy of the ones applied to all the other structural funds. But still the key solutions concerning the institutional requirements imposed by the EU were the same for both CAP and rural development measures.

¹ The evolution of CAP and the appearance of rural development policy are the subjects described, *inter alia*, by: A. Jurewicz et al. (2004); J. Dwyer et al. (2003); M. Wigier (2004), M. Keating, L. Stevenson (2006).

² Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277 of 21.10.2005). This regulation imposes a new shape of rural development policy to be implemented during the programming period 2007-2013. However, the place of the rural policy has not been changed.

Figure 1: Community system of supporting rural areas in the period 2000-2006

Source: Own elaboration based on – Commission of the European Communities: Commission Staff Working Document. Proposal for a Council Regulation on support to Rural Development by the European Agricultural Fund for Rural Development. EXTENDED IMPACT ASSESSMENT, {COM(2004)490 final}, p. 9.

I.1. PHARE – first step towards the EU

Already in the pre-accession phase the EU tried to shift the process of assistance implementation to the supported countries. However, the shift of power and responsibility was to be gradual and take into account the administrative capacity of the beneficiary countries.

The process of creating implementation institutions in the candidate countries started with the PHARE programme. For this pre-accession programme the basic principle concerning the arrangement of the implementation system is the division of powers and responsibilities. The actual responsibilities and powers of each link in the implementation chain must be well defined. A well defined division of powers is necessary to avoid conflict of interest in procurement and payment.

The implementing agency must meet a number of criteria. There are following criteria among them:

- reliable financial control over the agency at the national level;
- effective internal control system and management of the public funds within the agency;
- commitment expressed by the National Authorising Officer to bear the full financial responsibility and liability for the funds;
- procurement rules in accordance with the Financial Regulation applicable to the general budget of the European Communities.³

It has to be underlined that the EU does not give a detailed description of the system for implementing the EU assistance leaving much freedom, and at the same time responsibility, to the member states or candidate countries.

I.2. SAPARD as a dress rehearsal before the EU accession

Special Accession Programme for Agriculture and Rural Development was created within the EU budget plan Agenda 2000 as an assistance programme for the pre-accession countries.⁴ The actual shape of this programme was given in the Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and Eastern Europe in the pre-accession period (OJ L 161 of 26.6.1999). According to the preamble of this regulation SAPARD was supposed to serve two key purposes:

- supporting the implementation *acquis communautaire* in the field of common agricultural policy and regulations concerning rural areas and agriculture;
- solving the main problems characteristic of candidate countries in order to better prepare their agricultural sector and rural areas for the future EU membership.

Apart from this, programme's justification directly targeting agriculture and rural areas there is also a third purpose of SAPARD. From the Polish perspective it could be even considered as the most successfully implemented. The probably ultimate aim of SAPARD was capacity building in the field public institutions envisaged to play a key role in the management of CAP and rural development policy at the national and regional levels. The final shape of the programme resembled the one of the EU structural policy. The most important provision required from the beneficiary countries preparing a multi-annual programme stylised as the ones that are required within the structural funds' co-financing.

This type of programmes requires a special institutional system. The EU regulations do give beneficiary countries room for their own solution concerning the final shape of the institutions involved in programmes' implementation. However, they do specify the standards that must be met by these institutional systems. The most important standard is the division of power between all the institutions and departments within them ensuring that the spending of EU public funds is controlled and protected from fraud and other types of incorrect actions.

For SAPARD the rules for accreditation of a SAPARD agency dealing with the expenditure of the available funds were established. These principles were laid down in the annex to

³ Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 (OJ L 161 of 26.6.1999).

⁴ The programme was offered to 10 countries: 8 countries that entered the EU on the 1st May 2004 – Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia and 2 countries that became the EU members on the 1st January 2007 – Bulgaria and Romania.

Commission Regulation (EC) No 2222/2000 of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period (OJ L 253/5 of 7.10.2000).

The basic principle underlined in the authorisation criteria is the requirement that the separation in the administrative structure of the agency's core functions:

1. authorisation;
2. execution;
3. accounting.

Criteria also specified that the procedures and all the documents used in the application processing phase must be written in detail and ensure the fulfilment of the project selection and payment criteria.

The responsibilities of the officials involved in the project processing at any time must be limited to one phase of the ones listed:

- approving projects,
- authorising payment,
- paying,
- accounting for sums.

The authority of a single official should also be restricted and his performance kept under supervision of another official. Moreover, limits of financial authority of the officials must be named. In order to minimize the possibilities of corruption there must be a system of rotating staff or an increased supervision.

The regulation also enables delegating authorisation and control functions to other bodies if a set of criteria is fulfilled. They can be summarized as criteria targeted at ensuring the compliance with the rules set out by the EC. Such a body is obliged to present its documentation concerning the tasks they perform at the request of institutions representing all the parties involved in the process of implementation and control including:

- the agency's staff who deal with the claim,
- the agency's internal audit service,
- the certifying body that attests the agency's annual declaration,
- mandated officials of the European Union.

The organisation of work concerning the responsibilities and duties delegated to the body must be specified in detail in the agreement signed by this body SAPARD agency. In particular the agreement should include the obligation to provide access for officials of the Commission and the Court of Auditors to information.

SAPARD was for Poland and all the other countries benefiting from this programme the first opportunity of gaining their own experience in managing large agricultural programmes with a high number of final beneficiaries. This was a test for the institutions whether they were already ready to operate even larger programmes. The EU actively supported the candidate countries by issuing guidelines and controlling the implementation of SAPARD.

I.3. Role of agencies within CAP and rural development policy

Within the EAGGF only specially authorised paying agencies are able to manage the spending of funds. The Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ L 158 of 8.7.1995) specifies the criteria that must be met by the institutions to become authorised by the EU.⁵

Regulation (EEC) No 729/70 on the financing of the common agricultural policy (OJ L 94 of 28.4.1970) stated that European Agricultural Guidance and Guarantee Fund is part of the Community budget. Following this statement, special rules concerning supervision and control over effective use of public funds must be applied to the Fund's management. The vital point for the creation of CAP implementation system is given in article 4 of this regulation. It states that: "Member states assign organs of government and organisations and authorize them to implement (...) the expenditures indicated in articles 2 and 3." The member states are also obliged to inform the EU organs about any changes in the organization of these institutions that could be vital for their functioning.

The EU member states were given the right to certify their paying agencies in 1995. This new shape of payment system was created because of the inefficiency of the fully centralised one with the EU conducting all the control activities. The empowerment of the member states with the authority to accredit paying agencies is interlinked with the responsibility for any irregularities.

The member states with more than one paying agency within the CAP measures are obliged to create a special unit – coordinating body responsible for gathering data and communication between agencies and the European Commission. Both certificating and coordinating bodies have supervision powers over the paying agencies.

According to the regulation 1663/95 the number of paying agencies depends on the member state. However, the European Commission may express its opinion presenting the obstacles to the compliance with the rules that could be connected with the chosen number and especially the potential problems with transparency of their operations.

The accreditation can be granted only after a careful examination focused on administrative and accounting system functioning in the tested institution, i.e. the maintenance of accounting records, the security of computer systems or the arrangements regarding the execution of payments.

In the Annex to the regulation 1663/95 the EC presented guidelines for criteria for accreditation as a paying agency. The actual criteria are named by each member state and are based on these EC guidelines. The criteria for accreditation of a paying agency must "provide sufficient assurance concerning the proper functioning of its administrative organization and of the system of internal control, and the maintenance of documents (...)". The basic rule is the formal

⁵ This regulation gives only general guidelines concerning the accreditation criteria. For example, in the point 6 of the Annex it is stated that: "The agency shall adopt the following procedures or those offering equivalent guarantees:

(i) The agency shall lay down detailed written procedures for the receipt, recording and processing of claims inclusive of a description of all documents to be used."

The example presented above shows that regulation 1663/1995 more of an enumeration of steps to be followed and issues to be taken into account when creating a paying agency than a really detailed specification of actual procedures to be implemented into the system.

establishment of the paying agency. The agency's activity must be based on a formal act laying down its powers concerning the expenditure of EU public funds and it must also present its administrative structure.

Within the accreditation process the existence and proper functioning of two services is checked. The first of these services is an internal audit that must be independent of other departments within the paying agency. The second service is the technical one. Its key responsibility is to manage the database and inspection system enabling the verification of facts that are the base for payments (such as livestock or land).⁶

In the process of changes concerning the CAP the regulation 729/70 was replaced in 1999 by a new regulation - Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160 of 26.6.1999).⁷ The system of accreditation of paying agencies was kept. The responsibilities and EU requirements towards the paying agencies and member states were preserved. The only new thing was a clear statement in the regulation 1258/1999 that member states should limit the number of their accredited paying agencies "to the minimum necessary in order to affect the expenditure (...) under satisfactory administrative and accounting conditions." The member states should base their decision on the number of paying agencies on their "constitutional and institutional structures".

In the pre-accession phase there was only one paying agency dealing with the EU agriculture and rural support in Poland. It was ARMA that acted as a paying agency for SAPARD. The accreditation was given to it by the European Commission. In case of the two paying agencies – ARMA and AMA⁸ – functioning in Poland after the accession the certification was given to them by the Polish Ministry of Finance that acts as a Polish certifying body. The authorisation for the paying agencies is granted on the basis of positive audit report prepared by a neutral auditing company according to internationally recognised procedures and EU regulations.

The regulations concerning the process of implementation of measures included in the rural development programmes co-financed by the EU are even less detailed than the ones describing paying agencies. The EU only obliges beneficiary countries to guarantee the compliance with the conditions of granting support under the rural development measures. The regulation laying down rules of the EU rural development policy in the period 2000-2006 - Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ L 160 of 26.6.1999) names only general conditions of granting support under each of the measures co-financed by the EU. The member states themselves translate these general criteria to their legal systems and programme principles. They can even add their own specific criteria and thus adjust the EU support to their specific situation and development challenges.

The institutional implementation system is not specified within the EU regulations. The EU only states in the article 43 of the Regulation 1257/99 that rural development plan should include "provisions to ensure the effective and correct implementation of the plans, including

⁶ Part of the technical responsibilities can be delegated to other bodies. They are obliged to fulfill all the criteria and requirements put on them by the EU regulations and the agreement with the paying agency that delegated them part of its responsibilities.

⁷ Council Regulation (EC) No 1258/1999 repealed the regulation 729/70. In 1995 the regulation 729/70 was amended by the Council Regulation (EC) No 1287/95 of 22 May 1995 amending Regulation (EEC) No 729/70 on the financing of the common agricultural policy (*OJ L 125 of 8.6.1995*).

⁸ ARMA – Agency for Restructuring and Modernisation of Agriculture; AMA – Agricultural Market Agency.

monitoring and evaluation". The whole process of implementing the EU support within the rural development programme and special operational programme for agriculture were based on the regulation 1260/99.

The EU in the preamble to this regulation stated that: "Member States should provide sufficient guarantees as to the details and quality of implementation, the results of operations and their evaluation and sound financial management and its supervision." There are no detailed solutions explaining how the implementation system should operate and whether specially enacted agencies should be responsible for implementation and payments. The EU requires only that for each programme there should be only one managing authority with responsibilities including:

1. collecting data on outcomes and reporting this data to the Commission,
2. ensuring sound financial implementation,
3. organising evaluations,
4. complying with obligations relating to publicity and Community law.

Managing authority is a "public or private authority or body at national, regional or local level designated by the Member State, or the Member State when it is itself carrying out this function, to manage assistance (...). If the Member State designates a managing authority other than itself, it shall determine all the modalities of its relationship with the managing authority and of the latter's relationship with the Commission. If the Member State so decides, the managing authority may be the same body as the paying authority for the assistance concerned."⁹

Member states are also obliged to appoint Monitoring Committees. They are bodies "supervising assistance, checking on how it is being managed by the managing authority, ensuring compliance with its own guidelines and implementing rules and reviewing evaluations".¹⁰

The managing and implementation systems must be described in the programming documents that MS send to the European Commission for acceptance.

Summing up, the paying agencies are required by the EU regulations as a guarantee of sound financial management but the detailed procedures and thus the final shape of the assistance system is decided at the national level. The whole process of programming and implementation of the EU support is even less regulated. The EU gives the member states even the right to decide whether a public or private institution acts as a managing body. The general provisions emphasize only the importance of Monitoring Committee as an independent body with a wide representation of different stakeholders.

II. The informal influence of the EU Commission in the process of creating structures to serve CAP and rural development policy.

There is no Polish literature concerning the informal influence of the EU on the organization of the Polish implementation system of CAP and the rural development policy.

The informal influence of the EU Commission towards candidate countries is always focused on the issue of simplicity. The Commission is always concerned with the problem of controlling the money transfer system. In order to be able to control how the EU funds are spent and

⁹ Article 9 of the Regulation no 1260/99.

¹⁰ Preamble to the Regulation no 1260/99.

to support the implementation process in the beneficiary country the EU representatives keep on emphasising the importance of designing a simple system of programme implementation.

The necessity for such a simple and easy to control system is a result of continuously repeated recommendations given by the European Court of Auditors¹¹ that the accounting systems of the institutions involved in distribution of the EU public financial resources be transparent so that the possibility of fraud or any other illegal action is minimized.

The informal influence of the Commission and its officials was naturally reduced by the extent of leeway given to the candidate countries within the regulations in force. The other reason for a minimal influence of the EU officials was their diversified professional experience. The officials and experts working for the European Commission stem from different member states and have thus various experiences concerning administrative systems.

The first designed and implemented system concerned SAPARD. In this case the whole accreditation process was a new experience for both sides – candidate countries and the EU itself. Thus, it was a learning process for each of the participating actors. The difficulty was multiplied by the delays in the legislation process. The uncertainty as to what binding solutions would be adopted made both sides caution and impeded any real actions.

The problem also concerned the extent of the programme as it was first programme of this size strictly targeted to agriculture and rural areas.

The EU co-financed numerous study visits for the employees of ministries and prospective implementation agencies so as to support the process of designing implementation systems in candidate countries. The participants of such visit were presented with the systems of implementation applied in the member states they visited and were informed in details about the advantages and disadvantages of particular solutions. Within the PHARE programme that financed such study visits special twinning programmes were established. For these programmes there were chosen member and candidate countries having much in common in the field of agriculture and rural areas. Thus, the candidate countries had a chance of getting to know details of the management systems functioning in the countries with similar size of agriculture. This co-operation with the member states can be seen as a subtle type of informal influence played by the EU and its members on the candidate countries in the adjustment process.

There are different systems of EU funds management in the member states stemming from the various administrative systems and none of them proved to be particularly suitable for the management of assistance programmes. This is why the European Commission does not feel authorised to push for homogenisation of EU funds management. However, it strongly emphasises two issues:

- decentralisation of powers – it concerns not only the programming process with the trendy "bottom-up approach" but also project selection phase;
- sound financial management – especially division of powers in the payment systems with strong and independent audit units.

¹¹ European Court of Auditors is an independent auditing body that examines financial operations involving EU public resources. Its work is aimed at improving the financial management of the EU funds.

III. Conclusions

The EU regulations emphasise the issue of ensuring sound financial management and preventing fraud, irregularities or any other illegal actions. The legal solutions prepared by the EU do not give one-fits-all approach towards organisation of public funds distribution and policy implementation. They take into account different experiences and historical process of building public administration. Thus, the ultimate shape of the institutional system concerning rural development policy and CAP management is decided at the national level. The member states are obliged to build-in into their systems the solutions ensuring legal and effective use of public funds.

In case of structural funds the formal programme management is more specified in the EU regulations in terms of the required structure of multi-annual programmes. However, the division of duties and powers between different institutions and units is left to the member states that are responsible for the efficient implementation of the programmes co-financed by the EU. This leaves much space for national solutions as long as they ensure compliance with the EU regulations and sound financial management.

IV. Bibliography

1. EU regulations:

- Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277 of 21.10.2005).
- Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ L 209 of 11.8.2005).
- Council Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and Eastern Europe in the pre-accession period (OJ L 161 of 26.6.1999).
- Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ L 158 of 8.7.1995).
- Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89 (OJ L 161 of 26.6.1999).
- Regulation (EEC) No 729/70 on the financing of the common agricultural policy (OJ L 94 of 28.4.1970).
- Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160 of 26.6.1999).
- Council Regulation (EC) No 1287/95 of 22 May 1995 amending Regulation (EEC) No 729/70 on the financing of the common agricultural policy (OJ L 125 of 8.6.1995).
- Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ L 160 of 26.6.1999).

2. Other materials

- Dwyer J., Baldock D., Beaufoy G., Bennett H., Lowe P., Ward N. (2003), *Europe's Rural Futures – The Nature of Rural Development II. Rural Development in an Enlarging European Union*. WWF European Policy Office and Land Use Policy Group, August 2003.
- European Commission (2004), *Commission Staff Working Document. Proposal for a Council Regulation on support to Rural Development by the European Agricultural Fund for Rural Development. EXTENDED IMPACT ASSESSMENT*, {COM (2004)490 final}.
- Jurcewicz A., Kozłowska B., Tomkiewicz E. (2004), *Wspólna Polityka Rolna. Zagadnienia prawne*. Wydawnictwo Prawnicze LexisNexis, Warszawa.
- Keating M., Stevenson L. (2006), Rural Policy in Scotland after Devolution. "Regional Studies", Vol. 40, No. 3, May 2006, p. 406.
- Wigier M. (2004), *Przyczyny i charakter zmian polityki strukturalnej w rolnictwie integrującej się Europy*. IERiGŻ, Studia i Monografie nr 124, Warszawa.