



11.3.2011

NOTICE TO MEMBERS

(29/2011)

Subject: Reasoned opinion by the Riksdag of the Kingdom of Sweden on the proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (COM(2010)0799 – C7-0008/2011 – 2010/0385(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Riksdag of the Kingdom of Sweden on the above-mentioned proposal.

ANNEX 2**Reasoned opinion of the Swedish Riksdag**

The Riksdag has examined the application of the principle of subsidiarity in the Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), COM(2010) 799 final. The Committee on Environment and Agriculture reports its conclusions in Statement 2010/11: MJU2 on, *inter alia*, distribution of food products to the most deprived persons in the Union – a single CMO. The Riksdag considers that the proposal in question is, to a certain extent, contrary to the principle of subsidiarity.

By way of introduction, the Riksdag would like to remind the Commission of its previous opinion on the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007, as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486 final), as set out in the Statement of the Committee on Environment and Agriculture 2010/11: MJU7 on distribution of food products to the most deprived persons in the Union. The Riksdag considered that proposal to be contrary to the principle of subsidiarity. The Committee notes that the Commission's previous proposal has been incorporated into the current proposal. Articles 17-19 essentially correspond to the previous Proposal amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007, as regards distribution of food products to the most deprived persons in the Union (COM(2010) 486 final).

There are many unclear points in the document. It is not clear which amendments have been made in relation to the current regulation. The Commission's analysis of the proposal in relation to the principle of subsidiarity has considerable shortcomings. The Commission states (recital 24):

'The objectives of the CAP as defined in Article 39(1) of the Treaty include stabilising the markets as well as ensuring that supplies reach consumers at reasonable prices. Over the years the food distribution scheme has successfully underpinned the fulfilment of both objectives. It should continue to guarantee the aims of the CAP and help achieve cohesion objectives. However, successive reforms of the CAP have resulted in a progressive reduction in intervention stocks, as well as the range of products available. Consequently, market purchases should also be made a permanent source of supply for the scheme.'

The Riksdag questions the Commission's interpretation that market purchases for distribution of food products to the most deprived persons can be considered to stabilise the market and ensure that supplies reach consumers at reasonable prices in accordance with Article 39(1) of the Treaty, as the Commission states in the proposal.

In the view of the Riksdag, under the Commission's current proposal, the CAP objectives have been clearly expanded to include social policy aspects that will be financed from budget resources earmarked for agricultural policy. Consequently, the Riksdag is strongly critical of the Commission proposal. As a result, the Riksdag wishes to underline and reiterate the positions previously put forward in a statement concerning the same issue.

The Riksdag would reiterate that under Article 5 of the Treaty on European Union, the Union may act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. It should also be borne in mind that in a number of cases the Court of Justice has found that the choice of the legal basis for a measure within the Community must rest on objective factors which are amenable to judicial review. Those factors include the aim and content of the measure.

As regards the proposal on distribution of food products to the most deprived persons in the Union, the Riksdag would point out that it is intended to modify a scheme for the use of intervention stocks that was introduced more than 20 years ago. That scheme is laid down in Article 27 of the Regulation establishing a common organisation of agricultural markets (Regulation (EC) No 1234/2007), under the heading ‘Disposal from Intervention’. The reason for the introduction of the scheme is given in recital 18 in the preamble to that regulation, which states: ‘Due to its intervention stocks of various agricultural products, the Community has the potential means to make a significant contribution towards the well-being of its most deprived citizens. It is in the Community interest to exploit this potential on a durable basis until the stocks have been run down to a normal level by introducing appropriate measures’.

The Riksdag concurs with the Commission that stocks have been dramatically reduced as a result of the comprehensive reform of the CAP over recent years and because the primary objective is no longer to increase productivity but to enhance the sustainability of agriculture in the long term. Consequently, the Commission is proposing the introduction of a new system for distribution of food products to the most deprived persons, a system that is not dependent on the existence of suitable intervention stocks.

The Riksdag takes the view that the amendments proposed by the Commission have changed the aim of the measure to which the proposal relates i.e. distribution of food products to the most deprived persons in the Union, from a method of using intervention stocks to creating a scheme for supplying nutritious food products to the most deprived persons in the Union. The Riksdag points out that the measure has now shifted from being an agricultural policy measure to a social policy measure. Consequently, the Riksdag considers that the legal basis on which the proposal rests is incorrect, as neither the aim nor the content of the proposed measure can be covered by the objectives of the common agricultural policy. A measure having the primarily social policy objective of providing food for the most deprived persons may, as such, be considered to fall within the objectives of the Union. Consequently, the Riksdag, like the Council’s Legal Service, considers that the Commission could have opted for Article 352 of the TFEU as a basis for its proposal. However, the Riksdag would like to point out that Article 352 states:

‘If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.’

The Riksdag considers that the proposed measures can, under no circumstances, be considered necessary in order to attain one of the objectives set out in the Treaty. On the contrary, the Riksdag considers the proposed measures to be contrary to the principle of subsidiarity, and for that reason there is no basis for adopting rules at Union level concerning distribution of food products to the most deprived persons in the Union.

Under the Treaties, social policy primarily comes under the competence of the Member States, particularly as regards support for individuals who may be considered to be the most deprived in the Union. Under Article 4 of the Treaty on European Union, the Union and the Member States share competences in the field of social policy, in respect of aspects set out in the Treaty. The Riksdag notes that these aspects principally concern freedom of movement of labour. Each Member State has a responsibility in the fight against poverty and exclusion in society and for providing support for those who are most deprived. It is a responsibility which is often shared with authorities at regional and local level. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union may act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The Riksdag cannot find any reasons why the objectives of the planned measure in the current proposal should be better achieved at Union level.

In summary, the Riksdag notes that the only reason for the introduction of food aid 20 years ago was that, at that time, there were intervention stocks which there was a desire to use in the optimum manner. That reason no longer exists as the intervention stocks are almost empty. Neither the aim nor the content of the proposed measure can be covered by the objectives of the common agricultural policy. The legal basis for the proposal is therefore incorrect.

There are also many unclear points in the document. It is not clear which amendments have been made in relation to the current regulation. The Commission's analysis of the proposal in relation to the principle of subsidiarity has considerable shortcomings. In the view of the Riksdag, under the Commission's proposal, the CAP objectives have been clearly expanded to include social policy aspects that will be financed from budget resources earmarked for agricultural policy.

The Riksdag therefore takes the view that the part of the proposal that concerns distribution of food products to the most deprived persons in the Union is contrary to the principle of subsidiarity. The objectives of the proposed action can be sufficiently achieved by the Member States at central level or at regional and local level. On the other hand, the Riksdag has no objections, from the point of view of subsidiarity, as regards the other parts of the Commission's proposal concerning adaptations to the new decision-making procedures under the Lisbon Treaty.

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