



11.2.2011

NOTICE TO MEMBERS

(06/2011)

Subject: Reasoned opinion by the Senate of the Republic of Poland on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards (COM(2010)0738 – C7-0422/2010 – 2010/0354(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 Sejm of the Republic of Poland on the above-mentioned proposal.

O P I N I O N
OF THE SENATE OF THE
REPUBLIC OF POLAND

of 4 February 2011

on the incompatibility with the principle of subsidiarity
of the proposal for a Regulation of the European Parliament and of the Council
amending Council Regulation (EC) No 1234/2007
as regards marketing standards (COM(2010) 0738)

Having examined the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1234/2007 as regards marketing standards (COM(2010)0738), the Senate of the Republic of Poland finds that this proposal is not compatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union.

The proposal for a regulation does not comply with the principle of subsidiarity because of the provisions contained in Articles 112c, 112f(3), 112g and 112l, which confer excessive powers on the European Commission:

- (1) Article 112c □ This provision entitles the Commission to adopt, by means of delegated acts, changes to the requirements relating to a general marketing standard and to introduce derogations from those requirements. The stated purpose of that entitlement is to ensure that the Community can react appropriately to changes in the market situation. The need to ensure that the Community is able to react swiftly to changes in the market situation is a major prerequisite for efficient Community action in the sphere of agriculture. Nevertheless, in accordance with Article 290 of the Treaty on the Functioning of the European Union, delegated acts may amend only 'non-essential elements' of a legislative act. Requirements relating to the general marketing standard must be considered essential elements of the regulation, since they constitute a basic condition for allowing products onto the market in the territory of the European Union.
- (2) Article 112f(3) □ In accordance with this provision, in order to take into account technical progress and evolving consumer demands and to avoid creating obstacles to product innovation, the Commission will be able, by means of delegated acts, to adopt 'any necessary modification, derogation or exemption to the definitions and sales descriptions provided for in Annex XIIa'. Definitions and sales descriptions are of fundamental importance for the market competitiveness of agricultural products, especially on the European Union market, which is characterised by demanding consumer requirements. It follows that all modifications to and derogations or exemptions from definitions and sales descriptions are essential elements of the regulation and cannot be implemented by the Commission by means of delegated acts.

- (3) Article 112g □ This provision would entitle the Commission to adopt, by means of delegated acts, a tolerance for each standard beyond which the entire batch of products would be considered as not respecting the standard. The tolerance for marketing standards determines the possibility of allowing products onto the market and is therefore of fundamental importance for the functioning of the agricultural market in the European Union. For that reason, the matters covered by this provision cannot be regulated by the Commission by means of delegated acts.
- (4) Article 112l □ This provision entitles the Commission to adopt delegated acts on essential matters, namely 'the conditions under which imported products are considered as providing an equivalent level of compliance with the Union requirements concerning marketing standards' and 'the rules relating to the application of the marketing standards to products exported from the Union'. The conditions for meeting the standards for importing and exporting agri-food products are an essential element in regulating the marketing of such products. For that reason, acts in this area should be adopted by means of legislative acts forming EU commercial policy in the agri-food sector.

SPEAKER OF THE SENATE
Bogdan Borusewicz