



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 November 2010

15858/10

**Interinstitutional File:
2008/0183 (COD)**

**AGRI 442
AGRIORG 42
CODEC 1204
INST 470
PARLNAT 115**

COVER NOTE

from: Michael Pownall, Clerk of the Parliaments, House of Lords of the United Kingdom

date of receipt: 4 November 2010

to: Yves Leterme, President of the Council of the European Union

Subject: Amended 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
[doc. 13435/10 AGRI 312 AGRIORG 25 CODEC 798- COM (2010) 486 final]
- Opinion¹ on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a copy of the above letter.

¹ This opinion is available in English on the Interparliamentary EU information exchange Internet site (IPEX) at the following address:
<http://www.ipex.eu/ipex/cms/home/Documents/pid/10>



HOUSE OF LORDS

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3 November 2010 The President

Council of the European
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Your President,

COM(2010)486, Council Document 13435/10 Commission 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

On 3 November 2010 the House of Lords of the United Kingdom Parliament resolved as follows:

"that this House considers that the amended Commission 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, Council Document 13435/10) does not comply with the principle of subsidiarity, for the reasons set out in the 2nd Report of the European Union Committee, Session 2010-11 (HL Paper 44); and, in accordance with article 6 of the Protocol on the application of the principles of subsidiarity and proportionality, instructs the Clerk of the Parliaments to forward this reasoned opinion to the Presidents of the European institutions."

I have the honour so to do. I enclose the report referred to, with a translation.

*Yours sincerely
Michael Pownall*

Michael Pownall
Clerk of the Parliaments

Subsidiarity assessment: distribution of food products to deprived persons

Report

Ordered to be printed 27 October 2010 and published 28 October 2010

Published by the Authority of the House of Lords

London : The Stationery Office Limited

The European Union Committee

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)

Internal Market, Energy and Transport (Sub-Committee B)

Foreign Affairs, Defence and Development Policy (Sub-Committee C)

Agriculture, Fisheries and Environment (Sub-Committee D)

Justice and Institutions (Sub-Committee E)

Home Affairs (Sub-Committee F)

Social Policies and Consumer Protection (Sub-Committee G)

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The Members of the European Union Committee are:

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Lord Carter of Coles Lord Richard

Lord Dear Lord Roper (Chairman)

Lord Dykes The Earl of Sandwich

Lord Hannay of Chiswick Baroness Sharp of Guildford

Lord Harrison Lord Teverson
Baroness Howarth of Breckland Lord Tomlinson
Lord Jopling Lord Trimble
Baroness O’Cathain Baroness Young of Hornsey
Lord Paul

The Members of the Sub-Committee which prepared this report are listed in Appendix 1.

Information about the Committee

The reports and evidence of the Committee are published by TSO. For information freely available on the web, our homepage is <http://www.parliament.uk/hleu>

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at http://www.parliament.uk/about_lords/about_lords.cfm

Sub-Committee Staff

The current staff of the Sub-Committee are Paul Bristow (Clerk), Alistair Dillon (Policy Analyst) and Melanie Moore (Committee Assistant).

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW

General enquiries 020 7219 5791. The Committee’s email address is euclords@parliament.uk

Subsidiarity assessment: distribution of food products to deprived persons

Amended Commission 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, Council Document 13435/10)

Recommendation

1. We recommend that the House of Lords should issue the reasoned opinion set out below to the effect that the proposed Regulation does not comply with the principle of subsidiarity; and should send it to the Presidents of the European Parliament, the Council and the Commission, in accordance with the provisions of the EU Treaties.

Scrutiny reserve

2. This report does not complete our scrutiny of this proposal.

Our report

3. This report was prepared by the Agriculture, Fisheries and Environment Sub-Committee whose members are listed in Appendix 1.

Reasoned opinion

4. Since 1987,¹ excess stocks of food purchased into public stores under the intervention mechanisms of the Common Agricultural Policy (CAP) have been made available to the most deprived persons in the Union. In 2008, more than 13 million people benefited from the scheme.² Following reform of the CAP, and the consequent reduction in intervention stocks, the programme has relied increasingly on market purchases for the provision of this food. An internet based public consultation has expressed strong support for the continuation of an EU food aid programme and the European Parliament has stressed the fundamental nature of the right to food.³ Member State participation in the scheme is voluntary, and the UK has not participated in it since the mid-1990s.
5. While leaving unchanged the voluntary nature of Member State participation in the scheme, the Commission's proposal would:
 - formalise the provision for food under the scheme to be sourced not just from intervention stocks but also from the open market;
 - widen the range of goods that can be purchased in order to take into account nutritional balance and suitability for distribution, allowing Member States to give preference to food products of Union origin;

¹ Council Regulation (EEC) No 3730/87

² COM(2010)486 p.2

³ Ibid p.3

DISTRIBUTION OF FOOD PRODUCTS TO DEPRIVED PERSONS

- establish three-year programmes instead of the current annual rounds in order to allow longer-term planning by Member States and charities;
- introduce co-financing by participating Member States at a minimum of 25% (10% for cohesion countries) of eligible costs with an annual ceiling of €500m for co-financing from the EU budget; and
- enhance reporting obligations, both for participating countries and for the Commission.

6. The Commission justifies its action on the following basis:⁴

- the programme addresses problems of hunger, deprivation, poverty and social exclusion in the spirit of the Treaty, which states that the Union's aim is to "promote the well-being of its peoples" and "promote [...] solidarity among Member States" (Article 3, TEU);
- the programme contributes to meeting the CAP's objectives of stabilising markets and ensuring that supplies reach consumers at reasonable prices;
- social support provided by Member State authorities rarely focuses on access to food; and
- the programme can trigger Member State action, and help charities and civil society to develop their own initiatives to ensure the right of all EU citizens to food.

Conclusions

7. Even to the extent that addressing problems of hunger, deprivation, poverty and social exclusion can be considered to be in the spirit of the Treaties, it is nevertheless the case that the spirit of the Treaties can be respected without Union action, and it can be promoted by the Union without following the legislative route. Inequalities between Member States are dealt with through EU cohesion policy. Member States are capable of acting individually to address the issues highlighted; and indeed confusion could arise from the parallel operation in a Member State of a national system and the EU scheme.
8. The extent to which purchases from the market contribute to the objectives of the CAP is questionable, being dependent on numerous factors, including: the quantity of food purchased from the market; any reduction in purchases by deprived persons who become eligible for the scheme; and the price paid. In any event, there is no reason why the Union is better placed to organise the purchase of products from the market than Member States.
9. The failure of Member States to act is not in itself a reason for the Union to act. The voluntary nature of the scheme suggests also that there is no demonstrable need for action, particularly at the Union level. All Member States do, of course, retain a stake in the proposal because it is part-financed from the Union budget.
10. In conclusion, there appears to be no compelling argument to suggest that the Union is better placed than Member States to ensure a food supply to its most deprived citizens.

⁴ SEC(2008)2437 p.3

APPENDIX 1: SUB-COMMITTEE ON AGRICULTURE, FISHERIES AND ENVIRONMENT

The members of the Sub-Committee which prepared this report were:

Earl of Arran

Baroness Byford

Earl of Caithness

Lord Cameron of Dillington

Lord Carter of Coles (Chairman)

Earl of Dundee

Lord Giddens

Baroness Howarth of Breckland

Lord Lewis of Newnham

Baroness Parminter

Baroness Sharp of Guildford

Declarations of Interests:

A full list of Members' interests can be found at the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

Traduction en langue française

Évaluation de la subsidiarité : distribution de denrées alimentaires aux personnes démunies

Proposition modifiée de la Commission de règlement du Parlement Européen et du Conseil modifiant les règlements du Conseil en ce qui concerne la distribution de denrées alimentaires aux personnes les plus démunies de l'Union (13435/10)

Recommandation

1. Nous recommandons que la Chambre des Lords (House of Lords) soumette l'avis motivé présenté ci-dessous, d'après lequel la proposition de règlement ne serait pas conforme au principe de la subsidiarité, et le transmette aux Présidents du Parlement européen, du Conseil et de la Commission, conformément aux dispositions des Traités de l'UE.

Réserve d'examen

2. Le présent rapport ne constitue pas l'achèvement de notre examen de la présente proposition.

Notre rapport

3. Le présent rapport a été élaboré par le sous-comité de l'Agriculture, des Pêches et de l'Environnement (Agriculture, Fisheries and Environment Sub-Committee).

Avis motivé

4. Depuis 1987,¹ les stocks d'aliments excédentaires achetés auprès d'entrepôts publics au titre des mécanismes d'intervention de la politique agricole commune (PAC) sont mis à la disposition des personnes les plus démunies de l'Union. En 2008, plus de 13 millions de personnes ont bénéficié de ce régime de soutien.² Suite à la réforme de la PAC et à la réduction des stocks d'intervention qui en a résulté, le programme est devenu de plus en plus tributaire des achats sur le marché pour l'approvisionnement en denrées alimentaires. Une consultation publique organisée sur Internet a exprimé un soutien massif pour la poursuite d'un programme européen d'aide alimentaire et le Parlement européen a souligné le caractère fondamental du droit à l'alimentation.³ La participation des États membres au régime de soutien est volontaire et le Royaume-Uni n'y a pas souscrit depuis le milieu des années 1990.

¹ Règlement (CEE) n° 3730/87 du Conseil

² COM(2010)486 p.2

³ Ibid p.3

5. La proposition de la Commission ne changerait en rien le caractère volontaire de la participation des États membres au régime, mais reposerait sur les points suivants :

- officialisation de la disposition stipulant que les produits alimentaires fournis au titre du régime de soutien proviennent à la fois des stocks d'intervention et du marché.
- élargissement de l'éventail des produits pouvant être achetés afin de prendre en considération l'équilibre nutritionnel des produits et la facilité avec laquelle ils se prêtent à la distribution, en permettant aux États membres d'accorder la préférence aux produits alimentaires originaires de l'Union.
- établissement de programmes triennaux au lieu des actuels cycles annuels afin de permettre une planification à plus long terme par les États membres et les organisations caritatives ;
- introduction du cofinancement par les États membres participants à raison d'un minimum de 25 % (10 % pour les pays bénéficiant du Fonds de cohésion) des coûts admissibles, avec un plafond annuel établi à 500 millions d'EUR pour le cofinancement provenant du budget de l'UE ; et
- renforcement des obligations en matière de communication, aussi bien pour les pays participants que pour la Commission.

6. La Commission justifie ses actions sur les bases suivantes :¹

- le programme vise à lutter contre les problèmes de faim, de privation, de pauvreté et d'exclusion sociale dans l'esprit du Traité, qui spécifie que l'objectif de l'Union est de « promouvoir le bien-être de ses peuples » et de « promouvoir [...] la solidarité entre les États membres » (Article 3, TUE) ;
- le programme contribue à la réalisation des objectifs de la PAC en matière de stabilisation des marchés et de garantie de prix raisonnables pour les livraisons aux consommateurs ;
- l'aide sociale fournie par les autorités des États membres porte rarement sur l'accès à la nourriture ; et
- le programme peut déclencher l'action d'un État membre et aider les organisations caritatives ainsi que la société civile à développer leurs propres initiatives pour garantir le droit à l'alimentation de tous les citoyens de l'UE.

Conclusions

7. Même si la lutte contre les problèmes de faim, de privation, de pauvreté et d'exclusion sociale peut dans une certaine mesure être considérée comme étant dans l'esprit des Traités, il est pourtant indéniable que l'esprit des Traités peut être respecté sans action de l'Union, et qu'il peut être promu par l'Union sans suivre la voie législative. Les inégalités entre les États membres sont traitées par le biais de la politique de cohésion de l'UE. Les États membres sont capables d'agir de manière individuelle pour lutter contre les problèmes qui ont été soulignés ; l'opération parallèle d'un système national et du régime de l'UE dans un État membre pourrait en fait être source de confusion.

¹ SEC(2008)2437 p.3

8. L'importance de la contribution des achats sur le marché aux objectifs de la PAC est discutable, compte tenu des nombreux facteurs qui interviennent, parmi lesquels : la quantité de nourriture achetée sur le marché ; toute diminution d'achats par les personnes démunies qui sont éligibles pour le régime ; et le prix payé. Dans tous les cas, il n'y a pas de raison que l'UE soit mieux placée que les États membres pour organiser l'achat de produits sur le marché.

9. Le manquement des États membres à agir ne constitue pas en soi une raison d'agir pour l'Union. Le caractère volontaire du régime laisse également à penser qu'il n'existe pas de nécessité démontrable d'agir, en particulier à l'échelle de l'Union. Tous les États membres gardent bien entendu un intérêt dans la proposition puisque celle-ci est en partie financée à partir du budget de l'Union.

10. En conclusion, il ne semble pas qu'il y ait d'argument convaincant laissant à penser que l'Union soit mieux placée que les États membres pour assurer une distribution de denrées alimentaires au profit de ses citoyens les plus démunis.
