



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 1 December 2011**

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**COVER NOTE**

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from: House of Lords of the United Kingdom Parliament  
date of receipt: 30 November 2011  
to: Donald Tusk, President of the Council of the European Union

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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. 15054/10 AGRI 651 AGRIORG 172CODEC 1591 - COM (2011) 634 final]  
- Opinion<sup>1</sup> on the application of the Principles of Subsidiarity and Proportionality

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Delegations will find attached a copy of the above letter.

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<sup>1</sup> 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  
Clerk of the Parliaments

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The President  
Council of the European Union  
Rue de la Loi 175  
B-1048 Brussels  
Belgium

30 November 2011

*Dear Mr President*

**COM(2011)634, Council Document 15054/11 Commission Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1290/2005 and Council Regulation (EC) No.1234/2007 as regards distribution of food products to the most deprived persons in the Union.**

On 28 November 2011 the House of Lords of the United Kingdom Parliament resolved as follows:

“that this House considers that the Commission proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1290/2005 and Council Regulation (EC) No.1234/2007 as regards distribution of food products to the most deprived persons in the Union, does not comply with the principle of subsidiarity, for the reasons set out in the 23rd Report of the European Union Committee Session 2010-2012 (HL Paper 217); 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 into French.

*Yours sincerely*

*David Beamish*

David Beamish  
Clerk of the Parliaments



HOUSE OF LORDS

European Union Committee

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23rd Report of Session 2010–12

**Subsidiarity assessment:  
distribution of food  
products to deprived  
persons**

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Ordered to be printed 8 November 2011 and published 11 November 2011

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HL Paper 217

### *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)

### *Our Membership*

The Members of the European Union Committee are:

Lord Bowness	Baroness O'Cathain
Lord Carter of Coles	Lord Plumb
Lord Dear	Lord Richard
Lord Dykes	Lord Roper (Chairman)
Lord Foulkes of Cumnock	The Earl of Sandwich
Lord Hannay of Chiswick	Lord Teverson
Lord Harrison	Lord Tomlinson
Baroness Howarth of Breckland	Lord Trimble
Lord Jopling	Baroness Young of Hornsey
Lord MacLennan of Rogart	

The Members of the Sub-Committee which conducted this inquiry are listed in the Appendix.

### *Information about the Committee*

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/business/lords/>

### *Sub-Committee Staff*

The current staff of the Sub-Committee are Paul Bristow (Clerk), Alistair Dillon (Policy Analyst) and Mandeep Lally (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](mailto:euclords@parliament.uk)

## Subsidiarity assessment: distribution of food products to deprived persons

15054/11 Amended proposal from the European Commission for a Regulation of the European Parliament and of the Council amending Council Regulations as regards distribution of food products to the most deprived persons in the Union

### 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 inquiry

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

### Reasoned opinion of 3 November 2010

4. On 3 November 2010, for the reasons set out in a report by the European Union Committee,<sup>1</sup> the House of Lords submitted a reasoned opinion in response to the Commission's previous proposal on this subject,<sup>2</sup> objecting that the proposal did not comply with the principle of subsidiarity. That proposal has since been withdrawn further to a Court of Justice of the European Union (CJEU) judgment<sup>3</sup> that purchases from the market for deprived persons could not be made under the auspices of agricultural legislation. As we explain below in our new reasoned opinion, the Commission has consequently revised its proposal to add Article 175(3) TFEU—relating to economic, social and territorial cohesion—as a joint legal base alongside Articles 42 and 43(2) TFEU, which relate to agriculture. The substance and objective of the measure remain, in our view, the same.

### Reasoned opinion

5. Since 1987,<sup>4</sup> excess stocks of food purchased into public stores under the intervention mechanisms of the Common Agricultural Policy (CAP) have been

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<sup>1</sup> 2nd Report of the European Union Committee, Session 2010-11 (HL Paper 44)

<sup>2</sup> COM (2010)486 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

<sup>3</sup> Case T-576/08 (13 April 2011)

<sup>4</sup> Council Regulation (EEC) No 3730/87

made available to the most deprived persons in the Union. In 2010, more than 18 million people benefited from the scheme.<sup>5</sup> 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. The Commission states in its Explanatory Memorandum that the “legal framework of the food distribution scheme needs to be adjusted to this new reality”.<sup>6</sup>

6. 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;
  - include both an agricultural and an economic, social and territorial cohesion legal base;
  - 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;
  - retain the current annual programmes;
  - retain 100% EU funding of eligible costs with an annual ceiling of €500m; and
  - enhance reporting obligations, both for participating countries and for the Commission.
7. Neither the proposal nor the Commission’s Explanatory Memorandum provide an explicit subsidiarity justification as required by Article 5 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality. However, on the basis of the summary of the Impact Assessment<sup>7</sup> accompanying the Commission’s original 2008 proposal<sup>8</sup> on this subject and on the basis of the recitals in the current proposal, the Commission’s justification appears to be that:
  - 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);
  - it is a specific action necessary to pursue the objective of strengthening the Union’s social cohesion;
  - 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.
8. Even to the extent that addressing problems of hunger, deprivation, poverty and social exclusion, and strengthening the Union’s social cohesion, can be

<sup>5</sup> COM(2011)634 p.2

<sup>6</sup> Ibid p.3

<sup>7</sup> SEC(2008)2437 p.3

<sup>8</sup> COM(2008)563

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. 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.

9. The extent to which such 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.
10. 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 financed from the Union budget.
11. 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.

## **APPENDIX: SUB-COMMITTEE ON AGRICULTURE, FISHERIES AND ENVIRONMENT**

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

The Earl of Arran  
 Baroness Byford  
 The Earl of Caithness  
 Lord Cameron of Dillington  
 Lord Carter of Coles (Chairman)  
 The Earl of Dundee  
 Lord Giddens  
 Baroness Howarth of Breckland  
 Lord Lewis of Newnham  
 Baroness Parminter  
 Baroness Sharp of Guildford

### **Declarations of Interests**

The Earl of Arran  
*Married to farmer and landowner in Devon*

Baroness Byford  
*Family farming interests in Suffolk  
 Member, NFU, CLA, National Trust  
 Member, Royal Agricultural Society of England  
 Patron/President of several rural charities  
 President 2010 The Royal Smithfield Club  
 Hon Ass. Member RCVS and BVA  
 President, Leaf  
 Patron, Womens Farming Union*

The Earl of Caithness  
*Trustee of Queen Elizabeth Castle of Mey Trust which owns agricultural land  
 Chairman of a salmon fishing time-share and on the Caithness District  
 Salmon Fishery Board*

Lord Cameron of Dillington  
*Farmer and landowner in Somerset  
 Trustee of Lawes Agricultural Trust at Rothamsted  
 Director of Royal Bath and West Agricultural Society  
 President of the Guild of Agricultural Journalists  
 Chairman of the Strategic Advisory Board of the Government's  
 Global Food Security Programme  
 A Member of: CLA, NFU, RSPB, CPRE and National Trust*

Lord Carter of Coles  
*Farms and farmland in Hertfordshire*

The Earl of Dundee  
*Farmer, landowner and forester in Scotland  
 Director of farming company in Scotland  
 In receipt of Single Farm Payments*

Lord Giddens  
*No relevant interests*

Baroness Howarth of Breckland  
*No relevant interests*



Lord Lewis of Newnham

*Chair of Advisory Board, Veolia Environmental Services*

Baroness Parminter

*Charity Consultant (non-practising)*

*Trustee, Institute for Public Policy Research*

Baroness Sharp of Guildford

*Visiting Fellow to Science Policy Research Unit, University of Sussex*

During the consideration of the report by the European Union Committee, Lord Jopling declared an interest as a recipient of funds from farming and the Common Agricultural Policy.

A full list of registered interests of Members of the House of Lords can be found at:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>