

I would like to inform that the Senate, at the 70th sitting held on 4 February 2011, 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)738 and decided that the proposal did not comply with the subsidiarity principle, referred to in Article 5 para. 3 of the Treaty on European Union.

Pursuant to the procedure provided for in Protocol No. 2 of the Treaty on European Union and the Treaty on the Functioning of the European Union as regards the application of the principles of subsidiarity and proportionality, I hereby submit the Senate's justified opinion stating that the above proposal does not comply with the principle of subsidiarity.

Bogdan Borusewicz

**OPINION
OF THE SENATE OF THE REPUBLIC OF POLAND**

of 4 February 2011

**on nonconformity with the principle of subsidiarity
of 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) 738**

Having considered 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) 738, the Senate establishes that the draft does not conform to the principle of subsidiarity as set forth in Art. 5 section 3 of the Treaty of the European Union.

The proposal of the Regulation does not conform to the principle of subsidiarity given the nature of the provisions contained in art. 112c, art. 112f section 3, art. 112g and art. 112l thereof, which give too far-reaching powers to the European Commission (EC):

- 1) Article 112c – this provision gives the EC powers to modify to the rules applicable to general marketing standards and to introduce derogations from such standards by adopting delegated acts. Granting of such powers to the EC should secure an appropriate reaction of the Community to changes of the market situation. The need to ensure a swift response to changes on the market is an important premise when assessing the effectiveness of Community's operations in the area of agriculture. Nevertheless, in line with Art. 290 of the Treaty on the Functioning of the European Union only “non-essential elements of the legislative act” can be amended by means of delegated acts. Rules for general marketing standards must be considered an essential element in this Regulation since they represent a fundamental condition for admitting products to be placed on the market in the European Union.
- 2) Article 112f section. 3 – In line with this provision, in order to take technological progress into account and to adapt to evolving consumer demands as well as to avoid creating barriers to product innovation, “the Commission may, by means of delegated acts, adopt any necessary modification, derogation or exemption to the definitions and sales descriptions provided for in Annex XIIa”. Definitions and sales

descriptions are of crucial importance to market competitiveness of agricultural produce, especially on the EU market, which features high expectations on the part of consumers. In this connection, any modifications, derogations or exemptions applied to definitions and sales descriptions constitute an essential element of the Regulation and thus cannot be decided upon by the EC by means of delegated acts.

- 3) Article 112g – In line with this provision, the EC should have powers to adopt, by means of delegated acts, a tolerance for each standard, and beyond the tolerance level the entire batch of products shall be considered as not respecting the standard. In case of marketing standards a tolerance determines the admissibility of a product to be placed on the market, and resultantly has a significant importance for the functioning of the EU agricultural market. Therefore, questions subject to this provision cannot be decided upon by the EC by means of delegated acts.
- 4) Article 112l – Powers granted to the EC by means of this provision to adopt delegated acts refer to such fundamental questions as "the conditions under which imported products are considered as providing an equivalent level of compliance with the Union requirements concerning marketing standards" and determination of "the rules relating to the application of the marketing standards to products exported from the Union". Compliance with those standards allowing for imports or exports of agri-food products is a significant element in the regulation of trade in such products. Bearing this in mind, acts adopted in this field – as those which form EU trade policy in the area of agri-food production - should be adopted by means of implementing acts.