

Warsaw, 7 March, 2011

Dear Mr. President,

According to the provisions of the Lisbon Treaty I hereby enclose a reasoned opinion, adopted on the 86th session of the Polish Sejm on 4th of March 2011, on the non-compliance with the principle of subsidiarity of:

- 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).*

Please accept assurances of my highest esteem,

Grzegorz Schetyna

*Mr.
José Manuel Barroso
President of the European Commission*

B r u s s e l s

RESOLUTION
of the Sejm of the Republic of Poland
of 4 March 2011
containing a reasoned opinion
on the non-compliance with the principle of subsidiarity of 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) 799 final)

The Sejm of the Republic of Poland, having considered 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) 799 final), finds that the proposal does not comply with the principle of subsidiarity as referred to in Article 5 (3) of the Treaty on European Union (TEU). The proposal is contrary to the principle of subsidiarity owing to the failure to provide reasons to substantiate its compliance with that principle.

1. The Sejm disagrees with the European Commission's view that the proposal is only aimed to align the Regulation with the Treaty of Lisbon. The provisions of the Regulation will empower the Commission to adopt acts in areas which are not regulated at EU level or are regulated only in part. In the Sejm's opinion, there are no reasons to believe that the objectives of the proposed Regulation cannot be sufficiently achieved by the Member States and that by reason of the scale or effects of the proposed action, they can be better achieved at Union level. Hence, the proposal does not meet the subsidiarity criteria that mandate action by the EU instead of the Member State.

2. The Sejm expresses reservations about the new powers to be conferred on the Commission, which are mentioned in the proposed Regulation. The Sejm considers that Article 310 of the proposed Regulation, which empowers the Commission to adopt, by means of delegated acts, provisions concerning declarations made by processors of raw milk, does not comply with the principle of subsidiarity.

Currently, provisions in this area are adopted by the Member States. The proposal contained in Article 310 of the proposed Regulation sets legal norms for an action, the objectives of which can be, and currently are, achieved by means of the Member States' national laws. Hence, the proposal does not comply with the principle of subsidiarity as referred to in Article 5 (3) of the TEU. Moreover, in the Explanatory Memorandum of the proposed Regulation, the Commission has not provided arguments supporting the need to transfer legislation of the submission of the declarations concerned in the milk sector from the national legislation to the EU legislation.

The same reservations apply to Article 126, Article 172 (f) and Article 229 (4) of the proposed Regulation.

3. What also gives rise to reservation from the Sejm is that no criteria are provided to determine whether an area will be regulated by means of delegated acts or implementing acts. These acts, adopted by the Commission on the basis of the Regulation, will not be subject to scrutiny by national parliaments for compliance with the principle of subsidiarity, as they are not legislative acts. The scope of powers conferred on the Commission under the proposed Regulation should be subject to special scrutiny for compliance with the principle of subsidiarity in order to rule out any future discretionary measures to be taken by the Commission.

With regard to delegated acts (Article 290 of the Treaty on the functioning of the European Union, TFEU), the Sejm has reservations against an excessively wide scope of competence provisions empowering the Commission to adopt such acts. Under the proposed Regulation, the Commission will be given the power to complete or modify measures by the EU legislator, i.e. the Council and the European Parliament. In the Sejm's opinion, the scope of powers conferred on the Commission on this basis requires a restrictive interpretation. The powers should be defined in a clear, precise and detailed manner, with specified limits, which the acts adopted must not exceed. Meanwhile, many provisions of the proposed Regulation (e.g. Article 30 (1), Article 31, Article 35, Article 43 (1), Article 46, Article 78 in conjunction with Article 321 (1)) authorise the Commission to adopt, for an indeterminate period of time, detailed rules or conditions in regulated areas. In view of such a broad construction of the competence provisions and lack of explanations justifying this

approach, the Sejm notes that the Commission will be able to adopt delegated acts in fields that are essential to the area concerned.

On the other hand, Article 291 of the TFEU requires that the exercise of implementing powers by the Commission be subject to control by the Member States under regulations adopted in advance by the European Parliament and the Council. However, no such provisions have been adopted so far. The Sejm considers it unacceptable for the Commission to be empowered to adopt implementing acts under the Regulation in a situation where the procedure for their control by the Member States remains unknown.

The Sejm takes the view that the proposed Regulation does not comply with the principle of subsidiarity. An insufficiently defined scope of the Commission's powers to adopt delegated acts, in conjunction with an unknown procedure for control by the Member States of the adoption of implementing acts would allow the Commission to take regulatory measures, while their objectives could be sufficiently achieved at national level.

4. The Sejm expresses reservations about the Commission's failure to substantiate compliance with the principle of subsidiarity of the provisions of the proposed Regulation, which empower the Commission to adopt delegated acts (Article 290 of the TFEU) and implementing acts (Article 291 of the TFEU), which is in breach of Article 5 of the Protocol (No. 2) on the application of the principles of subsidiarity and proportionality (Protocol No. 2). The justification of the compliance of a draft legislative act with the principle of subsidiarity plays a key role in subsidiarity checks performed by national parliaments, as it enables them to become familiar with and evaluate arguments for the adoption of specific provisions set forth in the proposed act. The justification of the EU legal act also enables the Court of Justice of the European Union to review its legality under the action for annulment (Article 263 of the TFEU).

In the Explanatory Memorandum of the proposal, the Commission has declared that the proposed Regulation complies with the principle of subsidiarity without substantiating this statement. The Commission has noted that the common agricultural policy is an area of shared competence between the EU and the Member States, which means that the Member States maintain their law-making competence only where no legal provisions have already been adopted in the sector concerned at EU level. The memorandum notes that the "proposal is limited to adapting the Single

Common Market Organisation to new requirements introduced by the Lisbon Treaty” and therefore “the existing Union approach is not affected by this Proposal”.

Given the general nature of the statements contained in the Explanatory Memorandum concerning the compliance of the proposal with the principle of subsidiarity, it cannot be deemed to be in compliance with the requirements of Article 5 of Protocol No. 2, which requires a detailed statement to be provided, giving reasons (substantiated by qualitative or quantitative indicators) why the matter in question is regulated by UE bodies, so as to make it possible to examine legality of the legal act concerned.

In the absence of detailed substantiation of compliance of the proposed Regulation with the principle of subsidiarity, the Sejm, as the chamber of the national parliament exercising scrutiny in this area, is unable to evaluate the Commission’s arguments in support of declaring the proposal consistent with that principle. Having regard of the above, it is concluded that the Commission, failing to meet the requirement of detailed justification of compliance of the proposal with the principle of subsidiarity, has breached the principle of subsidiarity.