

# 2010/11:MJU7 Distribution of food products to the most deprived persons in the Union

## Reasoned opinion from the Swedish Parliament

In the light of the examination of the application of the principle of subsidiarity to the Commission's proposal for a regulation of the European Parliament and 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 Final, presented in the Committee on Environment and Agriculture's Statement 2010/11:MJU7 Distribution of food products to the most deprived persons in the Union, the Riksdag (Swedish Parliament) considers that the current proposal conflicts with the principle of subsidiarity.

The Riksdag would like to emphasise that it is positive to the development of cohesion between different regions in the EU by reducing economic and social disparities in the Union. The structural funds are, for example, available for this purpose, as laid down in Article 153 of the Treaty on the Functioning of the European Union. However, it is important to stress that there is a great difference between developing regions by reducing economic disparities in the Union and distributing food products to the most deprived persons. The latter is one means of many of helping individuals with economic difficulties, regardless of the region they are in.

The Riksdag recalls that, according to Article 5 of the Treaty on European Union, the Union may only act within the framework of the competence conferred upon the Union by the member states in the treaties to achieve the goals established therein. Any competences not conferred upon the Union in the treaties shall remain with the member states. It should also be born in mind that the Court, on several occasions, has maintained that the choice of legal basis for a legislative act within the Community is to be made on the basis of objective criteria, which may be the subject of a judicial examination by a court. These criteria include the purpose and content of the legislative act.

Regarding the current proposal, the Riksdag notes that it is intended to amend a scheme for use of intervention stocks that was introduced over 20 years ago. The scheme is set out in Article 27 of the regulation concerning the common organisation of agricultural markets (Regulation (EC) No.1234/2007), under the heading *Distribution of intervention stocks*. The reason the scheme was introduced is found in opening clause 18 of the said regulation, which states the following:

Due to its intervention stocks of various agricultural products, the Community has the potential means to make a significant contribution towards the well-being of its most-deprived citizens. It is in the

Community interest to exploit this potential on a durable basis until the stocks have been run down to a normal level by introducing appropriate measures.

As pointed out by the Commission, the Riksdag further notes that as a result of considerable changes in the common agricultural policy in recent years and the fact that the primary goal is no longer to increase productivity but to increase sustainability in the long term, the stocks have been dramatically reduced. The Commission therefore proposes that a new system for the distribution of food stuffs to the most deprived persons be introduced, a system that is not dependent on the existence of suitable intervention stocks.

With the amendments proposed by the Commission, the Riksdag considers that the purpose of the action set out in the current proposal, i.e., distribution of food products to the most deprived persons in the Union, has shifted from having been a means of making use of intervention stocks to creating a system for the acquisition of nutritious food products to the most deprived persons in the Union. The Riksdag notes that the action has thus shifted from having been an agricultural policy measure to a social policy measure. The Riksdag therefore considers that the legal basis for the proposal is inaccurate, as neither the purpose nor the content of the proposed legislative act are encompassed by the goals of the common agricultural policy. However, a legislative act with the primary social-policy purpose of providing food products to the most deprived persons can be considered to be encompassed by the Union's goals. Thus the Riksdag notes that, like the Council's legal services, the Commission could choose Article 352 of the Treaty on the Functioning of the European Union to support this proposal. At the same time, the Riksdag recalls that according to Article 352:

If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.

The Riksdag considers that the proposed action can, in no way, be considered necessary for achieving any of the objectives set out in the Treaty. On the contrary, the Riksdag considers that the proposed action conflicts with the principle of subsidiarity, and as a consequence that there is no basis for adopting provisions at Union level on distribution of food products to the most deprived persons in the Union.

According to the Treaties, social policy is primarily the responsibility of the member states. This applies in particular as concerns support to the individuals who can be considered most deprived in the Union. According to Article 4 of the Treaty on European Union, the Union and member states shall have shared competence in the field of social policy, as regards aspects laid down in the Treaty. The Riksdag notes that these aspects primarily concern the free movement of labour. Each member state is responsible for the fight against poverty and social exclusion, and for the task of providing support to

the most deprived persons in society. This is a responsibility that is often shared with authorities at the regional and local levels. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states, either at central level or at regional and local level, and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Union level. The Riksdag cannot find any reason why the objectives of the planned action in the current proposal could be better achieved at Union level.

To summarise, it may be noted that the only reason the food security programme was introduced 20 years ago was the desire to make the best possible use of existing intervention stocks at the time. This reason no longer applies today as the intervention stocks have been more or less depleted. Neither the purpose nor the content of the proposed legislative act can be said to be included in the goals of the common agricultural policy. The legal basis of the proposal is therefore inaccurate. The Riksdag further considers that the objectives of the planned action can be sufficiently achieved by the member states, at central or regional and local level, and that the proposal therefore conflicts with the principle of subsidiarity.