

Statement 2011/12:MJU8 Distribution of food products to the most deprived persons in the Union – Appendix 2

Reasoned opinion of the Riksdag

In view of the examination of the application of the principle of subsidiarity to the Commission's 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, COM (2011) 634, as presented in the Statement 2011/12:MJU8 from the Committee on Environment and Agriculture, the Riksdag considers that the current proposal conflicts with the principle of subsidiarity.

First, the Committee wishes to remind the Commission of its earlier comments on distribution of food products to the most deprived persons in the Union in response to the Commission's proposal COM (2010) 486 final and COM (2010) 799 final as presented in the Statements from the Committee on Environment and Agriculture 2010/11:MJU7 and 2010/11:MJU21. The Committee considered that both proposals were in breach of the principle of subsidiarity as regards the parts concerning distribution of food products to the most deprived persons in the Union. The Riksdag notes that neither of the proposals has contained any reasoning around the question of the principle of subsidiarity and the food security programme. The Riksdag finds it remarkable that the Commission fails to fulfil this obligation, which is of great importance in ensuring broad democratic confidence in the EU decision-making process.

The Riksdag questions the Commission's interpretation that market purchases for distribution to the most deprived persons can be considered to stabilise the market and ensure that supplies reach consumers at reasonable prices in accordance with Article 39.1 of the Treaty, as put forward by the Commission in the proposal. In the opinion of the Riksdag, the Commission's proposal means that the goals of the common agricultural policy are clearly being extended to include social policy measures that will be funded by means of budget funds intended for agricultural policy. This opinion is also in line with what the European Court set out in case T-576/08. The extended legal basis has no impact on the Riksdag's opinion as the Riksdag does not consider Article 175.3 to be the correct legal basis for the proposal either. As set out in the Riksdag's earlier statement 2010/11:MJU7, it is important to emphasise 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 in the Union. The latter is one means of many of helping individuals with economic difficulties, regardless of the region they are in. It is thus a social policy measure which, although it is important, belongs to the responsibility of the individual member states. The Riksdag is therefore highly critical of the Commission's proposal. This is why the Riksdag both stresses and repeats the opinions previously presented in its statements on the same issue.

The Riksdag recalls once again 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 borne 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 on the distribution of food products to the most deprived persons in the Union, 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 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 measures have thus changed from having been agricultural policy measures to social policy measures. The Riksdag therefore considers that the dual legal basis on which the proposal rests is incorrect, as neither the purpose nor the content of the proposed legislative act are covered by the goals of the common agricultural policy or the goals economic, social and territorial cohesion enshrined in Article 174 of the Treaty on the Functioning of the European Union. The fact that neither the purpose nor the content of the proposed legislative act can be covered by the above mentioned goals is clearly indicated in report no. 6 from the European Court of Auditors 'European Union food aid for deprived persons: an assessment of the objectives, the means and the methods employed'..

Still, 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. According to the Treaties, however, social policy is primarily the responsibility of the member states. This applies in particular in connection with 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.

In summary, the Riksdag notes 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. In the opinion of the Riksdag, the Commission's proposal means that the goals of the common agricultural policy are clearly being extended to include social policy measures that will be funded by means of budget funds intended for agricultural policy. Neither the purpose nor the content of the proposed legislative act can be said to be included in any of the goals of the common agricultural policy in Article 39 of the Treaty on the Functioning of the European Union, nor in any of the goals concerning economic, social and territorial cohesion enshrined in Article 174 of the same Treaty. The legal basis of the proposal is therefore incorrect. Regardless of the choice of legal basis, the goals of the planned action, which are mainly to do with social policy, can be sufficiently achieved by the member states, at the central, regional or local levels. The Riksdag thus considers that the proposal conflicts with the principle of subsidiarity.

