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30 November 2011

The President
European Commission
Rue de la Loi 200
B-1049 Brussels
Belgium

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

23rd Report of Session 2010–12

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

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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.

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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)

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The Members of the European Union Committee are:

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Lord Carter of Coles

Lord Dear

Lord Dykes

Lord Foulkes of Cumnock

Lord Hannay of Chiswick

Lord Harrison

Baroness Howarth of Breckland

Lord Jopling

Lord Maclennan of Rogart

Baroness O'Cathain

Lord Plumb

Lord Richard

Lord Roper (Chairman)

The Earl of Sandwich

Lord Teverson

Lord Tomlinson

Lord Trimble

Baroness Young of Hornsey

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

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,¹ the House of Lords submitted a reasoned opinion in response to the Commission's previous proposal on this subject,² 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) judgment³ 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 1987,⁴ excess stocks of food purchased into public stores under the intervention mechanisms of the Common Agricultural Policy (CAP) have been

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

² 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

³ Case T-576/08 (13 April 2011)

⁴ 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.⁵ 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”.⁶

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 Assessment⁷ accompanying the Commission’s original 2008 proposal⁸ 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

⁵ COM(2011)634 p.2

⁶ Ibid p.3

⁷ SEC(2008)2437 p.3

⁸ 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

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/>

Évaluation de la subsidiarité : distribution de denrées alimentaires aux personnes démunies

15054/11 Proposition modifiée de la Commission européenne relative à un règlement du Parlement Européen et du Conseil modifiant les règlements du Conseil en ce qui concerne la distribution de denrées alimentaires aux personnes les plus démunies de l'Union

Recommandation

1. Nous recommandons que la Chambre des Lords (House of Lords) soumette l'avis motivé présenté ci-dessous, d'après lequel la proposition de règlement ne serait pas conforme au principe de la subsidiarité, et le transmette aux Présidents du Parlement européen, du Conseil et de la Commission, conformément aux dispositions des Traités de l'UE.

Réserve d'examen

2. Le présent rapport ne constitue pas l'achèvement de notre examen de la présente proposition.

Notre rapport

3. Le présent rapport a été élaboré par la sous-commission de l'Agriculture, des Pêches et de l'Environnement (Agriculture, Fisheries and Environment Sub-Committee) pour l'UE, dont la composition est détaillée en annexe.

Avis motivé du 3 novembre 2010

4. Le 3 novembre 2010, pour les raisons énoncées dans un rapport établi par la commission de contrôle des affaires de l'Union européenne (European Union Committee), la Chambre des Lords a soumis un avis motivé en réponse à la proposition précédente de la Commission sur ce sujet, dans lequel elle émettait l'objection que la proposition n'était pas conforme au principe de la subsidiarité. Cette proposition a depuis été retirée suite à un arrêt de la Cour de justice de l'Union européenne (CJUE) jugeant que l'achat sur le marché de denrées alimentaires à l'intention des personnes démunies ne pouvaient se faire sous les auspices de la législation agricole. Comme expliqué ci-dessous dans notre nouvel avis motivé, la Commission a alors revu sa proposition pour ajouter l'article 175(3) TFUE – concernant la cohésion économique, sociale et territoriale – afin de constituer une double base juridique avec les articles 42 et 43(2) TFUE, qui se rapportent à l'agriculture. Le fond et l'objectif de la mesure restent, à notre avis, inchangés.

Avis motivé

5. Depuis 1987, des stocks d'aliments excédentaires achetés auprès d'entrepôts publics au titre des mécanismes d'intervention de la politique agricole commune (PAC) sont mis à la disposition des personnes les plus démunies de l'Union. En 2010, plus de 18 millions de personnes ont bénéficié de ce régime de soutien. Suite à la réforme de la PAC et à la réduction des stocks d'intervention qui en a résulté, le programme est devenu de plus en plus tributaire des achats sur le marché pour l'approvisionnement en denrées alimentaires. La Commission spécifie dans son mémoire explicatif

que le « cadre juridique du régime de distribution de denrées alimentaires doit être adapté à cette nouvelle réalité ».

6. La proposition de la Commission reposerait sur les points suivants :

- officialisation de la disposition stipulant que les produits alimentaires fournis au titre du régime de soutien proviennent à la fois des stocks d'intervention et du marché ;
- dotation d'une double base juridique alliant les objectifs agricoles à la cohésion économique, sociale et territoriale ;
- élargissement de l'éventail des produits pouvant être achetés afin de prendre en considération l'équilibre nutritionnel des produits et la facilité avec laquelle ils se prêtent à la distribution, en permettant aux Etats membres d'accorder la préférence aux produits alimentaires originaires de l'Union ;
- maintien des plans annuels actuels ;
- maintien du financement à 100 % des coûts admissibles par l'UE avec un plafonnement annuel à 500 millions d'EUR ; et
- renforcement des obligations en matière de communication des données, aussi bien pour les pays participants que pour la Commission.

7. En dépit de l'exigence stipulée à l'article 5 du protocole (n° 2) sur l'application des principes de subsidiarité et de proportionnalité, ni la proposition ni le mémoire explicatif de la Commission ne comportent de motivation explicite au regard du principe de la subsidiarité. Toutefois, au vu du résumé de l'analyse d'impact qui accompagnait la proposition originale de 2008 de la Commission sur ce sujet et des attendus énoncés dans la proposition actuelle, la motivation de la Commission reposerait sur les points suivants :

- le programme vise à lutter contre les problèmes de faim, de privation, de pauvreté et d'exclusion sociale dans l'esprit du Traité, qui spécifie que l'objectif de l'Union est de « promouvoir le bien-être de ses peuples » et de « promouvoir [...] la solidarité entre les Etats membres » (article 3, TUE) ;
- cette action spécifique est nécessaire pour atteindre l'objectif de renforcement de la cohésion sociale de l'Union ;
- le programme contribue à la réalisation des objectifs de la PAC en matière de stabilisation des marchés et de garantie de prix raisonnables pour les livraisons aux consommateurs ;
- l'aide sociale fournie par les autorités des Etats membres porte rarement sur l'accès à la nourriture ; et
- le programme est susceptible de déclencher l'action d'un Etat membre et d'aider les organisations caritatives ainsi que la société civile à développer leurs propres initiatives pour garantir le droit à l'alimentation de tous les citoyens de l'UE.

8. Même si la lutte contre les problèmes de faim, de privation, de pauvreté et d'exclusion sociale et le renforcement de la cohésion sociale de l'Union peuvent dans une certaine mesure être considérés comme étant dans l'esprit des Traités, il n'en demeure pas moins que l'esprit des Traités peut être respecté sans action de l'Union, et qu'il peut être promu par l'Union sans passer par la voie législative. Les Etats membres sont capables d'agir de manière individuelle pour lutter contre les problèmes qui ont été soulignés ; l'opération parallèle d'un système national et du régime de l'UE dans un Etat membre pourrait en fait prêter à confusion.

9. L'importance de la contribution de ces achats sur le marché aux objectifs de la PAC est discutable, compte tenu des nombreux facteurs qui interviennent, parmi lesquels : la quantité de nourriture achetée sur le marché ; toute diminution d'achats par les personnes démunies qui sont éligibles pour le régime ; et le prix payé. En tout état de cause, il n'y a pas de raison que l'Union soit mieux placée que les Etats membres pour organiser l'achat de produits sur le marché.

10. Le manquement des Etats membres à agir ne constitue pas en soi une raison d'agir pour l'Union. Le caractère volontaire du régime laisse également à penser qu'il n'existe pas de nécessité démontrable d'agir, en particulier à l'échelle de l'Union. Tous les Etats membres gardent bien entendu un intérêt dans la proposition puisque celle-ci est financée par le budget de l'Union.

11. En conclusion, il ne semble pas qu'il y ait d'argument convaincant laissant à penser que l'Union soit mieux placée que les Etats membres pour assurer une distribution de denrées alimentaires au profit de ses citoyens les plus démunis.