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The President
European Commission
rue de la Loi 200
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19 December 2012

Dear Mr President

15865/12: Commission proposal for a Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived

On 19 December 2012 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 on the Fund for European Aid to the Most Deprived (15865/12) does not comply with the principle of subsidiarity, for the reasons set out in the Sixth Report of the European Union Committee (HL Paper 87); 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.

I am writing in similar terms to the Presidents of the Council and the European Parliament.

Yours sincerely

David Beamish

David Beamish
Clerk of the Parliaments



HOUSE OF LORDS

European Union Committee

6th Report of Session 2012–13

**Subsidiarity
Assessment: Fund
for European Aid to
the Most Deprived**

Report

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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.

The Committee has six Sub-Committees, which are:

Economic and Financial Affairs (Sub-Committee A)
Internal Market, Infrastructure and Employment (Sub-Committee B)
External Affairs (Sub-Committee C)
Agriculture, Fisheries, Environment and Energy (Sub-Committee D)
Justice, Institutions and Consumer Protection (Sub-Committee E)
Home Affairs, Health and Education (Sub-Committee F)

Our Membership

The Members of the European Union Committee are:

Lord Boswell of Aynho (Chairman)	Lord Hannay of Chiswick	The Earl of Sandwich
Lord Bowness	Lord Harrison	Baroness Scott of Needham Market
Lord Cameron of Dillington	Lord MacLennan of Rogart	Lord Teverson
Lord Carter of Coles	Lord Marlesford	Lord Tomlinson
Lord Dear	Baroness O'Cathain	Lord Trimble
Baroness Eccles of Moulton	Lord Richard	Baroness Young of Hornsey
Lord Foulkes of Cumnock		

The Members of the Sub-Committee on the Internal Market, Infrastructure and Employment, which conducted this inquiry, are:

Lord Brooke of Alverthorpe	Lord Fearn	Baroness O'Cathain (Chairman)
Baroness Buscombe	Lord Haskel	Baroness Scott of Needham Market
Lord Clinton-Davis	Lord Kakkar	Baroness Valentine
Lord Elton	Earl of Liverpool	Lord Wilson of Tillyorn

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 Sub-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 Nicole Mason (Clerk), Paul Dowling (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: Fund for European Aid to the Most Deprived

15865/12: Proposal for a Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived

Recommendation

1. We recommend that the House of Lords should issue the reasoned opinion set out below to the effect that the draft 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 European Union (EU) Treaties¹, before the expiry of the prescribed period on 26 December 2012.

Scrutiny history

2. In 1987 the EU created a food distribution programme for the most deprived people to make use of agricultural surpluses, which might otherwise have been destroyed. It makes the surpluses available to Member States wishing to use them to distribute food to the poorest members of society. It will come to an end after implementation of the 2013 programme.
3. The Committee examined *13435/10: 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 2 November 2010 and concluded it did not comply with the principle of subsidiarity. It proposed a reasoned opinion, which the House agreed on 3 November 2010, concluding that there was no compelling argument to suggest that the EU is better placed than Member States to ensure a food supply to its most deprived citizens.² The proposal was subsequently withdrawn after a Court of Justice of the European Union judgment³ that purchases from the market for deprived persons could not be made under the auspices of agricultural legislation.
4. The Committee examined a similar proposal the following year: *15054/11: Amended 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*. The Committee again concluded that it did not comply with the principle of subsidiarity, and again proposed a reasoned opinion. The House agreed the reasoned opinion on 28 November 2011, concluding that there remained no compelling argument to suggest that the EU is better

¹ Article 5(3) of the Treaty on European Union and Article 6 of the Protocol on the application of the principles of subsidiarity and proportionality

² European Union Committee, 2nd Report (2010–12): *Subsidiarity assessment: distribution of food products to deprived persons* (HL Paper 44): <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldcom/44/44.pdf>

³ Case T-576/08 (13 April 2011)

placed than Member States to ensure a food supply to its most deprived citizens.⁴ The proposal was nevertheless adopted by Member States, which meant that the life of the scheme was extended to the end of 2013.⁵

Scrutiny reserve

5. This report was prepared by the Internal Market, Transport and Infrastructure Sub-Committee (Sub-Committee B) whose members are listed in the Appendix. This report does not complete our scrutiny of this proposal.

Reasoned opinion

6. We share the Commission's concerns about EU citizens suffering from deprivation, and recognise the negative impact of the economic crisis. However, this report focuses on whether the *Proposal for a Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived* satisfies the principle of subsidiarity. This principle provides that, in policy areas which do not fall within the exclusive competence of the European Union, but where competence is shared with the Member States, the Union can act "only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States".⁶ We have come to the conclusion that the proposal is inconsistent with the principle.
7. The current proposal would establish a new instrument for 2014–2020 called the Fund for European Aid to the Most Deprived ('the Fund') to address food deprivation, homelessness and material deprivation of children. It aims to complement other EU instruments to promote social cohesion, especially the European Social Fund, and contribute to achieving the Europe 2020 strategy's objective of reducing by at least 20 million the number of people in or at risk of poverty and social exclusion.
8. The Fund proposes to achieve its objectives by supporting national schemes which provide nonfinancial assistance to the most deprived persons through partner organisations. It may also support accompanying measures, complementing material support, to contribute to the social reintegration of the most deprived persons. It will also create a Commission-run platform for the exchange of experience, capacity building, networking and the dissemination of information.
9. The Fund would co-finance up to 85% of the costs of the activity. A Member State with temporary budgetary difficulties would be able to request that interim and final payments be increased by ten percentage points above the agreed co-financing rate for its programme. It would be implemented through the cohesion policy model on the basis of shared management. There would be one seven-year operational programme per Member State covering 2014 to 2020. The Member State would submit its operational programme to the European Commission which would assess it and make observations. Provided that its observations had been satisfactorily taken into

⁴ European Union Committee, 23rd Report (2010–12): *Subsidiarity assessment: distribution of food products to deprived persons* (HL Paper 217):

<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldcom/217/217.pdf>

⁵ The Commission's Explanatory memorandum records that seven Member States were against continuing the MDP beyond 2013, while thirteen Member States were in favour.

⁶ Article 5(3) of the Treaty on European Union.

account, the Commission would adopt the programme by means of an implementing act.

10. The Commission has provided little by way of justification for the compliance of its proposal with the principle of subsidiarity. This important principle is not specifically addressed in its Explanatory Memorandum and recital (42) of the proposal, addressing this point, is merely formulaic. Some indication of the Commission's justification can be derived from its Impact assessment, which includes, at section 2.7, a section on "EU added-value". Here the Commission identifies poverty and social exclusion as major obstacles to the achievement of the Europe 2020 objectives. It also identifies the provision of food and other temporary assistance as benefitting the dignity and social capital of the most deprived persons. However, the only direct justification for EU action is "the level and nature of poverty and social exclusion in the Union, further aggravated by the economic crisis, and uncertainty about the ability of all member States to sustain social expenditure and investment at levels sufficient to ensure that social cohesion does not deteriorate further and that the objectives and targets of the Europe 2020 strategy are achieved."
11. We believe that such uncertainty can be met by action through the existing EU cohesion programmes (from which money would have to be diverted to fund this scheme), without burdening Member States and the bodies who are intended to implement the distribution programmes with the extra administrative obligations introduced by this proposal.
12. In our view, no convincing argument has been put forward by the Commission that the proposal meets the principle of subsidiarity.

APPENDIX: SUB-COMMITTEE ON THE INTERNAL MARKET, INFRASTRUCTURE AND EMPLOYMENT

The Members of the Sub-Committee which conducted this inquiry were:

Lord Brooke of Alverthorpe
Baroness Buscombe
Lord Clinton-Davis
Lord Elton
Lord Fearn
Lord Haskel
Lord Kakkar
The Earl of Liverpool
Baroness O'Cathain (Chairman)
Baroness Scott of Needham Market
Baroness Valentine
Lord Wilson of Tillyorn

Declaration of Interests

Lord Brooke of Alverthorpe
No relevant interests

Baroness Buscombe
No relevant interests

Lord Clinton-Davis
No relevant interests

Lord Elton
No relevant interests

Lord Fearn
No relevant interests

Lord Haskel
No relevant interests

Lord Kakkar
Membership of the APPG Global Health
Membership of the APPG Dalits

The Earl of Liverpool
No relevant interests

Baroness O'Cathain
No relevant interests

Baroness Scott of Needham Market
No relevant interests

Baroness Valentine
No relevant interests

Lord Wilson of Tillyorn
No relevant interests

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)
Lord Bowness
Lord Dear
Baroness Eccles of Moulton
Lord Foulkes of Cumnock
Lord Harrison
Lord Maclennan of Rogart
Lord Marlesford
Baroness O’Cathain
Lord Richard
Baroness Scott of Needham Market
Lord Teverson
Lord Tomlinson
Lord Trimble
Baroness Young of Hornsey

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/>



Analyse de subsidiarité : Fonds européen d'aide aux plus démunis

Proposition n° 15865/12 de règlement du Parlement européen et du Conseil relatif au Fonds européen d'aide aux plus démunis

Recommandation

1. Nous recommandons que la Chambre des Lords présente l'avis motivé exposé ci-dessous selon lequel le projet de règlement n'est pas conforme au principe de subsidiarité et l'adresse aux Présidents du Parlement européen, du Conseil et de la Commission, conformément aux dispositions des traités¹ de l'Union européenne (UE) avant l'expiration, le 26 décembre 2012, du délai imparti.

Historique de l'examen

2. En 1987, l'UE a créé un programme de distribution de denrées alimentaires en faveur des personnes les plus démunies afin d'utiliser les excédents agricoles susceptibles, sinon, d'être détruits. Le programme met les excédents à la disposition des États membres souhaitant les utiliser pour distribuer des denrées alimentaires aux membres les plus pauvres de la société. Il finira après la mise en œuvre du programme 2013.
3. La commission a examiné la proposition n° 13435/10 de règlement du Parlement européen et du Conseil modifiant les règlements (CE) n° 1290/2005 et (CE) n° 1234/2007 du Conseil en ce qui concerne la distribution de denrées alimentaires aux personnes les plus démunies de l'Union, le 2 novembre 2010, et a conclu qu'elle ne respectait pas le principe de subsidiarité. La commission a proposé un avis motivé, que la Chambre a adopté le 3 novembre 2010, concluant qu'il n'y avait pas d'argument convaincant suggérant que l'UE soit en position, plus que les États membres, d'assurer un approvisionnement alimentaire à ses citoyens les plus démunis². La proposition a ensuite été retirée à la suite d'un arrêt³ de la Cour de justice de l'Union européenne statuant que les achats sur le marché destinés aux personnes démunies ne pouvaient être effectués sous les auspices de la législation agricole.
4. La commission a examiné une proposition semblable l'année suivante : la proposition modifiée n° 15054/11 de règlement du Parlement européen et du Conseil modifiant les

Article 5, paragraphe 3, du traité sur l'Union européenne et article 6 du protocole sur l'application des principes de subsidiarité et de proportionnalité

Commission de l'Union européenne, 2e rapport (2010-12) « Subsidiarity assessment: distribution of food products to deprived persons », HL Paper 44, <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldcom/44/44.pdf>

Affaire T-576/08, arrêt du 13 avril 2011

règlements (CE) n° 1290/2005 et (CE) n° 1234/2007 du Conseil en ce qui concerne la distribution de denrées alimentaires aux personnes les plus démunies de l'Union. La commission a à nouveau conclu que la proposition n'était pas conforme au principe de subsidiarité et a à nouveau proposé un avis motivé. La Chambre a adopté l'avis motivé le 28 novembre 2011, concluant qu'il n'y avait toujours pas d'argument convaincant suggérant que l'UE soit en position, plus que les États membres, d'assurer un approvisionnement alimentaire à ses citoyens les plus démunis⁴. La proposition a néanmoins été adoptée par les États membres ce qui a eu pour effet de prolonger la durée du dispositif jusqu'à la fin de l'année 2013.⁵

Réserve d'examen

5. Ce rapport a été élaboré par la sous-commission Marché intérieur, transport et infrastructure (sous-commission B) dont la liste des membres figure en annexe. Le présent rapport ne signifie pas que notre examen de cette proposition est achevé.

Avis motivé

6. Nous partageons les préoccupations de la Commission au sujet des citoyens de l'UE vivant dans le dénuement et reconnaissons que la crise économique a eu un effet négatif. Cependant, l'objet du présent rapport est de déterminer si la proposition de règlement du Parlement européen et du Conseil sur le Fonds européen d'aide aux plus démunis satisfait au principe de subsidiarité. Ce principe prévoit que, dans les domaines qui ne relèvent pas de la compétence exclusive de l'Union européenne mais où la compétence est partagée avec les États membres, l'Union peut intervenir « seulement si, et dans la mesure où, les objectifs de l'action envisagée ne peuvent pas être atteints de manière suffisante par les États membres »⁶. Nous sommes arrivés à la conclusion que la proposition n'est pas compatible avec ce principe.
7. La proposition actuelle projette d'instituer un nouvel instrument pour la période allant de 2014 à 2020 appelé Fonds européen d'aide aux plus démunis (le Fonds) pour répondre à la privation alimentaire, au sans-abrisme et au dénuement matériel des enfants. Il a pour objectif de compléter d'autres instruments de l'UE de promotion de la cohésion sociale, en particulier le Fonds social européen, et de contribuer à la réalisation de l'objectif de la stratégie Europe 2020 de réduire d'au moins 20 millions le nombre de personnes touchées ou menacées par la pauvreté et l'exclusion sociale.
8. Le Fonds se propose de remplir ses objectifs en appuyant des dispositifs nationaux qui apportent une assistance non financière aux personnes les plus démunies par le biais

Commission de l'Union européenne, 23e rapport (2010–12) « Subsidiarity assessment: distribution of food products to deprived persons », HL Paper 217, <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldcom/217/217.pdf>

L'exposé des motifs de la Commission mentionne que sept États membres étaient contre le maintien du programme d'aide aux plus démunis au-delà de 2013, tandis que treize États membres étaient pour.

Article 5, paragraphe 3, du traité sur l'Union européenne.

d'organisations partenaires. Le Fonds peut également soutenir des mesures d'accompagnement, venant en complément de l'aide matérielle, afin de contribuer à la réintégration sociale des personnes les plus démunies. Il créera aussi une plateforme administrée par la Commission destinée à favoriser l'échange d'expériences, le renforcement des capacités, le travail en réseau et la diffusion de l'information.

9. Le Fonds cofinancerait jusqu'à 85 % des coûts de l'action. Un État membre connaissant temporairement des difficultés budgétaires serait en mesure de demander que les paiements intermédiaires et le paiement du solde soient majorés de dix points de pourcentage au-dessus du taux de cofinancement convenu pour son programme. Le Fonds serait mis en place selon le modèle de la politique de cohésion sur la base d'une gestion partagée. Il y aurait un seul programme opérationnel sur sept ans par État membre couvrant la période de 2014 à 2020. L'État membre soumettrait son programme opérationnel à la Commission européenne qui l'évaluerait et formulerait des observations. À condition que ses observations aient été prises en compte de manière satisfaisante, la Commission adopterait le programme par voie d'acte d'exécution.
10. La Commission a fourni peu d'éléments justifiant de la conformité de sa proposition au principe de subsidiarité. Son exposé des motifs ne traite pas spécifiquement de cet important principe et le considérant 42 de la proposition, qui concerne ce point, n'est que pure formule. Il est possible de déduire en partie la justification de la Commission de son Analyse d'impact, qui comporte dans la section 2.7 un passage sur la « valeur ajoutée par l'UE ». La Commission y pointe la pauvreté et l'exclusion sociale comme des obstacles majeurs à la réalisation des objectifs d'Europe 2020. Elle avance aussi que la fourniture de denrées alimentaires et d'autres types d'assistance transitoire est bénéfique à la dignité et au capital social des personnes les plus démunies. Néanmoins, la seule justification directe de l'intervention de l'UE est « l'ampleur et la nature de la pauvreté et de l'exclusion sociale dans l'Union, qu'aggrave encore la crise économique, et l'incertitude qui pèse sur la capacité de tous les États membres à maintenir les dépenses sociales et l'investissement à des niveaux suffisants pour éviter que la cohésion sociale ne continue de se détériorer et pour atteindre les objectifs de la stratégie Europe 2020 ».
11. Nous sommes d'avis qu'il est possible de répondre à cette incertitude en agissant par l'intermédiaire des programmes existants de cohésion de l'UE (dont des fonds devraient être redirigés pour financer ce dispositif) sans charger les États membres et les organes dont la mission serait de mettre en œuvre les programmes de distribution du fardeau des obligations administratives supplémentaires introduites par cette proposition.
12. Nous estimons qu'aucun argument convaincant n'a été avancé par la Commission sur la conformité au principe de subsidiarité de la proposition.

