



European and External Affairs Committee
EUR(3)-04-11: Paper 12
8 March 2011

Subsidiary Assessment: Distribution of food products to deprived persons.

1. On 4 October 2010 the UK Government published an Explanatory Memorandum (EM) on Draft Instrument 13453/10 of 20 September 2010 which concerned the revision of existing regulations on the distribution of food products to the most deprived persons in the Union.¹
2. The scheme to distribute food products to deprived person in the Union was introduced in 1987 and was originally intended to rundown the stockpiles of food products that had be created under the auspices of the Common Agricultural Policy (CAP). That is where the Commission acted to buy up surplus food stocks and thus support food prices in the EU market. Surplus food stocks where then distributed on the basis of Member States requests via charities or other competent bodies to deprived persons. As a result of subsequent reforms to the CAP which have made the policy more market orientated the amount of intervention stocks of food held by the Union has reduced significantly. This has led the Union increasingly towards the purchasing of products on the open market to fulfil Member State demand under the scheme. The scheme is **voluntary and Member States** are not required to participate. The UK Government **does not support the scheme and has not participated in it since the mid-1990s.**
3. Given the re-orientation of the scheme away from the use of intervention food stocks Draft Instrument 13453/10 of 20 September 2010 proposed to
 - formalise the provision of CAP funds to be used to purchase goods not just from intervention stocks but also from the open market;
 - widen the range of goods that can be purchased in order to take into account nutritional balance and sustainability for distribution;
 - establish three-year programmes instead of the current annual rounds to facilitate longer-term planning and;
 - introduce co-financing by participating Member States at a minimum of 25 per cent (10 per cent for cohesion countries) of eligible costs with an annual ceiling of €500 for co-financing from the EU budget.²

¹ EM13435/10- received 5 October 2010

² European Commission, [*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.*](#) COM(2010) 486 Final, [Accessed 17 February 2010]



4. The EM published by the UK Government on this draft instrument expressed concern about the subsidiarity impacts of the proposals and stated:

Although the proposal does not increase the ambit of Community law, the Government remains unconvinced as to the merits or appropriateness of this proposal. We consider that social measures are a matter for Member States and that measures to assist the most needy members of society would be more properly and efficiently delivered through domestic social programmes that take account of the prevailing situation and available funding in individual countries.³

5. No comments or references were made in the EM from the Welsh Government or other devolved administrations. A note on the EM was provided to the Assembly European and External Affairs Committee on 14 October 2010 as the EM had been flagged up by the House of Lords.
6. The House of Lords Sub-Committee on Agriculture, Fisheries and Environment (Sub-Committee D) considered the Draft Instrument and the UK Government EM in its meeting on 20 October 2010 and published a subsidiarity assessment on the Instrument on 28 October 2010.⁴ In its subsidiarity assessment the House of Lords Sub-committee concluded that the House of Lords **should issue a reasoned opinion to the effect that the proposed Regulation did not comply with the principle of subsidiarity** and that this opinion should be sent to the Presidents of the European Parliament, the Council and the Commission.
7. The House of Lords Sub-committee made this recommendation as it concluded that the regulation no longer contributed to the market objectives of the CAP, that inequalities between Member States are dealt with through cohesion policy and that given the voluntary nature of the scheme it suggests that there is no demonstrable need for Community Action. The Sub-committee's subsidiarity assessment stated:

In conclusion, there appears to be no compelling argument to suggest the Union is better placed than Member States to ensure a food supply to its most deprived citizens.⁵
8. The House of Lords notified the European Commission of its reasoned opinion in a letter sent to the President of the European Union on 3 November 2010.
9. Following on from this, the European Commission has decided that this draft instrument and two others on marketing standards and contractual relations in the milk and milk products sector **should be integrated into a new Draft Instrument 5084/11 of 10 January 2011, the Single CMO Regulation.**
10. The UK Government therefore published a **new EM in January 2011** in which it continued to express concern about the subsidiarity impacts of the regulation regarding the distribution of foods to deprived persons in the Union. The EM stated:

³ EM13453/10- received 5 October 2010

⁴ European Union Committee, *Subsidiarity assessment: distribution of food products to deprived persons*, House of Lords Paper 44, Session 2010-11, [accessed 17 February 2011]

⁵ *ibid.*



..the Government would still have concerns that this measure (insofar as it does not use intervention stocks) infringes the principle of subsidiarity. This is because the Government considers that the provision of aid in these circumstances is essentially a social measure, more properly and appropriately dealt with by Member States themselves than at an EU level.⁶

11. Subsequent to this the Scottish Parliament's Rural Affairs and Environment (REA) Committee considered the subsidiarity impacts of this new Draft instrument, 5084/11. The Committee received evidence from the Scottish Government who noted its support for the subsidiarity concerns outlined by the UK Government in its EM (detailed in para.9) that the proposals in relation to surplus food stocks do not appear to comply with the subsidiarity principle.⁷
12. Having considered the evidence the REA Committee concluded that it agreed with the views expressed by both the UK and Scottish Governments, and the views of the House of Lords European Committee on the original proposal. The Committee therefore decided to write to the House of Lords European Committee ahead of its scrutiny of the new Draft Instrument outlining its views.
13. The House of Lords European Committee received a response from the Vice-President of the European Commission, Maroš Šefčovič, on 22 February 2011 to its letter sent in November 2010 setting out its reasoned opinion on original the draft regulation.
14. The letter from the Vice- President of the Commission responded to the concerns raised by the House of Lords in its subsidiarity assessment published on 28 October 2010. The Vice-President stated that the majority of the food distributed through the programme will continue to come from intervention food stocks and therefore will continue to meet the two CAP objectives of market stabilisation and ensuring that food supplies reach consumers at reasonable prices.
15. In addition, the Vice-President states that that Member States participating in the scheme are largely responsible for implementing the Programme and that the Union has no role in purchasing products from the market as this is entirely the responsibility of the participating Member States.
16. The House of Lords European Committee will consider the letter from the European Commission at a meeting to be held during March 2011. A copy of the letter is attached as an Annex to this paper.

⁶ EM5084/11- received 24 January 2011

⁷ [*Minutes of Rural Affairs and Environment Committee \(Scottish Parliament\)*](#), 4th Meeting 2011 (Session3), [accessed 17 February 2011]



MAROŠ ŠEFČOVIČ

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VICE-PRESIDENT OF THE EUROPEAN COMMISSION

Brussels, 22 FEB. 2011
C/2011/ 1084 final

Lord Roper
Chairman of the European Union
Select Committee
House of Lords

Dear Lord Roper,

I would like to thank you for forwarding the reasoned opinion of the House of Lords on the Commission 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 the distribution of food products to the most deprived persons in the Union {COM (2010) 486 final}.

The report notes the increasing reliance of this scheme on market purchases following the decline in intervention stocks and emphasises its social dimension, claiming that this falls within the remit of Member States. It states that there is no compelling argument to suggest that the European Union is better placed than Member States to ensure a food supply to its most deprived citizens and, building on this, concludes that the proposed Regulation does not comply with the principle of subsidiarity.

In responding to your report, I would like to draw your attention to the following elements:

First, the Commission takes very seriously the Treaty obligation (article 5 of Protocol 2) to motivate its proposals in light of the subsidiarity and proportionality principles. In preparation of this proposal the Commission carried out an impact assessment in 2008¹, in which it analysed subsidiarity in terms of value added and the necessity for the intervention by the EU in this field.

The purpose of the European Programme of Food Aid for the Most Deprived Persons is two-fold. While it certainly seeks to fulfil the Common Agricultural Policy's Treaty objective of ensuring that food reaches consumers at reasonable prices (in this case, at no charge) it also has a primary role in the disposal of public intervention stocks of agricultural products.

In fact, 87% of the resources devoted to food procurement in the programme's 2010 plan were sourced through intervention stocks. In the recently adopted plan for 2011, this share will rise to 97%.²

While the days of butter mountains and wine lakes are long gone, intervention remains an important market stabilisation tool, offering a safety net against price volatility. The management of intervention at EU level is entirely the responsibility of the European

¹ http://ec.europa.eu/agriculture/markets/freefood/fullimpact_en.pdf

² Commission Regulation (EU) No 945/2010

Commission. Under the aegis of the Common Agricultural Policy, the food aid programme for the most deprived offers the perfect foil for this mechanism and remains the single largest outlet for intervention stocks.

It is therefore the Commission's view that the proposal's merits lie in its dual contribution to two of the objectives of the Common Agricultural Policy as enshrined in the Treaty, namely, market stabilisation and ensuring that supplies reach consumers at reasonable prices. In this scheme, both goals go hand in hand and cannot be considered separately.

The 2008 impact assessment considered various options for the programme's future, ranging from the maintenance of the status quo to the termination of the programme.

The report on the impact assessment's work noted the scale of the food insecurity problem within the European Union. It emphasised that the food aid programme did not seek to replace or substitute private or national actions, but rather to complement and underpin them. It is our experience in many participating Member States, in particular those where no food distribution previously existed, that the initiation of the EU programme has had what could be described as a snowball effect, enabling the development of various types of locally-based social aid programmes.

This view was largely supported by the internet-based public consultation referred to in your report and the NGO community across participating Member States.

I would also like to emphasise the extent to which responsibility for implementing the Programme is delegated to the participating Member States, in recognition of the subsidiarity principle.

First, it is entirely the responsibility of the Member State concerned to identify the target population to which it wishes to direct the food aid. This they usually do in consultation with charities or public authorities with the appropriate local knowledge.

Second, the Commission agrees entirely with the report's statement (paragraph 8) that "there is no reason why the Union is better placed to organise the purchase of products from the market than Member States." I would emphasise that the Union has no role in purchasing products from the market; this is entirely the responsibility of the Member States.

Finally, it is true that social structures and support mechanisms for the most needy are widely divergent among the Member States. Some, like the United Kingdom, have well-developed networks, with a tradition of providing food to those in need. In many others, particularly in the younger Member States, no such structures existed. In these cases, the Programme has been instrumental in enabling appropriate support structures to be established. For the Commission this programme is a good example of the practical demonstration of solidarity between Member States in addressing a common problem.

The Commission appreciates the efforts of the House of Lords in producing this report and looks forward to continuing the policy dialogue in future on this and other subjects.

Yours sincerely,

