

RESOLUTION
of the Sejm of the Republic of Poland
of 4th February 2011
containing a reasoned opinion on the non-compliance with the principle of
subsidiarity of the proposal for a Regulation of the European Parliament
and of the Council amending Council Regulation (EC) No. 1234/2007
as regards marketing standards
COM(2010) 738 final

Having examined the proposal for a Regulation of the European Parliament and of the Council amending the Council Regulation (EC) No. 1234/2007 as regards marketing standards COM(2010) 738 final, the Sejm of the Republic of Poland finds that the proposal does not comply with the principle of subsidiarity as referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal is contrary to the principle of subsidiarity because it does not offer any justification that would allow the Sejm as the chamber of the national parliament to scrutinize proposed provisions authorizing the Commission to adopt delegated acts (Article 290 of the Treaty on the Functioning of the European Union, TFEU) as well as implementing acts (Article 291 TFEU). The Sejm objects also to the empowerment of the Commission to adopt implementing acts in the situation where the European Parliament and the Council have not adopted the regulation concerning mechanisms for control by Member States of the Commission's adoption of those acts (Article 291(3) TFEU).

1. The Sejm voices reservations about the fact that the Commission has failed to put forward any substantiation concerning compliance with the principle of subsidiarity of the provisions of the proposal empowering the Commission to adopt delegated acts (Article 290 TFEU) as well as implementing acts (Article 291 TFEU), which is in breach of Article 5 of the Protocol (No. 2) on the application of the principles of subsidiarity and proportionality (Protocol No. 2). The substantiation of the compliance of a draft legislative act with the principle of subsidiarity plays a key role in the control by national parliaments of the adherence to this principle. Such substantiation allows them to become acquainted with and assess the arguments for the adoption of the specific provisions set forth in the proposed act. Also, the substantiation of the EU legislative act enables review of its legality by the European Court of Justice under the action for annulment (Article 263 TFEU) which may be brought by a national parliament. The Sejm takes the view that the Commission has violated Article 5 of the Protocol No. 2 by failing to give reasons to consider the compliance with the principle of subsidiarity of the provisions of the proposal empowering the Commission to adopt delegated acts and implementing acts.

The Sejm expresses particular reservations about the fact that the Commission has failed to indicate the criteria deciding whether given elements of the regulated area of marketing standards for agricultural produce are essential or non-essential. From the point of view of the proposal, such division plays a key role as, according to Article 290(1) TFEU, the essential elements of an area shall be reserved for the legislative act, adopted by the European Parliament and the Council, while the delegated act, adopted by the Commission, may apply only to non-essential elements of the given area. What is important, conferral to the Commission of power to regulate a given area in the form of a delegated act, which does not constitute a legislative act (Article 289(3) of the TFEU), results in that the subject-matter it concerns would not fall under the control of national parliaments as to the compliance with the principle of subsidiarity. For this reason, those provisions of the proposal which define the areas where the Commission will be empowered to adopt delegated acts require a particularly thorough control and special attention paid to their compliance with the principle of subsidiarity as well as restrictive interpretation in order to rule out the Commission's future discretionary actions uncontrolled by national parliaments.

Moreover, the Sejm notes that Article 290(1) TFEU requires that the objectives, content, scope and duration of the delegation of power to the Commission be explicitly defined. Therefore these powers should be phrased in a clear, precise and detailed manner, laying down the limits these acts must not exceed. And yet, many provisions of the proposal empower the Commission to adopt, at an indefinite time, general provisions concerning marketing standards for agricultural produce. For example, this way the Commission would be able, among other things, to adopt and modify the requirements related to the general marketing standard for agricultural produce (Article 112c), to adopt marketing standards for agricultural produce (Article 112e), to change the definitions and sale descriptions of agricultural produce (Article 112f(3)), and to adopt a tolerance for each standard beyond which the entire batch of products will be considered as not respecting the standard (Article 112g). In view of so wide a construct of Commission's authority to adopt delegated acts and of the absence of justification why marketing standards for agricultural produce they regulate concern non-essential elements, the Sejm finds that the draft regulation violates the principle of subsidiarity.

2. The Sejm objects also to empowering the Commission to adopt implementing acts (Article 291 TFEU) in the situation where we still do not know the mechanisms for control of their adoption by Member States. The regulation of the European Parliament and of the Council, which, according to Article 291(3) TFEU, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, still has not been enacted.