

OPINION

OF THE SENATE OF THE REPUBLIC OF POLAND

of 3 March 2011

**concerning the incompatibility with the subsidiarity principle
of the proposal for a Regulation of the European Parliament and of the Council
establishing a common organisation of agricultural markets and on specific provisions
for certain agricultural products (Single CMO Regulation)
COM (2010) 799**

Having examined the proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) COM (2010) 799, the Senate has concluded that the proposal does not conform to the subsidiarity principle referred to in Art. 5(3) of the Treaty of the European Union.

The proposal for a regulation does not conform to the subsidiarity principle given the nature of the below listed provisions. By their virtue, too far-reaching powers to adopt delegated acts are being granted to the European Commission (EC), which must be deemed unjustified in view of Art. 290 of the Treaty on the Functioning of the European Union:

1. Art. 4 – definitions applied in the Regulation to define agricultural products covered by the scope of the Regulation are an essential element of the Regulation. The way how particular terms are defined is of crucial importance to the functioning of a given aid instrument;
2. Art. 18 - determining by the Commission of “the method for calculating the overall allocation of resources including the distribution of intervention products and financial means for the purchase of food products on the market” and defining “the accounting value of products released from intervention stocks as well as the method to be used for any reallocation of resources among Member States as a result of a three-year plan revision”. All of those elements are the foundation for the functioning of aid;
3. Art. 31(1) – requirements and conditions to be met by products to be bought in under public intervention. These very factors determine the effectiveness of the intervention

and therefore, they are an essential element of the functioning of this aid instrument; and further on, also an essential element for the Single CMO;

4. Art. 31(2) – price changes as regards buying-in and sales of cereals and paddy rice are an essential element even if dictated only by quality considerations.
5. Art. 31(5) – reducing the amount of aid to be paid and conditions relating to the granting of an advance payment and the requirements to be fulfilled represent an essential element of intervention;
6. Art. 31(7) – provisions relating to the establishment of operators and their registration for VAT introduced with the view to safeguard the rights and obligations of operators participating in public intervention or private storage measures are likewise the elements which are essential for intervention;
7. Art. 35 – how average EU prices are calculated is an essential issue for the aid to be granted to agricultural producers;
8. Art. 42 – relating the minimum beet root price to their quality is an essential element of the functioning of the Community sugar sector;
9. Art. 47 – measures facilitating the adjustment of supply to market requirements which can cover the sectors of: live plants, beef and veal, pig meat, sheep meat and goat meat, eggs and poultry meat. Introduction of such instruments is an essential element of the functioning of CMO;
10. Art. 55(2) – a list of products for the production of which industrial sugar, industrial isoglucose and industrial inulin syrup may be used, is an essential element in the functioning of aid in the sugar sector;
11. Art. 78(2) – definitions related to the production of sugar, isoglucose and inulin syrup, as well as the production of an undertaking are essential definitions in the functioning of the sugar sector;
12. Art. 101(1) – conditions and standards for skimmed milk and skimmed milk-powder intended for use as feeding stuffs, depending on which aid shall be granted, are an essential element for the functioning of aid in the milk sector;
13. Art. 102(1) - conditions and standards for the production of skimmed milk processed into casein and caseinates are an essential element in the functioning of aid for skimmed milk into casein and caseinates;
14. Art. 103 – products that may benefit from those aids and conditions and standards relating to the use of the products and the approval and withdrawal of approval of undertakings using the products for the purpose of claiming the aid to skimmed milk

- processed into casein and caseinates, and aid to skimmed milk and skimmed milk-powder intended for use as feeding stuffs;
15. Art. 118 – the way of functioning of support to producer groups. To-date, Member States have been defining detailed provisions to be applied in this scope, relying only on the *de minimis* requirements posed by the Commission;
 16. Art. 126 – operational funds, national financial assistance, crisis prevention and management measures. All of those questions related to various forms of aid are essential elements for the functioning of aid granted to agriculture and determine its scope and nature. The form of aid instruments should be defined at the national level only or should be co-shaped by Member States since national-level knowledge and competence is required in this respect;
 17. Art. 129 – The School Fruit Scheme. The indicative allocation of aid between Member States, the method for reallocating aid between Member States based on applications received, any reductions to be applied in consequence of non-compliance as well as all other questions listed in this Article are of essential significance for the functioning of aid offered under this Scheme.
 18. Art. 153 – in relation to beekeeping schemes conditions for the allocation of the Union's financial contribution to each participating Member State. Conditions for the allocation of aid to the beekeeping sector are an essential element in the functioning of aid to beekeepers and influence importantly the situation in this production sector;
 19. Art. 156 – aid granted to silkworms rearers. The minimum quantity of eggs and other conditions regarding successful rearing and the conditions to be met by the approved bodies which supply rearers with boxes of eggs and collect the cocoons from them are essential elements of the aid granted to this sector;
 20. Art. 160 – requirements related to the general marketing standard and derogation from those requirements. This is an essential element in the trading of agri-food products;
 21. Art. 162 – marketing standards. They constitute an essential element in the trading of agri-food products;
 22. Art. 169 – conditions related to the imported and exported products. This is an essential element in the trading of agri-food products;
 23. Art. 193 – wine market. All issues referred to in this Article, in particular the measures related to national procedures to be applied to trans-border applications, are an essential element since they determine the conditions for competing on this market.

24. Art. 207 – wine market. Definitions, provisions and limitations concerning labelling and the presentation on the market of wine constitute an important determinant of the ability to compete on this market.
25. Art. 230 (1) – producers’ organisations. All issues referred to in this paragraph are of essential importance to the functioning of producers’ organisations and, therefore, to the functioning of agricultural markets;
26. Art. 249 – imports of specific agricultural products. All import-related issues referred to in this Article, such as minimum quality requirements necessary to benefit from a reduction in the rate of the import duty, are essential elements impacting the functioning of EU agricultural markets;
27. Art. 253 – import tariff quotas. The conditions and requirements for eligibility of an operator to apply for imports within the import tariff quota as well as all other issues addressed in this Article are significant determinants for operators to benefit from tariff arrangements;
28. Art. 261 – imports of sugar intended for refining. The conditions and eligibility requirements that an operator must fulfil to lodge an application for an import license, including the lodging of a security and other questions mentioned in this Article are an essential element in the regulation of sugar imports, and resultantly, in the functioning of the sugar market;
29. Art. 264(3) – imports of hops. The conditions under which obligations related to an attestation of equivalence and the labelling of packaging do not apply determine the abilities for imports of hops, and therefore, impact the developments on this market;
30. Art. 268 – exports of specific agricultural products. The list of the products of the sectors subject to the presentation of an export license as well as all other aspects referred to in this Article are essential elements in the functioning of the Community agricultural markets and may affect the competitiveness of EU agriculture on the global market;
31. Art. 271(3) – Provisions related to eligibility of products and operators to benefit from export refunds for certain spirit drinks obtained from cereals, and in particular definitions and characteristics of the products and the establishment of coefficients for the purposes of calculating export refunds taking into account the ageing process of the products concerned. All the above elements are of essential importance to the functioning of export refunds in this sector;

32. Art. 274 – Granting of export refund. All export refund-related issues mentioned here, including the *ex post* granting of licenses for the export of hatching eggs and day-old chicks are essential elements in the functioning of this particular form of aid to EU agriculture, i.e. export refunds, and in some periods of time they can be of crucial importance to the condition of an agricultural market;
33. Art. 277 - export refunds and import licenses. The specific requirements and conditions for operators and products to meet to be eligible to export refund are essential elements affecting one's ability to benefit from a refund as one of instruments of Community support for agriculture, whereas the export conditions significantly impact the competitiveness of EU agricultural produce on global markets.

SPEAKER OF THE SENATE

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