

RESOLUTION
of the Sejm of the Republic of Poland
of 3rd February 2011
containing a reasoned opinion on 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
contractual relations in the milk and milk products sector
(COM(2010) 728 final)

The Sejm of the Republic of Poland, having considered the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1234/2007 as regards contractual relations in the milk and milk products sector (COM(2010) 728 final), concludes that the proposal does not comply with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal is contrary to the principle of subsidiarity owing to the failure to provide reasons to substantiate its compliance with that principle. The European Commission has not demonstrated that the objectives of the proposed Regulation could not be sufficiently achieved by the Member States and that by reason of the scale or effects of the proposed action, they can be better achieved at European Union (EU) level.

1. The Sejm expresses reservations about the fact that no reasons are provided to substantiate the proposal from the point of view of its compliance with the principle of subsidiarity, which is in breach of Article 5 of Protocol (No. 2) on the application of the principles of subsidiarity and proportionality, in conjunction with Article 5 TEU. Neither in the explanatory memorandum nor in the preamble of the proposed Regulation, has the Commission made any statement referring to the compliance of the proposal with the principle of subsidiarity set forth in Article 5(3) TEU. The question is only referred to in the context of Member States being allowed to make the use of formalised written contracts for the delivery of milk compulsory (recital 9 of the proposed Regulation). The Commission has justified the action at EU level, referring to provisions adopted in the field of competition, which is an area falling within the exclusive competence of the EU. It has not, however, justified the

provisions of the Regulation adopted in the field of agriculture to the extent they do not apply to competition rules, that is, under shared competence between the EU and the Member States – although the legal basis referred to in the proposal is Article 43(2) of the Treaty on the Functioning of the European Union (TFEU), which regulates the adoption of legislative acts necessary for the pursuit of the objectives of the common agricultural policy. In the absence of explanation justifying compliance of the proposed Regulation with the principle of subsidiarity, the Sejm, as the chamber of the national parliament exercising scrutiny in this area, has no opportunity to evaluate the Commission's arguments in support of declaring the proposal consistent with that principle.

2. What also gives rise to objections from the Sejm is that the European Commission is empowered to adopt implementing acts. The proposal makes reference to "Regulation (EU) No [xxxx/yyyy]" (Article 1(1) of the draft Regulation). Article 291 TFEU requires that the exercise of implementing powers by the Commission be subject to control by the Member States under regulations adopted in advance by the European Parliament and the Council. However, no such provisions have been adopted so far. The Sejm considers it unacceptable for the Commission to be empowered to adopt implementing acts under the Regulation in a situation where the procedure for their control by the Member States remains unknown. The acts, adopted by the Commission on the basis of a regulation, would not be subject to scrutiny by national Parliaments for compliance with the principle of subsidiarity, as they are not legislative acts (Article 289(3) TFEU).