

Brussels, 14.06.2011  
C/2011/4132

Dear Marshal,

*The Commission would like to thank the Sejm of the Republic of Poland for its opinion on 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.*

*The Commission takes note that in this opinion the Sejm argues that the proposal in question did not provide reasons to substantiate its compliance with the principle of subsidiarity, since no statement referring to that principle was made in the explanatory memorandum or in the preamble of the proposed Regulation.*

*Let me first assure you that the Commission takes its Treaty obligations to justify adequately each legislative proposal with regard to the principles of subsidiarity very seriously. In this respect, the Commission is endeavouring to ensure that the justifications are clearly reflected in the explanatory memoranda of its proposals.*

*With regard to this particular case, the Commission would like to clarify that the explanatory memorandum specifies in Paragraph 14 the legal basis for the proposal (Article 42 and 43(2) of the TFEU) and further specifies in Paragraph 15 that:*

*"Action at EU level is justified since in order to realise the objectives of the common agricultural policy, measures have to be taken in that context in order to ensure equal implementation throughout the Union, whilst maintaining effective competition on the dairy market and ensuring the proper functioning of the internal market."*

*Concerning the measures that relate to EU competition law, Paragraph 15 also indicates that:*

*"This is particularly the case where the application of EU competition law – an exclusive competence of the Union - to the common agricultural policy is concerned."*

*In addition, the same paragraph specifies concerning contracts and in line with the principle of subsidiarity that Member States can decide whether or not to make contracts compulsory:*

*"However, in view of the differentiated situations in the Union as regards contract law, the choice as to whether to make certain elements of the proposal (contracts) compulsory is left to Member States."*

*This approach is further substantiated in recital 9 of the proposal. The latter two sentences of paragraph 15 are also further substantiated in paragraphs 16 and 17 which read:*

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*"EU competition law is an exclusive competence of the Union and individual Member States cannot therefore modify its application to the common agricultural policy, which may only be done under Article 42 TFEU. As regards contractual relations, the proposal leaves a wide margin of appreciation to Member States. However certain minimum standards need to be laid down in order to allow for the proper functioning of the internal market and the common market organisation due to their inherent cross-border nature.*

*The EU can achieve the objectives better, since the envisaged objectives on competition law cannot be achieved by individual Member States and the necessary minimum standards as regards competition law are needed to ensure the proper functioning of the internal market and the common market organisation."*

*The Commission also takes note of the comments of the Sejm concerning the empowerment of the European Commission to adopt implementing acts. The Commission would like to clarify that the Regulation referred to in recital 16 of the proposal was under discussion within the European Institutions at the time when the proposal to amend Council Regulation (EC) 1234/2007 was adopted. Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers has since been adopted and was published in OJ L55 of 28 February 2011 page 12. The new rules entered into force on 1 March 2011.*

*I hope that these clarifications address the issues raised in the opinion of the Sejm. The Commission looks forward to continuing our political dialogue in future on this and other subjects.*

*Yours faithfully,*

*/-/ Maroš Šefčovič*