

Subsidiary versus Solidarity? The Example of the European Food Aid Programme for the Most Deprived¹



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The creation of a European food aid programme for the most deprived persons (MDP) dates back to 1987, the iciest winter on record in the EEC member states since the 1950s. The member states², equipped with mechanisms associated with the traditional prerogatives of the welfare state, were not prepared to face the re-emergence of food poverty. Jacques Delors, who was the Commission’s president at the time, recalls³: “There were some agricultural surpluses. I received appeals from Sœur Emmanuelle and from Coluche. Rather than leaving these surpluses or selling them off on the cheap, I proposed this programme because it was one of the Commission’s areas of authority, but I took the precaution of getting it ratified by the Council of Ministers.” All of the member states subscribed to it on a voluntary basis. In view of the heavy demand that ensued, the programme became permanent. It was based on a dual objective⁴: one economic – using up agricultural produce surpluses –, the other social – providing food aid for the most deprived.

In 2011, following an appeal by Germany questioning the preservation of the programme in the absence of stock, the EU Court of Justice has called into question the existence of the MDP for

2012-2013. In addition, a blocking minority in the Agriculture Ministers’ Council is disputing the strengthening of the programme proposed by the Commission. Aside from the threat that it entails to food aid, charitable organisations and the most deprived, this situation has a symbolic side to it that is pregnant with consequences for the way Europe’s citizens perceive the EU. This, because this aid is being called into question at a time when the economic crisis is causing poverty to spread.

Even though the budget allocated to the MDP accounts for only a small part of the CAP (less than 1%), the budgetary aspect cannot be overlooked in the debate⁵. Yet current opposition to it rests essentially on a legal issue: this form of solidarity with the most deprived persons is said to be incompatible with the principle of subsidiarity. The nature of the confrontation is nothing new. It rests on a clash of visions regarding the EU’s areas of authority in the social sphere, an old chestnut in European integration that goes back to the 1980s. This Policy Brief dwells on the legal arguments in the blocking move, it discusses the political issues involved and it reviews the potential ways of emerging from the deadlock.

1. Calling the MDP into question: a controversy between subsidiarity and solidarity

1.1. Calling the MDP into question: background and basis

The MDP was accepted as an obvious solution from the outset, both in the eyes of the Community and

the member states because it was a display of solidarity towards the most deprived while at the same time resolving part of the problem of surplus stocks, and in the eyes of charitable associations because it provided them with a stable source of supply. But surplus stock began to tail off in the 1990s and 2000s following reform of the CAP, and the EU

1. This essay completes the analysis contained in the Policy Paper entitled “Is the CAP a ground for European solidarity or disunion?”, Chambon N., 2011: http://www.notre-europe.eu/uploads/tx_publication/PolicyPaper_45_NChambon_EN_01.pdf

2. Impact Assessment, European Commission, SEC (2008) 2436/2.

3. “Contre-Champs” Programme, 29.09.2011.

4. Regulation (EEC) n°3730/87.

5. Only 20 member states sought to benefit from the MDP in 2009 even though it was funded principally by the EU budget, i.e. by resources common to all 27 member states.

was forced to resort to the purchase of produce in order to set up the MDP. In addition, the European Parliament, the Commission and the NGOs agreed on the need to expand the list of food products distributed (beef, milk, cereals, rice, olive oil, sugar) outside of surplus stocks in order to ensure a better balanced diet to recipients.

Following a declaration by the European Parliament in 2006 calling for a boost to the budget and for a legal framework for the MDP, the 1st Barroso Commission, in the person of Mariann Fischer Boel, proposed in 2008 (as part of an ambitious reform plan) that the programme's social objective be recognised as predominant over the surplus stocks aspect, arguing that the purchase of produce had by then become structural due to the "uncertain and erratic" nature of stocks⁶. While the EU's bread-line population and the price of food⁷ were both going up, the annual budget proposed for the MDP in 2009 benefited from a historic increase⁸, shooting up from 305 million to nearly 500 million euro.

Disputing the legality of aid not originating in stocks, Germany, with Sweden's support, appealed against the Commission in December 2008 to partially cancel the MDP 2009's financial regulation. In September 2010, the 2nd Barroso Commission, in the person of Commissioner Dacian Cioloş, attempted to come up with a compromise by making a new proposal for an amended regulation, but to no avail. The European Court of Justice issued a judgement in April 2011 cancelling the measures in the 2009 financial regulation authorising the purchase of produce on the market, which accounts for 90% of the MDP's resources. Obligated to implement the ruling, the Commission has proposed, for 2012, an MDP restricted to intervention stock, in other words 113.5 million euro as opposed to 480 million euro, which is equivalent to a 75% cut in the programme in every member state. For 2013 the MDP's budget could be cut to zero¹⁰ in the light of market trends.

Since then, those in favour of the programme – the Commission, Parliament, the consultative bodies and 19 national representatives – have come up against a blocking minority comprising six member states (Germany, Sweden, the United Kingdom, the Czech Republic, The Netherlands and Denmark).

1.2. Subsidiarity versus solidarity: a legal or a political clash over the EU's social competences?

To emerge from this deadlock, Commissioner for Employment and Social Affairs László Andor sub-

mitted a legal solution to the employment and social affairs ministers on 3 October 2011. According to him the EU could pursue the food aid programme as part of its mission to support member states in the struggle against discrimination and for the inclusion of vulnerable groups.

But in proposing to base the MDP on what is essentially a social objective, the programme shifts into another sphere where authority is shared with the member states: social policy. But as Richard Yung points out, social issues remain "for the most part the province of member states, which are particularly keen to ensure that their authority in this sphere is observed. So they show no hesitation in claiming the principle of subsidiarity when the European Union pokes its nose into such areas as employment, health, social protection and social inclusion, which still come under the jurisdiction of member states¹¹."

The same blocking minority that has formed in the Agriculture Ministers' Council may well appeal to the principle of subsidiarity¹² to reject Commissioner László Andor's proposal. The Commission, which now – ever since the Lisbon Treaty – has to better prove the added value of its action over national programmes, is going to have to prepare for a very biting debate. To defend the MDP over food aid programmes, it is going to have to prove that "the goals of the action contemplated cannot be satisfactorily achieved by the member states" and that "the action can be better implemented, on account of its size or of its impact, by intervention on the part of the Union"¹³. In this confrontation, Germany is defending a very narrow view of the EU's areas of authority, resorting to a definition of subsidiarity based on German federalism¹⁴, "in order to preserve the social competences devolved to its Länder"¹⁵. Its position is further strengthened by the national specificity of its network of churches, which are financially supported by the citizens and which are very active with the poorer strata of society.

There was a precedent for this clash between two different visions of subsidiarity concerning a programme with a social impact: "Poverty IV" programme. Reflecting a comparable rationale, the United Kingdom (with Germany's and Denmark's support) won a ruling from the Court of Justice of the European Communities in 1998 to have the programme designed to promote the struggle against exclusion and the promotion of solidarity cancelled. The Court ruled back then¹⁶ that the Commission

10. Richard Yung, "Social Europe, Current Situation and Prospects", *Senate Report n°413*, 2008-2009 : http://www.senat.fr/rap/r08-413/r08-413_mono.html#toc89

11. Maastricht Treaty, Article 5, paragraph 3: "In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community".

12. As provided for in the TEU. *Fact sheets on the European Union*, European Parliament, R. Panizza, 12/2009.

6. Op. Cit.

7. Impact Assessment, Op. Cit.

8. The MDP was created in 1987; it benefited from numerous budget rise: 1994-1995, 2004, 2006-2007, 2008-2009 (source: DG Agri).

9. Council press release, draft version, 20.09.2011.

had no authority to commit any funding to a programme which promised significant action going

well beyond previous programmes of an experimental nature.

2. Emerging from the legal, political and social deadlock

Thus the MDP has been under threat from a legal standpoint ever since the Court published its judgement. Before proposing ways of remedying the situation, we should take a look at the issues relating to the nationalisation of food aid.

2.1. The political and social risks implicit in the nationalisation of food aid

Within the 27-strong EU in 2008, some 80 million people (16% of the overall population) were threatened with poverty, 43 million of whom were threatened with food poverty. The programme is a modest affair¹⁷: only 20% of the poorer sectors of the population benefit from it, with some 13 million beneficiaries receiving an average of five to twelve meals from it a year. But it is an essential provider of food aid for charities. Some 54% of stocks distributed by charitable organisations in Spain come from the EU; 30% in France; in Italy, for the two organisations audited, the MDP accounts for 100% and 60% of supplies; and in Poland, for 60% and 70% of the two organisations audited.

Extremely adverse political repercussions on the European project. The impact assessment¹⁸ of a reform of the MDP warned back in 2008 that any cut in aid would be negatively received by the most deprived sectors of the population and by the general public, while an increase in the budget would further improve the image they have of the EU. Today, even though the stalemate situation is the product of a blocking minority of member states pitted against the Commission, Parliament and a majority of members of the Council, it is the EU's image as whole that is being hit by the consequences. At a time when the disadvantaged social groups and a part of the media seem to question the benefits of European construction, this stalemate and the jeopardisation of the plan for 2012-2013 strengthen the idea that Europe's decision-makers are uninterested in the people at large and, more especially, in the poorer social groups.

Likely repercussions of the nationalisation of aid. In the event the MDP disappears, will it be satisfactorily replaced by the nationalisation of food aid? This seems rather unlikely, and even paradoxical if we

look at the budget constraints that member states are adopting to curb the debt crisis. And besides, funding for the MDP already exists and has been built into the Community budget for 2012 and 2013. While the French Government has pledged to maintain the aid level through its national budget, it appears to be an isolated case in this because several of its European counterparts (Romania, Bulgaria, Latvia, Poland, Finland, Greece and Hungary) have stated that they would have difficulty co-funding the programme if they were to be asked to do so¹⁹. Moreover, nationalisation of the MDP would nullify the added value of this Community programme²⁰, which lies in such areas as improved public health, the development of national food programmes (for instance, the National Food Aid Programme, in France), its leverage effect on public/private partnerships, the comparison of experience and the spread of best practices, and so forth.

2.2. Arguments in favour of maintaining the MDP

An adequate economic and legal basis for maintaining the MDP in the CAP²¹. Intervention stocks no longer justify the MDP, but maintaining the programme as part of the CAP makes sense in terms of food safety. This, because the purchasing power of the most deprived persons (who devote a larger proportion of their budget to food purchases than do other groups) is affected by the additional cost of foodstuffs occasioned by the customs duty applied to imported agricultural produce. As the table below clearly demonstrates, European consumers pay 4% more for foodstuffs on average²², according to OECD estimates in 2010. Thus it seems legitimate that the EU should guarantee food aid for the most deprived persons.

Table: The adverse effect of duty on the price of agricultural produce within the EU

ESTIMATE SUPPORT FOR CONSUMPTION (%)	1986-88	1995-97	2008-10	2008	2009	2010
EU	-36%	-21%	-6%	-7%	-7%	-4%
UNITED-STATES	-3%	3%	13%	11%	14%	14%
JAPAN	-62%	-54%	-42%	-43%	-43%	-42%
CHINA	NC	-2%	-7%	2%	-9%	-13%

Table based on "Agricultural Policy Monitoring and Evaluation 2011", OECD, September 2011.

13. Jutta Hergenhan, "German Federalism and European Integration", Notre Europe, *European Issues* n° 5, January 2000: http://www.notre-europe.eu/uploads/tx_publication/Probl5-en.pdf

14. R. Yung, Op. Cit.

15. Judgement of the Court dated 12 May 1998, "Community Action Programme to combat Social Exclusion – Funding – Legal Basis", in the C-106/96 case. 16. Excerpts: European Court of Auditors, *Special Report n°6*, 2009.

17. Impact Assessment, Op. Cit.

18. In 2011 the Commission backtracked on its proposal that the MDP be co-financed.

19. Impact Assessment, Op. Cit.

20. The Commission proposes Articles 33 - 37 (CAP) and 152 (Social) as a legal basis in its impact assessment.

21. It should be noted that the prices refer to gross produce, in the knowledge that the end price of food produce also contains other costs (transport, processing, distribution, advertising and so forth).

NB: The nominal coefficient of support (NCS) for consumption gauges the ratio between consumer spending devoted to agricultural foodstuffs produced on national soil (including support for producers) and consumer spending assessed on the basis of prices at the border (excluding support for consumers). A negative NCS constitutes an implicit tax for the consumer.

In these circumstances, acknowledging the need to offer aid to the most deprived persons entails a change in the approach to agricultural policy since the 1950s²³. Indeed the CAP is based on a supply-side policy, while if we are to achieve the goal of guaranteed food supplies for the population – a goal enshrined in the Treaty of Rome and extremely topical in view of the rising price of farm produce – a demand-side policy is more than justified. As the Commission's impact assessment indicates, it would be a matter of helping people who, for one reason or another, are incapable of feeding themselves properly.

Legal and Economic Arguments for Transferring the MDP to Social Policy. In the longer term, the Commission seems to have opted to peg the MDP to social policy. Thus in the next multiannual budget (2014-2020) it no longer plans to fund it through the EAGF²⁴, in other words the CAP, but through the ESF²⁵ whose mission to pursue the struggle against social exclusion has been strengthened in accordance with the "Europe 2020" Strategy. This, because the Union is empowered to act in this sphere to "support and complement the activities of the member states in the combating of social exclusion" (Art. 153(1)(j) TFEU). Given that the MDP is merely complementary to national, local and private-sector social policies, it can fall within the framework provided for in the treaty.

22. Impact Assessment, 2008.

23. EAGF (European Agricultural Guarantee Fund): 1st pillar of the CAP, included under Heading 2 in the Community budget: "Sustainable Growth, Natural Resources".

24. ESF (European Social Fund): included under Heading 1 in the budget: "Intelligence and Inclusive Growth".

25. EAFRD (European Agricultural Fund for Rural Development), EMFF (European Maritime and Fisheries Fund). See p. 38 Art. 14(c), p. 87 Art. 84(5).

This would be unlikely to resolve all of the issues raised by such a change, because it would be necessary at that juncture to define the modalities involving all of the member states. This could be achieved in the context of the new general financial regulation covering the ERDF, the ESF, the cohesion funds, the EAFRD and the EMFF²⁶, which introduces an integrated approach targeting the areas with the highest concentration of social groups in difficulty. Thereafter, the credits planned for the MDP within the CAP, amounting to more than 2 billion euro over 7 years, should be allocated to the ESF.

And finally, it is necessary to counter the criticism traditionally levelled at aid mechanisms which target areas with a high poverty rate and which, when all is said and done, "reward" those member states whose societies are least egalitarian and which potentially make the least effort to redress the situation. The most effective way of doing this would be to peg the aid's allocation to, say, progress in the field of the struggle against poverty, rather than to any a priori statistics.

2.3. Are we heading for an enhanced cooperation in the event of a stalemate?

As a last resort, if the above-mentioned solutions do not break the deadlock, one might consider enhanced cooperation, which the treaty envisages as a last-ditch measure. This, because the MDP has operated on a voluntary basis from the outset. Today, a broad majority of member states that want the programme to continue are clashing with the blocking minority mentioned above. If no way out can be found, the EU would find itself in a situation in which one (or more) member state(s) do not wish to act together. But as Article 20 in the TEU²⁷ specifies, those member states cannot prevent the states that do wish to cooperate, from doing so. Thus the MDP could be maintained in the framework of an enhanced cooperation which would be particularly symbolic ■

26. For conditions required for enhanced cooperation, see Andoura, Hancher, Van der Woude, Notre Europe, 2010, p. 106 : http://www.notre-europe.eu/uploads/tx_publication/Etud76-Energy-en.pdf