

The position of the Committee on the Constitution

First, the Committee on the Constitution would like to give an account of its most important observations in connection with its third annual follow-up of the Riksdag's examination of the application of the principle of subsidiarity. The follow-up shows that approximately one sixth of the draft legislative acts that were examined for compliance with the principle of subsidiarity during the period 1 January to 31 December 2011 lacked or contained insufficient justification in relation to the principle of subsidiarity. Compared with the Committee's two previous follow-ups, the proportion of draft legislative acts containing insufficient or lacking justification has decreased. Nevertheless, and in view of the absolute obligation of the Commission and other proposing parties to justify their legislative proposals, the Committee would like once again, and emphatically, to point out that insufficient justifications makes it difficult for the Riksdag to fulfil its obligation to ensure compliance with the principle of subsidiarity under the subsidiarity protocol. In this context, the Committee on the Constitution (CoC) would also like to highlight that several Riksdag committees have emphasised in connection with the CoC's follow-up, that existing justifications are often far too brief or not always that easy to penetrate. Insufficient subsidiarity justifications are, in the opinion of the Committee on the Constitution, a serious flaw in the EU's legislative process. The Committee notes, in this context, that both the Commission's Impact Assessment Board and the European Parliament have highlighted shortcomings regarding the Commission's justifications. The Committee is opposed to national parliaments being assumed to examine proposals for compliance with subsidiarity when no justification has been provided. In the opinion of the Committee, failure to provide justification may be regarded as a failure to comply with the subsidiarity protocol. The Committee on the Constitution considers that a possible procedure regarding proposals that do not provide any justification is that they are returned to the proposing party to be completed in accordance with the treaty and its protocols.

The Committee is also doubtful about the effectiveness of the subsidiarity checks as they are organised today. One aspect is the extent to which the Riksdag's objections regarding the application of the principle of subsidiarity are taken into account when legislation is adopted. A related aspect is the UK's House of Commons' question about the general impact of its reasoned opinions on negotiations in the Council. The Committee on the Constitution considers that it is important that the Riksdag, through its committees, monitors the handling of the principle of subsidiarity in the continued legislative process, especially in cases where a reasoned opinion has been submitted. A further aspect regarding the effectiveness of the subsidiarity checks is the relatively short time available for these checks. The Committee shares the opinion of the European Parliament that it is important to examine, within the framework of a review, whether the current timescales are sufficient. Regarding these aspects, there is possibly room for improvement in the current system. A longer time frame would, for example, make it easier for more parliaments to examine a greater number of proposals and would facilitate interparliamentary cooperation. It should be possible to consider both the level of the thresholds in the subsidiarity protocol for yellow and orange cards and the effects of these thresholds being reached in a review of the kind proposed by the European Parliament on the alleviation of the impediments to national parliaments' participation in the subsidiarity check mechanism. The

question of making it possible for the national parliaments to return proposals that lack any subsidiarity justification to the proposing party should also be included in this review. Yet another aspect is the IPEX database and its function in the above-mentioned mechanism. In the opinion of the Committee on the Constitution, it is important that measures are taken to enable the database to offer better support to the national parliaments' subsidiarity checks.

Even though the Commission's report deals with 2011, the Committee considers that certain questions of principle should be dealt with now concerning observations made during 2012 by the Secretariat of the Chamber's EU Coordination function as regards the criteria for the scope of application of the subsidiarity protocol. Here, the Committee would like, among other things, to highlight the fact that some proposals have not been examined for compliance with the principle of subsidiarity due to inadvertence. The Committee notes that it stressed, as early as the autumn of 2011, how important it is that all proposing parties at Union level establish routines to ensure that proposals are forwarded to the national parliaments. Here too, the Committee wishes to stress the absolute obligation imposed by the treaties on the Commission and other proposing parties to submit proposals to the national parliaments and inform them that the procedure under the subsidiarity protocol has been initiated. In addition, the Committee wishes to highlight the observation by the Riksdag's EU Coordination function about the development of a "doctrine" on a form of exclusive competence in areas of a particular kind, that is, that other areas besides those explicitly mentioned in Art. 3 of the Treaty on the Functioning of the European Union could, on account of their specific nature, represent areas of exclusive competence for the EU. The Committee wishes to draw attention to this observation in view of the risk that this doctrine may be improperly applied. Even if this doctrine is, as such, in many ways logical, it can be difficult to approve if the proposing party introduces elements extending beyond the special nature that the doctrine derives from. The discussions that have taken place in some of the member states' parliaments on the European Parliament's draft proposal for a regulation on the European Parliament's right of inquiry gives reason to reflect on the above-mentioned risk. The Committee notes that the EU Coordination function has asked the Commission's Secretariat-General about certain clarifications in a specific case with a certain connection to the doctrine, but no reply has been received from the Secretariat-General as yet. In this context the Committee notes that the issue of the demarcation of the Union's exclusive competences is touched upon in a current case in the EU Court of Justice.

As regards the application of subsidiarity checks to amended proposals, the Committee on the Constitution would like to highlight the EU Coordination function's examination of all the forwarded amended proposals (24) since the Lisbon Treaty came into force. The Committee notes that just over half of these (13) have been subject to a subsidiarity check. In this context, the Committee would like to stress the absolute obligation of the Commission and other proposing parties, under Art. 4 of the subsidiarity protocol to the treaty, to forward their draft legislative acts and their *amended* drafts to the national parliaments at the same time as they are forwarded to the EU legislators.

The Committee also wishes to highlight the impact of the outcome of subsidiarity checks on the division of competence between the Union and member states. Despite the difficulties of qualitatively assessing this impact, the Committee on the Constitution can already note that the Committee on Taxation has brought attention to an actual transfer of competence in the implementation of certain proposals, and that the Committee on Justice has stressed the

importance of noting the combined impact of various proposals together, which can be difficult to see in connection with subsidiarity checks of individual proposals. In addition, the Committee on Finance has noted that the overall outcome in the field of financial markets and regulation of economic and monetary policy in the Union has meant that legislation at EU level has been strengthened. Another reflection from the Riksdag's committees is that it is more common today that proposals are presented in the form of regulations as opposed to directives. Together, these observations point to the importance of monitoring how the long-term development of Union law affects the division of competence between the EU and the member states within the framework of the treaties' provisions. The Committee on the Constitution will therefore continue to monitor these important issues. In this context, the Committee also wishes to point out the analysis work that has been initiated by the Government of the Netherlands. The Committee looks forward to the findings of this analysis and the following discussions in the EU on issues relating to the application of the principle of subsidiarity. Finally the Committee, like the European Parliament and the Italian Chamber of Deputies, wishes to recall that the essence of the principle of subsidiarity enables Union measures to be implemented within the framework of the Union's competence when circumstances so require and, conversely, that measures are limited or restricted when they are no longer justifiable.