



EUROPEAN COMMISSION

Brussels, 17/06/2009
C/2009/4646

Dear Mr President,

Thank you for transmitting the German Bundesrat's contribution to the document COM(2008)586 concerning the report from the Commission on Subsidiarity and Proportionality (15th report – "Better Regulation").

In line with the Commission's decision to encourage National Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response, and hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

Yours sincerely

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Vice-President of the European Commission

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EUROPEAN COMMISSION

Brussels, May 2009

COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE GERMAN BUNDESRAT

COM(2008)856 – REPORT OF THE COMMISSION ON SUBSIDIARITY AND PROPORTIONALITY (15TH REPORT "BETTER REGULATION")

The European Commission would like to thank the Bundesrat for its opinion of 3 April 2009 on the report on the application of the principles of subsidiarity and proportionality in 2007.

The Commission notes the request that the analysis of the application of both principles should be more in-depth, for instance by listing cases where the Commission adopted a proposal in spite of concerns relating to subsidiarity or proportionality which were expressed during the preparation. The Commission agrees that such examples are especially interesting because of the different interpretations that various actors give to the same principles. These conflicting opinions reveal the very real challenges of making these principles operational. In fact the report covering the year 2007 already contained several examples that fall in this category, though it did not explicitly highlight it. The clearest example is the Action plan on effective consular protection in third countries. As the report notes, after the Commission re-examined the need for EU action a more modest approach was proposed. But at the time of adoption the Commission was already aware that even this slimmed-down approach would meet opposition from several Member States who were of the opinion that the Commission should not make a proposal at all in the area of consular protection. The Commission disagreed with this view point, and decided to pursue the proposal while giving a frank overview in the impact assessment accompanying the action plan of the differences of opinion regarding subsidiarity. If it is found that comparable cases occurred in 2008, the Commission will endeavour to appropriately highlight them in the next report.

As the Bundesrat points out, paragraph 4 of Protocol 30 requires that "the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators." The Commission is aware that quantification is a significant challenge for the assessment of subsidiarity, as it is for impact assessment in general. It is constantly trying to make further progress in this area, while being realistic about the difficulties and limitations. An important step forward was the recent revision of the Impact Assessment Guidelines. These now contain a set of specific and operational questions, which will encourage a

more structured analysis of subsidiarity. The following two of these newly added questions potentially allow for the use of quantitative indicators:

- Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its scale?
- Would action at Community level produce clear benefits compared with action at the level of Member States by reason of its effectiveness?

The Commission agrees with the opinion of the Bundesrat that the assessment of subsidiarity and proportionality as part of its impact assessments cannot replace the obligation to explain in the explanatory memorandum of a legislative proposal how the principles of subsidiarity and proportionality apply to the proposal. Therefore the Commission will continue its current practice to provide all the relevant considerations relating to subsidiarity and proportionality both in the legislative proposal itself, and – where available – in the impact assessment.

Finally, concerning the Bundesrat's request to provide a more substantial analysis of the different concerns expressed by National Parliaments as regards the respect of the principles of subsidiarity and proportionality, it should be noted that the report on the application of the principles of subsidiarity and proportionality looks into the way the subsidiarity control was carried out not only by the National Parliaments, but also by the European Parliament, the Council, the Committee of Regions and the Court of Justice. The report aims to present a balanced analysis of how subsidiarity was applied by all actors, and therefore reports in comparable detail on each of them. Should there be changes to the Treaties affecting the subsidiarity control mechanism the Commission will of course review its routines for reporting on the matter.