



EUROPEAN COMMISSION

Brussels, 13.3.2014
C(2014) 1511 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Commission's Annual Report 2012 on subsidiarity and proportionality {COM(2013) 566 final}.

The Commission appreciates the positive comments of the Bundesrat on the Annual Report and welcomes the fact that it follows the developments on subsidiarity very closely.

As regards the comments of the Bundesrat on the subsidiarity scrutiny undertaken by national Parliaments, the Commission notes, first of all, that, as part of the preparation of all Commission proposals, the Commission examines whether the Union has a competence to act (principle of conferral), what is the appropriate legal basis for the proposed Union action, and whether the proposal complies with the principles of subsidiarity and proportionality. The Commission's analysis about these various aspects is included in the explanatory memorandum to its legislative proposal.

The Commission agrees with the Bundesrat that there are different views on the scope of the principle of subsidiarity and its relationship with the principles of conferral and proportionality, as reflected, for instance, in the 18th bi-annual report of COSAC. The Commission also notes that national Parliaments are free to scrutinise legislation in the way they see fit and with the elements they find to be appropriate and necessary.

Nevertheless, the Commission recalls that the procedure of Article 7(2) of Protocol No 2 is exclusively focused on the principle of subsidiarity. In reasoned opinions within the meaning of Article 6 of Protocol No 2, national Parliaments need to state why they consider that a draft legislative act does not comply with that principle. As a result, legal or policy arguments not connected to subsidiarity are not examined in the context of Protocol No 2. The Commission is however well aware that the limits of the principle of subsidiarity are not always easy to trace and therefore adopts an open attitude towards the reasoned opinions, interpreting their arguments, insofar as possible, in the light of the principle of subsidiarity. The Commission would also recall that such limitations do not apply to the political dialogue between national Parliaments and the Commission, which may extend to any aspect of Union legislation.

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President of the Bundesrat
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The Commission appreciates the Bundesrat's favourable remarks on the Commission's Impact Assessment Guidelines. With regards to the comments of the Bundesrat on impact assessments, it should be noted that the Impact Assessment Guidelines clearly set out the detailed analysis that should be carried out and the justification that should be provided on subsidiarity in relation to concrete proposals. The objective of the Impact Assessment Board is to ensure that all impact assessments follow these Guidelines.

Concerning the Commission's annual reports on subsidiarity and proportionality, the Commission takes note of the Bundesrat's wish to give more weight to the presentation of specific cases of reasoned opinions, but also notes that the Bundesrat acknowledges that the Annual Report 2012 deals in-depth with three major cases for which a large number of reasoned opinions were issued by national Parliaments.

As regards the Bundesrat's comments on yellow card procedures, the Commission refers to its Communication of 27 November 2013 on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity¹, which contains a detailed analysis of all subsidiarity arguments raised by national Parliaments in their reasoned opinions.

Finally, as regards the regular meetings between representatives of national Parliaments in Brussels to which the Commission is often invited to participate in part, the Commission agrees that such meetings are useful for informal exchanges of views on different topics, including subsidiarity issues linked to specific Commission proposals.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

¹COM(2013) 851 final