

Translation of letter from the Secretary General of the Swedish Parliament to the European Commission, dated 26 November 2010

---

The Swedish Parliament (Riksdag) referred the Report from the Commission *Annual Report 2009 on relations between the European Commission and National Parliaments* (COM(2010) 291) to the Constitutional Committee for examination.

The Committee reported the results of its examination of the Green Paper in an opinion to the Chamber, No 2010/11:KU12. A decision on the opinion was taken on 24 November 2010.

The opinion is enclosed.

# Relations between the European Commission and National Parliaments

## Summary

In this report the Committee considers the Commission's Report on relations between the European Commission and National Parliaments (COM(2010) 291). The report includes a list of opinions sent to the Commission by national parliaments in the course of 2009 in connection with the Commission's initiative on the strengthening of political dialogue between the Commission and national parliaments, the so-called "Barroso Initiative" (cf. COM(2006) 211). In its report the Commission also sets out its position on the Lisbon Treaty's subsidiarity control mechanism and political dialogue on the one hand and the future prospects for relations between the Commission and national parliaments on the other.

Against the background of the Commission's observation on the participation by the Swedish Parliament in the political dialogue with the Commission, and the Commission's views on the subsidiarity control mechanism and the political dialogue, the Committee points out that, under the terms of the Swedish constitution as it stands, political dialogue between the Commission and Sweden is conducted via the Government, which is responsible to Parliament. Only within the framework of the powers that existing treaties confer on national parliaments can the Swedish Parliament communicate directly with the Commission - as laid down in the Riksdag Act or Parliament Act (Riksdagsordningen) - as regards the application of the subsidiarity principle.

# Table of contents

Summary	1
The Committee's proposal for a decision by the Swedish Parliament	3
Description of the item	4
The item and its preparation	4
Background	4
Main content of the Report	4
The Committee's examination	7
Explanatory memorandum	7
Existing arrangements	7
Statistics from the Riksdagsförvaltning (Riksdag Administration)	10
Earlier examination	11
EUMOT Commission of enquiry	11
The Committee's conclusions	12
<i>Annex</i>	
List of proposals discussed	14

# The Committee's proposal for a decision by the Swedish Parliament

## Relations between the European Commission and National Parliaments

Parliament takes note of the Committee's opinion No 2010/11:KU12.

Stockholm, 16 November 2010

For the Constitutional Committee

*Peter Eriksson*

The following Committee members participated in the decision: Peter Eriksson (MP), Per Bill (M), Peter Hultqvist (S), Andreas Norien (M), Helene Petersson i Stockaryd (S), Lars Elinderson (M), Billy Gustafsson (S), Karl Sigfrid (M), Phia Andersson (S), Karin Granbom Ellison (FP), Hans Hoff (S), PerIngvar Johnsson (C), Hans Ekström (S), Kajsa Lunderquist (M), Tuve Skånberg (KD), Jonas Åkerlund (SD) and Mia Sydow Mölleby (V).

## Description of the item

### The item and its preparation

This opinion concerns a document from the European Commission. On 2 June 2010 the European Commission adopted its 2009 Annual Report on relations between the European Commission and National Parliaments (COM(2010) 291).

The Swedish version of the Report reached the Swedish Parliament on 14 June 2010. On a decision from the Speaker, on 29 June 2010 (see item 4 of Minutes 2009/10:145) the Chamber referred the report to the Constitutional Committee for consideration in accordance with Chapter 10, Section 5 of the Riksdag Act (Riksdagsordningen).

### Background

In 2006 the Commission took the initiative to increase the political dialogue between the Commission and the national parliaments, the 'Barroso Initiative'. In its Communication 'A Citizens' agenda – Delivering results for Europe' (COM(2006) 211), the Commission stressed the importance of involving national parliaments more closely in the development and execution of EU policy, not least because 'the increased involvement of national parliaments could help make European policies more attuned to diverse circumstances and more effectively implemented'. The Commission decided that all new proposals and consultation papers should be transmitted directly to national parliaments. It added that, by giving national parliaments more opportunity to express their views, the process of policy formulation could be improved.

### Main content of the Report

The Committee's Report is divided into four sections dealing with political dialogue, contacts and visits, the Lisbon Treaty and the outlook for the future. On the matter of political dialogue, the report lists the number of national Parliament opinions sent to the Commission as part of the political dialogue. In 2009 the Commission was sent a total of 250 opinions altogether<sup>1</sup>. The Report goes on to add that, as in previous years, there was a group of particularly active national parliaments, including the Portuguese, Swedish, Danish and Greek Parliaments, the Czech, Italian and French Senates, the two Dutch chambers, the German Bundesrat and the Austrian Bundesrat, and the UK House of Lords. Those twelve national assemblies were responsible for around three-quarters of all the opinions received in 2009.

---

<sup>1</sup> Compared with 200 in 2008 and 168 in 2007; see COM(2009) 343 and COM(2008) 237.

The list of opinions received per Directorate General shows that a third of the opinions (83) related to matters for which the Directorate-General for Justice, Freedom and Security was responsible, while just over a seventh (38) and almost a tenth (22) related to matters that were the responsibility of the Directorate-General for Health and Consumer Protection and the Directorate-General for Energy and Transport respectively.

The Report also states that about half the opinions received during 2009 referred to legislative proposals and the other half to Commission communications or consultation documents. In this connection the Report notes that the very active Swedish and Danish Parliaments continued to participate in the political dialogue with the Commission only with regard to non-legislative documents, in accordance with their internal procedures.

As regards the evaluation of opinions, the Report states that most of the national Parliaments examined substantive political issues in their opinions and that relatively few opinions (fewer than 25) contained views on the legal base or the principles of subsidiarity and proportionality. According to the Report, the French Senate, the Austrian Bundesrat and the German Bundesrat, as well as the Dutch, Portuguese and Greek Parliaments, showed a particular interest in subsidiarity questions. Some opinions had also indicated that the Commission had provided insufficient justification as regards a given proposal's compliance with the principle of subsidiarity. The Report also includes (p. 56 of the Swedish version) an analysis of the political dialogue on key documents, focusing in the most representative areas (i.e. those on which the most opinions were received), including the proposal on the Stockholm Programme<sup>2</sup> and the Directives on consumer rights<sup>3</sup> and cross-border healthcare<sup>4</sup>.

In the section on the Lisbon Treaty, it is stated, inter alia, that at the end of 2009 the Commission had introduced internal arrangements with a view to implementing the Treaty's new provisions concerning national Parliaments, and in particular the monitoring of the application of the subsidiarity principle (control mechanism), and that the Commission President and Vice-Presidents had informed national Parliaments of these provisions in a letter dated 1 December 2009. According to the Commission, experience gained in the coming months would show whether certain aspects of these arrangements might need to be changed. The key message in the letter of 1 December 2009 was that the Commission saw the subsidiarity control mechanism as a political instrument, and not as a purely accounting exercise, and intended to put the right measures in place to facilitate the use of this new instrument as a practical tool for national Parliaments.

The section of the Report dealing with the outlook for the future makes it clear that the Commission considers it of key importance to consolidate the partnership with national Parliaments by enhancing and strengthening the political dialogue, with due regard for the institutional balance at EU level. The continuation of this dialogue will, in the Commission's view, allow both sides to engage in a broader, more political exchange of views, not limited to legislative proposals and going well beyond the issue of subsidiarity.

The Commission also sees the subsidiarity control mechanism and the political dialogue as two sides of the same coin, with the former being part of a wider political relationship between the Commission and national Parliaments. According to the Commission, national Parliaments have welcomed this approach, given that up until now they have tended to focus their opinions on the substance of Commission documents rather than on subsidiarity aspects.

While the Commission recognises that it is not always easy to measure the concrete impact of national Parliaments' opinions on a given final legislative act, it takes the view that if the opinions are delivered on time, and are received from a number of Parliaments, there is a greater likelihood that the views expressed in them will be taken into account in the legislative process within the European Parliament and the Council.

Finally, the Report states that the Commission will:

- closely monitor the proper implementation of the new Treaty provisions concerning national Parliaments, and will be particularly vigilant that the subsidiarity-related requirements contained in Protocol 2 are met;
- encourage those national Parliaments which do not yet participate in the political dialogue to engage in an active exchange of views with the Commission;

- involve national Parliaments more closely in the preparatory work on its proposals for regulations on participation by national Parliaments in the political monitoring and evaluation of the activities of Europol and Eurojust.

# The Committee's examination

## Explanatory memorandum

No explanatory memorandum has been drafted by the Government on the Commission's Report.

## Existing arrangements

### *Provisions of the Riksdag Act concerning the handling of EU documents*

Under the terms of Chapter 10, Section 5 of the Riksdag Act, the Swedish Parliament (*Riksdag*) must consider Green Papers and White Papers which are forwarded to it in the manner laid down in Section 5 of the Act. After conferring with the special representatives of the party groups, the Speaker may determine that other documents from the European Union, other than draft legislative acts, shall also be considered in this manner.

The third paragraph states that the provisions of Chapter 4, Section 8, apply to the committee's examination of the document; in other words, the examining committee may provide another committee with an opportunity to deliver an opinion concerning a matter or issue affecting that committee's area of competence or may obtain any necessary information from the Government.

Under the fourth paragraph the committee must give an account of its examination in an opinion to the Chamber. When the committee takes its decision regarding the opinion, Chapter 4, Sections 15 and 16, apply, i.e. members are entitled to request an open vote within the committee and to attach reservations or separate opinions.

Under the fifth paragraph the Chamber takes a decision on the opinion.

### *Provisions of the Riksdag Act on subsidiarity control*

According to the first paragraph of Chapter 10 Section 6 of the Riksdag Act, the Swedish Parliament must examine whether a draft legislative act conflicts with the principle of subsidiarity.

Under the third paragraph, the Government must, within two weeks from the day the committee so requests, inform the committee of its assessment regarding the application of the principle of subsidiarity to the draft in question.

The fourth paragraph states that if the committee considers that the draft conflicts with the principle of subsidiarity it must deliver an opinion to the Chamber with a proposal that Parliament should send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission, that the committee must also deliver an opinion to the Chamber if so requested by at least five of its members, and that otherwise the committee will report to the Chamber by means of an extract from the minutes that the draft act does not conflict with the principle of subsidiarity.

The seventh paragraph states that a decision on a reasoned opinion must be sent to the Presidents of the European Parliament, the Council and the Commission by means of a letter from the Parliament.

### *Decision on Parliament's consideration of EU documents*

The provisions of the Riksdag Act on the consideration by Parliament of Green Papers, White Papers and other EU policy documents are based on decisions by the Swedish Parliament (submission 2005/06:RS3, Reports 2005/06:KU21 and 2006/07:KU3) to introduce among other things a duty for committees to consider and examine the consultation documents deriving from the Report on the role of national Parliaments in the European Union or from decisions by the Speaker.

The Constitutional Committee stated in its report (2005/06:KU21 pp. 28-29) that in the case of the consideration of a committee's opinion in the Chamber, the proposal entails that the matter is closed when the Chamber takes note of the committee's opinion but that it was possible for the Chamber to vote between alternative wordings of the opinion, which may not contain any proposed statements regarding the Government's actions.

The committee particularly stressed that a decision by the Chamber in connection with the consideration of the EU documents in question was not in any legal sense binding on the Government, the Swedish Parliament or any Parliamentary bodies. The committee went on to say that a Parliamentary decision in such matters can be regarded as a preliminary position that is not constitutionally binding, but that such expressions of opinion can nevertheless be seen as reflecting the prevailing climate of opinion in the Swedish Parliament and thus offer an opportunity for the Government to verify whether its views are supported in the Parliament.

The committee also stressed that only the Chamber can speak on Parliament's behalf. Statements by the EU committee or other committees or their members are therefore not binding on Parliament as a whole. Such expressions of opinion can, however – like a decision by the Chamber under the rules on the consideration of Green Papers and White Papers which were proposals at the time but have since been introduced – be an expression of the prevailing opinion in Parliament.

The Swedish Parliament approved the committee's proposal and position on the aforementioned points (Parliamentary Communications 2005/06:334 and 2006/07:25).

#### *Decision on subsidiarity control by Parliament*

The provisions of the Riksdag Act on examination by the Swedish Parliament of the application of the subsidiary principle are implemented through Parliamentary decisions (submission 2008/09: RS4, Rep. 2009/10:KU2) on the application of the Lisbon Treaty in Parliament. The submission by the Riksdag Board (submission 2008/09: RS4) involved sending a legislative proposal from a commission of enquiry (2008/09:URF2) to the Swedish Parliament for decision.

The Constitutional Committee stated in its report (2009/10:KU2 p. 1315) that it shared the commission of enquiry's view that the subsidiarity check was primarily a fitness-for-purpose test and that it should therefore be carried out by the committee with specialist knowledge of the field in question.

The committee stressed that the check was concerned with determining the level – EU level or one of the national levels – at which the proposed measure should be implemented, not whether the proposed measure should be carried out or not, and that committees, when carrying out this check, should follow the guidelines<sup>5</sup> referred to by the commission of inquiry, which have provided guidance on the application of the subsidiarity principle since its introduction into the EU Treaty.

The committee also noted that the commission of inquiry had suggested that a committee proposal to issue a reasoned opinion should be referred to as an opinion. The committee observed that this term in this way acquired a somewhat broader meaning than had been the case hitherto. Although the committee took the view that one advantage of using the same term as in the case of opinions resulting from the examination of EU documents which occurs at earlier stages of the decision-making process was that the opinions in both cases relate to the EU, it found that there were also differences, for example in how a matter is closed in the Chamber and in the final addressees. It decided to support the commission's proposal (see the committee's legislative proposal in Report 2009/10:KU2 p. 31). The Swedish Parliament adopted the committee's proposal (submission 2009/10:4041).

The Swedish Parliament's position on the matter is that both the rules on subsidiarity control by Parliament then introduced (i.e. present Chapter 10 Section 6 of the Riksdag Act) and the rules that already existed on opinions on various EU documents (i.e. present Chapter 10 Section 5 of the Riksdag Act) enable the committees to carry out different forms of subsidiarity checks at the various stages of the EU decision-making process. In the initial phase of the process, when the committees are examining Green Papers and White Papers as well as other EU documents under Chapter 10, Section 5 of the Riksdag Act, the question of subsidiarity can be raised when the committee is giving its opinion on different EU documents. In one of the later phases of the process, i.e. when a draft legislative act is being submitted, the actual subsidiarity check in accordance with Chapter 10, Section 6 of the Riksdag Act is carried out within eight weeks from the date on which the draft is presented.

#### *The Swedish Parliament's consideration of various types of EU document: summary*

In summary, the following conclusions can be drawn from the current rules on the consideration by the Swedish Parliament of various types of EU document as part of the EU's decision-making process:

In the introductory phase of the process the committees and Parliament *must* examine Green Papers and White Papers, and *may* examine other EU documents *with the exception of draft legislative acts*. As part of this examination, subsidiarity aspects can be raised in so far as they emerge in the course of the committee's examination. The committee's examination culminates in the statement referred to in Chapter 10, Section 5 of the Riksdag Act.



In one of the later phases of the process and in accordance with the rules laid down in Chapter 10, Section 6 of the Riksdag Act, the committee, and in some cases the Chamber and Parliament, *must* examine the *application of the subsidiarity principle* in certain draft legislative acts. As part of this examination, Parliament may send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission, stating why the Riksdag considers that the draft does not comply with the subsidiarity principle. If at least five members of the committee consider that a draft violates the subsidiarity principle they are entitled, in an opinion submitted to the Chamber by the examining committee, to propose that a reasoned opinion be sent.

## Statistics from the Riksdagsförvaltning (Riksdag Administration)

### *Opinions under Chapter 10, Section 5 of the Riksdag Act*

According to information compiled by the Secretariat of the Chamber, the committees presented ten opinions under Chapter 10, Section 5 of the Riksdag Act during Parliament's 2006/2007 session. Of these, seven were debated in the Chamber and three resulted in a vote. The European Commission replied to nine of the Swedish Parliament's opinions for its 2006/2007 session.

During Parliament's 2007/2008 session the committees presented 17 opinions. Of these, eight were debated in the Chamber and two were put to a vote. The Commission replied to all the Swedish Parliament's opinions for its 2007/2008 session.

During Parliament's 2008/2009 session the committees presented 17 opinions. Of these, eight were debated in the Chamber and five were put to a vote. The Commission replied to 12 of the Swedish Parliament's opinions for its 2008/2009 session.

During Parliament's 2009/2010 session the committees presented 17 opinions. Of these, seven were debated in the Chamber and six were put to a vote. As of 8 September 2010, the Commission had replied to nine of Parliament's opinions adopted during the previous parliamentary session.

### *Opinions under Chapter 10, Section 6 of the Riksdag Act*

According to information compiled by the Constitutional Committee Secretariat, the Finance Committee presented two opinions under Chapter 10, Section 6 of the Riksdag Act. These two opinions were debated in the Chamber during the 2010/11 session. In both cases the Swedish Parliament decided to send reasoned opinions to the Presidents of the European Parliament, the Council and the Commission.

## Earlier examination

In autumn 2008, the Constitutional Committee delivered an opinion (Rep. 2008/09:KU3) on the Commission's Report on relations between the European Commission and national Parliaments (COM(2008) 237). Taking as its point of departure the constitutional situation in Sweden, the Committee commented as follows (p. 11).

The main responsibility for representing the country abroad lies with the Government. The Instrument of Government does not contain explicit rules on the ability of the Swedish Parliament to communicate directly with international organisations. From the rules that apply in relation to the decisions taken by the Swedish Parliament on committees' opinions on EU documents, it follows that these should be regarded as preliminary views that are not constitutionally binding. The Committee stresses that the consideration by Parliament of a committee's opinion is closed when the Chamber takes note of the opinion.

The Committee points out that the expression of views in an opinion can nevertheless be seen as a reflection of the prevailing climate of opinion in the Swedish Parliament. Committee opinions and decisions by the Chamber can thus offer the Government an opportunity to check whether positions it intends to adopt in EU cooperation are supported in Parliament. In this sense, Parliamentary decisions can therefore become important in the relationship between Government and Parliament, based on parliamentary principles.

A decision by the Chamber in connection with the consideration of an opinion is not in any legal sense binding on the Government, the Swedish Parliament or any of Parliament's bodies. The Government is therefore at liberty, while remaining answerable to Parliament, to represent a position, for example at a Council meeting, which conflicts with the views expressed by the Chamber when considering an opinion. Similarly, the EU Committee or other committees are not guilty of any breach of the rules if, in consultations with the Government, they permit a departure from the opinion expressed by Parliament.

The Committee notes that the opinions are public and are available within the framework of interparliamentary cooperation and the IPEX database for the exchange of information on the discussion of EU documents in national parliaments and in the European Parliament. The Committee also notes that the Riksdag Administration sends the opinions to the Commission's Secretariat-General for information.

In accordance with what has been stated here, the Committee notes that the Commission's decision to send new legislative proposals and consultation documents direct to national parliaments is likely to encourage a more in-depth debate on EU cooperation within Member States.

The Swedish Parliament decided on 3 December 2008 to approve the Committee's proposal and take note of its opinion.

**EUMOT Commission of enquiry**The "EUMOT" Commission of enquiry has been operating within Parliament since the spring of 2009; its role is to map out the work situation in the committees and look into ways of making room for the committees' new and increased tasks. The commission of enquiry was set up as a result of discussions between the leaders of the political groups in Parliament and is operated under the authority of the Secretary-General of the Riksdag. Its tasks include monitoring the new ways of working in EU matters with the aim of preparing the division of work and recommending a template for how the work should be carried out. The commission of enquiry is expected to submit a document to be used as a basis for further discussion, including possible legislative proposals, around the turn of the year.

## The Committee's conclusions

The Committee notes the Commission's observation in its report that the very active Swedish Parliament continues to participate in the political dialogue with the Commission only with regard to non-legislative documents, in accordance with its internal procedures. In this context the Committee would like to point out that the main responsibility for representing Sweden abroad lies with the Government. The Committee also notes that, as of 1 December 2009, the Riksdag Act (Riksdagsordningen) contains provisions on two different types of opinion, one under Chapter 10, Section 5 and one under Chapter 10, Section 6.

The following applies to 10§5 opinions. They must be delivered by the committees to the Chamber when Parliament is examining Green Papers and White Papers. They must also be delivered by the committees to the Chamber when the Speaker, having conferred with the leaders of the party groups in the Swedish Parliament, determines that Parliament will examine other EU documents, although with the *exception of draft legislative acts*. They can include a consideration of subsidiarity aspects in so far as such aspects emerge in the course of the committee's examination. They must be regarded as preliminary positions that are not constitutionally binding. The Committee stresses that the consideration by Parliament of a committee's opinion is closed when the Chamber takes note of the opinion, even though the Committee has previously noted that the Riksdag Administration sends the opinions to the Commission's Secretariat-General for information.

The following applies to 10§6 opinions. These must be submitted by the committee to the Chamber if the committee feels that a draft legislative act conflicts with the principle of subsidiarity; they must also be submitted if at least five members of the committee consider that a draft legislative act conflicts with the principle of subsidiarity. Such opinions contain proposals for reasoned opinions to be sent to the Presidents of the European Parliament, the Council and the Commission stating why the Swedish Parliament considers that a draft does not comply with the subsidiarity principle. They should be regarded as containing proposals for positions which are binding in nature in accordance with the Protocol on the application of the principles of subsidiarity and proportionality. The seventh paragraph of Chapter 10, Section 6 of the Riksdag Act states that a decision on a reasoned opinion must be sent to the Presidents of the European Parliament, the Council and the Commission by means of a letter from Parliament.

The Commission Report also makes it clear that the Commission sees the subsidiarity control mechanism and the political dialogue as two sides of the same coin, with the former also being part of a wider political relationship between the Commission and national Parliaments.

The Committee continues to take the view that the Commission's decision to send new legislative proposals and consultation documents direct to national parliaments under the Barroso initiative will encourage a more in-depth debate on EU cooperation within Member States. Taking as its point of departure the prevailing constitutional situation in Sweden, the Committee would like to make it clear, however, that political dialogue between the Commission and Sweden is conducted via the Government, which is responsible to Parliament. This applies both to the substance of the Commission's draft legislative acts and to other documents. As regards the subsidiarity control mechanism, the Committee notes that the existing

treaties confer special powers on national parliaments. It is within the framework of these powers that the Swedish Parliament is able to communicate directly with the Commission - as laid down in the Riksdag/Parliament Act (Riksdagsordningen) - as regards the application of the subsidiarity principle.

«

ANNEX

## List of proposals discussed

*Commission's Annual Report on relations between the European Commission and National Parliaments (COM(2010) 291)*