



EUROPEAN COMMISSION

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Dear President,

The European Commission would like to thank you for the Swedish Parliament's response to the Commission's Report on subsidiarity and proportionality (17th report on Better Lawmaking covering the year 2009) {COM(2010)547}.

The Commission appreciates the comprehensive overview of the procedures that Sweden has put in place to implement the subsidiarity control mechanism. We have also taken particular note of several observations on how the Commission and other EU institutions apply the subsidiarity principle:

As for the **availability and sufficiency of subsidiarity justifications** in legislative proposals, set by Article 5 of Protocol 2 of the Treaty on the Functioning of the European Union (TFEU), the Commission takes this obligation very seriously. Incomplete and missing subsidiarity statements have mostly related to minor amendments to existing legislation [see also the 2010 Subsidiarity Report, COM(2011)344]. In that context, the Commission will take measures to ensure appropriate justification of subsidiarity in explanatory memoranda, for instance, by recalling and reconfirming the subsidiarity analysis made in the past. For Commission proposals with significant impacts, a comprehensive subsidiarity assessment is provided in the accompanying impact assessments, and is summarised in the explanatory memoranda.

Rules concerning **the scope of application of the subsidiarity control mechanism** are clear. The provisions of Protocol 2 cover draft legislative acts, which are to be adopted either under ordinary or under special legislative procedure, as long as they do not fall under the Union's exclusive competences. This means that where the Treaty legal base does not explicitly refer to one of the legislative procedures, be it ordinary or special, the relevant act is not a legislative one. As regards matters which fall under exclusive competence, these are set out in Article 3 TFEU. There are a number of very limited matters which can also be said to be exclusive competence by nature – these are few and mainly concern institutional or budgetary acts (for example the Commission proposals on the Citizens' Initiative, on the Commission's exercise of implementing powers, on the multiannual financial framework or on a new system of own resources). These are considered exclusive by nature as only the Commission can, and sometimes must legislate thereon. The Commission is committed to ensuring a high standard of implementation and a rigorous and transparent follow up of these rules by its services.

Mr Per Westerberg
President
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*The Commission fully supports the Swedish Parliament in its view that **compliance with the subsidiarity principle should be ensured throughout the legislative process.** According to the TFEU, as well as the 1993 inter-institutional agreement, all institutions shall apply the principle of subsidiarity.*

The Commission would like to encourage the Swedish Parliament to continue sharing its findings in the course of the annual follow-up of the application of the subsidiarity principle, as this provides very useful input to the Commission's work on subsidiarity and proportionality.

Yours faithfully,

*Maroš Šefčovič
Vice-President*