

Statement 2011/12:KU5

The position of the Committee on the Constitution

The Committee on the Constitution (hereafter referred to as the Committee) has examined the Commission's report on relations between the European Commission and national parliaments, COM (2011) 345. The Committee would like to point out that political dialogue between Sweden and the Commission according to current Swedish constitutional rules should take place via the Government, which is accountable to the Riksdag. Only within the framework of powers which existing treaties bestow on national parliaments (through Protocol [no 2] on the application of the principles of subsidiarity and proportionality, hereafter referred to as the Protocol) is the Riksdag given the opportunity to communicate directly (in the manner provided for by the Riksdag's internal procedures) with the Commission regarding the application of subsidiarity.

The Committee's second annual follow-up of the application of the subsidiarity principle shows that over a third of the draft legislative acts falling under the subsidiarity control mechanism during the period 1 July 2010–31 December 2010 lacked or contained insufficient subsidiarity justifications. Compared with the Committee's first follow-up (cf. the Committee's scrutiny report 2010/11:KU26 concerning COM(2010) 547), which covered the period 1 December 2009–30 June 2010, the proportion of insufficient or non-existent subsidiarity justifications is almost unchanged. Considering this fact, the Committee wishes once again to sharply underline the fact that the absence of or insufficient subsidiarity justifications makes it difficult for the Riksdag to fulfil its treaty obligation to ensure compliance with the principle of subsidiarity in accordance with the procedure set out in the Protocol. Thus the Committee concurs with the assessment contained in the European Parliament's resolution on better legislation, subsidiarity and proportionality and smart regulation from the 14 September 2011 on how important it is that the Commission's subsidiarity justifications are detailed and understandable. Detailed subsidiarity justifications without stereotyped elements improve the conditions under which national parliaments can control the compliance of draft legislative acts with the principle of subsidiarity. Incomplete or missing subsidiarity justifications constitute a serious flaw in the Union's legislative process.

The Committee would once again like to underline the importance of clear criteria for the scope of the subsidiarity control mechanism. Observations made by the Secretariat of the Chamber indicate some ambiguities concerning which proposals should be regarded as falling within the Union's exclusive competence and which revised draft legislative acts should fall under the subsidiarity control mechanism. According to the Committee, it is of great importance that clarity and predictability are created as to which draft legislative acts fall under the scope of the subsidiarity control mechanism. The Committee expects the Commission to adequately clarify the ambiguities with regard to the mechanism's scope highlighted in this report. In this context and in light of two cases identified by the Secretariat of the Chamber the Committee wishes to highlight a specific complication. A condition for parliaments' subsidiarity control is that the initiator of a draft legislative act informs them that the subsidiarity control mechanism is applicable to this specific draft. The Committee assumes that all initiators of draft legislative acts have established procedures to ensure that such information is given to parliaments.

The Committee notes the Commission's invitation to national parliaments to express their views also on pre-legislative documents. The Committee would like to point out that the Riksdag's internal procedures imply that scrutiny reports are issued for all green and white papers and for some other EU documents, with the exception of draft legislative acts. The Committee welcomes deliberation and examination of pre-legislative documents by national parliaments. This may contribute to both an early in-depth debate in member states about the Union's development and an increased knowledge about the positions of national parliaments. In this way the parliaments' positions can be taken into account, for example through their governments, in the continued legislative process at EU level.

Given that the Commission's report mentions that some parliaments within the framework of the subsidiarity control mechanism also inform the Commission about their positive opinions, the Committee wishes to make the following statement. According to article 6 of the Protocol, any national parliament may, within eight weeks, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. The Committee considers that reasoned opinions should be reserved for those situations addressed in the Protocol.

Following an observation by the Committee on Transport and Communications regarding what the Commission terms "an indivisible legislative package", the Committee on the Constitution would like to state the following. The Committee on the Constitution notes that it is apparent from the Protocol that each national parliament within eight weeks from the date of transmission of a draft legislative act may send a reasoned opinion with the reasons why the parliament considers that the draft in question does not comply with the principle of subsidiarity. The Committee notes that the term "package" is not used in the Protocol. It follows, according to the Committee's opinion, that each draft's subsidiarity justification is scrutinized individually, regardless of whether the initiator chooses to present it in a so-called legislative package or not.

Regarding the green paper on the European Citizens Initiative, the Committee notes that the Commission in its report states that "as regards the minimum number of Member States from which signatories of a citizens' initiative must come, all chambers which provided comments via political dialogue, stated that the threshold of one third was too high". The Committee would like to sharply remind the Commission that in its report on the green paper the Committee explicitly shared the Commission's assessment at that time that a threshold limit of one third would strike the right balance.