



## EUROPEAN COMMISSION

*Brussels, 25.7.2013  
C(2013) 4869 final*

*Dear President,*

*The Commission would like to thank the Riksdag for its Opinion concerning the Commission's Report on subsidiarity and proportionality (19<sup>th</sup> report on Better Lawmaking covering the year 2011) {COM(2012) 373 final}.*

*In reply to the comments raised in the Riksdag's Opinion, the Commission would like to provide the following clarifications.*

*As far as the subsidiarity justification of Commission proposals is concerned, as indicated previously to the Riksdag, the Commission fully recognises the importance of thoroughly explaining in the explanatory memorandum how the Commission concluded that the proposal is in conformity with the principle of subsidiarity. Compliance with this principle is analysed in the impact assessment report which is prepared for legislative proposals having significant impacts and which is scrutinised by the Impact Assessment Board. The explanatory memorandum accompanying a legislative proposal should draw upon this analysis. The Commission will continue to take all necessary steps to ensure that the explanatory memorandum sets out the subsidiarity reasoning and considers that progress has been made in this respect since the year 2011 covered by the Annual Report.*

*The Riksdag has suggested that it should be possible for national Parliaments to return proposals which do not contain any justifications. The Commission notes that Article 6 of Protocol No 2 as adopted by the Member States does not foresee any derogation to the eight week deadline, and that such a procedural step is not foreseen in Protocol No 2. In addition, in view of the measures taken to ensure that adequate justifications are provided for all proposals, proposals which do not contain any justification concerning subsidiarity will be rare if they occur at all. The Commission services however remain at the disposal of national Parliaments for clarifications and additional information on the proposal.*

*In relation to the comments made by the Riksdag on the efficiency of the subsidiarity control mechanism, suggesting that a longer deadline for reasoned opinions should be considered, the Commission notes that it is obliged to apply the rules of Protocol No 2 in force. Any changes of the procedure must be agreed by the Member States in the context of a revision of the Protocol.*

*Mr Per WESTERBERG  
President of the Riksdag  
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*As regards the comment of the Riksdag on exclusive competence "by nature", the Commission recalls that Protocol No 2 refers to Article 5 TEU which does not define the notion of exclusive competence. Article 3 TFEU sets out a number of areas in which the Union shall have exclusive competence, but in the Commission's view this list is not exhaustive. Certain proposals which are not covered explicitly by Article 3 TFEU can only be made at Union level and inherently fall under the EU's exclusive competence. These mainly concern budgetary and institutional matters (e.g. the draft budget, own resources, the multiannual financial framework regulation, the citizens' initiative, the comitology regulation, rules on access to documents of the EU institutions and bodies, data protection rules for the institutions etc.). Where proposals legally can only be made at EU level, most often by the Commission, Member States cannot themselves legislate in the matter and hence, the subsidiarity control mechanism is irrelevant and does not apply. Although the Commission considers that these proposals do not fall under the scope of the subsidiarity control mechanism, it would of course welcome any opinion that national Parliaments would submit on such proposals in the framework of the political dialogue.*

*The Commission confirms that it sends all amended proposals to national Parliaments under Article 4(1) of Protocol No. 2. At the same time, the Commission would like to point out that Articles 6 and 7 describing the functioning of the subsidiarity control mechanism only refer to draft legislative acts. The Commission considers that the transmission of a modified proposal does not imply the re-opening of the eight weeks scrutiny deadline for subsidiarity control. Only in the exceptional cases where the proposed modifications are of such significance that they could have a bearing on the subsidiarity analysis will the Commission re-consult national Parliaments on the modified proposal's compliance with the principles of subsidiarity.*

*Finally, on the comments made by the Riksdag on the division of competence between the Union and the Member States, e.g. pointing to the strengthening of legislation at EU level in the field of financial markets and regulation of economic and monetary policy, the Commission notes that democratic legitimacy and accountability are crucial topics for the EU and especially so in the context of deepened and strengthened Economic and Monetary Union (EMU), as explained in detail in the Commission Blueprint for a Deep and Genuine EMU<sup>1</sup>. The Commission will carefully analyse the contributions to this debate from national Parliaments in the framework of the political dialogue which should also feed in to a pan-European debate on the topic.*

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

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>1</sup> COM(2012) 777 final