



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 05/11/08
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Dear Mr Sanchez,

Thank you for your e-mail dated 23 October 2008, informing me about the inquiry of the European and External Affairs Committee of the National Assembly for Wales into subsidiarity.

This is an important subject and I am pleased to have the opportunity to contribute. Subsidiarity is one of the guiding principles for the European Union, of direct relevance for the effect of the Union's work on European citizens.

Under the Treaty of Lisbon, national parliaments would acquire an important additional role. It is perhaps worth underlining that these provisions refer to parliaments at the national level alone. However, regional parliaments and authorities do have an opportunity to contribute to reflections in work of the Committee of the Regions, which would enjoy the specific right to launch a legal challenge on the grounds of subsidiarity.

Please find attached responses to the questions you have raised (see attachment). But if you feel the need to request further clarifications, please do not hesitate to address them to my services. Mr Fernando Frutuoso de Melo, Director in the Secretariat General (tel: (32-2) 29-93145, fernando.frutuoso-melo@ec.europa.eu) will be happy to answer.

Yours sincerely,

Catherine Day

Annex

- *How does the Commission currently notify regional governments on new legislative proposals, if at all? Are there different processes in place for specific Member States? If yes, please illustrate with examples? E.g. Belgium or perhaps other federal systems such as Austria or Germany*

Currently the European Commission sends the legislative proposals to the Council, the European Parliament and other bodies as legally requested. The Permanent Representations of the Member States in the Council transmit these documents to their respective authorities. They are of course free to transfer the documents as they choose inside their Member States, in accordance with national constitutional requirements.

In addition, in the framework of the political dialogue between the Commission and the national parliaments launched by President Barroso in 2006, all Commission documents are also directly transmitted to all national parliaments.

- *How would this change through the introduction of the Subsidiarity Protocol should the Treaty of Lisbon come into force?*

The Treaty of Lisbon would put in place a requirement that the Commission sends all legislative proposals to national parliaments. In practice, this will require no change from current informal arrangements, since legislative acts are amongst the texts already sent to national parliaments by the Commission.

- *Are you aware of examples from European regions that already have in place a system to monitor new EU legislation for breaches of subsidiarity? If yes, can you please provide details of how this functions, and how the Commission engages with this process?*

In 2005, the Committee of the Regions set up an interactive subsidiarity monitoring network. Primarily aimed at local and regional authorities, in June 2007 an interactive website was set up. The stated goals of the exercise were:

- to permit a political participation of local and regional authorities in monitoring the implementation of the principles of subsidiarity and proportionality;
- to facilitate exchange of information on Commission political initiatives both at regional and EU level;
- to identify measures that could improve EU law and/or reduce administrative burden;
- to keep Committee of the Regions abreast of subsidiarity-related inputs stemming from a representative network of local and regional actors.

The Commission is following the activities developed by the Committee of the Regions with interest, within the framework of the co-operation agreement signed in 2005.

- *On average how many legislative proposals are produced each year by the European Commission? And of these what percentage would result in Member States, regional governments, or regional parliaments raising questions of subsidiarity? Within this percentage which EU policy areas are most prevalent in questions over application of subsidiarity?*

Based on our latest estimate, around 350 legislative proposals from the European Commission are transmitted to national parliaments each year.

It is difficult to estimate the number of proposals which might be thought to raise issues of subsidiarity. All proposals are analysed by the European Commission in terms of their respect for the principle of subsidiarity (and indeed proportionality). This is part of the better regulation approach to which the Commission is committed, and which is applied through tools such as impact assessment and stakeholder consultation. The Commission would therefore hope to have established that the principle has been respected in all cases. However, there is clearly room for different appreciations of the principle, and it is also natural that this is one of the issues to be considered by the European Parliament and the Council when examining a legislative proposal. It is interesting to note that when national parliaments have commented on the issue of subsidiarity, there are often different views, with some supporting the Commission's conclusion and others having doubts.

The political dialogue established with national parliaments has shown that national parliaments' interests spread much beyond the issue of subsidiarity. Most of the opinions received from national parliaments – some 300 in the space of two years – are rather linked to a political assessment of the content of proposals. But certain parliaments have chosen to take a particular interest in subsidiarity – such as the French Sénat and the German Bundesrat – and certain proposals have attracted particular interest in this respect, such as those on soil protection and road safety.

- *Is there any recourse for action for a regional government/parliament where a difference of view exists with the national government concerning a matter of subsidiarity?*

The interplay between the national and regional level is a matter for national choice so would depend on national constitutional arrangements. In terms of the EU architecture, the route by which the regional voice can be heard independent of the national voice is the Committee of the Regions.

- *Are Member States free to delegate the use of the orange/yellow card to a regional level?*

Under the terms of the Lisbon Treaty, the power to issue a reasoned opinion lies with the national parliaments. However, there is also a specific reference made that national parliaments can, if appropriate, consult regional parliaments with legislative powers. Exactly how to organise this, and what consequences would flow from this consultation, would be a matter for national constitutional choice.

I understand that the Committee of the Regions has expressed an intention to agree an opinion within 6 weeks. The intention is to allow this position to be ready before the 8-week deadline for national parliaments' responses is concluded.

- *Point of clarification: would the Subsidiarity Protocol only apply to legislative proposals?*

Whilst the protocol itself refers to the general obligations in terms of subsidiarity and proportionality, it makes clear that the mechanism operates only with regard to the respect for subsidiarity of legislative proposals.