

The position of the Committee

The Committee would like to start by underlining the importance of the national parliaments' monitoring of the application of the principle of subsidiarity. It is important not least from the perspective of the EU's democratic legitimacy that the national parliaments take responsibility for monitoring that the EU uses its conferred competences in accordance with the principle of subsidiarity and that the EU institutions are informed of any misgivings the parliaments have in this regard.

First, it can be noted that the Riksdag examines all draft legislative acts that are sent for subsidiarity checking in accordance with Protocol no. 2 on the application of the principles of subsidiarity and proportionality. The subsidiarity check of a draft legislative act is carried out by one of the Riksdag's 15 committees whose area of responsibility corresponds to the matter. In total, the Riksdag has carried out subsidiarity checks of 876 draft legislative acts and has submitted 74 reasoned opinions since the entry into force of the Lisbon Treaty, which means that the Riksdag has had objections to just over 8 per cent of all proposals. The Committee notes that the all-party committee of inquiry with the task of examining the Riksdag's work with EU affairs has assessed that the Riksdag's subsidiarity checks are meaningful and that the method used is appropriate. The Committee on the Constitution shares this view.

The Committee on the Constitution has stated several times that the subsidiarity checks are about establishing at what level - EU or some national level - the proposed measures are to be taken, not whether or not the proposed measures are to be taken. The Committee has further maintained that the parliamentary committees should seek guidance in the guidelines that have instructed application of the principle of subsidiarity ever since the principle was introduced to the Treaty on European Union in 1992. The Committee notes that the assessment method that Timmerman's working group has recommended should be applied by the EU institutions and the national parliaments partially corresponds to the method recommended by the Committee. According to this two-stage method - as the Committee on the Constitution has chosen to call it - the first stage involves asking whether it is possible to achieve the objectives of the proposed measure if it is taken at the national, regional or local level. If the answer is no, action should be taken at EU level. If the answer is yes, the question has to be asked if the objectives of the measure can be better achieved by its being taken at EU level. In order to

answer the latter question, the following follow-up questions should be asked:

- Are there any important cross-border aspects to the proposed action that cannot satisfactorily be regulated by means of measures in the member states?
- Would failure to act at EU level conflict with the requirements of the Treaty or in some other way considerably harm the member states' interests?
- Would action at EU level, on account of its scope or its consequences involve clear advantages compared with action at member state level?

As regards the eight-week time limit to submit reasoned opinions, the Committee considers that it would be a welcome improvement if the period over Christmas and New Year was not included in the time limit. In the opinion of the Committee, an extension of the time limit from eight to twelve weeks should also be considered in contexts where this is appropriate. Such a change could possibly be achieved, in a first step, through agreements between the member states and the EU institutions.

The Committee also wishes to stress how important it is that the EU institutions respect the time limit for subsidiarity checks and do not start negotiations on proposals before the time limit for the national parliaments' subsidiarity checks has expired. Failure to respect the time limit could mean that the role of the role of national parliaments in monitoring the application of the principle of subsidiarity becomes meaningless.

As regards the Commission's justifications, the Committee has noted a positive trend in that just under 7 per cent of the proposals in 2017 lacked satisfactory justifications, which is the same percentage as in 2016. The year before that, in 2015, just over 23 per cent of the proposals lacked satisfactory justifications. At the same time, the Committee notes that the justifications vary in terms of content and scope, and that they are far too brief in certain cases. The Committee on the Constitution therefore considers that there is potential for improvement in this regard, and appreciates the fact that the Commission, in its Communication on the principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking (COM (2018) 703) has stated that it intends to apply the assessment model proposed by Timmerman's working group. This will hopefully lead to justifications on the principle of subsidiarity in all cases, and to more detailed justifications.

The Committee on the Constitution would like to highlight that several of the parliamentary committees, in their comments to the Committee on the Constitution as part of the annual follow-up of the application of the principle of subsidiarity at the Riksdag, have underlined that it can be difficult to predict and plan for coming subsidiarity checks and that their experience is that the

information in the Commission's planning documents (work programmes, roadmaps and calendars of meetings) is not entirely reliable. Nor is there reliable information about when the various language versions are expected to be available and when the eight-week time limit will start. An example that is referred to is the situation before the summer break in 2018, when a very large number of draft legislative acts was sent by the Commission to the national parliaments. The Committee on the Constitution notes that the national parliaments' planning of subsidiarity checks could be considerably facilitated if the Commission provided more detailed and reliable information about the planning of each individual initiative.

The Riksdag currently participates in a formal dialogue with the EU institutions regarding, inter alia, subsidiarity checks. The all-party committee of inquiry with the task of examining the Riksdag's work with EU affairs recently drew the conclusion that the Commission should continue to be notified of statements in which the examination of documents from the Commission is presented, and that the Riksdag should accept that the statements may be regarded as participation in a dialogue between the Commission and the Riksdag in its capacity as a national parliament. The all-party committee of inquiry further pointed out that the Riksdag only represents itself as a national parliament, and not Sweden as a member state. The Committee shares the all-party committee of inquiry's opinions.

The Committee on the Constitution would also like to recall the importance of cooperation between national parliaments. Of the proposals examined after the entry into force of the Lisbon Treaty, just three proposals have led to the threshold value for a yellow card being achieved. The Committee on the Constitution has, as mentioned, highlighted the value of exchange of information with other national parliaments on several occasions, and that there is reason to consider how the national parliaments can exchange information in such a way that the possibilities of achieving the threshold for a yellow card can be improved. The Committee has stated that the Representative of the Riksdag to the EU institutions is a possible channel for exchange of information with other committees or equivalent bodies in other national parliaments with the purpose of, for example, informing other parliaments of the position of a Riksdag committee, or in order to join together as many parliaments as possible together to achieve the threshold value set out in Protocol 2 to get a proposal reviewed. The Committee on the Constitution has also stressed the value of increased cooperation between the national parliaments, if possible also at the political level.

The Committee on the Constitution also considers that there is potential for improvement regarding information that is entered into IPEX, and that it should

be entered in a language that is accessible to other national parliaments.

The Committee welcomes the fact that the Commission has raised its level of ambition in recent years to achieve enhanced legislation, *inter alia*, as regards the application of the principle of subsidiarity. Furthermore, the Committee values the Commission's ambition to improve openness and transparency in the EU's decision-making procedures and to enhance the quality of legislation by means of better impact assessments of new legislative proposals and an ongoing overview of existing legislation.