

REASONED OPINION

**of the European Affairs Committee of the Federal Council
24 May 2012**

**pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol
No.2 on the application of the principles of subsidiarity and proportionality**

COM (2012) 150 final

**Proposal for a Regulation of the European Parliament and of the Council amending Directives
1999/4/EC, 2000/36/EC, 2001/113/EC and 2001/114/EC as regards the powers to be conferred on
the Commission**

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

According to the Treaties, the European Commission has almost no autonomous legislative powers. Secondary legal acts, i.e. detailed provisions adopted by the Council or by the Council and the European Parliament as basic legal acts, but which cannot be dealt with in a meaningful way by the Council on account of their degree of detail, have to be referred back to the European Commission by the Council within the framework of Articles 290 and 291 TFEU. Although implementing acts (comitology) prove to be a very useful instrument for dealing with complex issues, the question arises if their use is indeed democratic and, let alone, compatible with the principle of subsidiarity. The possibility for Member States to submit comments is not clear at all. The above proposal by the European Commission refers to a “new philosophy” and a corresponding alignment of the rules on implementing powers. According to the Commission, there is no need for an impact assessment. As regards the principle of subsidiarity, it is stated that the proposal falls under the shared competence between the EU and the Member States and therefore complies with the subsidiarity principle. The European Affairs Committee of the Federal Council does not share this opinion.

In the opinion of the Federal Council, no final clarification has been provided as to whether the Fruit Juice Directive published in the Official Journal on 27 April 2012 still allows Member States to determine their own product names or if any changes have occurred in that respect.

The possibility of delegated acts pursuant to Article 290 TFEU is obviously difficult to reconcile with the power to perform subsidiarity checks granted to the national parliaments. Hence, Article 290 TFEU is to be interpreted in a restrictive manner.

The proposal now on the table, however, is based on a much broader interpretation: Contrary to the provision contained in Art. 209 TFEU, it does not specify the duration of the power of delegation, but confers the power to adopt delegated acts for an indeterminate period of time, merely indicating that these can be revoked at any time. In the absence of any indication of the objectives and the content, only the scope – technical characteristics, product names and definitions – is specified. This is a step towards conferring insufficiently specified law-making powers on the Commission in areas that may constitute a substantial interference with the implementing powers of the Member States,

e.g. in the context of traditional or regional product names. Finally, the proposal states that experts are to be consulted in the preparatory work for delegated acts, but no mention is made of the possibility for Member States or national parliaments to nominate experts for this consultation.

Given the established principle of European law *potestas delegata non delegator* and in view of the fact that the competence of the Union is based on the principle of conferral, the Council and the European Parliament do not have the authority to eliminate subsidiarity checks by the national parliaments by conferring law-making powers the Commission. However, this is exactly what the proposal submitted would result in.

For these reasons, the Federal Council is of the opinion that the proposal submitted is not compatible with the principle of subsidiarity enshrined in Article 5 TEU.