

## Introduction

Meine Damen und Herren,

- Vielen Dank für die Einladung zur Subsidiaritätskonferenz. Diese Konferenz wird von zwei glaubwürdigen Institutionen organisiert.
- Der Bundesrat ist eine der aktivsten Kammern im politischen Dialog der Kommission mit nationalen Parlamenten. Und der Ausschuss der Regionen ist ein wertvoller Partner für die Kommission.
- Subsidiarität ist derzeit wieder im Fokus. Wie Sie sicher wissen, haben im Oktober knapp ein Drittel der nationalen Parlamente erklärt, dass der Kommissionsvorschlag zur Errichtung der Europäischen Staatsanwaltschaft dem Subsidiaritätsprinzip widerspricht. Dies war das zweite Mal, dass die Schwelle für eine 'gelbe Karte' im Rahmen des Subsidiaritätschecks durch die nationalen Parlamente erreicht wurde. Aber dieses Mal, hat die Kommission entschieden, den Vorschlag beizubehalten. Rat und Parlament werden ihn jetzt beraten.
- Respektiert die Kommission das Subsidiaritätsprinzip nicht? Respektiert sie die nationalen Parlamente nicht? Nein. Im Gegenteil.
- Die Kommission hat wiederholt klar gemacht, dass Subsidiarität eine der Säulen der EU ist. Und sie hat über die letzten zehn Jahre Subsidiarität nach und nach in ihre Prozesse integriert.
- Aber bevor ich den Versuch unternehme, dies auf Deutsch zu erklären, fahre ich lieber auf Englisch fort.

Ladies and Gentlemen,

- Subsidiarity is not a technical concept. It is a fundamental democratic principle. An ever closer union among the citizens of Europe demands that decisions are taken as openly and as closely to the people as possible. As

President Barroso put it in his last state of the Union address:

- "Not everything needs a solution at European level. Europe must focus on where it can add most value. Where this is not the case, it should not meddle. The EU needs to be *big on big things and smaller on smaller things.* "
- Article 5 of the Lisbon Treaty provides us all with the guiding principle. The Union should only act if Member States, either at central or at regional and local level, cannot achieve the objectives sufficiently and if, by reason of the scale or effects, the Union can achieve them better.
- This principle is strong. It establishes a presumption in favour of local, regional and national action.
- But it is not a magical formula. It is subject to appraisal of the policy makers on a case-by-case basis. For each initiative, the arguments on subsidiarity and proportionality have to be substantiated and made explicit so that policy-makers at all levels can debate them and make informed and transparent decisions on the level and the scope of action.
- Controversies about the division of labour between the national and European levels will never be concluded. This is a continuous and joint endeavour; and its results should be reviewed regularly.
- I would like to come back to each of these points: Continuous, joint, and liable to review.

### **Continuous: Streamlined in Commission procedures**

- The choice whether and where to propose action at European level is an intrinsic part of the Commission's approach to smart regulation. Just because there is a Treaty competence does obviously not mean that the EU has to exercise it.

- First, during the very initial planning phase, the question "should we propose action at EU-level" is being examined, for example in reports, green papers, policy communications and similar documents.
- During the phase when a legislative proposal is being drafted, the question is asked again: and namely in roadmaps (which provide first information and a preliminary subsidiarity assessment); stakeholder consultations (which should systematically address subsidiarity questions); external studies; and finally the impact assessments (which contain the most detailed subsidiarity argumentation).
- The Commission's Impact Assessment Guidelines have enhanced the guidance. They provide a set of structured questions that was actually based on the work of the Committee of the Regions.

### **Joint: Subsidiarity check, Role of national and regional parliaments**

- However, subsidiarity does not only concern the Commission. This is a joint endeavour that involves national and regional parliaments, the EU legislator and the Committee of the Regions.
- There can be different ways of reading this concept. Its interpretation can of course be subject to various political considerations. Therefore, it is so important that the national Parliaments exercise an additional "subsidiarity check" introduced by the Lisbon Treaty once the Commission has adopted the legislative proposal.
- They can come forward with new subsidiarity arguments, which the Commission may not have considered during the pre-legislative phase, or it may have considered from a different perspective. Commission, Council and

European Parliament have a genuine interest in hearing these arguments.

- From the Commission's perspective, the implementation of the subsidiarity control mechanism, and, more generally, the cooperation with national Parliaments works well.
- Since the Treaty of Lisbon entered into force on 1 December 2009, the Commission transmitted over 341 draft legislative acts under shared competence to national Parliaments for subsidiarity control and has received 181 "reasoned opinions" in the sense of Protocol 2, i.e. stating – in an opinion submitted within 8 weeks – that the Commission proposal does not comply with the principle of subsidiarity [34 in 2010, 64 in 2011 and 70 in 2012 and 13 so far in 2013].
- The reasoned opinions are spread across many files. In fact, only 9 proposals elicited 6 or more:
  - in 2010 the Seasonal workers Directive, the Deposit Guarantee Schemes Directive and the proposal on Food Distribution to the most deprived;
  - in 2011 the proposal for a Common Consolidated Corporate Tax Base (CCCTB) and the so-called Schengen package on the temporary reintroduction of border control at internal borders in exceptional circumstances;
  - in 2012 the so-called Monti II proposal on the Right to take collective action within the context of the freedom of establishment and the freedom to provide services;

- earlier this year, in 2013, the proposal concerning gender balance on Management Boards and the Tobacco Directive
- After the Monti II proposal, which the Commission withdrew for several reasons, only the proposal for a European Public Prosecutors Office triggered a yellow card procedure.
- The Commission reviewed this proposal and concluded on 27 November that it does not share the view of some national Parliaments that the principle of subsidiarity is not respected. The Commission, therefore, maintains its original proposal, which is one of the options provided for by the Treaty.
- Before taking this decision, the Commission has examined and analysed the entirety of the subsidiarity arguments. It has also been essential for us to provide as complete explanations for the Commission's position as possible. That is why the Communication of 27 November is very detailed.
- It goes without saying that the Commission will have the concerns in mind in the further legislative process.
- And the impact of reasoned opinions does not stop here. The European Parliament and the Council should also take them into account in their decisions. This is what I mean by subsidiarity being a joint endeavour.
- The Commission established already in 2006 a political dialogue that goes beyond the subsidiarity control mechanism. The scope of the subsidiarity control mechanism is confined to draft legislative acts falling outside the EU's exclusive competences and to objections "only" on grounds of subsidiarity. The informal political dialogue gives national Parliaments the possibility to share

their views on the content of all documents we transmit to them, which includes non-legislative documents.

- Because of the political dialogue, it is clear that even where reasoned opinions on subsidiarity do not reach the yellow card-threshold, the Commission carefully examines the arguments put forward and replies to each of the negative opinions from national Parliaments in the context of the political dialogue.
- The Lisbon Treaty has foreseen a new role for national Parliaments not to create competition between institutions but rather to allow national Parliaments to participate constructively in the decision-making process, and to make other institutions aware of their views. National Parliaments should feel encouraged by the role they play today; encouraged to assume the responsibilities given to them by the new Treaty.
- The evidence that this is happening is all around us. I don't think anybody can fail to recognise to what extent the role of NPs has changed today, and how present they have become on the European scene.
- And when I say national parliaments, I also think "regional parliaments". The Lisbon Treaty mentions regional parliaments (with legislative powers) for the first time.
- The way regional parliaments are consulted by their national Parliaments falls within each Member States' national constitutional order, and the Commission cannot and does not want to interfere in this order. The Treaty after all is very clear that it is up to the national Parliaments (and not to the Commission) to consult regional parliaments, where appropriate.
- On the other hand, the Commission wants regional parliaments to participate in the process of subsidiarity monitoring. There is, after all, a reason that this provision has been introduced in the Treaties.

## **Revisable: smart regulation and REFIT**

Ladies and gentlemen,

- Let me return to my last observation on subsidiarity: Subsidiarity also means that past decisions on the level of action are up for regular revision. The Commission has been intensifying this review practice over the last years.
- But first, I also say loud and clearly: Regulation at the EU level is necessary to ensure minimum common standards for health and safety at work, consumer protection, protection of the environment and other public interest objectives. For business, common minimum EU standards ensure fair conditions of competition in the single market.
- But we must pay attention to the cost / benefit balance of regulation. The challenge is to ensure the protection of the public interest but to do it more efficiently and effectively. This includes the examination of the appropriate mix of action at European, national, regional and local level.
- In the current difficult economic context, it is particularly important that EU regulation does not impose unnecessary requirements that stifle businesses, especially the smallest ones which have the least resources to spend on complying with regulation.
- The Programme for Administrative Burden Reduction from 2008 – 2012 resulted in the adoption of changes to EU regulation with an estimated potential to reduce administrative burdens in the 13 main sectors by 25%, with further initiatives, worth a further 6% proposed by the Commission. These reductions were worth an estimated €30bn annually.

- Some of these measures at the EU level, such as on company accounts, presented options which Member States were left free to take up to a greater or lesser extent at the national level, thereby respecting the principles of subsidiarity and proportionality.
- In December 2012, the Commission took the next step in its Smart Regulation policy, adopting its Communication on REFIT ('EU Regulatory Fitness'). The Commission explained how it is developing its consultation policy. It committed to organise public consultations on its evaluation and Impact Assessment policy and practice – and I take this opportunity to draw your attention to the public consultation on the Commission's evaluation policy running up to 25 February.
- The Commission also undertook a review of all EU regulation, producing an account of the results in August, and a Communication in October. It contains over one hundred initiatives to review and revise, withdraw proposals for EU legislation and repeal existing EU legislation.
- REFIT is the expression of the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework. REFIT is a continuing programme to review the entire stock of EU legislation and to make the necessary proposals to follow up.
- The Commission's drive to reduce regulatory burden and to respect the principle of subsidiarity are closely related. Both require a closer look to be taken at the justification for action. Any measures taken must be designed to be the most efficient and effective way of achieving the public interest objectives.
- The Commission's commitment to improved consultation, stronger evaluation of existing EU regulation and better Impact Assessment will all strengthen the subsidiarity test.



Intensified use of these Smart Regulation tools will ensure that full account can be taken of input from stakeholders and the general public.

- Finally, there is some overlap between the subsidiarity review recently undertaken by the Netherlands and actions being taken under REFIT. Further discussions on subsidiarity and the annual development of REFIT work may give rise to more corresponding ideas and initiatives. The Commission and the Member States and their regions share the aim of EU legislation which is fit for purpose, proportionate, and fully respects the principle of subsidiarity.

### **Conclusions**

- With this outlook, let me conclude.
- The struggle about the right level of action in the EU is a continuous one. It does not involve automatic choices but implies discussions between all concerned institutions. This is not a bad thing. It characterizes each dynamic and successful federal system. In this city, discussions if a specific action should be taken by the Bund or the Länder are daily business. Does any German put therefore the *Bundesrepublik* into question?
- But there are those who claim that a weaker Europe would make their country stronger; that they would be better off without it.
- My reply is clear: our countries' sovereignty is enhanced because they are EU Members. There are issues that are much better resolved at the EU level, and where the EU is more than just the summary of 28 Member States.
- Let me finish with another quote from Commission President Barroso:

- "In the debate that is ongoing all across Europe, the bottom-line question is: *Do we want to improve Europe, or give it up?*
- My answer is clear: let's engage!
- If you don't like Europe as it is: improve it!
- Find ways to make it stronger, internally and internationally. Find ways that allow for diversity without creating discriminations.
- But don't turn away from it. "