13.9.2018

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARIETY


Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Swedish Parliament (Riksdag) has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament’s Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.
Reasoned opinion of the Riksdag

The Riksdag has examined the application of the principle of subsidiarity in the Commission’s proposal for a regulation of the European Parliament and of the Council on a mechanism to resolve legal and administrative obstacles in a cross-border context (COM(2018)0373).

One of the tasks of the European Union is to develop and pursue its actions to increase its economic, social and territorial cohesion. In particular, the Union must aim to reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions. The Riksdag agrees with the Commission that territorial and cross-border cooperation generates added value for the residents of the European Union.

The Riksdag believes that a properly functioning internal market is of crucial importance in boosting competitiveness, growth and employment throughout the EU, to the benefit of undertakings, employees and consumers. Interreg programmes have led to improved integration in the Union with increased confidence, greater connectivity, a better environment, better health and stronger economic growth as a result. Interreg has also helped to complete the internal market and helped internal border regions to transform themselves from peripheral areas into areas of growth and opportunities. Naturally, the smooth functioning of the internal market also requires the removal of obstacles at internal borders.

In order to address legal obstacles in border regions which impede joint cross-border infrastructure projects or services of general economic interest, the Commission proposes a regulation providing for a mechanism to resolve legal and administrative obstacles.

The Riksdag notes that the current proposal is complex and unclear on several points. This lack of clarity concerns, among other things, the extent to which use of the mechanism under the Regulation to overcome obstacles occurring in border areas will be voluntary. The Commission states that Member States have already taken individual, bilateral and multilateral initiatives to solve legal problems at borders, but that such mechanisms do not exist in all Member States and do not cover all borders in a given Member State. The Commission states that the most effective way of resolving legal obstacles in border regions is by means of legislation in the form of a regulation, as it would require Member States to establish a mechanism at every border with another Member State to resolve legal obstacles in a joint cross-border region, while allowing them to use other effective mechanisms. Recital 9 of the proposal for a regulation also states that ‘In full respect of the constitutional and institutional set-up of the Member States, the use of the Mechanism should be voluntary with regard to those border regions of a given Member State where another effective mechanism exists or could be set up with the neighbouring Member State.’ This option of establishing a mechanism that does not already exist is not provided for in Article 4 of the proposal, which stipulates that Member States shall either opt for the mechanism or opt for existing ways to resolve legal obstacles, or else, with regard to a specific border with one or more neighbouring Member States, join an existing effective way set up formally or informally by one or more neighbouring Member States. Thus, under the current wording, those Member States which currently do not already have mechanisms to deal with legal obstacles that may arise in joint cross-border projects have no choice but to implement the mechanism proposed.
by the Commission. Furthermore, it is unclear what the existing alternative mechanisms authorised by the Commission are and to what extent, in the Commission’s view, they are effective enough to be chosen by Member States as an alternative to the mechanism proposed in the regulation.

The Riksdag also takes the view that the proposal is unclear as regards the powers of the cross-border coordination points in relation to national law, administrative structures and legal orders. The proposal lacks a clear definition of the problems and legal fields to be covered by the regulation. It is therefore also not clear to the Riksdag which aspects of infrastructure projects and services of general economic interest are intended to fall within the scope of the regulation or whether the proposal seeks to deal with national differences, for example in labour law and taxation. Labour market policy and tax policies are matters that come within the national competence of the Member States. As it is not clear to what extent the proposal in its current form might potentially encroach upon this competence, it cannot be concluded that the proposal complies with the principle of subsidiarity. The Riksdag also notes that there is no proper assessment of the impact of the regulation in terms other than economic ones, which possibly adds to the uncertainties surrounding the proposal. In addition, the Riksdag considers that the Commission’s statement of the reasons why regulation of these types of problem-solving mechanisms for cross-border obstacles should be moved up to EU level is not fully substantiated, thereby also contributing to the uncertainties.

With reference to the above, the Riksdag therefore considers that, in its present form, the proposal is not compatible with the principle of subsidiarity.