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REPORT FROM THE COMMISSION

ON SUBSIDIARITY AND PROPORTIONALITY

(18th report on Better Lawmaking covering the year 2010)

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1. INTRODUCTION

This is the eighteenth annual report on the application of the principles of subsidiarity and proportionality in EU lawmaking. According to the Protocol (No 2) on the application of these principles (hereinafter ‘the Protocol’) attached to the Treaty on the Functioning of the European Union (TFEU), the Commission has to present this report each year to the European Council, the European Parliament, the Council and national Parliaments.¹

The report looks at how the principles are implemented by different institutions – the Commission, the European Parliament, the Council and the Committee of the Regions, and presents in more detail some initiatives which have raised subsidiarity issues. It also examines how the subsidiarity control mechanism of national Parliaments, which was one of the innovations introduced by the Lisbon Treaty,² has been implemented.

2. THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

Subsidiarity and proportionality are enshrined in Article 5 of the Treaty on European Union (TEU).

Subsidiarity is a guiding principle for defining the boundary between Member State and EU responsibilities – that is, *who should act?* If the Union has exclusive competence in a particular area,³ then clearly it is the Union which should act. If the Union and the Member States share competence,⁴ the principle establishes a presumption in favour of the Member States taking action. The Union should only act if Member States cannot achieve the objectives sufficiently and if, by reason of the scale or effects, the Union can achieve them better.

¹ Wider smart regulation issues were addressed in the Commission Communication on Smart Regulation (COM(2010) 543).

² The Lisbon Treaty came into force on 1 December 2009.

³ According to Article 3 of the TFEU these areas are customs union, the competition rules necessary for the functioning of the internal market, monetary policy of euro-zone, conservation of marine resources, and common commercial policy.

⁴ According to Article 4 of the TFEU these areas are internal market, social policy, cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, freedom, security and justice, and certain public health matters.

Proportionality is a guiding principle for determining how the Union should exercise its competences, both exclusive and shared – *what should be the form and nature of EU action?* The TEU provides that the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. Any decision must favour the least restrictive option.

3. APPLICATION OF THE PRINCIPLES BY THE INSTITUTIONS

Decisions about whether to propose action at EU level (subsidiarity) and, if so, the extent of the action (proportionality) are fundamental to smart regulation.¹ The appropriate level of action sometimes emerges as part of the policy design and inter-institutional legislative process.

It is imperative to make the arguments on subsidiarity and proportionality **transparent**, because this enables the different players to deliberate constructively over the validity of their positions. Therefore, irrespective of where the initiative originates, the draft legislative act should contain a detailed ‘statement’ making it possible for the other actors to appraise compliance with the principle. According to the Protocol, this statement should contain some assessment of the proposal’s financial impact, take account of financial or administrative burdens, and in case of directives, mention any implications for national and regional rules. The conclusions should be substantiated by qualitative and, wherever possible, quantitative indicators.

Subsidiarity **cannot be easily validated** by operational criteria. The Protocol, as revised by the Lisbon Treaty, no longer mentions conformity tests, such as ‘necessity’ and ‘EU value-added’. Instead it has shifted the application mode towards the procedural aspects ensuring that all key actors can have their say. The Commission has continued to use ‘necessity’ and ‘EU value-added’ tests as part of its analytical framework and recommends the other actors to do likewise.

A fair political judgement at the **pre-legislative phase is important** to ensure that proposals get the subsidiarity issues right from the beginning. At the post-legislative stage, the Court of Justice could be called on to check the legality of adopted legislation. The Court has yet to annul a measure for breach of subsidiarity.

3.1. The Commission

The Commission, as the main author of legislative proposals under its right of initiative, should ensure that the correct choices about whether and how to propose European action are made at an early stage of policy development.

The Commission publishes roadmaps⁵ for all the major initiatives. Roadmaps outline the Commission's intentions, including an initial subsidiarity and proportionality justification. These ideas are verified later during stakeholder consultation and impact assessment (IA) work. The subsidiarity statement for each legislative proposal is presented in the explanatory memorandum and recalled in the recitals of the proposal. IAs, which accompany proposals with significant impacts, provide the most detailed analysis of subsidiarity and proportionality. The quality of this analysis is scrutinised by the IA Board.

In 2010, the **Board** commented on subsidiarity and proportionality issues in more than half of the cases it examined,⁶ and identified three main areas for improvement:

- Need for more robust **evidence of EU value added**. For example, for the initiative on the *European Dimension in Sport*,⁷ the Board was concerned about the limited evidence base for a planned financing programme. Similarly, the Board questioned the added value of EU-level measures for the idea of a mountain product label (initially included in the *Package of Agricultural Product Quality*⁸). In both cases the relevant services have decided to conduct further analysis before proposing EU action.
- Need for **thorough subsidiarity analysis** for initiatives **extending the scope of EU intervention**. This was the case for several initiatives adopted in the aftermath of the financial crisis – amendments to the Directives on Deposit Guarantee Schemes⁹ and Investor Compensation Schemes,¹⁰ an initiative on Short Selling and Credit Default Swaps,¹¹ and the White Paper on Insurance Guarantee Schemes.¹²
- The Board questioned the **preferred level of harmonisation** on several occasions, given the differences in national situations. This was the case for amendments to the Regulation on Judgments in Civil and Commercial Matters¹³ and a proposed Regulation on Property Consequences of Registered Partnerships.¹⁴

⁵ Access to roadmaps is via the Commission's IA Website:
http://ec.europa.eu/governance/impact/index_en.htm.

⁶ http://ec.europa.eu/governance/impact/key_docs/docs/sec_2011_126_en.pdf.

⁷ COM(2011) 12, here and afterwards access to IAs and IA Board opinions is via the Commission's IA Website: http://ec.europa.eu/governance/impact/ia_carried_out/cia_2011_en.htm.

⁸ COM(2010) 733.

⁹ COM(2010) 368.

¹⁰ COM(2010) 371.

¹¹ COM(2010) 482.

¹² COM(2010) 370.

¹³ COM(2010) 748 (recast).

¹⁴ COM(2011) 127.

3.2. National Parliaments

The subsidiarity control mechanism introduced by the Lisbon Treaty enhances the role of national Parliaments, which can express their views on whether draft legislative proposals comply with the principle of subsidiarity. Depending on the number of reasoned opinions concluding that a proposal is in breach of the subsidiarity principle, the Treaty provides for two mechanisms – the so-called ‘yellow card’ and ‘orange card’.¹⁵ Both mechanisms entail a review of the draft legislation and may lead to amendment or withdrawal of the proposal.

Since 2006 the Commission has, within the framework of the political dialogue,¹⁶ transmitted all new proposals to national Parliaments, and replied to their opinions.¹⁷ As from 1 December 2009, this framework has been used in parallel for the subsidiarity control mechanism. By the end of 2010, the Commission had sent out 82 draft legislative proposals falling within the scope of the Protocol and received 211 opinions. While most of the opinions concentrated on the content of the proposal, a total of 34 opinions raised subsidiarity concerns. For five legislative proposals the Commission received more than one reasoned opinion,¹⁸ but in all of these cases the threshold for a ‘yellow card’ was far from being reached.

Some replies from the national Parliaments have also highlighted insufficient or missing subsidiarity justification in a number of the Commission’s proposals. This appeared to be in particular the case for proposals on minor amendments to existing legislation. The Commission will take measures to ensure proper subsidiarity justification in explanatory memoranda of all legislative proposals, including, for instance, by recalling and reconfirming the subsidiarity analysis made in the past.

3.3. The European Parliament and the Council

The legislators – the European Parliament and the Council – act at the final stage of the pre-legislative phase. They must validate the proposal’s conformity with the principles of subsidiarity and proportionality, and provide a relevant justification if an amendment they make affects the scope of Union action.¹⁹

In the Council, the Committee of the Permanent Representatives of each Member State (Coreper) ensures that the principles are respected.²⁰ In the European Parliament, the compliance is verified by the committees in charge of specific legislative dossiers, together with the Committee on Legal Affairs.

¹⁵ See also Article 7 of the Protocol.

¹⁶ COM(2006) 211. See also the Commission 2010 Report on relations with national Parliaments.

¹⁷ See also http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm.

¹⁸ See also Annex, further details via IPEX (a dedicated website for the inter-parliamentary exchange): <http://www.ipex.eu/ipex/>.

¹⁹ See the Inter-Institutional Agreement on subsidiarity (OJ C 329, 6.12.1993, p. 132).

²⁰ Council Decision 2009/937/EU, OJ L 325, 11.12.2009, p. 35.

The Council and the European Parliament have both set up their own procedures to implement the subsidiarity control mechanism. The Parliament's Rules of Procedure were amended to ensure that the reasoned opinions of national Parliaments are taken into consideration in parliamentary discussions.²¹ The Council has ensured that the national Parliaments were consulted on the initiatives originating from a group of Member States.²²

3.4. The Committee of the Regions

The Committee of the Regions expresses its views either when it is consulted or in own-initiative opinions. The Lisbon Treaty empowers the Committee to challenge ex post the validity of legislation that could violate the principle of subsidiarity, but only in those areas where the Committee is to be consulted. As from 2010 the Committee has adapted its Rules of Procedure²³ to the effect that all its opinions should contain an explicit reference to the subsidiarity and proportionality principles.

The Subsidiarity Monitoring Network (SMN) of the Committee included by the end of the year 2010 113 regional partners. In 2010 the SMN conducted five targeted consultations. It also embarked on the first Action Plan to identify best practices in the application of the subsidiarity principle in Europe's regions and cities. In addition, the Committee plans to develop the functionality of the SMN further to support the participation of regional parliaments in the subsidiarity control mechanism.

The Committee has issued its first Annual Report on Subsidiarity.²⁴

3.5. The Court of Justice

The Court of Justice of the European Union, in accordance with Article 263 TFEU, is competent to review the legality of legislative acts, as regards compliance with the principle of subsidiarity. The Protocol particularly states that the Committee of the Regions or Member States, themselves or on behalf of their national Parliaments, can bring a case before the Court.

Apart from the ruling on the *Roaming Regulation*,²⁵ which has already been covered in the 2009 report, there has been no new case law to record.

²¹ Rules of Procedure of the European Parliament,
<http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=TOC>.

²² In 2010: Directive on the Rights to Interpretation and to Translation in Criminal Proceedings (2010/0801 (COD)), Directive on the European Protection Order (2010/0802 (COD)) and Directive on European Investigation Order (2010/0817 (COD)).

²³ OJ L 6, 9.1.2010, p. 14.

²⁴ <http://portal.cor.europa.eu/subsidiarity/news/Pages/CoRSubsidiarityAnnualReport2010.aspx>.

²⁵ Case C-58/8 *Vodafone Ltd, Telefónica O2 Europe plc, T-Mobile International AG, Orange Personal Communications Services Ltd v. Secretary of State for Business, Enterprise and Regulatory Reform* about EC Regulation No 717/2007.

4. KEY CASES WHERE SUBSIDIARITY AND PROPORTIONALITY CONCERNS WERE RAISED

This section looks at the Commission proposals which have generated the most discussion among the legislators and stakeholders on subsidiarity and proportionality.

4.1. Follow-up to cases mentioned in previous reports

For some of the cases mentioned in earlier reports, such as the Directives on *Aviation Security Charges*,²⁶ *Protection of Soil*,²⁷ *Equal Treatment outside Employment*²⁸ and *Consumer Rights*,²⁹ there were no significant developments in ongoing legislative procedures.

In the subject of *Patients' Rights in Cross-Border Healthcare*,³⁰ mentioned in the 2009 report, a second-reading agreement was reached after long negotiations, at the beginning of 2011. Throughout the whole procedure the main concern was the delicate balance to be found between respecting national competences to organise and finance health care, on the one hand, and codifying patients' rights as recognised by the Court of Justice, on the other hand.

Regarding the *Maternity Leave Directive*,³¹ mentioned in the 2008 report, the legislators have still not managed to find common ground. In 2008, after having consulted the European social partners, the Commission proposed to extend the right to maternity leave from 14 to 18 weeks, in principle with full salary. The Parliament's resolution adopted in October 2010 suggested a more ambitious approach: to lift the minimum right to fully paid maternity leave to 20 weeks and add an entitlement of two weeks of paternity leave. Mindful of the subsidiarity principle, the overwhelming majority of Members voted in favour of a '*passerelle clause*' offering national governments discretion to adapt this policy to their social systems. However, delegations in the Council advocated a more flexible approach. They also found the measures expensive in a time of economic austerity. The Belgian Presidency has written to the social partners asking for their views.

²⁶ COM(2009) 217. Here and afterwards, details on inter-institutional discussion are accessible via PreLex database: <http://ec.europa.eu/prelex/apcnet.cfm>.

²⁷ COM(2006) 232.

²⁸ COM(2008) 426.

²⁹ COM(2008) 614.

³⁰ COM(2008) 414.

³¹ COM (2008) 637.

4.2. Further cases where subsidiarity was debated

Seasonal Workers

The Commission presented a proposal for a *Seasonal Workers Directive*³² within a legal migration package. This proposal has received the highest number of reasoned opinions from national Parliaments so far³³ – in all, nine chambers expressed subsidiarity concerns.³⁴ They found that the subject matter is already sufficiently regulated at national level and that the EU cannot adequately address national specificities. Further, given that the Member States remain in control of the volumes of the admitted third-country nationals, the proposal may not achieve the goal of managing migratory flows. At the same time, nine chambers³⁵ delivered positive opinions, noting that the proposal helps to ensure uniform protection, common admission criteria and conditions of residence throughout the EU. They appreciated the fact that the Member States are given the right to set admission quotas.

Some chambers, both those which questioned subsidiarity and those which did not, found the proposal to be in breach of the proportionality principle as it can have an impact on national social security systems. Two chambers³⁶ formally opposed the proposal on these grounds.

The Commission emphasised in its replies³⁷ that the creation of a common EU framework is necessary to avoid distortion of migratory flows and irregular entries, to protect third-country seasonal workers and to prevent social dumping. It also stressed that the proposal includes provisions which should allow Member States to adjust it to their national labour market specificities.

The Committee of the Regions in its opinion took note of the views and arguments of the national Parliaments. The Committee however concluded that the proposal is compatible with the subsidiarity principle, as it prevents national systems from engaging in a race to the bottom with regard to protection of seasonal workers. The examination of the proposal by the legislators is at an early stage.

Deposit Guarantee Schemes

In July 2010, the Commission tabled a proposal to reinforce the Deposit Guarantee Scheme framework³⁸ in the EU as a result of the weaknesses revealed by the financial crisis.

³² COM(2010) 379.

³³ Here and afterwards, details on opinions of national Parliaments are accessible via IPEX database: http://www.ipex.eu/ipex/cms/home/Documents/dossier_COD20100210/lang/en.

³⁴ See Annex for details.

³⁵ Latvian *Saeima*, Lithuanian *Seimas*, German *Bundesrat*, Italian *Senato* and *Camera dei Deputati*, Finnish *Eduskunta*, Portuguese *Assembleia* and Spanish *Congreso de los Diputados* and *Senado*.

³⁶ Latvian *Saeima* and Lithuanian *Seimas*.

³⁷ Here and afterwards, details on Commission replies to national Parliaments are accessible via http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm.

³⁸ COM(2010) 368 (recast).

The proposal received 11 reactions from national Parliaments. Of these, five³⁹ raised explicit subsidiarity concerns; principally that the Directive would not sufficiently take into account the characteristics of the national systems or could reduce the current level of protection. Another controversial point was the proposed mutual borrowing facility between schemes, which was seen as potentially increasing moral hazard and acting as a disincentive to establish adequate national coverage. At the same time, six chambers⁴⁰ stated that the proposal was in line with the subsidiarity principle, in that it would help to overcome the fragmentation of national rules.

In its replies the Commission noted that harmonisation would help to promote the integration of financial markets. The schemes, not guaranteeing deposits but mutually protecting banks against a failure (mutual guarantee schemes), could continue to fulfil their function. Concerning the mutual borrowing facility, the Commission clarified that it would be triggered as a last resort only, is subject to safeguards to avoid moral hazard and should ultimately reduce the need to have recourse to taxpayers' money.

The proposal is currently being discussed by the European Parliament and the Council.

Food Distribution to the Most Deprived People

In 2008 the Commission proposed a revision of the Food Distribution programme for deprived persons,⁴¹ which has been in place since 1987. The European Parliament was supportive of the proposal and made several, mostly technical, modifications. In the Council, discussions failed to progress because a blocking minority of Member States argued that this scheme does not relate to the Common Agricultural Policy, as food distribution belongs to social welfare policies under the national responsibility.

In 2010 the Commission adopted an amended proposal,⁴² to adapt the implementation mechanisms of the 2008 proposal to the provisions of the Lisbon Treaty. Several national Parliaments declared that the proposal does not comply with the subsidiarity principle. In a similar vein to Council discussions, they argued that the objectives had shifted from an agricultural policy to social policy. Some national Parliaments also noted that there was no subsidiarity statement accompanying the 2010 proposal.

In its replies, the Commission explained that the purpose of this proposal is two-fold. While it certainly seeks to fulfil the Treaty objective on food security, it also has a primary role in the disposal of public intervention stocks of agricultural products. The Commission pointed out that a thorough subsidiarity analysis was provided in the IA accompanying the 2008 proposal.

Both the Committee of the Regions and the Economic and Social Committee considered the proposal to be acceptable. It is currently being discussed by the legislators.

³⁹ See Annex for details.

⁴⁰ Portuguese *Assembleia*, Italian *Camera dei Deputati* and *Senato*, Austrian *Nationalrat* and *Bundesrat*, and Czech *Senát*.

⁴¹ COM (2008) 563.

⁴² COM(2010) 486.

Support for Rural Development by the EAFRD Regulation and Establishing Common rules for a Direct Support Scheme for Farmers

The aim of these proposals was to align the powers conferred on the Commission under Regulation (EC) No 1698/2005 and Regulation (EC) No 73/2009 to the provisions of the Lisbon Treaty.⁴³ In addition, the Commission introduced some elements of simplification.

According to several national Parliaments, the subsidiarity argumentation provided in the explanatory memoranda was not sufficient. Some chambers also thought that the new provisions on delegated and implementing powers would *de facto* give additional powers to the Commission. In its replies, the Commission clarified the principles of the Lisbon provisions on delegated and implementing acts and explained that these proposals cover merely technical adaptations and simplification. For these reasons, no new exhaustive analysis on the question of subsidiarity was undertaken.

The Commission has several similar alignment acts planned for 2011. In order to accommodate the concerns of national Parliaments, the Commission will do its utmost to reinforce the subsidiarity statements for these proposals.

Cultivation of Genetically Modified Organisms (GMOs)

This package, containing a Communication, a Recommendation and a proposal for a Regulation,⁴⁴ was adopted by the Commission in July 2010. The package responds to Member States' repeated requests to allow decisions on cultivation of authorised GMOs to be taken at national level, while maintaining the EU system of authorisation, based on the evaluation of risks to health and the environment. While some delegations in the Council have welcomed the text, the approach is being criticised by others, who prefer a fully centralised European approach, often for reasons closely linked to the sensitivity of the topic.

Single European Railway Area

In September 2010 the Commission proposed a Directive that would establish a 'Single European Railway Area',⁴⁵ aiming to revive the railway sector. The Luxembourg *Chambre des Députés* submitted a reasoned opinion concluding that, while in general there is scope for EU action, several concrete provisions are in breach of the subsidiarity and proportionality principles.

The Council held a first policy debate on the proposal in December 2010, which highlighted some subsidiarity concerns. One Member State called for prudence on the proposal to develop and publish multiannual national rail infrastructure strategies, considering long-term infrastructure planning as a matter of national competence. As regards the temporary reduction of track access charges for trains equipped with the European train control system, several delegations stressed that they want to keep the right to levy new charges or increase the existing ones in order to compensate for loss of revenue caused by such a reduction.

⁴³ COM(2010) 537 and COM(2010) 539.

⁴⁴ COM(2010) 380 and COM(2010) 375.

⁴⁵ COM(2010) 475 (recast).

The proposal is awaiting its first reading in the European Parliament. The Committee of the Regions, while not yet having given its opinion on subsidiarity, has indicated that the issue is of prime concern to local and regional authorities.⁴⁶

Rights of passengers in bus and coach transport

In 2008 the Commission proposed that the Regulation, which aimed to assure quality of service and passenger rights, would apply to all bus services, including those at regional, urban and suburban areas.⁴⁷ This view was shared by the European Parliament. However, an overwhelming majority of Member States in the Council insisted, on the grounds of subsidiarity, on exclusion of regional, urban and suburban services from the scope of the Regulation. In the final agreement, which was concluded in the Conciliation Committee in November 2010, the European Parliament finally agreed on the application of the Regulation in general only to services with a travelling distance of over 250 kilometres. In exchange, the Council agreed to the application of certain provisions to all services.

Measures to safeguard security of gas supply

In response to the Russian-Ukrainian gas crisis in January 2009, the Commission proposed⁴⁸ to revise existing legislation on security of gas supply with a view to improve preventive action as well as reaction to specific disruptions. The Council in principle welcomed the proposal, although several delegations asked for further clarification about the roles and responsibilities of the market actors, the Member States and the Commission. The Council also insisted that it should be left to Member States to decide on which priority customers to serve first during a time of gas shortage. These concerns were eventually taken on board in the first-reading agreement with the European Parliament in October 2010.

5. CONCLUSIONS

The concepts of subsidiarity and proportionality are fundamental elements of the policy development process of the EU Institutions. The subsidiarity control mechanism of national Parliaments, as introduced by the Lisbon Treaty, has made the process more transparent and has further enriched the discussions.

The fact that the majority of Commission proposals have not raised any subsidiarity concerns among national Parliaments, and were adopted by the legislators without major subsidiarity discussions, indicates that subsidiarity checks at an early stage of the policy development process are generally effective. However, in a limited number of cases, there has been an extensive debate between the European Parliament and the Council on how subsidiarity should be interpreted. Thorough political discussions have helped to find an appropriate balance between EU and Member State responsibilities.

⁴⁶ Opinion COR/2010/297.

⁴⁷ COM(2008) 817.

⁴⁸ COM(2009) 363.

ANNEX

List of Commission initiatives on which the national Parliaments delivered reasoned opinions as regards respect of the subsidiarity principle

	Title	National chambers submitting reasoned ⁴⁹ opinions
1.	Seasonal Workers Directive, COM(2010) 379	Austrian <i>Nationalrat</i> and <i>Bundesrat</i> Czech <i>Senát</i> and <i>Poslanecká sněmovna</i> Dutch <i>Eerste Kamer</i> and <i>Tweede Kamer</i> Polish <i>Senat</i> The United Kingdom House of Commons and House of Lords
2.	Deposit Guarantee Schemes Directive, COM(2010) 368	German <i>Bundesrat</i> and <i>Bundestag</i> Swedish <i>Riksdag</i> Danish <i>Folketinget</i> The United Kingdom House of Commons
3.	Food Distribution to the Most Deprived Persons in the Union, COM(2010) 486	The United Kingdom House of Lords French <i>Sénat</i> Danish <i>Folketinget</i> Swedish <i>Riksdag</i> Dutch <i>Eerste Kamer</i> and <i>Tweede Kamer</i>
4.	Support for Rural Development by the EAFRD Regulation, COM(2010) 537	Polish <i>Sejm</i> and <i>Senat</i> Lithuanian <i>Seimas</i> The Luxembourg <i>Chambre des Députés</i>
5.	Direct Support Scheme for Farmers, COM(2010) 539	Polish <i>Sejm</i> and <i>Senat</i> Lithuanian <i>Seimas</i> The Luxembourg <i>Chambre des Députés</i>
6.	Investor Compensation Scheme, COM(2010) 371	Swedish <i>Riksdag</i> The United Kingdom House of Commons
7.	European Heritage Label, COM(2010) 76	French <i>Sénat</i>
8.	Frontex Regulation, COM(2010) 61	Polish <i>Senat</i>
9.	Translation and Interpretation in Criminal Proceedings, COM(2010) 82	Austrian <i>Bundesrat</i>
10.	Imports of Fishery Products from Greenland to the EU, COM(2010) 176	Italian <i>Senato della Repubblica</i>
11.	Radio Spectrum Policy Programme, COM(2010) 471	French <i>Sénat</i>
12.	Single European Railway Area, COM(2010) 475	The Luxembourg <i>Chambre des Députés</i>

⁴⁹ These include four opinions that arrived after the 8 weeks deadline or were not adopted by the respective chambers according to their internal rules.