Letter of 26 June 2013 from William Cash MP, the Chairman of the European Scrutiny Committee to Maroš Šefčovič, Vice-President of the European Commission

The Commission’s responses to the House of Commons’ Reasoned Opinions received to date

I write as chairman of the European Scrutiny Committee.

Set out below is a list of the Reasoned Opinions the House of Commons has forwarded to the EU institutions, the date of forwarding, and the date of your replies on behalf of the Commission. (All can be viewed in the “subsidiarity” section of the Committee’s website.)

2. 11 May 2011 on a Common Consolidated Corporate Tax Base (CCCTB) — reply dated 10 November 2011;
3. 9 November 2011 on Prudential Requirements for Credit Institutions and Investment Firms — reply dated 10 July 2012;
4. 23 November 2011 on the Common European Sales Law — reply dated 27 September 2012;
5. 6 May 2012 on Public Procurement and Procurement by Public Entities — reply dated 20 November 2012;
7. 18 December 2012 on the Fund for European Aid for the Most Deprived — reply dated 6 June 2013;
8. 7 January 2013 on Gender Balance on Corporate Boards — reply dated 19 June 2013; and
9. 21 May 2013 on Reducing the cost of deploying high-speed electronic communications networks — reply awaited.

The Committee has reviewed your replies and makes the following comments, on which we would be grateful for your early response (by the end of July).

Delay

It would be of great assistance to the Committee if the Commission could respond more quickly to the House’s Reasoned Opinions. This would enable us to raise points arising from the Commission response with the Government, before first reading negotiations with the European Parliament begin. The
average response time is approximately six months. In the case of the Common European Sales Law, a response was received ten months after the Reasoned Opinion was submitted.

**Detail**

Although the Commission is not required to respond to Reasoned Opinions unless the thresholds in Protocol 2 are met, it has undertaken to do so as part of its “political dialogue” with national parliaments. For the dialogue about subsidiarity to have value, however, the Commission should reply meaningfully to the points raised by a national parliament in a Reasoned Opinion. This has not always been the case.

Most replies are, in terms of content, of questionable brevity; they are on average two pages long, including preliminary paragraphs which restate the questions raised in the Reasoned Opinions, or the general policy context of the proposal, or the basis for the EU’s competence to act (which is not a relevant subsidiarity consideration).

The replies are, as a consequence, too general: they fail to focus on the detailed subsidiarity concerns contained in the Reasoned Opinions forwarded by the Commons. Set out below are four examples for you to consider:

- In the Reasoned Opinion on Gender Balance on Corporate Boards, the Commission responded directly on the impact of national legislation on its decision to adopt the proposal, and on the likelihood of Member States achieving the stated objective by themselves. It does not, however, address (at all) the adequacy of the evidence for concluding that the absence of this proposal will hinder the internal market. Its reliance on the growing body of literature which says that gender-diverse boards run more successful companies is selective (the existence of a causal link is contested) and also misses the concern raised in the Reasoned Opinion about the internal market objective.

- In the Reasoned Opinion on the Fund for European Aid for the Most Deprived, the content of the Commission’s short reply is disappointing. It only directly addresses whether the impact assessment and explanatory memorandum examined the question of subsidiarity to the extent required; and whether Article 175 TFEU permits this type of social solidarity fund. The remainder rehearses the social imperatives behind the proposal and its national implementation.
• In the response to the Opinion (you categorise Reasoned Opinions received after the eight-week deadline as “Opinions”)
I sent to you on the draft Regulation on periodic roadworthiness tests for motor vehicles and their trailers¹, the Commission fails to address the two principal criticisms of the Committee, namely: that the link between the quality of road tests in one Member State to road fatalities in that or another Member State was sufficiently unreliable to have to be based on an assumption; and that, in the absence of overriding internal market objectives, Member States were better placed than the EU to decide whether road tests should be improved to reduce fatalities on their roads. It also fails to respond to the serious concerns about the costs of implementation, particularly within the Northern Ireland Assembly, whose letter was attached to the Reasoned Opinion. The reply cites an internal market justification which was not present in the proposal, and relies on previous policy targets as a reason for legislating, both of which are concerning.

• Even in the case of the Monti II proposal, where the yellow card was triggered, the Commission’s initial response was both general and evasive. It claimed to have withdrawn the proposal on political grounds (no appetite in the Council) rather than subsidiarity grounds, and failed to address the specific points raised by each parliament (instead referring to “the arguments of national parliaments” collectively). The second more recent reply of 14 March, presumably sent as a consequence of October’s COSAC Conclusions calling on the Commission to provide individual responses to national parliaments, has done little to improve the overall response. The letter merely lists the different grounds of challenge lodged by national parliaments, suggests that none demonstrates a breach of the subsidiarity principle, and then explores other non-related issues.

The CCCTB reply is a better example of the sort of depth and scope of response that is helpful to the Committee.

Compliance with procedural obligations

The Commission rebuts without hesitation in its replies challenges about its fulfilment of key procedural and substantive obligations imposed on it by the Treaties and Protocol 2, namely whether it has:

¹ COM(12) 380 final.
consulted “widely” (which the Commission considers does not encompass each and every aspect of the proposal) before proposing a draft legislative act, taking into account local and regional impact where appropriate (Article 2 of Protocol 2);

- established that legislative action is necessary in the first place;
- proved that necessary legislative action cannot be sufficiently achieved at Member State level (Article 5(3) TEU); and
- demonstrated that legislation at the EU level can better achieve the objective in question (EU added value), by including within each draft legislative act (so in the accompanying explanatory memorandum, which is translated into all EU languages, and not (as currently) in the impact assessment, which is not) a “detailed statement” containing some assessment of the proposal’s financial impact (and in the case of a Directive, the implications for national and/or regional implementation) and qualitative and, whenever possible, quantitative indicators of compliance with subsidiarity (Article 5 of Protocol 2).

On the last point above, we have a particular concern about whether the Commission is complying with the requirement in Article 5 of Protocol 2 relating to the preparation of a detailed statement. We think that “[a]ny draft legislative act should contain a detailed statement...” means that a sufficiently detailed statement should be contained in one section in the Commission’s explanatory memorandum (not impact assessment), which forms part of the draft legislative act, and which, importantly, is translated in all official languages of the EU. This linguistic accessibility allows all national parliaments to assess the statement of compliance with subsidiarity. It also would mean that national and regional parliaments could assess the Commission’s subsidiarity arguments more easily within the eight-week short timeframe: currently, the arguments have to be traced through many pages in the impact assessments.

In light of these concerns, I would be grateful if you could explain:

- whether the Commission interprets the requirement in Article 5 that “[a]ny draft legislative act should contain a detailed statement...” to include detailed statements in the impact assessment; and
- whether the Commission’s internal guidelines on assessing the compliance of draft legislative acts with the principle of subsidiarity have been revised as a consequence of the coming into force of Protocol 2, and, if so, to provide us with further details.

The thresholds in Article 7 of Protocol 2 mean, in reality, that the yellow card is unlikely to be triggered often. This puts greater emphasis on the Commission’s
responses to individual Reasoned opinions. For these exchanges with national parliaments to have some purpose, however, there must be a meaningful exchange of views on the points raised in the Reasoned Opinion. From our analysis, this is not the case: there is a sense from many responses that this is a pro forma exercise for the Commission, and that a Reasoned Opinion is unlikely ever to cause it to re-consider any aspect of a proposal.

I look forward to receiving your comments on the concerns set out in this letter.