Follow up to the European Parliament resolution on the Annual reports 2012-2013 on subsidiarity and proportionality, adopted by the Commission on 20 July 2016

1. **Rapporteur:** Sajjad KARIM (ECR/UK)

2. **EP reference number:** A8-0301/2015 / P8_TA-PROV(2016)0103

3. **Date of adoption of the resolution:** 12 April 2016

4. **Subject:** The resolution is a follow-up to the Commission's 2012 and 2013 reports on the application of the principles of subsidiarity and proportionality. While the resolution addresses subsidiarity issues, including the role of national Parliaments, it also covers Better Regulation issues more generally, which continue to stay high on the political agenda of the European Parliament.

5. **Competent Parliamentary Committee:** Committee on Legal Affairs (JURI)

6. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution calls on the Commission to engage in a yearly debate with each national Parliament in order to strengthen the dialogue with national parliaments (point 3). It stresses the importance of assessing at the beginning of the legislative process whether policy objectives can be achieved better at EU level than by means of national or regional initiatives (point 4). In this regard the resolution regrets that the Commission's annual reports often do not give detailed consideration of how subsidiarity and proportionality principles are observed in EU policy-making (point 9). The resolution also notes that where a reasoned opinion from a national Parliament relates to a package of proposals, the Commission classifies it as one reasoned opinion, rather than a reasoned opinion on each of the individual proposals (point 10).

The resolution notes that reasoned opinions issued by national Parliaments highlight the existence of various interpretations of the principles of subsidiarity and proportionality. On that basis it strongly recommends that national Parliaments and EU institutions engage in exchanges of views and practices of scrutinising subsidiarity and proportionality (point 13). It also notes that the reasoned opinions submitted by national Parliaments vary considerably with regard to the types of arguments raised and their form (point 14).

The resolution recalls previous concerns raised by the European Parliament regarding instances where subsidiarity has not been adequately addressed in the Commission's impact assessments and expresses concern that the number of such instances rose to 50 % of the impact assessments reviewed by the Impact Assessment Board in 2014. The resolution therefore suggests revising the guidelines for impact assessments (point 15).

Furthermore, the resolution expresses disappointment at the Commission's response to the two "yellow card procedures", arguing that the Commission should respond comprehensively to any concerns raised by national Parliaments and appear before the parliamentary committee concerned to explain its position (point 19).

The resolution recommends that EU institutions and national Parliaments promote a "subsidiarity culture", and suggests facilitating greater inclusion of national Parliaments' positions or suggestions in the political dialogue, in particular in the course of preparatory work such as Green and White Papers. It also suggests considering an extension of the eight week period for submitting reasoned opinions under the subsidiarity control mechanism in case of time constraints on the basis of justified objective reasons, such as natural disasters and recess periods. The resolution further suggests that this could be achieved through a political undertaking agreed by the institutions and the national Parliaments (point 22).

The resolution also notes that legislative proposals often change dramatically in the lead-up to adoption by the EU institutions, and calls for a further subsidiarity check and full impact assessment to be undertaken at the conclusion of the legislative negotiations, in advance of the adoption of a final text in order that compliance with subsidiarity can be guaranteed and that assessments including proportionality can be made (point 26).

The resolution finally calls on the Commission, in compliance with the proportionality and subsidiarity principles, to simplify the procedure for applying for EU funds, with a view to making the application procedure more efficient and results-oriented (point 30).

7. Response to requests and overview of action taken, or intended to be taken, by the Commission:

The Commission welcomes the European Parliament's resolution and its support for the Commission's efforts to ensure that the views of national Parliaments on the principles of subsidiarity and proportionality are respected.

As a preliminary remark the Commission agrees with the European Parliament's view as expressed in point 14 of the resolution that reasoned opinions vary considerably with regard to the types of arguments raised. In that respect, the Commission would recall that the procedures set out in Article 7 of Protocol No 2 to the Treaties and involving national Parliaments exclusively relate to subsidiarity.

<u>The Commission's position on the main elements addressed to it in the resolution</u>

- *"... suggests as a first step that the Commission engage in a yearly debate with each of the national parliaments in order to strengthen the dialogue between the Commission and the national parliaments";* (point 3)

The Commission has made a commitment to forge a new partnership with national Parliaments, in particular by increasing the frequency of meetings with national Parliaments by Commissioners. In his mission letters to members of the new Commission, President Juncker highlighted the importance that all members visit national Parliaments to present and explain important proposals and initiatives. Since taking office in November 2014, Commissioners have had more than 300 visits/ meetings with national Parliaments. The Commission fully agrees with the European Parliament as regards the special role that national Parliaments have in enforcing the principle of subsidiarity. Therefore the Commission is committed to working together with national Parliaments and the other EU institutions to ensure that every proposal respects the principle of subsidiarity and to enhance its understanding by all.

- *"... calls on the Commission to consider preparing more detailed reports regarding the way subsidiarity and proportionality are observed in EU policy-making";* (point 9)

The Commission endeavours to fulfil its obligation under Article 9 of Protocol No 2 to the Treaties to present annual reports on the subsidiarity and proportionality principles that take account of the application of the principles by all relevant EU institutions and bodies. The institutions engaged are the European Parliament, the Council and the Commission, the Committee of the Regions as well as the national Parliaments.

- *"... strongly recommends that national parliaments and European institutions engage in exchanges of views and practices of scrutinising subsidiarity and proportionality"; (*point 13);

The Commission is open to discussing the issue of subsidiarity with national Parliaments, especially in the context of specific proposals, where the discussions tend to be most useful. The Commission also intends to be very clear in its proposals as to how it understands subsidiarity and why it finds that a proposal respects that principle.

- *"Recalls concerns raised in previous Parliament reports regarding instances where subsidiarity had not been adequately addressed in impact assessments (IAs) prepared by the Commission; further recalls that the Annual Reports of the Impact Assessment Board (IAB) have raised this issue; notes that the IAB considered more than 30 % of IAs reviewed by them in 2012 and 2013 to have included an unsatisfactory analysis of the principle of subsidiarity; expresses concern that this number rose to 50 % in 2014, and urges the Commission in its revision of the guidelines for IAs to address this issue and reverse this trend";* (point 15)

The Commission fully agrees as to the importance of a thorough assessment of the subsidiarity principle in the Commission's impact assessments. In that regard the Better Regulation package adopted in May 2015 outlined a range of measures to make Commission policy-making more transparent and evidence-based, including improved guidelines both for ex-ante impact assessment and retrospective evaluation of existing legislation. The revised guidelines include strengthened guidance both on subsidiarity and proportionality analysis as well as a dedicated tool for the legal basis, subsidiarity and proportionality.

The Regulatory Scrutiny Board (and its predecessor, the Impact Assessment Board) seeks to ensure the highest possible standards in Commission services' impact assessments, and issues opinions with recommendations for improvement across a range of issues. These recommendations relate to the draft impact assessments submitted to the Board, which then must be addressed in the final version of the impact assessments that are published.

It should be noted that in 2015, the Board asked for improvements regarding subsidiarity in less than 20% of cases and proportionality in less than 10% of cases, compared to the previous year's statistics asking for improvements in either subsidiarity and proportionality in 50 % of cases. This shows that the Commission's track record has been improving in this respect.

Furthermore, the Interinstitutional Agreement on Better Law-Making signed in April 2016 by the European Parliament, the Council and the Commission provides that the principles of subsidiarity and proportionality should be given full respect when developing Union

legislation and assessing its impacts. In addition, the Agreement requires the Commission to explain in its explanatory memoranda how the measures proposed are justified in the light of the principle of subsidiarity, which the Commission is committed to fulfil.

- *"Expresses disappointment at the response of the Commission to national parliaments in instances where yellow cards have been issued; believes that it is necessary for the Commission to respond comprehensively to any concerns raised by national parliaments, and on an individual basis as part of a dialogue in addition to any published opinion; considers that it is also necessary for the Commission to appear before the relevant committee or committees of the Parliament to explain its position in detail";* (point 19)

The Commission recalls that on the two occasions in 2012 and 2013 when the threshold of Article 7(2) of Protocol No 2 was met, concerning the Commission's proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (so-called "Monti II" proposal) and the Commission's proposal for a Council Regulation on the European Public Prosecutor's Office (also called the "EPPO" proposal), the Commission carefully examined all subsidiarity concerns expressed in the reasoned opinions received.

As regards the "Monti II" proposal, the Commission decided, having regard to the views expressed and the state of play of the discussions among relevant stakeholders, to withdraw the proposal. Replies were sent to the chambers which had submitted an opinion.

As regards the EPPO proposal, the Commission adopted a Communication concluding, after analysing the various subsidiarity arguments submitted, that the proposal complied with the subsidiarity principle and decided to maintain the proposal. Subsequently, the Commission sent individual replies to the chambers which had submitted an opinion addressing, in the framework of the political dialogue, the arguments not related to subsidiarity.

When the procedure laid down by Article 7(2) of Protocol No 2 is triggered, the Commission will consider ways to engage with national Parliaments as appropriate in an informal political dialogue in order to discuss the merits of a legislative proposal from the point of view of the principle of subsidiarity, before taking its decision on whether to maintain, amend or withdraw a proposal.

- *"... recommends two particular initiatives which will aid better consideration of subsidiarity in the legislative process at present, namely facilitating greater inclusion of positions, perspectives or other suggestions made by national parliaments in the political dialogue, in particular in the course of preparatory work such as Green Papers or White Papers produced by the Commission, and considering an extension of the time period for consultation of national parliaments under the subsidiarity check if national parliaments request this on grounds of time constraints on the basis of justified objective reasons, such as natural disasters and recess periods, to be agreed between national parliaments and the Commission; considers that this could be achieved through a political undertaking agreed by the institutions and the national parliaments in the first instance, without giving rise to a delay in the adoption of relevant legislation";* (point 22)

As a general remark, the Commission points out that it is committed to the fulfilment of its Better Regulation agenda. One year after the Communication of May 2015 announcing the Better Regulation agenda (COM(2015) 215 final) it is increasingly engaging with

stakeholders at different steps of the policy process, giving them a chance to provide feedback, including on subsidiarity and proportionality. New feedback mechanisms allow any interested party to provide feedback on the Commission's early plans (roadmaps, inception impact assessments) in addition to open public consultations during the preparation of the Commission's proposals and related impact assessments. The Commission also gathers feedback on its legislative proposals once adopted, and transmits a summary of this feedback to the legislator. From 1 July 2016, the Commission will also invite feedback on draft delegated acts and implementing acts, using a new user-friendly IT portal.

The Commission agrees that national Parliaments should be more involved at the early stages of European decision-making, in particular when the Commission has launched a public consultation or presented a White or Green Paper. The Commission has also encouraged national Parliaments to step up their involvement in the pre-legislative phase. However, the Commission notes that as a general rule, very few national Parliaments make their views known in response to such documents.

The Commission notes the suggestion to extend the deadline for submitting reasoned opinions from national Parliaments under the subsidiarity control mechanism. The Commission is well aware that it might sometimes be difficult for national Parliaments to carry out their subsidiarity scrutiny within the eight week deadline, which is laid down in Protocol 2 to the Treaties, in particular when this period coincides with holidays or non-working periods in national Parliaments. However, this eight week deadline is set by the Treaties and cannot be extended without a treaty change.

- *"Asks the Commission, in compliance with the proportionality and subsidiarity principles, to simplify the procedure for applying for EU funds, with a view to making the application procedure more efficient and results-oriented";* (point 30)

The Commission has long advocated the simplification of the management of EU funds to help maximise the benefits of EU funding while maintaining high standards of financial management. Progress on simplification is monitored through an Administrative Simplification Scoreboard, regularly published by the Commission (COM(2014) 114 final). Simplification is a building block of the new EU "Budget focused on results" effort, which paves the way for joined-up efforts of the EU institutions and the Member States towards better spending, increased accountability, transparency and maximum added value for EU citizens.

Simplification will be also one of the main qualitative aspects which will be tackled in the mid-term review of the Multiannual Financial Framework (MFF), planned by the end of 2016. It has been at the core of the Commission's proposals for the programmes covered by the MFF 2014-2020; considerable progress has been made, but simplification is an ongoing effort with a view to identifying best practices and bottlenecks, assessing efficiency of delivery and control requirements, and adapting rules further if appropriate. In the context of the MFF mid-term review a number of areas for improvement have been identified to be reflected in the future proposal for a revision of the Financial Regulation.

Furthermore, an example of the continuous work in this area is the setting up of a High Level Group of Independent Experts on Monitoring Simplification for Beneficiaries of the European

Structural and Investment Funds[1]. The task of the expert group is to advise the Commission with regard to simplification and reduction of administrative burden for beneficiaries in accessing and using the five European Structural and Investment Funds. The Group will be working until 2018 and will be making recommendations for improvements in the 2014-20 period, including suggestions for legislative changes, as well as recommendations that should be taken into account when designing the post-2020 framework for European Structural and Investment Funds.

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[1] Commission Decision C(2015) 4806 final of 10.7.2015.