Better lawmaking 2006 pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality

2008/2045(INI) - 06/06/2007 - Non-legislative basic document

PURPOSE : to present a report on “Better Lawmaking 2006”.

CONTENT : this report is the 14th annual review of the application of the principles of subsidiarity and proportionality. It also covers progress in improving the regulatory environment in the EU.

Actions taken by the Commission: the Commission has taken a lead on the Better Regulation agenda and in 2006 it:

-carried out 67 impact assessments, launched an external evaluation of its impact assessment system and established an Impact Assessment Board as an independent quality support and control function for impact assessments prepared by Commission departments;

-continued implementation of its simplification programme, reported on the progress made and added more than 40 new items to it, and integrated simplification items into its Legislative and Work Programme for 2007;

-integrated the EU Standard Cost Model for the measurement of administrative costs into its impact assessment guidelines and proposed the launch of an ambitious action programme to reduce administrative burden in the EU;

-completed its screening of pending proposals dating from previous Commissions and re-launched its programme for codification and repeal of obsolete legislation.

Many of these activities are carried out in a mutually reinforcing manner, ensuring that the Better Regulation agenda is coherent, for example: measurement of administrative costs is included in the methodology for impact assessments; and simplification proposals in the Commission Legislative and Work Programme are subject to impact assessment, which in turn makes use of stakeholder consultation.

The Commission discusses all of these points in detail.

Impact assessments: in a growing number of cases impact assessment has significantly changed the approach, the nature of the legal instrument, or even led to the abandonment of a proposal. The Commission also integrated into its guidelines for impact assessments a methodology for the measurement of administrative costs. The President of the Commission has set up an Impact Assessment Board, which operates under his direct authority and independently of Commission departments. It scrutinises draft impact assessments and provides opinions on their quality, offering advice and quality support where needed. Further measures to enhance the overall approach of impact assessments are likely in the follow-up to the external evaluation of the system, which was concluded in 2007.

Actions by EU institutions, the EESC and the Committee of the Regions: the European Parliament adopted a package of five resolutions on Better Regulation, which include a wide range of proposals for improvements of existing tools and procedures. In response to the European Parliament's call for reinforced quality control of Commission impact assessments, the Commission set up the Impact

Assessment Board in November 2006. 2006 also saw the political endorsement by the European Parliament of the Inter- Institutional "Common Approach to Impact Assessment". It sets out "traffic rules" on how Commission impact assessments should be used in the legislative process and on European Parliament and Council impact assessments of their substantive amendments.

Both Parliament and Council have increased their use of Commission impact assessments when examining Commission proposals, thus consolidating impact assessment as a tool to ensure that political decisions are taken in the light of the best available evidence of potential impacts. During the Austrian Presidency the Council drew up an indicative guide for working parties on handling impact assessments in the Council. Parliament is increasingly requesting that studies and impact analyses on certain subjects to Commission proposals are carried out. The CoR and the EESC also took an active part in the Better Regulation debate in 2006, especially on subsidiarity issues.

Application of the principles of subsidiarity and proportionality: the Commission continued efforts to explain how the measures it proposes comply with both principles, through impact assessments and explanatory memoranda. In May 2006, it transmitted its new proposals directly to the national parliaments, inviting them to react so as to improve the process of policy formulation. As in previous years, the European Parliament and the Council introduced relatively few amendments to Commission proposals referring explicitly to subsidiarity and proportionality. The vast majority of opinions from the CoR and the EESC had no criticism regarding the application of the subsidiarity principle. Proportionality problems were raised slightly more often. This was also the conclusion of the two test cases of the CoR's Subsidiarity Monitoring Network. Several opinions sent by national parliaments asked for Commission arguments to be clarified. A minority of them concluded that the proposals transmitted by the Commission were considered in some respects to go against the principles. The Commission is responding to these submissions individually.

These divergences of views underline the need for a common understanding of the conditions set by these two principles. The Commission hopes that the presentation of the standard set of questions used for drafting the explanatory memoranda accompanying Commission proposals will contribute to such understanding. Convergent interpretation would avoid confusion with for instance the principle of "conferral of competences" and counter misapprehension that occasionally feed the perception of subsidiarity infringements.

As regards ex-post judicial control in 2006, the principle of subsidiarity was referred to in two judgments delivered by the Court of First Instance, which confirmed previous case law. In neither case did the Court find that the principle of subsidiarity had been infringed. Possible infringements of the principle of proportionality were analysed in several judgments and, in some cases, the Community measures were annulled in full or in part on that ground.

The commission gives the example of case C-310/04 Spain v Council concerning a Council Regulation amending the support scheme for cotton.