Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality

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PURPOSE: to present the 15th annual review of the application of the principles of subsidiarity and proportionality for 2007.

CONTENT: this is the 15th annual review of the application of the principles of subsidiarity and proportionality which the Commission presents in line with the protocol annexed to the Treaty establishing the EC. Unlike the reviews for the previous three years, this review does not cover the wider issues of better regulation as these were addressed in the Second Strategic Review of Better Regulation in the EU. The review also highlights two developments in 2007 which have an impact on how subsidiarity and proportionality are applied. First the establishment of the Impact Assessment Board which has led to reinforced scrutiny of subsidiarity and proportionality in Commission impact assessments; and secondly, the agreement on a new Treaty which gives an important new role to national parliaments in assessing how the two principles are applied.

1) Application of the principle by the Commission

Impact Assessments and the Impact Assessment Board: the Commission states that while impact assessment has become embedded in the working practices and decision-making of the Commission, the institution is committed to improving the system even further. A key development was the creation of the **Impact Assessment Board (IAB)** in November 2006 to provide independent quality support and control for impact assessments prepared by Commission services. The IAB's opinions are formally integrated into the Commission's internal decision-making, from inter-departmental consultation to the final adoption by the College. In its opinions, the IAB frequently recommends substantial improvements to core elements of the impact assessments, including on subsidiarity and proportionality. On the basis of the IAB's work and of an external evaluation of the impact assessment system, the Commission has decided to make more operational the guidance it provides on the

analysis of subsidiarity and proportionality in the revised Impact Assessment Guidelines to be adopted in the second half of 2008. The Guidelines will contain explicit questions, closely based on protocol 30 of the Treaty establishing the European Community, which each impact assessment will have to address. The revised Guidelines will also reinforce the message that, while impact assessments typically examine problems that can be addressed by action at EU level, they must take into account the fact that the problems and the measures taken to address them, may have different effects in different Member States and regions of the Union. These changes will help to ensure that the Commission provides a more rigorous and transparent analysis and justification of its proposals than ever before. The Commission goes on to give examples of how it applied the principles, noting particularly, two proposals in the area of company law, which were stopped.

2) Application of the principles by other actors

National parliaments: the Lisbon Treaty will lead to a number of changes in the role of national parliaments in EU lawmaking. One of the most important innovations concerns the introduction of ex ante

political control and ex post judicial control over the principle of subsidiarity. Ex ante political control will be provided by the introduction of an early warning mechanism allowing national parliaments to send a reasoned opinion when they consider that a European legislative proposal does not comply with the subsidiarity principle. The Commission has been transmitting all new initiatives to national parliaments since 2006, and has put in place a procedure for responding. By December 2007, the Commission had received 166 opinions from 25 national parliaments in 19 Member States. These related to 86 Commission texts. Subsidiarity and proportionality have been important themes in the issues raised by national parliaments, and examples are given in the report.

European Parliament and Council: these institutions raised the issues of subsidiarity and proportionality on a number of occasions. The report cites Parliament's amendments to the Marine Strategy Framework Directive, and the Directive on the protection of soil in 2007. The Council and the European Parliament should address subsidiarity and proportionality when proposing an amendment that affects the scope of Community action. The low number of amendments that actually does so reflects wider difficulties for Parliament and Council of providing impact assessments of significant amendments that are proposed, especially when during political discussions they are changed, split, or combined before coming to a vote. The review of the "Common Approach for Impact Assessment" – which will take place in 2008 – provides an opportunity for the Council, the European Parliament and the Commission to discuss ways of facilitating the assessment of amendments.

The report goes on to discuss the activities of the **Committee of the Regions**, noting that the latter launched an interactive Subsidiarity Monitoring Network in March 2007, and those of the Court of Justice which confirmed in certain decisions the established case-law on the principles of subsidiarity and proportionality.

The report states that three broad conclusions can be drawn:

- in 2007 each of the actors in the system, at national and European level, made a contribution to ensuring that Community proposals are scrutinised to ensure consistency with subsidiarity and proportionality. The evidence is that this functions well;

- the process of scrutiny is being reinforced in a number of ways: in the Commission through reinforcement of the impact assessment system; in national parliaments; and in the Committee of the Regions;

- the fact that national parliaments and the EU institutions have raised similar issues shows a growing degree of consensus on what is meant by subsidiarity and proportionality in practice.

The Commission will continue to follow these developments closely.