

Better legislation, subsidiarity and proportionality and smart regulation

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PURPOSE: the presentation of the 17th report on the application of the subsidiarity and proportionality principles (2009).

The report covers 2009 when the Nice Treaty was still in force, and briefly explains the changes introduced by the Lisbon Treaty, which came into force on 1 December 2009. As was the case for the 2007 and 2008 reports, it does not cover wider issues of smart regulation which are addressed in a specific Communication on Smart Regulation.

In its legislative work, the **Commission** has always been governed by the need to respect subsidiarity and proportionality. Checks are now applied at three key stages of the policy development process:

- a preliminary analysis in roadmaps which are published for major initiatives when the Commission Work Programme is agreed;
- a fuller analysis of subsidiarity as part of the impact assessment process, taking into account views expressed during stakeholder consultations;
- lastly, a justification in terms of subsidiarity and proportionality in the explanatory memorandum and recitals of each legal proposal.

In the **European Parliament**, compliance of draft legislative acts with the principle of subsidiarity is ensured by the committees in charge of a specific legislative dossier, together with the Committee on Legal Affairs. In the **Council**, the Committee of the Permanent Representatives of each Member State (Coreper) ensures that the principles of legality, subsidiarity and proportionality are respected.

The report notes that the majority of Commission proposals were adopted by the co-legislators **without significant discussions** on subsidiarity and proportionality. For those proposals compliance with these principles has presumably not been an issue. However, the analysis has shown that, where compliance is questioned, the actors involved in discussions hold a broad variety of views not only between the different institutions, but also within these institutions, and sometimes between the different actors of the same Member State.

The Commission proposals that provoked the most debate among the co-legislators and the stakeholders in respect of the subsidiarity and proportionality principles are the following:

- [Directive](#) on Aviation Security Charges;
- [Directive](#) on Energy Performance of Buildings;
- [Directive](#) on Equal Treatment outside Employment;
- [Directive](#) on the Protection of Soil;
- [Directive](#) on Cross-Border Healthcare;
- Urban Mobility ([Green Paper](#) 'Towards a new culture for urban mobility');
- [Directive](#) on Standards of Human Organs Intended for Transplantation;
- Consumer Rights [Directive](#).

The debate on subsidiarity and proportionality will be further enhanced as a result of the **increased role of national parliaments** introduced by the Lisbon Treaty.

Since 2006, the Commission has on its own initiative transmitted all new proposals to national Parliaments, and has put in place a procedure for replying to their opinions. It received 250 opinions in 2009 compared to 115 in 2007. About 10% contained comments on subsidiarity and/or proportionality, with in most cases only one national chamber expressing a view.

The chambers with a particular interest in subsidiarity questions were the French *Sénat*, the Austrian *Bundesrat*, the German *Bundesrat* and the Dutch, Portuguese and Greek Parliaments. Some opinions did not question the respect of subsidiarity as such, but indicated that the Commission's justification was not sufficient.

The Commission is committed to strengthening further the relations with national Parliaments within the framework of the political dialogue developed since 2006, and the subsidiarity control mechanism is a key element of this process. An overview of how the mechanism is operating will be presented in the next subsidiarity report.