

Annual reports 2012-2013 on subsidiarity and proportionality

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The Committee on Legal Affairs adopted the own-initiative report by Sajjad KARIM (ECR, UK) on the annual reports 2012-2013 on subsidiarity and proportionality.

Members emphasised that the use of the EU's competences should be guided by the principles of subsidiarity and proportionality and welcomed the fact that in 2012 and 2013, compliance with these two principles was **carefully scrutinised by the EU institutions and by national parliaments**.

They regretted, however, that the annual reports prepared by the Commission were somewhat perfunctory, and often did not delve into a more detailed consideration of how subsidiarity and, in particular, proportionality were observed in EU policy-making.

National parliaments: noting the importance of parliaments and of their territorial impact and closeness to the citizens, Members called for their **greater involvement in the early warning system and in the European debate**.

2012 saw the first use of the so-called yellow card procedure by national parliaments regarding the principle of subsidiarity. However, Members noted that reasoned opinions issued by national parliaments pointed out the existence of **various interpretations** of the principles of subsidiarity and proportionality.

Members encouraged national parliaments to be faithful to the letter of the TEU when assessing compliance with the principles of subsidiarity and proportionality, and strongly recommended that national parliaments and European institutions **engage in exchanges of views and practices** of scrutinising their application. They regretted the absence of common patterns, which makes it more difficult to evaluate on what basis national parliaments intervene.

Impact assessments: the report stressed that **enhanced subsidiarity checks** could be considered an important tool for reducing the so-called 'democratic deficit'. The Impact Assessment Board considered more than 30 % of IAs reviewed by them in 2012 and 2013 to have included an unsatisfactory analysis of the principle of subsidiarity. Members expressed concern that **this number rose to 50 % in 2014**, and urged the Commission in its revision of the **guidelines** for impact assessments to address this issue and reverse this trend.

The committee reiterated the call made in Parliament's [resolution of 14 September 2011](#) for the use of **national impact assessments** as a complement to those carried out by the Commission in support of proposed legislation.

Furthermore, given that legislative proposals may change dramatically in the lead-up to adoption by the institutions, Members called for a further subsidiarity check and **full impact assessment to be undertaken at the conclusion of the legislative negotiations** and in advance of the adoption of a final text.

Commission's response: expressing disappointment at the response of the Commission to national parliaments in instances where yellow cards had been issued, Members believed that the Commission

should respond **comprehensively and on an individual basis** to any concerns raised as part of a dialogue in addition to any published opinion. They felt also that it was necessary for the Commission to appear before the relevant committee or committees of the Parliament to explain its position in detail.

Political dialogue: Members considered that political dialogue should be improved not only in instances of a yellow or orange card, but as a general rule. They welcomed in this regard the Commission's undertaking to appear before more national parliaments, and called for the Parliament to consider undertaking similar initiatives.

In order to promote a '**subsidiarity culture**' across the EU, Members recommended **two particular initiatives**:

- facilitating **greater inclusion of positions** 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;
- 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.

'Green card': the report noted that several national parliaments in COSAC had expressed their interest in proposing the introduction of a green card as an instrument for improving political dialogue, having first secured the support of Parliament, the opportunity to make constructive proposals for the Commission's consideration and with due regard for the Commission's right of initiative.

The report also:

- asked 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;
- emphasised the need to **clarify the division of competences** when trade policies impact on investments other than the foreign direct ones, namely portfolio investments, as controversies persisted in current Free Trade Agreements;
- called for clarification of whether **trade instruments**, such as investor-state dispute settlement (ISDS), could jeopardise the subsidiarity principle with respect to the competences of the Member States;
- called for more in-depth ex-ante and ex-post impact assessments regarding the proportionality of proposed measures with respect to **EU financial assistance to other countries**, namely macro-financial assistance.

Lastly, the report stressed the need for a **proper mechanism** for proper consultation, dialogue and involvement of citizens, businesses (namely SMEs) and civil society in the EU decision-making process for trade policy.