Basic information

2011/2029(INI) INI - Own-initiative procedure	Procedure completed
Better legislation, subsidiarity and proportionality and smart regulation **Subject** 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology 8.50.02 Legislative simplification, coordination, codification	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	KARIM Sajjad (ECR)	01/12/2010
	Shadow rapporteur RANGEL Paulo (PPE) GERINGER DE OEDENBERG Lidia Joanna (S&D) WALLIS Diana (ALDE) LICHTENBERGER Eva (Verts/ALE) MAŠTÁLKA Jiří (GUE/NGL) SPERONI Francesco Enrico (EFD)	

Committee for opinion	Rapporteur for opinion	Appointed
IMCO Internal Market and Consumer Protection	DE JONG Dennis (GUE/NGL)	18/02/2011
AFCO Constitutional Affairs	MESSERSCHMIDT Morten (EFD)	31/01/2011

European Commission

Commission DG	Commissioner
Secretariat-General	BARROSO José Manuel

Key events

Date	Event	Reference	Summary

08/10/2010	Non-legislative basic document published	COM(2010)0547	Summary
17/02/2011	Committee referral announced in Parliament		
21/06/2011	Vote in committee		Summary
28/06/2011	Committee report tabled for plenary	A7-0251/2011	
13/09/2011	Debate in Parliament		
14/09/2011	Decision by Parliament	T7-0381/2011	Summary
14/09/2011	Results of vote in Parliament		
14/09/2011	End of procedure in Parliament		

Technical information

Procedure reference	2011/2029(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 148-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/04985

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE458.789	07/04/2011	
Committee opinion	IMCO	PE460.948	26/05/2011	
Amendments tabled in committee		PE466.983	01/06/2011	
Committee opinion	AFCO	PE462.857	16/06/2011	
Committee report tabled for plenary, single reading		A7-0251/2011	28/06/2011	
Text adopted by Parliament, single reading		T7-0381/2011	14/09/2011	Summary

European Commission

Document type	Reference	Date	Summary
Document attached to the procedure	COM(2010)0543	08/10/2010	Summary
Non-legislative basic document	COM(2010)0547	08/10/2010	Summary

Commission response to text adopted in plenary	SP(2011)8668	30/01/2012	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2010)0543	26/11/2010	
Contribution	PT_PARLIAMENT	COM(2010)0543	01/04/2011	

Better legislation, subsidiarity and proportionality and smart regulation

2011/2029(INI) - 14/09/2011 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on better legislation, subsidiarity and proportionality and smart regulation in response to the Commission communication aiming to improve the quality of existing EU legislation.

Stresses the vital importance of making simple and clear laws that are accessible and easily understood with a view to safeguarding the principle of transparency of European legislation and guaranteeing more effective implementation, Members point out that **all European institutional actors have a role** in promoting and delivering better lawmaking, in accordance with the principles and guidance contained in the Smart Regulation agenda and the Interinstitutional Agreement on better law-making. They urge the incoming Presidencies and the Commission to set in motion the process of **renegotiating the Interinstitutional Agreement** so as to agree on key changes in preparation for future negotiations with the Council of Ministers on adapting the Interinstitutional Agreement to the new provisions of the Lisbon Treaty. Every effort should be made to ensure that **Parliament and Council are treated as equals** in the law-making process.

The Commission is called upon to give **an undertaking regarding the deadlines** by which it will meet requests made by Parliament pursuant to Article 225 TFEU, with specific reference to the commitment under the Framework Agreement to draw up a report on the concrete follow-up of any request within the three months following the adoption of a legislative initiative report in plenary and to submit a legislative proposal at the latest after one year.

(1) National parliaments: Members welcome the closer involvement of national parliaments in the European legislative process, in particular in the process of verifying the compliance of legislative proposals with the principle of subsidiarity. They stress that the national parliaments will be better able to comply with their responsibility under the Treaty to test the compliance of legislative proposals with the subsidiarity and proportionality principles if the Commission for its part complies fully with its obligation, as laid down in Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality, to give detailed and comprehensible reasons for its decisions.

(2) Reducing administrative burdens and ensuring proper implementation: Members express concern that the programme to reduce administrative burdens may not reach its target of reducing administrative burdens by 25 % by 2012 and point out that Parliament and the Council should act promptly in order to approve proposed measures. They encourage the High-Level Group of Independent Stakeholders on Administrative Burdens to enter into a dialogue with SMEs from across Europe, to identify the barriers most frequently referenced for preventing them from trading with other Member States within the Single Market, and **propose measures to remove or reduce these obstacles** to increased growth. Parliament stresses the need for the programme to continue post-2012 to cover the life of the current Commission, with a more ambitious and clearly defined target and an enhanced remit to enable the programme to extend beyond simply administrative burdens and to address regulatory burdens and costs arising from EU legislation as a whole, including regulatory ‘nuisances’.

(3) Policy formulation: Members call on the Commission to make better use of White Papers presenting draft legislative proposals for consideration, stating that this would reduce the frequency with which proposals have to undergo substantial, if not wholesale, revision during the legislative process. It would also aid evaluation of the proportionality of suggested legislation, which is often difficult when only outline proposals are presented initially in Green Paper form.

Welcoming the Commission’s commitment to **review its consultation procedure**, the resolution states that the current asymmetric methods and forms of consultation do not encourage responses from all interested stakeholders. It makes several suggestions in this regard, including: (i) a common approach involving a standard form for responses to consultations which would simplify matters for respondents and encourage receipt of a more detailed selection of responses (ii) mainstreaming multilingualism in the running and publication of the results of public consultations, as a prerequisite for extensive involvement of all the European stakeholders; (iii) simplifying consultation documents so as to aid responses from the relevant stakeholders, with the introduction of a ‘clarity test’; (iv) improved communication by the Commission after the consultation period has closed, and feedback on the main issues raised by all respondents.

Parliament moved on to underline the importance of **guaranteeing the independence and credibility of the analyses carried out in the Commission’s impact assessments** so as to secure the overall goals of the smart regulation agenda, and reiterated Parliament’s position on the issue as set out in its resolution of 8 June 2011. It suggests that impact assessments should identify the particular effects – both positive and negative – that measures will have on competitiveness and growth within the EU and that these effects should as far as possible be fully quantified. In addition, when formulating new legislation, the Commission is asked to place the utmost importance on its possible impact on small and medium-sized enterprises, and to exempt SMEs from regulation where provisions would disproportionately affect them and there is no robust reason for including them in the scope of the

legislation. Parliament takes the view in this regard that the SME test adopted in the Small Business Act has a key role to play, and expects the Commission to make full use of the test.

(4) Ex-post evaluation: Members demand that the Council require Member States to draw up and publish tables illustrating the correlation between directives and national transposition measures, since such tables are essential in order to provide transparency on how national law transposes the obligations in EU directives, and can play a useful role in identifying discrepancies and cases of gold-plating. They also stress that the recasting technique should always be used when amending legislation.

Lastly, Parliament welcomes the personal support the President of the Commission has given to the Smart Regulation agenda, considering the issue to be of sufficient importance that real political leadership is required from the Commission to keep this issue high on the political agenda, and in this regard suggests that the agenda be brought forward as a **key part of the portfolio** for one of the College of Commissioners. For its part, Parliament should investigate methods to increase the importance attached to better law-making within its committees, and the use of inter-committee meetings to address this issue requires further consideration.

Better legislation, subsidiarity and proportionality and smart regulation

2011/2029(INI) - 08/10/2010 - Document attached to the procedure

PURPOSE: to improve the quality of regulation within the European Union (Smart Regulation).

CONTENT: the better regulation agenda has already led to a significant change in how the Commission makes policy and proposes to regulate. The Commission believes that it is now time to step up a gear. Better regulation must become **smart regulation** and be further embedded in the Commission's working culture.

The approach to regulation must **promote the interests of citizens, and deliver on the full range of public policy objectives** from ensuring financial stability to tackling climate change. EU regulations also contribute to business competitiveness by underpinning the single market, eliminating the costly fragmentation of the internal market because of different national rules.

This communication outlines the measures envisaged by the Commission to **ensure the quality of regulation throughout the whole policy cycle** - from the design of a piece of legislation, to implementation, enforcement, evaluation and revision. It draws on a number of inputs including a recent resolution from the European Parliament on Better Law-makinga public consultation4; the European Court of Auditors' report on Impact Assessment in the EU institutions; and the reports of the Impact Assessment Board (IAB).

The measures foreseen to deal with these issues are the following:

1) Improving the stock of EU legislation: the Commission is concentrating its efforts on **reducing administrative burdens** along with **simplifying** legislation. A key tool in this new approach will be **ex post evaluation** of legislation. The Commission intends, in particular, to:

- ensure that all significant proposals for new or revised legislation are in principle based on an evaluation of what is already in place;
- provide transparency by presenting planned evaluations of legislation on a specific website to allow Member States and stakeholders to prepare inputs at an early stage;
- carry out the four “fitness checks” launched in 2010 for areas in environment, transport, employment/social policy and industrial policy and extend the approach to other policy areas in 2011 on the basis of these experiences;
- finalise the administrative burden reduction programme by 2012;
- improve the consultation website to allow stakeholders to express more easily their concerns about administrative burdens and simplification issues;
- invite Member States to use the possibilities in EU legislation to waive obligations for businesses such as SMEs.

At the same time, the Commission will continue to encourage the European Parliament and Council to approve swiftly the simplification and burden reduction proposals that it has already tabled, and the new proposals it will make over the next year.

2) Ensuring that new legislation is the best possible: the Commission has put in place an impact assessment system to prepare evidence for political decision-making and to provide transparency on the benefits and costs of policy. A key element of this system is the Impact Assessment Board (IAB) which provides independent quality control of the Commission's impact assessments. Since it was created in 2006 it has produced over 400 opinions which are available to the public.

While the Court of Auditors has confirmed that the IAB is effective, the President of the Commission has reinforced its role further so that in principle a positive opinion from the IAB is needed before a proposal can be put forward for Commission decision. The independence of the IAB is also demonstrated. Against this background, the **Commission will consolidate the current system** and the priority will be to ensure that it delivers its full potential.

3) Improving the implementation of EU legislation: to improve further the transposition, implementation and enforcement of EU legislation the Commission will:

- strengthen the analysis of these issues in ex post evaluations of legislation and ensure that the results are used in impact assessments for new or revised proposals;
- further develop the use of Implementation Plans for new EU legislation, and continue to request Member States to produce correlation tables to provide transparency on how national law transposes the obligations in EU directives;
- improve the efficiency of the EU Pilot which aims to provide quick and full answers to citizens' and businesses' questions on EU law, and encourage more Member States to participate in it;

- explore how to improve SOLVIT and promote it further to SMEs.

4) Making legislation clearer and more accessible: the Commission scrutinizes all new legislative proposals to ensure that the rights and obligations they create are set out in simple language to facilitate implementation and enforcement. To improve electronic access to the full body of EU legislation, a new EUR-Lex portal is being developed with the other EU institutions. The Commission encourages Member States to consolidate national legislation which transposes EU legislation and to make it electronically available, including via the EUR-Lex portal.

The Communication stresses that smart regulation is, however, a **shared responsibility** and its success will depend on all institutions and stakeholders involved in the formulation and implementation of EU policies playing their part.

Moreover, the views of those most affected by regulation have a key role to play in smart regulation. The Commission has made great strides in opening its policy making to **stakeholders**. This can also be taken a step further and the Commission will lengthen the period for its consultations, and carry out a review of its consultation processes to see how to strengthen the voice of citizens and stakeholders further.

The Commission will report on progress in implementing the smart regulation agenda in the second half of 2012.

Better legislation, subsidiarity and proportionality and smart regulation

2011/2029(INI) - 08/10/2010 - Non-legislative basic document

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.