Basic information

2011/2276(INI) INI - Own-initiative procedure	Procedure completed
18th report on better legislation - Application of the principles of subsidiarity and proportionality (2010) **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)	11/10/2011

Committee for opinion	Rapporteur for opinion	Appointed
AFCO Constitutional Affairs	REGNER Evelyn (S&D)	20/12/2011

European Commission

Commission DG	Commissioner
Secretariat-General	ŠEFČOVIČ Maroš

Key events

Date	Event	Reference	Summary
10/06/2011	Non-legislative basic document published	COM(2011)0344	Summary
17/11/2011	Committee referral announced in Parliament		
10/07/2012	Vote in committee		
23/07/2012	Committee report tabled for plenary	A7-0251/2012	Summary
10/09/2012	Debate in Parliament		
13/09/2012	Decision by Parliament	T7-0340/2012	Summary
13/09/2012	Results of vote in Parliament		
13/09/2012	End of procedure in Parliament		

Technical information	
Procedure reference	2011/2276(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/07630

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE488.052	23/05/2012	
Committee opinion	AFCO	PE483.487	21/06/2012	
Amendments tabled in committee		PE492.605	22/06/2012	
Committee report tabled for plenary, single reading		A7-0251/2012	23/07/2012	Summary
Text adopted by Parliament, single reading		T7-0340/2012	13/09/2012	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2011)0344	10/06/2011	Summary

18th report on better legislation - Application of the principles of subsidiarity and proportionality (2010)

2011/2276(INI) - 10/06/2011 - Non-legislative basic document

PURPOSE: presentation of the 18th annual report on the application of the principles of subsidiarity and proportionality in EU lawmaking.

CONTENT: the report looks at how the principles are implemented by different institutions – the Commission, the European Parliament, the Council and the Committee of the Regions, and presents in more detail some initiatives which have raised subsidiarity issues. It also examines how the subsidiarity control mechanism of national Parliaments, which was one of the innovations introduced by the Lisbon Treaty, has been implemented.

The fact that the **majority of Commission proposals have not raised any subsidiarity concerns** among national Parliaments, and were adopted by the legislators without major subsidiarity discussions, indicates that **subsidiarity checks** at an early stage of the policy development process are **generally effective**.

Application of the principles: the report highlights that it is imperative to make the arguments on subsidiarity and proportionality **transparent**, because this enables the different players to deliberate constructively over the validity of their positions. Therefore, irrespective of where the initiative originates, the draft legislative act should contain a detailed '**statement**' making it possible for the other actors to appraise compliance with the principle.

Subsidiarity **cannot be easily validated** by operational criteria. A **fair political judgement** at the **pre-legislative phase is important** to ensure that proposals get the subsidiarity issues right from the beginning.

European Commission: in 2010, the Board commented on subsidiarity and proportionality issues in more than half of the cases it examined, and identified three main areas for improvement:

(1) Need for **more robust evidence of EU value added**. For example, for the initiative on the European Dimension in Sport, the Board was concerned about the limited evidence base for a planned financing programme. Similarly, the Board questioned the added value of EU-level measures for the idea of a mountain product label (initially included in the Package of Agricultural Product Quality). In both cases the relevant services have decided to conduct further analysis before proposing EU action.

(2) Need for **thorough subsidiarity analysis for initiatives extending the scope of EU intervention**. This was the case for several initiatives adopted in the aftermath of the financial crisis – amendments to the Directives on Deposit Guarantee Schemes and Investor Compensation Schemes, an initiative on Short Selling and Credit Default Swaps, and the White Paper on Insurance Guarantee Schemes.

(3) The Board **questioned the preferred level of harmonisation on several occasions**, given the differences in national situations. This was the case for amendments to the Regulation on Judgments in Civil and Commercial Matters and a proposed Regulation on Property Consequences of Registered Partnerships.

National Parliaments: the subsidiarity control mechanism introduced by the Lisbon Treaty enhances the role of national Parliaments, which can express their views on whether draft legislative proposals comply with the principle of subsidiarity. The Treaty provides for two mechanisms – the so-called '**yellow card**' and '**orange card**'. Both mechanisms entail a review of the draft legislation and may lead to amendment or withdrawal of the proposal.

Since 2006 the Commission has, within the framework of the political dialogue, transmitted all new proposals to national Parliaments, and replied to their opinions. By the end of 2010, the Commission had sent out 82 draft legislative proposals falling within the scope of the Protocol and received **211 opinions**. While most of the opinions concentrated on the content of the proposal, a total of **34 opinions raised subsidiarity concerns**. For five legislative proposals the Commission received more than one reasoned opinion,18 but in all of these cases the threshold for a 'yellow card' was far from being reached.

The Commission initiatives on which the national Parliaments delivered reasoned opinions as regards respect of the subsidiarity principle are as follows:

- Seasonal Workers Directive,
- Deposit Guarantee Schemes Directive,
- Food Distribution to the Most Deprived Persons in the Union,
- Support for Rural Development by the EAFRD Regulation,
- Direct Support Scheme for Farmers,
- Investor Compensation Scheme,
- European Heritage Label,
- Frontex Regulation,
- Translation and Interpretation in Criminal Proceedings,
- Imports of Fishery Products from Greenland to the EU,
- Radio Spectrum Policy Programme,
- Single European Railway Area.

Some replies from the national Parliaments have also highlighted insufficient or missing subsidiarity justification in a number of the Commission's proposals. This appeared to be in particular the case for **proposals on minor amendments to existing legislation**. The Commission will take measures to ensure proper subsidiarity justification in explanatory memoranda of all legislative proposals, including, for instance, by recalling and reconfirming the subsidiarity analysis made in the past.

The European Parliament and the Council: the legislators – the European Parliament and the Council – act at the final stage of the prelegislative phase. They must validate the proposal's conformity with the principles of subsidiarity and proportionality, and provide a relevant justification if an amendment they make affects the scope of Union action.

The Council and the European Parliament have both set up their own procedures to implement the subsidiarity control mechanism. The Parliament's Rules of Procedure were amended to ensure that the reasoned opinions of national Parliaments are taken into consideration in parliamentary discussions. The Council has ensured that the national Parliaments were consulted on the initiatives originating from a group of Member States.

In a limited number of cases, there has been an extensive debate between the European Parliament and the Council on how subsidiarity should be interpreted. Thorough political discussions have helped to find an appropriate balance between EU and Member State responsibilities.

18th report on better legislation - Application of the principles of subsidiarity and proportionality (2010)

2011/2276(INI) - 23/07/2012 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted an own-initiative report drafted by Sajjad KARIM (ECR, UK) on the 18th report on Better legislation - Application of the principles of subsidiarity and proportionality (2010).

The committee expresses its deep concern regarding the Impact Assessment Board's view that the **Commission's consideration of the principles of subsidiarity and proportionality in its impact assessments are is often unsatisfactory in nature**. It considers it of the utmost importance that the Commission address any deficiencies in this area in order to ensure that these principles are respected.

Members reiterate their repeated calls for the **2003 Interinstitutional Agreement on Better Lawmaking** to be renegotiated in order to take account of the new legislative environment created by the Treaty of Lisbon. They suggest that arrangements concerning the demarcation between delegated and implementing acts be agreed in that context.

Subsidiarity control by national parliaments: the report notes that in 2010, **211 opinions were received from national parliaments** but that only a small number of them – 34 in all – raised subsidiarity concerns. Members recall, however, that on 22 May 2012, for the first time since the entry into force of the Lisbon Treaty, national parliaments triggered the **'yellow card' procedure** by adopting reasoned opinions opposing the Commission proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

The report highlights the need for the European institutions to make it possible for **national parliaments to scrutinise legislative proposals** by ensuring that the Commission provides detailed and comprehensive grounds for its decisions on subsidiarity and proportionality.

The Commission is called upon, in the scrutiny of subsidiarity, to pay attention to the role of the **regional parliaments** with legislative powers.

Evidence-based policymaking: Members recall the commitment made by Parliament and Council in the 2005 Interinstitutional Common Approach to Impact Assessment to **carry out impact assessments prior to the adoption of substantive amendments**. They call on the committees to make use of the new Impact Assessment Directorate in implementing this commitment.

Moreover, they suggest that as part of a **more systematic approach to the consideration of impact assessments** within Parliament, the Impact Assessment Directorate should be asked by committees to prepare a short summary of each impact assessment for consideration when an initial exchange of views is held.

Minimising regulatory burdens: Members consider it essential that the Commission respects the '**think small first'** principle when preparing legislation. They recall Parliament's position on the issue of regulatory exemptions, and urge the Commission to extend exemption to SMEs where regulatory provisions would disproportionately affect them.

Members welcome the Commission's adoption of Parliament's recommendation on publication of information concerning implementation, thus addressing the problem of 'gold-plating'. They believe, however, that a **more constructive engagement** in the pre-legislative process with relevant stakeholders and the institutions, together with adherence to the general commitments to simplification and the smart regulation agenda, would render such publicity unnecessary. They suggest, nonetheless, that those Member States which engage the most in the 'gold-plating' of directives should be named, alongside those which are the biggest offenders when it comes to late, impreciseor incomplete transposition of EU law.

Lastly, Member States are urged to **reduce their administrative burden by a further 25% by 2015**.

18th report on better legislation - Application of the principles of subsidiarity and proportionality (2010)

2011/2276(INI) - 13/09/2012 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution on the 18th report on Better legislation - Application of the principles of subsidiarity and proportionality (2010).

Members recall that the principles of subsidiarity and proportionality must be respected by the European institutions when legislating. They underline, moreover, the overarching need for legislation to be clear, simple, easy to understand and accessible to all.

In light of these considerations, Parliament expresses its deep concern regarding the Impact Assessment Board's view that **the Commission's consideration of the principles of subsidiarity and proportionality in its impact assessments are is often unsatisfactory in nature**. It considers it of the utmost importance that the Commission addresses any deficiencies in this area in order to ensure that these principles are respected.

Members reiterate their repeated calls for the **2003 Interinstitutional Agreement on Better Lawmaking to be renegotiated** in order to take account of the new legislative environment created by the Treaty of Lisbon. They suggest that arrangements concerning the demarcation between delegated and implementing acts be agreed in that context.

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The resolution highlights the need for the European institutions to **make it possible for national parliaments to scrutinise legislative proposals** by ensuring that the Commission provides detailed and comprehensive grounds for its decisions on subsidiarity and proportionality.

Members urge the Commission to improve and **regularise the statements** which justify its legislative initiatives on the grounds of subsidiarity.

The Commission is also called upon, in the scrutiny of subsidiarity, to pay attention to the **role of the regional parliaments with legislative powers**.

Evidence-based policymaking: Members recall the commitment made by Parliament and Council in the 2005 Interinstitutional Common Approach to Impact Assessment to **carry out impact assessments prior to the adoption of substantive amendments**. They call on the committees to make use of Parliament's new Impact Assessment Directorate in implementing this commitment.

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Member States are urged **to reduce their administrative burden by a further 25% by 2015**.

Lastly, Parliament recalls its Resolution on smart regulation and calls on the Commission to put forward proposals **implementing regulatory offsetting**, which would require equivalent cost offsets to be identified in advance of new legislation that would introduce costs being imposed.