Basic information

2013/2077(INI) INI - Own-initiative procedure	Procedure completed
EU regulatory fitness and subsidiarity and proportionality - 19th report on Better lawmaking covering the year 2011 **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)	15/04/2013
	Shadow rapporteur GERINGER DE OEDENBERG Lidia Joanna (S&D) TAYLOR Rebecca (ALDE)	

Committee for opinion	Rapporteur for opinion	Appointed
REGI Regional Development	The committee decided not to give an opinion.	
AFCO Constitutional Affairs	MESSERSCHMIDT Morten (EFD)	23/04/2013

European Commission

Commission DG	Commissioner
Secretariat-General	ŠEFČOVIČ Maroš

Key events

Date	Event	Reference	Summary
10/07/2012	Non-legislative basic document published	COM(2012)0373	Summary
10/06/2013	Committee referral announced in Parliament		
21/01/2014	Vote in committee		

28/01/2014	Committee report tabled for plenary	A7-0056/2014	Summary
03/02/2014	Debate in Parliament		
04/02/2014	Decision by Parliament	T7-0061/2014	Summary
04/02/2014	Results of vote in Parliament		
04/02/2014	End of procedure in Parliament		

Technical information

Procedure reference	2013/2077(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 148-p1
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/12547

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE514.600	21/06/2013	
Amendments tabled in committee		PE516.887	30/08/2013	
Committee opinion	AFCO	PE514.776	17/10/2013	
Amendments tabled in committee		PE524.664	02/12/2013	
Committee report tabled for plenary, single reading		A7-0056/2014	28/01/2014	Summary
Text adopted by Parliament, single reading		T7-0061/2014	04/02/2014	Summary

European Commission

Document type	Reference	Date	Summary
Commission document (COM)	COM(2012)0373	10/07/2012	Summary
Commission document (COM)	COM(2012)0746	12/12/2012	Summary
Commission response to text adopted in plenary	SP(2014)414	18/06/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	IT_CHAMBER	COM(2012)0373	11/10/2012	

Contribution	IT_SENATE	COM(2012)0373	17/10/2012	
Contribution	SE_PARLIAMENT	COM(2012)0373	19/04/2013	

EU regulatory fitness and subsidiarity and proportionality - 19th report on Better lawmaking covering the year 2011

2013/2077(INI) - 10/07/2012 - Non-legislative basic document

PURPOSE: to present the 19th report on the application of the principles of subsidiarity and proportionality.

BACKGROUND: this is the nineteenth annual report on the application of the principles of subsidiarity and proportionality in EU lawmaking.

As in previous years, it looks at how the principles are implemented by the different EU institutions and bodies, the Commission, the European Parliament, the Council and the Committee of the Regions and presents in more detail some Commission initiatives and legislative proposals which have raised subsidiarity issues during 2011. It also examines how the subsidiarity control mechanism, which under Article 12 of the TEU and the Protocol gives **national Parliaments a particular role in scrutiny of the principle of subsidiarity**, has developed since the entry into force of the Lisbon Treaty.

CONTENT: the majority of Commission proposals were adopted by the colegislators without significant discussions on subsidiarity and proportionality. In 2011, the thresholds for the so-called "yellow card" and "orange card" were not reached and only **a small percentage** (**about 10%**) of national Parliaments' opinions sent to the Commission in the context of the political dialogue were reasoned opinions within the meaning of the Protocol, i.e. stating **a breach of subsidiarity**. At the same time, in cases where compliance with the principles of subsidiarity and proportionality was questioned, the views of the institutions and other players involved sometimes differed widely.

The concepts of subsidiarity and proportionality are fundamental elements in the policy development process of the EU Institutions, and the Commission's impact assessments remain the main vehicle for addressing subsidiarity and proportionality issues during the pre-legislative phase, the IA Board playing a key role in this respect. However, institutional practice shows that the way these principles are interpreted and applied during the legislative phase often depends on the political context, highlighting thus their political dimension.

The way in which most of the national Parliaments implement the Protocol and use the subsidiarity control mechanism has highlighted the primarily political character of this new tool.

The **subsidiarity control mechanism has served to make the process more transparent** and has clearly helped to bring EU policies into the public debate in Member States and thus to raise public awareness on these issues.

How the institutions apply these principles: the report reviews how the institutions apply these two fundamental principles:

1. the Commission: it recalls that a subsidiarity statement is presented for each legislative proposal, as foreseen by Article 5 of the Protocol to the Treaty. Impact assessments (IAs), which accompany proposals with significant impacts, provide the most detailed analysis of subsidiarity and proportionality. The quality of this analysis is systematically scrutinised by the IA Board. In 2011, the Board continued to assess EU added value when scrutinising the quality of IAs. Though the Board's recommendations on subsidiarity and proportionality were down slightly compared to 2010, they still featured in a significant number of opinions (43 %). The Board frequently asked for stronger justification of the need for action at EU level, in particular the need for more evidence of problems that require action at EU level and, on some occasions, it concluded that the evidence base to demonstrate the need for and proportionality of an EU legislative initiative remained weak.

2. the national parliaments: the subsidiarity control mechanism gives national Parliaments the right to express their views on whether draft legislative acts, which do not fall within the EU's exclusive competences comply with the principle of subsidiarity. Depending on the number of reasoned opinions concluding that a proposal is in breach of the subsidiarity principle, the so-called '**yellow card**' and '**orange card**' can be triggered. These entail a review of the draft legislation and may lead to the relevant legislative proposal being amended or withdrawn. In 2011, the Commission received **64 reasoned opinions from national Parliaments**, an increase of almost 75% in comparison with 2010, the first year of functioning of the subsidiarity control mechanism. These 64 reasoned opinions received in 2011 related to 28 different Commission proposals. Most of the reasoned opinions focused on legislative proposals in the fields of taxation, agriculture, internal market and justice. The proposals which elicited the highest number of reasoned opinions concerned the **Common Consolidated Corporate Tax Base** (nine opinions), the **temporary reintroduction of border controls at internal borders in exceptional circumstances** (six), the **Common European Sales Law** (five) and the **Single CMO Regulation** (five).

In none of the 2011 cases were the thresholds for triggering the yellow or orange cards met.

In accordance with its political commitment to national Parliaments, the Commission replied or is in the process of preparing a reply to each reasoned opinion in the context of the political dialogue and put forward into account in the ensuing interinstitutional discussions and negotiations.

3. the European Parliament and the Council: in Council, the Committee of Permanent Representatives (Coreper) ensures that the principles are complied with. In the European Parliament, the internal Rules of Procedure contain **a specific Rule on the** "**Examination of respect for the principle of subsidiarity**", which states that compliance is verified by the committees in charge of specific legislative dossiers, together with the Committee on Legal Affairs, and that the committee responsible may not take its final vote before expiry of the eight-week deadline.

It should also be noted that, in 2011, the Commission received a small number of **parliamentary questions** (**32** out of more than 12 000) which concerned issues in relation to respect for the principles of subsidiarity and proportionality. They mainly covered requests to substantiate the compliance of certain Commission proposals with these principles, partially echoing concerns raised by other institutions and players.

4. the Committee of the Regions: the Committee of the Regions expresses its views either when it is consulted or in the form of own-initiative opinions. In accordance with Article 8 of the Protocol, it also has the right to challenge under Article 263 TFEU the validity of legislation as regards compliance with the principle of subsidiarity, but only if it has been consulted by virtue of an obligation under the TFEU. 2011 saw preparations for the launch of the REGPEX website, which is designed to help regions with legislative powers play their part in the subsidiarity control mechanism and to provide a source of information and exchange between regional parliaments and governments as they prepare their subsidiarity analyses. The website was launched in March 2012.

5. the Court of Justice: the Court of Justice of the European Union is, in accordance with Article 263 TFEU, competent to review the legality of legislative acts as regards compliance with the principle of subsidiarity. The Protocol states that the Committee of the Regions or Member States, themselves or on behalf of their national Parliaments, can bring a case before the Court.

Lastly, the report cites a number of key cases where subsidiarity and proportionality concerns were raised. These cases are described both from the point of view of the interinstitutional debates that took place in their regard and the arguments put forward by national parliaments to counter the proposals in question.

EU regulatory fitness and subsidiarity and proportionality - 19th report on Better lawmaking covering the year 2011

2013/2077(INI) - 12/12/2012 - For information

PURPOSE: to present a programme, called **REFIT**, which aims at more targeted EU regulation.

BACKGROUND: EU legislation is essential to achieve the objectives of the EU Treaty and to set the conditions for smart, sustainable and inclusive growth, benefitting citizens, businesses and workers. Achieving these goals is a shared responsibility between the Commission, the other European Institutions and the Member States.

The economic and financial crisis has focused attention on the **costs of EU legislation** and the challenges of implementing and enforcing the laws already on the statute books. National administrations, already under strain, find it difficult to keep up with the transposition and application of EU legislation. Businesses and citizens raise concerns about the complexity and administrative load of laws. The European Council has therefore called for further efforts to reduce the overall regulatory burden at EU and national level.

The Commission is responding to these concerns. Since outlining new initiatives two years ago, it has consolidated its **impact assessment system**. The 25% target set under the Action Programme for Reducing Administrative Burdens has been met and exceeded. Legislation has been simplified and codified. Significant simplification proposals in several policy areas are being examined by the European Parliament and Council. Many problems on the correct application of EU legislation are being solved without having to resort to formal infringement procedures.

It would appear, nevertheless, necessary to further enhance the initiatives already taken.

CONTENT: the Commission will continue its activities in this field and is determined to meet policy goals at **minimum cost**, achieving the benefits that only EU legislation can bring and eliminating all unnecessary regulatory burden. It intends therefore to propose a programme designed to set in place **fitter regulation**.

To this end, it will:

- continue to strengthen its regulatory tools and to apply them systematically across its regulatory activities;
- also step up its implementation and enforcement in close cooperation with the other European institutions and the Member States;
- combine various initiatives now underway into a **Regulatory Fitness and Performance Programme** (REFIT) aimed at **eliminating unnecessary regulatory costs** (i.e. burden) and ensuring that the body of EU legislation remains fit for purpose.

Against quantitative targets: in its Communication, the Commission indicates that it **does not believe that setting global targets and/or quantitative formulae for managing the stock of legislation will produce the desired results**. This requires a more tailored approach with an assessment of actual benefits and costs - identifying whether they are directly related to EU legislation or to the implementation choices made by the Member States. Such an approach would make it possible to **more accurately target cost reduction** and regulatory improvements and would be better suited to the specificities of EU policy making.

Main objective of a Regulatory Fitness and Performance Programme, REFIT: to move towards its goal, the Commission will launch a Regulatory Fitness and Performance Programme (REFIT) building on its experience in evaluating and reducing administrative burden. **REFIT will identify burdens, inconsistencies, gaps and ineffective measures**. Attention will be paid to possible regulatory burden related to how EU legislation is implemented at the national and sub-national level.

Through REFIT, the Commission will:

1. identify, assess, adopt, and monitor implementation of, initiatives which will result in **significant regulatory cost reduction** or simplification;
2. propose a **common framework for conducting assessments**, on the one hand, to show how they fit into the overall objective of ensuring smart regulation and eliminating burdens, to involve all relevant levels of government and, on the other, to facilitate wide stakeholder participation;

3. conduct a mapping exercise to identify the regulatory areas and pieces of legislation with the **greatest potential for simplifying rules and reducing regulatory cost for businesses and citizens** without compromising public policy objectives. Normally, the mapping will point to areas where further evaluation, including of costs and benefits, is needed. These evaluations will also assess whether quantitative targets for burden reduction should be examined in the concerned field and in relation to EU and Member States responsibilities respectively. Where the mapping provides sufficient evidence that more immediate action is needed, an impact assessment process for the proposals will be launched. Stakeholders will be informed throughout the process;
4. implement REFIT in a **transparent** manner: once the mapping and appropriate evaluation work has been conducted, REFIT evaluations will be publicly flagged in strengthened multiannual evaluation plans starting from 2014. A tracking system (**scoreboard**) will be set up to assess the progress of proposals through the EU institutions and at the implementation stage;
5. REFIT will include **a follow-on** to the Administrative Burden Reduction Programme (ABR) - ABR Plus. The 2007 Programme aimed to reduce burdens on business stemming from EU legislation by 25% by 2012. It covered around 80% of the main sources of administrative burden. The Commission has gone beyond the target by presenting proposals to cut the administrative burden by over 30 %, while measures equalling 25% have been adopted by the co-legislators. Benefits will not materialize until the ABR is successfully implemented. ABR Plus will therefore focus on follow-up in the Member States. Member States will be asked to report by 31 December 2013 on how they implemented ABR measures. Special measures will be set in place to evaluate the reduction in administrative burden **for SMEs.**

The Commission's communication presents the methodology, the tools and the partners that it envisages being involved in implementing the REFIT programme. This would include, among other things:

- the continuation of the impact assessment programme;
- further evaluation of implementation measures in force;
- the continuation of the systematic consultation of stakeholders;
- the involvement of all the European and Member States' institutions.

EU regulatory fitness and subsidiarity and proportionality - 19th report on Better lawmaking covering the year 2011

2013/2077(INI) - 04/02/2014 - Text adopted by Parliament, single reading

The Parliament adopted a resolution on EU Regulatory Fitness and Subsidiarity and Proportionality - 19th report on Better Lawmaking covering the year 2011.

General comments: Parliament stressed that legislation proposed and adopted at the European level should be simple, effective and efficient, should provide a clear added value, and should be easy to understand and accessible in all the official languages of the Member States, as well as delivering full benefits at minimum cost. It emphasised the fact that the European institutions are responsible for ensuring that legislation is clear and easily understood and does not place any unnecessary administrative burdens on citizens or enterprises.

Believing that better lawmaking should be pursued in a spirit of multilevel governance, i.e. through coordinated action by the EU, national institutions and local and regional authorities, Parliament considered that the **Interinstitutional Agreement on Better Lawmaking of 2003 had become ill-suited to the current legislative environment** created by the Treaty of Lisbon, and called for the Agreement to be re-negotiated on the basis of Article 295 TFEU and should be of a binding nature.

In addition, Parliament stressed the following:

- the principles of subsidiarity and proportionality were not adequately addressed by the Commission in its impact assessments, as has been pointed out by the Impact Assessment Board and by national parliaments;
- the Commission and Council need to engage with Parliament in negotiations on the criteria for the appropriate application of Article 290 and 291 TFEU, and this can be achieved in the framework of the revision of the Interinstitutional Agreement on Better Lawmaking,
- the Commission should step up its review of the application of the principle of proportionality, especially with regard to the use of Articles 290 and 291 TFEU on delegated and implementing acts;
- close attention should be paid to the early warning system.

Subsidiarity mechanism for national parliaments: Members welcomed the closer participation of national parliaments in the framework of the European legislative process. They recommended that the national parliaments be afforded substantial assistance to enable them to carry out their scrutiny tasks.

On Subsidiarity mechanism, Parliament stressed that in 2011 the Commission received 64 reasoned opinions within the meaning of Protocol No 2 on the application of the principles of subsidiarity and proportionality, which represents a considerable increase in comparison to 2010. It notes, however, that these 64 reasoned opinions represented barely 10 % of the total of 622 opinions forwarded to the Commission by national parliaments in 2011 within the terms of the political dialogue in question.

It also drew attention to the fact that **no Commission proposal received a sufficient number of reasoned opinions to trigger the 'yellow or orange card procedures'** under the Protocol. It noted, however, that on 22 May 2012 a 'yellow card procedure' was for the first time triggered by a Commission proposal (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, i.e. the proposal for the 'Monti II' Regulation). It stressed that the Commission withdrew the proposal, not because it considered the principle of subsidiarity to have been infringed upon, but because it realised that the proposal was unlikely to gain enough political support in Parliament and the Council to ensure its adoption

Globally, Parliament took the view that the mechanism for verification of the subsidiarity principle must be designed and put to use as a **major instrument for collaboration between European and national institutions** and emphasised dialogue among the different institutional levels of the multi-level European system.

Better lawmaking: Parliament urged the Commission to come forward with further concrete proposals to **reduce the overall EU regulatory burden without undermining health and safety at work**.

Members further suggested that the Commission should:

- explore the option of **introducing a 'white paper' stage** in the legislative process to afford stakeholders the ability to comment on draft proposals and accompanying provisional impact assessments;
- put forward proposals **implementing regulatory offsetting**, which would require equivalent cost offsets to be identified in advance of new legislation that would introduce the imposition of costs, and present an assessment of its impact before the end of the current parliamentary term in 2014.

Impact assessments and European added value: Members proposed that Parliament's own impact assessments should include a territorial dimension when appropriate.

Lastly, Parliament insisted that the Commission give serious consideration to the **European added value assessments accompanying legislative own-initiative reports**, setting out in detail the reasons why it did not accept or consider relevant any of the arguments put forward by Parliament.

EU regulatory fitness and subsidiarity and proportionality - 19th report on Better lawmaking covering the year 2011

2013/2077(INI) - 28/01/2014 - Committee report tabled for plenary, single reading

The Committee on Legal Affairs adopted the own-initiative report by Sajjad Karim (ECR, UK) on EU Regulatory Fitness and Subsidiarity and Proportionality - 19th report on Better Lawmaking covering the year 2011.

General comments: Members considered that the Interinstitutional Agreement on Better Lawmaking of 2003 had become **ill-suited to the current legislative environment created by the Treaty of Lisbon**, and called for the Agreement to be re-negotiated, to take account of the new framework, consolidate current best practices, and bring the agreement up to date in line with the 'better lawmaking' agenda. Any new agreement should be adopted on the basis of Article 295 TFEU and should be of a binding nature.

In addition, the Committee stressed the following:

- the principles of subsidiarity and proportionality were not adequately addressed by the Commission in its impact assessments, as has been pointed out by the Impact Assessment Board and by national parliaments;
- the Commission and Council need to engage with Parliament in negotiations on the criteria for the appropriate application of Article 290 and 291 TFEU, and this can be achieved in the framework of the revision of the Interinstitutional Agreement on Better Lawmaking,
- the Commission should step up its review of the application of the principle of proportionality, especially with regard to the use of Articles 290 and 291 TFEU on delegated and implementing acts;
- close attention should be paid to the early warning system.

Subsidiarity mechanism for national parliaments: Members welcomed the closer participation of national parliaments in the framework of the European legislative process.

Initiatives to improve the evaluation of European issues by national parliaments were suggested in the report.

Better lawmaking: Members urged the Commission to come forward with further concrete proposals to **reduce the overall EU regulatory burden without undermining health and safety at work.**

Members further suggest that the Commission should:

- explore the **option of introducing a 'white paper' stage** in the legislative process to afford stakeholders the ability to comment on draft proposals and accompanying provisional impact assessments;
- put forward proposals **implementing regulatory offsetting**, which would require equivalent cost offsets to be identified in advance of new legislation that would introduce the imposition of costs, and present an assessment of its impact before the end of the current parliamentary term in 2014.

Lastly, it insisted that the Commission give serious consideration to **the European added value assessments accompanying legislative own-initiative reports**, setting out in detail the reasons why it did not accept or consider relevant any of the arguments put forward by Parliament.