Basic information

2017/2010(INI) INI - Own-initiative procedure	Procedure completed
Annual reports 2015-2016 on subsidiarity and proportionality **Subject** 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	DELVAUX Mady (S&D)	19/01/2017
	Shadow rapporteur RADEV Emil (PPE) KARIM Sajjad (ECR) MARINHO E PINTO António (ALDE) CHRYSOGONOS Kostas (GUE/NGL) BOUTONNET Marie-Christine (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
AFCO Constitutional Affairs	PREDA Cristian Dan (PPE)	08/11/2016

European Commission

Commission DG	Commissioner
Secretariat-General	TIMMERMANS Frans

Key events

Date	Event	Reference	Summary
15/07/2016	Non-legislative basic document published	COM(2016)0469	Summary
16/02/2017	Committee referral announced in Parliament		
27/03/2018	Vote in committee		

09/04/2018	Committee report tabled for plenary	A8-0141/2018	Summary
17/04/2018	Debate in Parliament		
18/04/2018	Decision by Parliament	T8-0120/2018	Summary
18/04/2018	Results of vote in Parliament		
18/04/2018	End of procedure in Parliament		

Technical information	
Procedure reference	2017/2010(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/8/09083

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE612.381	30/10/2017	
Amendments tabled in committee		PE615.401	13/12/2017	
Committee opinion	AFCO	PE613.535	28/02/2018	
Committee report tabled for plenary, single reading		A8-0141/2018	09/04/2018	Summary
Text adopted by Parliament, single reading		T8-0120/2018	18/04/2018	Summary

European Commission

Document type	Reference	Date	Summary
Commission document (COM)	COM(2016)0469	15/07/2016	Summary
Commission document (COM)	COM(2017)0600	30/06/2017	Summary

Annual reports 2015-2016 on subsidiarity and proportionality

2017/2010(INI) - 15/07/2016 - Non-legislative basic document

PURPOSE: to present the 23rd annual report on the application of the principles of subsidiarity and proportionality in EU law making in 2015.

CONTENT: the report looks at how the European Union's institutions and bodies implemented these two principles in 2015 and how the practice has evolved in comparison with previous years. It also provides an analysis of the Commission proposals that were the subject of reasoned opinions during the year.

Better Regulation: 2015 was the first full year under the new Commission, which had committed itself to **putting subsidiarity at the heart of the European democratic process**. In line with this approach, the Commission's 2015 work programme presented a limited number of new initiatives focusing on **ten policy priorities** and announced the withdrawal of a large number of pending proposals.

To fulfil the commitment made, the Commission:

- **adopted a new Better Regulation package**: the new Better Regulation framework also allows the Commission to apply the principles of subsidiarity and proportionality in a more integrated and comprehensive way than before.
- The new Better Regulation framework helps ensure that when developing new policies, the Commission assesses their compliance with the principles of subsidiarity and proportionality. This assessment now takes place at different stages of the decision-making cycle. At the early stage of the policy planning process, roadmaps or inception impact assessments are published for all major new initiatives;
- **introduced new consultation and feedback mechanisms for new policy initiatives**. Member States and stakeholders – such as regional and local authorities, businesses, organisations and members of the general public – can give their views on how the Commission is developing specific proposals;
- launched the website 'Lighten the load – Have your say', as well as the Regulatory Fitness and Performance **(REFIT) Platform**, they enable the Commission to communicate on possible excessive charges or inefficiencies arising from existing regulatory measures.

Impact assessments: in 2015, the Impact Assessment Board and subsequently the Regulatory Scrutiny Board assessed **30 impact assessments**. Seven of these (23 %) were judged as needing improvements on either subsidiarity or proportionality, or both. The following cases from 2015 are particularly noteworthy:

- the proposal for a Directive on accessibility requirements for products and services;
- the draft Commission Regulation establishing a network code on rules on interoperability and data exchange in gas transmissions;
- the proposal for a Regulation to ensure the cross-border portability of online content services.

Evaluations and fitness checks: subsidiarity and proportionality were also key for retrospective evaluations and fitness checks carried out in 2015. The Commission normally produces between **100 and 120 evaluations every year** (122 in 2015).

The 2015 evaluations led the Commission to:

- confirm the strong European added value of the 2013 Fiscalis and Customs programmes;
- propose a range of measures to simplify requirements in order to enable Member States to **make procurement more efficient** and strategic;
- adopt a revised proposal for the Prospectus Directive in order to reduce the administrative burden on businesses (especially SMEs).

Follow-up of the reasoned opinions of the national parliaments: 2015 saw the **lowest number** of reasoned opinions sent by national parliaments since the introduction of the subsidiarity control mechanism by the Lisbon Treaty in 2009. In 2015, the Commission received eight reasoned opinions from national parliaments on the principle of subsidiarity, which represented a 62% reduction in the number of opinions received during 2014.

The eight reasoned opinions issued in 2015 covered three Commission proposals, namely:

- the proposal for a Regulation establishing a crisis relocation mechanism;
- the proposal amending Regulation (EC) No 1829/2003 as regards the possibility for the Member States to restrict or prohibit the use of genetically modified food and feed on their territory;
- the proposal amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Despite the small number of reasoned opinions submitted in 2015, a number of chambers continued their call for the subsidiarity control mechanism to be strengthened.

The European Parliament: Parliament has continued to address issues of subsidiarity and proportionality in the context of its work on legislative proposals. In 2015, the European Parliament prepared **13 initial appraisals, one impact assessment of substantive parliamentary amendments and six ex post impact assessments**.

In addition, it prepared a reports on the cost of non-Europe, mapping the gains of actions at European level proposed by the European Parliament.

Lastly, the **Committee of the Regions** continued its work on subsidiarity issues, notably by adopting and implementing its third subsidiarity programme and organising the seventh subsidiarity conference.

Annual reports 2015-2016 on subsidiarity and proportionality

2017/2010(INI) - 30/06/2017 - Supplementary non-legislative basic document

PURPOSE: to present the 24th annual report on the application of the principles of subsidiarity and proportionality in EU law making in 2016.

CONTENT: the report looks at how the European Union's institutions and bodies implemented these two principles in 2016 and how the practice has evolved in comparison with previous years. It also provides an analysis of the Commission proposals that were the subject of reasoned opinions from national Parliaments during the year.

Better Regulation: in 2016, the Commission continued putting into practice its reinforced Better Regulation agenda launched in 2015, which includes strengthened **guidance** on how to assess subsidiarity and proportionality in the policy-making process.

Better Regulation principles and instruments, including subsidiarity and proportionality assessments, are applied at various stages of the decision-making process, taking account of relevant analysis and input provided by stakeholders:

- at the early stage of the policy planning process, **roadmaps** or inception impact assessments are published on the Commission's Europa website for all new major initiatives;
- during the policy development process, subsidiarity and proportionality aspects are analysed in **impact assessments**, which are also accompanied by an open public consultation;
- the **explanatory memorandum** accompanying the Commission proposal itself summarises how the principles of subsidiarity and proportionality are met;
- the Commission **website** 'Lighten the load – Have your say', which was launched in 2015, as well as the Regulatory Fitness and Performance (**REFIT**) Platform, which began to operate in 2016, also provide ways for the public and stakeholders to communicate with the Commission on possible excessive burdens or inefficiencies of existing regulatory measures;
- the new Interinstitutional Agreement on Better Law-Making was signed by the Presidents of the European Parliament, the Council and the Commission in April 2016 demonstrating the three institutions' commitment to Better Regulation to observe and implement the principles of subsidiarity and proportionality.

Impact assessments: in 2016, the Regulatory Scrutiny Board screened **60 impact assessments** and, in a number of cases, requested improvements of the argumentation on the principles of subsidiarity and proportionality.

This was particularly the case for:

- the proposal amending the Directive on the posting of workers;
- the proposal for a Council Directive on a general reverse charge mechanism for value added tax;
- the proposal for a Council Regulation on geo-blocking based on the principle of residence and nationality;
- the proposal for a Regulation on the modernisation of EU copyright rules in the Digital Single Market;
- the proposed revision of the Renewable Energies Directive.

Evaluations and fitness checks: the Commission normally produces between 100 and 120 evaluations every year. In 2016, the Commission published **43 evaluations** and fitness checks. The following examples from 2016 highlight evaluations where subsidiarity, European added value and proportionality issues were raised:

- on the Cross-Border Enforcement of Traffic Fines Directive;
- on the action plan against the rising threats from **antimicrobial resistance**;
- on the **seventh Framework Programme** for Research.

Two fitness checks were completed: one on Reporting, Planning and Monitoring Obligations in the EU Energy acquis and one on the Birds and Habitat Directives. T

Follow-up to reasoned opinions from national Parliaments: in 2016, the Commission received **65 reasoned opinions** from national Parliaments on the principle of subsidiarity. This was 713% more than the eight reasoned opinions received in 2015. The proposal giving rise to most reasoned opinions was the proposal for a review of the Directive on the posting of workers, which generated 14 reasoned opinions, thereby triggering the so-called 'yellow card' procedure.

After careful analysis of the reasoned opinions, the Commission adopted a Communication on 20 July 2016 concluding that the **proposal complies with the principle of subsidiarity and that the proposal should be maintained unchanged**. It recognises that a number of national Parliaments remain unconvinced of its merits. The proposal is still under discussion by the European Parliament and the Council. Both co-legislators, like the Commission, are committed to keeping in mind the comments from the national Parliaments throughout the legislative process.

The report also noted the proposal for a review of the Dublin Regulation received eight reasoned opinions and the two proposals establishing the Common Consolidated Corporate Tax Base received eight reasoned opinions (see 2016/0336(CNS) and 2016/0337(CNS)).

European Parliament: in 2016, the competent parliamentary committee and the Committee on Legal Affairs, which has a horizontal responsibility for ensuring respect for the principle of subsidiarity, have continued to assess the conformity of the legislative proposals with the principles of subsidiarity and of proportionality.

In 2016, the European Parliament produced **36 Initial Appraisals, one Impact Assessment of substantive parliamentary amendments and 14 ex-post European Impact Assessments**. In addition, seven reports on the cost of **non-Europe** and four European Added Value Assessments were completed. In 2016, the European Parliamentary Research Service produced 28 '**Implementation Appraisals'** of EU legislation.

The Committee of the Regions has also continued its work on monitoring the subsidiarity principle, in particular by adopting and implementing its subsidiarity work programme 2016, which provides for consultation of the Subsidiarity Expert Group. In its opinions, the Committee of the Regions has taken account of the subsidiarity concerns expressed by parliaments and the authorities of regions with legislative powers.

In conclusion, the Commission reiterates that the principles of subsidiarity and proportionality will **continue to underpin and shape EU decision-making** in the years to come.

Annual reports 2015-2016 on subsidiarity and proportionality

2017/2010(INI) - 09/04/2018 - Committee report tabled for plenary, single reading

The Legal Affairs Committee adopted an own-initiative report by Mady DELVAUX (S&D, LU) on the annual reports 2015-2016 on subsidiarity and proportionality.

Fundamental principles for the exercise of the Union's competences: the report stressed that subsidiarity and proportionality are fundamental principles that the EU institutions should take into consideration when exercising EU competences in order to ensure that the Union's actions add value. These principles are aimed at enhancing the functioning of the Union by ensuring that actions at Union level are necessary, that their objectives cannot be adequately achieved by the Member States acting individually.

However, Members drew attention to the fact that **these principles can be misused to serve anti-EU ends** and emphasised that the EU institutions should be vigilant in order to avoid and counteract this risk. The principle of subsidiarity **cannot be used to interpret the powers assigned to the Union** by virtue of the Treaties restrictively.

National Parliaments: the report welcomed the growing interest of national parliaments in the Union's decision-making process in a context of declining legislative activity. It welcomed the number of reasoned opinions (65) submitted by national parliaments in 2016 is the third largest in a calendar year since the introduction of the subsidiarity control mechanism in the Lisbon Treaty. It also noted a significant increase in the number of opinions received by the Commission in the political dialogue, from 350 to 620.

Members encouraged national parliaments to continue and further reinforce inter-parliamentary contacts, also on a bilateral basis, as a means of enhancing cooperation between Member States, and to do so with a democratic European vision, where the Union can add value, and in a spirit of solidarity, based on the rule of law and fundamental rights.

They also welcomed Parliament's increased role as interlocutor and intermediary between national parliaments. **Strengthening dialogue** at political level with national parliaments could be one way to rationalise subsidiarity and proportionality controls. National and regional parliaments should also strengthen their links with the Committee of the Regions.

Impact assessments: Members recognised the work done by the Impact Assessment Board and its successor as of July 2015 the Regulatory Scrutiny Board. They noted that in 2016 the percentage of impact assessments considered unsatisfactory by the Regulatory Scrutiny Board was 15 %, welcoming the fact that these percentages have decreased compared with previous years.

Better law-making: Members noted that the implementation of the better law-making agenda has led the Commission to develop stronger internal instruments and procedures aimed at avoiding infringements of the principle of subsidiarity. They welcomed the fact that subsidiarity and proportionality are now part of the quality check that the Board performs.

New tools: Members noted that a number of tools already exist which enable national parliaments and citizens to participate at every stage of the legislative process and thus ensure that the principles of subsidiarity and proportionality are monitored. Members therefore encouraged the full-use of all the possibilities offered by these existing tools, avoiding as far as possible the creation of even more complex administrative structures and lengthy procedures in a context where the Union already has difficulty making itself understood by its citizens.

Member States are invited to organise **targeted information campaigns** and seminars to accurately inform citizens of the opportunities they have to participate at each stage of the legislative process.

Annual reports 2015-2016 on subsidiarity and proportionality

2017/2010(INI) - 18/04/2018 - Text adopted by Parliament, single reading

The European Parliament adopted by 550 votes to 70, with 72 abstentions, a resolution on the annual reports 2015-2016 on subsidiarity and proportionality.

Fundamental principles for the exercise of the Union's competences: Parliament stressed that subsidiarity and proportionality are fundamental principles that the EU institutions should take into consideration when exercising EU competences in order to ensure that the Union's actions add value. These principles are aimed at enhancing the functioning of the Union by ensuring that actions at Union level are necessary, that their objectives cannot be adequately achieved by the Member States acting individually.

However, Members drew attention to the fact that **these principles can be misused to serve anti-EU ends** and emphasised that the EU institutions should be vigilant in order to avoid and counteract this risk. The principle of subsidiarity **cannot be used to interpret the powers assigned to the Union** by virtue of the Treaties restrictively.

Any reflection on subsidiarity and the control thereof should take place in the context of the **growing calls by citizens** for the Union to tackle major global challenges such as, inter alia, intercontinental financial flows, security, migration and climate change.

National Parliaments: Parliament welcomed the growing interest of national parliaments in the Union's decision-making process in a context of declining legislative activity. It welcomed the number of reasoned opinions (65) submitted by national parliaments in 2016 is the third largest in a

calendar year since the introduction of the subsidiarity control mechanism in the Lisbon Treaty. This represents a marked increase (+713%) compared with the 8 reasoned opinions received in 2015.

The Commission has put in place procedures to ensure that it provides national parliaments with substantive and political responses to their concerns in a timely manner. It is asked to systematically forward its replies to reasoned opinions to the European Parliament.

Members encouraged national parliaments to continue and further reinforce inter-parliamentary contacts, also on a bilateral basis, as a means of enhancing cooperation between Member States, and to do so with a democratic European vision, where the Union can add value, and in a spirit of solidarity, based on the rule of law and fundamental rights.

They also welcomed Parliament's increased role as interlocutor and intermediary between national parliaments. **Strengthening dialogue** at political level with national parliaments could be one way to rationalise subsidiarity and proportionality controls. National and regional parliaments should also strengthen their links with the Committee of the Regions.

Impact assessments: Parliament supported the Commission's commitment to 'evaluate first' before considering potential legislative changes. It considered, in this respect, that the European Union and the authorities of the Member States should work closely together to ensure better monitoring, measurement and evaluation of the actual impact of EU regulation on **citizens, the economy, social structure and environment**.

Members recognised the work done by the Impact Assessment Board and its successor as of July 2015 the Regulatory Scrutiny Board. They noted that in 2016 the percentage of impact assessments considered unsatisfactory by the Regulatory Scrutiny Board was 15 %, welcoming the fact that these percentages have decreased compared with previous years.

Better law-making: legislation should be comprehensive and clear to allow affected parties to understand their rights and obligations, including appropriate reporting, monitoring and evaluating requirements, while avoiding disproportionate costs, as well as being practical to implement.

Members noted that the implementation of the better law-making agenda has led the Commission to develop **stronger internal instruments and procedures** aimed at avoiding infringements of the principle of subsidiarity. They welcomed the fact that subsidiarity and proportionality are now part of the quality check that the Board performs. They welcomed the signature by the European Parliament, the Council and the Commission in 2016 of a new Interinstitutional Agreement on Better Law-Making.

New tools: Members noted that a number of tools already exist which enable national parliaments and citizens to participate at every stage of the legislative process and thus ensure that the principles of subsidiarity and proportionality are monitored. Parliament therefore encouraged the full-use of all the possibilities offered by these existing tools, avoiding as far as possible the creation of even more complex administrative structures and lengthy procedures in a context where the Union already has difficulty making itself understood by its citizens.

Member States are invited to organise targeted **information campaigns** and seminars to accurately inform citizens of the opportunities they have to participate at each stage of the legislative process.