Tuesday 4 February 2014

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EU regulatory fitness and subsidiarity and proportionality — better lawmaking

European Parliament resolution of 4 February 2014 on EU Regulatory Fitness and Subsidiarity and Proportionality — 19th report on Better Lawmaking covering the year 2011 (2013/2077(INI))

(2017/C 093/03)

The European Parliament,

— having regard to the Interinstitutional Agreement on better law-making ([1]),

— having regard to Protocol No 2 to the Treaty on the Functioning of the European Union concerning the application of the principles of subsidiarity and proportionality, in particular Articles 4, 6 and 7 thereof,

— having regard to the practical arrangements agreed on 22 July 2011 between the competent services of the European Parliament and the Council for the implementation of Article 294(4) TFEU in the event of agreements at first reading,

— having regard to its resolution of 13 September 2012 on the 18th report on Better legislation — Application of the principles of subsidiarity and proportionality (2010) ([2]),

— having regard to its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation ([3]),

— having regard to its resolution of 8 June 2011 on guaranteeing independent impact assessments ([4]),

— having regard to the Commission report on subsidiarity and proportionality (19th report on Better Lawmaking covering the year 2011) (COM(2012)0373),

— having regard to the Commission communications on EU Regulatory Fitness (COM(2012)0746) and (COM(2013)0685) ,

— having regard to the Commission communication entitled 'Smart regulation — Responding to the needs of small and medium-sized enterprises' (COM(2013)0122),

— having regard to the Commission staff working document on monitoring and consultation on smart regulation for SMEs (SWD(2013)0060),

— having regard to the Commission communication on Smart Regulation in the European Union (COM(2010)0543),

— having regard to the Council conclusions on Smart Regulation of 30 May 2013,

— having regard to the report of 15 November 2011 of the High Level Group of Independent Stakeholders on Administrative Burdens, entitled 'Europe can do better: Report on the best practices in the Member States to implement EU legislation in the least burdensome way',

— having regard to the opinion of the Committee of the Regions of 30 May 2013 ([5]),

— having regard to Rule 48 of its Rules of Procedure,

— having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Constitutional Affairs (A7-0056/2014),

([1]) OJ C 321, 31.12.2003, p. 1.
([2]) OJ C 353 E, 3.12.2013, p. 117.
([3]) OJ C 51 E, 22.2.2013, p. 87.
([4]) OJ C 380 E, 11.12.2012, p. 31.
([5]) OJ C 218, 30.7.2013, p. 22.

A. whereas the smart regulation agenda constitutes an attempt to consolidate efforts in terms of better lawmaking, simplification of EU law and the reduction of administrative burdens, and to embark on a path towards good governance grounded in evidence-based policymaking, in which impact assessments and ex post controls play an essential role;

B. Considers that national parliaments should be involved in ex post assessments of new regulations, which would as a result help the Commission with its reports and in general improve assessments of European issues by national parliaments;

C. whereas the Interinstitutional Agreement on Better Lawmaking of 2003 has become ill-suited to the current legislative environment created by the Treaty of Lisbon, not least in view of the piecemeal approach taken by the EU institutions in terms of adopting joint political declarations on explanatory documents and secretariat-level practical arrangements for the implementation of Article 294 TFEU;

General comments

1. Stresses 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; recognises that the economic crisis has put increased strain on the resources of national administrations, and believes that a commitment to producing clear and easily transposable legislation would help alleviate some of the burden on national administrations and on private individuals who have to comply with the law; emphasises 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;

2. Stresses that evaluating the impact of new regulations on SMEs or on large companies must neither result in discrimination between workers on the basis of the size of the companies that employ them nor erode workers' fundamental rights, including the right to information and consultation, or their working conditions, wellbeing at work and rights to social security, nor must it hinder improvements to these rights or their safeguarding at the workplace in the face of existing and new risks connected with work;

3. Emphasises that the principles of subsidiarity and proportionality must be respected by the European institutions when legislating;

4. Recalls its earlier comments remarking that these principles have on many occasions been found by the Impact Assessment Board and by national parliaments to have been inadequately addressed in Commission impact assessments; expresses its disappointment once more that such criticisms have been repeated for a further year;

5. Believes 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;

6. Calls once more for the 2003 Interinstitutional Agreement on Better Lawmaking to be renegotiated in order to take into account the new legislative environment created by the Treaty of Lisbon, consolidate current best practices, and bring the agreement up to date in line with the 'better lawmaking' agenda; recommends that any new agreement should be adopted on the basis of Article 295 TFEU and should be of a binding nature;

7. Urges the Commission and Council to engage with Parliament in negotiations on the criteria for the appropriate application of Article 290 and 291 TFEU; considers that this can be achieved in the framework of the revision of the Interinstitutional Agreement on Better Lawmaking, which would thus, inter alia, include such criteria;

8. Considers that the variety of titles applied to the schemes used by the Commission to evaluate adopted laws and deliver burden reductions to be confusing and needlessly complicated; recommends that a single title be adopted under the 'better lawmaking' heading, and reiterates its call for one Commissioner to be responsible for the brief;

9. Calls on the Commission to 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;

10. Considers that, in the context of greater democratic legitimacy, close attention should be paid to the early warning system;

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Subsidiarity mechanism for national parliaments

11. Points out that, while the economic and financial crisis necessitates better coordination of policies and the strengthening of the Union's powers in a range of domains, it is also essential to maintain a clear understanding of the division of competences in the European Union system of multi-level governance and, following a transparent debate, to take decisions transparently at the most appropriate level, cutting down on red tape;

12. Stresses that the European institutions must respect the principles of subsidiarity and proportionality enshrined in Article 5 of the Treaty on European Union and Protocol No 2 to the Treaty on the Functioning of the European Union, which are of a general nature, binding the institutions in exercising the powers of the Union, with the exception that the principle of subsidiarity does not apply in those areas which fall within the exclusive competence of the Union;

13. Suggests assessing whether appropriate criteria should be laid down at EU level for the evaluation of compliance with the principles of subsidiarity and proportionality;

14. Notes that Protocol No 2 provides national parliaments with the formal opportunity to advise the EU legislator as to whether a proposed law falls short of the subsidiarity test since its objectives cannot, by reason of their scale or effects, be better achieved at Union rather than at Member State level;

15. Notes the crucial importance of impact assessments as tools for aiding decision-making in the legislative process, and stresses the need, in this context, for proper consideration to be given to issues relating to subsidiarity and proportionality;

16. Welcomes the closer participation of national parliaments in the framework of the European legislative process, and notes that the parliaments of the Member States are showing an ever greater interest in the proper application of these principles by the Union institutions; this is illustrated by the fact that in 2011 the European Parliament received 77 reasoned opinions claiming that a draft legislative act did not comply with the principle of subsidiarity, and 523 other contributions on the merit of a draft law, whereas the respective figures for 2010 were 41 and 299; expresses its willingness to continue with and strengthen cooperation and interparliamentary dialogue with national parliaments;

17. Strongly underlines the importance of parliamentary scrutiny, both by the European Parliament and by the national parliaments; recommends that the national parliaments be afforded substantial assistance to enable them to carry out their scrutiny tasks; suggests that the national parliaments be provided with guidelines to assist them in their assessment of compliance with the principle of subsidiarity;

18. Stresses that the Court of Justice, in accordance with Article 263 TFEU, is competent to review the legality of legislative acts as regards compliance with the principle of subsidiarity, and that this principle constitutes a political guideline on the exercise of powers at Union level;

19. Points out, on the other hand, that the Court of Justice, by virtue of the Treaties, has jurisdiction in actions brought on grounds of 'infringement of the Treaties or of any rule of law relating to their application', and that pursuant to the Treaty on European Union the principles of subsidiarity and proportionality pertain to these rules; notes that the judicial review of the validity of Union acts does therefore extend to compliance with these principles;

20. Emphasises that the Court of Justice, in its judgment of 12 May 2011 in case C-176/09 (Luxembourg v. European Parliament and Council), states that the principle of proportionality 'requires that measures implemented through provisions of European Union law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them' and that 'in the fields in which the European Union legislature has a broad legislative power' the lawfulness of a measure adopted in this context can only be affected if the measure is manifestly inappropriate with respect to the objective which the competent institutions are seeking to pursue, although the European legislator must nonetheless 'base its choice on objective criteria' and, when assessing the burdens associated with various possible measures, 'examine whether objectives pursued by the measure chosen are such as to justify even substantial negative economic consequences for certain operators';

21. Observes that the subsidiarity principle as formulated in the Treaties permits Union action in areas which do not fall within the Union's exclusive competence only 'if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States', either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level, while, under the proportionality principle, the substance and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties; points out that subsidiarity and proportionality are closely related but distinct: while the former relates to the appropriateness of Union action in sectors which do not come within the Union's exclusive competence, the latter relates to proportionality between

the means and ends stipulated by the legislator and is a general rule governing the exercise of Union powers; notes that consideration of proportionality regarding a draft legislative act must logically follow consideration of subsidiarity, while, at the same time, verification of subsidiarity would not be sufficiently effective without the verification of proportionality;

22. Observes that the Commission received only a small number of parliamentary questions (32 out of more than 12 000) in 2011 on issues relating to compliance with the principles of subsidiarity and proportionality;

23. Highlights the fact 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; 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; also draws 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; notes, 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); stresses 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;

24. Takes 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; notes with satisfaction that this instrument is used in practice as a means of communication and cooperative dialogue among the different institutional levels of the multi-level European system;

25. Notes with concern that some reasoned opinions from national parliaments highlight the fact that, in a number of the Commission's legislative proposals, the justification of subsidiarity is insufficient or non-existent;

26. Recommends that the reasons why so few formal, reasoned opinions are submitted by national parliaments be investigated and that it be determined whether this is due to the fact that the principle of subsidiarity is observed on all sides, or to the fact that the national parliaments are unable to enforce this principle due to a lack of resources or the tightness of their deadlines; considers an analysis by the Commission to be desirable;

27. 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 legislative decisions on subsidiarity and proportionality in accordance with Article 5 of Protocol No 2 to the Treaty on the Functioning of the European Union;

28. Notes furthermore in this regard that the current timeframe for national parliaments to carry out subsidiarity and proportionality checks has often been considered insufficient;

29. Considers that the pressure on time and resources faced by national parliaments when responding to draft legislation contributes to the perceived 'democratic deficit' within the EU;

30. Recalls its previous requests for a more detailed examination of the problems national parliaments encounter in order to improve the functioning of the existing mechanism; believes that it would also be desirable to explore moves to strengthen this mechanism which, perhaps in the context of future Treaty revision, could give more rights to national parliaments; suggests that in such a review consideration could be given to the appropriate number of national parliament responses required to trigger such a procedure, whether it should be limited to subsidiarity grounds, and what its effect should be, with particular reference to recent experiences of the 'yellow card' procedure; views such a discussion as a useful stage in the evolution of the power accorded to national parliaments, aligning incentives to exercise scrutiny with effects at European level;

31. Considers that in the meantime several initiatives could be introduced to improve the evaluation of European issues by national parliaments; in particular:

— suggests that each legislative act published in the Official Journal should contain a note detailing those national parliaments which had responded and those which had raised subsidiarity concerns;

— proposes forwarding the reasoned opinions of national parliaments sent under Article 6 of Protocol No 2 annexed to the TEU and the TFEU to the co-legislators without delay;

— suggests that guidelines could be prepared outlining criteria for reasoned opinions on subsidiarity issues;

— proposes mobilising national parliaments to undertake comparative evaluations of ex ante assessments which they have conducted and ex post assessments drawn up by the Commission;

Better lawmaking

32. Believes that an effective approach to the challenges of better lawmaking, in terms of both existing laws and prospective legislation, will help the European institutions respond to the crisis; considers that the reform of European legislation and legislative practices is an essential tool for delivering growth, competitiveness and decent jobs in Europe;

33. Welcomes the increasing emphasis placed by the Commission on a policy 'cycle', with the initiation, impact assessment, consultation, enactment, implementation and evaluation stages of EU legislation being seen as part of a coherent process; believes in this context that the 'Think Small First' principle should be a key element throughout, and that the ex ante evaluation of new legislation should be improved, thus forming an intelligible and transparent process for stimulating growth and competitiveness in Europe;

34. Welcomes, in this regard, the Commission communications on smart regulation and on EU regulatory fitness, as well as the Staff Working Document on the 'Top 10 most burdensome legislative acts for SMEs'; considers that these documents represent credible advances in the better lawmaking agenda and reflect many of Parliament's previous requests;

35. Considers that these rhetorical advances should now be consolidated with concrete action; urges the Commission, therefore, to come forward with further concrete proposals to reduce the overall EU regulatory burden without undermining health and safety at work, and in particular to:

— take action to reduce the burdens identified by SMEs across Europe in the 'Top 10' consultation as soon as possible;

— increase, where appropriate, the use of exemptions or lighter regimes for micro-enterprises and SMEs when proposing new legislation, and make EU public procurement rules more SME-friendly;

— rapidly implement the commitments set out in its Regulatory Fitness (REFIT) communication of 2 October 2013 (COM(2013)0685), and complete evaluations in key policy areas before the end of the current legislative term, including input from all levels of government in the principal sectors that are of concern to local and regional authorities;

— start a more ambitious drive to create jobs and growth in the EU by reducing the costs of regulation for business;

— prepare an annual report focusing on the broader better lawmaking agenda, containing a statement of progress on the initiatives launched by the Commission, including a statement of net costs to business, as well as social costs, of the new proposals adopted by the Commission in the preceding 12 months;

36. Emphasises that improving health and safety at work and the information and consultation of workers are two important keys to strengthening productivity and competitiveness in the European economy; stresses that strong and stable regulation in those areas does not hamper, but rather contributes to growth;

37. Considers that the Commission should further explore the option of introducing a 'white paper' stage in the legislative process; believes that affording stakeholders the ability to comment on draft proposals and accompanying provisional impact assessments would improve the quality of the draft legislation presented by the Commission, without unduly adding time to the gestation period of prospective laws;

38. Further recalls the invitation made by Parliament to 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 the imposition of costs; notes that EU legislation does not automatically mean 28 national laws being scrapped in favour of one European law, nor does it automatically mean that a new European law imposes a lesser burden than the respective national laws; urges the Commission, therefore, to seriously examine this proposal, and to present an assessment of its impact before the end of the current parliamentary term in 2014;

39. Regrets the fact that the Commission intends to withdraw its proposal on the statute of the European private company, which Parliament had called for in a legislative own-initiative report; asks the Commission to consult Parliament before withdrawing any proposal based on such a report of Parliament;

40. Emphasises the significance of simplification for streamlining the regulatory environment, especially for local and regional authorities, whose resources for the implementation of legislation are often limited and diminishing;

41. Understands 'gold-plating' to be the practice whereby Member States, in transposing EU directives into national law, go beyond the minimum requirements; reiterates its support for measures to tackle unnecessary gold-plating and therefore invites Member States to explain, in cases where gold-plating is undertaken, their reasons for doing so;

Impact assessments and European added value

42. Welcomes the fact that the Commission's impact assessments attempt to cover a wide and comprehensive range of potential impacts, but believes that the system could still be strengthened in a number of ways, such as including the territorial dimension (financial and administrative implications for national, regional and local authorities); in this regard, is encouraged by the Commission's decision to update, consolidate and revise its Impact Assessment Guidelines by June 2014, and reserves the right to make a detailed contribution in the coming months setting out potential improvements to those guidelines; insists that these impact assessments, which are vital in shaping public and political opinion, should uphold the principle of multilingualism;

43. Asks the Commission to analyse the methodology used in drafting impact assessments with a view to evaluating means of improving both the qualitative indicators and the general conduct of the consultation process, with particular reference to the involvement of relevant stakeholders;

44. Believes that there needs to be complete consistency between the impact assessment published by the Commission and the contents of the legislative proposal as adopted by the College of Commissioners; requests that any impact assessment for a proposal that is amended by the College be automatically updated to reflect the changes made by the Commissioners;

45. Calls on the Commission to strengthen the role and independence of the Impact Assessment Board (IAB), and in particular only to finalise and present legislative proposals where they have been approved with a favourable opinion by that Board; urges the IAB to draw on the expertise of the social partners;

46. Believes that the current disclaimer which states that the Commission's impact assessment 'only commits the Commission's services involved in its preparation and does not prejudge the final form of any decision to be taken by the Commission' highlights an important weakness in the existing system;

47. Welcomes the positive development of the Directorate for Impact Assessment and European Added Value within Parliament; believes that a systematic approach to the consideration of impact assessments should be adopted throughout Parliament; welcomes the preparation by the Impact Assessment Directorate of short summaries of the impact assessments accompanying Commission proposals, and considers that these should form an essential element of committees' consideration of legislative proposals under debate; proposes that Parliament's impact assessments should include a territorial dimension when appropriate; requests the Conference of Committee Chairs to consider how best to implement this recommendation;

48. Recalls the commitment made by Parliament and the Council in the 2005 Interinstitutional Common Approach to Impact Assessment to carry out impact assessments where they consider it to be appropriate and necessary for the legislative process, prior to the adoption of any substantive amendment; calls on the committees to make use of the Impact Assessment Unit in implementing this commitment;

49. Further recalls the 2003 Interinstitutional Agreement on Better Lawmaking, and encourages the Council to complete work on establishing its own mechanism for undertaking impact assessments on its own substantive amendments without undue delay, in fulfilment of its obligations under the 2003 Agreement;

50. Insists 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 does not accept or consider relevant any of the arguments put forward by Parliament;

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51. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.