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Report on Better Law-Making covering 2020, 2021 and 2022

European Parliament resolution of 23 November 2023 on European Union regulatory fitness and subsidiarity and proportionality – report on Better Law-Making covering 2020, 2021 and 2022 (2023/2079(INI))

(C/2024/4228)

The European Parliament,

- having regard to Article 5 of the Treaty on European Union,
- having regard to Protocol No 1 on the role of national parliaments in the European Union ⁽¹⁾,
- having regard to Protocol No 2 on the application of the principles of subsidiarity and proportionality ⁽²⁾,
- having regard to the Interinstitutional Agreement of 16 December 2003 on better law-making ⁽³⁾, and to the most recent version, the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 13 April 2016 on Better Law-Making ⁽⁴⁾,
- 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) of the Treaty on the Functioning of the European Union in the event of agreements at first reading,
- having regard to the Commission's 2020, 2021 and 2022 annual reports on the application of the principles of subsidiarity and proportionality and on relations with national parliaments of 23 July 2021 (COM(2021)0417), 1 August 2022 (COM(2022)0366) and 12 October 2023 (COM(2023)640) respectively,
- having regard to its resolution of 9 June 2016 for an open, efficient and independent European Union administration ⁽⁵⁾,
- having regard to its resolution of 24 June 2021 on European Union regulatory fitness and subsidiarity and proportionality – report on Better Law Making covering the years 2017, 2018 and 2019 ⁽⁶⁾,
- having regard to the Commission communication of 29 April 2021 entitled 'Better regulation: Joining forces to make better laws' (COM(2021)0219),
- having regard to its resolution of 7 July 2022 entitled 'Better regulation: Joining forces to make better laws' ⁽⁷⁾,
- having regard to the Commission communication of 23 October 2018 entitled 'The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking' (COM(2018)0703),
- having regard to the Cooperation Agreement signed on 5 February 2014 between the European Parliament, the European Economic and Social Committee and the Committee of the Regions,

⁽¹⁾ OJ C 202, 7.6.2016, p. 203.

⁽²⁾ OJ C 202, 7.6.2016, p. 206.

⁽³⁾ OJ C 321, 31.12.2003, p. 1.

⁽⁴⁾ OJ L 123, 12.5.2016, p. 1.

⁽⁵⁾ OJ C 86, 6.3.2018, p. 126.

⁽⁶⁾ OJ C 81, 18.2.2022, p. 74.

⁽⁷⁾ OJ C 47, 7.2.2023, p. 250.

- having regard to all the previous Commission communications to the European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions on the need for better regulation in order to achieve better results for the benefit of EU citizens,
 - having regard to Rule 54 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Constitutional Affairs,
 - having regard to the report of the Committee on Legal Affairs (A9-0310/2023),
- A. whereas, since 2018, the Commission has continued to apply its reinforced better regulation agenda by integrating the principles of subsidiarity and proportionality at all stages of policymaking; whereas it started merging reports on the application of the principles of subsidiarity and proportionality in the drafting of EU legislation with reports on its relations with national parliaments, giving more importance to the views of national parliaments and avoiding overlaps between the two annual reports;
- B. whereas there is still the need to alleviate unnecessary regulatory burdens to make sure that EU laws deliver their intended benefits while reducing unnecessary costs, particularly for citizens and small and medium-sized enterprises (SMEs); whereas, 'Better Regulation' should deliver for all and serve the interests of European society;
- C. whereas ensuring the coherence of EU legislation can significantly facilitate its implementation;
- D. whereas the mandate of the Regulatory Scrutiny Board includes checking the quality of impact assessments;
- E. whereas national parliaments are the natural guardians of the subsidiarity principle and have the right to monitor it through the Early Warning System (EWS), according to which when a national parliament and/or chamber considers that a legislative proposal does not respect the principle of subsidiarity, it may adopt a reasoned opinion;

On subsidiarity

1. Recalls that the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union aims to ensure that decisions are taken as closely as possible to citizens and that constant checks are carried out to verify that action at EU level is justified; recalls that the principle of proportionality requires that any action taken by the EU should not go beyond what is necessary to achieve the objectives of the Treaties;
2. Welcomes the measure to help national parliaments execute their role more effectively by excluding the period from 20 December to 10 January from the eight-week period during which national parliaments can submit reasoned opinions, which has produced positive results, and invites the Commission to evaluate the possibility of further extending this period;
3. Notes that the number of reasoned opinions received from EU national parliaments was 9 in 2020, 16 in 2021 and 34 in 2022; underlines that since the entry into force of the Lisbon Treaty in 2009, the EU national parliaments have activated the Early Warning System or 'yellow card' on only three occasions, and that no 'orange card' (the system according to which half of the national parliaments raise an objection to a Commission proposal) has ever been drawn;

4. Notes that, of the 16 reasoned opinions received in 2021, nine were related to the 'Fit for 55' package, three to the European Health Union package, two to the Pact on Migration and Asylum, one to the proposal for a directive on adequate minimum wages in the EU and one to the proposal amending the VAT Directive ⁽⁸⁾ as regards conferral of implementing powers to the Commission to determine the meaning of the terms used in certain provisions of that directive; notes as well that, of the nine reasoned opinions received in 2020, three concerned the proposal for a regulation establishing the framework for achieving climate neutrality (European Climate Law ⁽⁹⁾) adopted by the Commission on 4 March 2020;

5. Notes also that, in 2020, of a total number of 39 chambers of national parliaments, only eight issued reasoned opinions, that, in 2021, that number fell to seven and that, in 2022, it increased to 13;

6. Notes that in 2021, national parliaments submitted 360 opinions, while in 2020 they submitted only 225; further notes, however, that the trend in the number of opinions and reasoned opinions in the period 2007-2022 demonstrates that national parliaments are increasingly asking for more political dialogue and a greater involvement in the debate on EU policies;

7. Calls on the Commission to take greater account of the opinions expressed by the European Committee of the Regions through the Subsidiarity Monitoring Network created to facilitate the exchange of information between regional and local authorities and the Union on the various legislative proposals which, following their adoption, will have a direct impact on these bodies and on the policies for which they are responsible;

On fostering the inclusion of national parliaments

8. Emphasises the importance of the participation of national parliaments in the process of law-making at EU level; highlights the crucial role of national parliaments in the pre-legislative scrutiny of draft EU laws, which enhances the legitimacy and quality of EU legislation; notes that current forms of cooperation with national parliaments could be improved; calls for the InterParliamentary EU Information Exchange (IPEX) platform, which facilitates the electronic exchange of EU-related information between Member State national parliaments and the European Parliament, to be further refined, with the addition of an effective notification system for national parliamentarians;

9. Stresses the importance of promoting dialogue between Members of national parliaments and Members of the European Parliament; highlights the need for the European Parliament's committees to engage directly with national parliaments with specific thematic focuses; invites the Commission to evaluate the possibility for the EU to involve national parliaments at an earlier stage of the legislative procedure, more specifically when consultations take place;

10. Encourages national parliaments to take into account the reasoned opinions of regional parliaments with legislative powers in their reasoned final opinions which are sent to the Presidents of Parliament, the Council and the Commission, particularly when regional exclusive competences may be affected;

11. Supports the consolidation of responses if seven or more national parliaments issue reasoned opinions on one of the Commission's legislative proposals, despite the threshold for initiating the 'yellow card' procedure not having been reached; insists that every reasoned opinion by a national parliament receive a detailed response from the Commission;

12. Suggests that its Committee on Legal Affairs hold a genuine discussion of the national parliament reasoned opinions that are sent to it, alerting its members when at least two reasoned opinions criticise the same proposal;

⁽⁸⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽⁹⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1).

13. Recalls the utmost importance of parliamentary scrutiny in the Union's legislative process and reiterates its call for Parliament's right to initiate policy proposals;

14. Shares the concerns expressed by national parliaments that the Commission's insufficient factual explanations when proposing draft legislative acts prevent them from performing a solid assessment of the subsidiarity and proportionality principles;

On improving regulatory fitness and EU law-making for an effective single market

15. Continues to support the Commission's commitment to *ex ante* evaluation before considering possible legislative changes or new initiatives; believes that the EU and the authorities of the Member States should continue to work closely together to ensure better evaluation of the real impact of EU regulations on citizens and businesses, notably SMEs; stresses the importance of the application and implementation of the 'think small first' principle;

16. Emphasises that the impact assessment is a key instrument of the 'Better Regulation' programme to ensure that subsidiarity and proportionality are respected and is used to promote the accountability of Commission initiatives likely to have a significant economic, social or environmental impact; calls on the Commission to carry out gender impact assessments for the design of legislative proposals;

17. Calls on the Commission to develop a more integrated approach to sustainability that would better take into account the interplay of the economic, social and environmental impacts of EU policies and legislation; considers that impact assessments must pay equal attention to the evaluation of these impacts; highlights the need to develop additional tools to assess the social and environmental impacts of new policies, initiatives and legislation where the existing tools are insufficient, in order to ensure that the Green Deal policy ambitions and their linkage to the UN's Sustainable Development Goals will feature more prominently in the Commission's impact assessments;

18. Notes that, in 2020, the Regulatory Scrutiny Board examined a total of 53 impact assessments, that in 12 cases, it estimated that it was necessary to improve their analysis of subsidiarity and EU added value, and that 30 opinions contained comments on proportionality; notes that, in 2018, it examined 75 impact assessments, that in 16 cases it was necessary to improve their analysis of subsidiarity and EU added value, and that 47 opinions contained remarks aimed at improving the analysis of proportionality and comparisons of policy options; underlines that, in 2019, the board examined only one impact assessment;

19. Stresses that the Regulatory Scrutiny Board aims to provide an effective check on the Commission's work with independence and impartiality; calls, in this regard, for the strengthening of the independence of the board, including by ensuring a well-balanced composition that reflects a broad set of backgrounds and competences; calls for increased transparency of the board, including by publishing all its opinions immediately after adoption, by declaring its meetings with interest groups and by making the use of the Transparency Register mandatory for its members; underlines that, while the advice of the board should be taken into account by the Commission to improve impact assessments, evaluations and fitness checks, it should in no way affect the Commission's capacity to propose legislation; calls for closer cooperation between the board and the co-legislators;

20. Welcomes the Commission's commitment to subjecting EU legislative proposals to an SME test; welcomes its increased accessibility; regrets, however, that the test is not conducted systematically and consistently; calls for the test to be binding and updated throughout the whole legislative process in order to ensure clear and predictable EU legislation; recommends that the SME test differentiate between different size-classes of SMEs to ensure proportionality; underlines the need to monitor and assess the implementation and quality of the SME test;

21. Stresses that the quality of the EU's regulatory framework is crucial for the Union's competitiveness; welcomes the Commission communication entitled 'Long-term competitiveness of the EU: looking beyond 2030' ⁽¹⁰⁾ and the commitment therein to better assess the cumulative impacts of different policy measures with a view to developing a methodology complementary to the competitiveness check currently used in impact assessments ⁽¹¹⁾; deplores, however, the fact that the promised methodology has not yet been developed and that the current competitiveness check focuses only on individual legislative proposals; calls, therefore, on the Commission to promptly develop a comprehensive methodology covering the cumulative effects of the relevant policy measures on the EU's competitiveness; calls, furthermore, for the competitiveness check to not only be performed on the impact assessments of single EU legislative proposals, but also on legislative packages ⁽¹²⁾ and the Commission work programme as a whole;

22. Notes with concern that, in 2022, 58 % of the impact assessments provided insufficient quantification of costs relevant to the 'one in, one out' approach ⁽¹³⁾; calls, therefore, on the Commission to clarify the implementation of the 'one in, one out' approach in law-making, to better indicate what costs and benefits were considered and to provide clear information on the reduction of existing regulatory burdens;

23. Is concerned about the possible unintended consequences of some EU legislation for citizens and businesses, which hamper the transition towards a sustainable economy; stresses the importance of a holistic approach towards *ex post* evaluation ; calls, therefore, on the Commission to come up with a thorough *ex post* 'practice check' aimed at clarifying any supporting best practices, as well as stumbling blocks, such as bureaucracy that acts as a hindrance, preventing citizens and businesses from making the necessary sustainable transition;

24. Calls for further transparency in decision-making processes within all institutions; deplores the Council's lack of transparency and its practice of over-classifying documents; urges the Council to increase the number of documents it makes public, in particular the positions expressed by the Member States, thereby allowing the public to be aware of the position of their government and enhancing scrutiny by national parliaments;

25. Stresses that the lack of a coherent and comprehensive set of codified rules on good administration applicable across the Union makes it difficult for citizens and businesses to easily and fully understand their rights under Union law; believes that codifying the rules on good administration would reinforce citizens' rights and transparency, and would respond to the need for investment and reform in the European Union; calls on the Commission to come forward with a legislative proposal on a European law of administrative procedure, taking into account the steps taken by Parliament in this field;



26. Instructs its President to forward this resolution to the Council, the Commission, the European Committee of the Regions, the European Economic and Social Committee and the national parliaments of the Member States.

⁽¹⁰⁾ Commission communication of 16 March 2023 entitled 'Long-term competitiveness of the EU: looking beyond 2030' (COM(2023) 0168).

⁽¹¹⁾ COM(2023)0168, p.17.

⁽¹²⁾ For example, the 'Fit for 55' package.

⁽¹³⁾ Regulatory Scrutiny Board, 'Annual Report 2022', Publications Office of the European Union, Luxembourg, 16 May 2023, p. 25.