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DRAFT REPORT

on the 18th report on Better legislation - Application of the principles of
subsidiarity and proportionality (2010)
(2011/2276(INI))

Committee on Legal Affairs

Rapporteur: Sajjad Karim

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

(2011/2276(INI))

The European Parliament,

- having regard to the Interinstitutional Agreement on better law-making¹,
- having regard to the Joint Political Declaration of the Member States and the Commission of 28 September 2011 on explanatory documents²,
- having regard to the Joint Political Declaration of the European Parliament, the Council and the Commission of 27 October 2011 on explanatory documents³,
- 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 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation⁴,
- having regard to its resolution of 14 September 2011 on the twenty-seventh annual report on monitoring the application of European Union law⁵,
- having regard to its resolution of 8 June 2011 on guaranteeing independent impact assessments⁶,
- having regard to the Commission report on subsidiarity and proportionality (18th report on Better Lawmaking covering the year 2010) (COM(2011)0344),
- having regard to the Commission report on minimising regulatory burdens for SMEs - Adapting EU regulation to the needs of micro-enterprises (COM(2011)0803),
- having regard to the Commission communication on the 28th annual report on monitoring the application of EU law (2010) (COM(2011)0588),
- having regard to the Commission communication on Smart Regulation in the European Union (COM(2010)0543),
- having regard to the conclusions of the Competitiveness Council of 5 December 2011 on

¹ OJ C 321, 31.12.2003, p. 1.

² OJ C 369, 17.12.2011, p. 14.

³ OJ C 369, 17.12.2011, p. 15.

⁴ Texts adopted, P7_TA(2011)0381.

⁵ Texts adopted, P7_TA(2011)0377.

⁶ Texts adopted, P7_TA(2011)0259.

impact assessment,

- having regard to the conclusions of the Competitiveness Council of 30 May 2011 on smart regulation,
 - 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 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 (A7-0000/2012),
- A. whereas in 2010 the European Parliament received more than seven times as many contributions as reasoned opinions from national parliaments;
- B. 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 and regulatory burdens, and to embark on a path towards good governance based on evidence-based policymaking in which impact assessments and ex post controls play an essential role;
- C. whereas the Interinstitutional Agreement on better lawmaking of 2003 has become ill-suited to the current legislative environment as 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;
- D. whereas an incorrect choice between using delegated acts under Article 290 TFEU or implementing acts under Article 291 TFEU in a legislative act subjects it to the risk of being annulled by the Court of Justice;

General comments

1. Underlines the overarching need for legislation to be clear, simple, easy to understand and accessible to all;
2. Stresses that the principles of subsidiarity and proportionality must be respected by the European institutions when legislating;
3. Expresses its deep concern regarding the Impact Assessment Board’s view that the Commission’s consideration of these principles in its impact assessments are is often unsatisfactory in nature; considers it of the utmost importance that the Commission address any deficiencies in this area in order to ensure that these principles are respected;
4. Reiterates its repeated calls for the 2003 Interinstitutional Agreement on Better Lawmaking to be renegotiated in order to take account of the new legislative environment created by the Treaty of Lisbon, consolidate current best practice and bring the agreement

up to date in line with the smart regulation agenda; suggests that arrangements concerning the demarcation between delegated and implementing acts be agreed in that context;

Subsidiarity control by national parliaments

5. Notes that the criticism made by the Impact Assessment Board concerning consideration of subsidiarity was also made by a number of national parliaments in their submissions under the subsidiarity control mechanism introduced in the Treaty of Lisbon; further notes, however, that on no occasion in 2010 was the threshold for activating the formal procedures under Protocol No 2, as annexed to the Treaties, reached;
6. Considers, however, that the current timescales laid down in the Treaties for national parliaments to carry out subsidiarity checks are often insufficient; suggests that the EP, the Commission and representatives of the national parliaments investigate how any impediments to national parliaments' participation in the subsidiarity control mechanism might be alleviated;
7. Welcomes, in this regard, the introduction of the revised IPEX website, which can act as a catalyst for further improvements and engagement in the operation of the subsidiarity control mechanism;

Evidence-based policymaking

8. Stresses the importance of the smart regulation agenda and of developing new regulatory approaches in order to ensure that EU legislation is fit for its purpose and can effectively contribute to facing future challenges of competitiveness and growth;
9. Emphasises Parliament's commitment to its obligations under the smart regulation agenda, and encourages use of Parliament's Impact Assessment Directorate by committees engaging in legislative work as a matter of routine; recalls the commitment made by Parliament and Council in the 2005 Interinstitutional Common Approach to Impact Assessment to carry out impact assessments prior to the adoption of substantive amendments, and calls on the committees to make use of the new Impact Assessment Directorate in implementing this commitment;
10. Suggests that as part of a more systematic approach to the consideration of impact assessments within Parliament, the Impact Assessment Directorate should be asked by committees to prepare a short summary of each impact assessment for consideration when an initial exchange of views is held; suggests that this summary could include a brief conclusion as to the quality of the impact assessment, together with a short note on the key findings and any areas of analysis omitted by the Commission; is of the view that this would greatly enhance the scrutiny of draft legislation by Parliament;
11. Considers it essential that the methodologies applied by the Impact Assessment Directorate are compatible and comparable with the approach adopted by the Commission, and calls on Parliament and the Commission to cooperate fully in this regard;
12. Recalls the 2003 Interinstitutional Agreement on Better Lawmaking, and encourages the

Council to complete work on establishing its own mechanism for undertaking impact assessments without undue delay, in compliance with its obligations under the 2003 agreement;

13. Encourages the Commission to continue improving its own approach to impact assessments, and calls on it to strengthen the role of the Impact Assessment Board and, in particular, only to finalise and present legislative proposals where they have been approved with a favourable opinion from the Board;

Minimising regulatory burdens

14. Welcomes the Commission's communication on minimising regulatory burdens for SMEs; considers it essential that the Commission respects the 'think small first' principle when preparing legislation, and is encouraged by the commitment shown by the Commission and its desire to go beyond present approaches and introduce lighter regimes and exemptions for smaller businesses;
15. Recalls Parliament's position on the issue of regulatory exemptions, and urges the Commission to extend exemption to SMEs where regulatory provisions would disproportionately affect them and there is no sound reason for including them in the scope of the legislation;
16. Reminds the Commission, however, that the reversal of the burden of proof should not automatically lead to more complex legislation which has been developed without SMEs in mind; calls on the Commission to strive for the simplification of legislation wherever possible, and to continue to prepare and present proposals with accessibility and ease of implementation for SMEs as guiding principles in the drafting of legislation, even where an exemption may apply;
17. Stresses the need for the Commission to ensure consistent application of the enhanced SME test across its directorates, and encourages Member States to include similar considerations in their national decision-making processes;
18. Welcomes the 'tailor-made' approach to legislation proposed by the Commission; calls for consideration to be given to possible future application of 'tailor-made' approaches when existing legislation is reviewed;

Follow-up, ex post controls and feedback into the policymaking cycle

19. Welcomes the Commission's adoption of Parliament's recommendation on publication of information concerning implementation, thus addressing the problem of 'gold-plating'; reminds the Commission and the Council that in order to ensure that existing and future programmes to reduce burdens are successful active cooperation between the Commission and the Member States is necessary, so as to avoid discrepancies in the interpretation and implementation of legislation;
20. Considers the proposals to 'name and shame' European institutions which backtrack on simplification to be well-intentioned; believes, however, that a more constructive engagement in the pre-legislative process with relevant stakeholders and the institutions,

together with adherence to the general commitments to simplification and the smart regulation agenda, would render such publicity unnecessary; suggests, nonetheless, that those Member States which engage the most in the ‘gold-plating’ of directives should be named, alongside those which are the biggest offenders when it comes to late or insufficient transposition of EU law;

21. Recalls its previous statements concerning the need for a comprehensive review of the consultation process undertaken by the Commission, and looks forward to the Commission adopting Parliament’s recommendations in this area before the end of 2012;

Ensuring continuity and vigilance

22. Underlines the importance of these measures as a key element for renewed economic growth in the EU; recalls, in this regard, its resolution on smart regulation, and invites the Commission to put forward proposals implementing regulatory offsetting, which would require equivalent cost offsets to be identified in advance of new legislation that would introduce costs being imposed; recalls, furthermore, its position in favour of extending and expanding the scope of the Administrative Burden Reduction Programme, and urges the Commission to introduce, in its 2013 Work Programme, a programme which addresses the need to reduce the overall regulatory burden;

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

EXPLANATORY STATEMENT

The Smart Regulation agenda constitutes an attempt to consolidate efforts in better lawmaking, simplification of EU law and the reduction of administrative and regulatory burdens. The agenda marks a renewed opportunity for European institutions to fully adopt good governance based on evidence based policy-making where impact assessments and ex-post control play an essential role. The Commission's communication on smart regulation expands on the Presidency Conclusions from the Spring 2007 European Council on the renewed Lisbon Strategy for Growth and Jobs and Commission President Barroso's *Political Guidelines for the Next Commission* in which it was suggested to turn the Lisbon Strategy into the 'EU 2020' strategy, which were to emphasise competitiveness and less administrative burden through smart regulation to make markets work for people.

Parliament, together with the other European institutions and the Member States, must now do its part to ensure that the momentum gained is upheld and that activities are stepped up in all relevant areas. There is in particular a dire need for the Interinstitutional Agreement on better law-making from 2003 to be updated to the current legislative environment created by the Lisbon Treaty, for instance concerning correlation tables, the practical modalities for legislative procedures and the demarcation between delegated and implementing acts. Action is also needed in the areas of subsidiarity checks by national parliaments and when it comes to impact assessments conducted by the Parliament and the Council. Lastly, adequate follow-up of the functioning of adopted legislation needs to be made, not least in order to gain feed-back to be used for the amendment of legislation identified as possible to ameliorate, but also in order to combat the practice of 'gold-plating', i.e. the introduction of additional national requirements not included in a directive, thus creating additional unnecessary burdens for citizens and business.

The Commission is foreseen to publish a report on the progress of the smart regulation agenda in the latter part of 2012. Parliament should make sure to remain vigilant in identifying shortcomings and suggesting improvements in this area.