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*Committee on Legal Affairs*

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# **DRAFT REPORT**

on Annual reports 2012-2013 on subsidiarity and proportionality  
(2014/2252(INI))

Committee on Legal Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on Annual reports 2012-2013 on subsidiarity and proportionality (2014/2252(INI))

*The European Parliament,*

- having regard to the Interinstitutional Agreement on better law-making<sup>1</sup>,
- 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 4 February 2014 on EU Regulatory Fitness and Subsidiarity and Proportionality - 19th report on Better Lawmaking covering the year 2011<sup>2</sup>,
- 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)<sup>3</sup>,
- having regard to its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation<sup>4</sup>,
- having regard to the Commission's annual report 2012 on subsidiarity and proportionality (COM(2013)0566) and to the Commission's annual report 2013 on subsidiarity and proportionality (COM(2014)0506),
- having regard to the Council Conclusions on Smart Regulation of 4 December 2014,
- having regard to the Conclusions of the Conference of Speakers of the European Union Parliaments of 21 April 2015,
- having regard to the Bi-annual reports of COSAC on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny of 27 September 2012, 17 May 2013, 4 October 2013, 19 June 2014, 14 November 2014,
- having regard to the final report of 14 October 2014 of the High Level Group of Independent Stakeholders on Administrative Burdens, entitled 'Cutting Red Tape in Europe – Legacy and Outlook'<sup>5</sup>,
- having regard to Rule 52 and Rule 132 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the opinions of the

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<sup>1</sup> OJ C 321, 31.12.2003, p.1.

<sup>2</sup> Texts adopted, P7\_TA(2014)0061.

<sup>3</sup> OJ C 353 E, 3.12.2013, p. 117.

<sup>4</sup> OJ C 51 E, 22.2.2013, p. 87.

<sup>5</sup> [http://ec.europa.eu/smart-regulation/refit/admin\\_burden/docs/08-10web\\_ce-brocuttingredtape\\_en.pdf](http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf)

Committee on International Trade, the Committee on Budgetary Control, the Committee on Employment and Social Affairs and the Committee on Constitutional Affairs (A8-0000/2015),

- A. whereas in 2012, the Commission received reasoned opinions addressing 83 legislative proposals; whereas the total number of submissions received in 2012 was 292, including those submissions which did not qualify as reasoned opinions;
- B. whereas in 2013, the Commission received reasoned opinions addressing 99 legislative proposals; whereas the total number of submissions received in 2013 was 313, including those submissions which did not qualify as reasoned opinions;
- C. whereas in 2012, national parliaments issued 12 reasoned opinions on the Monti II proposal<sup>1</sup>, representing 19 votes (18 being the threshold), and thus for the first time triggered a so-called yellow card, which requires the institution that has presented the proposal to review it and to justify its decision as regards whether to withdraw, to amend or to maintain the proposal;
- D. whereas the Commission withdrew the Monti II proposal but stated that it considered the proposal to be in conformity with the principle of subsidiarity and that the proposal was withdrawn in view of insufficient support for it in the European Parliament and the Council of Ministers<sup>2</sup>;
- E. whereas in 2013, national parliaments issued 13 reasoned opinions on the proposal for the establishment of a European Public Prosecutor's Office<sup>3</sup>, representing 18 votes, thereby triggering the second yellow card procedure;
- F. whereas the Commission concluded that its proposal complied with the principle of subsidiarity and that a withdrawal or an amendment of the proposal was not required; whereas the Commission declared that in the legislative process it would take due account of the reasoned opinions<sup>4</sup>;
- G. whereas several national parliaments expressed concern regarding the Commission's approach, considering the justifications and arguments presented by the Commission insufficient; whereas the Legal Affairs Committee and the Civil Liberties, Justice and Home Affairs Committee of the European Parliament held debates on this topic;
- H. whereas in the subsequent negotiations with the Council on the European Public Prosecutor the scope and working methodologies have been narrowed as compared with the initial proposal upon which the reasoned opinions were issued;

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<sup>1</sup> 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 - COM(2012) 130.

<sup>2</sup> Letter of 12 September 2012 by Vice-President Šefčovič to National Parliaments.

<sup>3</sup> Commission proposal for the establishment of the European Public Prosecutor's Office (EPPO) - COM(2013) 534.

<sup>4</sup> Communication to the European parliament, the Council and National Parliaments on the review of the proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office with regard to the principle of subsidiarity, in accordance with Protocol No 2 of 27.11.2013 (COM(2013) 851 final).

- I. whereas given its right of initiative, the Commission has a responsibility to ensure that the correct choices about whether and how to propose action at EU level are made at an early stage of policy development;
- J. whereas the Commission is undertaking a revision of the guidelines applying to the impact assessment process, which includes consideration of subsidiarity and proportionality;
- K. whereas the Parliament has established its own Impact Assessment Unit, which produced 50 initial appraisals and two detailed appraisals of Commission impact assessments in 2013;
- L. whereas national parliaments have observed that the inclusion of significant and numerous delegated powers makes it difficult to effectively evaluate whether final rules would comply with the principle of subsidiarity;
1. Welcomes continued consideration of the principles of subsidiarity and proportionality, which are guiding principles for the European Union when it chooses to act;
  2. Believes that the principles of subsidiarity and proportionality represent the starting point for policy formulation; considers that it is not always the case that European action can achieve the policy objectives better than national or regional initiatives may do, or even global efforts where the will for joint action exists;
  3. Regrets therefore that the annual reports prepared by the Commission are somewhat perfunctory, and often do not delve into a more detailed consideration of how subsidiarity and, in particular, proportionality are observed in EU policy-making;
  4. Questions some of the assumptions made in the 2012 and 2013 Annual reports, such as that of classifying reasoned opinions submitted by national parliaments on a package of proposals as only one reasoned opinion, rather than a reasoned opinion on each of the individual proposals; believes that this is an inappropriate assumption, as objections raised on a package should be considered as an objection on each legislative proposal;
  5. Considers that, when taken as a whole, the proportion of reasoned opinions has increased significantly as a percentage of total submissions when compared to 2010 and 2011; notes that in 2012 reasoned opinions represented 25 % of all submissions, while in 2013 they accounted for 30 % of submissions from national parliaments under the Protocol 2 process; expresses concern that an increasing proportion of the submissions made by national parliaments are raising strong reservations about compliance with subsidiarity;
  6. Recalls concerns raised in previous European Parliament reports regarding instances where subsidiarity had not been adequately addressed in impact assessments (IAs) prepared by the Commission; further recalls that the Annual Reports of the Impact Assessment Board (IAB) have raised this issue; expresses concern that the IAB considered more than 30 % of IAs reviewed by them in 2012 and 2013 to have included an unsatisfactory analysis of the principle of subsidiarity; expresses serious concern that this number rose to 50 % in 2014, and urges the Commission in its revision of the

guidelines applying to IAs to address this issue and reverse this trend;

7. Stresses that thorough impact assessments which thoroughly evaluate subsidiarity compliance are essential to improve the trust of citizens, who often consider the subsidiarity principle a key aspect of the democratic process; highlights, therefore, that enhanced subsidiarity checks could be considered an important tool for reducing the so-called 'democratic deficit';
8. Expresses disappointment at the response of the Commission to national parliaments in instances where yellow cards have been issued; believes that it is necessary for the Commission to respond comprehensively to any concerns raised by national parliaments, and on an individual basis as part of a dialogue in addition to any published opinion; considers that it is also necessary for the Commission to appear before the relevant committee or committees of the Parliament to explain its position in detail;
9. Believes that political dialogue is increasingly important in ensuring that subsidiarity is respected; considers that political dialogue should be improved not only in instances of a yellow or orange card, but as a general rule; welcomes in this regard the Juncker Commission's undertaking to appear before more national parliaments, and calls for the Parliament to consider undertaking similar initiatives; believes that rapporteurs could be encouraged to engage more often with national parliaments, particularly as video-conferencing and other methods of online engagement are made easier and more effective;
10. Stresses that the European institutions and the national parliaments still have much to do to create a 'subsidiarity culture' across the European Union; recommends two particular initiatives which would aid better consideration of subsidiarity in the legislative process at present, namely facilitating greater inclusion of positions, perspectives or other suggestions made by national parliaments in the political dialogue, in particular in the course of preparatory work such as Green Papers or White Papers produced by the Commission, and undertaking to extend the period for consultation of national parliaments under the subsidiarity check contained in Protocol 2; considers that this could be achieved through a political undertaking agreed by the institutions and the national parliaments, in advance of any change to the Protocol itself;
11. Believes that a stronger approach is needed to fully recognise the principle of subsidiarity; considers therefore that the introduction of a stronger 'red card' procedure could be a positive first step; suggests that consideration should be given to what the appropriate number of national parliament responses should be in order to trigger such a procedure, whether it should be limited to subsidiarity alone or include proportionality grounds, and what its effect should be; views such a discussion as a useful stage in the evolution of the power given to national parliaments, aligning incentives to exercise scrutiny with effects at European level;
12. Considers that the introduction of a 'green card' could also be considered, which would afford national parliaments the opportunity to propose the introduction, amendment or repeal of Union legislation; suggests that similar consideration would be required on the number of responses required to trigger such a procedure, and the extent of its impact;

13. Notes that legislative proposals may change dramatically in the lead-up to adoption by the institutions; recalls that a check on compliance with the principle of subsidiarity is only undertaken at the outset and not at the conclusion of the legislative process; further recalls that impact assessments more generally are only prepared for the initial rather than the final stages of the legislative process;
14. Calls therefore for a further subsidiarity check and full impact assessment to be undertaken at the conclusion of the legislative negotiations and in advance of the adoption of a final text, in order that compliance with subsidiarity can be guaranteed and that assessments including proportionality can be made; believes that such a ‘cooling off’ period would help policy-makers in assessing whether legislation complies with the principles of the Union, and would increase transparency about the results of periods of often rather intense negotiation;

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15. Instructs its President to forward this resolution to the Council and the Commission.

## EXPLANATORY STATEMENT

The annual reports on subsidiarity and proportionality 2012 and 2013 show that the proportion of reasoned opinions increased significantly as a percentage of total submissions when compared to 2010 and 2011. The threshold for ‘yellow cards’ was also reached, first in 2012 on the ‘Monti II’ proposal and then in 2013 on the proposal for the establishment of a European Public Prosecutor’s Office (EPPO). In both cases the Commission stated that it considered the proposals in conformity with the principle of subsidiarity. Whereas the Monti II proposal was withdrawn in view of insufficient political support, the EPPO proposal was maintained. Several national parliaments expressed concern as regards the sufficiency of the Commission’s arguments justifying the compatibility of the two proposals with the principle of subsidiarity.

Your rapporteur believes that the principles of subsidiarity and proportionality are an integral element of policy formulation in order to establish whether European Union action can achieve policy objectives better than national or regional initiatives.

Political dialogue is increasingly important in ensuring that subsidiarity is respected, not only in instances of a yellow or orange card, but as a general rule. A green card could also be considered. The Juncker Commission’s undertaking to appear more before national parliaments is welcomed, and could be also pursued by the Parliament. This could include encouraging rapporteurs to engage more often with national parliaments and at an earlier stage in the legislative process particularly as video-conferencing and other methods of online engagement are made easier and more effective.

The importance of thorough impact assessments, which evaluate subsidiarity compliance, are essential to improve the trust of citizens who consider subsidiarity is linked to democracy and subsidiarity could therefore be considered a tool to reduce the so-called ‘democratic deficit’.

The creation of a genuine ‘subsidiarity culture’ across the European Union could be promoted through facilitating greater inclusion of positions and suggestions by national parliaments in the in the course of preparatory work on legislation. The possibilities to *de facto* extend the period for consultation of national parliaments under the subsidiarity check without amending Protocol 2 should also be considered, in advance of any change to the Protocol itself. In the future a stronger ‘red card’ procedure could be introduced and consideration could be also given to the possible introduction of a ‘green card’, which would afford national parliaments the opportunity to propose the introduction, amendment or repeal of Union legislation.

Your rapporteur notes, finally, that a check on compliance with the principle of subsidiarity should not only be undertaken at the outset but also at the conclusion of the legislative process since the proposal might change substantially in the course of the legislative procedure. Therefore, a further subsidiarity check and full impact assessment should be undertaken at the conclusion of the legislative negotiations and in advance of the adoption of a final text, in order that compliance with subsidiarity can be guaranteed.