

## **P5\_TA(2003)0143**

### **Better lawmaking (2000, 2001)**

**European Parliament resolution on the Commission report to the European Council on better lawmaking 2000 (pursuant to Article 9 of the Protocol to the EC Treaty on the application of the principles of subsidiarity and proportionality) (COM(2000) 772 – C5-0097/2001 – 2001/2044(COS)) and on the Commission report to the European Council on better lawmaking 2001 (pursuant to Article 9 of the Protocol to the EC Treaty on the application of the principles of subsidiarity and proportionality) (COM(2001) 728 – C5-0102/2002 – 2001/2044(COS))**

*The European Parliament,*

- having regard to the Commission report (COM(2000) 772 – C5-0097/2001),
  - having regard to the Commission report (COM(2001) 728 – C5-0102/2002),
  - having regard to the Commission communication to the Parliament and the Council entitled 'Codification of the Acquis communautaire' (COM(2001) 645),
  - having regard to the opinion of the Committee of the Regions of 20 November 2002 on 'Simplification of the Union's instruments'<sup>1</sup>,
  - having regard to Rule 47(1) of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Constitutional Affairs (A5-0100/2003),
- A. whereas the subsidiarity principle has a vital role to play in establishing the authority of Community legislation,
- B. whereas Community legislation is too profuse, complex and equivocal,
- C. whereas the subsidiarity principle is a binding legal and constitutional norm imposing mutual obligations on the EU institutions and the Member States, and it must not lead to the 'acquis communautaire' being called into question,
- D. whereas it is important for EU rules and national legislation to be proportionate to their objectives, in order to reinforce legal certainty,
- E. whereas the Court of Justice is responsible for monitoring the application of the subsidiarity and proportionality principles,

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<sup>1</sup> OJ C 73, 26.3.2003, p. 73.

- F. whereas Parliament has concluded an interinstitutional agreement with the Council and the Commission on implementation of the subsidiarity principle<sup>1</sup>,
- G. whereas the Convention has given detailed consideration to the principle of subsidiarity, its interpretation and its implementation both through political and judicial processes,
1. Points out that legislative and regulatory inflation in the Member States and at Community level weakens the rule of law and alienates citizens from their institutions,
  2. Considers that the European Union should not only act in accordance with its own rules, protocols and principles, but should also be seen to do so;
  3. Points out that the requirement to produce high-quality legislation applies to the formal quality of texts as much as to their substance and that drafting laws more simply and clearly, in line with the principles of subsidiarity and proportionality, is a precondition for their being properly used by the citizens; calls on the Council and the Commission to assume their responsibilities in this area and commits itself to do likewise;
  4. Aims to make legislative texts more comprehensible and easy to apply and to reduce their number; encourages the Commission and Council to do likewise;
  5. Notes that in the light of enlargement, it is all the more necessary to preserve the 'acquis communautaire' to facilitate the new members' integration;
  6. Expects the Commission to take effective measures to remedy the excessively frequent instances of failure to apply Community law correctly, and recommends that the Convention focus its attention on ways of increasing the Commission's power of effective intervention in such cases;
  7. Deplores the proliferation of preparatory documents issued by the Commission (Green Papers, White Papers, communications, reports and interpretative notes);
  8. Calls on the Commission to take steps to speed up the simplification of Community law, particularly via the Simplified Legislation for the Internal Market (SLIM) initiative, and to submit a complete codification programme with binding deadlines;
  9. Welcomes the Commission's initiatives to facilitate administrative preparations for enlargement by reducing the number of pages to be translated, and encourages it to continue with this approach;
  10. Welcomes the work of the Convention on Subsidiarity and Proportionality, and the Praesidium's report to the Convention of 27 February 2003 (CONV 579/03);
  11. Points out that:
    - the Commission's plan to alter the format and nature of the Better Lawmaking reports from 2002, though welcome, will not necessarily tackle the tendency towards vague and unfocussed statements which is apparent in the 2001 report,

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<sup>1</sup> OJ C 329, 6.12.1993, p. 135.

- an enumeration and explanation of what action has been taken by the Commission under a variety of policy headings is not a report on the application of the principles of subsidiarity and proportionality, and
  - this is unnecessary, as there are already a number of reports on the activities and achievements of the Union;
12. Recognises that the other aspects of law-making explored in the report (such as legal drafting or codification) are also important and interesting, but asks that the Commission focus more closely on the *raison d'être* of the report, in order to produce a clear, relevant and meaningful review of how and with what measure of success the principles of subsidiarity and proportionality have been applied by the Community;

### ***Proportionality and subsidiarity***

13. Considers that differences with regard to implementing the principles of subsidiarity and proportionality should preferably be settled at the political level, on the basis of the aforementioned Interinstitutional Agreement of 25 October 1993; notes, however, the proposals currently under consideration by the Convention, whereby national parliaments should take on a role in monitoring subsidiarity issues through an 'early warning' system, while the Committee of the Regions - and according to European Parliament resolution of 14 January 2003 on the role of the regional and local authorities in building Europe<sup>1</sup>, also regional authorities having legislative powers - could in certain circumstances challenge legislation before the Court of Justice on the ground of infringement of the principle of subsidiarity;
14. Underlines the importance of Community institutions and Member States, through regional and local authorities as well as at central ministerial level, keeping a permanent watch on the application of the subsidiarity and proportionality principles;
15. Considers that a clear justification of compliance for each proposal at a European level should play an important part of the recitals setting out why the proposal (and the measure if adopted) is judged to be necessary;
16. Instructs its relevant bodies to seek agreements with the national parliaments with a view to working together on scrutinising the Commission's annual legislative programme;
17. Recognises that the Commission is making some effort to demonstrate compliance with the principles of subsidiarity and proportionality, but notes that the formula "In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of the proposed measure ... cannot be sufficiently achieved by the Member States and can therefore ... be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose" was used in 45 of the 323 'preparatory acts' published by the Commission during 2001 and that without communications, consultations and legislation in areas of 'exclusive competence' where subsidiarity does

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<sup>1</sup> P5\_TA(2003)0009.

not apply, the figure is 45 out of 209 (i.e. over 20%); considers that the use of a standard recital reflects the somewhat mechanical nature of the Commission's approach;

18. Believes that although European Court of Justice case-law does not consider an express reference to the principle of subsidiarity a legal requirement<sup>1</sup>, in the interests of clarity and transparency, suggests that the Commission examine ways of explicitly setting out why each proposal is made (legal basis, necessity, proportionality) and why it should be done at European Union level (criteria of subsidiarity, qualitative and/or quantitative evidence) as a matter of good practice in accordance with the Protocol annexed to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality<sup>2</sup>;
19. Welcomes the Annex to the 'Better-Lawmaking 2000' report on justifying a legal instrument as a step towards a framework for the consideration and discussion of the principles of subsidiarity and proportionality;
20. Points out that a reduction in the number of Commission proposals (as announced in the 'Better Lawmaking 2001' report) does not imply compliance with Article 5 of the EC Treaty, and invites the Commission to consider other ways of analysing and reviewing the application of the principles of subsidiarity and proportionality in the year's legislation;
21. Suggests that such a new approach could involve:
  - describing how specific proposals are measured against the criteria of subsidiarity and proportionality before adoption by the Commission;
  - summarising comments and amendments presented by interested parties and other EU institutions during the pre-legislative consultation and referring to these criteria;
  - giving examples of how comments and criticisms were responded to;
  - exploring the implications of Parliament and Council amendments for the compliance of legislation adopted by the Community with the principles of subsidiarity and proportionality;
22. Encourages the Commission to inform the national parliaments at the beginning of each year of the areas where it intends to propose legislation;

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

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<sup>1</sup> Germany v Parliament and Council Case C-233/94 (1997) ECR I-2405, paragraph 28.

<sup>2</sup> OJ C 340, 10.11.1997, p. 105.