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P8_TA(2018)0120

Annual reports 2015-2016 on subsidiarity and proportionality

European Parliament resolution of 18 April 2018 on the Annual Reports 2015-2016 on subsidiarity and proportionality (2017/2010(INI))

(2019/C 390/11)

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,
- having regard to Protocol No 2 on the application of the principles of subsidiarity and proportionality,
- having regard to the Interinstitutional Agreement of 16 December 2003 on better law-making, and to the most recent version, the Interinstitutional Agreement of 13 April 2016 on better law-making ⁽¹⁾,
- 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 (TFEU) in the event of agreements at first reading,
- having regard to its resolution of 17 May 2017 on the Annual report 2014 on subsidiarity and proportionality ⁽²⁾ and to its resolution of 12 April 2016 on the Annual reports 2012-2013 on subsidiarity and proportionality ⁽³⁾,
- having regard to the Commission's annual report 2015 on subsidiarity and proportionality (COM(2016)0469), and to the Commission's annual report 2016 on subsidiarity and proportionality (COM(2017)0600),
- having regard to the Commission's annual report 2015 on relations between the European Commission and national Parliaments (COM(2016)0471) and to the Commission's annual report 2016 on relations between the European Commission and national Parliaments (COM(2017)0601),
- having regard to all previous Commission communications on the need for better regulation in order to achieve better results for the benefit of EU citizens,
- having regard to the decision of the President of the European Commission of 14 November 2017 on the establishment of a Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' (C(2017)7810),
- having regard to the bi-annual reports of COSAC on Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny, of 19 June 2014, 14 November 2014, 6 May 2015, 4 November 2015, 18 May 2016, 18 October 2016 and 3 May 2017,
- having regard to the Cooperation Agreement signed on 5 February 2014 between the European Parliament and the Committee of the Regions,
- having regard to the Committee of the Regions' Subsidiarity Annual Report 2015,

⁽¹⁾ OJ L 123, 12.5.2016, p. 1.

⁽²⁾ Texts adopted, P8_TA(2017)0210.

⁽³⁾ OJ C 58, 15.2.2018, p. 33.

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- having regard to Rules 52 and 132 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and to the opinion of the Committee on Constitutional Affairs (A8-0141/2018),
- A. whereas 2015 and 2016 were the two first full years of the Juncker Commission, which took office in November 2014; whereas President Juncker undertook to place subsidiarity at the heart of the European democratic process and ensure full compliance with the principles of subsidiarity and proportionality throughout the legislative process;
- B. whereas the new Interinstitutional Agreement of 13 April 2016 on Better Law-Making, includes an undertaking by the three institutions to respect and implement the principles of subsidiarity and proportionality;
- C. whereas in 2015 the Commission received eight reasoned opinions addressing three Commission proposals; whereas the total number of submissions received that year by the Commission was 350;
- D. whereas in 2016 the Commission received 65 reasoned opinions addressing 26 Commission proposals; whereas this constitutes 713 % more than the eight reasoned opinions received in 2015, and is the third highest in a calendar year since the subsidiarity control mechanism was introduced by the Lisbon Treaty in 2009 (after 84 in 2012 and 70 in 2013); whereas the total number of submissions received that year by the Commission increased significantly to a total of 620;
- E. whereas on 19 May 2015 the Commission adopted a package of better regulation measures with new integrated Better Regulation Guidelines, including updated guidance for assessing subsidiarity and proportionality in the context of impact assessment of new initiatives;
- F. whereas, in 2015, the Commission launched the ‘Lighten the load – Have your say’ website ⁽⁴⁾, as well as the REFIT platform (for effective and efficient regulation), giving stakeholders additional opportunities to notify the Commission of any shortcomings regarding existing regulatory measures, including matters relating to subsidiarity and/or proportionality;
- G. whereas in 2015 the European Parliamentary Research Service produced 13 initial appraisals, one impact assessment of substantive parliamentary amendments and six ex post impact assessments; whereas it also produced four reports on the cost of non-Europe and two European added value assessments; whereas in 2016 the European Parliamentary Research Service produced 36 initial appraisals, one impact assessment of substantive parliamentary amendments and 14 ex post European impact assessments; whereas it also produced seven reports on the cost of non-Europe and five European added value assessments;
- H. whereas delegated powers in the Union’s legislative acts are conferred where flexibility and efficiency are needed and cannot be delivered by means of the ordinary legislative procedure; whereas the adoption of rules essential to the subject envisaged is reserved to the legislators;
- I. whereas subsidiarity and proportionality are key considerations in the context of impact assessments and retrospective evaluations, which assess whether actions at EU level are necessary, whether their objectives can be achieved more effectively by other means and whether they are actually delivering the expected results in terms of efficiency, effectiveness, coherence, relevance and EU added value;
- J. whereas in 2014, three national chambers (the Danish Folketing, the Netherlands Tweede Kamer and the UK House of Lords) issued reports with detailed proposals on how the role of national parliaments could be strengthened in the decision-making process;

⁽⁴⁾ http://ec.europa.eu/smart-regulation/refit/simplification/consultation/contributions_en.htm

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1. Recalls the importance of the annual reports on subsidiarity and proportionality prepared by the Commission; observes that the Commission's annual reports 2015 and 2016 are more detailed and exhaustive than those concerning previous years;
2. Stresses the importance of the European Union only acting where it can add value in order to reduce the 'democratic deficit';
3. Underlines that subsidiarity and proportionality are fundamental principles that the EU institutions should take into consideration when exercising EU competences in order to ensure that the Union's actions add value; recalls that these principles are aimed at enhancing the functioning of the Union by ensuring that actions at Union level are necessary, that their objectives cannot be adequately achieved by the Member States acting individually, that their nature and substance do not exceed what is necessary to fulfil the objectives of the Treaties, and that they are always taken at the most appropriate level of government; draws attention to the fact that these principles can be misused to serve anti-EU ends and emphasises that the EU institutions should be vigilant in order to avoid and counteract this risk;
4. Recalls that subsidiarity is a fundamental principle of federations as well as an indeterminate legal concept, which, consequently, should be subject to political interpretation;
5. Understands that the principle of subsidiarity cannot be used to interpret the powers assigned to the Union by virtue of the Treaties restrictively;
6. Considers that any reflection on subsidiarity and the control thereof should take place in the context of the growing calls by citizens for the Union to tackle major global challenges such as, inter alia, intercontinental financial flows, security, migration and climate change;
7. Welcomes the reference to subsidiarity in the Rome Declaration of 25 March 2017; takes the view that subsidiarity should have a prominent place in reflection on the EU's future;
8. Notes the initiative announced by the President of the Commission Jean-Claude Juncker during his State of the Union Address 2017 to create a Task Force on Subsidiarity, Proportionality and 'Doing less more efficiently' headed by Commission Vice-President Frans Timmermans; recalls that Parliament considered that participation in the task force set up by the Commission would disregard Parliament's institutional role and standing as the only directly elected Institution of the European Union, representing the citizens at Union level and exercising functions of political scrutiny over the Commission, and that, consequently, it decided to decline the invitation to participate in the task force;
9. Notes the Commission's methodology in the 2015 and 2016 Annual reports, within which statistics are used to classify reasoned opinions submitted by national parliaments on a package of proposals as one single reasoned opinion, rather than a reasoned opinion on each of the individual proposals;
10. Appreciates that the number of reasoned opinions (65) submitted by national parliaments in 2016 is the third highest in a calendar year since the introduction of the subsidiarity control mechanism in the Lisbon Treaty; notes the sharp increase (+ 713 %), with respect to the eight reasoned opinions received in 2015; acknowledges, in addition, the significant increase, from 350 to 620, in the number of opinions received by the Commission within the framework of the political dialogue; underlines that these trends emerged against the backdrop of a decrease in legislative activity, which also demonstrates that national parliaments' participation has evolved in comparison with previous years; welcomes the marked interest in EU decision-making expressed by national parliaments;
11. Welcomes the fact that more national chambers have issued reasoned opinions (26 out of 41 in 2016, compared with eight in 2015); notes the marked difference between chambers active within the framework of political dialogue and reasoned opinions; underlines that national parliaments continue to have more interest in influencing the content of EU legislation than in identifying cases in which subsidiarity may be an issue; notes that the power of national parliaments to monitor respect for the principles of subsidiarity and proportionality also encompasses a right to ask the European legislator to act at European level if necessary;

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12. Recognises the work done by the Impact Assessment Board (IAB) and its successor as of July 2015 the Regulatory Scrutiny Board (RSB); notes that the IAB and the RSB considered that 23 % of the impact assessments (IAs) reviewed by them in 2015 needed improvements on either subsidiarity or proportionality, or both; observes that in 2016 the percentage of IAs considered unsatisfactory by the RSB was of 15 %; welcomes the fact that these percentages have decreased compared with previous years; underlines that the Commission reviewed all of the IAs concerned taking into account the analyses from the RSB;

13. Notes that the implementation of the better law-making agenda has led the Commission to develop stronger internal instruments and procedures aimed at avoiding infringements of the principle of subsidiarity; underlines that impact assessments are a key instrument to ensure respect for the principles of subsidiarity and proportionality and to promote accountability; highlights, in particular, the role of the RSB and welcomes the fact that subsidiarity and proportionality are now part of the quality check that the Board performs; stresses, nonetheless, that the independence of the RSB could be enhanced further;

14. Welcomes the adoption by the Commission in May 2015 of a new Better Regulation package to ensure that EU legislation serves the public interest more effectively and guarantees respect for the principles of subsidiarity and proportionality in a more comprehensive manner, which in turn will contribute to a higher degree of transparency in EU decision-making; considers that the new Better Regulation framework should be a tool for the European Union to act in full compliance with the principles of subsidiarity and proportionality; stresses, notwithstanding the above, that, while it should provide for tests assessing compliance with these principles to ensure that the Union only acts where it adds value, it should not give rise to unnecessary delays in the adoption of the relevant legislation;

15. Welcomes the publication by the Commission, on 24 October 2017, of its communication entitled 'Completing the Better Regulation Agenda: Better solutions for better results', in which it sets out its efforts to increase the transparency, legitimacy and accountability of its work on better law-making, in particular as regards the consultation process and the possibilities for stakeholders to provide feedback on its proposals;

16. Welcomes the introduction by the Commission, in 2015, of new consultation and feedback mechanisms for new policy initiatives;

17. Underlines the importance of adequately explaining the need for legislative initiatives and their impact on all important sectors (economic, environmental, and social) with the aim of respecting the principles of subsidiarity and proportionality;

18. Supports the Commission's commitment to 'evaluate first' before considering potential legislative changes; considers, in this respect, that the European Union and the authorities of the Member States should work closely together to ensure better monitoring, measurement and evaluation of the actual impact of EU regulation on citizens, the economy, social structure and environment;

19. Welcomes the signature by the European Parliament, the Council and the Commission in 2016 of a new Interinstitutional Agreement on Better Law-Making; recalls that the Commission is committed to explaining in its explanatory memoranda how its proposals are justified in the light of the principles of subsidiarity and proportionality; welcomes the fact that, through the Interinstitutional Agreement on Better Law-Making, the Commission has committed itself to making the impact assessments of its legislative and non-legislative proposals available to national parliaments; recalls that this agreement also emphasised the need for more transparency in the legislative procedure and that the information provided to national parliaments must allow them to exercise fully their prerogatives under the Treaties;

20. Invites national parliaments to clearly indicate from the outset that their submission is a reasoned opinion under Protocol No 2 to the Treaties and the legislative proposal(s) it refers to, to clearly state the reasons for which it considers that the proposal breaches the subsidiarity principle, to include a brief summary of the argumentation, and to respect the eight-week time limit from the date of transmission of the relevant draft legislative act; notes that this will facilitate a timely and adequate treatment of reasoned opinions by all the institutions involved;

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21. Is of the opinion that, since the adoption of the Lisbon Treaty, the involvement of national parliaments in EU legislative procedures has developed significantly, through contacts with other national parliaments; encourages national parliaments to continue and further reinforce inter-parliamentary contacts, also on a bilateral basis, as a means of enhancing cooperation between Member States, and to do so with a democratic European vision, where the Union can add value, and in a spirit of solidarity, based on the rule of law and fundamental rights; underlines that these contacts can facilitate an exchange of best practices concerning the application of the principles of subsidiarity and proportionality;

22. Welcomes the fact that Parliament increasingly and more regularly plays the role of interlocutor with and intermediary between the national parliaments with regard to the subsidiarity and proportionality mechanisms; considers that enhancing dialogue at political level with national parliaments could be a means to rationalise subsidiarity and proportionality checks by better addressing the substance of legislative proposals;

23. Draws attention to the fact that in 2016 14 chambers of 11 national parliaments submitted reasoned opinions on the proposal for a Directive amending Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM(2016)0128), thus reaching the threshold of one third of the votes required by Article 7(2) of Protocol No 2 to the Treaties to trigger the so-called 'yellow card' procedure; recalls that the arguments put forward by the national parliaments were widely debated in Parliament with the Commission; notes that the Commission engaged with national parliaments within the framework of COSAC; notes that the Commission issued a communication in which it gave extensive reasons for maintaining the proposal⁽⁵⁾; considers that, in spite of the concerns raised by some national parliaments, the Commission, with the arguments set out therein, complied with its obligation to give reasons for its decision;

24. Notes that, in relation to the above-mentioned Commission proposal, seven national chambers sent opinions in the framework of the political dialogue, which mainly considered the proposal as compatible with the principle of subsidiarity; observes that the Committee of the Regions' Subsidiarity Expert Group considered that the objective of the proposal could be better achieved at EU level;

25. Recalls that the 'yellow card' procedure has been triggered twice in the past (once in 2012 and once in 2013), which, together with this new 'yellow card' procedure, proves that the system functions and that national parliaments can easily and in a timely fashion participate in the subsidiarity debate when they wish to do so; considers, in any case, that increased awareness of the role of national parliaments and better cooperation between them could improve *ex ante* subsidiarity monitoring;

26. Recalls that, according to Article 7 of Protocol No 2 to the Treaties, the European institutions should take account of the reasoned opinions issued by national parliaments or by a chamber of a national parliament; notes that some national parliaments have in the past expressed disappointment at the responses given by the Commission in instances where 'yellow cards' have been issued; observes, however, that the Commission has put in place procedures to ensure that it provides national parliaments with substantive and political responses to their concerns in a timely manner; calls on the Commission to systematically forward its replies to reasoned opinions to the European Parliament;

27. Takes note of the changes proposed by some national parliaments to the subsidiarity control mechanism; welcomes the conclusion reached by COSAC that any improvement to the subsidiarity control mechanism should not entail Treaty change; notes that an extension of the eight-week time limit in which national parliaments can issue a reasoned opinion would require an amendment of the Treaties or the Protocols thereto; recalls the context of the letter of 1 December 2009 on the practical arrangements for applying the subsidiarity control mechanism sent by the President and Vice-President of the Commission to the Presidents of the national parliaments, in which the Commission stated that, in order to take account of national parliaments' summer recesses, the month of August would not be taken into account when determining the deadline referred to in Protocol No 2; recalls the suggestion made by some national parliaments to the effect that the Commission should also consider the possibility of excluding the December recess of national parliaments from the calculation of the eight-week deadline;

28. Stresses that the adoption of legal acts requires the agreement of a large majority within the Council, comprising the national Ministers of all the Member States, who should be accountable to their national parliaments;

⁽⁵⁾ Commission communication of 20 July 2016 on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2 (COM(2016)0505).

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29. Notes that a number of tools enabling national parliaments and citizens to participate in every step of the legislative process, which ensure monitoring of respect for the principles of subsidiarity and proportionality, already exist; encourages, therefore, that full use of these existing tools be made, avoiding – where possible – the creation of even more complex administrative structures and lengthy procedures in times when the EU is struggling to make itself understood by its citizens, always with the aim of respecting and protecting their rights and interests; calls on the Member States to organise information campaigns and relevant seminars, to accurately inform citizens about the possibilities for them to participate in every stage of the legislative process;
30. Highlights that legislation should be comprehensive and clear to allow affected parties to understand their rights and obligations, including appropriate reporting, monitoring and evaluating requirements, while avoiding disproportionate costs, as well as being practical to implement;
31. Stresses the importance of promoting access to the impact assessments and roadmaps prepared by the Commission, of participating in public and/or stakeholder consultations organised by the Commission and/or the European Parliament, and of making suggestions through the REFIT platform 'Lighten the load: Suggestions'; notes, in this context, the smooth functioning of the website and of the effective and efficient regulation programme (REFIT), which came into effect in 2016;
32. Recalls the need to enhance existing formats for cooperation and establish options to improve the IPEX platform in order to foster awareness by national parliaments of their role in subsidiarity and proportionality checks, to assist them in dealing more efficiently with the information received under the early warning system and improve their cooperation and coordination; encourages national parliaments to give opinions on Commission proposals, all of which are available for consultation at any time on the internal database CONNECT; recalls that all of the information is available on the platform REGPEX;
33. Encourages national and regional parliaments to develop further their relations with the Committee of Regions, which has a group of 12 experts who examine legislative proposals in light of the principles of subsidiarity and proportionality;
34. Welcomes the interest shown by some national parliaments in playing a more positive and proactive role in European affairs through the use of a 'green card' procedure; observes that national parliaments have different views on the modalities of this procedure; considers that an informal mechanism based on inter-parliamentary cooperation can contribute to enhancing the political dialogue with national parliaments;
35. Notes, in relation to the above, that in 2015 20 parliamentary chambers co-signed or supported the first 'green card' initiative on food waste, and that in July 2016 nine parliamentary chambers co-signed the second 'green card' inviting the Commission to submit a legislative proposal implementing corporate social responsibility principles at European level; observes that some of the suggestions in the first 'green card' initiative were subsequently reflected in the revised Circular Economy package adopted by the Commission in December 2015; observes, therefore, that national parliaments already play a constructive role in the institutional framework and that there is no need, at this point in time, to create new institutional and administrative structures, which would make the whole process unnecessarily complicated;
36. Observes that in 2016 some regional parliaments informed the Commission directly of their opinions on certain Commission proposals; notes that the Commission has taken these views into account where appropriate; recalls that, according to Article 6 of Protocol No 2, it is up to each national parliament or each chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers;
37. Takes note of the case law of the Court of Justice of the European Union on subsidiarity and proportionality delivered in 2015 and 2016; emphasises that the Court has stated that the observance by the EU legislature of the obligation to state reasons as regards subsidiarity should be evaluated not only by reference to the wording of the contested act, but also by reference to its context and the circumstances of the individual case, and that the information provided should be sufficient and understandable by national parliaments, citizens and courts; emphasises, furthermore, that, in relation to proportionality, the Court has confirmed that the EU legislature must be allowed broad discretion in areas entailing political, economic and social choices, and in which it is called upon to undertake complex assessments;
38. Instructs its President to forward this resolution to the Council and the Commission.
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