Procedure file

Basic information

INI - Own-initiative procedure	2009/2142(INI)	Procedure completed
Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality Subject 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology 8.50.02 Legislative simplification, coordination, codification		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	JURI Legal Affairs		02/09/2009
		S&D GERINGER DE OEDENBERG Lidia Joanna	
		Shadow rapporteur	
		PPE ZWIEFKA Tadeusz	
	Committee for opinion	Rapporteur for opinion	Appointed
	AFCO Constitutional Affairs		25/01/2010
		PPE ZWIEFKA Tadeusz	
European Commission	Commission DG	Commissioner	
	Internal Market, Industry, Entrepreneurship and SMEs	BARROSO José Manuel	

Key events

26/09/2008	Non-legislative basic document published	COM(2008)0586	Summary
19/10/2009	Committee referral announced in Parliament		
23/06/2010	Vote in committee		Summary
29/06/2010	Committee report tabled for plenary	A7-0215/2010	
09/09/2010	Results of vote in Parliament		
09/09/2010	Debate in Parliament		
09/09/2010	Decision by Parliament	T7-0311/2010	Summary
09/09/2010	End of procedure in Parliament		

Technical information

Procedure reference	2009/2142(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 148-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/00887

Documentation gateway

Non-legislative basic document		COM(2008)0586	26/09/2008	EC	Summary
Committee draft report		PE438.154	03/03/2010	EP	
Committee opinion	AFCO	PE439.241	04/05/2010	EP	
Amendments tabled in committee		PE441.225	11/05/2010	EP	
Committee report tabled for plenary, single reading		A7-0215/2010	29/06/2010	EP	
Text adopted by Parliament, single reading		T7-0311/2010	09/09/2010	EP	Summary
Commission response to text adopted in plenary		SP(2010)7906	08/02/2011	EC	

Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality

PURPOSE: to present the 15th annual review of the application of the principles of subsidiarity and proportionality for 2007.

CONTENT: this is the 15th annual review of the application of the principles of subsidiarity and proportionality which the Commission presents in line with the protocol annexed to the Treaty establishing the EC. Unlike the reviews for the previous three years, this review does not cover the wider issues of better regulation as these were addressed in the Second Strategic Review of Better Regulation in the EU. The review also highlights two developments in 2007 which have an impact on how subsidiarity and proportionality are applied. First the establishment of the Impact Assessment Board which has led to reinforced scrutiny of subsidiarity and proportionality in Commission impact assessments; and secondly, the agreement on a new Treaty which gives an important new role to national parliaments in assessing how the two principles are applied.

1) Application of the principle by the Commission

Impact Assessments and the Impact Assessment Board: the Commission states that while impact assessment has become embedded in the working practices and decision-making of the Commission, the institution is committed to improving the system even further. A key development was the creation of the Impact Assessment Board (IAB) in November 2006 to provide independent quality support and control for impact assessments prepared by Commission services. The IAB's opinions are formally integrated into the Commission?s internal decision-making, from inter-departmental consultation to the final adoption by the College. In its opinions, the IAB frequently recommends substantial improvements to core elements of the impact assessments, including on subsidiarity and proportionality. On the basis of the IAB's work and of an external evaluation of the impact assessment system, the Commission has decided to make more operational the guidance it provides on the

analysis of subsidiarity and proportionality in the revised Impact Assessment Guidelines to be adopted in the second half of 2008. The Guidelines will contain explicit questions, closely based on protocol 30 of the Treaty establishing the European Community, which each impact assessment will have to address. The revised Guidelines will also reinforce the message that, while impact assessments typically examine problems that can be addressed by action at EU level, they must take into account the fact that the problems and the measures taken to address them, may have different effects in different Member States and regions of the Union. These changes will help to ensure that the Commission provides a more rigorous and transparent analysis and justification of its proposals than ever before. The Commission goes on to give examples of how it applied the principles, noting particularly, two proposals in the area of company law, which were stopped.

2) Application of the principles by other actors

National parliaments: the Lisbon Treaty will lead to a number of changes in the role of national parliaments in EU lawmaking. One of the most important innovations concerns the introduction of ex ante political control and ex post judicial control over the principle of subsidiarity. Ex ante political control will be provided by the introduction of an early warning mechanism allowing national parliaments to send a reasoned opinion when they consider that a European legislative proposal does not comply with the subsidiarity principle. The Commission has been

transmitting all new initiatives to national parliaments since 2006, and has put in place a procedure for responding. By December 2007, the Commission had received 166 opinions from 25 national parliaments in 19 Member States. These related to 86 Commission texts. Subsidiarity and proportionality have been important themes in the issues raised by national parliaments, and examples are given in the report.

European Parliament and Council: these institutions raised the issues of subsidiarity and proportionality on a number of occasions. The report cites Parliament?s amendments to the Marine Strategy Framework Directive, and the Directive on the protection of soil in 2007. The Council and the European Parliament should address subsidiarity and proportionality when proposing an amendment that affects the scope of Community action. The low number of amendments that actually does so reflects wider difficulties for Parliament and Council of providing impact assessments of significant amendments that are proposed, especially when during political discussions they are changed, split, or combined before coming to a vote. The review of the "Common Approach for Impact Assessment" ? which will take place in 2008 ? provides an opportunity for the Council, the European Parliament and the Commission to discuss ways of facilitating the assessment of amendments.

The report goes on to discuss the activities of the Committee of the Regions, noting that the latter launched an interactive Subsidiarity Monitoring Network in March 2007, and those of the Court of Justice which confirmed in certain decisions the established case-law on the principles of subsidiarity and proportionality.

The report states that three broad conclusions can be drawn:

- in 2007 each of the actors in the system, at national and European level, made a contribution to ensuring that Community proposals are scrutinised to ensure consistency with subsidiarity and proportionality. The evidence is that this functions well;
- the process of scrutiny is being reinforced in a number of ways: in the Commission through reinforcement of the impact assessment system; in national parliaments; and in the Committee of the Regions;
- the fact that national parliaments and the EU institutions have raised similar issues shows a growing degree of consensus on what is meant by subsidiarity and proportionality in practice.

The Commission will continue to follow these developments closely.

Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality

The Committee on Legal Affairs adopted the own-initiative report drafted by Lidia Joanna GERINGER de OEDENBERG (S&D, PL) on better lawmaking ? 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality.

The committee stresses the vital importance of making simple, clear laws that EU citizens can understand and emphasises that European institutions must respect the principles of subsidiarity and proportionality when formulating proposals.

Members stress that all draft legislation must include reasons for concluding that the objective can be better achieved by EU action, substantiated by qualitative and, wherever possible, quantitative indicators, in accordance with the protocol on the application of the principles of subsidiarity and proportionality annexed to the TFEU.

The report firmly supports the process of better regulation aimed at increasing the transparency, effectiveness and coherence of European Union legislation. It emphasises the Commission?s key role, as the institution with the power of legislative initiative, in drafting high-quality legislative proposals. Parliament undertakes to make every effort to examine such proposals promptly, in accordance with the appropriate legislative procedure. It also emphasises the importance of cooperating with Member States to ensure that legislation is correctly implemented.

Members consider that the improvement of interinstitutional cooperation in this vast area requires a revision of the Interinstitutional Agreement on better law-making of 2003. They urge the Commission, on the basis of the political agreement embodied in the resolution of 9 February 2010 on a revised Framework Agreement between the European Parliament and the Commission, to make every effort to ensure that Parliament and the Council are treated as equals in the lawmaking process, thus implementing the principle of equal treatment between Parliament and the Council deriving from the Lisbon Treaty, in particular by simultaneously and comprehensively notifying both institutions of all events and developments affecting that process and ensuring equal access to meetings and to proposals or other information.

The report stresses that the process of simplifying legislation must not lead to a lowering of the standards laid down in current legislation, which is why consultations with all interested parties, including social partners, must be an integral part of the process.

Members welcome the closer involvement of national parliaments in the European legislative process. They welcome the action taken by the Commission to ensure an effective exchange of information with national parliaments and to inform Parliament and the Council thereof. They also encourage national parliaments to distinguish clearly between opinions concerning the principle of subsidiarity and opinions on the substance of Commission proposals.

Impact assessment: underlining the Commission?s basic responsibility to carry out impact assessments, Members recall that new proposals should be evaluated with regard to the full extent of their impact, in accordance with the principle of an integrated approach, which means that their economic, social and environmental consequences all need to be analysed.

The report underlines the need to examine the social effects of legislative proposals, including their impact on the European labour market and living standards. It underlines once again the necessity to examine carefully the impact of legislation on businesses and suggests that the Commission should carry out an impact assessment on all proposals to reduce administrative burdens.

Members welcome, in particular, the fact that the Commission?s new Impact Assessment Guidelines call for analysis of the impact of forthcoming legislation and administrative initiatives on SMEs (the SME test) and for the results of such analysis to be taken into account when proposals are drafted. They encourage all Parliament committees to precede any discussion of a Commission legislative proposal with an exchange of views with the Commission on the impact assessment.

The committee believes that objective impact assessments are an extremely important tool for assessing Commission proposals and calls, therefore, for scrutiny of the conduct of impact assessments by an independent body, which should, however, be accountable to Parliament. In this regard, it emphasises that the quality of impact assessments should be subject to continuous monitoring.

The report recalls that, for an impact assessment to be objective, the Commission must systematically consult all interested parties, including small and medium-sized enterprises. It recognises the need to ensure that interested parties are better informed of the possibility of taking part in consultations and calls for the extension of the eight-week consultation period.

The Commission is called upon to carry out systematically ex-post assessments of adopted legislation in order, among other things, to verify insofar as possible the accuracy of the relevant impact assessments.

Reducing administrative burdens: the report welcomes the results of the Commission?s work to date in drafting proposals which, once adopted, will enable administrative burdens to be reduced by as much as 33% by 2012, an improvement on the earlier commitment to a 25% reduction. It notes that savings generated in this way could amount to more than EUR 40 billion.

Member emphasise the importance of reducing the costs for businesses operating in the European Union, in order to enable them to function effectively in difficult economic conditions and compete globally. They underline the need to streamline public administrative procedures. They also stress that administrative burden reduction must focus on unnecessary information requirements and, as such, fully supports the ?only once? principle set out in the Small Business Act. Moreover, members emphasise that reducing administrative burdens for businesses must not have any negative social or environmental consequences.

The report draws particular attention to the progress made in the work on those Commission proposals that offer the greatest potential for savings (i.e. the exemption of microenterprises from Union accounting requirements and the amendment of the VAT Directive to facilitate electronic invoicing).

Noting that the baseline programme for the measurement of administrative burdens has proved to be a useful but costly method, they encourage the Commission to consider alternative methods of measuring administrative burdens, such as consultation with interested parties, which would allow the prompt removal of burdens in specific cases. Members also share the Commission?s opinion that electronic communication constitutes an excellent tool for reducing administrative burdens and encourages it to realise the ideas set out in the e-Commission 2006-2010 framework and the i2010 strategy aimed at modernising administration in Europe. The Commission is urged to continue to implement sectoral plan measures to reduce administrative burdens.

Members point out that, to ensure that the programme to reduce burdens is successful, active cooperation between the Commission and the Member States is necessary in order to avoid discrepancies in interpretation and the ?gold-plating? of legislation.

The Commission is called upon to extend the Action Programme for Reducing Administrative Burdens in the EU to new priority areas and other legislative acts, and to continue this Action Programme beyond 2012.

Institutional and procedural comments: Members welcome the Commission?s efforts so far to identify and draft the proposals for simplifying and codifying European legislation. Nevertheless, they stress the need to maintain good interinstitutional cooperation in that regard, in particular in relation to the withdrawal by the Commission of legislative proposals that are not considered essential.

The Commission is called upon to proceed with the codification of legislative acts and to present the report scheduled for 2009 detailing the achievements of the codification programme as a whole. The committee stresses that the recasting technique should always be used when amending legislation. It points out that other initiatives for simplifying legislation are subject to the ordinary legislative procedure and the corresponding deadlines.

The report warns against abandoning necessary legislation in favour of self-regulation or coregulation or any other non-legislative measure. Members believe that the consequences of such choices should be subject to careful examination in each case, in accordance with Treaty law and the roles of the individual institutions. They stress, at the same time, that soft law should be applied with the greatest of care and on a duly justified basis, without undermining legal certainty and the clarity of existing legislation, and after consultation of Parliament.

The report points, furthermore, to a range of other institutional changes introduced by the Lisbon Treaty that will affect lawmaking in the European Union. It emphasises in particular the importance of the European citizens? initiative, which has the potential to become an essential element of European public debate and welcomes the Commission's proposal for a regulation on this matter. It stresses the need for close cooperation between Parliament and the Commission to create an effective and understandable instrument, with clear criteria of admissibility, that will be in accordance with the good practice of the EU lawmaking process.

Lastly, the report points out that the issue of better lawmaking is directly linked to the issue of monitoring the implementation of Union law. Members are closely following the implementation of the EU pilot project for such monitoring. However, they express concern that the proposed method for examining complaints could lead to the Commission being overly dependent on the Member States.

Better lawmaking - 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality

The European Parliament adopted a resolution on better lawmaking ? 15th annual report from the Commission pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality.

The resolution stresses the vital importance of making simple, clear laws that EU citizens can understand and emphasises that European institutions must respect the principles of subsidiarity and proportionality when formulating proposals.

Members stress that all draft legislation must include reasons for concluding that the objective can be better achieved by EU action, substantiated by qualitative and, wherever possible, quantitative indicators, in accordance with the protocol on the application of the principles of subsidiarity and proportionality annexed to the TFEU.

The resolution firmly supports the process of better regulation aimed at increasing the transparency, effectiveness and coherence of European Union legislation. It emphasises the Commission?s key role, as the institution with the power of legislative initiative, in drafting high-quality legislative proposals. Parliament undertakes to make every effort to examine such proposals promptly, in accordance with the appropriate legislative procedure. It also emphasises the importance of cooperating with Member States to ensure that legislation is correctly implemented.

Members consider that the improvement of interinstitutional cooperation in this vast area requires a revision of the Interinstitutional Agreement on better law-making of 2003. They urge the Commission, on the basis of the political agreement embodied in the resolution of 9 February

2010 on a revised Framework Agreement between the European Parliament and the Commission, to make every effort to ensure that Parliament and the Council are treated as equals in the lawmaking process, thus implementing the principle of equal treatment between Parliament and the Council deriving from the Lisbon Treaty, in particular by simultaneously and comprehensively notifying both institutions of all events and developments affecting that process and ensuring equal access to meetings and to proposals or other information.

The resolution stresses that the process of simplifying legislation must not lead to a lowering of the standards laid down in current legislation, which is why consultations with all interested parties, including social partners, must be an integral part of the process.

Members welcome the closer involvement of national parliaments in the European legislative process. They welcome the action taken by the Commission to ensure an effective exchange of information with national parliaments and to inform Parliament and the Council thereof. They also encourage national parliaments to distinguish clearly between opinions concerning the principle of subsidiarity and opinions on the substance of Commission proposals.

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The Commission is called upon to extend the Action Programme for Reducing Administrative Burdens in the EU to new priority areas and other legislative acts, and to continue this Action Programme beyond 2012.

Institutional and procedural comments: Members welcome the Commission?s efforts so far to identify and draft the proposals for simplifying and codifying European legislation. Nevertheless, they stress the need to maintain good interinstitutional cooperation in that regard, in particular in relation to the withdrawal by the Commission of legislative proposals that are not considered essential.

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The resolution warns against abandoning necessary legislation in favour of self-regulation or coregulation or any other non-legislative measure. Members believe that the consequences of such choices should be subject to careful examination in each case, in accordance with Treaty law and the roles of the individual institutions. They stress, at the same time, that soft law should be applied with the greatest of care and on a duly justified basis, without undermining legal certainty and the clarity of existing legislation, and after consultation of Parliament.

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cooperation between Parliament and the Commission to create an effective and understandable instrument, with clear criteria of admissibility, that will be in accordance with the good practice of the EU lawmaking process.

The Commission is urged to give an undertaking regarding the deadlines by which it will meet requests made by Parliament pursuant to Article 225 TFEU, with specific reference to the commitment under the Framework Agreement to draw up a report on the follow-up to all legislative initiative requests during the three months following adoption of a legislative initiative report and to submit a legislative proposal within a year at most.

Lastly, the resolution points out that the issue of better lawmaking is directly linked to the issue of monitoring the implementation of Union law. Members are closely following the implementation of the EU pilot project for such monitoring. However, they express concern that the proposed method for examining complaints could lead to the Commission being overly dependent on the Member States.