

# Procedure file

Basic information		
INI - Own-initiative procedure	<a href="#">2014/2252(INI)</a>	Procedure completed
Annual reports 2012-2013 on subsidiarity and proportionality		
Subject 8.40.10 Interinstitutional relations, subsidiarity, proportionality, comitology		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 <b>JURI</b> Legal Affairs		13/10/2014
		 <a href="#">KARIM Sajjad</a>	
		Shadow rapporteur	
		 <a href="#">ZWIEFKA Tadeusz</a>	
		 <a href="#">DELVAUX Mady</a>	
		 <a href="#">KAUFMANN Sylvia-Yvonne</a>	
		 <a href="#">MARINHO E PINTO António</a>	
		 <a href="#">ANDERSSON Max</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	 <b>AFET</b> Foreign Affairs	The committee decided not to give an opinion.	
	 <b>DEVE</b> Development	The committee decided not to give an opinion.	
	 <b>INTA</b> International Trade		21/01/2015
		 <a href="#">BORRELLI David</a>	
 <b>BUDG</b> Budgets	The committee decided not to give an opinion.		
 <b>CONT</b> Budgetary Control		12/02/2015	
	 <a href="#">ŠULIN Patricija</a>		
 <b>ECON</b> Economic and Monetary Affairs	The committee decided not to give an opinion.		
 <b>EMPL</b> Employment and Social Affairs		11/02/2015	
	 <a href="#">STEVENS Helga</a>		

<b>ENVI</b>	Environment, Public Health and Food Safety	The committee decided not to give an opinion.
<b>ITRE</b>	Industry, Research and Energy	The committee decided not to give an opinion.
<b>IMCO</b>	Internal Market and Consumer Protection	The committee decided not to give an opinion.
<b>TRAN</b>	Transport and Tourism	The committee decided not to give an opinion.
<b>REGI</b>	Regional Development	The committee decided not to give an opinion.
<b>AGRI</b>	Agriculture and Rural Development	The committee decided not to give an opinion.
<b>PECH</b>	Fisheries	The committee decided not to give an opinion.
<b>CULT</b>	Culture and Education	The committee decided not to give an opinion.
<b>LIBE</b>	Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.
<b>AFCO</b>	Constitutional Affairs	20/01/2015
		 <a href="#">UJAZDOWSKI</a> <a href="#">Kazimierz Michał</a>
<b>FEMM</b>	Women's Rights and Gender Equality	The committee decided not to give an opinion.
<b>PETI</b>	Petitions	The committee decided not to give an opinion.

European Commission

Commission DG

[Justice and Consumers](#)

Commissioner

JOUROVÁ Věra

## Key events

05/08/2014	Non-legislative basic document published	<a href="#">COM(2014)0506</a>	Summary
15/01/2015	Committee referral announced in Parliament		
13/10/2015	Vote in committee		
16/10/2015	Committee report tabled for plenary	<a href="#">A8-0301/2015</a>	Summary
11/04/2016	Debate in Parliament		
12/04/2016	Results of vote in Parliament		
12/04/2016	Decision by Parliament	<a href="#">T8-0103/2016</a>	Summary
12/04/2016	End of procedure in Parliament		

## Technical information

Procedure reference	2014/2252(INI)
Procedure type	INI - Own-initiative procedure

Procedure subtype	Annual report
Legal basis	Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	JURI/8/02323

## Documentation gateway

Supplementary non-legislative basic document		<a href="#">COM(2013)0566</a>	30/07/2013	EC	Summary
Non-legislative basic document		<a href="#">COM(2014)0506</a>	05/08/2014	EC	Summary
Committee draft report		<a href="#">PE557.127</a>	05/05/2015	EP	
Committee opinion	<b>AFCO</b>	<a href="#">PE549.117</a>	07/05/2015	EP	
Committee opinion	<b>CONT</b>	<a href="#">PE549.234</a>	07/05/2015	EP	
Committee opinion	<b>EMPL</b>	<a href="#">PE549.221</a>	29/05/2015	EP	
Amendments tabled in committee		<a href="#">PE557.420</a>	03/06/2015	EP	
Committee opinion	<b>INTA</b>	<a href="#">PE554.679</a>	17/06/2015	EP	
Committee report tabled for plenary, single reading		<a href="#">A8-0301/2015</a>	16/10/2015	EP	Summary
Text adopted by Parliament, single reading		<a href="#">T8-0103/2016</a>	12/04/2016	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2016)484</a>	20/09/2016	EC	

## Annual reports 2012-2013 on subsidiarity and proportionality

The Commission presented its 20th annual report on the application of the principles of subsidiarity and proportionality in EU law making in 2012. The report looks at how the different EU institutions and bodies have implemented these two principles and whether practice has changed in comparison to previous years. It also analyses in more detail certain Commission proposals that were the subject of reasoned opinions in 2012.

National Parliaments: 2012 saw the first use of the yellow card by national Parliaments in the context of the subsidiarity control mechanism, in response to the Commissions [proposal for a 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 (Monti II).

The Commission concluded that the subsidiarity principle had not been breached, but it took note of the views expressed by national Parliaments as well as the state of play of the discussions on the draft regulation among stakeholders. It recognised that its proposal was unlikely to gather the necessary political support within the European Parliament and Council to enable adoption.

The Commission took its decision to withdraw the Monti II proposal on 26 September 2012.

In 2012, the Commission received from national Parliaments 70 reasoned opinions, with a slight increase of around 9% compared to 2011. Reasoned opinions continue to vary greatly in terms of their form and the type of arguments put forward by national Parliaments underpinning their conclusion that the principle of subsidiarity was breached. Similarly to the previous year, the focus of reasoned opinions issued by national Parliaments varied greatly. The 70 reasoned opinions covered no fewer than 23 Commission proposals.

After the Monti II proposal (12 reasoned opinions), the [proposal for a regulation](#) on the Fund for European Aid to the Most Deprived elicited the second highest number of reasoned opinions. Eight other proposals elicited three reasoned opinions each.

As in 2011, the Swedish Riksdag was the national Parliament which adopted by far the highest number of reasoned opinions (20). The French Sénat issued the second highest number of reasoned opinions (7), followed by the German Bundesrat (5).

Scope of subsidiarity control: 2012 saw an intensification of discussions concerning the definition of the principles of subsidiarity and proportionality. Although national Parliaments see clear benefits in closer coordination of their scrutiny work and more voices call for guidelines, they wish to maintain the right to interpret these principles. Only half of the national Parliaments responding to the COSAC questionnaire were in favour of this. All who supported it insisted that any guidelines must be non-binding. In this context, it should be recalled that the Commissions Impact Assessment Guidelines already set out clearly the criteria used to assess the compliance of Commission proposals with subsidiarity and proportionality, and the Commission has always encouraged other institutions to apply the same criteria.

Application of the principles by the institutions: the impact assessment board (IAB) opinions help improve the analysis of compliance with the principles of subsidiarity and proportionality, and they constitute, along with the IA reports themselves, important elements underpinning the Commissions political decision-making process. In 2012, the IAB examined 97 impact assessments and issued 144 opinions. Comments on

issues of subsidiarity were included in 33% of its opinions.

Subsidiarity control and monitoring issues also figured prominently on the agenda of the European Parliament and the Committee of the Regions, who both adapted their internal procedures to be able to better examine the impact and added value of their work.

As a result, the Committee of the Regions can now feed information, at the explicit request by the Commission, relating to the regional and local impact of a planned proposal into the Commissions impact assessments.

The European Parliament also created a new horizontal directorate to provide a broader range of services to EP committees on impact and European added-value assessments. At the request of a European Parliament committee, European added-value assessments can be provided to assess the potential impacts and identify the advantages and disadvantages of proposals made in legislative reports of the Parliament.

The European Parliament can now also produce reports on the cost of not taking EU-level action, on policy areas with significant potential for greater efficiency and/or on achieving public good by taking action at EU level, where such action is currently absent.

## Annual reports 2012-2013 on subsidiarity and proportionality

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**PURPOSE:** to present the Commissions 21st annual report on the application of the principles of subsidiarity and proportionality in the legislative process in the EU in 2003.

**CONTENT:** the report looks at how the EU institutions and bodies have implemented the principles of subsidiarity and proportionality and provides a more detailed analysis of a number of Commission proposals that were the subject of reasoned opinions submitted by national Parliaments in 2013.

National Parliaments: 2013 saw, for the second time ever, the triggering of a yellow card by national Parliaments in the context of the subsidiarity control mechanism, namely on the [Commissions proposal for a Council Regulation on the European Public Prosecutors Office](#).

The 88 reasoned opinions issued by national Parliaments (an increase of 25% in comparison to the previous year) covered 36 Commission proposals. This seems to confirm a trend which had already been observed in previous years: national Parliaments have varying political interests and different priorities in choosing Commission proposals to be scrutinised in the context of the subsidiarity control mechanism.

They also seem to apply different criteria when assessing a proposals compliance with the principle of subsidiarity.

The proposal on the EPPO generated 13 reasoned opinions; the second highest number of reasoned opinions (9) were issued in relation to the [proposal for a Directive](#) establishing a framework for maritime spatial planning and integrated coastal management.

National Parliaments issued 7 reasoned opinions on the [proposal for a Directive](#) on the manufacture, presentation and sale of tobacco and related products as well as on the [proposal for a Regulation](#) establishing a framework on market access to port services and financial transparency.

As in 2012, the Swedish Riksdag was the national Parliament which issued by far the highest

number of reasoned opinions (9). The Austrian Bundesrat and the Lithuanian Seimas issued the second highest number of reasoned opinions (6 each), followed by the two Spanish chambers (the Congreso de los Diputados and the Senado), the Maltese Kamra tad-Deputati, the Dutch Tweede Kamer and the UK House of Commons (5 each).

Application of the two principles by institution: the report notes that all institutions involved in the legislative process were active in ensuring control of the principle of subsidiarity.

The Commission continued to carry out in-depth assessments of compliance with the principles of subsidiarity and proportionality at different stages. Before adopting legislative proposals, it provides assessments (e.g. in roadmaps and impact assessments) and after adoption, it examines and replies to reasoned opinions from national Parliaments expressing subsidiarity concerns.

Subsidiarity control and monitoring issues also figured prominently on the agenda of the European Parliament and the Committee of the Regions.

The European Parliament continued to support its legislative own-initiative reports with evidence-based analysis of the potential EU added value. In total, five assessments accompanying legislative own-initiative reports by the European Parliament were finalised in 2013. They covered:

- better governance of the single market;
- combating violence against women;
- a Directive on the cross-border transfer of a companys registered office (the 14<sup>th</sup> Company Law Directive);
- the application of the principle of equal pay for men and women for equal work of equal value; and
- the statute for European mutual societies.

In 2013, the European Parliaments ex ante Impact Assessment Unit produced 50 initial appraisals of Commission impact assessments, two detailed appraisals of Commission impact assessments, three impact assessments on the Parliaments amendments (in total, 20 amendments were assessed).

The Committee of the Regions similarly increased its work on subsidiarity issues, especially by adopting and implementing a subsidiarity work programme for the first time. Since local and regional authorities are responsible, in most Member States, for implementing EU waste legislation, the CoR closely monitored the review of EU waste policy and legislation. A Quick Scan territorial impact assessment workshop was held to look at this initiative on 25 September 2013.

## Annual reports 2012-2013 on subsidiarity and proportionality

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The Committee on Legal Affairs adopted the own-initiative report by Sajjad KARIM (ECR, UK) on the annual reports 2012-2013 on subsidiarity and proportionality.

Members emphasised that the use of the EUs competences should be guided by the principles of subsidiarity and proportionality and welcomed the fact that in 2012 and 2013, compliance with these two principles was carefully scrutinised by the EU institutions and by national parliaments.

They regretted, however, that the annual reports prepared by the Commission were somewhat perfunctory, and often did not delve into a more detailed consideration of how subsidiarity and, in particular, proportionality were observed in EU policy-making.

National parliaments: noting the importance of parliaments and of their territorial impact and closeness to the citizens, Members called for their greater involvement in the early warning system and in the European debate.

2012 saw the first use of the so-called yellow card procedure by national parliaments regarding the principle of subsidiarity. However, Members noted that reasoned opinions issued by national parliaments pointed out the existence of various interpretations of the principles of subsidiarity and proportionality.

Members encouraged national parliaments to be faithful to the letter of the TEU when assessing compliance with the principles of subsidiarity and proportionality, and strongly recommended that national parliaments and European institutions engage in exchanges of views and practices of scrutinising their application. They regretted the absence of common patterns, which makes it more difficult to evaluate on what basis national parliaments intervene.

Impact assessments: the report stressed that enhanced subsidiarity checks could be considered an important tool for reducing the so-called democratic deficit. The Impact Assessment Board considered more than 30 % of IAs reviewed by them in 2012 and 2013 to have included an unsatisfactory analysis of the principle of subsidiarity. Members expressed concern that this number rose to 50 % in 2014, and urged the Commission in its revision of the guidelines for impact assessments to address this issue and reverse this trend.

The committee reiterated the call made in Parliaments [resolution of 14 September 2011](#) for the use of national impact assessments as a complement to those carried out by the Commission in support of proposed legislation.

Furthermore, given that legislative proposals may change dramatically in the lead-up to adoption by the institutions, Members called 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.

Commissions response: expressing disappointment at the response of the Commission to national parliaments in instances where yellow cards had been issued, Members believed that the Commission should respond comprehensively and on an individual basis to any concerns raised as part of a dialogue in addition to any published opinion. They felt also that it was necessary for the Commission to appear before the relevant committee or committees of the Parliament to explain its position in detail.

Political dialogue: Members considered that political dialogue should be improved not only in instances of a yellow or orange card, but as a general rule. They welcomed in this regard the Commissions undertaking to appear before more national parliaments, and called for the Parliament to consider undertaking similar initiatives.

In order to promote a subsidiarity culture across the EU, Members recommended two particular initiatives:

- facilitating greater inclusion of positions 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;
- considering an extension of the time period for consultation of national parliaments under the subsidiarity check if national parliaments request this on grounds of time constraints on the basis of justified objective reasons, such as natural disasters and recess periods, to be agreed between national parliaments and the Commission.

Green card: the report noted that several national parliaments in COSAC had expressed their interest in proposing the introduction of a green card as an instrument for improving political dialogue, having first secured the support of Parliament, the opportunity to make constructive proposals for the Commissions consideration and with due regard for the Commissions right of initiative.

The report also:

- asked the Commission, in compliance with the proportionality and subsidiarity principles, to simplify the procedure for applying for EU funds, with a view to making the application procedure more efficient and results-oriented;
- emphasised the need to clarify the division of competences when trade policies impact on investments other than the foreign direct ones, namely portfolio investments, as controversies persisted in current Free Trade Agreements;
- called for clarification of whether trade instruments, such as investor-state dispute settlement (ISDS), could jeopardise the subsidiarity principle with respect to the competences of the Member States;
- called for more in-depth ex-ante and ex-post impact assessments regarding the proportionality of proposed measures with respect to EU financial assistance to other countries, namely macro-financial assistance.

Lastly, the report stressed the need for a proper mechanism for proper consultation, dialogue and involvement of citizens, businesses (namely SMEs) and civil society in the EU decision-making process for trade policy.

## Annual reports 2012-2013 on subsidiarity and proportionality

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The European Parliament adopted by 400 votes to 257, with 57 abstentions, a resolution on the annual reports 2012-2013 on subsidiarity and proportionality.

The Commission received reasoned opinions addressing 83 legislative proposals in 2012, and 99 legislative proposals in 2013. When taken as a whole, the proportion of reasoned opinions as a percentage of total submissions from national parliaments under the Protocol 2 of the

Treaty has increased significantly when compared to 2010 and 2011: this percentage was 25 % in 2012 and 30 % in 2013.

As a consequence, Members emphasised that the use of the EUs competences should be guided by the principles of subsidiarity and proportionality and welcomed the fact that in 2012 and 2013, compliance with these two principles was carefully scrutinised by the EU institutions and by national parliaments. They noted, however, that the annual reports prepared by the Commission were somewhat perfunctory, and called on the latter to consider preparing more detailed reports regarding the way subsidiarity and proportionality are observed in EU policy-making.

National parliaments: noting the importance of parliaments and of their territorial impact and closeness to the citizens, Members welcomed the stronger involvement of national parliaments in the European legislative process in recent years, and called for their greater involvement in the early warning system and in the European debate.

2012 saw the first use of the yellow card procedure by national parliaments regarding the principle of subsidiarity in response to the Commissions [proposal for a regulation](#) on the exercise of the right to take collective action within the context of freedom of establishment and the freedom to provide services (Monti II). A second yellow card was triggered in 2013 on the Commissions [proposal for a Council Regulation](#) on the establishment of the European Public Prosecutors Office.

Members noted that reasoned opinions issued by national parliaments pointed out the existence of various interpretations of the principles of subsidiarity and proportionality. They encouraged national parliaments to be faithful to the letter of the TEU when assessing compliance with the principles of subsidiarity and proportionality, and strongly recommended that national parliaments and European institutions engage in exchanges of views and practices of scrutinising their application. They regretted the absence of common patterns, which makes it more difficult to evaluate on what basis national parliaments intervene.

Impact assessments: Parliament stressed that enhanced subsidiarity checks could be considered an important tool for reducing the so-called democratic deficit. The Impact Assessment Board considered more than 30 % of IAs reviewed by them in 2012 and 2013 to have included an unsatisfactory analysis of the principle of subsidiarity. Members expressed concern that this number rose to 50 % in 2014, and urged the Commission in its revision of the guidelines for impact assessments to address this issue and reverse this trend.

Parliament reiterated the call made in Parliaments [resolution of 14 September 2011](#) for the use of national impact assessments as a complement to those carried out by the Commission in support of proposed legislation.

Furthermore, given that legislative proposals may change dramatically in the lead-up to adoption by the institutions, Members called 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.

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Parliament also:

- asked the Commission, in compliance with the proportionality and subsidiarity principles, to simplify the procedure for applying for EU funds, with a view to making the application procedure more efficient and results-oriented;
- underlined its commitment to ensuring compliance with principles of subsidiarity and proportionality through assessments of its own legislative own-initiative reports, ex-ante appraisals of Commission impact assessments and the constant assessment of the potential EU added value and the cost of non-Europe;
- noted, with regard to the recent discussions on investor-state dispute settlement (ISDS), that Article 3 of the Treaty on the Functioning of the European Union designates the common commercial policy and that therefore, the principle of subsidiarity does not apply to that policy;
- stressed the need to clarify the scope of the Unions exclusive competence on foreign direct investment. The different policies implemented by the Member States as regards investment protection have led to the current situation in which the Member States are party to some 1 400 bilateral investment treaties with, at times, different provisions, which could lead to varying treatment of EU investors abroad, depending on the origin of the investment in question;
- called for more in-depth ex-ante and ex-post impact assessments regarding the proportionality of proposed measures with respect to EU financial assistance to other countries, namely macro-financial assistance.

Lastly, Parliament stressed the need for a proper mechanism for proper consultation, dialogue and involvement of citizens, businesses (namely SMEs) and civil society in the EU decision-making process for trade policy.