



## Constitutional and Legislative Affairs Committee

Autumn 2012 subsidiarity monitoring report (September - December 2012)

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This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

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Research  
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## Contents

1.	Introduction.....	3
2.	The monitoring process.....	3
3.	Overview of draft EU legislative proposals received (September 2012 - December 2012) .....	5
3.1.	EU legislative proposals that did not raise any subsidiarity concerns.....	5

## 1. Introduction

**Under Standing Order 21, a “responsible committee” in the Assembly** (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>1</sup>

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers. *[RS emphasis]*<sup>2</sup>

## 2. The monitoring process

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<sup>1</sup> Official Journal of the European Union, [Consolidated version of the Treaty on European Union](#), C83/204, 30 March 2010

<sup>2</sup> Official Journal of the European Union, [Protocol on the Application of the Principles of Subsidiarity and Proportionality](#), C310/207, 16 December 2004



In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (**known as the “batch list”**) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the **Assembly’s** Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate **to are “legislative” or “non-legislative”<sup>3</sup>** and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that **are both “legislative” and** deal with issues of interest to the Assembly are then checked further by officials from **the Assembly’s Legal Services**, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to **issue a “reasoned opinion” on the proposal or not.**
- **Those proposals which are “legislative” and relate to devolved matters but raise no** subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September-December], Spring [January-April] and Summer [May - August]).

This report therefore includes a general overview of those draft EU legislative proposals **received by the Assembly’s Research Service** between September and December 2012, and provides further information about those proposals that were identified by Assembly **officials as being both “legislative” in nature and relating** to devolved matters.

Please note however that this report only monitors “legislative” proposals, it does not contain details of any “non-legislative proposals” that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

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<sup>3</sup> Subsidiarity concerns can only be raised in relation **to draft “legislative” proposals.**

### 3. Overview of draft EU legislative proposals received (September 2012 – December 2012)

A total of 295 UK Government EMs relating to EU proposals were received by the Assembly's **Research Service** from the UK Government between 1 September 2012 and 31 December 2012.

Of these, 7 EMs were identified by Assembly officials as being both "**legislative**" in nature and of interest to the Assembly. Following further analysis **by officials from the Assembly's** Legal Service, Brussels Office and Research Service, none of the 7 proposals were identified as raising subsidiarity concerns.

#### 3.1. *EU legislative proposals that did not raise any subsidiarity concerns*

Date EM  
emailed

Title and description

***Proposal for a Decision of the European Parliament and of the Council amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances*** (COM(2012)416).

6 September  
2012

The proposal aims to amend an existing Directive in order to clarify the **European Commission's legal power to specify when EU Emissions Trading Systems allowances (ETS - which sets a cap on carbon emissions for the heavy industry and power sectors) will be auctioned as part of the third phase of the ETS.**

***Proposals for regulations on medical devices and in vitro diagnostic devices*** (COM(2012)540/541/542).

15 October  
2012

These proposals aim to replace the existing three directives on medical and in vitro diagnostic devices to strengthen the existing regulatory framework and to ensure more consistent implementation of the legislation across the EU.

The draft legislation aims to provide users of medical devices and patients with a high level of confidence that devices are acceptably safe, along with providing manufacturers with a single set of regulatory requirements to provide free and unhindered access to the EU markets. The EM provided by the UK Department for Health welcomes the proposals in light of lessons learnt following the recent events involving PIP breast implants and metal on metal hip replacements.

16 October  
2012

***Proposal for a directive of the European Parliament and of the Council amending Council Directive 2001/110/EC relating to honey***

(COM(2012)530).

The proposal aims to clarify the status of pollen in honey, in the light of a judgement made on this matter in September 2011 by the European Court of Justice (ECJ). It also aims to align the existing implementing powers of **the European Commission under the “Honey Directive” with the provision** laid down in the Treaty on the Functioning of the European Union.

9 November  
2012

**Proposal for a Directive of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and on the promotion of the use of energy from renewable sources** (COM(2012)595)

This proposal amends the Fuel Quality Directive and the Renewable Energy Directive to minimise the impact of the “Indirect Land Use Charge” (the term used when production of biofuels on existing agricultural land results in the displacement of production on to previously uncultivated land).

26 November  
2012

**Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases** (COM(2012)643).

The proposal aims to place further controls to achieve a reduction in emissions of fluorinated gases, whilst maintaining the current provisions of the existing EU fluorinated gases regulation. The most important new measure proposed is a phase down in the supply of HFCs to be managed by a freeze in supply in 2015 followed by a series of reduction steps commencing in 2016. The objective is by 2030 to have reached a level of supply of 21% of the annual average of the total quantity of HFCs produced and imported into the EU during the period from 2008 to 2011.

6 December  
2012

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment** (COM(2012)628).

The purpose of this proposal is to amend an existing directive (Directive 2011/92/EU) on the assessment of the effects of certain public and private projects on the environment. In particular, the aim of the proposal is to correct perceived shortcomings in the existing process by amending the procedure for determining whether projects should be subject to a full assessment (screening); improving the quality of the assessments; and ensuring that the Directive is applied consistently between Member States and in relation to other European Union legislation. The proposal also aims



to reflect on-going environmental and socio-economic priorities by streamlining the process and reducing burdens on business, and amends the text to incorporate relevant European caselaw.

UK Government EM states that the devolved administrations have been consulted in preparing their position on this proposal.

***Proposal for a Regulation of the European Parliament and of the Council amending certain legislative acts in the domain of agricultural and fishery statistics (COM(2012)724).***

21 December  
2012

This proposal updates existing statistical legislation on agriculture and fisheries to reflect changes in the Lisbon Treaty. The subjects covered are: surveys of milk and milk products; economic accounts for agriculture; catch and activity statistics of fishery products; statistics on aquaculture; livestock and meat statistics, and crop statistics. The proposal also updates the comitology process in the Commission and outlines where the Commission has the power to adopt Delegated Acts.

The proposed Regulation includes a clause restricting the scope of the changes: **“The Commission should ensure that these delegated acts do not impose a significant additional administrative burden on the Member States or on the respondent units.”**