



Constitutional and Legislative Affairs Committee

Summer 2013 subsidiarity monitoring report (May - August 2013)

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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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Contents

1.	Introduction.....	3
2.	The monitoring process.....	4
3.	Overview of draft EU legislative proposals received (May – August 2013).....	5
3.1.	EU legislative proposals that did not raise any subsidiarity concerns.....	6

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.¹

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]*²

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

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



2. The monitoring process

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’³ 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 May and August 2013, 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.

³ Subsidiarity concerns can only be raised in relation to draft ‘legislative’ proposals.



3. Overview of draft EU legislative proposals received (May – August 2013)

A total of 370 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 May and 31 August 2013.

Of these, 18 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 18 proposals were identified as raising subsidiarity concerns. Details of these proposals are included below.

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

<u>Date EM emailed</u>	<u>Title and description</u>
8 May 2013	<p><i>An amended proposal for a Regulation of the European Parliament and of the Council on <u>the European Maritime and Fisheries Fund</u> (COM(2013)245).</i></p> <p>This amended proposal aims to align the management and control system for the European Maritime and Fisheries Fund with those for the other European Structural Investment (ESI) funds under the Common Provisions Regulation.</p>
9 May 2013	<p><i>Proposal for a Council Decision establishing the position to be taken by the European Union within the Committee on Government Procurement with respect to decisions implementing certain provisions of the Protocol Amending the <u>Agreement on Government Procurement</u> (COM(2013)142).</i></p> <p><i>Proposal for a Council Decision on the conclusion of the Protocol Amending the <u>Agreement on Government Procurement</u> (COM(2013)143).</i></p> <p>These proposals aim to conclude the 'Protocol' which amends the Agreement on Government Procurement ('GPA') on behalf of the EU. The GPA is an international agreement under the World Trade Organisation whose signatories agree to mutually open up their public and utilities procurement markets.</p>
14 May 2013	<p><i>Amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the <u>European Regional Development Fund, The European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation</u> (COM(2013)246).</i></p> <p>This proposal amends the Common Provisions Regulation to align the management and control system of the European Maritime and Fisheries Fund with that of the cohesion policy.</p>

Proposal for a Regulation of the European Parliament and of the Council on animal health (COM(2013)260).

28 May 2013

This proposal establishes a legal framework to support the Animal Health Strategy for the EU, published in 2007. The specific objectives of the proposed Regulation are: to establish a single, simplified regulatory framework that sets out the objectives, scope and principles of regulatory intervention based on good governance and compliant with international (e.g. OIE) standards that will enable quick reaction in case of emerging diseases, ensure consistency across the field of animal health, reduce the impact of animal diseases on animal and public health, animal welfare, economy and society as far as possible, and ensure the smooth functioning of the internal market of animals and animal products.

The proposal relates to COM(2013)262, 265 and 267 below.

*Proposal for a Regulation of the European Parliament and of the Council on the production and making available on the market of plant reproductive material (*plant reproductive material law*) (COM(2013)262).*

28 May 2013

The proposal aims to update, simplify and consolidate the current EU regulatory regime comprising 12 directives and some 90 secondary acts, which will be repealed.

Whilst the proposed regulation includes many aspects of the current EU regime, it also includes additional requirements seeking to clarify and harmonise existing approaches throughout the European Union to ensure the free movement of plant reproductive material.

Proposal for a Regulation of the European Parliament and of the Council on protective measures against pests of plants (COM(2013)267).

28 May 2013

The proposal seeks to strengthen the current plant health regime so as to protect European agriculture, horticulture, forestry, parks, gardens and the environment by preventing the entry and spread of harmful non-native pests and diseases. In particular, the proposal aims to replace deficiencies encountered in the current regime in order to put in place a robust, sustainable and transparent regulatory framework.

- The proposal provides detailed technical rules on:
- Preventing the entry of harmful pests and diseases;
- Prioritising risks;
- Controlling outbreaks;

- Tightening internal controls; and
- Improved communication and collaboration.

The proposed regulation is one of five in a package of interconnected proposals to update and simplify controls in the agri-food chain and improve EU harmonisation. The others cover feed and food controls, plant reproductive material and animal health, and financial measures.

Amendment of the Environmental Accounts Regulation (COM(2013)247).

This proposal amends the Environmental Accounts Regulation to implement three additional modules of accounts, namely:

29 May 2013

- Environmental Protection Expenditure;
- Environmental Goods and Services; and
- Physical Energy Flow Accounts.

Proposal for a Regulation of the European Parliament and of the Council on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union (COM(2013)228).

This Regulation proposes that public documents originating in Member States are exempted from all forms of 'legalisation'. Legalisation refers to confirmation that the signature, seal or stamp on a public document is genuine.

3 June 2013

Public documents are defined for the purposes of the proposal as those issued by authorities of a Member State and having formal evidentiary value relating to birth, death, name, marriage and registered partnership, parenthood, adoption, residence, citizenship and nationality, real estate, legal status and representation of a company or other undertaking, intellectual property rights, and absence of a criminal record. The UK does not require the legalisation of documents for use in the UK.

The Regulation also proposes to establish EU multilingual standard forms for birth, death, marriage, registered partnership and legal status, and representation of a company or other undertaking. In addition, standard forms could be established at a later stage for public documents relating to name, parenthood, adoption, residence, citizenship and nationality, real estate, intellectual property rights and absence of a criminal record.

Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material and plant protection products (COM(2013)265).

3 June 2013

This regulation relates to COM(2013)267 (see above) and proposes a new framework for the organisation of official controls, such as inspections and audits, undertaken by Member States and their delegated enforcement authorities to verify business compliance with agri-food chain law.

The proposal aims to simplify the current legislative framework and create a more integrated approach to official controls along the entire agri-food chain by including in its scope food, animal feed, animal health and welfare, plant health and plant reproductive material controls.

Proposal of the European Parliament and of the Council amending Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products with regard to certain conditions for access to the market (2013/0150(COD)).

7 June 2013

Biocides are chemicals used to control harmful organisms. Examples include wood preservatives, disinfectants, rodenticides and insecticides. They are currently regulated by a new direct-acting Regulation EU No 528/2012 which came into force on 1 September 2013.

This proposal seeks making further amendments to the Regulation to correct certain errors.

Proposal for a Regulation of the European Parliament and of the Council establishing a framework on the market access to port services and the financial transparency of ports (COM(2013)295 & 296).

14 June 2013

These proposals seek to impose a regulatory framework aimed at improving the efficiency and competitiveness of all EU ports and to contribute towards their ability to cope with increased demand in the transport and logistics sector.

The proposed Regulation would provide for the following:

- establishment of the principle of freedom to provide specified types of port services, subject to certain requirements;
- the number of competing providers may be limited, and where a limit is applied, there must be a transparent selection process for contracts;

- Member States may impose public service obligations, and in these circumstances they can keep port services in-house, and so not be obliged to tender them;
- provisions requiring transparency of payments by public authorities and certain other specific accounting requirements;
- requirements relating to charges for port services (including cargo-handling) and infrastructure, including a power for the Commission to adopt delegated acts in relation to the basis for and principles of port charges;
- requirements relating to consultation by ports of port-users and other stakeholders;
- creation or specification of a new 'independent supervisory body' that would be required to investigate and rule on complaints of alleged breaches of the Regulation's requirements.

Proposal for a Regulation of the European Parliament and of the Council laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (COM(2013)327).

21 June 2013

The proposal provides a strategic framework and sets clear objectives for the implementation of funded programmes. It will set indicators for success and provide increased clarity over funding rates.

The regulation also provides the scope and objectives for feed and food expenditure. In line with the MFF negotiations, it also sets the maximum ceiling for expenditure in relation to food and feed during the whole period 2014-2020.

Proposal for a Decision of the European Parliament and of the Council on enhanced co-operation between Public Employment Services (PES) (COM(2013)430).

10 July 2013

The proposal aims to expand, reinforce and consolidate on-going initiatives (such as the European Network of the Heads of Public Employment Services) to modernise Public Employment Services (PES) and improve the operation of labour markets.

Proposal for a Regulation of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport (COM(2013)480).

17 July 2013

The proposal requires the CO2 emissions of ships (above 5000 Gross Tonnage) to be monitored and to be reported on an annual basis. The requirement to monitor and report would fall to the company which has responsibility for the ship's operations and reports would be verified by an independent, accredited verifier.

The proposal also amends existing Regulation EU No 525/2013 to include the monitoring and reporting of CO2 emissions from maritime transport.

Proposal for a Decision on the participation of the Union in a Research and Development Programme aimed at supporting research performing small and medium-sized enterprises (COM(2013)493).

1 August
2013

The proposal sets out rules for participation of Eurostars-2, the successor programme to the Eurostars Joint Programme. Eurostars is a joint research programme which supports Research and Development performing SMEs in executing market-orientated research in transnational projects.

The Commission proposes that Eurostars will continue as a programme between 2014-2020.

Proposal for a Council Regulation on the Bio-Based Industries Joint Undertaking (COM(2013)496).

1 August
2013

The regulation concerns the creation of a Bio-Based Industries Joint Undertaking ('BBI JU') which is intended to enable the demonstration of new technologies and development of new business models leading to the creation of new building blocks for the chemical industry, bio-based materials and consumer products.

The main objective of the BBI JU is to encourage greater cooperation and coordination of the bio-based industries across the EU.

Proposal for a Decision of the European Parliament and of the Council on the participation of the Union in the Active and Assisted Living Research and Development Programme jointly undertaken by several Member States (COM(2013)500).

2 August
2013

This proposal seeks to allow the European Union to financially contribute to



a programme undertaken by several Member States on the development of ICT-based solutions for active and assisted living, the Active and Assistive Living Research and Development Programme ('AAL2').

The proposal describes the governance model, project-selection procedures and other operational aspects of AAL2.

Proposal for a Council Regulation on the Electronic Components and Systems for European Leadership Joint Undertaking (COM(2013)501).

This regulation concerns the creation of a Joint Undertaking on Electronic Components and Systems for European Leadership that will undertake and support EU-level research, development and innovation activities in the areas of micro / nanoelectronics, embedded systems and smart systems.

This JU will build on and combine the work of two previous Joint Undertakings; ARTEMIS (on embedded systems) and ENIAC (on nanoelectronics) and additionally support work on smart systems identified by the European Technology Platform on Smart Systems Integration (EPoSS).

2 August
2013