

Constitutional and Legislative Affairs Committee

Spring 2014 subsidiarity monitoring report (September 2013–April 2014)

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

For further information, contact Stephen Boyce in the Research Service

Telephone ext. 8095

Email: Stephen.boyce@wales.gov.uk



Research
Service



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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

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

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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. 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

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

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

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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 2013 and April 2014, 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 primarily monitors 'legislative' proposals, in the main it does not contain details of '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. Overview of draft EU proposals received (September 2013–April 2014)

A total of 548 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 September 2013 and 30 April 2014.

Of these, 15 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 xx proposals were identified as raising subsidiarity concerns. Details of these proposals are included below.

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Heading

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

Date emailed	Title and description
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06/09/2013	<i>Proposal for regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1698/2005 on support for rural development by the European Agriculture Fund for Rural Development (COM(2013)521)</i>
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The proposed regulation would allow Member states which are experiencing serious financial difficulties to receive an increase in financial assistance from the fund of 10 percentage points above the normal permitted ceilings until 31 December 2015.

24/09/2013	<i>Proposal for a Regulation of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species. (COM(2013)620)</i>
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The proposals require Member States to prevent the introduction and spread of invasive alien species, a list of which will be agreed within 12 months of the regulation coming into force.

03/10/2013	<i>Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.718/1999 on a Community–fleet capacity policy to promote inland waterway transport. (COM(2013)621)</i>
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Regulation (EC) no 718/1999 established an Inland Waterway Fund which was to be used in cases of ‘serious market disturbance’ in the inland waterway market and to improve working environments in the industry. The fund has not yet been used and this amendment to 718/1999 aims to widen its scope. It is a first step towards implementing a revised European action

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plan (“NIAIDES II”) to move more freight transport onto EU waterways and reduce carbon emissions.

Non-devolved.

14/10/2013 Proposal for a **Regulation** of the European Parliament and of the Council on new psychoactive substances. (HO – EM due by 8 October)

The draft Regulation would aim to strengthen the EU’s ability to respond to new psychoactive substances and allow harmful psychoactive substances to be quickly withdrawn from the market. It would replace an existing instrument, Council Decision 2005/387/JHA.

Non-devolved.

28/10/2013 Proposal for a Council **Recommendation** on promoting health-enhancing physical activity across sectors. (DOH/DCMS – EM due by 24 September)

This recommendation seeks to address shortcomings in the development and implementation of health-enhancing physical activity (HEPA) policies by member states. These include a need to develop cross sectoral approaches and adopt clear objectives and goals for HEPA, and the monitoring and evaluation of HEPA rates and policies.

Non-legislative.

13/11/2013 Proposal for a Regulation of the European Parliament and of the Council establishing the **Connecting Europe Facility**. (COM(2013)665)

In 2011 the European Commission proposed the creation of a new integrated instrument for investing in EU infrastructure priorities in transport, energy and telecommunications: the “Connecting Europe Facility”.

22/11/2013 Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.1166/2008 on **farm structure surveys and the survey on agricultural production methods, as regards the financial framework for the period 2014–2018**. (COM(2013)757)

A community survey on the structure of agricultural holdings is required by

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Regulation (EC) 1166/2008 in 2016. These surveys include a financial contribution by the European Commission to expenses incurred by the Member States. The proposed amendment keeps the level of contribution the same for existing Member States and introduces a new contribution for Croatia.

22/11/2013 Proposal for a Directive of the European Parliament and of the Council *amending Directive 94/62/EC on packaging and packaging waste to reduce the consumption of lightweight plastic carrier bags.* (COM(2013)761)

The proposal requires Member States to take measures to reduce the consumption of lightweight plastic carrier bags, of a defined thickness, within two years of the measure entering into force. Wales has introduced a charge on all single use bags at point of sale and this measure extends beyond lightweight plastic carrier bags covered by the Commission proposal. There will be interest in how the final legislation impacts (if at all) on existing Welsh legislation – so this raises a question of the ‘proportionality’ of the measures proposed rather than a question of ‘subsidiarity’.

11/12/2013 Proposal for a Regulation of the European Parliament and of the Council on *information provision and promotion measures for agricultural products on the internal market and in third countries.* (COM(2013)812)

The proposal aims to reform the ways in which EU funding promotes agricultural products in the EU and in third countries. A range of measures would be introduced which would ensure better targeting of promotion measures in internal and external markets through: the development and implementation of a strategy, extension of the list of beneficiaries and potential beneficiaries, encouragement of multi-Member State programmes, with some limited use of origin and branding allowed. The budget for the fund would be increased from €60m (£51m⁴) in 2013 to €200m (£170m) by

⁴ All monetary figures are provided using the Cabinet Office November 2013 exchange rate

2020.

09/01/2014 Proposal for a Council Recommendation on a *Quality Framework for Traineeships*. (COM(2013)857)

The Recommendation asks Member States (MS) to ensure that open-market traineeships (i.e. those involving only the trainee and employer and no other institution) comply with a set of quality requirements. The proposal would primarily cover what the UK would call 'graduate internships', but as currently drafted could encompass any form of work experience placement which is not part of a formal education or vocational course.

Non-legislative

14/01/2014 Proposal for a Council Directive on *the placing on the market of food from animal clones*. (COM(2013)893)

The proposal aims to prohibit the marketing of animal and embryo clones and any food produced from them.

14/01/2014 Proposal for a Directive of the European Parliament and of the Council on *the cloning of animals of the bovine, porcine, ovine, caprine and equine species kept and reproduced for farming purposes*. (COM(2013)892)

The proposal aims to prohibit the commercial cloning of traditionally farmed animal species. However, the proposals will allow the continuation of the use of reproductive material from clones for livestock breeding purposes; and scientific research into cloning and its use for the preservation of rare breeds or endangered species; and for sporting or cultural events.

15/01/2014 *Proposal for a Regulation of the European Parliament and of the Council on novel foods*. (COM(2013)894)

The proposed regulation aims to update the existing novel foods regulation and includes clarification of the definition of a novel food and a streamlined authorisation procedure for novel foods.

21/01/2014 *Proposal for a Directive of the European Parliament and of the Council on **the limitation of emissions of certain pollutants into the air from medium combustion plants.*** (COM(2013)919)

A new Directive would regulate emissions from combustion plants with a rated thermal input of between 1 and 50MW. This would cover energy plants for large buildings and small industrial installations. The proposed Directive is part of a Clean Air Policy Package adopted by the Commission on 18 December 2013.

21/01/2014 *Proposal for a Directive of the European Parliament and of the Council on the **reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC.*** (COM(2013)920)

The proposed Directive is part of a Clean Air Policy Package adopted by the Commission on 18 December 2013. The package was developed following a review of air quality policy by the Commission which began in 2011. The package seeks to update existing legislation and further reduce harmful emissions from industry, traffic, energy plants and agriculture, with a view to reducing their significant impact on health and the environment.

06/02/2014 *Proposal for a Council Regulation laying down **maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency.*** (COM(2013)943)

The proposal brings together three existing regulations: Council Regulation (Euratom) No 3954/87, Commission Regulation (Euratom) No 944/89 and Commission Regulation (Euratom) No 770/90. It also updates the procedure for implementing the levels of radioactive contamination following a nuclear or radiological emergency.

10/03/2014 *Proposal for a Council Recommendation on **European Tourism Quality Principles.*** (COM)(2014)85)

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This recommendation aims to establish quality principles for organisations providing tourism services and thus demonstrate to consumers the quality of EU tourist destinations.

Non-legislative

08/04/2014 *Proposal for a Regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No.XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No.834/2007. (COM(2014)180*

The proposal consists of a new regulation and Impact Assessment covering organic production and labelling of organic products. There is also an associated Action Plan which considers the future of organic production. The documents have been produced following a Commission review of the legislative and policy framework for organic production across the EU. No subsidiarity issues are raised, however, there will be interest in Wales in the content of the proposals and the 'proportionality' of the measures proposed.