

Subsidiarity monitoring report May to December 2014

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Research Briefing

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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.

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.

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’ 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 usually 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 1 May 2014 and 31 December 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 (May 2014–December 2014)

A total of 488 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 May 2014 and 31 December 2014.

Of these, three 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 three proposals were identified as raising subsidiarity concerns, although two were considered in breach of the proportionality principle. Details of these proposals are included below.

3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
03/06/2014	<p><i>Proposal for a Regulation of the European Parliament and of the Council laying down a prohibition on driftnet fisheries, amending Council Regulations (EC), no 850/98, (EC) no 812/2004, (EC) no 2187/2005 and (EC) no 1967/2006 and repealing Council Regulation (EC) no 894/97. (COM(2014)265)</i></p> <p>The proposed Regulation would introduce a complete ban on all fishing with driftnets in EU waters. The aim is to overcome the difficulties with enforcing the moratorium on large scale pelagic driftnet fishing on the high seas, particularly in the Mediterranean, which was implemented in EU legislation from 1997. This legislation prohibited the use of driftnets of over 2.5km in length for all driftnet fishing.</p> <p>The proposal has met with criticism in Wales, and other parts of the UK, where driftnets are used for small scale fishing. Since the proposed regulation aims to address large scale driftnet fishing in the Mediterranean, rather than smaller scale operations such as those in Wales, it is argued that the proposal breaches the principle of proportionality.</p> <p>Further criticism of the proposal has come from other EU Member states including France, Spain and Ireland. This Committee wrote to the European Commissioner for Maritime Affairs and Fisheries in July 2014 and has had further correspondence since. The Commissioner has met with representatives of the UK fishing industry to hear its concerns and the proposed legislation is currently being considered by the Council and in the European Parliament, with an indicative timeframe of vote in Fisheries Committee on 23 February and in plenary on 19 May 2015.</p>
29/07/2014	<p><i>Proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical</i></p>

and electronic equipment. (COM(2014)397)

The proposed Directive amends six Directives relating to the management of waste. It forms part of a package of proposals from the European Commission and sits alongside a Commission Communication on the Circular Economy (COM(2014)398).

The proposals include:

- a scheduled review of the targets contained in the Waste Framework Directive (WFD), the Landfill Directive (LD), and the Packaging and Packaging Waste Directive (PPWD);
- amendments to align definitions, terms and powers across these 3 Directives; and
- measures to streamline and simplify reporting requirements and to tackle specific waste issues.

A limited number of amendments are also proposed for the Waste Electronic and Electrical Equipment (WEEE), the End of Life Vehicles (ELV) and the Batteries and Accumulators and Waste Batteries and Accumulators (BD) Directives. These proposals both streamline and simplify reporting requirements as well as introducing new conditions on reporting.

The European Commission has indicated in its 2015 Work Programme¹, published on 16 December 2014, its intention to withdraw this proposal and replace it, by the end of 2015, with a “more ambitious proposal... to promote the circular economy”.

8/4/2014

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 (COM(2014)179) which considers the future of organic production. The documents have been produced

¹ [European Commission Work Programme 2015](#), Annex 2 List of withdrawals or modifications of pending proposals, p8 [accessed 6 January 2015]

following a Commission review of the legislative and policy framework for organic production across the EU. The Commission's stated aim for the proposals is to reduce the administrative burdens of organic production and to maintain and improve consumer confidence in organic products.

Although no subsidiarity issues have been raised, there has been concern about the 'proportionality' of the proposals.

The proposals will make changes to the inspection and control system, introduce new animal welfare standards and remove a number of the derogations on non-organic inputs and methods currently allowed. Of significant concern to Wales are the proposals to remove the derogations on: mixed farming (which allow organic and conventional farming on the same holding); the use of non-organic seeds; regional food sourcing; the use of non-organic breeding stock; and the retailer's exemption from organic certification

The Assembly's **Environment and Sustainability Committee** has considered the proposals and held an evidence session on **13 November 2014**. The Committee has written to the European Parliament and Commission to outline the concerns of stakeholders in Wales. It has also expressed disappointment that some of the most important details of the proposal have been left to delegated and implementing Acts.

The proposals have also provoked controversy at the European level. They were considered by the EU Council of Ministers on 10 November 2014 which agreed that the EU must retain current derogations that allow mixed farming and organic farmers to use non-organic animals, seeds and feed.

The European Commission Work Programme for 2015², published on 16 December 2014 states that, if not agreed in six months, the proposal will be withdrawn and replaced by a new initiative.

² [European Commission Work Programme 2015](#), Annex 2 List of withdrawals or modifications of pending proposals, p4 [accessed 6 January 2015]

4. European Commission Annual Report 2013 on Subsidiarity

This section includes information on the European Commission's Annual Report for 2013 on subsidiarity and proportionality, and the UK Government's Explanatory Memorandum in response to it. It is included for information purposes and to provide an overall picture of how national parliaments across the EU engaged with the subsidiarity early warning system during 2013, including the UK Parliament.

29/08/2014 The European Union Commission's [Annual Report on Subsidiarity for 2013](#). (COM(2014) 506)

The European Commission published its 2013 annual report on the application of the principles of subsidiarity and proportionality in EU law-making in August 2014.

The report looks at how the EU institutions and bodies have implemented these two principles and how practice has evolved as compared with previous years. It also provides a more detailed analysis of a number of Commission proposals that were the subject of reasoned opinions submitted by national parliaments on the basis that they believed Commission proposals did not meet subsidiarity criteria.

National parliaments issued 88 “reasoned opinions”, the instruments which can be used to trigger a “yellow card” review, on issues of subsidiarity. **One “yellow card” was triggered in 2013**, being only the second ever issued, over the legislative proposal to create a European Public Prosecutor's Office. The report details that the most prolific issuer of reasoned opinions was once again the Swedish *Riksdag* (nine), though it issued far fewer than in the previous year (twenty). The **House of Commons** was in the group of Parliamentary chambers issuing the third most reasoned opinions, having issued five. The **House of Lords** issued two reasoned opinions. Devolved legislatures may ask either or both Houses at Westminster to issue a ‘reasoned opinion’ where they believe it is necessary.

The Committee of the Regions implemented a “Subsidiarity Work Programme” in which it paid close attention to the subsidiarity aspects of the implementation of five of the initiatives set out in the Commissioner Work Programme. The Committee also considered subsidiarity issues as part of its own-initiative opinion on devolution and the place for local and regional self-government in EU policy-making and delivery.

29/08/2014 **Explanatory memorandum on the 2013 Annual Report from the EU Commission on Subsidiarity and Proportionality**

The Foreign and Commonwealth Office of the UK Government published this EM on 28 August 2014. (COM(2014)506)

The document summarises the contents of the Commission report and sets out the UK Government's own views on subsidiarity and proportionality issues:

20. The Government considers that the principles of subsidiarity and proportionality should be fundamental to the way the EU makes law.

[...]

21. The Government's position is that national parliaments and national governments are the real source of democratic legitimacy in the EU.

[...]

22. The Government was therefore very disappointed by the Commission's response to the "yellow card" issued in response to the EPPO proposal in 2013. Thirteen national chambers, including both Houses of Parliament, put forward reasoned opinions that the proposal breached the principles subsidiarity. These arguments were perfunctorily dismissed by the Commission. After only four weeks' consideration, the Commission announced that its proposal on the EPPO would remain unchanged. Its response took a narrow view of subsidiarity, introduced no new evidence to justify the proposal and failed to engage with the thoroughness and detail that rightly should be expected with the genuine concerns that so many national Chambers had expressed. While this is technically within the Commission power, the Government considers it to be wholly unsatisfactory, and the Minister for Europe joined others in setting out our concerns at the 17 December General Affairs Council.

The document sets out the UK Government's views on strengthening the role of national parliaments in monitoring and challenging breaches of the subsidiarity and proportionality principles.