

Subsidiarity monitoring report June to August 2015

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Medi 14, 2015
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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 June 2015 and 31 August 2015, 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 (June 2015 to August 2015)

A total of 176 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 June 2015 and 31 August 2015.

Of these, 51 EMs were of policy interest to the Assembly and were shared with the Research Service and 8 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 proposals were identified as raising subsidiarity concerns although details of other concerns are included for information.

Information is also included in section 4 on the *European Commission Annual Report 2014 on Subsidiarity*.

Legislative proposals under the new European Commission

In general the number of EU legislative proposals has declined under the new European Commission following the European elections in May 2014. There has been a quite radical shift in approach by the European Commission to its forward planning; one of a number of changes introduced by the new Juncker Commission which took office in November 2014. President Juncker's deputy, First Vice President Frans Timmermans (ex-Dutch Foreign Minister), has control of the Work Programming process and he is a strong advocate of a more streamlined approach to policy and law-making by the EU.

New European Commission President Jean-Claude Juncker, in his Political Guidelines has called for a much clearer focus for EU level interventions, and respect for principles of subsidiarity and proportionality, stating:

...I want a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things...

This translates into 10 key priorities for EU level action over the coming five years, which will be the focus of the European Commission's Work Programmes and planned activities, with the

emphasis on leaving Member States (and sub-State authorities) to deal with issues outside of these areas.

This new approach is very much reflected in the first Work Programme of the new Juncker Commission which was published in December 2014. It proposed 23 new legislative initiatives, which is a major departure from previous years where the European Commission would on average table over 100 legislative proposals. The other innovation of the 2015 Work Programme was an Annex proposing a list of ongoing proposals that the European Commission intended to withdraw due to lack of progress in the decision-making process, with stalemate in Council or between Council and Parliament on particular dossiers.

The fact that only 23 new legislative initiatives have been proposed will have (and has had) a direct impact on the number of proposals that the Constitutional and Legislative Affairs Committee will need to reflect on with regard to subsidiarity concerns.

3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed Title and description

04/06/2015 *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1829/2003 as regards the possibility for the member states to restrict or prohibit the use of genetically modified food and feed on their territory* (COM(2015) 177).

Note that the Committee considered this legislative proposal at its meeting on 22 June 2015. Legal Services provided a note for that meeting.

In 2014 the European Commission undertook to review the decision making process for authorising the use of GMOs for food and feed, the rules for which are laid down in Regulation (EC) No 1829/2003. This arose from the failure of the Council of Ministers to achieve the necessary qualified majority in favour or against proposals on the subject, leaving decisions to be taken by the European Commission.

The European Commission proposal would enable Member States to restrict or prohibit the use, within their territories, of GMOs authorised under Regulation (EC) No 1829/2003 on GM food and feed, providing such measures are in accordance with EU law, reasoned, proportionate, non-discriminatory (including in respect of trade) and based on compelling grounds unrelated to the risk assessment undertaken at EU level.

The UK Government states in the EM that it agrees with the Commission that the proposal would introduce a **new element of subsidiarity** by giving Member States the discretion to ban or restrict the use of EU-approved GM products on non-safety grounds. However, the UK Government also states that it “cannot support this proposal” because of a number of concerns, including the impact on the EU single market and international trade, which it believes may adversely affect the UK livestock sector which is heavily dependent on imported GM feed.

A number of parliaments and regional assemblies have highlighted concerns about the proposals, including the Thüringen (German), Romanian and Irish parliaments.

At its meeting on 22 June the Committee agreed to write to the Welsh Government to ask whether it expects to take decisions on the use of genetically modified food and feed in Wales under the proposed EU Directive.

On 24 August 2015 UK Government issued a **supplementary EM** on the

proposal. In relation to devolved administrations (“DAs”) the EM states:

5. Whilst the UK Government retains competence on import and export controls, the normal devolution of food and feed policy means that the DAs have competence to decide on the use of GM food and feed within their territories. Consequently, were the proposal to be adopted, it is possible that differing positions could be taken across the constituent parts of the UK. The DAs would be responsible for the consequences of any restriction on use which does not meet EU or WTO legal obligations. As relations with the EU are reserved, the UK Government would be responsible for notifying on the DAs’ behalf any restrictions they may wish to impose. The DAs have been consulted in the preparation of this Supplementary Explanatory Memorandum.

The EM also states that the proposal was discussed at the July Agriculture and Fisheries Council during which the majority of Member States expressed concern about the legal soundness of restrictive measures that could be brought in under it. Member States also voiced concern about the implications it may have for the European single market and international trade obligations. The UK and many Member States, also asked the Commission to carry out a detailed impact assessment in line with better regulation principles.

A draft rejection report for the proposal prepared by the Rapporteur Giovanni la Via recommending rejection of the proposal was discussed by the EP Environment Committee. The Committee will vote on the report in October. A draft rejection opinion has also been prepared by Agriculture Committee Rapporteur, Albert Dess.

02/07/2015 *Proposal for a Regulation concerning the establishment of a **Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (RECAST)** (COM(2015)294).*

Annex to the Proposal for a Regulation concerning the establishment of a Union framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (recast) (COM(2015)294).

Commission staff working document. Towards a new Union Framework for collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy.

The proposal presents a recast of the European framework for the collection, management and use of data in the fisheries sector. Data Collection is considered essential for the implementation of the reformed

Common Fisheries Policy (CFP), enabling decisions to be based on the best scientific advice.

The proposal states that reducing the level of detail decided by or reported to the Commission should lead to simplification of the current system. Collecting data once to use for several purposes should also increase efficiency. The proposal sets out to improve the availability and flexibility of data, as well as reduce the complexity of the framework, removing much of the duplication and prescriptive detail.

This proposal falls under the exclusive competence of the European Union and therefore the Subsidiarity principle does not apply.

14/08/15

*Proposal for a Regulation of the European Parliament and of the Council setting a **framework for energy efficiency labelling** and repealing Directive 2010/30/EU. (COM(2015)341)*

Report from the Commission to the European Parliament and the Council on the review of Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication of labelling and standard product information of the consumption of energy and other resources by energy-related products. (COM(2015)345)

These documents include the European Commission's review of the Ecodesign and Energy Labelling Directives and the legislative proposals that the Commission has brought forward as a result, together with supporting documentation.

Legislative proposals.

The Commission has proposed to strengthen the current energy labelling regime and replace the current Directive with a Regulation having direct effect across the EU; the Commission justifies this change as simplifying the regulatory regime in Member States and bringing a more uniform approach across the EU by removing the need for transposition.

Review of the Ecodesign and Energy Labelling Directives.

The Commission report (COM(2015)345), and the accompanying evaluation report (SWD(2015)143):

- a. sets out an evaluation of the effectiveness of the Energy Labelling Directive (2010/30/EU).
- b. reports on the delegation of powers and provide a synthesis of the national market surveillance reports that Member States have to submit

every four years.

c. reviews specific aspects of the Ecodesign Directive (2009/125/EC) such as the effectiveness of implementing measures and harmonised standards and a closer coordination between the implementation of two Directives.

14/08/15

Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments (COM (2015) 337).

The European Commission has issued a proposal for a Decision of the European Parliament and of the Council to **amend the EU Emissions Trading System Directive** (Directive 2003/87/EC) which sets out the rules that govern the EU Emissions Trading System (EU ETS). The proposals relate to the next phase of the EU ETS, covering the period 2021–2030 ('Phase IV').

The EU ETS is designed to deliver cost effective emissions reduction and provide an incentive for investment in low carbon technologies. It sets an overarching emissions reduction target for industrial installations, power plants and aviation operators. The ETS works by allowing participants permits or 'emissions allowances' to emit greenhouse gas emissions. The total number of allowances is fixed, and reduces over time to put a declining cap on the total level of emissions. These allowances can be traded among participants, allowing emissions reductions to occur where abatement is most cost-effective.

4. European Commission Annual Report 2014 on Subsidiarity

This section includes information on the European Commission's Annual Report for 2014 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 2014, including the UK Parliament.

29/08/2014 The European Union Commission's [*Annual Report 2014 on Subsidiarity and Proportionality*](#) (COM(2015) 315)

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

In 2014 national parliaments issued 21 reasoned opinions, (the instruments which can be used to trigger a "yellow card" review), on 15 different proposals, a reduction of 76 per cent compared to the 88 issued in 2013.

Fifteen out of 41 chambers issued reasoned opinions (compared to 34 in 2013). The Austrian Bundesrat issued three, and the Swedish Riksdag and French Senat issued two each. In the UK the **House of Commons** issued three and the **House of Lords** none. Devolved legislatures may ask either or both Houses at Westminster to issue a reasoned opinion where they believe it is necessary.

The House of Commons issued reasoned opinions on:

- the proposal for a directive on strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings;
- the proposal for a Council directive on the placing on the market of food from animal clones, and
- the proposal for a decision on establishing a European platform to enhance co-operation in the prevention and deterrence of undeclared work.

No yellow cards were issued in 2014, compared with one issued in 2013. However, it is worth noting that European elections were held in 2014 and a new Commission appointed, which meant fewer legislative proposals.

In addition, the Danish Folketing, Dutch Tweede Kamer and the House of Lords submitted **reports recommending a strengthened role for national parliaments in EU decision making, including reforms relating to subsidiarity**. The subsidiarity and proportionality report notes that discussions continue on these potential reforms.

In 2014, the **Committee of the Regions** adopted and implemented its second Subsidiarity Work Programme, which included the following three initiatives selected from the Commission Work Programme: (i) the Clean Air policy package; (ii) The proposal on organic production; (iii) The waste legislation in the framework of the Circular Economy package.

The Committee of the Regions was due to publish its Subsidiarity Annual Report 2014 in June 2015. The report is not yet available but will be posted [here](#) when published. The Assembly is represented on the Committee of the Regions by Rhodri Glyn Thomas AM and Mick Antoniw AM.