

**NOTE**

PROPOSALS FOR TASK FORCE ON SUBSIDIARITY, PROPORTIONALITY AND DOING LESS MORE EFFICIENTLY

Proposals for the European Commission's Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently

14. March 2018

The European Commission's Task Force on "Subsidiarity, Proportionality and Doing Less More Efficiently", will in the coming months be discussing ways of further improving the application of the principles of subsidiarity and proportionality and whether there are policy areas of the European Union, which should be taken back to Member States. National parliaments must respond to this challenge in a clear and responsible manner. National parliaments constitute an essential link between Europe and its citizens. The pending debate on the future of the EU provides an open window of opportunity for national parliaments to contribute to the debate on the accountability of the evolving framework of Europe.

The role of national parliaments in the European Union should not be limited to being the guardians of the subsidiarity principle¹. National parliaments should be involved more actively in the decision-making of the EU with the aim of taking back influence with regard to the development of EU policies at the various stages of EU-decision making.

The European Affairs Committee of the Danish Parliament therefore submits this paper to the Task Force providing a number of ideas as to how national parliaments can contribute to reducing the democratic deficit in the EU and re delegating influence to Member States².

¹ Since 2009 national parliaments have altogether submitted more than 400 reasoned opinions to the Commission complaining that EU legislative proposals infringes the principle of subsidiarity. However, only on three occasions, have national parliaments reached the threshold of 1/3 of the parliaments, which obliges the Commission to review its proposal.

² The proposals of this paper were discussed and approved by the European Affairs Committee at a meeting on 12 march 2018.

Taking back influence to Member State Parliaments

I. A new green card to national parliaments to table proposals

Firstly, the EU and Member States should introduce a right of initiative for national parliaments in the EU decision-making process – **a so-called green card as a means by which national parliaments can invite the Commission to table an EU legislative proposal within a particular policy field**. If such a request is forwarded to the Commission, it should be obliged to respond adequately to the request and give its reasons for taking or not taking the proposed action. It is important to stress that such a procedure will not undermine the European Commission's right of initiative, but simply give national parliaments a right, which is similar to the one held by both the European Parliament, the Council and 1 million European Citizens (The Citizens' initiative).

II. An enhanced yellow and orange card procedure

Secondly, the role of national parliaments can be increased by strengthening the so-called early warning system (EWS) – or the yellow and orange card procedure, which has appointed national parliaments as the guardians of the principle of subsidiarity in close dialogue with the Commission. The yellow card procedure lays down that the Commission must review a draft legislative proposal if a least one third of national parliaments issue a reasoned opinion stating that the proposal infringes subsidiarity³. **The scope of both the yellow and orange card procedures should be expanded to allowing national parliaments to review not just the principle of subsidiarity, but also the substance of a proposal and its compliance with the principles of proportionality and conferred powers**. In fact, this is already being practised in a number of national parliaments.

Consequently, the **deadline for examining a proposal under the enhanced yellow and orange card procedures should be extended from eight to 12 weeks** (holidays should be excluded from the counting) to allow national parliaments to conduct a proper substantial examination of the EU legislative proposal.

III. Involvement at the pre-legislative stage

The Commission should involve national parliaments already at the pre-legislative stage along with other stakeholders which are consulted by the Commission as part of its better regulation agenda. The Commission could commit itself to take into account any reasoned opinions expressed by EU

³ If half of national parliaments adopt a reasoned opinion regarding a draft legislative act under the ordinary legislative procedure, either of the two co-legislators can decide to reject the proposal entirely. This is called the orange card.

national parliaments at this stage regarding Commission Green Papers, White Papers and internet based public consultations when publishing a legislative proposal.

IV. A Code of Conduct on good and timely response

Thirdly, the Commission should **adopt a special Code of Conduct on good and timely response to national parliaments within the Political Dialogue**. The Code of Conduct should guide the Commission with regard to its management of the different types of contributions from national parliaments.

The Commission should commit itself to always publishing a **formal reasoned response to any green, yellow or orange card within a specified deadline of 8/12 weeks**. Along the same lines, the **Commission should commit itself to respond to enquiries from national parliaments within 12 weeks⁴**.

The Commission should commit itself to **always explaining how it has taken views of national parliaments into account when publishing an amended legislative proposal** following a yellow or orange card from a group of national parliaments.

Finally, the Commission should **commit itself to always justify or state the reasons for a proposal in the explanatory memorandum of the proposal** and not just in the impact assessment⁵.

V. Other proposals

Finally, national parliaments should consider developing the political dialogue with the Council and the European Council.

It should also be considered to **conclude a common agreement with the Council with the aim of improving access to Council documents** for national parliaments.

⁴ In June 2012, the Commission agreed to respond to enquiries from national parliaments and to let Commissioners appear before national parliamentary committees, but no deadline was fixed for the Commission's response.

⁵ According to case law of the European Court of Justice, it is sufficient for the Commission to state the reasons for a proposal's compliance with the subsidiarity principle in the impact assessment of the proposals.