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European Union Committee

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The President
European Commission
Rue de la Loi 200
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Belgium

10 September 2014

Dear Mr President,

COM(2014)397: 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, 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 and electronic equipment

Your recent proposal to amend various pieces of EU waste legislation has been considered by our Agriculture, Fisheries, Environment and Energy Sub-Committee.

We are supportive of the overall resource efficiency objective and are pleased that the European Commission is revising its waste legislation in order to boost further this important objective.

Despite our support for the overall objective, it is with some regret that I must raise two procedural issues with you, one of which has been a recurring problem but which in this instance was particularly stark.

Lack of a detailed statement to appraise compliance with the subsidiarity principle

By virtue of Article 5 of Protocol (No 2) (the Subsidiarity Protocol) "any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality". The requirement for the detailed statement to be contained within the draft legislative act indicates that it should be contained in the Commission's explanatory memorandum, which forms part of the draft legislative act and which is translated into all official languages of the EU, thus allowing it to be appraised for compliance with subsidiarity (and proportionality) in all Member States of the EU, in conformity with Article 5 of the Subsidiarity Protocol. This is to be contrasted with the Commission's impact assessment, which is not contained within a draft legislative act, and

which is not translated into all the official languages of the EU. Commission impact assessments are published in one of the working languages of the EU, nearly always English.

The presumption in Article 5 of the Treaty on European Union is that decisions should be taken as closely as possible to the EU citizen. Any departure from this presumption should be justified with sufficient detail and clarity so that EU citizens and national legislators can understand the qualitative and quantitative reasons leading to a conclusion that “a Union objective can be better achieved at Union level”, as required by Article 5 of the Subsidiarity Protocol. The onus rests on the EU institution which proposes the legislation to satisfy these requirements.

The extent of the Commission's justification for compliance with subsidiarity in the explanatory memorandum is limited to one paragraph:

The proposal is in conformity with the subsidiarity and proportionality principle set out in Article 5 of the Treaty on the European Union. It is limited to amending the abovementioned Directives by providing a framework establishing shared objectives, while leaving Member States free to decide about precise implementation methods.

This falls manifestly short of the detail required by Article 5 of the Subsidiarity Protocol; in particular there is no qualitative and quantitative substantiation of the necessity for action at EU level. Instead, such substantiation is included at pages 38-39 of Part I of the series of documents that comprise the impact assessment accompanying the document. It is to be found under the sub-heading “The EU's right to act and justification”. While comprehensive in its analysis, its important role in allowing the reader to assess the alignment of the proposal with the principle of subsidiarity is not clear.

We believe that the omission of a detailed statement of compliance with the principle of subsidiarity is a failure on behalf of the Commission to comply with essential procedural requirements in Article 5 of the Subsidiarity Protocol.

This was an issue that I raised with you in my letter of 9 July 2014 on the Proposal for a Directive of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision (recast). We would welcome re-assurance that you are actively addressing this significant problem.

New Annexes to Directive 2008/98/EC

It is proposed that three new annexes to the Waste Framework Directive (2008/98/EC) be added to the Directive. These are referenced in the text of the proposal but are set out in a separate document. It would be normal practice for substantive amendments to the Annexes of a Directive to appear in the draft legislative text rather than in a separate paper. The failure to do so in this instance serves to obscure the amendment from those who may only read the legislative proposal and not all of the various accompanying texts. The content of the Annexes is important, particular Annex VII on minimum requirements for extended producer responsibility, and requires careful scrutiny. We would welcome clarification on why the Commission chose to table these new Annexes in a separate document rather than in the draft legislative text.

I am copying this letter to Mr Dan Rogerson MP, Parliamentary Under Secretary of State in the UK Department for Environment Food and Rural Affairs (Defra), Mr Matthew Hancock MP, Minister of State in the UK Department for Business, Innovation and Skills (BIS), Sir William Cash MP, Chair of the European Scrutiny Committee, Sarah Davies, Clerk to the European Scrutiny Committee, Arnold Ridout, Legal Adviser to the European Scrutiny Committee, Ali Scoleri, Scrutiny Coordinator, Defra and Marzena Bujalska, Scrutiny Coordinator, BIS.

Baroness Scott

Lord Boswell
Chairman of the European Union Committee

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