

## 4 Subsidiarity and Proportionality and the Commission's relations with national parliaments

Committee's assessment	Legally and politically important
<u>Committee's decision</u>	Not cleared from scrutiny; recommended for debate on the floor of the House
Document details	(a) Commission Annual Report 2014 on <i>subsidiarity and proportionality</i> ; (b) Commission Annual Report 2014 on <i>relations with national Parliaments</i>
Legal base	—
Department	Foreign and Commonwealth Office
Document Numbers	(a) (36967), 10651/15 + ADD 1, COM(15) 315 (b) (36968), 10663/15 + ADD 1, COM(15) 316

### Summary and Committee's conclusions

4.1 These reports provide an essentially factual overview of (a) how the principles of subsidiarity and proportionality have been applied by the EU institutions in 2014 and (b) the Commission's relations with national parliaments, and in particular how it has handled opinions it has received from them. Document (a) focusses on the formal subsidiarity reasoned opinion procedure which national parliaments can use to raise objections to proposed legislation on the ground that it does not comply with the principle of subsidiarity, whereas document (b), whilst it also covers the formal reasoned opinion procedure, focusses more on the informal opinions submitted by national parliaments by way of "political dialogue". These informal opinions can include objections on subsidiarity grounds. For example, our predecessor Committee has pursued subsidiarity objections by way of political dialogue in respect of the proposal for a Directive on the activities and supervision of institutions for occupational retirement provision (recast), because the Parliamentary timetable precluded the recommendation of a formal reasoned opinion.<sup>7</sup>

4.2 2014 was a year in which there were elections to the European Parliament and a change of Commission, with the consequence that there were fewer legislative proposals. This is reflected in a decline in the number of reasoned opinions and a decline in the volume of political dialogue. However during this period various ideas for strengthening the role of national parliaments were developed<sup>8</sup> which were summarised in our first Report on the 2013 Annual Report on subsidiarity and proportionality.

<sup>7</sup> See Thirty-seventh Report HC 219-xxxvi (2014-15) chapter 1 (18 March 2015), Fiftieth Report HC 83-xlv (2013-14), chapter 6 (14 May 2014), First Report HC 219-i (2014-15), chapter 13 (4 June 2014), Sixth Report HC 219-vi (2014-15), chapter 3 (9 July 2014) and Twenty-fifth Report HC 219-xxiv (2014-15), chapter 7 (10 December 2014). One formal reasoned opinion was issued by the Netherlands Lower House.

<sup>8</sup> See, in particular, Danish paper Folketinget: Twenty-three recommendations to strengthen the role of national parliaments in a changing European governance and Dutch Report Tweede Kamer: Ahead in Europe – on the role of the Dutch House of Representatives and national parliaments in the European Union and the House of Lords EU Select Committee Report The Role of National Parliaments in the European Union.

4.3 The Commission reports recognise the wider context of the continuing debate on strengthening the role of national parliaments in the EU legislative process in order to improve democratic legitimacy. This debate is now reflected in the UK renegotiation.

4.4 The reports also recognise the parallel effort to improve EU legislation found in the Commission's *Better Regulation* package published in May this year.<sup>9</sup>

4.5 Although it is not included in these reports, some national parliaments and chambers have recently taken unilateral action to strengthen the role of national parliaments through a pilot "green card" exercise, as outlined in more detail below.

**4.6 We welcome the useful digest of the activities of national parliaments in shaping EU legislation contained in these reports. They must be seen against the broader context of continuing dissatisfaction with the democratic legitimacy of EU legislation, which forms part both of the UK renegotiation and debates on the need for more intensive "Europeanization" amongst the Eurozone Member States.**

**4.7 Given the importance of the subject and its context we recommend these reports for debate on the floor of the House.**

**4.8 In doing so we note that Commission President Juncker has not set up the working group to look at the role of national parliaments in the EU requested by 29 signatories of national parliaments or chambers. Like the Government we are disappointed that this has not been done and renew our call for him to do so. We are therefore sending a copy of this report to him.**

4.9 We also:

- reiterate our support for the new Commission initiatives for early consultation of national parliaments outlined in its *Better Regulation* package which we consider should be strengthened by transmitting indicative impact assessments to national parliaments on; and
- welcome the Commission's efforts to improve its dialogue with national parliaments and in particular, its responses to reasoned opinions issued by national parliaments.

**Full details of the documents:** a) Commission Report — *Annual Report 2014 on Subsidiarity and Proportionality*: (36283), [10651/15](#) + ADD 1, COM(15) 315 (b) Commission Report — *Annual Report 2014 on relations with national Parliaments*: (36968), [10663/15](#) + ADD 1, COM(15) 316.

### **The Commission's Report on Subsidiarity and Proportionality**

4.10 The Commission starts its report by indicating that in 2014 it continued to apply internal procedures to ensure compliance with subsidiarity and proportionality including by undertaking 25 impact assessments. It illustrates the process by using the example of the

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<sup>9</sup> See our First Report HC 342-i (2015-16), [chapter 1](#) (21 July 2015) which recommends this package for debate in European Committee C.

proposal for legislation on undeclared work, on which the Commission's Impact Assessment Board required further evidence to support the legislation. Although not mentioned in this part of the report, the House of Commons issued a reasoned opinion on this proposal.<sup>10</sup> The Commission's Impact Assessment Boards have been replaced, as part of the *Better Regulation* package by Regulatory Scrutiny Boards with more independent membership and strengthened powers.

4.11 The report continues by providing information on the reasoned opinion procedure. During 2014 15 chambers or parliaments issued 21 reasoned opinions covering 15 proposals. The highest number reached on any one proposal was three. All reasoned opinions are listed at Annex I to the report.

4.12 The Commission provides information on the activities of other EU institutions, the most notable point being that the Court of Justice delivered no significant judgments concerning subsidiarity or proportionality during 2014.

4.13 Finally the report examines three "key cases". None of the three reasoned opinions issued by the House of Commons concerned these proposals, which were:

- The proposal for a Directive on the Union legal framework for customs infringements and sanctions.<sup>11</sup> Three reasoned opinions were issued and three chambers issued opinions in the framework of political dialogue. The Commission has maintained this proposal which is still under consideration.
- The proposal for a Directive amending Directives on waste, packaging and packaging waste, landfill of waste, end-of-life vehicles, batteries and accumulators and waste batteries and accumulators, and on waste electrical and electronic equipment (Directive on recycling and other waste-related targets).<sup>12</sup> Three reasoned opinions were issued and ten chambers issued opinions in the framework of political dialogue. In its *2015 Work Programme: A New Start* the Commission announced that it would withdraw this proposal in favour of a new more ambitious proposal.<sup>13</sup>
- The proposal for a Regulation on organic production and labelling organic products.<sup>14</sup> Two reasoned opinions were issued against this proposal and nine chambers issued opinions in the framework of political dialogue. In its *2015 Work programme* the Commission indicated that it would withdraw the proposal and replace it if agreement was not found within six months.

## The Government's View

4.14 In his Explanatory Memorandum of 22 July 2015 the Minister for Europe (Mr David Lidington) summarises the Report and sets out the following policy implications:

<sup>10</sup> Forty-ninth Report HC 83-xliv (2013–14), chapter 1, (7 May 2014) plus annex.

<sup>11</sup> For the latest Report from our predecessor Committee see First Report HC 219-i (2014–15), chapter 11, (4 June 2014).

<sup>12</sup> For the last Report from our predecessor Committee see Thirty-seventh Report HC 219-xxxvi (2014–15), chapter 25, (18 March 2015).

<sup>13</sup> The proposal was withdrawn in February 2015.

<sup>14</sup> For the last Report from our predecessor Committee see Twelfth Report HC 219-xii (2014–15), chapter 1, (10 October 2014).

“The Government agrees with Commission President Juncker that respect for the principles of subsidiarity and proportionality should be at the heart of the work of the new Commission. The tone and content of the annual report gives some reason for cautious optimism on the way in which the new Commission is approaching this essential task. In contrast to preceding annual reports, this one makes explicit the link between respect for subsidiarity and proportionality and the Better Regulation agenda and contains more information on how the Commission and the European Parliament reflect on national parliaments’ views. This is a welcome step in the right direction.

“In the Government’s Explanatory Memorandum for this report in 2013, we welcomed the reference in the June 2014 European Council Conclusions to the principles of subsidiarity and proportionality, and agreement that ‘the Union must concentrate its action on areas where it makes a real difference. It should refrain from taking action when member states can better achieve the same objectives’. Given those European Council conclusions were within the timeframe for this annual report, the Government would have welcomed a reference within this report to the direction which the European Council has set for the whole EU.

“The Government’s position is that national parliaments and national governments are the real source of democratic legitimacy in the EU. People in Europe identify with their national parliaments more than with EU institutions. People understand how to make their voice heard through national parliaments. And those parliaments are closer to, and understand better, the concerns of citizens. The Government welcomes the text in the draft proposal for an Inter-Institutional Agreement on Better Regulation, (published on 19 May 2015) that states that: ‘The three institutions reiterate the role and responsibility of national parliaments as laid down in the Treaties in the Protocol on the role of national Parliaments in the European Union and Protocol 2 on the application of the principles of subsidiarity and proportionality of the Treaty on the Functioning of the European Union’.

“The Government fully supports national parliaments in their endeavours to strengthen their role. The Government was disappointed that the Commission has not yet formally responded to the request from national parliaments to establish a working group to consider ways to strengthen national parliaments’ role. However, the Government welcomes national parliaments’ continued commitment to these issues and the recent decision of the Chair of COSAC to establish a working group within COSAC to consider both the ‘green card’ proposal and ways to strengthen the existing ‘yellow card’. The Government also welcomes First Vice-President Timmermans’ commitment, at the July meeting of COSAC Chairs, to take seriously any ‘green card’ proposal received from a group of national parliaments.

“These are some of the ways in which the new Commission is demonstrating its interest in establishing better relations with national parliaments. The three reasoned opinion case studies detailed in the annual report also reflect some changes to the ways the Commission is working; with a withdrawal of one proposal and a commitment to withdraw another if agreement could not be found with the co-legislators within six months. The Commission has indicated its intention to

reintroduce a similar proposal to the withdrawn proposal on the waste directive, and the Government will be keen to see if that new proposal appropriately addresses national parliaments' subsidiarity concerns.

“Although there was a reduction in the number of reasoned opinions in 2014, this should be seen in the context of fewer legislative proposals given the changeover of the Commission and the European Parliamentary elections. As reasoned opinions have to be issued within eight weeks of the publication of a legislative proposal, they are dependent on new legislation being published. Opinions by national parliaments can be issued at any stage during the legislative process, and therefore, as we see in the report, were less affected by the lower levels of new legislation.

“The Government is committed to helping Parliament make full use of its power to directly influence EU initiatives; and continues to embed an understanding of these issues - and of Parliament's crucial role - across Whitehall departments dealing with EU business. UK officials regularly liaise with Committee clerks in Westminster and Brussels.”

## **The Commission's Report on its relations with national parliaments**

4.15 This report starts by noting that in 2014 the new Commission announced its intention of forging a new partnership with national parliaments including by more frequent visits by Commissioners. It notes a 19% drop in the number of opinions issued, to 506, which it attributes to the drop in the number of legislative initiatives. These are analysed by chamber, by subject matter and by lead Commission service in Annexes 1 to 3 to the report. It states that 80% of opinions came from just ten chambers. Most opinions concerned legislative proposals, 13 of which alone generated six or more opinions. 12 opinions emanated from our predecessor Committee.

4.16 The Commission indicated that it “is encouraging national Parliaments to engage in the pre-legislative phase, either by responding to public consultations or by commenting on policy documents, such as green papers. However, so far, very few chambers have made their views known before the adoption of a legislative proposal”.

4.17 Three key topics of the political dialogue are identified:

- The proposal for a Directive amending Directives on waste, packaging and packaging waste, landfill of waste, end-of-life vehicles, batteries and accumulators and waste batteries and accumulators, and on waste electrical and electronic equipment (Directive on recycling and other waste-related targets);
- The proposal for a Regulation on organic production and labelling organic products.

Both these proposals are referred to above.

- The proposal for a Regulation on the establishment of the European Public Prosecutors Office (EPPO). This proposal had been subject to a reasoned opinion yellow card in 2013, but the Commission continued to maintain it. In 2014, 10 Parliaments or chambers sent follow up opinions, mostly expressing dissatisfaction

with the Commissions' decision on the yellow card, particularly the narrow definition of subsidiarity used by the Commission. Our predecessor Committee shared these concerns and expressed them as part of the political dialogue.<sup>15</sup>

4.18 The report next provides a commentary on how two legislative proposals (of the three attracting most attention from national parliaments in 2013) adopted in 2014 might have been influenced by political dialogue. These are the Tobacco Products Directive<sup>16</sup> and the Directive on maritime spatial planning.<sup>17</sup>

4.19 Finally the report has sections reporting on the meetings of COSAC<sup>18</sup> and other conferences, the wider context of proposals on the future role of national parliaments and the new Commission's emphasis on national parliaments, and bilateral visits and contacts by Commissioners and Commission officials.

### The Government's view

4.20 In his Explanatory Memorandum on this report, also of 22 July, the Minister summarises the report, reiterates the Government's view that national parliaments and national governments are the real source of democratic legitimacy in the EU, and expresses the following views:

"The Government is encouraged by the number of opinions raised in 2014, even though the number fell from 2013. The Government notes the decline in activity is due to the changeover to a new Commission. The process of raising opinions is one way to ensure EU legislation is being scrutinised at national parliament level and the views of the national parliaments are being fed through to the Commission. The House of Lords and House of Commons between them issued 33 opinions. The Government acknowledges the work undertaken by the Committees and it remains committed to helping Parliament make full use of its power to directly influence EU initiatives; and continues to embed an understanding of these issues - and of Parliament's crucial role - across Whitehall departments dealing with EU business. UK officials regularly liaise with Committee clerks in Westminster and Brussels.

"The Government supports the Commission's interest in greater engagement from national parliaments at an early stage of the legislative process. This would give national parliaments greater influence in shaping decision making and contribute to the policy development process.

"It is encouraging to see national parliaments across Europe engaged in this important debate. We welcome the proposals put forward by the Danish, Dutch, French and Polish parliaments and will continue to discuss this important issue with EU partners.

<sup>15</sup> See Thirty-first Report, HC 83-xxviii (2013-4), chapter 8, (22 January 2014) and Forty-fifth Report HC 83-xi (2013-14), chapter 10, (2 April 2014).

<sup>16</sup> See our First Report HC 342-i (2015-16), chapter 30, (21 July 2015).

<sup>17</sup> For the last Report of our predecessor Committee on this see Twentieth Report HC 83-xix (2013-14), chapter 6, (30 October 2013).

<sup>18</sup> The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.

“While the Government is disappointed that the Commission has not yet formally responded to the request from national parliaments to establish a working group to consider ways to strength national parliaments’ role, we do welcome the commitment made by COSAC in June to take forward work on the green card proposal to support greater engagement between the national parliaments and the Commission, as well as considering ways to strengthen the existing yellow card. First Vice-President Frans Timmermans has already expressed support for making the yellow card system work more effectively and at the COSAC meeting in July committed to take seriously any green card proposal received by a group of national parliaments, and to improve the dialogue throughout the legislative process.”

## The UK renegotiation

4.21 When giving evidence to the House of Lords Select Committee inquiry on *Renegotiation and Referendum on UK Membership of the EU* the Minister for Europe was asked about the future role of national parliaments. He responded:

“First, giving greater weight to national parliaments in the system of checks and balances within the EU is one essential element in reconnecting Europe with ordinary citizens who, to judge by Eurobarometer or pure research findings, have grown pretty disaffected with EU institutions. That is by no means unique to the United Kingdom. If one looks at the opinion poll findings in France or Spain in particular, one will find some real disillusion in those countries. If you talk to parliamentarians in Scandinavian countries and the Netherlands, you find that there is a very keen appetite for reform of this type. The Dutch and Danish parliaments have both produced papers advocating changes that are very similar to the ones that we are putting forward.

“It is true that there have been only two yellow cards. Part of the problem is the very short window of time that is available to national parliaments to submit a reasoned opinion, and the fact that if one looks strictly at the current grounds on which a yellow card can be tabled, it relates to subsidiarity only and not to proportionality or other factors. At the European level those things need to be addressed. I also think there is a challenge to parliaments themselves in how to organise their own affairs and procedures so that they are in a position to respond rapidly to a decision to submit a reasoned opinion, but also to network with other parliaments. Just as Governments around Europe have had to get used to the idea of picking up the phone or texting Ministers regularly and trying to construct agreements, comprises and common positions, so will parliaments, if the system is to work well, need to develop that sort of networking approach too. I think the red card would add something to our armoury. National parliaments being able to say in sufficient numbers, ‘Look, this point clearly does not command democratic consent across Europe as a whole, so call a halt’, would, it seems to me, be a constitutional check that a sensible Europe would find a place for.”<sup>19</sup>

<sup>19</sup> Evidence session 1 of 30 June 2015. See Q 15.

## The pilot “green card”

4.22 The green card, as envisaged by the Dutch *Tweede Kamer* would enable national parliaments, in a form of joint action, to propose new European policies to the European Commission. This would include the possibility of a proposal to amend or revoke existing legislation.

4.23 Following discussions in COSAC and on the basis of an initiative by the House of Lords EU Committee,<sup>20</sup> a pilot green card has been developed, asking the Commission to adopt a strategic approach to food-waste reduction, including the following five elements, in addition to the approach to food waste set out in the proposal in a new “Circular Economy” package :

- EU Food Donation guidelines;
- An EU co-ordination mechanism;
- The commission to monitor the business to business cross-border food supply chain;
- A Commission Recommendation on the definition of food waste and on data collection; and
- The establishment of a horizontal working group within the Commission to assess the consideration of food waste within policy making across the Commission.

4.24 A letter issuing this pilot green card, signed by 16 chairpersons of EU Committees of national parliaments or chambers (including by Lord Boswell, Chairman of the House of Lords EU Select Committee), was sent to Commission President Juncker on 22 July 2015.

## Previous Committee Reports

None, but see, in respect of the 2013 reports on *subsidiarity and proportionality and relations with national parliaments* Thirteenth Report HC 219-xiii (2014–15), chapter 2 and chapter 3, (15 October 2014), Thirtieth Report HC 219-xix (2014–15) chapter 1, (21 January 2015).

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<sup>20</sup> The Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.