



EUROPEAN  
COMMISSION

Brussels, 2.7.2015  
COM(2015) 315 final

**REPORT FROM THE COMMISSION**

**ANNUAL REPORT 2014**  
**ON SUBSIDIARITY AND PROPORTIONALITY**

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## ANNUAL REPORT 2014 ON SUBSIDIARITY AND PROPORTIONALITY

### 1. INTRODUCTION

This is the 22<sup>nd</sup> annual report on the application of the principles of subsidiarity and proportionality in EU law-making. The report is submitted in accordance with Article 9 of Protocol No 2 on the application of the principles of subsidiarity and proportionality (hereinafter ‘Protocol No 2’) to the Treaty on the Functioning of the European Union (TFEU).

The report looks at how the EU institutions and bodies have implemented these two principles and how the practice has evolved in comparison with previous years. It also provides an analysis of several Commission proposals which were the subject of reasoned opinions in 2014. Given the close links between the subsidiarity control mechanism and the political dialogue between national Parliaments and the Commission, this report should be seen as complementary to the Commission’s Annual Report 2014 on relations with national Parliaments.

### 2. APPLICATION OF THE PRINCIPLES BY THE INSTITUTIONS

#### 2.1. The Commission

Over the years, the Commission has introduced procedures to assess compliance with the principles of subsidiarity and proportionality at different stages of the decision-making process in line with better regulation principles.<sup>1</sup> President Juncker has emphasised that respect for the principles of subsidiarity and proportionality will be at the heart of the work of the new Commission.

Before proposing new initiatives, the Commission checks that EU-level action is legitimate and justified. Roadmaps are published for all major new initiatives.<sup>2</sup> They provide, at an early stage, a preliminary description of the potential initiative and existing evaluation work and outline the Commission’s plans for carrying out an impact assessment and consultation. The roadmaps also include an initial justification for action in the light of subsidiarity and proportionality.

When an impact assessment needs to be carried out, i.e. whenever significant impact is envisaged, stakeholders are invited, through a public consultation, to comment on the need to

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<sup>1</sup> Better regulation principles cover all better regulation activities within the Commission and are expressed as a set of guiding principles which apply to all DGs and services involved in the preparation, implementation, application or evaluation of EU interventions and associated stakeholder consultations. The principles are defined in tool #1 of the Commission's better regulation tool box, see [http://ec.europa.eu/smart-regulation/guidelines/tool\\_1\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/tool_1_en.htm).

<sup>2</sup> [http://ec.europa.eu/smart-regulation/roadmaps/index\\_en.htm](http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm) – as outlined in the Commission's package of better regulation measures – COM(2015) 215 final – the Commission will in the future present Inception Impact Assessments for initiatives subject to an Impact Assessment, replacing the Roadmaps for such initiatives.

act and on possible solutions to problems identified. Based on responses to this consultation and other relevant input, impact assessments analyse, inter alia, subsidiarity and assess the proportionality of the options examined. On 19 May 2015, the Commission adopted – in line with President Juncker's political priorities – a package of better regulation measures<sup>3</sup> with new integrated Better Regulation Guidelines<sup>4</sup>, including updated guidance for assessing subsidiarity and proportionality in the context of impact assessment of new initiatives.

In 2014, 25 impact assessments were conducted. After scrutiny by the independent quality control body, the Impact Assessment Board, eight of these impact assessments were judged to be in need of improvements as regards subsidiarity or proportionality, or both. This rate of 32% is similar to that of previous years.

For example, in the case of a proposal for a Decision on enhancing EU cooperation in the prevention and deterrence of undeclared work<sup>5</sup>, the Impact Assessment Board considered that the impact assessment should provide further evidence underpinning the reasons why demand-driven cooperation among Member States would fail to tackle the relevant issues. Moreover, it was recommended to present more clearly the legal basis for the initiative. Further details were also requested on the proportionality of the preferred option, in order to demonstrate why closer forms of cooperation across all 28 Member States would be required given the preference of employers and Member States for other options. The final report was modified in line with the Board's recommendations. For instance, the legal basis was presented more clearly and the proportionality aspects were better explained (p. 43).

In the case of the Impact Assessment of the harmonisation of radio spectrum bands for wireless audio programme making and special events equipment<sup>6</sup>, the Impact Assessment Board asked for a better justification of the proportionality of the initiative by comparing estimated costs to the identified benefits and also sought to clarify the added value and necessity of action at EU level as opposed to Member State level. Following these comments from the Board, the analytical sections placed more emphasis on the impact on the different categories of users (smaller vs. bigger users). The report also made it clear that a large proportion of the costs would necessarily be incurred under the baseline scenario, thus putting the comparison of costs and benefits into a clearer context.

Through its recommendations, the Impact Assessment Board contributed to improving the analysis of compliance with the principles of subsidiarity and proportionality, providing critical information for the Commission's political decision-making process. The explanatory memorandum accompanying a legislative proposal also sets out how the proposal complies with the principles of subsidiarity and proportionality.

Subsidiarity and proportionality are also key considerations in the context of retrospective evaluations, which assess whether EU actions are actually delivering the expected results in terms of efficiency, effectiveness, coherence, relevance and EU added value. Such evaluations examine whether EU actions remain necessary, or whether the objectives could be better achieved in other ways. The Commission is committed to 'evaluate first', analysing past performance before considering potential legislative changes. By gathering evidence and identifying lessons which can feed into decision-making, the EU is making evaluation an

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<sup>3</sup> COM(2015) 215 final.

<sup>4</sup> [http://ec.europa.eu/smart-regulation/guidelines/index\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/index_en.htm)

<sup>5</sup> COM(2014) 221 final.

<sup>6</sup> C(2014) 6011 final.

integral and permanent part of its policy-making along with assessments of subsidiarity and proportionality.

## 2.2. Follow-up to reasoned opinions from national Parliaments

In 2014, the Commission received 21 **reasoned opinions** from national Parliaments regarding the principle of subsidiarity,<sup>7</sup> which represented a decrease of 76% compared to the number of reasoned opinions received in the previous year (88 in 2013). The reasoned opinions received in 2014 accounted for a considerably lower proportion (4%) of the overall number of opinions received by the Commission in the same year in the context of the political dialogue (506). In 2013, reasoned opinions accounted for 14% of the overall number of opinions, whereas in 2012 and 2011 slightly more than 10% of opinions were reasoned opinions.

While no new yellow card procedure was triggered in 2014, the yellow card procedure triggered in 2013 in respect of the proposal on the European Public Prosecutor's Office (COM(2013) 534 final) continued to fuel discussions within the political dialogue. For more details, see the report on relations with national Parliaments.

The considerably lower number of reasoned opinions should be seen in the context of a decrease in the overall number of proposals made by the Commission towards the end of its term of office. It should be noted that in 2013 the total number of opinions submitted by the national Parliaments in the framework of political dialogue also decreased, but to a lesser extent than the decrease in the number of reasoned opinions.<sup>8</sup>

Reasoned opinions continued to vary in form and the arguments put forward by national Parliaments in support of their conclusions regarding alleged breach of the principle of subsidiarity also differed. As in previous years, national Parliaments issued reasoned opinions on various proposals adopted in 2014. The 21 reasoned opinions issued in 2014 covered 15<sup>9</sup> Commission proposals. The proposals that gave rise to the most reasoned opinions however only generated three reasoned opinions, namely the proposal for a Directive on the Union legal framework for customs infringements and sanctions<sup>10</sup> and the proposal for a review of waste policy and legislation.<sup>11</sup> Two reasoned opinions were issued regarding the proposal for a Regulation on organic production and labelling of organic products,<sup>12</sup> the proposal for a

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<sup>7</sup> See the Annex to this report.

<sup>8</sup> 505 compared to 621 in 2013.

<sup>9</sup> The Commission received 21 reasoned opinions, some of them relating to more than one document.

<sup>10</sup> Proposal for a Directive of the European Parliament and of the Council on the Union legal framework for customs infringements and sanctions, COM(2013) 884 final.

<sup>11</sup> Proposal for a Directive 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 and electronic equipment, COM(2014) 397 final.

<sup>12</sup> 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, COM(2014)180 final.

Regulation on novel food<sup>13</sup> and the proposal for a Directive on single-member private limited liability companies.<sup>14</sup> For more details, see the Annex to this report.

The significant decrease in the overall number of reasoned opinions issued in 2014 translated into a substantial decrease in the number of reasoned opinions issued per chamber. Only 15 out of 41 chambers issued reasoned opinions in 2014 (compared to 34 chambers in 2013). The Austrian *Bundesrat* and the UK House of Commons issued three reasoned opinions each (compared to, respectively, six and five reasoned opinions in 2013). The Swedish *Riksdag* and the French *Sénat* issued two reasoned opinions each (in comparison, in 2013, nine reasoned opinions were issued by the *Riksdag* and four by the *Sénat*). The majority of chambers issued one or no reasoned opinions.

Although national Parliaments were less active in terms of issuing reasoned opinions in 2014, a number of chambers called for strengthening of the subsidiarity control procedure. Between January and May 2014 the Danish *Folketing*, Dutch *Tweede Kamer* and UK House of Lords<sup>15</sup> submitted reports with detailed proposals on how to strengthen the role of national Parliaments in the decision-making process. These reports contained, *inter alia*, ideas on how to extend the scope of subsidiarity control. They suggested that reasoned opinions should not only concern compliance with the principle of subsidiarity, but also compliance with the principle of proportionality or the legal basis for the proposal. The reports also advocated an extension of the deadline for submitting reasoned opinions<sup>16</sup> and proposed that when a yellow card is triggered, the Commission should be bound to withdraw or amend its proposal. Discussions between national Parliaments on these subjects are continuing in different fora.

## 2.3. The European Parliament and the Council

### a) The European Parliament

Since the entry into force of the TFEU and in the framework of Protocol No 2, the European Parliament has taken a series of measures to fulfil its legal obligations in this area. With particular reference to the reasoned opinions of national Parliaments, the procedure described below is currently in place.

National Parliaments' opinions are transmitted to the parliamentary committee responsible for the subject matter and to the Committee on Legal Affairs, for distribution to all committee members and inclusion in the meeting file. National Parliaments' opinions are systematically translated into all EU official languages<sup>17</sup> and mentioned in the preamble to legislative resolutions.

In principle, the parliamentary committee responsible for the subject matter is obliged not to proceed to its final vote before the expiry of the stipulated eight-week deadline.

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<sup>13</sup> Proposal for a Regulation of the European Parliament and of the Council on novel foods, COM(2013) 894 final.

<sup>14</sup> Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies, COM(2014) 212 final.

<sup>15</sup> DK *Folketing* 'Twenty-three recommendations to strengthen the role of national Parliaments in the European decision-making process', UK House of Lords 'The role of National Parliaments in the European Union' and NL *Tweede Kamer* 'Ahead in Europe'.

<sup>16</sup> However, the deadline is enshrined in the Treaty and so cannot be changed without Treaty change.

<sup>17</sup> Except Irish and Maltese.

In 2014, the European Parliament formally received 287 submissions from national Parliaments. 18 of these were reasoned opinions whilst the other 269 were contributions (i.e. submissions not raising issues related to compliance with the principle of subsidiarity). In 2013, 86 reasoned opinions and 206 contributions were officially transmitted to the European Parliament.

The Committee on Legal Affairs is the parliamentary committee which has overall responsibility for dealing with the principle of subsidiarity. A member of the committee is appointed as ‘standing rapporteur’ for subsidiarity for a period of six months on the basis of rotation among the political groups. The rapporteur monitors the reasoned opinions received and can take up issues raised in reasoned opinions for debate in the committee and for possible recommendations to other relevant committees. A report is also regularly drawn up by the Committee on Legal Affairs on the Annual Report by the Commission on subsidiarity and proportionality. On the basis of a report drawn up by Mr Sajjad Karim (ECR/UK), a resolution was adopted by the European Parliament on 4 February 2014 on the 19<sup>th</sup> report from the Commission on subsidiarity and proportionality.<sup>18</sup>

Despite the break in parliamentary activity in 2014, an election year, the European Parliament produced 32 initial appraisals and two detailed appraisals of Commission impact assessments, three complementary impact assessments, one impact assessment of substantive parliamentary amendments and one ex-post impact assessment in 2014. In addition, five reports on the cost of non-Europe were completed.

The European Parliament has also initiated a new, more general approach to assessing the added value of action at EU level, by drawing up a Cost of Non-Europe report,<sup>19</sup> mapping the gains obtainable from actions proposed by the European Parliament, and a report on the economic growth potential of the 10 priorities set out in President Juncker’s political guidelines.<sup>20</sup>

#### *b) The Council*

The Council’s obligations regarding national Parliaments’ right to monitor subsidiarity are set out in Protocols No 1 and 2. The responsibilities of the Council mainly consist in forwarding to national Parliaments draft legislative acts which do not originate from the Commission.

Under Article 4 of Protocol No 2, the Council has to forward to national Parliaments all draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank and the European Investment Bank. However, in 2014, no such acts were received by the Council and thus none were forwarded to national Parliaments.

As a corollary to the above obligation, under Article 6 of Protocol No 2, the Council must forward any national Parliament opinion on a legislative proposal originating from a group of Member States to the proposing Member States. Similarly, the Council will forward national

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<sup>18</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0061+0+DOC+XML+V0//EN>

<sup>19</sup> Mapping the Cost of Non-Europe 2014 -19, Second edition: July 2014, European Added Value Unit, July 2014 [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-EAVA\\_ET\(2014\)563350](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-EAVA_ET(2014)563350)

<sup>20</sup> The economic potential of the ten-point Juncker Plan for growth without debt, European Added Value Unit, November 2014 [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/543844/EPRS\\_STU\(2014\)543844\\_REV1\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/543844/EPRS_STU(2014)543844_REV1_EN.pdf)

Parliaments' opinions on legislative proposals coming from the Court of Justice, the European Central Bank and the European Investment Bank to the institution concerned. However, no such acts were received by the Council during the course of 2014.

In addition to its Treaty requirements, the Council also keeps Member States informed of national Parliament opinions on Commission legislative proposals. Hence, in 2014, the Council Secretariat distributed to delegations over 250 reasoned opinions and opinions issued within the framework of the political dialogue, relating to Commission legislative proposals.

Lastly, as part of its legislative work, the Council checks compliance with the principles of subsidiarity and proportionality when it reviews the impact assessments which accompany Commission proposals.

## **2.4. The Committee of the Regions**

In 2014, the Committee of the Regions adopted and implemented its second Subsidiarity Work Programme,<sup>21</sup> which included the following three initiatives selected from the Commission Work Programme according to specific criteria: (i) the Clean Air policy package; (ii) The proposal on organic production; (iii) The waste legislation in the framework of the Circular Economy package.<sup>22</sup> Particular attention was given to the use of delegated acts in the monitored legislative proposals.

In implementing the Subsidiarity Work Programme, the Committee of the Regions analysed the EU's Clean Air policy package.<sup>23</sup> Following consultation of the Subsidiarity Expert Group, the Committee of the Regions concluded in its opinion<sup>24</sup> that the proposal complied with the principles of subsidiarity and proportionality, and agreed that air pollution was a transnational phenomenon that had to be tackled at European level.

Regarding the proposal for a Regulation on organic production and labelling of organic products, consultation of the Subsidiarity Expert Group and the Subsidiarity Monitoring Network took place during the eight-week period allowed for subsidiarity control by national Parliaments.<sup>25</sup> Most respondents were opposed to removing the possibility for Member States to grant exceptions to the rules governing organic production and raised concerns from a subsidiarity point of view. With regard to proportionality, they considered that the proposal went too far, as the intended objectives could be achieved in other less restrictive ways. These concerns were reflected in the Committee of the Regions' opinion.<sup>26</sup>

The proposal for a Directive 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 and electronic equipment<sup>27</sup> was of particular interest to

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<sup>21</sup> CdR 7657/2013.

<sup>22</sup> a) initiatives should present a clear political interest for local and regional authorities;  
b) initiatives should touch on competences of local and regional authorities;  
c) initiatives should bear a potential subsidiarity dimension.

<sup>23</sup> COM(2013) 918 final (Communication), COM(2013) 919 final and COM(2013) 920 final.

<sup>24</sup> CdR 1217/2014.

<sup>25</sup> COM(2014) 180 final and related Communication COM(2014) 179 final.

<sup>26</sup> CdR 4832/2014.

<sup>27</sup> COM(2014) 397 final.

the Committee of the Regions since, in most Member States, local and regional authorities are responsible for the implementation of EU waste legislation. Consultation of the Subsidiarity Expert Group and the Subsidiarity Monitoring Network took place during the eight-week period allowed for subsidiarity control by national Parliaments. It showed that most respondents saw no subsidiarity problems resulting from the new EU waste targets. However, several respondents raised concerns about proportionality, questioning the feasibility of the new waste targets, and highlighting the different approaches to the current waste targets throughout the EU. The Committee of the Regions organised a territorial impact assessment workshop<sup>28</sup>, which showed that certain regions face limitations in achieving the targets proposed by the Directive. The main results of the consultation and the territorial impact assessment exercise are reflected in the Committee of the Regions' opinion.<sup>29</sup> Several additional opinions adopted by the Committee of the Regions in 2014 raised concerns in terms of compliance of Commission proposals with the principles of subsidiarity and proportionality, such as the opinion on the proposal for a Regulation on the establishment of the European Public Prosecutor's Office,<sup>30</sup> the opinion on the proposal for a Decision establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work<sup>31</sup>, and the opinion on the proposal for a Regulation amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments.<sup>32</sup>

In July 2014 the Committee of the Regions organised a subsidiarity workshop<sup>33</sup> for stakeholders from the EU and from national and regional authorities. The workshop's aim was to take stock of the 6<sup>th</sup> Subsidiarity Conference 2013<sup>34</sup> and to explore new approaches and solutions for effective subsidiarity monitoring. In addition, a conference on 'the role of regional parliaments in EU affairs' that was jointly organised by the Committee of the Regions and the University of Tübingen (Germany)<sup>35</sup> aimed to raise awareness of the role of and challenges facing regional parliaments in the context of the subsidiarity control mechanism. Finally, a meeting of the REGPEX<sup>36</sup> partners and a meeting of other Committee of the Regions' internet platforms, both in December, concluded that it was necessary to raise regional parliaments' awareness of subsidiarity issues, and to support them with tools for information exchange. Reference is also made to the Subsidiarity Annual Report 2014 to be issued by the Committee of the Regions in June 2015.<sup>37</sup>

## 2.5. The Court of Justice

In 2014, the Court of Justice did not render any significant judgment as regards the principles of subsidiarity and proportionality.

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<sup>28</sup> In this workshop the CoR undertook the territorial impact assessment using the Quick Scan methodology developed by the European Observation Network for Territorial Development and Cohesion (ESPON).

<sup>29</sup> CdR 04083/2014.

<sup>30</sup> CdR 6520/2013.

<sup>31</sup> CdR 03236/2014.

<sup>32</sup> CdR 1287/2014.

<sup>33</sup> 'Subsidiarity monitoring under scrutiny: More, less or different?' following the 'world café' approach.

<sup>34</sup> <http://portal.cor.europa.eu/subsidiarity/SiteCollectionDocuments/Final%20Brochure.pdf>.

<sup>35</sup> Proceedings available at <http://www.cor.europa.eu/en/events/Pages/regional-parliaments-conference.aspx>.

<sup>36</sup> REGPEX (Regional Parliaments Information Exchange), launched by the Committee of the Regions in 2012, is a subsection of the Subsidiarity Monitoring Network website consisting of a database designed to assist regions with legislative powers with regard to the subsidiarity control mechanism: <http://corportal/subsidiarity/regpex/Pages/default.aspx>.

<sup>37</sup> Will be published at <http://portal.cor.europa.eu/subsidiarity/Publications/Pages/Publicationsandstudies-.aspx>

### 3. KEY CASES WHERE SUBSIDIARITY AND PROPORTIONALITY CONCERNS WERE RAISED

*Proposal for a Directive on the Union legal framework for customs infringements and sanctions*<sup>38</sup>

The Commission published a proposal on 13 December 2013 setting out acts which should be considered as infringements of the Union's customs rules and establishing a framework for imposing sanctions when such acts occur. The proposal aims to harmonise the consequences of violating the common rules which vary across the customs union as they depend on the 28 different legal orders and administrative or judicial traditions of the Member States. It thus seeks to provide more uniformity in the way that breaches of EU customs law are treated across the Member States.

National Parliaments issued three reasoned opinions<sup>39</sup> on the proposal, representing six votes.<sup>40</sup> Three other chambers of national Parliaments<sup>41</sup> issued opinions on this proposal in the framework of the political dialogue.

In their reasoned opinions, national Parliaments argued that it was questionable whether the Commission's proposal complied with the principle of subsidiarity and expressed doubts as to whether the proposed measures would be better regulated at EU level rather than at Member State level. The Swedish *Riksdag* was not convinced that a common formulation should be established in the Directive concerning sanctions and their levels. It further stated that certain elements of the proposal which were normally found in acts based on Article 83 TFEU (minimum rules on the constituent elements of criminal acts and penalties) would be better regulated at Member State level and that the Commission had failed to show that the regulation of common scales of sanctions is necessary to achieve strengthened customs cooperation. The Danish *Folketing* regarded the proposal as a more extensive than necessary harmonisation of the rules on infringements of EU customs legislation and the related sanctions. The Lithuanian *Seimas* argued that the aim of the proposal (i.e. to achieve effective implementation and correct and uniform enforcement of Union customs legislation) would not be fulfilled, because the proposed Directive would not determine whether Member States should apply administrative or criminal law sanctions in respect of those customs infringements. In its replies to the reasoned opinions, the Commission emphasised that harmonised customs legislation could not be effectively enforced due to the current wide divergence of rules on customs infringements and sanctions in Member States. In the Commission's view this divergence can be overcome by creating a common list of customs infringements and approximating relevant sanctions. Such measures could not be taken by individual Member States and therefore action at EU level was more appropriate in this area. The Commission further stated that approximation of customs infringements and sanctions would make cooperation between customs authorities more efficient and it underlined the fact that establishing a common list of customs infringements and the approximation of customs sanctions would create customs sanctioning systems which are more comparable. The proposal is still being examined by the co-legislators.

*Proposal for a Directive 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*

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<sup>38</sup> COM(2013) 884 final.

<sup>39</sup> DK *Folketing* (2 votes), LT *Seimas* (2 votes), SE *Riksdag* (2 votes).

<sup>40</sup> Each national Parliament has two votes; where a national Parliament is bicameral, one vote is allocated to each chamber. Each chamber is entitled to issue reasoned opinions independently.

<sup>41</sup> CZ *Senát*, MT *Kamra tad-Deputati*, and PT *Assembleia da República*.

*vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment*<sup>42</sup>

The Commission published a proposal on 2 July 2014 as part of a package to create a more circular economy with the objective of making Europe more competitive and reducing demand for costly scarce resources. The proposal suggests recycling 70% of municipal waste and 80% of packaging waste by 2030, and also suggests a ban on burying recyclable waste in landfill as of 2025. The proposal sets ambitious targets and adds key provisions on the instruments needed to achieve and to monitor them.

National Parliaments issued three reasoned opinions<sup>43</sup> on the proposal, representing four votes.<sup>44</sup> Ten other chambers of national Parliaments<sup>45</sup> issued opinions on this proposal in the political dialogue framework.

In their reasoned opinions, the national Parliaments put forward various arguments as to why the proposal did not comply with the principle of subsidiarity. The Austrian *Bundesrat* argued that there was no transnational aspect to be regulated at EU level and that the Commission had failed to properly explain why the current targets were not adequate, or why not all Member States were achieving them. The Czech *Senát* stated that the proposal did not substantiate the assumption that the proposed targets were realistically attainable at reasonable cost to the Member States and municipalities, and therefore the Commission had not justified the real added value of the proposed action at EU level. Finally, the Croatian *Hrvatski Sabor* argued that the matter of setting additional targets in the field of waste management should be within the competence of the Member States, depending on their economic circumstances.

On 16 December 2014 the Commission adopted its Work Programme for 2015, under which it proposed to withdraw or amend 80 out of 450 proposals awaiting decision by the European Parliament and the Council.<sup>46</sup> The Commission indicated that it intended to withdraw the proposed Directive, but at the same time announced that it would replace it by the end of 2015 with a new, more ambitious proposal to promote the circular economy. The Commission also reaffirmed its commitment to promote the transition towards a resource-efficient, circular economy in the EU, which would have a major positive impact on jobs, growth, competitiveness and innovation. Following consultations with the European Parliament and the Council, the Commission confirmed the withdrawal of the proposal on 25 February 2015.<sup>47</sup>

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<sup>42</sup> COM(2014) 397 final.

<sup>43</sup> AT *Bundesrat* (1 vote), CZ *Senát* (1 vote), HR *Hrvatski Sabor* (2 votes).

<sup>44</sup> Each national Parliament has two votes; where a national Parliament is bicameral, one vote is allocated to each chamber. Each chamber is entitled to issue reasoned opinions independently.

<sup>45</sup> CZ *Poslanecká sněmovna*, DE *Bundesrat*, DK *Folketing*, ES *Congreso de los Diputados* and *Senado* (both chambers), FR *Sénat*, IT *Senato della Repubblica*, MT *Kamra tad-Deputati*, PL *Senat*, PT *Assembleia da República* and UK House of Lords. As regards arguments raised by national Parliaments not relating to subsidiarity, please see the Annual Report 2014 on relations between the European Commission and national Parliaments.

<sup>46</sup> Some initiatives were proposed for withdrawal because they did not match the new Commission's priorities, while in other cases the Commission remained strongly committed to the objectives sought but the proposals (due to lengthy negotiations in the European Parliament and the Council) could no longer achieve their original purpose. In the latter case, the Commission intends to propose new, better ways of achieving the objectives sought.

<sup>47</sup> OJ C 80 of 7.3.2015, p. 17

*Proposal for a Regulation 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<sup>48</sup>*

The Commission published a proposal on 25 March 2014 that aims to ensure that public demands in terms of environment and quality are met. The proposal has three main objectives: maintaining consumer confidence, maintaining producer confidence and making it easier for farmers to switch to organic production. The Commission proposed in particular (i) to strengthen and harmonise rules, both within the EU and for imported products, by removing many of the current exceptions in terms of production and controls, (ii) to introduce a risk-based control system, (iii) to make it easier for small farmers to join organic farming by introducing the possibility for them to sign up to a group certification system, (iv) to better address the international dimension of trade in organic products with the addition of new provisions on exports, and (v) to simplify the legislation in order to reduce administrative costs for farmers and improve transparency.

National Parliaments issued two reasoned opinions<sup>49</sup> on the proposal, representing three votes.<sup>50</sup> Nine chambers issued opinions in the framework of the political dialogue.<sup>51</sup> In their reasoned opinions, national Parliaments argued that the proposal did not give enough leeway for regional or national legislation which could address regional or national particularities. According to the Austrian *Bundesrat*, the proposal did not allow an assessment of whether the measures put forward by the Commission were effective enough to reach the desired goal, nor did it allow an assessment of whether such measures needed to be taken at EU level. The proposal was criticised for not quantifying the value of its effects and the resulting financial and administrative burden for the Member States.

In its replies, the Commission pointed out that the current scope offered for granting exceptions to the existing rules had led to unfair competition among EU organic operators and in relation to imported organic products. Some resulting negative factors included a risk of loss of consumer confidence, complexity in the legislation, trade issues (difficulties in enforcing compliance) and heavy administrative burdens. Furthermore, the Commission stressed that the proposal provided possibilities for adaptation of the production process, where necessary. With regard to delegated acts, the Commission underlined that in order to make the Regulation fully operational, the power to adopt acts in accordance with Article 290 TFEU had been deemed necessary. The delegation of power set out in the proposal provides for clear and concise criteria, giving limited discretion to the Commission. Finally, the Commission stressed that Member States would be involved in the preparation of these acts.

In light of the long negotiation process in the European Parliament and the Council, the Commission announced in December 2014 in its Work Programme its intention to withdraw the proposed Regulation and replace it by a new initiative, unless an agreement could be found within six months.

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<sup>48</sup> COM(2014) 180 final.

<sup>49</sup> AT *Bundesrat* (1 vote), LU *Chambre des Députés* (2 votes).

<sup>50</sup> Each national Parliament has two votes; where a national Parliament is bicameral, one vote is allocated to each chamber. Each chamber is entitled to issue reasoned opinions independently.

<sup>51</sup> AT *Bundesrat*, CZ *Senát*, ES *Congreso de los Diputados* and *Senado* (both chambers), IT *Senato della Repubblica*, LT *Seimas*, LU *Chambre des Députés*, NL *Tweede Kamer* and PT *Assembleia da República*. As regards arguments raised by national Parliaments not relating to subsidiarity, please see the Annual Report 2014 on relations between the European Commission and national Parliaments.

#### **4. CONCLUSIONS**

2014 saw a significant reduction in the number of reasoned opinions compared to previous years. The reasoned opinions issued in 2014 also represented a significantly lower percentage of the overall number of opinions issued in the context of political dialogue. No yellow card procedure was triggered. The smaller number of reasoned opinions must however be seen in the light of the decrease in the number of legislative proposals issued by the Commission towards the end of its term of office and not as an indication of diminishing interest of national Parliaments in subsidiarity matters. This conclusion is confirmed by the ongoing debate among national Parliaments concerning the subsidiarity control mechanism.

In 2014, as in previous years, all institutions involved in the legislative process were active in ensuring control of the principle of subsidiarity. The Commission monitored compliance of its proposals with the principles of subsidiarity and proportionality by providing various assessments (roadmaps, impact assessments) before adoption of the legislative acts and by examining and replying extensively to reasoned opinions received from national Parliaments expressing subsidiarity concerns.

The European Parliament continued to deal with subsidiarity and proportionality issues in the context of its work on legislative proposals, taking into account reasoned opinions received from national Parliaments. It also initiated a new, more general approach to assessing the EU added value by drawing up a Cost of Non-Europe report and produced numerous appraisals of the Commission's impact assessments. Finally, the Committee of the Regions continued its work on subsidiarity issues, in particular by adopting and implementing its second Subsidiarity Work Programme and organising a number of workshops and conferences devoted to the principle of subsidiarity and issues related to the implementation of the subsidiarity control mechanism.