

EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENTS

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REPORT FROM THE COMMISSION ANNUAL REPORT 2017 ON RELATIONS BETWEEN THE EUROPEAN COMMISSION AND NATIONAL PARLIAMENTS (13542/18)

ANNEX TO REPORT FROM THE COMMISSION ANNUAL REPORT 2017 ON RELATIONS BETWEEN THE EUROPEAN COMMISSION AND NATIONAL PARLIAMENTS (13542/18)

REPORT FROM THE COMMISSION ANNUAL REPORT 2017 ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY (13537/18)

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Submitted by Department for Exiting the European Union on 12 November 2018.

SUBJECT MATTER

1. The European Commission has published two Annual Reports: the first an analysis of relations between the Commission and national Parliaments of Member States; and, the second on the principles of subsidiarity and proportionality. Given the links between the subsidiarity control mechanism and the political dialogue between national Parliaments and the Commission, the two reports are viewed by the EU as complementary to each other.

Annual Report on National Parliaments

2. The Annual Report on relations with national Parliaments focuses on the Commission's political dialogue with Member States' national Parliaments. It provides data on the number of opinions received from national Parliaments. In 2017, the national Parliaments addressed 576 opinions (including 52 reasoned opinions) to the Commission. This is a slight decrease of 7% compared to 2016.
3. The number of opinions sent to the Commission differed substantially between the national Parliaments. Constant with previous years, the 10 most active chambers issued nearly 74% of the opinions in 2017.
4. The report provides summaries of the dossiers on which it received the most written correspondence and how it took these into account during deliberations. These were:
 - a. *Clean Energy for all Europeans* package, which received 63 opinions on different elements of the package - the largest share.
 - b. White paper on the *Future of Europe* and accompanying reflection papers, receiving 23 opinions.
 - c. Services package, receiving 22 opinions.
 - d. *Europe on the Move* mobility package, receiving 21 opinions.

5. The report outlines the role of regional parliaments as contributing indirectly to the Commission's relations with national Parliaments. This is through the regional consultation process of national Parliaments, as well as representation through the Committee of the Regions. The Commission notes that although there is no treaty provision for regional parliaments to directly submit opinions, the Commission nevertheless received a number of opinions from regional Parliaments, notably from Germany and Austria.
6. It also provides an overview of bilateral visits and contacts between the Commission and national Parliaments. In total, more than 190 visits and meetings took place in 2017, with many chambers receiving more than one visit by President Juncker, First Vice-President Timmermans, Vice-Presidents or the Commissioners. It summarises the main meetings and conferences involving national Parliaments, including the Conference of Parliamentary Committees for Union Affairs (COSAC) and Conference of Speakers of the European Union Parliaments.
7. It concludes that the trend of high numbers of opinions and frequent meetings shows national Parliaments' continued interest in engaging on matters going beyond the subsidiarity aspects of Commission initiatives, and providing valuable input on the content of these initiatives. In addition, the report notes the work completed in January 2018 by the Task Force on Subsidiarity, Proportionately and "Doing Less More Efficiently" triggered a renewed interest from national and regional Parliaments to debate their role in subsidiarity control and in EU matters more generally, in order to ensure a stronger link between the Union's institutions and its citizens.

Annual Report on Subsidiarity and Proportionality

8. The Annual Report on subsidiarity and proportionality looks at how the EU institutions and bodies implemented these two principles over the last year and how the practice has evolved in comparison with previous years.
9. It outlines that the Commission has put into practice its reinforced Better Regulation agenda through impact assessments, public consultation, explanatory memoranda, the Commission website, the Regulatory Fitness and Performance (REFIT) Platform as well as a new Better Regulation Portal.
10. The Commission continues its practice of reviewing whether existing policy measures are still 'fit for purpose' and to what extent they comply with the principles of subsidiarity and proportionality through the REFIT platform. In 2017, the REFIT platform produced 46 opinions, including recommendations to the Commission on how to simplify and reduce regulatory burdens of existing EU legislation.
11. The report provides data on the mechanisms by which the Commission implements these principles. In 2017, the Regulatory Scrutiny Board examined 53 impact assessments, of which twelve cases (23%) were judged as needing improvement in their analysis of subsidiarity and/or proportionality aspects. The report provides examples of the impact assessments that were assessed and the rationale for the board's decisions. In 2017, the Commission published 72 evaluations and fitness checks. The Regulatory Scrutiny Board examined 17 major evaluations and fitness checks in 2017, for which the board made recommendations for improvement in seven of them.

12. It also outlines the measures taken by the other EU institutions:
- the European Parliament, which received 421 submissions by national Parliaments, produced 42 Initial Appraisals, two Impact Assessments of substantive parliamentary amendments, 11 ex-post European Impact Assessments, and produced 26 "Implementation Appraisals";
 - the Council, who forward to national Parliaments draft legislative acts which do not originate from the Commission and keeps Member States informed of national Parliaments' opinions on Commission legislative proposals;
 - the Committee of the Regions, who monitor the application of the principle of subsidiarity through its various instruments such as the Subsidiarity Work Programme, by issuing 15 opinions on legislative proposals, raising concerns in two of them, and REGPEX (the sub-network of the Subsidiarity Monitoring Network open to Parliaments and governments of regions with legislative powers), where 66 contributions from REGPEX partners were uploaded to the platform;
 - The Court of Justice of the European Union, who delivered four significant judicial decision on the principles of subsidiarity and proportionality considered that subsidiarity had been respected by the EU legislature.
13. There is also a reiteration of the proposals most subject to opinions from national Parliaments and where most concerns were raised on issues of subsidiarity and proportionality. The number of reasoned opinions received in 2017 was 52, this is 13 fewer than in 2016, and just under half of the reasoned opinions in 2017 were raised in response to four proposals:
- a. Proposal on the internal market for energy;
 - b. Two proposals from the Services Package;
 - c. Proposal on work-life balance for parents and carers.
14. It notes that for first time the Union legislature adopted a legislative proposal for which a 'yellow-card' procedure had been triggered. The Commission received reasoned opinions from 13 national parliaments on a Council Regulation establishing the European Public Prosecutor's Office (EPPO). The Commission reviewed the proposal and decided to maintain the proposal, the Council also adopted the proposal.
15. It concludes by committing to ensuring that the principles of subsidiarity and proportionality remain at the heart of European decision-making and that these principles are fully respected throughout the legislative process.

SCRUTINY HISTORY

16. The Annual Report on relations with national Parliaments has been published since 2006, and this is the thirteenth edition. There have been 25 previous Annual Reports on subsidiarity and proportionality. The 2016 report was deposited as document 11018/17, COM(17)600 on which DEXEU submitted an EM dated 27 July 2017. The ESC cleared the report as raising issues of legal and political importance in report 22, 17/19. The report remains under scrutiny in the EUC (Select) Committee.

MINISTERIAL RESPONSIBILITY

17. The Secretary of State for the Department for Exiting the European Union is the Minister with overall responsibility for UK policy on the EU Institutions and the principles of subsidiarity and proportionality.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

18. The Devolved Administrations have an interest and have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

- A. Legal basis: The Annual Report on subsidiarity and proportionality is submitted in accordance with Article 9 of Protocol No 2 to the Treaty on European Union and to the Treaty on the Functioning of the European Union.
- B. European Parliament Procedure: Not applicable
- C. Voting procedure: Not applicable
- D. Impact on United Kingdom Law: None
- E. Application to Gibraltar: Not applicable
- F. Fundamental rights analysis: No fundamental rights issues apply.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

19. None.

SUBSIDIARITY

20. It is appropriate that this report has been drafted at EU level. It is appropriate for the Commission to carry out its own reporting functions, especially on issues that relate to its relationship with national Parliaments, and the issues of subsidiarity and proportionality.

POLICY IMPLICATIONS

21. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.
22. While the UK remains an EU Member State, we continue to view subsidiarity and proportionality as crucial principles that should be at the heart of the work of the European Commission and the other EU institutions.
23. We welcome the Commission's commitment to proportionality and subsidiarity, and

the measures they continue to take to ensure that these are upheld. They remain essential principles by which the EU must abide to ensure EU legislation is effective and proportionate. These annual reports are a valuable mechanism for promoting accountability in the policy-making process and transparency for the manner in which the EU institutions adhere to the principles of subsidiarity and proportionality.

24. The Government notes the slight decrease of opinions issued by national parliaments in 2017. Despite the decrease, it remains overall encouraging that national Parliaments are prepared and willing to engage the Commission during the legislative process, and that the Commission takes such opinions into account during policy-making, as evidenced by the reports. Written and reasoned opinions provide national Parliaments influence to shape decisions, and dialogue between parliaments and the Commission, and a respect for subsidiarity and proportionality are a vital part of this.
25. As per the annex to the report on national Parliaments, the UK parliament submitted 25 opinions (22 from the House of Lords and 3 from the House of Commons). The House of Lords issued the tenth highest number of opinions of any chamber, with the largest number from the Portuguese Assembleia da Republica at 64. We are pleased that the UK Parliamentary chambers remain engaged in this process and are able to influence the decision-making process.
26. As an EU Member State it is the right of the UK to raise concerns it may have on whether the principles of subsidiarity and proportionality are being upheld in the legislative process, and will continue to do so. Departments will continue to raise with Parliament any policies where they assess the principles of subsidiarity and proportionality are not being upheld by the EU institutions in proposals, and outline any concerns they have.

CONSULTATION

28. None required.

IMPACT ASSESSMENT

29. None conducted, as the reports are for information only.

FINANCIAL IMPLICATIONS

30. None.

TIMETABLE

31. None - these reports are for information only and will not be discussed further or agreed in any forum at EU level.

OTHER OBSERVATIONS

32. None.

Martin Cole