

Subsidiarity monitoring report January to May 2015

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Mehefin 15, 2015
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Research Briefing

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1. Introduction

Under Standing Order 21, a ‘responsible committee’ in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or

each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

2. The monitoring process

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are ‘legislative’ or ‘non-legislative’ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both ‘legislative’ and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a ‘reasoned opinion’ on the proposal or not.
- Those proposals which are ‘legislative’ and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee usually during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly's Research Service between 1 January 2015 and 31 May 2015, and provides further information about those proposals that were identified by Assembly officials as being both 'legislative' in nature and relating to devolved matters.

Please note however that this report primarily monitors 'legislative' proposals, in the main it does not contain details of 'non-legislative proposals' that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

3. Overview of draft EU proposals received (January 2015 to May 2015)

A total of 184 UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 January 2015 and 31 May 2015.

Of these, 23 EMs were of policy interest to the Assembly and were shared with the Research Service and one was identified by Assembly officials as being both 'legislative' in nature and of interest to the Assembly.

Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, the proposal was not identified as raising subsidiarity concerns.

Legislative proposals under the new European Commission

In general the number of EU legislative proposals has declined under the new European Commission following the European elections in May 2014. There has been a quite radical shift in approach by the European Commission to its forward planning; one of a number of changes introduced by the new Juncker Commission which took office in November 2014. President Juncker's deputy, First Vice President Frans Timmermans (ex-Dutch Foreign Minister), has control of the Work Programming process and he is a strong advocate of a more streamlined approach to policy and law-making by the EU.

New European Commission President Jean-Claude Juncker, in his Political Guidelines has called for a much clearer focus for EU level interventions, and respect for principles of subsidiarity and proportionality, stating:

...I want a European Union that is bigger and more ambitious on big things, and smaller and more modest on small things...

This translates into 10 key priorities for EU level action over the coming five years, which will be the focus of the European Commission's Work Programmes and planned activities, with the emphasis on leaving Member States (and sub-State authorities) to deal with issues outside of these areas.

This new approach is very much reflected in the first Work Programme of the new Juncker Commission which was published in December 2014. It proposed 23 new legislative

initiatives, which is a major departure from previous years where the European Commission would on average table over 100 legislative proposals. The other innovation of the 2015 Work Programme was an Annex proposing a list of ongoing proposals that the European Commission intended to withdraw due to lack of progress in the decision-making process, with stalemate in Council or between Council and Parliament on particular dossiers.

The fact that only 23 new legislative initiatives have been proposed will have (and has had) a direct impact on the number of proposals that the Constitutional and Legislative Affairs Committee will need to reflect on with regard to subsidiarity concerns.

3.1 EU legislative proposals that did not raise any subsidiarity concerns

Date emailed	Title and description
28/01/2015	<p data-bbox="357 423 1449 555"><i>Proposal for a Regulation of the European Parliament and of the Council on the European Fund for Strategic Investments and Amending Regulations (EU) no 1291/2013 and (EU) no 1316/2013</i></p> <p data-bbox="357 580 1449 712"><i>Annex to the Proposal for a Regulation of the European Parliament and of the Council on the European Fund for Strategic Investments and Amending Regulations (EU) no 1291/2013 and (EU) no 1316/2013</i></p> <p data-bbox="357 736 1449 913">On 26 November 2014, the European Commission published in its communication ‘An Investment Plan for Europe’ (‘the Investment plan’) a proposed EU-level initiative to address an investment gap ‘as a consequence of the economic and financial crisis.’</p> <p data-bbox="357 938 1374 972">The Investment plan is based on three mutually reinforcing strands:</p> <ol data-bbox="357 996 1449 1308" style="list-style-type: none"><li data-bbox="357 996 1417 1030">i. the creation of a European Fund for Strategic Investments (EFSI);<li data-bbox="357 1055 1449 1187">ii. a transparent pipeline of investment projects at the European level and the creation of an advisory hub (European Investment Advisory Hub (EIAH)); and,<li data-bbox="357 1211 1449 1308">iii. measures to remove obstacles to investment and complete the Single Market. <p data-bbox="357 1332 1449 1509">This proposal creates the necessary legal framework for the first two strands of the Investment plan enabling the Commission to implement and deliver the Investment plan jointly with the European Investment Bank (EIB).</p> <p data-bbox="357 1534 1449 1619">With regard to the third strand, the Commission has set out actions in its Work Programme, adopted on 16 December 2014 (COM(2014) 910).</p>