



Council of the
European Union

**Brussels, 26 October 2018
(OR. en)**

**13544/18
ADD 1**

INST 411

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 October 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2018) 703 final
Subject:	ANNEXES to the COMMUNICATION FROM THE COMMISSION THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY: STRENGTHENING THEIR ROLE IN THE EU'S POLICYMAKING

Delegations will find attached document COM(2018) 703 final, ANNEXES 1 to 2.

Encl.: COM(2018) 703 final



EUROPEAN
COMMISSION

Strasbourg, 23.10.2018
COM(2018) 703 final

ANNEXES 1 to 2

ANNEXES

to the

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

**The principles of subsidiarity and proportionality: Strengthening their role in the EU's
policymaking**

{COM(2018) 490} - {COM(2018) 491}

ANNEX I

The Task Force's nine Recommendations

<i>Task Force Recommendation 1</i>
<p>A common method (“assessment grid”) should be used by the Union’s institutions and bodies and by national and regional Parliaments to assess issues linked to the principles of subsidiarity (including EU added value), proportionality and the legal basis of new and existing legislation.</p> <p>This assessment method should capture the criteria contained in the Protocol on subsidiarity and proportionality originally attached to the Amsterdam Treaty and relevant jurisprudence of the European Court of Justice. A proposed model assessment grid is annexed to this report.</p> <p>During the legislative process, the European Parliament and the Council should systematically review the subsidiarity and proportionality of draft legislation and the amendments they make using the common method. They should take full account of the Commission's assessment presented in its proposals as well as the (reasoned) opinions of national Parliaments and the European Committee of the Regions.</p>
<i>Task Force Recommendation 2</i>
<p>The Commission should apply flexibly the Treaty-based 8 weeks deadline for national Parliaments to submit their reasoned opinions.</p> <p>This flexibility should take account of common holiday periods and recess periods, while allowing the Commission to respond as far as possible, within 8 weeks of receiving each opinion.</p> <p>The Commission should reflect in an appropriate way the reasoned opinions it receives from national Parliaments and feed-back it receives from regional Parliaments with legislative powers in its annual report on subsidiarity and proportionality. It should also make available to the co-legislators, in a comprehensive and timely manner, information about proposals where significant concerns have been raised in respect of subsidiarity.</p>
<i>Task Force Recommendation 3</i>
<p>Protocol No. 2 TEU/TFEU should be revised when the opportunity arises to allow national Parliaments 12 weeks to prepare and submit their reasoned opinions and to express fully their views about subsidiarity, proportionality and the legal basis (conferral) of the proposed legislation. National Parliaments should consult regional Parliaments with legislative powers where their competences under national law are concerned by the proposal for EU legislation.</p>
<i>Task Force Recommendation 4</i>
<p>Together with national Parliaments and the European Committee of the Regions, the Commission should raise the awareness of national, local and regional authorities of the opportunities they have to contribute to policymaking at an early stage.</p> <p>The Commission should involve local and regional authorities fully in its consultation processes taking into account their specific role in implementing Union legislation. It should promote the participation of local and regional authorities by appropriate design of questionnaires and providing greater feedback and visibility to the views of local and regional authorities in its impact assessments, proposals and feedback transmitted to the co-legislators.</p> <p>Member States should follow the European Commission's guidance and engage meaningfully with local and regional authorities when preparing their national reform programmes and designing and implementing structural reforms as part of the European Semester to improve ownership and implementation of these reforms.</p>
<i>Task Force Recommendation 5</i>
<p>The Commission should ensure that its impact assessments and evaluations systematically consider territorial impacts and assess them where they are significant for local and regional authorities. Local and regional authorities should help to identify such potential impacts in their consultation responses and feedback on roadmaps.</p> <p>The Commission should revise its Better Regulation Guidelines and Toolbox accordingly and address issues linked to the implementation and EU added value of legislation, and to ensure greater visibility of the Commission's assessments of subsidiarity, proportionality and relevant territorial impacts in its proposals and accompanying explanatory memoranda.</p>

Task Force Recommendation 6

The European Parliament and the Council should use consistently the subsidiarity grid during their negotiations to promote a culture of better awareness of issues relevant for local and regional authorities.

The Commission should highlight to the co-legislators any views it receives from local and regional authorities in the scrutiny period following adoption of its proposals.

Member States' governments and national Parliaments should call on the views and expertise of local and regional authorities at the start of the legislative procedure. The Task Force invites the EU's co-legislators to consider inviting representatives of local and regional authorities to their meetings or hosting hearings and events where this is appropriate.

Task Force Recommendation 7

Regional and national Parliaments should explore how to link more effectively their respective platforms for sharing information (REGPEX and IPEX) to ensure that the legislative procedure and the subsidiarity control mechanism reflect better their concerns.

Task Force Recommendation 8

The Commission should develop a mechanism to identify and evaluate legislation from the perspective of subsidiarity, proportionality, simplification, legislative density and the role of local and regional authorities. This could build on the REFIT Programme and Platform.

In general, the experiences of local and regional authorities and their networks should be fully taken into account when EU legislation is monitored and evaluated. The Committee of the Regions should implement a new pilot network of regional hubs to support reviews of policy implementation.

Task Force Recommendation 9

The next Commission, with the European Parliament and the Council, should reflect on rebalancing its work in some policy areas towards delivering more effective implementation rather than initiating new legislation in areas where the existing body of legislation is mature and/or has recently been substantially revised.

ANNEX II

Model grid to assess subsidiarity and proportionality throughout the policy cycle (taken from the report of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”)

Institution*	
Title of the proposal or initiative	
Institutional Reference(s)	

Purpose and explanation of this assessment grid

This grid aims to provide a shared and consistent approach to assess conformity of a given proposal or initiative with the Treaty-based principles of subsidiarity and proportionality. It is intended to be used by the European Commission when initiating its proposals, the national Parliaments when preparing their reasoned opinions pursuant to Protocol No. 2 of the Treaty on the Functioning of the European Union (TFEU) as well as the European Parliament and the Council as the EU’s legislators. The grid is also intended to be used for initiatives from a group of Member States, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of legislative acts (Article 3 of Protocol No. 2)

The subsidiarity principle helps determine whether it is justified for the Union to act within the shared or supporting competences it has been given under the Treaties or whether it is more appropriate that Member States act at the appropriate national, regional or local levels. The two cumulative aspects of EU necessity and EU added value should both be satisfied if the subsidiarity test is to be fulfilled. These are explained further below.

The proportionality principle helps ensure that the intensity of the legislative obligations or policy approach match the intended objectives of the policy or legislation. This means that the content and form of Union action must not go beyond what is necessary to achieve the intended objectives.

Impact assessments prepared by the European Commission to support its proposals will include an assessment of subsidiarity and proportionality. In addition, each Commission proposal will be accompanied by an explanatory memorandum which also presents the Commission’s assessment of subsidiarity and proportionality as this is a requirement of Protocol No. 2 of the TFEU together with the requirements to consult widely before proposing a legislative act and to take into account the local and regional dimension of an envisaged action.

While this assessment grid only addresses subsidiarity and proportionality, each institution using it is free to add elements which are useful for their own internal processes and priorities. For example, the grid could be adapted to include an assessment of the Commission’s use of better regulation instruments or political aspects of the Commission’s proposals.

** Not all questions in this model assessment grid are relevant for all institutions.*

1. Can the Union act? What is the legal basis and competence of the Union's intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<i>Subsidiarity does not apply to policy areas where the Union has <u>exclusive</u> competence as defined in Article 3 TFEU. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU sets out the areas where competence is shared between the Union and the Member States and Article 6 TFEU sets out the areas for which the Union has competence only to support the actions of the Member States.</i>

2. Subsidiarity Principle: Why should the EU act?	
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2:	
<ul style="list-style-type: none"> – Has there been a wide consultation before proposing the act? – Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level? 	
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding conformity with the principle of subsidiarity?	
2.3. Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?	
(a)	Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
(b)	Would national action or the absence of EU level action conflict with core objectives of the Treaty or significantly damage the interests of other Member States?
(c)	To what extent do Member States have the ability or possibility to enact appropriate measures?

(d)	How does the problem and its causes (e.g. negative externalities, spill over effects) vary across the national, regional and local levels of the EU?
(e)	Is the problem widespread across the EU or limited to a few Member States?
(f)	Are Member States overstretched in achieving the objectives of the planned measure?
(g)	How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
2.4 Based on the answers to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of the scale or effects of that action (EU added value)?	
(a)	Are there clear benefits from EU level action?
(b)	Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
(c)	What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
(d)	Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, local and regional levels)?
(e)	Will there be improved legal clarity for those having to implement the legislation?

3. Proportionality: How the EU should act

3.1. Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

(a)	Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
(b)	Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with, the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-regulation, etc.)?
(c)	Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit European action to minimum standards or use a less stringent policy instrument or approach?).
(d)	Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
(e)	While respecting Union law, have special circumstances applying in individual Member States been taken into account?