

TO THE MEMBERS OF THE TASK FORCE ON SUBSIDIARITY,
PROPORTIONALITY AND DOING LESS MORE EFFICIENTLY

Maastricht
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Subject: Contribution to the reflections of the Task force on subsidiarity, proportionality and doing less more efficiently

Dear Members of the Task Force,

I would like first of all to praise the European Commission's initiative to create this Task force. A reflection on these issues is both an ambitious task, and a particularly welcome initiative. I am thus honoured to have the opportunity to try and contribute to your reflections, and thank you sincerely for this.

In doing so, I would like to first make some concrete pragmatic proposals as to how, in my view, the currently existing procedures for the participation of regional and national parliaments could be improved. Second, I would like to share my opinion on some of the proposals under discussion (e.g. red and green cards etc.). Finally, I will share some overall reflections on the Early Warning System, the Political Dialogue and, more generally, on national and regional parliaments' roles in the European Union (EU).

1. Some concrete proposals to improve the existing mechanisms

Taking the experience gathered so far into account, some improvements appear to be possible under the current Treaty framework.

- *Recentralisation of information:* There has undoubtedly generally been an effort towards more openness and an increase in the information made available to the wider public via, for instance, the publication on the Commission's website, of the 'own initiative opinions' or via the EP's 'Connect' database which is now accessible to all. This is a very positive evolution. Nevertheless, this has also led to the information related to the Early Warning Mechanisms and the Political Dialogue, in its written and other forms, being scattered among different platform (Commission website; European Parliament's website, IPEX etc.). There should instead be a single database in which all actors involved can easily upload and consult the relevant information,¹ and RegPEX should also be integrated to it. Further to this, the search functions should be developed further: whereas the IPEX platform mostly focuses on legislative and other types of documents, the Commission website dedicated to the relations with national parliaments² only allows for a search by Member State. This makes any comparative search on one same document particularly cumbersome, especially when the year of publication of a proposal and that of the submission of a national parliament's opinion or contribution differ.

¹ A recentralisation of the information related to interparliamentary cooperation in all its forms would also be particularly welcome.

² https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/relations-national-parliaments_en

Bearing this in mind, the new unique website should also include filters on the basis of a document's number and key words, whether it is a reasoned opinion or a contribution etc. Such a change would make it easier for parliaments, and the general public, to follow what (other) parliaments have been doing, and in this way it would improve the functioning of the existing mechanisms.

On a more minor note, I am aware of the fact that the Commission has been working on improving its website, but it appears to me that the section dedicated to national parliaments is not easy to find even for a frequent user, whilst it used to be more easily accessible in the past.

- *More detailed information in the annual reports:* It has repeatedly been suggested that the Annual reports include also the opinions directly submitted to the Commission by regional parliaments. The systematisation of such direct submission of reasoned opinions and contributions to the Commission may not fully be desirable as it is admittedly not for the EU to provide an alternative way for sub-national authorities to circumvent their central State, nor is it for the EU to interfere by making the consultation of regional parliaments mandatory at national level. Those authorities should continue to strive for more influence at national level, and reserve the direct dialogue with the Commission to the few truly problematic issues. They should also seek to coordinate their actions further, at national level and beyond, to submit a common opinion to the Commission, thereby increasing its representativeness. This notwithstanding, in as far as such dialogue does take place and the Commission does answer to those directly submitted opinions, this exchange should be fully acknowledged in the Annual reports and made publicly available (also then in the common database). This is to guarantee transparency and full democratic legitimacy.

Further to this, it matters that national (and regional) parliaments can understand how their submissions have been taken into account, and what the impact of their opinions (or the absence thereof) has been as they dedicate important resources to this process, and as participation needs to remain (politically) attractive to them; some parliaments already focus almost exclusively on their governments. An important and welcome effort has been made by the Commission, in particular in its Annual reports on relations with national parliaments where it has indicated the final outcome of the legislative proposals that received the highest numbers of contributions. While the Commission rightly notes that '[d]ue to the many actors involved, it is not possible to make a direct link between the position of an individual national Parliament and the outcome of the legislative process',³ it is nonetheless desirable that the way in which contributions and reasoned opinions are taken into account by the Commission, but also by the EU legislator, becomes clearer. The idea to send a summary of the reasoned opinions received to the legislator bears potential, and European Parliament and Council should be encouraged to not only take the principle into account, but also to highlight the way in which parliaments' input has been considered. Particular attention should also be devoted to the local and regional dimensions.

- *More detailed justification:* As per art. 5 Protocol 2, '[d]raft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality', and this point has oftentimes been the object of criticism by national parliaments. Impact Assessments, however, do tend to provide a detailed and balanced justification, but they are not translated in all EU official languages. Considering that parliaments have to conduct their subsidiarity check under important time pressure, it would be desirable for a more detailed justification to be included in the proposals themselves, in particular as it would not significantly increase the workload of the drafting procedure and as it would ease parliaments' task.
- *Common definition of the principle of subsidiarity:* The issue of the definition of the principle of subsidiarity is regularly subject to discussion, and so is its legal or political nature. Initiatives to try and elaborate a common 'subsidiarity grid' have not lacked at both EU and Member States level since the entry into force of the Lisbon Treaty. No consensus has emerged so far. Yet, it is crucial for both national (and regional) parliaments and the Commission that an agreement is reached on this point. First, it would ease national and regional parliaments'

³ European Commission, Annual report 2016 on relations between the European Commission and national parliaments, COM(2017) 601 final, 7.

task when conducting their subsidiarity check. Second, it would contribute to ensure that when a yellow card is reached, opinions are indeed based on a case of subsidiarity breach. Third, the Commission's task at the time of responding to these opinions would also intervene in a more defined framework, making it easier to address national parliaments' concerns and allowing potentially for swifter responses. The promotion of a 'subsidiarity culture' as proposed by the members of the Committee of the regions appears particularly suitable in this regard.

- *Reinforcement of the Dialogue between parliaments and Commission:* The Political Dialogue between national parliaments and the Commission has been significantly reinforced over the past years. For instance, the numerous visits regularly paid by Commissioners to national parliaments are undoubtedly a very positive development. An additional means to strengthen this dialogue on a collective basis would consist in the organisation of additional debate sessions between commissioners and national parliaments prior to, or following, interparliamentary conference meetings. It has indeed become customary for the responsible commissioner to appear before parliaments during those meetings - and this is a positive development too. However, these exchanges of views do not generally last very long. Hence, one could explore the possibility to (occasionally at least) organise one additional debate outside of the actual conference meeting with a view to allow national parliaments to, collectively, enter in a lengthier dialogue with the responsible Commissioner. This would not involve additional costs and could have an impact on MPs' interest and knowledge about the EU which, in turn, could contribute to making it more democratic and closer to citizens.

2. Assessment of some of the proposals under discussion

- *Green card:* The idea of a green card - understood as a 'reinforced Political Dialogue' or as the possibility for national parliaments to collectively invite the Commission to consider making a legislative proposal - should be pursued and clearer, yet flexible, rules should be defined to this end. Opening such a possibility to national parliaments - and to regional parliaments via their national parliaments - would contribute to give them a proactive and positive role in the EU. As is well-known, the Lisbon Treaty only attributed them negative powers which has led to the frustration of some parliamentarians. Furthermore, this could help the Commission identify the areas in which it should act primarily.
- *Red or late card:* By contrast, the idea of a red card as it was defined in the United Kingdom's New settlement or in a similar form should, in my view, not be pursued. It is first unrealistic that a higher threshold would be reached when only three yellow cards have been reached thus far, and, most importantly, it could give national parliaments an incentive to adopt 'reasoned opinions' on many different grounds unrelated to subsidiarity to try and block a legislative proposal they dislike, and potentially to try and by-pass the Commission. Whereas the idea to involve national parliaments a second time at the end of the legislative process seems attractive (late card), it is also not desirable in my view. It is arguably true that a legislative proposal can be significantly altered during the legislative process and that the conditions for the compliance with the principle of subsidiarity may not be met anymore once a proposal is on the verge of being adopted. However, giving national parliaments a second opinion could jeopardize the outcome of sometimes lengthy and tedious negotiations, while also making the whole procedure even longer. Once the proposal is examined by the EU legislator, national parliaments (and potentially also regional parliaments) should try and influence their government representatives and MEPs. Additionally, should national parliaments consider that a legislative act does not comply with the principle of subsidiarity, the possibility to bring a case before the Court of Justice remains open even if, admittedly, some national parliaments will depend on their governments' willingness to proceed with their request.
- *Lowering the thresholds for the yellow and orange cards:* Such a change is first of all not possible without Treaty change. Even if the Treaties were to be revised, a risk would arise that yellow cards are too frequently raised thereby complicating significantly the already complex legislative procedure; this could also be used consciously as an avenue to block legislation on grounds other than subsidiarity. Most importantly, in the

absence of any common understanding of subsidiarity, the risk would exist that those thresholds be reached on very different grounds, not always strictly related to subsidiarity. Therefore, a more flexible interpretation of these thresholds by the Commission appears a more desirable solution. This would also at least partially compensate for the limited time available to adopt reasoned opinions which, in some instances, has not allowed for reasoned opinions to be counted as such; those late submissions were instead submitted as contributions. One way to show more flexibility would for instance be to devote more (public) attention to the proposals that have received a certain, lower, number of reasoned opinions, which, to my knowledge, has not happened so far outside of the attention devoted to these proposals in the Annual reports. A similar public outreach strategy could in fact be reserved to those proposals that give rise to a significant number of contributions. National parliaments could try and continue to reinforce their cooperation as well by, for instance, exchanging their priorities on the Commission's Annual Work Programme as some have already in some occasions, or by continuing to work as clusters of interest. There should also be a possibility to receive an automatic notification once a certain number of national parliaments have indicated on IPEX that they are scrutinising a proposal; this alert function would also be made available to regional parliaments and local authorities.

- *Broadening the scope of the Mechanism:* The Treaty framework necessarily limits the extent to which the scope can be extended. As subsidiarity and proportionality are strongly intertwined though, the design of a common set of questions to check subsidiarity compliance mentioned above should contribute to clarify the distinction between the two principles, and include both to the extent necessary to the development of the 'subsidiarity culture'.
- *Extending the eight-week deadline:* in this case as well, the flexible interpretation by the Commission proposed previously could contribute to mitigate the absence of a Treaty revision. The exclusion of the Christmas period on an informal basis would be welcome,⁴ and a future extension to twelve weeks when the Treaties are next revised could be envisaged. In any event, anticipation matters, and national and regional parliaments alike should scrutinise the Commission's Annual Work Programme and above all voice their opinion before the proposal is published.⁵ As regional parliaments commonly have fewer resources, they should seek to concentrate on a more reduced number of key proposals and to pool resources, both with their regional counterparts or with their regional governments, as well as with their national parliaments and governments.

3. Overall reflection on regional and national parliaments' role in the EU

In conclusion, these reflections on the Early Warning Mechanism need to be replaced in a broader context as, in my opinion, the Mechanism should not be dissociated from national and regional parliaments' broader role in the EU.

Indeed, the Treaty constraints under which the Mechanism operates at present generates frustration and an impression of inefficiency since only three yellow cards have been reached. Additionally, these yellow cards have had very limited immediate consequences. However, three yellow cards are not, in my view, an automatic sign that the thresholds are too high for the Mechanism to be effective. But it is understandable that this impression exists as the 'yellow card' is the only clear visible instrument at national parliaments' disposal at present. This is why, as noted by your Task force, parliaments, but also local authorities, should voice their opinions while the proposal is prepared (and indeed not be assimilated to ordinary stakeholders in this

⁴ By contrast, an extension for the Member States whose regional parliaments have legislative powers does not seem suitable for at least two reasons. The fact that no regional parliaments with legislative competences exist in a given Member State does not automatically mean that its local and regional authorities are not consulted. Additionally, other valid grounds for an extension - such as national elections - exist and it could become increasingly difficult to choose on which ground to grant an informal extension. This already complex Mechanism should remain as simple as possible.

⁵ In this regard, the proposals made in the Contribution of the Committee of the Regions' members on 19 February 2019 (1.1. 2) and 1.2. short-term actions) appear particularly promising.

procedure). The frequent visits both by Commissioners to national parliaments and by national parliaments members to the Commission, should be used even more as forums of debate on current but also on upcoming proposals, and on the Commission Work Programme.⁶ The written Political Dialogue should also be further improved. On the other hand, at national level there should be an increased effort to also monitor the legislative procedure with a view to influence the government's position, and to anticipate transposition and implementation. More public attention should be devoted to those proposals that do not attract a yellow card, but are the object of numerous reasoned opinions, and contributions.

(Some) local authorities, as well as (some) regional and national parliaments are eager to participate and try and play an active, positive, role in the EU decision-making process; some more room should be made for this, by means of a more frequent and an 'enhanced' Political Dialogue, and by means of the concrete changes proposed here.

I wish you a fruitful conclusion of your reflections and look forward to reading your final report.

Yours sincerely,

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⁶ Contrary to what was proposed by the Committee of the regions members on 12 March (proposal 2 d)), the Commissioner who would present the Commission's Annual Work Programme should not necessarily be chosen on the basis of the country of origin. This could facilitate communication in one same language, but it would go against the spirit of the Commission's role within the EU and would not contribute to develop a dearly needed European culture.