



Parliament of Romania
Chamber of Deputies
COMMITTEE ON EUROPEAN AFFAIRS



Bucharest, May 8th, 2018

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To:

TASK FORCE ON SUBSIDIARITY, PROPORTIONALITY AND DOING LESS MORE EFFICIENTLY

Contribution on a better application of the principles of subsidiarity and proportionality

The European Affairs Committee:

- having regard to the mandate of the Task force on subsidiarity, proportionality and doing less more efficiently, established by decision of the European Commission;
- taking into account that the mandate of the Task force ends in July this year and that valuable contributions can be made during debates regarding enlarging the role of national parliaments in the European decision-making process, but also regarding the identification of policy areas which could be returned to Member States;
- observing that, during almost 10 years of subsidiarity control mechanism, as instituted by the Lisbon Treaty, the national parliaments couldn't realise any effective use of the „yellow card” procedure, neither of the „orange card” procedure, because the thresholds established in Protocol (no.2), annexed to the Treaties, are too difficult to achieve;
- noting that, according to Protocol (no. 2), national parliaments cannot adopt reasoned opinions exclusively for the breach of the principle of proportionality, which is incorrect, because proportionality, as well as subsidiarity, governs the exercise of competences by the Union, thus conferring legitimacy to actions, and this component should not escape the *ex ante* control exercised by the national parliaments, at least in the sphere of shared competences.

Deems necessary:

- **Involving national parliaments in all stages of the legislative procedure, starting with the stage of prior consultations and ending with the final text negotiated within the Union legislature.**

Involving national parliaments even from the stage of prior consultations would timely solve many problems regarding the breach of subsidiarity and/or proportionality principles or even substantive issues.

The European Commission should commit to taking into account the objections of the national parliaments expressed during the prior consultations stage, in a transparent manner, which would facilitate, in a decisive way, the development of the legislative procedure. In this regard, the IPEX platform could be extended or a new forum for debates and exchange of ideas between the national parliaments and the European Commission could be created. Furthermore, when adopting a proposal for a legislative act, the European Commission should indicate in the explanatory memorandum the way in which it resolved issues related to any breaches of the principles of subsidiarity and/or proportionality, but also problematic issues related to the substance of the debated documents.

At the same time, after the European Parliament and the Council of the EU reached an agreement regarding a legislative proposal, the national parliaments should be able to exercise the control regarding the compliance with the principles of subsidiarity and proportionality, in the same deadline established for the examination of the initiative in its version presented by the European Commission. This is necessary because, most of the time, the final text differs fundamentally from the initiative analyzed at the beginning of the legislative procedure.

But, under the current situation, the national parliaments do not have a formal instrument, coordinated at EU level, in order to exercise such a control.

➤ **Extending the 8-week period for assessing the compliance with the principle of subsidiarity**

Countless times, during COSAC debates, the issue of the 8-week period's insufficiency for submitting a reasoned opinion was highlighted.

We consider that this prolonging of the deadline could be done immediately, within the limits of the treaties, by eliminating the periods of recess and public holidays (Easter, Christmas) from the calculation of the 8-week period.

➤ **A more efficient parliamentary control procedure**

From the 2016 Report of the European Commission regarding the application of the principle of subsidiarity, we find that the total number of contributions submitted by the national parliaments in the field of political dialogue rose significantly, and the ratio of reasoned opinions was higher with 10,5% than the previous year. This shows focus of national parliaments (including the regional ones) towards the decision-making process at the EU level, but also their higher demand to participate actively in it.

But we observe that in almost 10 years from the entry into force of the Lisbon Treaty, the so-called "yellow card" procedure was triggered only 3 times, and the "orange card" procedure was never triggered. From the total of 3 yellow cards, 2 had no effects, the Commission preferring to maintain the legislative proposals unchanged; regarding the yellow card triggered in the field of exercising the right to take collective action, the Commission found that the principle of subsidiarity is not breached, but it withdrew the proposal because of the lack of political support in the EU legislature.

Accordingly, the experience of the 3 yellow cards triggered until now proves that national parliaments will not be able to actually involve themselves in the European decision-making process without amending those provisions of Article 7 of Protocol (no. 2) allowing the European Commission to maintain unchanged a proposal for a legislative act. However, until a possible amendment of EU Treaties, such an impediment could be overcome by a political commitment taken by the European Commission towards the national parliaments.

➤ **A greater involvement of the European Commission in the relation with national parliaments, especially by:**

- **Explicit acceptance of the possibility to issue reasoned opinions based on the breach of the principle of proportionality.** This is necessary, because the European Commission itself regarded the said principle as a component of subsidiarity. Proportionality did not occur as a principle separated from subsidiarity, but as a dimension of the application of subsidiarity, together with that of the need for action. Subsidiarity and proportionality measure together the mere legitimacy of the EU actions, governing the exercise of conferred competences, and from this perspective, national parliaments should not lack the capacity for opposing *ex ante* to a proposal for a legislative act susceptible to breach the principle of proportionality. Furthermore, COSAC debates highlighted repeatedly that the analysis regarding compliance of the principle of subsidiarity is lacking efficiency in the absence of a similar analysis regarding compliance with the principle of proportionality;

- **Focus on important substantive issues:** certain legislative proposals, even if they cannot be challenged for the infringement of the principle of subsidiarity or proportionality, they contain provisions with major impact over national policies or over particularities of certain Member States.

Many of these substantive issues could be resolved in due time, if national parliaments would be involved even from the stage of prior consultations. If, however, these substantive aspects are not solved in the stage of prior consultations, national parliaments could signal them in the period foreseen for adopting reasoned opinions and treated as such by the European Commission. Conferring a reasoned opinion value to certain substantive aspects merely gives expression to the political dimension of the principle of subsidiarity.

The extensive involvement of the Commission in its relation with national parliaments is justified by the correlation of the rules applicable to the exercise of EU competences.



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