



Constitutional and Legislative Affairs Committee

Subsidiarity monitoring report (January 2012 – April 2012)

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This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

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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.¹

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.** *[RS emphasis]*²

2. The monitoring process

¹ Official Journal of the European Union, [*Consolidated version of the Treaty on European Union*](#), C83/204, 30 March 2010

² Official Journal of the European Union, [*Protocol on the Application of the Principles of Subsidiarity and Proportionality*](#), C310/207, 16 December 2004

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 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 also 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”³ 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 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 January and April 2012, 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 only monitors “legislative” proposals, **it does not contain details of any “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 Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

3. Overview of draft EU legislative proposals received (January 2012 – April 2012)

A total of 147 UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 January 2012 and 31 April 2012. Of these, 29 EMs were 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, these were subsequently filtered as follows:

- 1 proposal was identified as raising subsidiarity concerns and was the subject of a "written representation" by the Constitutional and Legislative Affairs Committee to the relevant committees in the House of Commons and House of Lords.
- 28 proposals did not raise any subsidiarity concerns.

Additional details about these filtered proposals are included below.

3.1. *EU legislative proposals identified as raising subsidiarity concerns*

<u>Date EM emailed</u>	<u>Title, description and timeline</u>
17 January 2012	<i>Proposal for a Directive of the European Parliament and of the Council on Public Procurement</i> (COM(2011)896). Concerns relating to this proposal were raised by the Assembly's Enterprise and Business Committee in February 2012. It was subsequently considered by the Constitutional and Legislative Affairs Committee on 20 February 2012 where Members agreed to make a written representation under Standing Order 21 to the House of Commons' European Scrutiny Committee and the House of Lords' European Union Committee. The Committee's concerns were then incorporated into a "reasoned opinion" issued by the House of Commons in relation to the draft proposal on 6 March 2012. This was the first time that an Assembly Committee had utilised the powers available under Standing Order 21 to raise subsidiarity concerns in relation to an EU legislative proposal.

3.2. EU legislative proposals that did not raise any subsidiarity concerns

<u>Date EM emailed</u>	<u>Title and description</u>
5 January 2012	<i>Proposal for a Regulation of the European Parliament and the Council <u>establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020)</u> (COM(2011)809).</i> This proposal is part of a range of documents (detailed below) which establishes the Commission's proposals for the EU's next framework programme for research and innovation – Horizon 2010.
5 January 2012	<i>Proposal for a Council Decision establishing the <u>Specific Programme Implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020)</u> (COM(2011)811).</i> See COM(2011)809.
5 January 2012	<i><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, a Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020), a Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 – 2018) complementing the Horizon 2020 – The Framework Programme for Research and Innovation – <u>Impact Assessment</u></u> (SEC(2011)1427).</i> See COM(2011)809.
5 January 2012	<i><u>Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 – The Framework Programme for Research and Innovation, Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 – The framework Programme for Research and Innovation (2014 – 2020), Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 – The Framework Programme for Research and Innovation (2014 – 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 –</u></i>

2018) complementing the Horizon 2020 - The Framework Programme for Research and Innovation - **Executive Summary of the Impact Assessment** (SEC(2011)1428).

See COM(2011)809.

5 January
2012

*Proposal for Regulation of the European Parliament and of the Council **laying down the rules for the participation and dissemination in Horizon 2020** - The Framework Programme for Research and Innovation (2014 - 2020)* (COM(2011)810).

The proposal sets out the single set of rules intended for governing the application, evaluation, participation and dissemination processes for Horizon 2020.

5 January
2012

*Proposal for a Council Regulation on the **Research and Training Programme of the European Atomic Energy Community (2014 - 2020)** complementing the Horizon 2020 - The Framework programme for Research and Innovation* (COM(2011)812).

This proposal sets out the Euratom-related elements of the Horizon 2020 programme.

6 January
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.294/2008 **establishing the European Institute of Innovation and Technology (EIT)*** (COM(2011)817).

This proposal amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

6 January
2012

*Proposal for a Decision of the European Parliament and of the Council on the **Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT): The contribution of the EIT to a more innovative Europe*** (COM(2011)822).

This proposal (along with COM(2011)817) amends the EIT regulation for its operation from 2014–2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

10 January
2012

*Proposal for a Regulation of the European Parliament and of the Council establishing a **Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014 – 2020)**(COM(2011)834).*

The proposal aims to establish a “Programme for the Competitiveness of Enterprises and SMEs” which is designed to support the Europe 2020 strategy to ensure that SMEs are able to take full advantage of the Single Market’s potential.

10 January
2012

*Proposal for a Decision of the European Parliament and of the Council on **serious cross-border threats to health** (COM(2011)866).*

The proposal intends to strengthen current capacities and structures on health security to protect EU citizens from serious cross border threats that might affect public health.

12 January
2012

*Proposal for a Regulation of the European Parliament and of the Council on **the European Maritime and Fisheries Fund** [repealing Council Regulation (EC) No.1198/2006 and Council Regulation(EC) No.861/2006 and Council Regulation No.XXX/2011 on integrated maritime policy (COM(2011)804).*

The proposal establishes the European Maritime Fisheries Fund to replace the European Fisheries Fund from 1 January 2014 and will run until the end of December 2020.

12 January
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on **re-use of public sector information** (COM(2011)877).*

This proposal amends the “Re-Use Directive” in order to bring about a further degree of harmonisation of the legal rules governing the re-use of public sector information at the European level.

17 January
2012

*Proposal for a Directive of the European Parliament and of the Council on the award of **concession contracts** (COM(2011)897).*

The proposal aims to extend and expand the European rules governing the award of “concession” contracts by public authorities and utilities, in parallel with proposals to modernise the public and utilities procurement rules.

17 January 2012	<i>Proposal for a Directive of the European Parliament and of the Council on <u>procurement by entities operating in the water, energy, transport and postal services sectors</u> (COM(2011)895).</i> The proposal replaces the “Utilities Directive” and the “Public Sector Directive” which contain detailed procedural rules that apply to public procurements above certain thresholds.
18 January 2012	<i>Proposal for a Regulation of the European Parliament and of the Council on the <u>establishment of a Programme for the Environment and Climate Action (LIFE)</u> (COM(2011)874).</i> The proposal provides for the continuation of the LIFE programme for 2014–2020 to support EU environment and climate objectives.
18 January 2012	<i>Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of <u>the conservation of fish stocks</u> (COM(2011)888).</i> The proposal establishes a framework of trade measures that could be implemented against countries that are judged to be allowing non-sustainable fishing on stocks in which the EU has a common interest in their management.
27 January 2012	<i>Proposal for a Council Regulation establishing for the period 2014-2020 the programme "<u>Europe for Citizens</u>" (COM(2011)884).</i> The proposal builds on the existing programme which ends in December 2013. It aims to enhance capacity for civic participation at the Union level.
30 January 2012	<i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the <u>recognition of professional qualifications</u> and Regulation on administrative cooperation through the Internal Market Information System (COM(2011)883).</i> The proposal updates the Recognition of Professional Qualifications Directive and introduces a number of new processes which aim to facilitate free movement in the regulated professions throughout the EU.

2 February
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/40/EC on **minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)** (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(2012)15).*

The proposal will further delay the transposition of Directive 2004/40/EC from 30 April 2012 to 30 April 2014.

20 February
2012

*Report from the Commission to the European Parliament and the Council on the **outcome of the review of Annex X to Directive 2000/60/EC of the European Parliament and of the Council on priority substances in the field of water policy** (COM(2011)875).*

This proposal relates to proposal COM(2011)876 which will aim to review the list of substances which are identified as priority hazardous substances in water.

20 February
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/60/EC and 2008/105/EC as regards **priority substances in the field of water policy** (COM(2011)876)*

This proposal will aim to review the list of substances which are identified as priority hazardous substances in water.

20 February
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1342/2008 of 18 December 2008 **establishing a long-term plan for cod stocks and the fisheries exploiting those stocks** (COM(2012)21).*

The proposal aims to delegate powers to the Commission allowing the modification of parts of the “cod recovery plan” without the need to pass through the co-decision process.

22 February
2012

*Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to the **proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas***

and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean at the seventeenth meeting of the Contracting Parties (COM(2012)47).

The provides for an EU position at the “Barcelona Convention” to secure EU support to place 6 species of shark on Annex II (list of threatened and endangered species) to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

19 March
2012

Proposal for a Regulation of the European Parliament and of the Council on the non-commercial movement of pet animals (COM(2012)89).

The proposal clarifies the animal health requirements that apply to the non-commercial movement of pets following the expiry of the transitional regime (Regulation 288/2003).

19 March
2012

Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/65/EEC as regards the animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets (COM(2012)90).

The proposal amends an existing Directive relating to animal health rules for trade between Member States of the EU and import from third countries of non-livestock species.

19 April
2012

Proposal for Council Directive amending Annex I to European Parliament and Council Directive 94/62/EC on packaging and packaging waste (COM(2012)141).

The proposal adds new illustrative examples of packaging and non-packaging the “Packaging and Waste Directive”.

19 April
2012

Proposal for a Council Directive laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (COM(2012)122).

The proposal sets out similar standards as those included in “the Drinking Water Directive” in relation to radioactivity in water intended for human consumption but specifies one new standard for Radon and new



monitoring frequencies and additional analytical requirements.

26 April
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards **the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools** (SWD(12)65).*

The proposal amends the “Batteries Directive” by amending the exemption that allows cadmium to be used in batteries for cordless power tools so that the exemption ceases to have effect from 1 January 2016.