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From Subsidiarity to Better EU Governance: A Practical Reform Agenda for the EU

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1. Introduction: The Politics of Subsidiarity

Subsidiarity is one of the core organising principles of the European Union (EU) and can be considered from a legal, political and administrative perspective. Legally, the subsidiarity principle, as laid down in article 5 of the Treaty on European Union (TEU), determines whether action should be taken at the European level or at state level, thus helping to settle disputes concerning the division of competences.¹ The procedures to monitor compliance with subsidiarity are set out in Protocol No. 2, with national parliaments at the forefront. Politically, subsidiarity relates to a wide variety of demands from, and reservations in, the member states, pointing at the same time to more EU policies in some areas and less in others. In terms of administrative adaptations, particularly the European Commission and national parliaments have invested in procedures to argue better the application of better regulation principles (including subsidiarity and proportionality) in political decisions.² In combination, the instrumentalisation of subsidiarity has come a long way since its introduction in the Maastricht Treaty of 1992 to facilitate the practical application of this hard-to-apply legal concept.

The first twenty years of subsidiarity were about getting the principle widely accepted as a political, legal and administrative tenet. Phase two in the development of the principle of subsidiarity is about exploring possibilities for deepening and fine-tuning its application. For different reasons, the search for practical applicability of subsidiarity resonates in member states and EU institutions. The first wave of subsidiarity debates occurred around 1990 with the efforts to 'complete the internal market'.³ The current debates on phase two of the principle are connected to the deepening of European integration and the growing popular concerns this has provoked regarding democratic legitimacy, the perception of centralisation, and the threat of an omnipresent EU.⁴

This paper explores the political and practical relevance of some of the ideas currently being considered to solidify the principle of subsidiarity in day-to-day decision-making.⁵ Section two maps the current political contours of subsidiarity as they appear in speeches

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- 1 Craig, P. and G. De Búrca (2011), *EU Law: Text, Cases and Materials*, Oxford: Oxford University Press, fifth edition; and Craig, P. (2012), 'Subsidiarity: A Political and Legal Analysis', in *Journal of Common Market Studies*, 50:1, pp. 72–87.
- 2 Schout, A. and J. Sleifer (2014), 'A Public Administration Take on Legitimacy: Better Regulation as Multilevel Governance Challenge', in Ambrus, M., K. Arts, E. Hey and H. Raulus (eds), *The Role of 'Experts' in International Decision-Making: Advisors, Decision-Makers or Irrelevant*, Cambridge: Cambridge University Press.
- 3 Wallace, H. and M. Wilke (1990), *Subsidiarity: Approaches to Power-sharing in the European Community*, London: Royal Institute of International Affairs.
- 4 Craig, 'Subsidiarity: A Political and Legal Analysis'.
- 5 On Thursday 23 January 2014, a group of 73 member states' officials, representatives from the European institutions and academia gathered in The Hague to discuss whether subsidiarity can offer a way forward that reconciles needs for better EU governance and concerns about legitimacy. This paper is based on subsidiarity literature, on preparatory talks with officials from member states and EU institutions, and on the discussions in the seminar in The Hague. The discussions and interviews were held under the Chatham House Rule.

and policy papers. The third section reflects the discussion on some of the main ideas in the current debate on deepening subsidiarity. The conclusions finalise this paper.

The outcome of this exploration of the current state of play is that there is broad political support for deepening the application of subsidiarity. It is also evident that a lot has already been achieved in the creation of tools to support subsidiarity, such as better annual planning, impact assessments and involving national parliaments. Another finding is that much can be done '*à droit constant*' – that is, within the given legal frameworks and procedures. Yet there are also serious concerns about putting subsidiarity into practice and respecting self-restraint when formulating EU policies. Member states' governments and national parliaments have difficulties in becoming proactive in providing information to the Commission concerning the costs and benefits of new initiatives. Moreover, the Council, Commission and European Parliament seem inclined to lose their focus on smarter regulation in their dialogues. Evidently, more can still be done to enhance EU policy and self-restraint, but the political momentum and the basic legal and organisational preconditions are well established by now. The time seems ripe for addressing the challenges of phase two: deepening the practical application of the principle of subsidiarity.

2. Political Balance of Interests

The notion of subsidiarity again basks in the limelight – albeit with varying support. Subsidiarity has once again become a prominent theme on the EU’s agenda – propelled by a multitude of challenges, including eroding EU legitimacy, the need for better EU output, insecurity over the EU’s deepening integration in the field of economic integration, the feeling of sometimes overly burdensome EU regulation and a rising concern about the growing distance between the public and EU decisions. Yet member states and EU institutions place different accents and have varying priorities within this debate, and commitment varies. Combining its legal and political bases, European Commission President José Manuel Barroso remarked that subsidiarity is not a luxury but an obligation.⁶ After a pro-federalist national campaign for the Social Democratic Party of Germany (SPD) in 2013, Martin Schulz, the lead candidate for the Party of European Socialists (PES) in the European elections of 2014, stressed that subsidiarity is ‘about finding a more rational division of labour between the member states and the EU’.⁷ Several member states also voiced their wish for better EU governance, with the United Kingdom looking into ways to reduce EU bureaucracy with the ‘cut EU red tape’ reports and its mixed attempt towards a repeal or improvement of ‘EU competencies’,⁸ and with the call of (then) Prime Minister Enrico Letta of Italy and Prime Minister Jyrki Katainen of Finland for a reduction in the administrative burden.⁹ Some countries, however, seem to prefer more detailed EU legislation, so that EU legislation can simply be taken over without further demands on limited national legislative capacities. The overriding principle in the Dutch subsidiarity exercise in 2013 was directed at ‘European where necessary, national where possible’.¹⁰ In these early discussions on rekindling the subsidiarity debate, other member states have not yet formulated an official government position on EU reform, some out of fear for steps towards treaty change, and others simply because they have other priorities. Yet the overall support seems present, actively or by acquiescence.

Subsidiarity has to be seen in a context that is wider than the definition of the appropriate administrative or regulatory level for action. Interviews with experts and officials have learnt that at times a narrower and sometimes a more inclusive view of subsidiarity is applied in practice. Subsidiarity is inherently connected to debates on better regulation, deregulation, improving democratic control on EU policies and the institutional equilibrium. In any case,

- 6 European Commission, José Manuel Durão Barroso, ‘From 1946 till Today – a European Success Story. Why Leadership Matters’, SPEECH/13/900, 8 November 2013.
- 7 Schulz, M., ‘Prepared Address by President Schulz to Tweede Kamer – The Netherlands’, 2 December 2013, available online at http://www.europarl.europa.eu/the-president/en/press/press_release_speeches/speeches/sp-2013/sp-2013-december/html/prepared-address-by-president-schulz-to-tweede-kamer--the-netherlands.
- 8 Emerson, M. and S. Blockmans (2013), ‘British Balance of Competence Reviews, Part I: “Competences About Right, So Far”’, Brussels: CEPS working paper no. 35, October 2013; and Schout, A. and J.M. Wiersma (2014), ‘Britain and the Netherlands: Similar Concerns but Different Approaches in Reforming the EU’, in Adam Hug (ed.), *Renegotiation, Reform and Referendum: Does Britain have an EU Future?*, London: The Foreign Policy Centre, February 2014.
- 9 Katainen, J. and L. Enrico (2013), ‘Die EU-Rechtsetzung vereinfachen’, in *Frankfurter Allgemeine Zeitung*, 18 October 2013.
- 10 Dutch Ministry of Foreign Affairs (2013), *Uitkomsten subsidiariteitsexercitie*, MINBUZA-2013.184321, 21 June 2013.

the overall objective of better regulation¹¹ is regarded as the more important goal – including subsidiarity, proportionality, the choice of least disruptive instrument, deregulation and quality of output. Subsidiarity is a tool to provide more focus to EU policies and thus to render them more effective, but in itself the principle is insufficient to forge a constructive European reform agenda.

Generally, a need for EU reform is broadly felt. Nevertheless, some general parameters of the reform debate seem clear. Reform should preferably take place within the limits of the current Treaties (also with a view to delivering results in the short run), the ‘Community method’ should not be undermined, and there should be no repatriation of competencies. Similarly, more EU powers are needed in certain policy areas, for example to strengthen the economic, banking and monetary unions. In the meantime, in moving towards deliverables, a better Europe may imply a sharper prioritisation of policies where possible.

Tensions between collective Union interests and the wish for national diversity often surface in the negotiations between EU institutions and member states. There exists a widely shared impression that the European Commission and European Parliament are more inclined towards action at the EU level to attain EU-wide policy objectives. However, as the European Commission has often remarked, the Commission aims at producing lean and mean proposals, but that subsequent negotiations between the Council and European Parliament lead to all kinds of additions, details and qualifications.¹² The three European institutions are bound by the inter-institutional agreement (2003)¹³ to respect the principles of better regulation and to pay attention to the impact assessments attached to legislative proposals. With the evolving role of national parliaments as guardians of subsidiarity, it is likely that the Commission’s motivations for regulatory initiatives will be checked more thoroughly. The European Parliament has so far had a limited active role in guarding the principle of subsidiarity.¹⁴ All submissions of reasoned opinions from national parliaments are dealt with in its Committee on Legal Affairs. Most of the input from national parliaments is considered a ‘contribution’ and not a ‘reasoned opinion’, as they are not considered to include substantive subsidiarity claims.¹⁵

11 European Commission (2002), *European Governance: Better Lawmaking*, COM(2002)275, Brussels: European Commission; European Commission (2006), *Better Lawmaking 2005*, COM(2006)289, Brussels: European Commission; and Council of the European Union (2006), *Better Regulation – Handling of Impact Assessments*, COMPET DS 150/06, Brussels: Council of the European Union, 1 March 2006.

12 Schout and Sleifer, ‘A Public Administration Take on Legitimacy’.

13 European Parliament, Council and Commission, *Interinstitutional Agreement on Better Law-making*, 2003/C 321/01, OJ C 321, 31 December 2003.

14 European Parliament rules of procedures state that the European Parliament shall pay ‘particular attention’ to respect for the principle of subsidiarity. The Secretary-General of the European Parliament includes a directorate for ‘Impact Assessments and European Added Value’, screening the impact assessments of the European Commission in order to identify obvious strengths and weaknesses to support the legislative work in the committees.

15 According to the latest ‘State of Play on Reasoned Opinions and Contributions submitted by National Parliaments under Protocol No. 2 of the Lisbon Treaty’ of October 2013, the European Parliament has received a total of 1.506 submissions from national parliaments. Of these, 269 are reasoned opinions, while the remaining 1.237 are contributions. Compared to the European Commission, the official numbers of the European Parliament on reasoned opinions are lower.

3. Practical Proposals for Better EU Governance

The discussions over inclusive subsidiarity have resulted in a large variety of practical suggestions for deepening its application (see annexe 1). Many proposals have been raised, ranging from new institutional structures to refinement of existing procedures. Proposals such as the creation of an independent subsidiarity court (which, unlike the European Court of Justice (ECJ), would not be related to the objective of an ever-closer union¹⁶), limiting the competences of the European Commission or reducing the size of the Commission, fall outside the scope of practical steps considered here. Such alternatives demand treaty change or are unfeasible in the near future because, for example, the number of Commissioners has already been decided until 2019.

Below we address only the practical measures, as they have emerged in the discussions and interviews. The suggestions relate to both the national level (national parliaments and the involvement of national administrations), the EU institutions and, inherently, cooperation between the national and EU levels. Still, this leaves ample room for adjustments and improvements.

3.1 European Level

In his State of the Union speech of 2013, and referring to a growing concern for a more focused EU, Barroso argued that the EU ‘needs to be big on big things and smaller on smaller things’. Moreover, he added that the EU ‘needs to show it has the capacity to set both positive and negative priorities’.¹⁷ Public worries over ‘creeping competences’ or avoidable administrative burdens resulting from EU regulation have found receptive ears within the EU Commission and fuel efforts towards greater subsidiarity and better regulation. Given the Commission’s right of initiative and its advanced analysis of the application of the subsidiarity principle in the Commission’s impact assessment, the EU’s self-restraint and content analysis start here. Most efforts at the European level are directed towards regulatory reform and not specifically towards a better application of the subsidiarity principle. Yet subsidiarity is instrumental in contributing to the better regulation objectives of the EU.

Member states express support for the REFIT (Regulatory Fitness and Performance)-type programmes of the Commission to revisit regularly the stock of regulation, and to detect restraints to competitiveness and to the functioning of the single market with an aim of increasing the EU’s regulatory fitness, including respecting the principles of subsidiarity and proportionality. Such programmes have already been going on under different names over the past twenty years (although mostly concerning deregulation – not subsidiarity).¹⁸ There is, however, ample support for further rigorous assessments, including specifically related to subsidiarity.

¹⁶ Open Europe (2011), *The Case for European Localism*, London: Open Europe.

¹⁷ European Commission, José Manuel Durão Barroso, ‘State of the Union Address 2013’, SPEECH/13/684, 11 September 2013.

¹⁸ Schout and Sleifer, ‘A Public Administration Take on Legitimacy’.

The European Commission's impact assessments are an important tool to achieve this goal. Member states encourage the Commission to pay more attention in the impact assessments to subsidiarity, competitiveness, impact on local circumstances, and implementation and other costs. However, the input and knowledge to address these issues must also come from the national level, as the quality of impact assessments depends on the information that member states – as well as stakeholders – provide. The Commission has been stressing the need for feedback from the member states on subsidiarity, proportionality and administrative burdens at early stages of the legislative procedure, preferably after publication of its 'roadmaps' and during the consultation process. National parliaments can also use the consultation phase to present their opinions and national concerns. This should help to avoid complications during the negotiations, the blocking of legislation at a later stage with a yellow card, and tight deadlines once the proposal is sent to the parliaments. Moreover, it would be beneficial if the Council and the European Parliament took more time to discuss the impact assessments, as well as the results of the consultation process, before moving to a political discussion during the first reading.

There is a perceived disconnect between these early moments in the process, when civil servants mostly are involved, and the official negotiations when the national and European politicians take command. To smooth these processes, the Council could start discussions on Commission ideas at an earlier stage (for example, on the basis of a white paper or the annual work plan).¹⁹

Another way to achieve better regulation is by strengthening ex post control on subsidiarity and proportionality. Checks could be built in before the proposal is accepted, after the changes have been inserted during the negotiations. If substantial changes are made to the legislative proposal during the negotiations in the first or second reading, the estimated impacts of the final legislative act remain unexamined, given that neither the Council nor the European Parliament provide a systematic analysis of the impact of those amendments. An additional check would, however, involve criticism on the political changes that had just been made to the proposal, and politicians have not responded enthusiastically to this alternative. Another option would be to more systematic evaluations of policies' programmes. However, policies are already generally evaluated after three or five years and REFIT-type programmes are also regularly scheduled.

The Commission and European Parliament suffer from a perceived lack of self-control. They should reach the goals as identified in the Treaties and follow the European interests but, at the same time, they must abide by the principle of subsidiarity. The Commission's regulatory ambitions are considered high and doubts persist over its focus on key policy areas. However, Commission initiatives often originate from Council conclusions and demands from member states. One possibility to improve the dialogue over priorities and focus is to have an annual debate in the General Affairs Council (GAC) on the draft Commission working programme for the next year, before it is published. This is not to say that the Council should define the priorities, but it might help to create insights at an early stage in needs and foci – it would not alter the institutional balance. The European Parliament already has a similar procedure. Moreover, it would help member states (and hence national parliaments) to get engaged at an earlier stage.

19 Jordan, A. and A. Schout (2006), *The Coordination of European Governance: Exploring the Capacities for Networked Governance*, Oxford: Oxford University Press.

It is unlikely that the introduction of a discontinuity or ‘clean slate’ principle for each incoming Commission would receive sufficient support from member states and the European Parliament. Alternatively, a check on unfinished Commission work and European institutions’ priorities could be considered at the start of the new Commission’s mandate. The Commission’s rules of procedure, and also those of the European Parliament,²⁰ already offer a self-check at the start of each five-year term. Overall, member states do not wish to interfere with the Commission’s right of initiative, nor structural alterations in the inter-institutional balance of the Commission, Council and European Parliament.

The measures discussed above address the European level and they, of course, also impose demands on national governments. Yet there are also specific measures to be explored, specifically at the national level.

3.2 National Level

There is a lot of attention for the role of national parliaments as co-guardians of the subsidiarity principle and as prime sources of European legitimacy. This has triggered discussions on possibilities for better scrutiny of EU policies by national governments and for closer involvement of national parliaments in the EU legislative procedures. Following the innovations in the Lisbon Treaty, practical questions remain concerning how national parliaments can actually assume their enhanced role in EU decision-making and implementation. There is a perceived need for the mobilisation of national parliaments and more education on their role in the EU legislative procedures to ensure a better use of the powers and instruments available. More effective inter-parliamentary cooperation, both horizontally and vertically, and an exchange of best practices within the framework of the Conference of Parliamentary Committees for Union Affairs (COSAC) could be a starting point.

To allow for closer *ex ante* scrutiny, the Commission could explain major initiatives in parliaments – or explain them in more detail in the Council – to trigger political reactions from national parliaments. Conversely, national parliaments could be more active in calling on European Commissioners to explain their plans and actions. To go one step further, binding mandates for national governments would engage parliaments more closely in EU policy-shaping and make them co-responsible for the decisions taken in the Council. Moreover, national parliaments could engage in annual discussions on the Commission’s work programme and organise yearly subsidiarity debates on recent political agreements or the overall state of play in specific areas. These measures would not alter the institutional balance and the Commission would encourage national parliaments, and other stakeholders, to voice their concerns on subsidiarity, proportionality or other grounds at early (consultative) stages.

The involvement of national parliaments has been complicated by political incentives (it is hard for parliamentarians to be involved when negotiations among 28 states, the European Parliament and the Commission still have to start, and when decision-making could well still be two years away). Member states have also displayed disagreements over the question of whether the subsidiarity card should be considered. Moreover, member states have displayed inconsistent preferences with regard to subsidiarity, for example because of government changes over time or shifting political priorities. A further complicating issue is that national

²⁰ According to the rules of procedure of the European Parliament, the Conference of Presidents at the first plenary of the new European Parliament also decides on the (dis)continuity of legislative files from the previous legislature. Traditionally, the Conference decides in favour of continuity.

parliaments have no scrutiny over delegated powers of the Commission ('comitology'). Practical and legal challenges to the feasibility of practical suggestions are evident.

The yellow card procedure is the most concrete tool for national parliaments to intervene in the EU legislative process, potentially blocking a Commission proposal. Conversely, national parliaments have no tools to shape positively EU legislation. Even though the threshold has only been reached twice, the impression exists that the procedure is fairly successful and parliaments expect to make more use of it. Yet the yellow card could also be a frustration in the making. Even though there has been a gradual increase in reasoned opinions over recent years (34 in 2010, 64 in 2011, and 83 in 2012), there have been only nine Commission proposals that triggered six or more reasoned opinions from national parliaments, indicating that the concerns on subsidiarity – and also proportionality – are very much spread among national parliaments.²¹ Moreover, four chambers (the Swedish *Riksdag*, the French *Senát*, and the Dutch lower and upper house of representatives) are responsible for a disproportional amount of the reasoned opinions. A significant number of the reasoned opinions fail to justify a violation of the subsidiarity principle in the strict legal sense, and rather focus on the content of the legislative proposal, with concerns motivated by domestic politics.²² As such, the process is still ineffective and inefficient.

To facilitate the yellow card procedure, the time-frame can be expanded from eight to twelve weeks, the grounds for a reasoned opinion can be widened to include proportionality, and the threshold can be lowered to one-quarter of all chambers (instead of one-third). These suggestions triggered mixed reactions from member states and EU institutions, with the first idea finding most resonance among member states. In any case, giving parliaments more time could be circumvented by earlier involvement by parliaments in the decision-making, for example on the basis of work plans and roadmaps.

A specific concern among member state governments and national parliaments regarding the yellow card procedure is the perceived lack of Commission response or substantial follow-up to the reasoned opinions. A few national parliaments also complain that the reply letters are sometimes too general and do not properly address the specific objections raised.²³ In the case of the European Public Prosecutor's Office (EPPO), the Commission might consider pushing through its proposal under enhanced cooperation, thus ignoring the yellow card. In its detailed explanation, the Commission noted that the reasoned opinions contained several arguments relating to the principle of proportionality, to policy choices unrelated to subsidiarity, or to other policy or legal issues. It concluded that there is no breach of the principle of subsidiarity.²⁴ Even though the threshold for the yellow card was reached, the political consequences are unclear. Overall, apart from a more proactive involvement by national parliaments, there was little support for limiting the Commission's right of initiative in relation to yellow cards – the political negotiations offer ample room to respond to the Commission's

21 European Commission, *Annual Report 2012 on Subsidiarity and Proportionality*, COM (2013) 566 final, Brussels: European Commission, 30 July 2013; and Piedrafita, S., (2013), 'EU Democratic Legitimacy and National Parliaments', Brussels: CEPS essays.

22 CEPS (2014), *High-Level Group Report on EU Institutional Reform*, Brussels: CEPS, March 2014 (forthcoming).

23 COSAC (2011), *Sixteenth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny*, Brussels: COSAC Secretariat, October 2011.

24 European Commission, 'Communication from the Commission to the European Parliament, the Council and the National Parliaments on the Review of the Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office with Regard to the Principle of Subsidiarity, in Accordance with Protocol No. 2', COM (2013) 851 final, Brussels: European Commission, 27 November 2013.

initiative, including the option, as in the EPPO case, to move forward with differentiated integration.

There seems little support for the introduction of additional cards, such as the red card, giving national parliaments a veto right, a late card, giving national parliaments an opportunity to block a proposal in a later phase of the legislative procedure, or the green card, allowing for a joint initiative by national parliaments.

4. Conclusions: More Focus on Regulatory Quality in the Context of Better Governance

Subsidiarity has once again risen to the top of the EU's political agenda. The evolving political discussion has resulted in support from member states (ranging from passive to more active support) and the EU Commission. The European Parliament has so far been relatively quiet about subsidiarity. A wide-ranging list of practical solutions has been suggested. One general conclusion from the debates seems to be that there is – although in varying degrees – wide support for a generic and goal-oriented approach to better EU legislation (including subsidiarity, proportionality and burden reduction, etc.). Second, the operationalisation of subsidiarity since 1992 has resulted in a range of mechanisms. The issue now seems to be to make better use of these instruments and procedures. Third, the political signals behind the debates are that the EU should be more careful in formulating new policies and in going into (unnecessary) detail when formulating policies. This is a message to the Commission, Council and European Parliament alike.

Many possible initiatives have been suggested, yet far-reaching proposals for the reform of legislative procedures or the functioning of the Commission do not find much resonance because of questions of practical feasibility, treaty revision and institutional balance. Ideas about improving existing methods, ranging from the yellow card procedure, putting more effort into impact assessments, REFIT-type programmes, etc., are deemed to be a vital component of strengthening the legitimacy of EU policies. With European elections and the start of a new Commission term, the momentum of 2014 could and should be used to intensify these discussions.

Given that this will especially concern better use of existing procedures and continuation with deregulation-type programmes, a great deal of the success will depend on the ability of – in particular – the member states (stakeholders, parliaments and administrations) to provide inputs into the decision-making processes. Making subsidiarity (broadly defined) work will require vigilance and investments from all concerned. It will involve further investments in the available procedures, for example in the form of member states working together on impact assessments in early phases of the decision-making. Improving EU legislation will also have a price tag for national administrations.

Finally, subsidiarity is a mind-set that requires self-restraint. Regardless of the practical suggestions that politicians want to prioritise, the mind-set counts too. The momentum of the current discussions indicates that all involved should be sensitive to the questions of the necessity and added value of EU policies.

Annexe 1: Practical Ideas to Strengthen Subsidiarity and/or Improve Focus

In addition to the call to make better use of existing subsidiarity tools, the following practical ideas for furthering subsidiarity are circulating. There is no rigid division between the European and national levels, and several ideas touch on both levels.

European Level

- Introduce an annual subsidiarity debate in the General Affairs Council. The Council could hold discussions on the five-year working programme of the Commission, with annual follow-ups to discuss the working programme and inform the Commission on policy priorities in the Council.
- Introduce a discontinuity principle, where a new College of Commissioners should start with new proposals. It should be noted here that the Commission's rules of procedure state that the Commission performs a self-check on the necessity of floating proposals.
- Appoint a number of 'core' Commissioners with initiating powers, instead of 28 Commissioners with law-making powers in 28 policy portfolios.
- Give one of the Commissioners a subsidiarity portfolio.
- Include no unnecessary non-binding communications and recommendations from the Commission in areas where the treaties do not give the EU specific competences.
- Negotiate a political agreement between the Council and the Commission (possibly involving the European Parliament as well), determining certain domains or certain issues where the European institutions will refrain from further initiatives. A closely related alternative is the idea of a moratorium, agreeing not to present new proposals in a specific area for a certain period.
- Maximise member states' involvement in all legislative procedures, including the processes of implementing acts, delegated acts, or implementation and elaboration by EU agencies.
- Establish a separate subsidiarity court to monitor EU legislation.
- Encourage a proactive approach by EU and national legislators to prevent unintended interpretation by the European Court of Justice.
- Action taken by the EU should always be motivated by citing a clear legal basis in the Treaties. This basis should be concisely formulated and clearly related to the proposed action.

- EU legislation should be less detailed or invasive, but take a more generic and goal-oriented approach. There should be no micro-management of the EU.
- Create the possibility to pause the legislative process in cases of major changes/ amendments in the legislation, to give all involved the chance to (re)formulate a position.
- Prevent the EU from intervening in an unjustified way, while preserving the institutional equilibrium.
- Ensure that the European Parliament, taking advantage of its role in selecting the next Commission president, does not dictate the agenda to the Commission.
- Ensure better cooperation between the Commission and member states on the REFIT programme.
- Undertake more generic work on impact assessments, with explicit information on implementation costs and other costs, both at EU and national levels, and more focus on the fulfilment of the subsidiarity principle in impact assessments.
- Undertake impact assessments by the Council and the European Parliament at the start, or during the legislative procedure after significant amendments.
- Pay more attention to the subsidiarity test in the impact assessments by the Council and European Parliament at the start of the legislative procedure.
- Pay additional attention in the impact assessments to fostering a better balance between local circumstances in the member states and the common European goals.
- Reduce administrative and regulatory burden for companies, first of all for small and medium-sized enterprises (SMEs). Introduce checks for whether EU legislation truly improves the internal market and competition.
- Make better use of the roadmaps and consultation practice of the Commission, before a legislative proposal is published, to voice concerns about subsidiarity, proportionality or burdensome regulation.
- Introduce *ex post* subsidiarity control on existing EU legislation to demonstrate whether subsidiarity was respected and to justify the necessity of EU legislative acts on a case-by-case basis. Both member states and the EU institutions should be involved.

National Level

- Introduce the 'right' for national parliaments to request clarification from Commissioners regarding a proposal, communication or reaction to a reasoned opinion. Ensure better cooperation between national parliaments and the European Commission, especially in the yellow card procedure.
- Ask the European Commission to respond to reasoned opinions from national parliaments in the yellow card procedure within eight weeks of submission.

- Increase the effectiveness of the yellow card procedure, by extending the grounds for reasoned opinions, and allowing proportionality arguments next to subsidiarity objections.
- Extend the time-frame in the yellow card procedure to give national parliaments more time to submit reasoned opinions and coordinate among themselves.
- Lower the threshold in the yellow card procedure from one-third to one-quarter of all parliamentary chambers of the member states.
- Follow the example of the Danish scrutiny model and introduce a mandating system for national parliaments in *ex ante* control, making national parliaments policy-shapers in the EU legislative procedure.
- Organise an annual subsidiarity debate in national parliaments to consider current and proposed EU legislation.
- Request all member states to make a list on subsidiarity concerns and perceived over-burdensome regulations. The Commission should collect all the input and process it.
- Mobilise and educate national parliaments to improve their involvement in existing EU procedures.
- Increase investment in the monitoring of impact assessments at the national level.
- Encourage better cooperation and coordination between national parliaments and governments. Governments could better explain their position in the Council, so as to trigger a reaction from the national parliament.
- Exchange best practices on the approach to subsidiarity and the use of the subsidiarity check by national parliaments. COSAC could be the right platform for such an information exchange.
- Introduce an informal 'red card' for national parliaments, by proposing the political agreement that the Commission will use its discretion to withdraw legislation if one-third of national parliaments raise subsidiarity objections.
- Introduce a 'late card', giving national parliaments the opportunity to voice their concerns at a later stage of the ordinary legislative procedure.
- Introduce a 'green card' for national parliaments, which would give them the option to table a joint legislative proposal if a substantial number of member states' parliaments support it.