



...the information report:

## EUROPEAN LEGISLATION: COULD BE BETTER!

*Adopted unanimously by the French Senate's European Affairs Committee on 4 December 2024*

Regarding the major challenges facing the European Union today – war in Ukraine, ecological transition, migration, etc. – the expectations of its citizens are very high. Yet at the same time, as demonstrated by the rise of populist and extremist parties in the European elections of June 2024, the European Union is perceived as technocratic, remote and inefficient. It is criticised for an opaque and undemocratic decision-making process, disconnection from reality on the ground, and excessive and complex regulation that weighs heavily on national and local governments and hampers the competitiveness of businesses, as criticised by Mario Draghi in his September 2024 report...

**So, can we really speak of a normative and technocratic drift of the European Union? At a time when the European Union has an essential role to play in meeting the many challenges of our time, how can we make the European Union's action more legitimate, more effective and more readily accepted by citizens?** On the eve of a new European institutional cycle, the Senate's European Affairs Committee wanted to take stock of the situation and put forward a number of proposals. It entrusted three of its members with drawing up an information report on this subject: all three are convinced of the need for the European Union to exist and place certain requirements on it, as a remedy for growing mistrust.

### 1. A NORMATIVE DRIFT IN THE EUROPEAN UNION THAT UNDERMINES IT

#### A. EUROPEAN VOLUNTARISM FUELLING THE RISK OF REGULATORY DRIFT...

Ursula von der Leyen's first term as President of the European Commission has been marked by **intense normative activity on the part of the European Union**. Faced with a succession of crises, from the migration crisis to the war in Ukraine and the COVID-19 pandemic, but also in response to the challenge of the dual transition, both ecological and digital, the European Union has had to adopt a large number of acts in recent years: **around 13,000 texts** between 2019 and 2024, **compared with 5,500 in the United States**.

Certain texts, such as those introducing a duty of vigilance on the part of companies in environmental matters, banning the marketing in Europe of products derived from deforestation, and the regulation on waste and packaging management, have imposed heavy constraints on Member States, local authorities and companies, particularly SMEs. In his recent report, Mario Draghi points out that the European Union's gross domestic product is falling sharply due to a slowdown in growth and productivity. According to one study, **the EU's administrative burdens** represented an annual cost of around €150 billion, or **1.3% of European GDP**.

We must also deplore the **sometimes fragile legal basis for European legislative initiatives** – based, sometimes questionably, on Articles 114, 122 and 352 of the TFEU – a growing preference for **regulations** rather than directives, which are more respectful of national diversity, and the Commission's **executive voluntarism**, reflected in the abusive use of **implementing acts** or **delegated acts**.

## B. ...WITHOUT SUFFICIENT INSTITUTIONAL BRAKES: TOWARDS A TECHNOCRATIC DRIFT?

While **the European Commission has an eminent responsibility** due to its **monopoly of initiative** under the ordinary legislative procedure, the other European institutions, in particular **the Council and the European Parliament** – as co-legislators – also have a share of responsibility.

Similarly, **the Court of Justice of the European Union**, through its interpretation of European rules, can contribute to the extension of the European Union's powers, sometimes infringing on the sovereignty of States, for example on the subject of working time for military personnel or the retention of connection data for intelligence or investigation purposes.

The proliferation of **European agencies**, some of which have regulatory powers, also raises questions of legitimacy and governance.

## 2. RESPONSES THAT DON'T MEET THE CHALLENGES

### A. BETTER LAWMAKING: WISHFUL THINKING?

The concern for "better lawmaking" at the European level is not new. Over the last twenty years, the European Commission has taken a number of initiatives in this area: the obligation to present an impact assessment for all new legislative proposals, the creation of a regulatory scrutiny committee, and the "one in, one out" rule.

Despite these measures, many of the legislative proposals put forward by the European Commission – such as the reform of the European electricity market or the simplification of the CAP – have not been accompanied by an impact assessment or by the withdrawal of standards on an equal footing. An **interinstitutional agreement on better lawmaking** was signed in 2016 between the three European institutions, which provides for an impact assessment for any substantial amendment by the Council or the European Parliament, but **in practice it is not respected**.

### B. THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY, POWERFUL BUT ALL TOO OFTEN INEFFECTIVE SHIELDS

The **principle of subsidiarity**, which defines the conditions under which EU action takes precedence over that of the Member States in the field of competences shared between them, is binding on all European institutions under Article 5 of the EU Treaty. Together with its corollary, the principle of proportionality, it is a guarantee of efficiency and democracy: it ensures that European action adds value over and above that of the Member States and does not go beyond what is necessary to achieve the objectives pursued.

The Treaty of Lisbon gave national parliaments a "guardian role" in ensuring that these principles were respected, with a "yellow card" or even an "orange" or "red card" mechanism for alerting the European institutions to any infringement of these principles. However, this **mechanism has proved disappointing in practice**: since the Treaty of Lisbon came into force fifteen years ago, only three texts have resulted in a "yellow card".

### 3. MAKING THE EUROPEAN UNION'S ACTION MORE LEGITIMATE, MORE EFFECTIVE AND BETTER ACCEPTED BY ITS CITIZENS

#### A. LEGISLATE ONLY WHERE NECESSARY AND IN ACCORDANCE WITH THE POWERS OF THE MEMBER STATES

##### Proposal 1: Invite the Member States meeting in the Council to play their part in checking the legal basis of a European legislative initiative

As the French Conseil d'État points out in its latest annual study on sovereignty, "*strict compliance with the Treaties must always be and remain the basis for all European action*". However, experience shows that **the legal basis and the choice of legal instrument are rarely examined in depth** when a legislative proposal is being considered by the Council.

##### Proposal 2: Provide for the inclusion in all European legislation of a "shield clause" preserving Member States' competence in matters of public order and national security.

Taking up a recommendation of the Council of State, the French Senate's European Affairs Committee calls for the negotiation of any new legislative proposal to include a "**shield clause**" preserving the role of Member States in matters of public order, national security and territorial integrity, particularly in texts dealing with police and judicial cooperation.

##### Proposal 3: Promote dialogue between national and European judges to ensure that each Member State is always in a position to accept its responsibilities.

In the face of growing threats, the aim of this dialogue is to ensure that the European courts, in their interpretation of the law, leave the Member States the necessary scope to exercise their sovereign powers, while respecting their constitutional identity.

##### Proposal 4: Prioritise the use of directives and limit the Commission's abusive use of implementing acts and delegated acts.

**Directives** are more respectful of the diversity of Member States, since they set objectives to be achieved while leaving Member States a margin to determine the means to be used to achieve them, while regulations are essentially directly applicable.

**Delegated acts and implementing acts**, which are outside the control of national parliaments, should be reserved for specifying non-essential elements of legislation and for implementing technical, rather than political, aspects of legislation.

#### B. BETTER LAWMAKING: SIMPLE, HIGH-QUALITY LEGISLATION

##### Proposal 5: Extend the scope and improve the quality of impact assessments

All legislative proposals from the European Commission should be accompanied by an **impact assessment that meets certain quality requirements**; the same should apply to other European Commission documents – communications, action plans, etc. – with legislative implications, as well as to substantial amendments from the Council and the European Parliament.

##### Proposal 6: Provide for systematic *ex-post* evaluation of legislative acts

It would also be useful to systematically provide for an ***ex-post* evaluation** a few years after a legislative act takes effect, in order to check in particular whether the objectives have been achieved. This implies inserting a rendez-vous clause in each legislative act.

##### Proposal 7: Reduce the administrative burden on businesses, particularly SMEs, by subjecting all new European initiatives to a competitiveness test on the global market and a reinforced SME test.

As Mario Draghi points out, lightening the "regulatory burden" on European businesses would make them more competitive on the global market. Without abandoning its ambitions, the European Union should introduce a "competitiveness test" and strengthen the "SME test" in impact studies, prior to the adoption of any new European act.

## C. MOBILISE ALL THE PLAYERS WHO CAN CONTRIBUTE TO RESPECTING THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

### Proposal 8: Make it easier for national parliaments to monitor compliance with the subsidiarity principle

In line with the proposals of the working group on national parliaments set up within the Conference of European Affairs Committees (COSAC) under the French Presidency of the Council, the period for monitoring compliance with the principle of subsidiarity should be extended from 8 to 10 weeks, and the threshold of votes triggering a “yellow card” should be lowered to one quarter.

### Proposal 9: Encourage the Member States in the Council to examine the compliance of any European initiative with the principles of subsidiarity and proportionality before it is negotiated.

Member States should, prior to the substantive examination, carry out a systematic examination of any new legislative initiative from the point of view of subsidiarity and proportionality in order to check whether the proposal provides real “added value” and whether the means envisaged are proportionate, with the support of the General Secretariat of the Council.

### Proposal 10: Reinstate the post of Vice-President of the European Commission with responsibility for simplification and subsidiarity.

As proposed by Mario Draghi, the simplification objective should be handled by a Vice-President of the European Commission. However, the simplification portfolio has been “demoted” within the new college proposed by Ursula von der Leyen.

## D. TAKING GREATER ACCOUNT OF THE DIVERSITY OF MEMBER STATES

### Proposal 11: Ensure respect for linguistic diversity and the place of French

Respect for linguistic diversity also helps to take better account of the reality on the ground. Faced with the trend towards “monolingualism” and the exclusive use of English within the European institutions, **we need to defend and promote respect for linguistic diversity and the place of French as an official and working language.**

### Proposal 12: Take greater account of the specific characteristics of territories, particularly overseas territories.

Because of their geographical remoteness and specific characteristics, **the outermost regions should be able to benefit from special arrangements**, as provided for in Article 349 of the TFEU. This is all too rarely the case, particularly in the areas of energy, water management, waste treatment, agriculture and fisheries. **The European Commission should analyse the impact of any European legislative proposal on these regions.**



**Jean-François Rapin**

Committee Chairman  
Senator  
(Les Républicains)  
for Pas-de-Calais



**Catherine Morin-Desailly**

Vice-Chairman  
Senator  
(Union Centriste)  
for Seine-Maritime



**Didier Marie**

Vice-Chairman  
Senator (Socialiste,  
Écologiste et  
Republican)  
for Seine-Maritime

### [European Affairs Committee](#)

Telephone: 01 42 34 24 80

Consult the legislative dossier:

<https://www.senat.fr/notice-rapport/2024/r24-190-notice.html>

