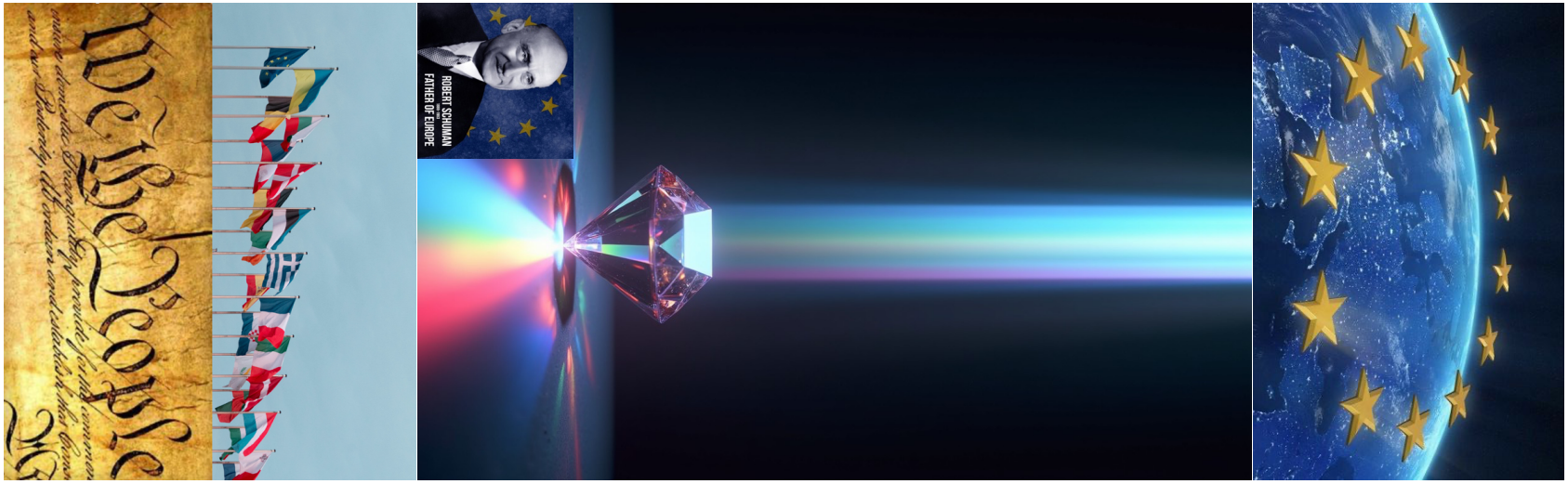


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Working Paper 8
A Bottom-up EU Subsidiarity Audit

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A Bottom-Up EU Subsidiarity Audit

Project Schuman2030

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Note on status. This is Work in Progress. Feedback, new arguments and further data will change it. Anyone who wants to help is welcome to join.

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1 Why an audit, and why now

1.1 Objectives and rationale

Europe faces problems on several fronts at once. Robert Schuman's project of 1950 produced a successful European Economic Community. Over time it became something more regulatory and more centralised: a political union whose competences were extended considerably by the Lisbon Treaty, amending amended the TEU and TFEU. The EU now regulates many details of everyday life, often without much regard for the diversity of national cultures and histories.

Heavy regulation has also weighed on the economy. Public funding cannot compensate for companies burdened by rules and long permitting delays. Products and technologies must compete worldwide, and regulation does not travel abroad with them. The Union is weak geopolitically, lacks a common defence and strategic posture, and struggles to turn declared ambitions into results. Calls for more national sovereignty pull against federalists who want more integration without much attention to conditions on the ground.

Schuman2030 proposes a different balance. Some domains need strong action at federal level: defence, international affairs, long-term strategy and cross-border high-speed transport are the clearest cases. Other regulation should be constrained, and competences should return to member states wherever the European level adds no benefit. To decide which is which on evidence rather than instinct, we propose a bottom-up subsidiarity audit (WP8 page).

The future structure envisaged by Schuman2030 separates federal and member-state competences strictly (WP6). The federal level would keep only what has to be federal: matters that are transnational in nature, or that require pooled resources to be effective. Defence and trans-European high-speed transport are the standard examples.

The audit of regulations and directives has three aims.

- **Identify federal competences** clearly, independently of current treaty wording. A precise list should focus effort and improve results.
- **Identify competences that are EU-regulated but could be handled by member states.** Removing them would let the Union concentrate on genuinely federal tasks, often the areas where Europe is weakest. Member states would also recover some of the sovereignty they have lost, which is a source of friction. The test is practical: would returning a competence serve the member states? If EU regulation adds no value, the competence should go back.
- **Detect inconsistencies and signs of inadequacy** in existing law. Earlier subsidiarity reviews mostly asked whether measures were legal. That question is rarely contested, because the treaties provide the justification and the Court of Justice of the European Union (CJEU) decides any dispute. The real question is if the regulation or directive is factually effective.

Shared competences do not always separate cleanly. Our working rule is that the federal part of a shared competence should be a guideline or norm rather than binding law. Implementation

remains with member states, even where a template proposal is offered at EU level. This audit does delve in the issue of ”gold plating” whereby member states often implement more stringent versions of the EU legal acts.

For readability, "regulations" in this paper usually also covers directives and other forms of EU law.

1.2 Where the project stands

This version describes an early stage. The objectives are set and an approach is outlined. The task is large and complicated. Schuman2030 intends to use current AI tools to speed it up, but several iterations are needed, starting with a more extensive semi-manual audit of selected regulations. Human supervision and validation remain mandatory at every step.

1.3 Invitation to take part

The project needs partners: organisations, experts and European participants. The volume of regulation across many domains is too large for one team. Sorting regulations into "member state" or "federal" is not enough, because shared competences require expert judgement. Preliminary work has also shown that the factual basis of some regulations is weak, that some are clear examples of regulatory overreach, and that the technical language of EU legislation makes democratic scrutiny harder.

We invite anyone with relevant expertise to take part, in an objective spirit and without ideological bias.

Contact: Eric Verhulst, mail@schuman2030.eu

2 Obstacles to the audit

2.1 Volume and classification

The active body of EU law, the *acquis communautaire*, was estimated in 2007 at roughly 170,000 pages in one language. Counting all 24 official languages, amendments and preparatory acts produces figures in the millions (source). More than 52,000 legal acts have been adopted since 1990 (EUR-Lex statistics).

Several systems help structure this material.

- **Subject matter.** EUR-Lex organises legislation into 20 top-level chapters, each subdivided further. The hierarchy can be browsed on the EUR-Lex directory.
- **Type of act.** Regulations apply directly. Directives bind member states as to results but leave the form and methods to them. Decisions bind specific addressees.
- **Celex sector codes.** The first digit of a Celex number indicates the sector: 1 treaties, 2 international agreements, 3 secondary legislation, 4 complementary legislation, 5 preparatory acts, 6 case law, 7 national implementing measures.
- **Nomenclatures.** NACE (economic activities), CPA (products) and the Combined

Nomenclature (customs and tariffs) are linked to specific legislation.

- **Acquis chapters.** Candidate countries negotiate against 35 chapters, which give a practical compliance view of the same body of law.
- **EuroVoc.** A multilingual thesaurus with 21 macro-domains and 127 sub-domains, used to tag acts with concepts. It is available as open data in Excel, XML/RDF and SKOS formats.

2.2 Omnibus simplification packages

Since 2024 the Commission has grouped simplification proposals into "omnibus" packages, prompted in part by the Draghi report on competitiveness. The stated aim is a 25% cut in administrative burden for businesses and 35% for SMEs.

Three observations are relevant to this audit.

1. Many omnibus measures postpone obligations rather than remove them. Postponed duties still reach smaller firms later.
2. Some obligations are repealed or delayed before they take effect, which points to poor initial design.
3. Harmonisation intended to create a single market can collide with national rules and raise compliance costs. The Packaging and Packaging Waste Regulation (EU) 2025/40 is one example.

An omnibus is a bundle, not a single law. Its components must still be adopted as separate regulations or directives. The main packages include the following.

- Omnibus I and II: sustainability reporting, due diligence and taxonomy. Introduced a "stop-the-clock" delay of one to two years.
- Omnibus III: agriculture. Eased CAP rules after farmer protests.
- Omnibus IV: batteries, F-gases and small mid-caps. Raised a compliance threshold to €150 million turnover and postponed battery due diligence to August 2027 (analysis).
- Omnibus V: defence procurement, permitting and the European Defence Fund.
- Omnibus VI: chemicals and cosmetics.
- Omnibus VII: digital rules and the AI Act.
- Omnibus VIII: environmental permitting and circular economy.
- Omnibus IX: automotive type-approval.
- Omnibus X: food and feed safety.
- Omnibus XI: taxation.
- Omnibus XII: energy product labelling.

The sustainability amendments are contained in Directive (EU) 2026/470, which amends the CSRD, CSDDD and related directives.

2.3 Factual basis, legal basis and instrument choice

A small pre-audit of selected acts raised several concerns.

- The treaties are broad enough that the line between Union and member-state competence is often unclear.
- Justifications are sometimes thin. The Working Time Directive rests on workers' health and safety under Art. 153(2) TFEU. The question is how far time-recording obligations actually serve that aim and justify the burden on in particular small companies.
- The single-market objective is often invoked to justify measures whose effectiveness is unclear. For instance, the detailed banana quality standards (now Annex I, Part B, Part 11 of Delegated Regulation (EU) 2023/2429, following Regulation (EC) No 2257/94 and Implementing Regulation (EU) No 1333/2011) are not supported by public data on the market shares of each class. Whether such rules add value is a fair question.
- The choice of instrument matters. A regulation can miss its target entirely if the justification is too broad.

2.4 Language and bureaucratic overreach

Legislative drafting is often hard to read. In one pre-audit case, a ten-page text contained a single operative sentence at the end. Understanding a term sometimes requires tracing its whole legislative history. This is a real obstacle, because the criteria must be applied to text that has first been made semantically clear.

Overreach is also common. Regulations go beyond general principles to impose detailed reporting duties, name responsible persons and prescribe implementation details. Such obligations often apply to every entity regardless of size. The Battery Regulation and the Packaging rules illustrate the point. Some provisions also conflict with the goal of a single market.

3 Audit criteria and method

3.1 Criteria

Text analysis can flag candidate regulations, but it cannot capture all relevant context. The criteria below draw on treaty principles and case law.

- **Transnational character.** Does the issue have cross-border effects that member states cannot address adequately alone? If not, it fails the test. Conversely, would returning the competence harm member states? If not, it can be returned.
- **Treaty requirements.** Would purely national action conflict with core treaty requirements, such as the single market, or significantly harm other member states? If not, the competence can return.
- **Scale and effects.** Would EU action produce clear added value compared with national action? This is the standard EU added-value test.

The audit then proceeds in three steps.

1. **Screen.** Regulations that fail the criteria are candidates for repatriation.
2. **Divide.** Shared competences are split into federal and national parts. This requires judgement.
3. **Test in depth.** Is the rule factually justified? Is it unnecessarily complex or resource-intensive? Is a regulation the right instrument? Does it harm the internal market?

AI can make first-pass identifications. Expert human review is essential, and given the volume of material, a complete audit may not be feasible. Partial results would still be valuable, because they would inform the operational rules of the Impact Office proposed in WP6.

3.2 Running the audit

The method separates areas of exclusive Union competence from shared and supporting competences. Subsidiarity (Art. 5(3) TEU) applies only outside exclusive competence.

Step 1: filter by legal basis. Every EUR-Lex act records its legal basis.

Competence	Treaty basis	Role of subsidiarity	Audit status
Exclusive	Art. 3 TFEU (e.g., customs union, monetary policy for the euro area, common commercial policy)	Does not apply	Excluded, but checked for shared elements
Shared	Art. 4 TFEU (e.g., internal market, environment, transport, consumer protection, energy)	Applies strongly	Primary target
Supporting	Art. 6 TFEU (e.g., culture, tourism, education, youth, health, industry)	Applies; harmonisation is excluded, but mission creep should be checked	Secondary target

Query EUR-Lex (for example through SPARQL) to remove Art. 3 acts and focus on Art. 4 domains.

Step 2: examine the instrument. A regulation binds all member states directly and leaves little room for national adaptation. Where a shared competence is exercised through a regulation although a directive or non-binding recommendation would have been enough, that is a strong case for repatriation.

Step 3: mine the text. With the dataset assembled, natural language processing or keyword clustering can flag centralisation.

- ***Harmonisation type***. Minimum harmonisation, which allows stricter national rules, fits subsidiarity. Maximum harmonisation, which bans divergent national rules, does not. Look for phrases such as "Member States may not maintain or introduce provisions other than" or "total harmonisation."
- ***Cross-border justification***. Recitals should show a concrete cross-border problem. If the justification is generic, for instance that fragmentation "hinders the internal market" without evidence, the act is a candidate for repatriation.

Step 4: use existing data. Two institutional sources help.

- **IPEX** records reasoned opinions submitted by national parliaments during the eight-week period for subsidiarity objections. Scraping it shows which acts attracted the most resistance.
- **The Committee of the Regions** applies a standard subsidiarity assessment grid. Its opinions identify areas it considers better handled regionally or nationally.

The pipeline is therefore: filter by metadata, filter by instrument, run text analysis for maximum harmonisation and weak justifications, then cross-check against national parliament objections.

3.3 Separating the three tiers

The WP6 concept establishes federal councils limited to supra-national matters, such as defence and Europe-wide transport, and returns everything else to member states (WP6). This is a structural shift from a top-down model towards a Swiss-inspired, bottom-up federation.

The usual question asks whether the EU adds value by regulating. The audit instead asks whether it is practically or geopolitically impossible for member states to handle the matter individually. Using EUR-Lex metadata, each act would fall into one of three tiers.

Tier	Action	Typical domains
1. Purely supra-national (Federal Council as defined in WP6)	Retain and consolidate. Pan-European public goods where fragmentation causes systemic failure.	Common defence (subject to the CFSP point above), border and customs control, major energy grids, core transport corridors, space
2. Coordinated intersect	Prune. Convert heavy regulations into minimal directives or interoperability standards. No micromanagement.	Cross-border rail signalling (ERTMS), roaming, cross-border pollution, asylum processing standards

Tier	Action	Typical domains
3. National sovereignty	Repeal at EU level and return competence to national or regional parliaments.	Consumer protection detail, labour law, hospital administration, domestic transport, local waste and environment

Three techniques help place acts in these tiers.

- **Micro-detail.** Rank shared-competence acts by length and density of obligations. Search for phrases such as "member states shall establish a national registry" or "the competent authority must report every X months."
- **Direct applicability.** A federal council should rarely issue binding regulations for domestic society. Active Art. 4 regulations would be flagged for conversion into treaty-based instruments or non-binding recommendations.
- **Recitals.** Test the justifications against two questions. *Scale:* does the problem arise from a border-crossing physical or external threat? *Systemic impact:* would one member state's different rule actually break the single market, or merely create local regulatory competition? Differences in corporate governance or local labour standards usually fall into the second category.

Parliamentary objections from IPEX can complement this. Where several chambers, such as the Dutch Senate, the Danish Folketing or the French National Assembly, have objected to the same proposal, the surrounding area is a strong candidate for Tier 3.

Once applied across the acquis, this yields a quantified catalogue. It would show what proportion of current EU law exceeds supra-national need, and therefore could be unwound, while leaving federal councils a lean framework focused on Europe's resilience.

3.4 Getting to a first result

A pilot domain would test the method before it is scaled up. Defence and energy are a useful pair because they sit at opposite ends of the spectrum. Defence is a plausible federal candidate, though its legal route needs care. Energy is a mixed case, with shared cross-border networks tied to national generation choices and taxation. Article 194 TFEU is relevant here, because it preserves member states' right to determine their energy mix.

AI can support the groundwork in four ways.

- **Data extraction.** Draft SPARQL or Python scripts that pull active acts tagged under the relevant EuroVoc domains.
- **Prompt design.** Build system prompts and decision trees that flag centralising language and classify harmonisation type.

- **Pre-classification.** Map sub-categories before extraction. For energy, a first sketch:

Area	Tentative action	Tier
Trans-European energy networks (TEN-E)	Retain and optimise	1: cross-border interconnection
Emergency gas and oil stocks	Convert to strategic coordination	2: collective security, national execution
Building energy efficiency	Repeal at EU level	3: domestic building codes with no single-market effect

- **Mock audits.** Paste the recitals of a contested act into an AI tool to produce a trial assessment of its legal basis, centralising features and proposed treatment under WP6, which human experts then review.

4 Earlier exercises

None of the following does what Schuman2030 proposes, but each offers lessons.

4.1 Formal mechanisms: yellow card and REFIT

Yellow card. The only formal subsidiarity check in the treaties (Protocol No. 2). National parliaments have eight weeks to review a draft act. If at least one third of the allocated votes (18 of 54), or one quarter for justice and home affairs (14 of 54), object on subsidiarity grounds, a yellow card is triggered. It has been triggered three times to our knowledge: over Monti II (2012), the European Public Prosecutor's Office (2013) and the revision of the Posting of Workers Directive (2016). The orange card, which requires a majority of votes, has never been used.

Limitations: the mechanism is reactive and covers new proposals only. It is non-binding, since the Commission may proceed after reasoned reply. And it demands rapid coordination within eight weeks.

REFIT. Launched in 2012, REFIT is the Commission's main programme for checking that existing law works. It runs fitness checks, evaluations and stakeholder consultation, and maintains a scoreboard. Its purpose is simplification and cost reduction. It does not ask whether the EU should legislate in the first place, is run by the Commission itself, and works incrementally.

4.2 Conference on the Future of Europe (2021–2022)

The conference was a deliberative process rather than an audit. It produced thousands of citizen proposals, some calling for more EU action on health and climate, others for less bureaucracy. Its final report fed into Commission proposals but did not systematically review competences.

4.3 Comparison with Schuman2030

	Yellow card and REFIT	**Schuman2030**
Scope	New proposals, or efficiency of existing law	Systematic review of the acquis to set the level of competence
Goal	Better regulation, simplification	Rebalancing: returning competences to member states
Authority	Commission-led, or a weak parliamentary check	Independent Impact Office with binding assessments; senate with a subsidiarity veto
Outcome	Recommendations, occasional withdrawal	Binding laws converted to guidelines; explicit repeal
Trigger	Ad hoc, or Commission planning	Moratorium on new laws during the audit, then domain-by-domain review

4.4 National and think-tank exercises

UK Review of the Balance of Competences (2012–2014). The most comprehensive national review. It covered 32 policy areas and drew on thousands of submissions. It produced detailed sector reports and a summary conclusion, but it proposed no rebalancing. The lesson is that granular evidence gathering is feasible, and that the results need a clear decision process to have effect.

Dutch subsidiarity review (2013). Announced by Mark Rutte and Frans Timmermans to complement the UK exercise. It sought areas where the EU could do less more efficiently. It produced political messaging but no legislative proposal. The lesson concerns inclusion: an audit whose participants are seen as selective will be dismissed as partisan.

EU Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently" (2018). Established by Jean-Claude Juncker and chaired by Frans Timmermans. It recommended earlier involvement of national parliaments, a shared assessment methodology and closer attention to existing law. The Commission's October 2018 subsidiarity package introduced procedural changes but no systematic audit. The lesson is that internal reform tends towards procedural adjustment rather than structural change.

Open Europe, "Top 100 EU Regulations" (2009–2015). An advocacy-driven cost estimate of the most burdensome regulations for the UK economy, with figures ranging from £24 to £33 billion a year. It showed that impact assessments had often understated costs. The lesson is the

persuasive power of quantification, though its advocacy origin means it should not be treated as neutral.

Academic work. The Subsidiarity Monitoring Network focuses on early warning. Jean Monnet centres and individual scholars have written detailed analyses of specific competences, though these are fragmented by topic.

4.5 What these precedents offer

The project does not start from zero. The UK reports are a ready evidence base that can be reread through a cross-border lens. The Task Force's work on shared assessment criteria can inform the audit's method. Open Europe's costing approach can be adapted. The pitfalls are documented: publish evidence and act on it; include all relevant political actors; and aim for structural change rather than procedural tweaks.

No initiative has yet returned significant competences to member states. The innovation in Schuman2030 is not in identifying problems, which earlier work has documented, but in proposing institutions that can act on them.

4.6 Why the timing matters

EU regulation has changed markedly since the Lisbon Treaty, and especially after 2015. Most earlier reviews predate that expansion. Three developments stand out.

- **Green Deal (from 2019).** Fit for 55, the carbon border mechanism and the Nature Restoration Law reach into energy mixes, buildings and land use.
- **Digital rules.** The GDPR (2018), the Digital Services and Digital Markets Acts (2022) and the AI Act (2024) are detailed and leave little room for national variation.
- **Health and crisis measures.** Joint procurement, health-union proposals and energy-crisis instruments extended the Union's role.

Two further shifts matter. Regulation has moved from making markets, by harmonising standards to enable trade, towards shaping society, through social and industrial policy such as vehicle targets and supply-chain due diligence. And much of the day-to-day burden now comes from delegated and implementing acts, which earlier reviews largely ignored. The number of such acts should be sourced from EUR-Lex, not estimated.

For a pilot, this suggests filtering the acquis to acts adopted after 2015, starting with the Green, digital and health packages, where cross-border tests are most contested. Cost data would need updating, and existing challenges, such as yellow-card attempts and national constitutional court rulings on climate law, provide a shortlist of disputed measures.

5 Conclusion

No comprehensive subsidiarity audit exists for the post-2015 regulatory period. The existing reviews describe a smaller and less intrusive Union. That gap makes the Schuman2030 proposal relevant and urgent. A pilot, for example on energy or digital regulation, is a practical way to

address current overreach without becoming lost in seventy years of accumulated law.

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