



9th Subsidiarity Conference

22 November 2019

Italian Senate

Palazzo Madama–Hemicycle, Piazza Madama, Rome

Active Subsidiarity: Creating EU added value together

BACKGROUND BRIEFING FOR PARTICIPANTS

1. Subsidiarity and Proportionality in the Treaties

The subsidiarity principle, alongside the principle of proportionality, guides EU action through the following questions (see Art. 5 of the Treaty on European Union, TEU):

Should the EU act?

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.

In policy areas which are not exclusively within the EU's competence, the **subsidiarity principle** (Art. 5 (3) TEU) ensures that decisions are taken as close as possible to the citizen and by the most appropriate level of authority. The EU should act only where it can provide added value and achieve a particular objective more effectively than a national, regional or local entity.





How should the EU act?

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 **principle of proportionality** (Art. 5 (4) TEU) requires that any action by the Union should not go beyond what is necessary to achieve the intended objectives. Proportionality is thus a guiding principle for defining how the Union should exercise its competences.

2. General Context

The Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently"

These fundamental principles of the EU became the focal point of discussion in the Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently" set up by President Juncker following his State of the Union address on 14 November 2017¹. Chaired by the European Commission first vice-president, Frans Timmermans, and made up of three members representing national parliaments² and three members from the Committee of the Regions³, the main goal of the Task Force was to propose how the EU could better apply the principles of subsidiarity and proportionality, divided into three major objectives:

- a. How to better apply the principles of subsidiarity and proportionality in the work of the Union's Institutions, notably regarding the preparation and implementation of Union legislation and policies.
- b. The identification of any policy areas where, over time, decision making and/or implementation could be re-delegated in whole or in part or definitively returned to the Member States.
- c. The identification of ways to better involve regional and local authorities in the preparation and the follow up of Union policies.

In achieving this goal, the Task Force engaged in monthly meetings from 1 January 2018 until 10 July 2018 to discuss individual objectives and developments in the fields of subsidiarity and proportionality. Inclusiveness and transparency were key principles for the functioning of the Task Force, so a number of open and targeted consultations were carried out to ensure that the viewpoints of all stakeholders and actors were obtained.

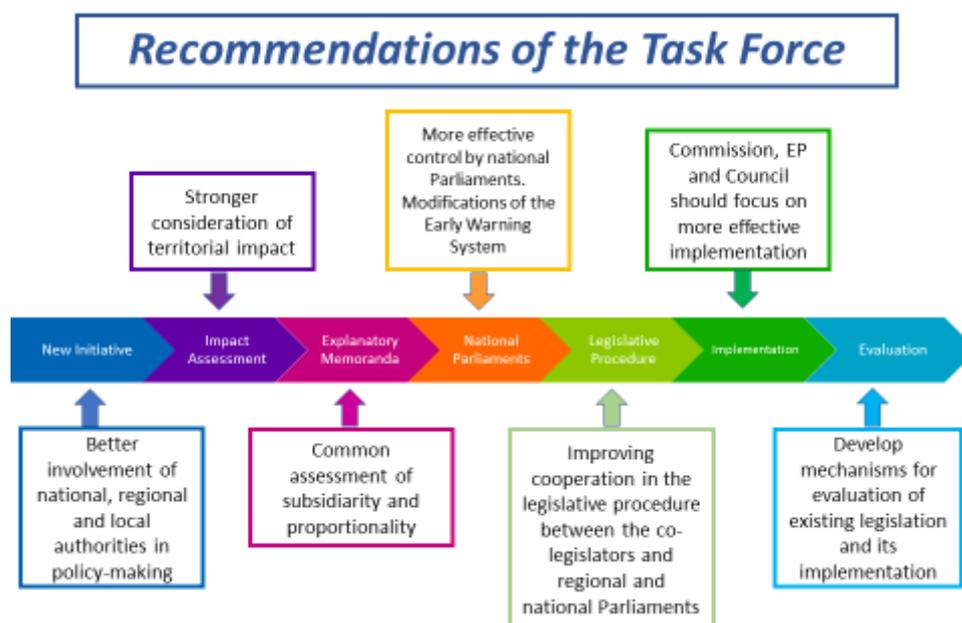
¹ Decision of the President of the European Commission C (2017) 7810 of 14 November 2017

² Reinhold Lopatka (Chairman of the Permanent Subcommittee on EU affairs of the National Council of the Austrian Parliament), Kristian Vigenin (Chair of the Committee on European Affairs and Oversight of the European Funds of the National Assembly of the Republic of Bulgaria), Toomas Vitsut (Chairman of the EU Affairs Committee of the Estonian Parliament)

³ Karl-Heinz Lambertz (President of the CoR and member of the Belgian Senate), Michael Schneider (Member of the CoR and Chair of the Subsidiarity Steering Group, State Secretary, Representative of the Land of Saxony-Anhalt), François Decoster (Member of the CoR, Vice-President of the Nord-Pas-de-Calais-Picardie Regional Council and Mayor of Saint-Omer)



The results of this process were consolidated in the Final Report of the Task Force⁴, presented to President Juncker on 10 July 2018. The Final Report put forward 9 recommendations accompanied by 36 concrete actions to improve the application of subsidiarity and proportionality, and reinvigorate the policy-making process within the EU. These recommendations, presented under the term 'Active Subsidiarity', promote a more inclusive and bottom-up approach to policy-making, as well as a more active and coherent take on the implementation of the principles of subsidiarity and proportionality.



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https://ec.europa.eu/commission/sites/beta-political/files/report-task-force-subsidiarity-proportionality-doing-less-more-efficiently_1.pdf

Active Subsidiarity

Subsidiarity ensures less EU action or more EU action, based on the expected added value of the proposed action, as well as the cost of the EU not acting. The active subsidiarity approach encourages all relevant actors (institutional, national and sub-national) to constructively contribute to developing the added value of EU legislation throughout the policymaking process, ensuring the level of EU added value remains sufficiently high throughout. Active subsidiarity promotes the positive, constructive side of the principle and highlights that all levels of governance can provide valuable input to policymaking. However, if an adequate level of EU added value cannot be reached, the subsidiarity principle still applies in its more "traditional" manner to restrict the proposed EU action.



The Task Force aimed to de-mystify the concept of subsidiarity by taking a pragmatic approach and proposing a common framework for subsidiarity assessment, following these key principles:

- Active subsidiarity stresses the need to include all actors in EU policy-making through a partnership approach, and along the entire policy cycle;
- The subsidiarity assessment of new legislative proposals and of existing EU laws should largely revolve around the concept of EU added value, highlighting the political nature of this principle exercised within a legal framework, and based on a common standardised approach of all parties to ensure comparability. The EU institutions must ensure, throughout the decision-making process, that there is adequate added value for citizens in EU legislation and actions;
- Subsidiarity should therefore not be reduced to only a restrictive mechanism, as positive and constructive contributions from all levels of government are needed in the preparation of legislation;
- Subsidiarity must not only be done – it must be seen to be done. Communicating subsidiarity is crucial to explain to citizens that the EU can only act when it brings clear added value. Communication and policy-making need to go hand in hand and communication should be integrated from the start in EU policy-making;
- The application of the principle of subsidiarity cannot be considered as complete without respecting the principle of multilevel governance. Coordinated action at European, national, regional and local levels is essential for the EU to be able to deliver on its objectives in a fully accountable and efficient manner.



With the focus shifted to the added value of EU legislation, rather than the struggle for competences between the different levels of governance, the active subsidiarity approach is also a key aspect of the debate on the Future of Europe. EU laws that stand the test of time and can be implemented with minimum associated burden can only be guaranteed through a joint approach to policymaking. The impact of this approach reaches further than ensuring better regulation within the EU framework. The Union is directly assessed by its citizens, businesses and other stakeholders based on the impact of its actions, and the growing gap between the citizens and the institutions can only be bridged by transparently drawing up laws that bring real added value to people's lives. The EU's democratic system is multi-layered and unique, with elected politicians at local, regional, national and European levels, and a reinvigorated, inclusive and active approach to subsidiarity monitoring and policymaking could also be a powerful tool in the battle against populism and euro-scepticism. Citizens need to be aware that the EU acts only when its actions bring added value, and giving a stronger voice to the levels closest to the citizens can facilitate this process. Local and regional politicians are consistently the most trusted level of governance in Europe⁵ and they are uniquely placed to facilitate communication, both upstream and downstream, between the citizens, the national and the European levels.

Active Subsidiarity – recent developments and activities

The CoR has confirmed its commitment to promoting the active subsidiarity approach in a declaration of the CoR Bureau⁶ from 14 September 2019, stating that it "*supports the Task Force call for the development of "active subsidiarity", which would allow all relevant actors to not only highlight possible infringements of subsidiarity and proportionality, but also to contribute positively and constructively to the development of EU legislation*". The CoR's action plan on developing active subsidiarity was elaborated in a note of the CoR Bureau from 4 December 2019⁷. The Conference of European Regional Legislative Assemblies (CALRE) also issued its position on this matter with the Final Resolution of the CALRE Working Group on Subsidiarity⁸ in September, stating that "[CALRE] *welcomes that the Task Force does not consider its final report as an end but rather as the beginning of a process to strengthen the acceptance of the principles of subsidiarity and proportionality*".

On the 8 October 2018, the CoR Bureau adopted a number of measures as a follow-up to the work of the Subsidiarity task force, including a pilot project for a network of regional hubs to assess the implementation of EU legislation⁹. The aims and objectives of the project are:

- Gathering the experience of the local and regional levels in implementing EU legislation in a systematic, coherent and inclusive manner;

⁵ European Commission (2018): Public opinion in the regions, Eurobarometer Flash 472, November 2018; European Commission (2018): Standard Eurobarometer 90.2 (November 2018)

⁶ <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-03130-00-02-decl-tra-en.docx/content>

⁷ <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-05025-06-01-nb-tra-en.docx/content>

⁸ https://www.calre.eu/wp-content/uploads/2015/05/resolution_CALRE_WG_Subsubsidiarity_en.pdf

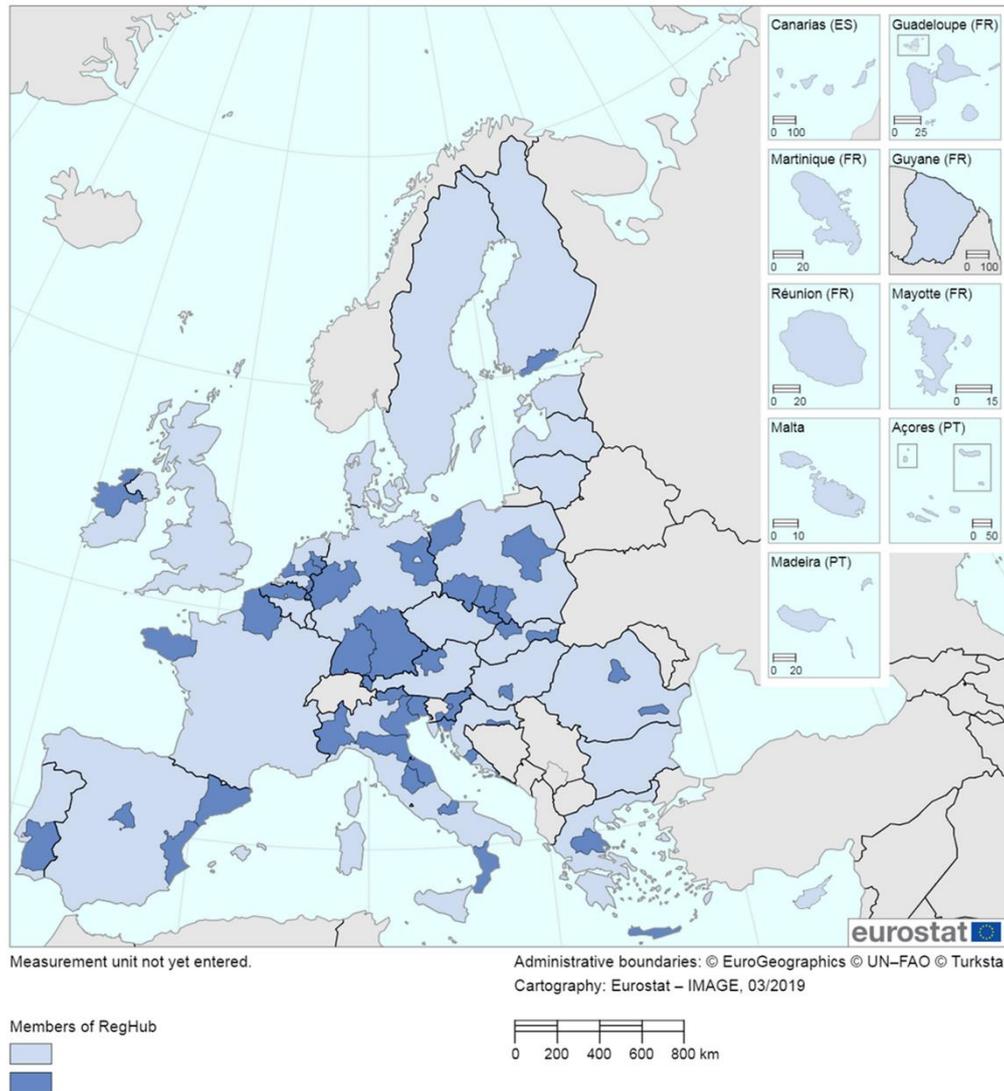
⁹ <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-03132-05-00-nb-tra-en.docx/content>



- Establishing a new way of working and a new quality of cooperation between the CoR and the EU institutions in providing first-hand experience of EU implementation as part of a revised EU Better Regulation agenda;
- Strengthening the consultative role and the political work of the CoR.

Network of Regional Hubs for EU Policy Implementation Review

Members of RegHub



Since then, the pilot project became fully functional, with a political launch at the 8th European Summit of Regions and Cities, held in Bucharest on 14-15 March 2019. The pilot project numbers 20 core hubs, as well as 16 associated hubs and is foreseen to run for two years. Three consultations are foreseen to

be carried out in the first year, with the findings of the first consultation (on public procurement) already published in an implementation report¹⁰, approved by the Subsidiarity Steering Group of the CoR on 17 July 2019. The implementation report has supported the CoR's opinion on public procurement¹¹ (rapporteur Thomas Habermann), which was adopted on 8 October 2019. The other two consultations are on the topics of air quality and cross-border healthcare, with the implementation report on air quality foreseen in November 2019.

The European Commission published its first official follow-up to the Task Force on 23 October 2019 with the Communication on *The principles of subsidiarity and proportionality: Strengthening their role in the EU's policymaking*¹². In this Communication the Commission voiced its intention to implement most of the recommendations of the Task Force and stated that "*subsidiarity is often characterised as a choice between EU action or no action at all. This is not correct. Subsidiarity means leaving room for the most appropriate level of governance to assume its responsibility to act*". In March 2019, the Council of European Municipalities and Regions (CEMR) put forward a number of proposals to achieve active subsidiarity in a position paper¹³ as a response to the Commission's Communication. The paper built on the issues underlined by the Communication and put forward five proposals to the Commission and other EU institutions to deliver better policy outcomes through a shared governance approach.

As a direct follow-up to the work of the Task Force, the Austrian Presidency of the Council of the EU organised a Subsidiarity Conference on 16 November 2018, where the Vice-President of the European Parliament, Mairead McGuinness, contributed, stating that the European Parliament called on the European Commission to systematically forward its replies on reasoned opinions to the European Parliament and that practical steps need to be taken to improve the interaction between local and regional authorities and the European institutions. The conference resulted in a declaration by the Chair¹⁴ proposing that the Task Force recommendations to improve the application of subsidiarity and proportionality should be taken into account in the new institutional cycle.

The value of the active subsidiarity approach in bringing the EU closer to its citizens was also highlighted in the CoR opinion on *Reflecting on Europe: the voice of local and regional authorities to rebuild trust in the European Union*, adopted on 9 October 2018¹⁵ (co-rapporteurs Karl-Heinz Lambertz and Markku Markkula). This opinion was the CoR's contribution to the debate on the Future of Europe and it stressed the importance of multi-level governance and communication as vital elements in

10 <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-03132-05-00-nb-tra-en.docx/content>

11 <https://webapi2016.COR.europa.eu/v1/documents/cor-2019-01136-00-00-ac-tra-en.docx/content>

12 https://ec.europa.eu/info/sites/info/files/communication-principles-subsidiarity-proportionality-strengthening-role-policy-making_en.pdf

13 https://ccre.org/img/uploads/piecesjointe/filename/Communication_on_active_subsidarity_EN.pdf

14 <https://www.eu2018.at/dam/jcr:18461d27-205b-40b5-8e86-0ee594049ab8/Declaration%20by%20the%20Chair%2016%20November%202018.pdf>

15 <https://webapi2016.COR.europa.eu/v1/documents/cor-2018-01230-00-01-ac-tra-en.docx/content>

increasing the democratic legitimacy of the EU. These two elements, alongside active subsidiarity, were outlined as the three guiding principles for bringing the EU closer to its citizens among the EU cities and regions' key proposals to renew the EU. The CoR also underlined the position that an active approach towards subsidiarity is crucial in strengthening the democratic foundation of the European Union in a Declaration at the 8th European Summit of Regions and Cities¹⁶, held in Bucharest on 14-15 March 2019.

On 15 April 2019, the European Commission published its Communication on *Better Regulation: taking stock and sustaining our commitment*¹⁷. This important document was the result of a long-lasting stocktaking exercise by the Commission on the better regulation agenda and its tools. The communication provided an objective look at improving EU law-making and, in line with the active subsidiarity approach, concluded that "*to be successful, better regulation must be a shared effort*". The communication was followed by a conference¹⁸, held on 29 April 2019, that brought together a wide array of stakeholders and institutional actors to discuss the findings of the stocktaking exercise. The CoR responded to the communication with an opinion by rapporteur Olgierd Geblewicz, adopted on 8 October 2019. The opinion reiterated the CoR's support towards the better regulation agenda and highlighted that all levels need to work together to provide EU laws that bring added value to the citizens.

During its Plenary session of 23-25 June 2019, held in Bucharest under the Romanian Presidency of the Council of the EU, the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) issued its contribution¹⁹, calling "*on national and regional Parliaments to harness the full potential of the subsidiarity and proportionality procedures and to support the improvement of political dialogue with the European institutions, thus enhancing transparency of EU policy making and bringing people closer to the EU*".

Should you require further information, please do not hesitate to contact
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¹⁶ <https://webapi2016.COR.europa.eu/v1/documents/cor-2019-00227-00-01-decl-tra-en.docx/content>

¹⁷ https://ec.europa.eu/info/sites/info/files/better-regulation-taking-stock_en_0.pdf

¹⁸ https://ec.europa.eu/info/events/conference-better-regulation-taking-stock-take-it-forward-2019-apr-29_en

¹⁹ http://www.parl2019ro.eu/eu/HTP_BLOB?id=4132&tip=pdf&blb=3

Appendix 1: Previous Subsidiarity Conferences

Date	Event	Title and main topics
4 December 2017, Austrian Bundesrat, Vienna	8 th Subsidiarity Conference	Converting subsidiarity into action
17 November 2015, Flemish Parliament, Brussels	7 th Subsidiarity Conference	Subsidiarity monitoring and better regulation in the EU
18-19 December 2013, Bundesrat, Berlin	6 th Subsidiarity Conference	Subsidiarity monitoring after Lisbon: experiences and perspectives
21 March 2011 Bilbao, Basque Country	5 th Subsidiarity Conference	Subsidiarity monitoring one year after Lisbon: common approaches at local and regional level
8 May 2009, Lombardy region, Milano	4 th Subsidiarity Conference	The culture of subsidiarity: a political and democratic challenge for good European governance Application of subsidiarity: best practice in the cities and regions of Europe
24 October 2008, French Senate, Paris	3 rd Subsidiarity Conference	Multi-level governance in the EU: Joint commitment to the subsidiarity culture
18-19 April 2006 Sankt Pölten, Lower Austria	2 nd Subsidiarity Conference	"Europe begins at home", 3 main topics: -Citizen-based policies: The contribution of the regions and local authorities -Subsidiarity and proportionality: the role of parliaments -Subsidiarity and Better Regulation
27 May 2004, Bundesrat Berlin	1 st Subsidiarity Conference	The CoR's role in subsidiarity monitoring -guidelines for the CoR's reinforced subsidiarity monitoring measures -recommendations for the progressive establishment of a network for monitoring subsidiarity