

Committee of the Regions –
Directorate for Consultative Works

CIVEX Secretariat



EUROPEAN UNION



Committee of the Regions

ANALYSIS NOTE

on Smart Regulation

Communication from the Commission on Smart Regulation in the European Union

COM (2010) 543 final

Report from the Commission on Subsidiarity and Proportionality (17th Report on Better Regulation)

COM (2010) 547 final

This memo has been prepared by the Secretariat of the Commission for Citizenship, Governance, Institutional and External Affairs in order to provide the rapporteur with information of use in drawing up the draft opinion on Smart Regulation

Objectives of the opinion (key messages)

Smart regulation helps to improve the efficiency of policies and economic performance, foster creativity and innovation, contribute to growth, the creation of jobs and overall prosperity. The CoR therefore insists that smart regulation should be pursued in the spirit of multilevel governance, i.e. through coordinated action by the EU, national institutions and local and regional authorities, based on a partnership and participatory approach in the conception and implementation of EU policies

The opinion could inter alia:

- *note the increased references to the local and regional dimension of smart regulation and to the related activities and capabilities of the Committee of the Regions as recognition of the role Europe's cities and regions have in EU policy making and the implementation of legislation;*
- *encourage nevertheless the European Commission and other EU institutions to pay closer attention to cities, regions and territories in general when designing legislation, assessing its impacts or devising ways to implement European policies and objectives;*
- *reiterate the significance of ex post evaluation and sound impact assessment in policy making, whereas it takes into account the implications of legislation and proposals on the European territories;*
- *state its readiness to assist the EU institutions in these endeavours, if data from local and regional authorities is needed;*
- *note the CoR's commitment to continue working together with the European Commission to integrate multi-level governance into the major European strategies and common policies especially as regards the implementation of the EU 2020 strategy;*
- *suggest that the interinstitutional instruments on better lawmaking, including the Cooperation Agreement between the CoR and the European Commission, be reviewed in the interest of achieving a procedural formalisation of the pre-legislative process in accordance with the principles of smart regulation; additionally these instruments should ensure that the role of local and regional authorities and the CoR is taken into account.*

1. Political context of the opinion

1.1 From "better" to "smart" regulation

The communication on "smart regulation" follows a long tradition of the European Commission, which started with the so-called Mandelkern report on Better Regulation in 2001¹ and was initially followed up by the European Commission's White Paper on Governance in 2001² and the first

¹ http://ec.europa.eu/governance/better_regulation/documents/mandelkern_report.pdf

² COM (2001) 482 final

Communication on Better Lawmaking in 2002³. Ever since, the European Commission has been developing the Union's better regulation agenda almost on a yearly basis. The main elements of this strategy have evolved to be the following:

- the establishment of a system for assessing the impact and improving the design of major Commission proposals;
- the implementation of a programme for the simplification of existing legislation;
- the withdrawal of obsolete legislation or proposals;
- the widespread use of stakeholders' and citizens' consultations into all Commission initiatives; and
- looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties).

In September 2009, before the current Commission came into office, President Barroso announced his vision to equip the Union with "smart regulation" in an effort to make markets work for the people⁴. In the President's view, smart regulation would be one of the tools, which would help the EU and the Member States overcome the economic crisis, build and maintain sustainable and competitive markets, achieve growth and jobs for all. In response to this political impetus the Commission came up with the present communication.

But, one may ask: "What is the difference between *better* and *smart* regulation?"

According to the Commission, the launching of the Smart Regulation strategy is more than a re-branding exercise. Smart regulation intends to cover the whole policy cycle – from the inception of legislation to its implementation and review; it is an objective embraced by all the EU institutions and the Member States and it ensures that citizens and stakeholders will increasingly participate in the process leading up to the adoption of legislation. On the political level, smart regulation is placed directly under the responsibility of the Commission President and operationally the whole agenda is coordinated by the European Commission Secretariat General.

1.2 Elements of Smart Regulation

The European Commission identifies 3 elements of Smart Regulation, which shall be looked into briefly below.

1.2.1 Smart regulation is about the whole policy cycle.

Smart regulation signals a change culture within the Commission which inspires law-making from the inception of legislation all through to its review and its implementation. The Commission intends to intensify the process of taking stock of the existing legislative *acquis*, ensure that new legislative

³ COM (2002) 275 final

⁴ See Political Guidelines for the Next Commission, http://ec.europa.eu/commission_2010-2014/president/pdf/press_20090903_en.pdf

proposals are well prepared and substantiated and that legislation enacted is actually and efficiently implemented by all actors concerned.

In this regard the European Commission intends to continue the **work on simplification of existing legislation and administrative burden reduction**. Simplification intends to do away with duplications in legislation and multiple obligations placed upon citizens and business. The reduction of administrative burdens aims to cut red tape by 25% until 2012. Both initiatives are on track and have started delivering tangible results. Proposals already tabled by the Commission could achieve an annual 31% reduction in the total administrative burden experienced by companies⁵. The Commission recognises the role of the High Level Group on Administrative Burdens (Stoiber Group) in this regard. The Group's mandate has been recently extended both in temporal and substantive terms⁶ and the Commission hopes that its work will help mainstream the administrative burden reduction efforts throughout the whole policy cycle.

The Commission also intends to step up the **evaluation of the benefits and costs of existing EU legislation**. The evaluation of the actual implications of EU legislation on the ground as well as a sincere stock-taking of the experiences of actors involved in its implementation is regarded as an essential prerequisite of the design of good legislation, which can in turn be easily – if not seamlessly – implemented. The European Commission thus will embark upon comprehensive exercises consisting in the evaluation of single legislative instruments but also entire policies, which are judged to be significant in political and economic terms. The latter strategic evaluations or "fitness checks" will aim to assess whether the regulatory framework for an entire policy area is fit for its purpose and – if not – what should be changed. This aims to identify excessive burdens, inconsistencies, obsolete or ineffective measures and will help pin-point the cumulative effect of legislation. The policy areas that will fall within the scope of such an evaluation will initially be environment, transport, employment and social policy as well as industrial policy.

Finally the Commission is going to continue on placing emphasis on **regulatory impact assessment** in preparation of legislation and major policy initiatives, which look into the possible economic,

⁵ Estimated at € 38 billion out of a total of € 124 billion.

⁶ Commission Decision of 17/08/2010 amending decision 2007/623/EC, OJ C 223/6 of 18/08/2010

The extended mandate of the HLG runs until 31 December 2012 and includes the following tasks (new tasks marked in italics):

- to advise the Commission on administrative burden reduction measures suggested by the consultants, through Internet consultation and local workshops in Member States,
- to advise the Commission, at its request, on methodological issues that may arise in the action programme,
- *to suggest which additional pieces of existing legislation could be included in the reduction programme,*
- *to advise the Commission on its Simplification rolling programme, in particular with regard to the acts with high potential for reducing administrative burdens,*
- *to assist the Commission in ensuring progress in adopting proposals on reducing administrative burden by the Council and Parliament, and*
- *to prepare a report by November 2011 on best practice in Member States to implement EU legislation in the least burdensome way.*

In addition the Commission decision stipulates in its recitals that the HLG should continue to work closely and have a regular and structured dialogue with the deputy SG of the European Commission and the Impact Assessment Board.

social and environmental impacts of the alternative policy options⁷. The Commission is also supposed to look at impacts on particular regions, but this is not done in a systematic manner.

Taking stock of the yearly self-evaluation exercise of its Impact Assessment system⁸, but also of the external audit recently performed by the Court of Auditors⁹, the Commission intends to consolidate the existing system so that it delivers its full potential. Practical steps are going to be taken to ensure greater transparency and predictability of impact assessments, in particular through the more systematic publication of so-called impact assessment roadmaps¹⁰, and it is reiterated that impact assessments should as far as possible include quantifiable data on the costs and benefits of EU legislation and policies. It should be said that the Interinstitutional Agreement on Better Lawmaking¹¹ and the Common Approach on Impact Assessment¹² place a certain responsibility on the European Parliament and the Council to perform impact assessment of their own on substantive amendments they make to legislative proposals of the Commission, but this is not done in a systematic manner.

Before closing this section a quick reference to the **main findings of the European Court of Auditors' report** is warranted. The Court has found that impact assessment has become an integral element of the Commission's policy development and has been used by the Commission to improve the design of its initiatives. Nevertheless the Court observed that the current system is a bit "static" in the sense that Impact Assessments are not updated in case the European Parliament or Council undertake significant amendments to the initial Commission proposals. The Court also suggested that the current system should become more predictable as to allow for better forward planning of interested stakeholders. Finally the Court noted that some impact assessments could benefit from more solid problem definitions, descriptions of policy options and sounder data collection. In that regard it also referred to possible data that could be provided through the Committee of the Regions.

1.2.2 Smart regulation is a shared responsibility of the European Institutions and the Member States.

The European Commission calls upon **all the EU institutions involved in the legislative and decision making process to step up their efforts to make smart regulation a reality**. In particular it should be once more noted that the European Parliament and the Council make use of impact assessments to support their decision making procedures, but only very rarely have they resorted to the possibility to conduct their own impact assessments of substantive amendments they make to

⁷ http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm

⁸ Impact Assessment Board report for 2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1728:FIN:EN:PDF>

⁹ [Special Report, Impact Assessments in the EU institutions: Do they support decision making?](#)

¹⁰ For examples see the [website of the European Commission Secretariat General](#)

¹¹ [OJ 2003/C 321/01](#)

¹² http://ec.europa.eu/governance/impact/key_docs/docs/ia_common_approach_to_ia_en.pdf

legislative proposals¹³. In addition, the goals of simplification of legislation and reduction of impact assessment, should be mainstreamed in the decision making processes and deliberations of all EU institutions. The High Level Group on the Reduction of Administrative Burdens is henceforth called upon to assist the European Commission in ensuring progress in adopting proposals on reducing administrative burden by the Council and Parliament¹⁴.

Member States have also an important role to play in achieving smart regulation. This naturally includes local and regional authorities, especially where the latter are endowed with legislative powers under national constitutional laws. The national, regional and local levels are responsible for the implementation of EU legislation and as such are very much involved in the effort to reduce administrative burden, which in many cases is exacerbated by the decision of some Member States to go beyond what is required by EU legislation ("*gold-plating*") and of the inefficiency in their administrative procedures¹⁵. Much has been achieved up to now, but in order to speed up the process and ensure that best practices from certain Member States or regions are replicated by others the Commission has called upon the High Level Group on Administrative Burdens to draft a report on "Best Practices in the Implementation of EU legislation". The report will aim (i) to provide concrete examples of model solutions chosen by the Member States to implement EU legislation, and (ii) to identify innovative and important institutional structures, initiatives or cross cutting solutions implemented at the Member State level to combat red tape. Examples of best practice will come from the national, but also from the regional and local levels. On this latter issue the Commission and the High Level Group are intent on seeking the assistance of the Committee of the Regions.

In addition, under the Lisbon Treaty national parliaments, as well as regional parliaments with legislative powers, monitor the application of the subsidiarity principle in legislative proposals and have the possibility to participate in the Early Warning Mechanism instituted by protocol number 2 annexed to the treaties. This ensures that national and regional parliaments participate in the debate on EU legislation and policy making. However, especially in the case of regional parliaments, this participation is dependant upon them receiving adequate information on the legislative proposals and activity in a timely manner.

Finally, the Commission is intent on exploring the feasibility of Member States conducting national impact assessments to complement those done at the EU level and encourages Member States to involve national and local stakeholders in the discussion on measures to implement or transpose EU legislation. This is a practice currently widespread only in the United Kingdom¹⁶, but is consists in an interesting proposal as it would ensure a better implementation and a wider understanding of EU law.

¹³ Cf. Report of the Court of Auditors pages 23 to 26.

¹⁴ Commission Decision of 17/08/2010

¹⁵ See Action Programme on the Reduction of Administrative Burdens, COM (2007) 23 final, and its 2009 update, COM (2009) 544 final

¹⁶ UK Better Regulation Executive, Impact Assessment Guidance, <http://www.berr.gov.uk/files/file44544.pdf>

1.2.3 Regulation is only smart, if it takes into account the views of those affected

Wide consultations with citizens, civil society and representative associations are essential in order to provide input to the legislative and decision making process. The Lisbon Treaty reinforces the role of consultations in decision making, by placing an obligation on the Commission and the legislative institutions to consult widely in order to ensure that EU action is coherent and transparent (see article 11 TEU and protocol 2 annexed to the Treaty). In practice many major legislative or policy proposals are preceded by consultations and in most cases such consultations provide valuable data in the process of impact assessment. A wide variety of actors including citizens, interest groups, NGOs and public authorities participate in these consultations. The European Commission recognises their value and proposes to increase their scope by extending the public consultation period from 8 to 12 weeks. In parallel it intends to review its overall consultation policy building upon its minimum standards for consultation from 2002¹⁷.

1.3 Subsidiarity, proportionality & multi-level governance

Both these fundamental principles of EU law are cornerstones of smart regulation. Subsidiarity in particular determines at which level action should be taken, when competences are shared between the EU, the Member States and possibly the sub-national level; it is about choices whether and where to propose actions at European level. Proportionality helps define the intensity and scope of the action to be taken.

Subsidiarity is linked with multi-level governance, a new paradigm in EU policy making pioneered by the CoR through its 2009 White Paper¹⁸, which implies that – notwithstanding formal competences – all actors concerned along all levels of government and throughout civil society should be involved in the conception, debate and implementation of EU policies. Multi-level governance is about ownership, sharing roles, targets and responsibilities. It is particularly important for LRA, which see multi-level governance as a recognition of their practical and active role in policy making at the European level.

Subsidiarity and proportionality are given particular attention throughout the pre-legislative and decision-making process, especially through impact assessments, where considerations based on these principles can help determine the policy option or alternative, which is finally put forward by the European Commission. In addition, the entry into force of the Lisbon Treaty reaffirms the regional and local dimension of the subsidiarity principle and can potentially come to reinforce the judicial control of its application through the possibility acquired by the CoR and National Parliaments to request the annulment of EU legislation before the Court of Justice on grounds of subsidiarity.

¹⁷ COM (2002) 704 final

¹⁸ CdR 89/2009 final

The 17th report on subsidiarity and proportionality still refers to 2009, i.e. before the entry into force of the Lisbon Treaty and the innovations it brings in terms of subsidiarity. But one can clearly see that all institutional actors involved are stepping up their vigilance concerning the correct implementation of the subsidiarity principles. Particularly important in this regard is the role of national and regional parliaments. Meaningful relations and effective political dialogue with them should be a priority for all EU institutions, including the CoR.

2. Significance of the dossier for local and regional authorities and the CoR

Local and regional authorities are concerned both by the design and application of EU law. They are responsible for the implementation and application of approximately 70% of legislation of EU origin. Those LRA vested with legislative competences might also be responsible for the transposition of a wide range of legislative instruments. In addition, it is at the local and regional level where data on the actual implementation of EU legislation exists and the consequences of the application of burdensome or inefficient legislative instruments are felt.

The Lisbon Treaty places upon the EU institutions the obligation to take into account the local and regional dimension of envisaged actions as well as the financial and administrative implication of legislative proposals on LRA (articles 2 and 6 of protocol number 2 annexed to the Treaties). In a broader sense this can be translated in an obligation to consult widely with LRA (cf. art. 11 TEU).

Finally, a variety of actors at the regional or local level are involved in subsidiarity monitoring, either through the early warning mechanism put in place by the Lisbon Treaty (regional parliaments with legislative powers, and out of implication the regional governments that are responsible before them) or through the activities of the Committee of the Regions.

Being part of the Union's institutional architecture and articulating an ever increasing dialogue with the European Commission and the co-legislators, **the Committee of the Regions is a significant actor in smart regulation on its own regard.** Its role in **subsidiarity monitoring** has been acknowledged both in law, with the acquisition of the right of recourse to the Court of Justice, but also in fact, through its gradual recognition as a centre of excellence and a forum for discussion on the establishment of a EU wide subsidiarity culture. In response, the CoR has adjusted its rules of procedure and has stepped up the activities of the Subsidiarity Monitoring Network. The Network numbers 113 partners representing a wide typology of LRA and associations, performs subsidiarity and proportionality consultations in conjunction with the Committee's consultative activity and now includes an Action Plan with the aim to analyse a range of EU policy domains in terms of subsidiarity¹⁹.

The Committee of the Regions has also started to play a significant role in Impact Assessment. In application of the provisions of the 2005 Cooperation Agreement between the CoR and the

¹⁹ The policy domains currently under the scope of the SMN Action Plan are integration of immigrants, climate change, social rights and policies, health policy and innovation policy

European Commission, the CoR has offered an active collaboration to the European Commission on the assessment of the impacts of specific proposals on EU territories and regions. In 2009 the CoR conducted two pilot impact assessment exercises (Commission Communication on Health Inequalities and the revision of the Drinking Water Directive). An impact assessment exercise on the 2010 EU Biodiversity Strategy started in September 2010 and is ongoing. The CoR uses its consultative networks (Subsidiarity Monitoring Network, EU2020 Monitoring Platform, EGTC network) as well as its links to the local and regional administrations across the EU to have access to quantitative and qualitative data on the territorial impacts of the proposed actions, which it analyses and passes on to the European Commission to be used in the latter's impact assessment of a specific initiative.

Both concluded exercises received positive feedback and have raised awareness among European Commission officials of the need and importance to take the local and regional perspective into account in their analysis. The Secretary General of the European Commission has invited the Directorates-General to pursue contacts with the CoR, whenever they consider that specific impacts of planned initiatives on regions and territories in general need to be assessed. The report of the Court of Auditors also encourages the Commission to have recourse to the CoR networks in order to gather data for impact assessment²⁰.

The CoR is working together with the European Commission to **integrate multi-level governance into the major European strategies and common policies**. With this in mind the Committee is proposing that the EU 2020 strategy should be implemented in partnership with all the various levels of governance concerned including national, regional and local.

Furthermore, the Committee of the Regions has been contributing actively to **the discussions on simplification of existing legislation the reduction of administrative burdens**. Since September 2008, the Committee has been participating as an observer on the High Level Group on Administrative Burdens. This participation comes in recognition of the fact that administrative burdens arising from EU legislation are felt not only by citizens and business, but also by public authorities in particular at the local and regional level. The CoR contribution to the deliberations of the Group aims to highlight best practices and experiences from the local and regional level and to channel Europe's cities' and regions' point of view in the Group's debate. Until March 2010 the CoR was represented on the Group by Ms Hanja Maij-Weggen (NL/EPP) and from that moment onward this role has been taken by Mr Karl-Heinz Lambertz (BE/PES).

As stated above, the Commission and the Group intend to work closely with the CoR in the preparation of the report on "Best Practices in the Implementation of EU legislation".

Finally, it should be noted that the Committee of the Regions also has **considerable experience with stakeholders' consultation** for the purpose of carrying out its consultative and political work. Maintaining close and fruitful relations with European and national associations of LRA the CoR

²⁰ Cf. Report of the Court of Auditors par. 70

endeavours to associate them as much as possible to its consultative process. In addition, the Committee's consultative networks²¹ are capable of tapping into specialist resources at the local and regional level within specific subject matters (subsidiarity and multi-level governance, EU2020 strategy, cohesion policy climate change, cross-border and territorial cooperation).

3. Suggestions to the Rapporteur

The secretariat recommends the following points that the Rapporteur might wish to consider when drafting the opinion. The suggestions concern various elements of smart regulation and tie into activities already undertaken by the Committee of the Regions.

In general, the Committee could note the increased references to the local and regional dimension of smart regulation and to the related activities and capabilities of the Committee of the Regions as recognition of the role Europe's cities and regions have in EU policy making and the implementation of legislation. Nevertheless, the Commission and the other institutions should be encouraged to pay closer attention to cities, regions and territories in general when designing legislation, assessing its impacts or devising ways to implement European policies and objectives. In addition, it could be noted that the smart regulation communication does not take into account alternative ways of regulating, which in particular implement the paradigm of multi-level governance. Territorial pacts are a particular example.

3.1 Impact Assessment

The CoR could welcome the report of the Court of Auditors and in particular its finding that impact assessments sometime lack quantifiable data. In this regard the rapporteur could note that often data can exist at the level local and regional authorities and could reiterate that the Committee of the Regions is capable of tapping into this data through its networks and contacts with local and regional authorities.

The Committee could remind that according to point 8 of the Cooperation Agreement with the European Commission it can be asked to take part in the study of impacts of certain proposals on local and regional authorities. The European Commission in fact has suggested to DGs to approach the CoR for such data. The CoR could, therefore, encourage European Commission DGs, who are in charge of preparing impact assessments on proposals where implications on territories are foreseen, to proactively approach the Committee of the Regions at an early stage of the process, so that the necessary data can be collected and analysed.

The Committee could reiterate that impact assessments of legislative and policy proposals should explore the territorial dimension (local and regional aspects, financial and administrative implications on national, regional and local authorities) of all major policy options under examination and could note that it is looking into issues of horizontal methodology of assessing the impacts of EU policies

²¹ EU 2020 monitoring platform, CoR Subsidiarity Monitoring Network, EGTC network.

and legislation on territories. In this context it could prepare a guidance document on the assessment of territorial impacts.

The CoR could note that substantive amendments made to legislative proposals by the European Parliament or the Council may also entail significant impacts on cities and regions. Therefore Parliament and Council could be invited to seek the assistance of the Committee of the Regions, when they decide to perform impact assessments of such amendments.

The Committee could welcome the greater transparency in the planning and operation of the impact assessment process, in particular through the availability of the roadmaps. However it could also criticise the "static" nature of this information. Roadmaps are made public once a year and – although they contain important information on future legislative and policy initiatives – often come too late. The European Commission should be encouraged to actively transmit its roadmaps to the EU institutions and advisory bodies and should be encouraged to be more transparent in the advance planning of its impact assessment process.

3.2 Ex-post evaluation of EU legislation

The CoR could welcome systematic ex-post evaluations of EU legislation as an efficient tool of smart regulation and could invite the Commission to embark on "fitness checks" of the principle sectors that are of concern to local and regional authorities, i.e. cohesion policy and funding instruments, environment legislation, industrial policy, social legislation and transport.

The Committee could note that local and regional authorities can have access to quantifiable data about the actual implementation of EU legislation on the ground in terms of financial implications, human resources and possible administrative burdens created. They also have direct experience with eventual difficulties in the legislation's interpretation and practical application. Therefore local and regional authorities could provide valuable assistance to the European Commission in the ex-post evaluation of legislation. The Committee could offer to coordinate this exercise.

The Committee could remind that point 8 of the Cooperation Agreement with the European Commission could already provide the legal basis for its association to future ex-post evaluations, if data from local and regional administrations is needed.

3.3 Simplification and reduction of administrative burdens

The Committee could reiterate the significance of simplification for streamlining the regulatory environment especially from a local and regional point of view, where resources devoted to the implementation of legislation are often limited. The Committee could note that simplification could result in significant efficiencies in terms of costs and human resources, not only for business but also for public administrations.

The Committee could note the useful work of the High Level Group on Administrative burdens and could welcome the extension of its mandate. In this regard it could remind that legislation can be the cause of administrative burdens not only on business, but also on citizens and public administrations, and that the reduction of administrative burdens on business should not only be achieved through a transfer of these burdens on to public authorities.

In this regard, it can invite the European Commission to take local and regional considerations into account when deciding on the extension of the Action Programme on Administrative Burdens and could also reiterate its commitment to assist the High Level Group in carrying out its tasks, especially if qualitative and quantitative data is needed from local and regional authorities is needed.

Finally, the Committee could note that any adjustment of the High Level Group membership should take into account the need of broad representation of all stakeholders, including civil society.

3.4 Implementing multi-level governance – Territorial pacts

The Committee could regret the lack of references to non-legislative alternatives and multi-level governance in the smart regulation communication. However it could reiterate its commitment to continue working together with the European Commission to **integrate multi-level governance into the major European strategies and common policies**.

In this spirit the CoR could therefore urge that Territorial Pacts of a contractual and voluntary nature be put in place between the national, regional and local authorities to implement the flagship initiatives of the EU 2020 strategy. Territorial pacts would line up the EU, national, local and regional agendas, and related policy instruments and financial resources, with the Europe 2020 goals and headline targets. All relevant tiers of government would increase their ownership of the strategy. The Pacts are seen as a way to help translate the objectives of the EU 2020 into reality and to prepare the way for the implementation of the EU 2020 National Reform Programmes. As an added value the pacts should be seen as an opportunity to contribute to the EU smart regulation agenda, in particular, in terms of administrative simplification, reduction of administrative burdens, stressing complementarities and limiting fragmentation of the different policy instruments and funding channels available.

3.5 Subsidiarity monitoring & relations with national and regional parliaments

The Committee could acknowledge its role in subsidiarity monitoring under the Lisbon Treaty and could announce that in assuming its responsibilities under the Treaty and in an effort to make its work on subsidiarity more visible and transparent it could publish an Annual Report on Subsidiarity.

The CoR could refer to the responsibility it shares with other EU institutions, as well as with national and regional parliaments, to mainstream subsidiarity in the EU decision making process. It could additionally point to its privileged role in raising awareness about subsidiarity and its application within Europe's regions and cities.

The Committee could take note of the difficulty experienced by some regional parliaments with legislative powers to receive information on EU legislative initiatives and thus carry out their role in the Early Warning Mechanism. In this regard it could urge the EU institutions and national parliaments to actively disseminate information to regional parliaments – and the CoR itself – and could state its availability to place its resources at the regional parliaments' disposal in the interest of developing a closer coordination between them, fostering closer contacts with the EU institutions and facilitating a more active participation in the EU legislative debate.

The CoR could reiterate its engagement towards the continued development of its Subsidiarity Monitoring Network and its gradual evolution into a centre of excellence for subsidiarity and multi-level governance. In particular the Network's Action Plan can have the potential of fostering discussion on the implementation of EU policies at the local and regional level and the exchange of best practices on governance solutions.

3.6 Consultations

The Committee could welcome the proposed increase in the duration of consultation to 12 weeks instead of 8 noting that this would facilitate the participation of more citizens, representative associations and civil society organisations in the consultation process with possible beneficial effects to the quality of legislation and impact assessment.

The CoR could also acknowledge the need for review in the European Commission's consultation policy, could urge the Commission to include all EU institutions and bodies implicated in the decision making process in this revision and – referring to its own experience in stakeholder's consultations – could state its availability to exchange experiences with the European Commission in view of establishing new common minimum standards for consultation. In this regard, the Committee could once more underline the need for visibility of the consultation process and should urge the institutions to consider a better and interlinked use of new information and communication technologies to publicise consultations.

3.7 Inter-institutional cooperation

In view of the aforementioned suggestions the Committee of the Regions could also propose that the inter-institutional framework regarding better lawmaking be reviewed so as to adjust to the new institutional framework introduced by the Lisbon Treaty, aim towards a *procedural formalisation of the pre-legislative process* and, in particular, take the reinforced position of the CoR into account. In this regard the Committee could suggest that the Inter-institutional agreement on better lawmaking of 2003 be reviewed and extended as to include the CoR.

The Committee could also request to be included in the discussions on the review of the common approach to impact assessment in view of its activities on impact assessment. It could also suggest

that methodological issues with regard to the ex-post evaluation of EU legislation also merit a common approach.

The CoR could propose that its activities covering the whole spectrum of smart regulation be taken into account in the review of its Cooperation Agreement with the European Commission. It could also suggest to the European Parliament and Council that similar cooperation agreements be negotiated with them as well.

Finally, the Committee could refer to all the institutions' shared responsibility to inform citizens, businesses and the public at large of the benefits that are to be reaped through the application of the tools inherent in smart regulation.

4. Procedures and contacts

Legal basis for CoR opinion

The communication is addressed to the European Parliament, the Council, the EESC and the CoR. It is included in the CIVEX commission work programme for 2010. It shall be considered as an optional referral.

Other institutions

The European Parliament, JURI committee, has not yet appointed a rapporteur on the Smart Regulation Communication. Information from the JURI committee secretariat has indicated that the a rapporteur on the communication will be appointed soon. The European Parliament (JURI committee) had produced a resolution on smart regulation in anticipation of the communication. The rapporteur was Ms Lidia Joanna Geringer de Oedenberg (PL/S&D)²².

The European Economic and Social Committee will be doing an opinion on the Smart Regulation communication through its Section for the Single Market, Production and Consumption (INT). The rapporteur will be Mr Jorge Pegado Liz (PT/Group III).

Within the European Commission the Secretariat General is responsible.

CoR procedure and proposed timetable

The following timetable is proposed:

- 13 December: exchange of views in the CIVEX commission
- 08 April 2010: first discussion and adoption by the CIVEX commission – the gap in the timetable of adoption is proposed so as to enable the rapporteur to take into account the publication of

²² Resolution of the European Parliament of 9 September 2010, [P7_TA-PROV\(2010\)0311](#)

additional documents on behalf of the European Commission and possible developments within the High Level Group on Administrative Burden

- 30 June – 1 July: adoption by the CoR Plenary

Among options to be considered by the rapporteur:

- Organisation of bilateral meetings with relevant stakeholders (relevant EC services, EP, High Level Group on Administrative Burdens)
- Participation in conferences related to Smart Regulation

External contacts

[...]

6. Reference documents

Previous CoR opinions

Opinion on the "Commission report to the European Council "Better lawmaking 1998 – a shared responsibility" - COM(1998) 715 final²³

Opinion on the "Commission report to the European Council "Better lawmaking 1999"" - COM(1999) 562 final²⁴

Opinion on "Simplification of the Union's instruments" COM (2001) 428 final, COM (2001) 275 final, COM (2002) 278 final, COM (2001) 728 final, COM (2002) 276 final, COM (2002) 277 final²⁵

Opinion on "Better Lawmaking 2002" and the Communication from the Commission "Updating and simplifying the Community acquis" – COM (2002) 715 final, COM (2002) 278 final, COM (2002) 276 final, COM (2002) 275 final²⁶

Opinion on Better Lawmaking 2004 and Better Regulation for Growth and Jobs in the European Union – COM (2005) 97 final, COM(2005) 98 final²⁷

²³ OJ C 374 of 23.12.1999, p. 11.

²⁴ OJ C 226 of 08.08.2000, p. 60.

²⁵ OJ C 73 of 26.03.2003, p. 73.

²⁶ OJ C 73 of 23.03.2004, p. 38.

²⁷ OJ C 81 of 4.4.2006, p. 6.

Opinion on Better Lawmaking 2005 and 2006 – COM (2006) 289 final, COM (2006) 689 final, COM (2006) 690 final, COM (2006) 691 final, COM (2007) 23 final, COM (2007)286 final²⁸

Committee of the Regions' White Paper on Multilevel Governance²⁹

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28 OJ C 305 of 15.12.2007, p. 38.

29 OJ C 211, 4.9.2009, p. 1-27

30 OJ C 141, 29.5.2010, p. 1-4

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