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SUBSIDIARITY/PROPORTIONALITY ASSESSMENT

Subsidiarity Monitoring Unit

Doc. no	COM(2007) 279 final
Title	<i>White Paper on: "A Strategy for Europe on Nutrition, Overweight and Obesity-related Health Issues"</i> <i>Document type: non-legislative document</i>
Date of adoption by the Commission	30-5-2007
Draft CoR opinion	DEVE
Treaty articles invoked	Article 152 of the EC Treaty
Detailed subsidiarity analysis	NO

1. Legal bases/Justification for EU action

The White Paper of the Commission under analysis touches on a number of different policies. However, there are three main legal bases, namely Treaty Articles 3 (p) and (t), 152 and 153.

The Commission's aim is first to obtain complete and useful statistics on obesity in Europe and on food and energy intake issues. The problem of statistics on physical exercise in Europe is also raised, because it is closely related to the issue of growing obesity. The second aim is to find solutions to combat these phenomena which also have social consequences in the various countries of the Union.

The Commission is endeavouring to underline its desire for action in these various fields by highlighting policies which can affect the development of the situation, for example the Common Agricultural Policy. Moreover, it states clearly that the initiative for such a policy arose in the Council, which passed on the urgent desire of the Member States to find a common and Community solution to the problems of obesity and physical activity deficit in Europe through exchanges of good practice.

This White Paper is both informative on the development of the situation as regards public health with respect to the rise in obesity, and prospective as regards the solutions to be applied. The policy proposed by the White Paper is based on providing information on the risks incurred by the over-consumption of certain products and the absence or lack of physical activity among European consumers. Companies and groups of agri-foodstuff producers are urged to modify the composition of their products in order to reduce the risks of overweight for consumers. In addition, the Commission stresses the educational role of schools in such areas. It also calls for more exchanges of good practice between regional and local authorities.

.../...

The Commission wishes to involve regional and local authorities in the adoption of a policy for combating obesity, its causes and its consequences. The closeness of these authorities to the general public is particularly noted. Consulting regional and local authorities, in addition to national authorities, should ensure that the diversity of such bodies' powers is respected and that the Community's response is tailored to the realities of the various territories of the European Union.

The Commission sees its role as complementing and supporting national, regional and local action and fostering the convergence of legislation. It feels that the linkage between European and local authorities seems to be a crucial factor in the success of this policy. For instance, it calls on local authorities to encourage the public to exercise more by promoting an appropriate environment. It should be noted here that in many Member States sports policy and club infrastructure are the responsibility of regional and local authorities.

As the document is not legislative, the analysis can only call for vigilance regarding future texts arising from this policy, respect for the principles of subsidiarity and proportionality and for detailed consultations with regional and local authorities, particularly on financial matters.

2. Respect for the principle of subsidiarity

It is worth noting, with some pleasure, that the Commission's White Paper takes account of the subsidiarity principle by sufficiently justifying its actions, for the vast majority of proposals, in terms of shared powers.

The White Paper gives regional and local authorities a role as partners in the measures that will be taken, which will make for a balanced distribution of powers. However, steps will have to be taken to ensure that the measures taken by the European Union do not systematically take the place of action by regional and local authorities. To do this, Article 152 of the Treaty (relating to public health) will have to be scrupulously respected.

Key point

The rapporteur's opinion could therefore *welcome the fact that the White Paper, from the point of view of subsidiarity, takes into account the balanced distribution of powers between the various levels of authority.*

2.1 Urban transport

However, attention should be drawn to the following analysis:

The Commission states in the sub-heading "*Encouraging physical activity*" in point 4 that urban transport should be restructured to take into account the lack of physical activities.

In its **opinion 119/2006 of 14 February 2007** on the "Mid-term review of the European Commission's 2001 Transport White Paper", the **Committee of the Regions** has already stated that *"a joint approach at all levels, from the EU institutions to local government, and one which is founded on the principle of effective subsidiarity, cooperation, the pooling of information and appropriate economic stimulus programmes, can lead to improvements in urban and regional transport"*¹.

Key point

The CoR also decided to *"recall that competences in the field of urban transport belong in the majority of states to the regional and local authorities and involve very high costs for the latter."*

It also stated that *"at the same time, it notes that the greater the extent to which urban and regional transport systems meet local needs, the more effective they are. Accordingly, unlike trans-European transport, it is very difficult to envisage every possible EU action or standardisation in this particular field"*².

2.2 Internal market

The Commission respects the distribution of powers set out in Article 153 of the Treaty regarding the various proposals that it is putting forward to combat the rise in obesity, by envisaging arrangements for industrialists in the agri-foodstuff sector (with the nutrition labelling in the sub-heading *"Better informed consumers"* in point 4³).

Key point

The Committee should *welcome the fact that from the point of view of subsidiarity, with the vast majority of the proposals in the White Paper, the Commission is fulfilling its duty to achieve the goals set in Articles 152 and 153, by protecting public health with measures (including information and prevention) that supplement national policies, and by contributing to consumer protection through measures taken as part of the completion of the internal market. More particularly, the Protocol on the*

1 Opinion CdR 119/2006, Recital.

2 Opinion CdR 119/2006, point 5.3.

3 "Nutrition labelling is one way that information can be passed on to consumers and used to support healthy decision-making in relation to the purchasing of food and drink. The Commission is currently carrying out a review of nutrition labelling legislation with a view to proposing to Parliament and Council that this is strengthened as a channel for information to consumers. Following a consultation on labelling in spring 2006, the Commission is reviewing the options for nutrition labelling. Issues being considered include whether mandatory labelling should be introduced and the number of nutrients that should be included on the label, and the regulation of front of pack labelling (i.e. simplified labelling or signposting)."

application of the principles of subsidiarity and proportionality enables the Community to extend its action, within the limits of its powers, when circumstances so require.⁴

3. Respect for the principle of proportionality

The White Paper does not ignore the requests resulting from the principle of proportionality. It fulfils the requirement of consultation and assessment of the possible effects of Community policy through its impact study.

Key point

It should nevertheless be pointed out that the impact study barely touches on the costs generated for regional and local authorities that will arise from the implementation of this policy. The Commission should certainly have evaluated the potential financial effects on regional and local authorities in its impact study (point 4.1 of the impact study on the economic repercussions).

In this respect, it has to comply with Article 9 indent 3 of the Protocol on the application of the principles of subsidiarity and proportionality because according to this article, without prejudice to its right of initiative, the Commission should "*take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens to be minimised and proportionate to the objective to be achieved*".

4. Analysis of the financial implications

- *Structural Funds*

The Commission's text does not seem to take enough account of the financial repercussions that will inevitably arise from the Structural Funds being used (point 1) by regional and local authorities (principle of additionality and co-financing), for instance when it proposes to raise EU co-financing to 60% for promotional projects aimed at young consumers (under-18s).

- *Programme for lifelong education and training (2007-2013) - Comenius*

"Health education and physical education" and the fact that producers' organisations will focus the current promotional campaigns financed by the EU on *"young consumers"* are among the priorities of the new programme for lifelong education and training (2007-2013) and, more specifically, its Comenius sub-programme for school education. It will be possible to advance both nutrition projects and physical activity projects, emphasising sport and strengthening cooperation between schools, teacher training bodies, local and national authorities and sports clubs. It is also stated that a *"a school fruit scheme co-financed by the European Union would be a big step in the right direction"*.

⁴ Article 3 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Amsterdam Treaty.

- *Seventh Framework Research Programme*

Another example highlighted by the Commission is its wish "*to know more about the determinants of food choices*" and to establish, under the Seventh Framework Programme, major strands of research into consumer behaviour; the health impact of food and nutrition; drivers for preventing obesity in target groups such as infants, children and adolescents, and into effective diet interventions.

Key point

On the one hand, the CoR should *welcome the financial initiatives proposed by the Commission* but, on the other, the CoR should *point out that the involvement of the Structural Funds will mean that regional and local authorities will have to invest significant resources in policies where Community funding is only complementary while at the same time being obliged to respect the Maastricht criteria aiming at controlling the public sector deficit.*

5. Choices for action

The Commission sets out four different solutions. Option A "Giving up", consists of allowing the Member States to choose their own policies, without any coordination at European level. Option B "Status quo" is the continuation of what already exists at European level. Option C "Overall European strategy, voluntary approach" defends the idea of seeking synergy between the European, national and local levels, in order to set up new voluntary-based actions. The final option, D "Regulation – strengthening the legislative framework", encourages Community action through legislation.

Key point

From the point of view of the application of the principles of subsidiarity and proportionality, and more specifically pursuant to Article 7 of the Protocol on the application of the principles of subsidiarity and proportionality (whereby the Community should leave as much scope for national decision as possible and provide the Member States with alternative ways to achieve the objectives of a measure), the CoR can support the Commission's choice of Option C for its "voluntary approach" action, which seems the most appropriate for the situation and most respects the principles of subsidiarity and proportionality.