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## **SUBSIDIARITY/PROPORTIONALITY EVALUATION**

### **Unit for Subsidiarity monitoring**

<b>Document number</b>	<b>COM(2007) 551</b>
<b>Title</b>	<b>GREEN PAPER: Towards a new culture for urban mobility</b>  Related documents: SEC(2007) 1209 Commission Staff Working Document
<b>Date of adoption by Commission</b>	25/09/2007
<b>Drafting of opinion of CoR</b>	<b>COTER</b> Rapporteur: Sir Albert Bore (UK/PES) Member of Birmingham City Council
<b>Related articles in the Treaties</b>	None mentioned in the Green Paper
<b>Detailed subsidiarity check</b>	NO

Urban transport and mobility are important factors in ensuring growth and employment within the EU. The present Green Papers sets down a set of policy options and 25 open questions regarding future EU action on this issue and it launches a new consultation process, which will run until the 15 March 2008. The Commission aims to publish an Action Plan on Urban Transport, which would contain concrete proposals and initiatives towards better and sustainable urban mobility, by autumn 2008.

#### **1. Legal basis**

The present document is a Green Paper, i.e. it aims to stimulate the discussion on the subject matter, without making a concrete proposal. In this regard no specific legal basis is invoked in it. However, the Commission refers (albeit without going into details) to some possible lines of action, on which the exchange of views during the forthcoming consultation is going to be centred. By looking at these lines of action one can identify possible legal bases. In any case, the exact choice of legal base will have to depend on the contents of the final proposals on behalf of the Commission. So, the final

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verdict about the exact scope of EC competence will have to be reserved until that point in time. For the time being the following possible legal bases can be identified:

- Article 71(1) TEC for actions relating to transport per se. Of specific relevance are points c (measures to improve transport safety) and d (other measures). As urban transport is not limited to road, rail on inland waterway, but can also encompass transport by sea (already an option in a number of cities world-wide, e.g. Istanbul), article 80(2) TEC can be of relevance. However, the current Green Paper does not make any mention of the sea component in urban transport, which could help alleviate road congestion and other connected environmental problems in many coastal European cities.  
Transport security is seen as an aspect of transport safety. Lately measures referring to transport security (e.g. security at airports) have been adopted under article 71(1)(c). Therefore, the CoR has a clear mandate to be consulted on these matters. Nevertheless, transport security is very closely associated with the general security concerns of the Member States (a competence which still falls primarily in the hands of the Member States and which is coordinated in the EU Treaty). It is thus advisable that the EC legislator exercise caution when dealing with such matters. This might be a point, which the CoR could underline.
- Articles 154 and 155 TEC for actions envisaged in the framework of TEN projects, in as far as some urban transport projects can be seen as part of a Transeuropean Transport Network (e.g. an urban ring-road which is part of a Transeuropean motorway).
- Articles 174 and 175 TEC for actions relating to the protection of the environment.
- Article 162 TEC for decisions relating to the management of the ERDF in relation to the funding of the proposed actions.
- Article 95 TEC can lastly also be of use for actions purported to introduce harmonisation of standards or actions which have as their object or effect the establishment of the internal market.

All the aforementioned legal bases relate to sectors of activity where the EC and the Member States enjoy shared competence. **Therefore, the principles of subsidiarity and proportionality become of relevance.**

It should be also mentioned that – as Community law now stands – some actions considered in the Green Paper (e.g. cross border enforcement of traffic violations) fall within the remit of the EU Treaty (see in particular title VI TEU). It goes without saying that legislation on these issues falls firmly within the hands of the Member States. In addition, the CoR does not have a mandate to be consulted under the EU Treaty. It could nevertheless, issue an own initiative opinion on such matters.

As a final note, it should be remembered that EU Treaty calls for decisions to be taken as openly and as close to the citizen as possible, in essence calling for **transparency and better lawmaking**. The CoR has underlined the importance of transparency to the democratic legitimacy of the EU<sup>1</sup> and has highlighted that local and regional authorities should actively participate in the law making procedure

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<sup>1</sup> CoR Opinion CdR 235/2006.

through consultation mechanisms in order that this objective be achieved. In this regard it could be noted that a Green Paper such as the present one, which only makes brief references to policy options by mentioning "key-words", does not go far in the direction of transparency.

**Key points:**

The Green Paper "Towards a new culture on urban mobility" does not contain any concrete proposals. Nevertheless, the policy options identified require to be examined as to their compatibility with the principles of subsidiarity and proportionality even at this early stage.

The CoR could recall that transparent pre-legislative proposals serve as to optimise the effective participation of local and regional authorities in the consultation process and thus contribute to the overall democratic legitimacy of the Union. In this regard it could regret the fact that the Commission's Green Paper only makes brief references to the policy options under consideration, without providing more details.

The CoR could suggest that the Commission also explore the sea dimension of urban transport as a sustainable transport option for Europe's coastal cities.

## **2. Compliance with subsidiarity principle**

The Committee of the Regions already affirmed in its opinion on **a Mid Term Review of the European Commission's 2001 White Paper on Transport**<sup>2</sup> of February 28 2007 that "*regional and local authorities hold a direct remit for establishing and developing regional and urban transport systems, creating the conditions for their more effective operation, and improving their safety and reliability*" (introductory points).

It went on to say 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. In accordance with the principle of subsidiarity, the EU's role should primarily involve sharing know-how and creating a programme for the transfer and implementation of tried and tested methods or for the screening of innovative approaches (transport organisation, intelligent systems, environmentally friendly and energy efficient fuels, mobility as a condition for regional development etc)*" (point 5.3 of the aforementioned Opinion).

Indeed, **the Commission accepts the above considerations in its Green Paper**. The important role played by local and regional authorities in managing and providing solutions to issues affecting urban mobility is underlined at various points. In addition the Commission reiterates that (a) to be successful

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CoR Opinion CdR 119/2006.

decisive action regarding urban mobility should be taken at the local level and (b) that the role of the EU should be of a facilitating nature rather than imposing "top down" solutions. In the same spirit, it foresees that European added value can be achieved through the following forms of action: *"promoting the exchange of good practice at all levels (local, regional or national); underpinning the establishment of common standards and the harmonisation of standards if necessary; offering financial support to those who are in greatest need of such support; encouraging research the applications of which will make it possible to bring about improvements in mobility safety and environmental; simplifying legislation and, in some cases, repealing existing legislation or adopting new legislation"*.

As this is a Green Paper, no concrete proposals are made. Nevertheless, some possible EU lines of action are contemplated (the ongoing consultation process is going to determine whether they are to be followed). An examination of the Green Paper identifies the following possible lines of action at EC/EU level:

- Promotion of walking and cycling.
- Promotion of urban and smart charging schemes (like the congestion charges already in place in London and Stockholm and contemplated in other traffic infested cities or differentiated parking schemes).
- Harmonised minimum performance standards for the operation of vehicles.
- Phasing out old heavily polluting vehicles.
- Implementation of economic (e.g. tax incentives) and non-economic (e.g. traffic restrictions for polluting vehicles) instruments aimed to promoting the use of new less polluting technologies.
- Guidance and development of harmonised rules for urban green zones (pedestrianisation, restricted access, speed limit, urban charges etc).
- Establishment of a European Registry of Vehicles.
- Cross-border enforcement of traffic rules, offences and penalties.
- Encouragement of the development of dedicated lanes for collective transport.
- Establishment of a European Charter on Rights and Obligations for Passengers using Urban Transport.
- Promotion of less costly collective transport solutions (i.e. bus rapid transit).
- Anti-terrorism security in urban transport.
- Actions to promote the development of a new urban mobility culture, including the optimisation of data collection through the establishment of a European Observatory on Urban Mobility for the harmonisation and the exploitation of statistics at a European level.
- An all-inclusive "Eurovignette" scheme (through the expansion of the current scheme to the urban dimension and to all types of vehicles and infrastructure).

Therefore, even at this early stage the CoR should be very vigilant in assessing the compatibility of the possible options with the principle of subsidiarity. In this regard the criteria set out in article 5 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty of Amsterdam, are very useful:

- the problem to be tackled presents trans-national aspects, not capable of being successfully regulated only by the Member States,
- action only on behalf of the Member States or lack of EC action would either be contrary to the requirements of the Treaty (e.g. the internal market, competition rules) or would significantly damage the interests of the Member States,
- action at the EC level would produce clear benefits by reason of its scale and effects as compared with action taken only at the Member State level.

A cursory examination of the aforementioned options, would show some of the envisaged lines of action to be in compliance with the principle of subsidiarity (e.g. promotion of walking and cycling, promotion of less costly urban transport solutions).

Nevertheless, for a significant number (i.e. urban charging, the European Vehicle Registry, the generalised "*Eurovignette*", harmonised rules for urban green zones) **it is not evident that they would fulfil the above criteria and thus would not be in conformity with the principle of subsidiarity**. In addition, the Commission has not provided an in depth analysis of the qualitative and quantitative indicators, which would show that EC action would contribute added value, thus better attaining the desired objectives than solely through action on the level of the Member States. For example:

- a generalised *Eurovignette* scheme for all vehicles would not take into full account local and regional priorities regarding urban transport and could in the long run prove to be detrimental to local or regional initiatives designed to generate revenue to be used in the tackling of local mobility demands,
- a European Vehicle Registry, would not contribute any added value to the improvement of the urban mobility situation; on the other hand such an initiative would generate more red tape,
- the same holds true for the European Observatory on Urban Mobility,
- dedicated lanes for collective transport are indeed a valuable solution contributing to free-flowing cities; however, this must be a choice left to individual local and regional authorities and the role of the EU must be limited to that of a facilitator for the exchange of experience and best practices,
- the same holds true for urban charging,
- harmonised rules for urban green zones, might conflict with the urban planning priorities of certain towns and cities (e.g. urban areas in regions where land is scarce – like mountains or islands – would not be in a position to change their urban planning strategy and adapt to eventual harmonised rules); in addition such harmonised rules may even conflict with article 295 of the EC Treaty, which declares that the Treaty shall not prejudice the system of property ownership in the Member States.

It is also useful to point out that some of the envisaged options measures would have to be adopted by unanimity in the Council and with the obligatory consultation of the CoR: this includes measures with financial implications (e.g. tax incentives to promote less polluting technologies) or which would have

implications for town and country planning (e.g. harmonised rules on urban green zones) [see art. 175 (2 a & b) TEC]. The Treaty requirement for unanimity is an indirect sign that these are issues which at least some Member States hold dear, and therefore call for a more detailed assessment of subsidiarity compliance.

It should be, lastly, noted that at least two lines of action require special attention from the Member States, because they either have a closer affinity to the subject matter of the so called 3<sup>rd</sup> pillar (cross-border enforcement) or they are related with security issues (anti-terrorism security in urban transport).

**Key points:**

The CoR should reiterate its pronouncements in Opinion 119/2006 and underline that urban transport is primarily the responsibility of the Member States, especially local and regional authorities. Any action taken on the EC/EU level should have due regard to the principle of subsidiarity. In that regard the CoR could stress that the Commission pay close attention to the contributions of local and regional stakeholders in the ongoing consultation process.

Furthermore, the CoR could invite the Commission to submit a detailed subsidiarity evaluation of the concrete proposals it intends to table with the publication of the Action Plan, following the conclusion of the consultation process. The CoR could also pledge to make a thorough assessment of the overall results of the consultation, especially regarding the conformity of the final Action Plan with the principle of subsidiarity.

**3. Compliance with the proportionality principle and cost of implementation**

Once again, seeing that the Commission document concerned is a Green Paper, there is not much scope for a thorough proportionality evaluation. True enough, no mention of the proportionality principle is made in the Green Paper. However, the CoR should keep articles 6 and 7 of the Protocol on the application of the principles of subsidiarity and proportionality in mind, especially when it comes to debate on the concrete proposals coming out of the future Action Plan.

Even at this early stage, however, **the CoR should address a number of issues relating to the proportionality principle:**

- The *necessity and effectiveness* of some of the options the Commission envisages to stimulate debate upon, in view of the objectives aimed to be achieved (e.g. urban charging, antiterrorism security in urban transport, the European Observatory on Urban Mobility ).
- The *form* of the proposed EC/EU action, especially in view of article 6 of the Protocol on the application of the principles of subsidiarity and proportionality. Save for a general reference alluding to the avoidance of "top down" measures, the Commission is not saying much in that regard. Having in mind the nature of the issues concerning urban transport, the CoR could call for a preference to be shown toward coordination or incentive measures (such as benchmarking,

promotion and exchange of best practices) rather than the adoption of new Community legislation of a harmonising nature.

- The *nature and extent of EC action*: it should be remembered that EC action should leave as much scope possible for national decision, whilst also respecting established national arrangements and the organisation of the Member States' legal systems. In addition, it should be kept in mind that Community measures should – whenever possible – provide the Member States with alternative ways to achieve their objectives (art. 7 of the Protocol on the application of the principles of subsidiarity and proportionality).

**Key points:**

The CoR could invite the Commission to present a detailed proportionality assessment of the concrete proposals it intends to table with the publication of the Action Plan, following the conclusion of the consultation process. In addition, it could call for future EC action that should avoid red tape and would leave ample scope for decision to the immediately concerned local and regional authorities and that pays due respect to well established arrangements or legal practises at the local or regional levels. Lastly the CoR should call for a preference to be shown toward coordination or incentive measures (such as benchmarking, promotion and exchange of best practices).

Furthermore, **no in-depth analysis of the administrative and the financial impact of the proposed lines of action has been offered by the Commission** (this is understandable in view of the fact that at this stage they only represent options and not concrete policy decisions).

Nevertheless, it goes without saying that **almost all initiatives will involve additional financial and administrative burdens, especially for local and regional authorities** rather than the central authorities of the Member States<sup>3</sup>. It should be remembered that with regard to article 9(3) of the Protocol on the application of the principles of subsidiarity and proportionality " [...] *the Commission should [...] take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national government, local authorities, economic operators and citizens, to be minimised and proportionate to the objectives to be achieved*".

In addition, it is proposed that some lines of actions be financed through existing structural (EDRF) and cohesion instruments (Cohesion Fund). The modalities of such funding should be explained by the Commission in a thorough and transparent manner [article 9(2) of the Protocol on the application of the principles of subsidiarity and proportionality].

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<sup>3</sup> The financial implications of some lines of action on citizens (e.g. urban charging, the generalised "Eurovignette"), should also not be ignored.

**Key point:**

The CoR could invite the Commission to submit – along with its future Action Plan – a detailed analysis of the financial and administrative impact the envisaged actions would have. It could also remind the Commission of its duty to introduce measures, which would have the smallest possible administrative and financial impact on the local and regional authorities, which would eventually be called upon to implement them.

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