

EUROPEAN UNION



Committee of the Regions



Subsidiarity

Annual Report

2011

EUROPEAN UNION



Committee of the Regions

SUBSIDIARITY ANNUAL REPORT 2011

Subsidiarity Annual Report 2011

TABLE OF CONTENTS

1. INTRODUCTION	2
2. THE SUBSIDIARITY AND PROPORTIONALITY PRINCIPLES: KEY ELEMENTS AND ADDED VALUE	3
3. SUBSIDIARITY MONITORING IN THE COR	5
3.1 The Subsidiarity Monitoring Network	5
3.1.1 Members	5
3.1.2 Activities	7
3.1.2.1 Introduction	7
3.1.2.2 Targeted consultations launched in 2011	7
3.1.2.3 Open contributions received in 2011	10
3.1.2.4 SMN Action Plan	10
3.1.3 Participation in Territorial Impact Assessment consultations	12
3.2 Subsidiarity in CoR opinions	14
3.2.1 Quantitative observations	14
3.2.2 Qualitative observations	15
3.2.2.1 General remarks	15
3.2.2.2 Main opinions adopted in 2011 with respect to subsidiarity	15
3.3 Subsidiarity Events	19
3.3.1 5th Subsidiarity Conference	19
3.3.2 2011 Open Days thematic subsidiarity workshop: The integration of immigrants at local and regional level	21
3.3.3 SMN website and Newsletter	22
4. REGIONAL PARLIAMENTS AND SUBSIDIARITY MONITORING	23
5. THE APPLICATION AND MONITORING OF THE SUBSIDIARITY PRINCIPLE BY OTHER INSTITUTIONS	26
5.1 The European Commission	26
5.2 The European Parliament	28
5.3 The Council of the EU	31
5.4 The Court of Justice	32
5.5 National parliaments	34
6. CONCLUSIONS	36
Appendix: Overview of opinions adopted between 1 January and 31 December 2011	38

This document contains 56 pages.

1. INTRODUCTION

2011 was the second year that the Treaty of Lisbon and its new provisions regarding the principle of subsidiarity have been in effect. Procedures have been established, refined and adjusted in the various institutions involved. The groundwork has now been laid to ensure proper application of this principle which is essential to the European Union's policy-making process. Indeed, subsidiarity means that EU decisions are taken at the appropriate level of authority (European, national, regional or local) - as close as possible to Europeans, in order to ensure that the objectives of those decisions are met.

The Committee of the Regions (CoR) is therefore committed to honour its new Treaty responsibilities by ensuring that this principle is respected. It now has the right to bring an action before the Court of Justice of the EU (CJEU) against an EU legislative act on grounds of subsidiarity breach. However, the Committee feels that it is important to avoid reaching this stage, which would come down to acknowledging failure of the lawmaking process, and instead to strengthen cooperation with the other EU institutions to achieve the best possible legislation. The Committee therefore considers that its responsibilities include monitoring subsidiarity as early as possible, not only through its regular consultative activities, but also throughout the policy cycle, i.e. upstream within policy development activities, such as impact assessments, as well as in the implementation and ex-post evaluation phases.

This Second CoR Annual Report on Subsidiarity reflects this comprehensive and cooperative approach. After a reminder of its interpretation of the principle and the main tool developed on this basis, the "Subsidiarity and Proportionality Assessment Grid" (*part 2*), the report covers the CoR's subsidiarity monitoring activities from 1 January 2011 to 31 December 2011. The status and activities of the Subsidiarity Monitoring Network (SMN) are presented, followed by the way CoR opinions have assessed compliance of EU acts with the principle and events that have been organised to mainstream the subsidiarity culture (*part 3*).

Furthermore, there is special focus on regional parliaments and subsidiarity monitoring in the context of their potential role within the Early Warning System (EWS) set up by the Lisbon Treaty. Opportunities have yet to be seized and regional parliaments are refining procedures and practices, internally and externally, within their respective countries but also through cooperation with counterparts in other EU Member States. The Committee is ready to put its experience and tools, notably the SMN and its developing REGPEX section, at their disposal (*part 4*).

Finally, the report includes an overview of developments in subsidiarity monitoring in the institutions involved, presenting an interpretation of the concept of subsidiarity given by the European Commission (EC), the European Parliament (EP), the Council, the Court of Justice and national parliaments, and the methodologies used to apply and monitor it (*part 5*).

2. THE SUBSIDIARITY AND PROPORTIONALITY PRINCIPLES: KEY ELEMENTS AND ADDED VALUE

The subsidiarity principle is designed to ensure, in areas of non-exclusive EU competence, that decisions are taken as closely as possible to citizens by the most appropriate level where the intended objective(s) can be most effectively achieved. The EU should thus act only if its action is deemed to be necessary and to provide a clear benefit.

The reinforcement of the subsidiarity principle within the EU decision-making process, as laid down in Article 5 of the Treaty on European Union (TEU) and Protocol No 2 on the application of the subsidiarity and proportionality principles¹, is one of the major breakthroughs of the Lisbon Treaty, contributing to a more democratic EU and “better lawmaking”. The definition of the subsidiarity principle now explicitly contains the local and regional dimensions² and thus underlines the need to respect the competences of the EU's local and regional authorities (LRA).

The proportionality principle is closely linked to subsidiarity and helps answer the question of how the EU should act. It is thus the guiding principle when defining the intensity of EU action whose content and form should not exceed what is necessary to achieve the intended objective(s)³.

However, in contrast to the previous Protocol on the application of the principles of subsidiarity proportionality⁴, the current Protocol No 2 does not provide any material criteria for assessing if there is a breach of the subsidiarity and/or proportionality principles. In its Resolution on Better legislation, subsidiarity and proportionality and smart regulation", the European Parliament has for instance underlined "*the need for the material conditions for the application of those principles to be specifically defined at EU level.*"⁵

In order to compensate for this lack and allow for uniform application of the two principles, in early 2010 the CoR adapted its "evaluation grid"⁶ to the innovations introduced by the Lisbon Treaty and provides SMN partners and other stakeholders with an updated "Subsidiarity and Proportionality

1 Hereafter referred to as Protocol No 2.

2 Article 5(3) TEU.

3 Article 5(4) TEU.

4 Protocol No 30 appended to the Treaty of Amsterdam.

5 (2011/2029(INI)), pt. 11.

6 The European Commission has drawn on this evaluation grid for the revision of its impact assessment guidelines in 2009; see the Commission's 16th report on Better lawmaking, COM(2009) 504 final, pt. 3.1.

Assessment Grid"⁷, a tool which identifies the main elements that have to be taken into account in order to assess the compliance of an EU initiative with the principles of subsidiarity and proportionality.

Despite the close links between subsidiarity and proportionality, it should be pointed out that reasoned opinions of national parliaments⁸ as well as possible legal action by the CoR⁹ are limited to an infringement of the subsidiarity principle. In this context, the CoR's Legal Service has prepared a "Practical Guide on the infringement of the subsidiarity principle" for CoR members.

⁷ Available at http://portal.cor.europa.eu/subsidiarity/SiteCollectionDocuments/GridFinalB_EN.doc (last consulted on 13 February 2012).

⁸ Art. 6 (1) Protocol No 2; see parts 4 and 5.5.

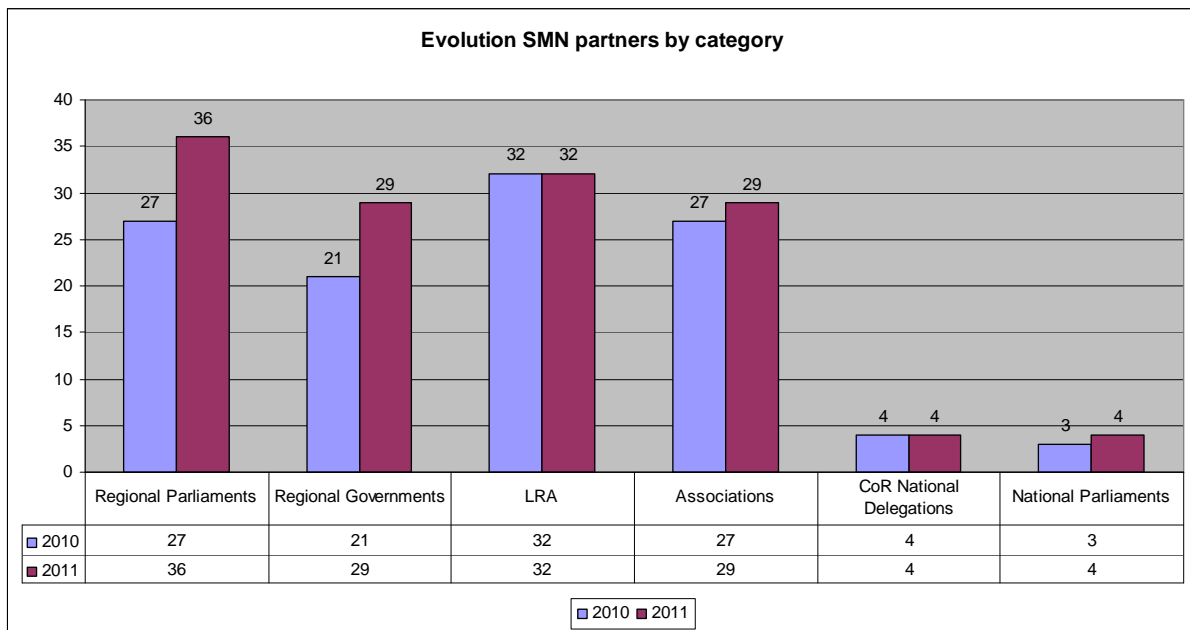
⁹ Art. 8 (2) Protocol No 2.

3. SUBSIDIARITY MONITORING IN THE COR

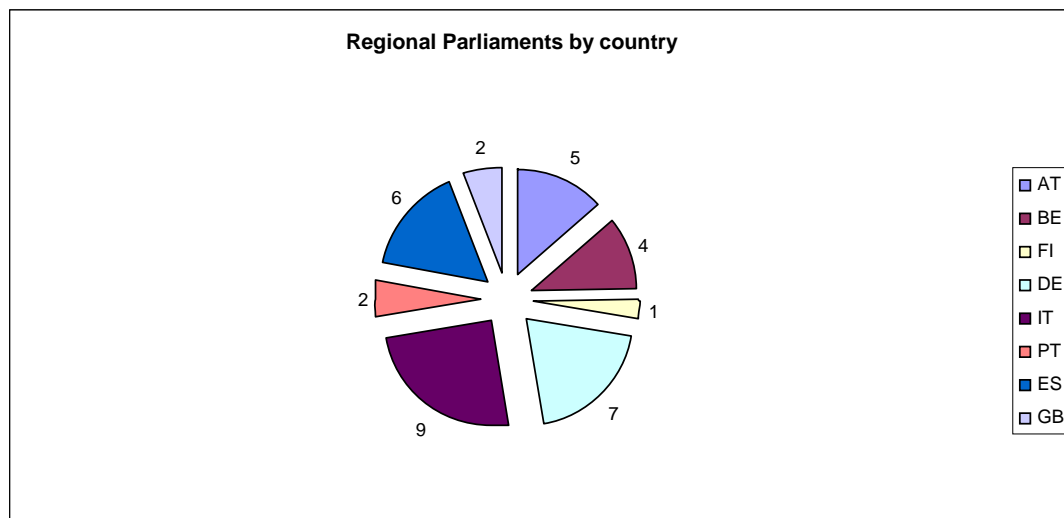
3.1 The Subsidiarity Monitoring Network

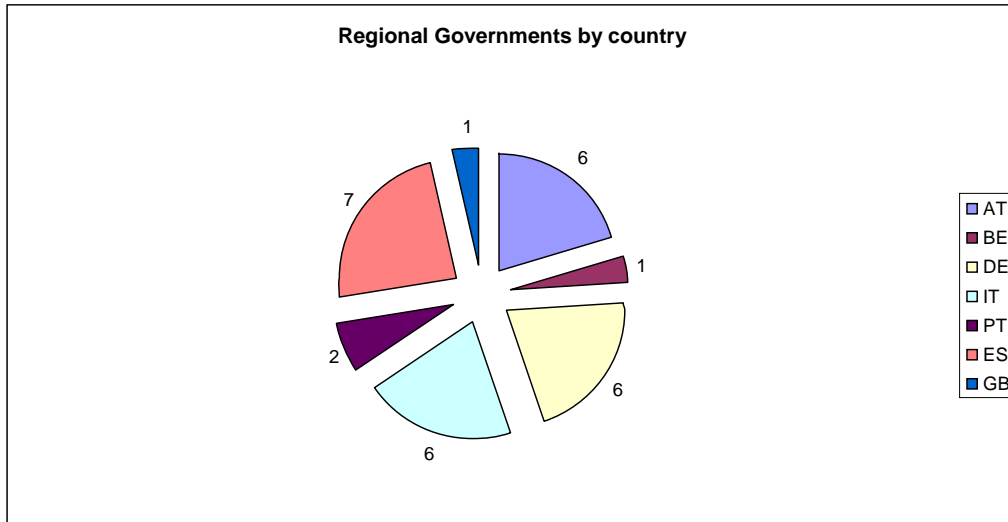
3.1.1 Members

Membership of the SMN increased significantly in 2011. On 31 December 2011, the network included **134 partners**:

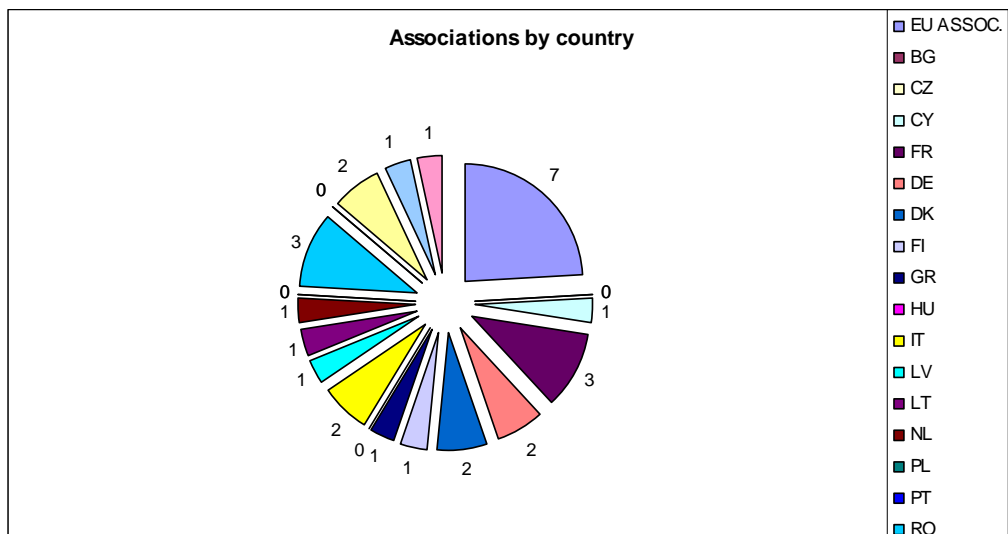
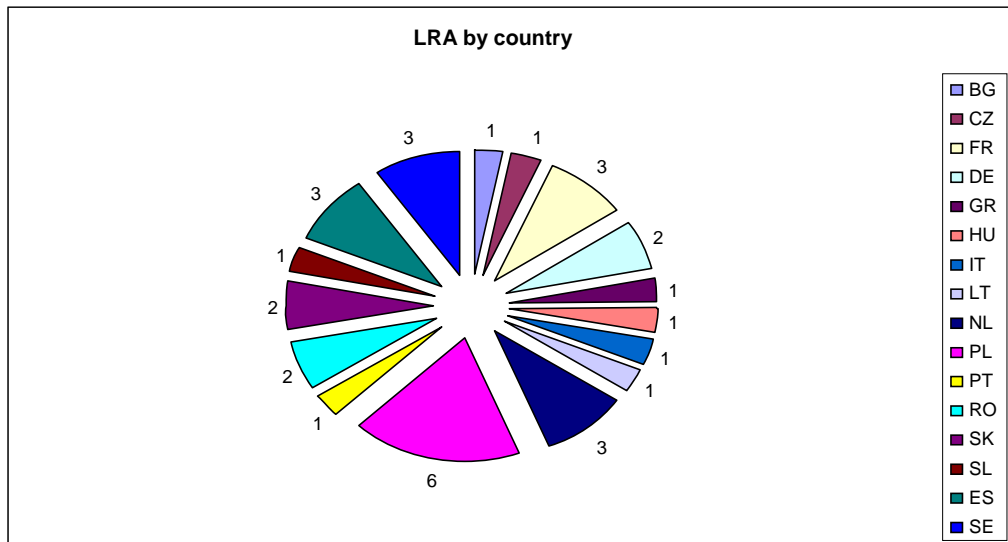


The call for applicants launched in December 2010 targeting regions with legislative powers produced an impressive result; nine regional parliaments (+ 33%) and eight regional governments (+ 38%) submitted applications to join the SMN. Regions with legislative powers are therefore represented as follows within the SMN:





Other categories of SMN partners are geographically represented as follows:



3.1.2 **Activities**

3.1.2.1 **Introduction**

In 2011, the SMN continued to provide its partners with the opportunity to submit their views on subsidiarity in a range of policy fields, in the form of targeted and open consultations.

For the first time, the SMN presented a work programme including a number of dossiers on which targeted consultations would be organised. The network's work programme was presented by the SMN coordinator and CoR first vice-president during the CoR Bureau meeting in Gödöllő (Hungary) in March 2011¹⁰.

3.1.2.2 **Targeted consultations launched in 2011**

Targeted consultations are launched by a CoR rapporteur and can be based either on a standard Subsidiarity and Proportionality Assessment Grid¹¹ or on tailored questionnaires that are submitted to the SMN. Drawing on the consultations' findings, a brief summary report is forwarded to rapporteurs before they submit their draft opinion. Rapporteurs may agree to publish the report on the network website and the CoR's TOAD portal, and for it to be distributed to the members of the relevant CoR commission at the appropriate meeting. So far rapporteurs have consistently agreed to the reports being distributed in this way.

In 2011, the SMN launched five targeted consultations.

ROMA Integration

The SMN targeted consultation on "An EU Framework for National Roma Integration Strategies up to 2020"¹² was launched on 16 June 2011 and concluded on 5 August 2011. Mr Alvaro Ancisi (IT/EPP), CoR rapporteur for this dossier, decided to launch this consultation in order to identify the SMN partners' perceptions regarding this EC initiative.

In particular, network partners were asked about the need for and added value of EU action, the National Roma Integration Strategies and the use of Structural Funds. They were also asked to share best practices in a range of policy fields related to the integration of the Roma population.

¹⁰ R/CdR 57/2011 item 5 - Appendix 1. The work programme included proposed consultations for 2011. Some of the consultations launched in 2011 were requested by CoR rapporteurs even though they were not included in the network's work programme.

¹¹ See above part 2.

¹² COM(2011) 173.

Five contributions from four Member States were received. The final opinion on this issue was adopted by the CoR in December 2011 and includes a specific reference to the consultation and its main findings.

Less Bureaucracy

A second targeted consultation was also launched during the summer of 2011. The consultation on the Green Paper "Less bureaucracy for citizens: Promoting free movement of public documents and recognition of the effects of civil status records"¹³, for which Mr Patrick McGowan (IE/ALDE) was CoR rapporteur, ran from 13 July to 2 September and received seven contributions from SMN partners.

The EU facilitates moving beyond national borders for a variety of reasons. The Green Paper is a further step in the process of tackling bureaucratic burdens that can make it difficult to exercise the rights attached to EU citizenship. It is primarily at local and regional level that citizens come into contact with public administration and that questions about the cross-border usability of public documents and the recognition of the effects of civil status records first arise.

The consultation aimed to gather the views of LRAs on some issues considered to be of great relevance to them within the context of the Green Paper and the subsequent legislative proposals envisaged in this respect.

Energy Efficiency

A third targeted consultation was submitted to the SMN and ran from 6 July to 19 August 2011. It was a consultation on the EC's proposal for a Directive on Energy Efficiency¹⁴, for which Mr Jean-Louis Joseph (FR/PES) was CoR rapporteur.

This consultation received 21 contributions from SMN partners and other local and regional stakeholders from 10 Member States. It must be highlighted that the consultation ran in parallel to the eight-week deadline given to national parliaments to send their reasoned opinions on subsidiarity to the EC and other EU institutions in the context of the EWS. Therefore, in an effort to give a more comprehensive view of the main issues at stake, the final report of the consultation makes explicit reference to some of the main elements contained in the reasoned opinions issued by the Swedish and Finnish Parliaments.

The Directive proposed by the EC establishes a common framework for promoting energy efficiency in the EU to ensure that the target of 20% primary energy savings by 2020 is met and to pave the way for further energy efficiency afterwards. It lays down rules which primarily concern the public sector

¹³ COM(2010) 747.

¹⁴ COM(2011) 370.

and energy companies. Network partners were asked to express their views regarding the need for and added value of the proposed measures.

In this framework, subsidiarity concerns were mainly raised with regard to the following aspects:

- ✓ the EC's explanation that intervention at EU level is needed because action to increase energy efficiency at national level is insufficient;
- ✓ the requirement to renovate, from 2014, 3% of the total surface owned by public bodies;
- ✓ the establishment of EU requirements for national heating and cooling plans.

Review of EU Air Quality and Emissions Policy

A comprehensive review of EU air quality legislation is planned for 2013 at the latest. Given the importance of air quality management for many municipalities and regions in the EU, the EC has asked the CoR to prepare an outlook opinion on this issue.

The rapporteur for this opinion, Mr Cor Lamers (NL/EPP), asked for a targeted consultation of the SMN which ran from 18 October to 2 December 2011. The aim of the consultation was to gain an understanding of the administrative, financial and legal implications of existing EU air quality and emissions legislation at local and regional level, as well as the resulting requirements for a review of this legislation, as perceived by SMN partners.

Twenty-three replies were submitted by local and regional stakeholders from nine Member States.

Most of the replies referred to subsidiarity principle-related criteria, highlighting the need for EU action on air quality matters involving transnational aspects that cannot be regulated by Member States acting alone. The prevailing view was that local and regional authorities are faced with problems in this context that cannot be solved by them or the central level of Member States.

Connecting Europe Facility

Finally, at the request of the CoR rapporteur on the Connecting Europe Facility¹⁵, Dr Ivan Zagar (SI/EPP), a consultation on this dossier was launched on 29 November 2011.

The budget of the Connecting Europe Facility will be used to finance projects that fill the missing links in Europe's energy, transport and digital backbone. It will also make Europe's economy greener by promoting cleaner modes of transport, high speed broadband connections and facilitating the use of renewable energy in line with the Europe 2020 Strategy. By focusing on smart, sustainable and fully interconnected transport, energy and digital networks, the Connecting Europe Facility aims to truly complete the European Single Market.

¹⁵ COM(2011) 665.

Given the nature of the subject matter and at the request of the rapporteur, in addition to the SMN this consultation was open to the EGTC Platform, CoR members willing to participate, regional offices based in Brussels and permanent representations. At the time that this report was prepared, the consultation had been closed and 31 contributions received.

3.1.2.3 Open contributions received in 2011

Network partners also submitted their views on subsidiarity and proportionality through open contributions. Thanks to this type of consultation, network partners are able to submit their views on any EU initiative they choose. Contributions are uploaded onto the SMN website and all SMN partners are informed. Open contributions received in the context and during the preparation of a draft opinion are sent automatically to the secretariat of the CoR commission concerned.

At the request of the CoR rapporteur for Smart Regulation¹⁶, Lord Graham Tope (UK/ALDE), network partners were invited to send their contributions regarding this EC proposal between 5 January and 21 March 2011. In total, 13 contributions were received and forwarded to the rapporteur, who was able to use them when preparing his draft opinion¹⁷.

In 2011, a total of 22 EU initiatives were commented on by means of open contributions. In particular, some network partners regularly send their views on subsidiarity to the network. This is a practice that provides more publicity for their views and better information for network partners and is becoming more popular.

3.1.2.4 SMN Action Plan

The first SMN Action Plan was launched in June 2009 by the CoR president and first vice-president, as a follow-up to the 4th Subsidiarity Conference held in Milan by the CoR and the Region of Lombardy. The aim of the Action Plan is to **identify experiences and best practices in the application of the subsidiarity principle in Europe's regions and cities**. It complements the SMN's activities by analysing a range of EU policy areas in the light of subsidiarity and can feed into the CoR's consultative activities.

The first Action Plan (2009/2010) was divided into pillars corresponding to policy areas where the application of the subsidiarity principle was perceived to be especially relevant and where examples of best practices exist at the level of local and regional authorities.

¹⁶ COM(2010) 543.

¹⁷ R/CdR 353/2010 rev. 2.

For each working group, specific partners (the "lead partners") agreed to take on key roles in the steering of the Action Plan, owing to their experience in applying the subsidiarity principle at grass-roots level and the expertise of the scientific and academic networks at their disposal. Lead partners presented the final reports of the SMN Action Plan during the Subsidiarity Conference held in Bilbao (Spain) in March 2011.

According to the SMN's 2011 work programme, the second SMN Action Plan was launched in the summer of 2011. It was decided¹⁸ to set up working groups on the following subjects: resource efficiency; integration of immigrants and TEN-T. In October 2011, in the light of expressions of interests it was decided to set-up a group on TEN-T only and to propose a new activity in the field of integration of immigrants as a result of a thematic subsidiarity workshop on that topic, which took place during the Open Days 2011¹⁹.

The working group on TEN-T is led by two SMN partners, the City of Gothenburg and the Region of Västra Götaland (SE) and includes the Association of European Border Regions (AEBR); Arco Latino; Valencia Region (ES); the Basque Country Region (ES); the Legislative Assembly of Friuli Venezia Giulia (IT); Netwerk Stad Twente (NL); the province of Overijssel (NL); and Wielkopolska Region (PL). The group focuses on two main documents: the new Regulation on TEN-T Guidelines²⁰ and the Regulation establishing the Connecting Europe Facility²¹, due to the fact that both proposals are closely linked and have a dramatic effect on the future of TEN-T policy in the EU.

In order to step up the involvement of CoR members in the work of the working groups and so improve the link between the Action Plan and the CoR's consultative activity, a number of CoR members (one per political group) have been invited to meet the members of the working group and follow its work.

At the time of writing, three CoR Members, Messrs. Väino Hallikmägi (EE/ALDE), Uno Silberg (EE/EA) and Ivan Žagar (SI/EPP) were to meet with the group on 28 February 2012. Mr Žagar being the CoR rapporteur for the opinion on the Connecting Europe Facility, this meeting is a good way to ensure a good connection between works produced in the context of the Action Plan and CoR's consultative work. The working group is to present its final report during the first half of 2012.

18 R/CdR 57/2011 item 5 - Appendix 1.

19 See point 3.3.2.

20 COM(2011) 650.

21 COM(2011) 665.

3.1.3 Participation in Territorial Impact Assessment consultations

In 2011, the CoR continued developing its cooperation with the European Commission in the preparation of a number of Impact Assessments (IA).

IA is a set of steps which helps the EC to assess the potential economic, social and environmental consequences of its proposals. It is a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impact. It is an aid to political decision-making, not a substitute for it. The results of this process are summarised and presented in an IA report.

A sound IA should: identify the problem(s); assess the need for EU-level intervention; define the objective(s); develop the policy options; analyse the impact of the options; compare the options and outline policy monitoring and evaluation. IA is a crucial tool for better regulation and for ensuring respect for the subsidiarity and proportionality principles at an early stage of the decision-making process.

The *Agreement governing cooperation between the European Commission and the Committee of the Regions*²² explicitly mentions the participation of the CoR in IA exercises carried out by the Commission; in particular the CoR is called upon to cooperate in assessing the territorial impact of certain proposals. The CoR's contribution to specific territorial IA reflects technical input from local and regional stakeholders, and can constitute a valuable source of information for the EC, CoR members as well as all stakeholders.

Thanks to this cooperation, which began in 2009, LRAs are able to express their views on future EU initiatives before the legislative process starts. This mechanism helps avoid conflicts regarding compliance with the subsidiarity principle at a very early stage in the pre-legislative process.

The participation of the CoR in these exercises takes the form of stakeholder consultations. Specific dossiers are identified in agreement with the relevant EC Directorate-General (DG) and questionnaires are submitted to all CoR platforms and beyond, in some cases to all regional offices based in Brussels. At the end of the consultation, a report is prepared and forwarded to the EC together with all contributions received. The report is forwarded by the CoR secretary-general to the EC secretary-general.

In 2011, two SMN consultations were launched in the framework of this cooperation, one on the new EU LIFE instrument and the other on the renewed Second European Agenda on Integration.

²² R/CdR 86/2007 item 3a).

The consultation on the *Assessment of Territorial Impact of the EU LIFE + instrument* was launched on 3 February and concluded on 15 April 2011. It was conducted through all CoR consultative platforms, distributed to all regional offices based in Brussels and received 40 contributions from stakeholders from 12 Member States.

The consultation aimed to identify how LRAs perceive the existing financial instrument for the environment, LIFE+, including their suggestions for future policy initiatives as well as their own experiences and best practices in this field. Specifically, it intended to get LRAs' views on "*the important environmental problems locally and at EU scale; the weaknesses in existing EU environmental policy and local limitations in implementing EU policy/legislation effectively; and the potential role for a future EU financial instrument for the environment, building on the current LIFE+ programme*"²³.

The results of the consultation indicated that there is sufficient scope for one or more EU financial instruments for the environment, targeting several significant local and regional environmental problems/key challenges, ranging from nature and biodiversity issues to climate change, and from resource use and waste to freshwater management. The LIFE instrument is broadly used by LRAs to address these issues, especially in terms of facilitating the implementation of EU policy/legislation in related fields.

The report on the IA Consultation was forwarded to the European Commission by the CoR secretary-general together with a letter on 16 May 2011. The CoR's consultation is mentioned in the EC's Proposal for a Regulation of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE) (COM(2011) 874 final).

Consultation on the Second European Agenda on Integration

Although not taking place within the context of an impact assessment, the aim of this consultation was to provide the EC (DG HOME) with input from local and regional authorities with regard to the Second European Agenda for Integration, which was then being drafted²⁴.

The consultation sought input on four main areas related to the integration of migrants: (a) the respondents' experience with the Common Agenda on Integration and their expectations of the upcoming second agenda, (b) the delivery of integration policies at local and regional level, (c) monitoring the results of integration policies at local and regional level, and finally (d) identification of "success stories". The consultation targeted actors at the local and regional level, particularly public administrations, and ran from 18 February to 15 April 2011. The CoR launched the

²³ LIFE Impact Assessment Questionnaire, CoR 2011.

²⁴ Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2011) 455 final.

consultation through two of its consultative networks, namely the Europe 2020 Monitoring Platform and the CoR SMN, but it also contacted all regional offices based in Brussels, associations of local and regional authorities at the regional, national or European level, the coordinators of CoR national delegations as well as other selected stakeholders. The European Commission also forwarded information on the consultation to the national contact points on integration.

In total, the consultation attracted 47 responses from entities in 11 Member States.

The report of the consultation together with all contributions received was sent to the European Commission and some of its findings are reflected in the Communication on a renewed "European Agenda for the Integration of Third-Country Nationals"²⁵. The results of the consultation were also used by Mr Kalogeropoulos (EL/EPP), CoR rapporteur for the communication when preparing his draft opinion²⁶. The results of the consultation were also discussed during a thematic subsidiarity workshop held during the Open Days 2011²⁷.

3.2 Subsidiarity in CoR opinions

This section is based on a quantitative and qualitative analysis of all the opinions adopted by the CoR during its six plenary sessions in 2011. A general overview as well as detailed tables arranged by the CoR's commissions may be found in the appendix²⁸.

3.2.1 Quantitative observations

The CoR adopted 62 opinions in 2011. More than three quarters (51) included an explicit reference to the application of the subsidiarity principle as requested by Rule 51 of the CoR Rules of Procedure and one quarter set out a clear position on the initiative's compliance with the principle.

In general, opinions that did not include any reference to subsidiarity (11) were adopted either on the initiative of the CoR (2) or on non-legislative initiatives (Communications, Green Papers or Reports) (8). Only one opinion adopted on a legislative proposal did not comply with Rule 51 (Agricultural product quality schemes²⁹).

25 Op. cit. note 24.

26 Adopted by the CoR plenary on 15 February 2012, CdR199/2011.

27 See point 3.3.2.

28 See Appendix 1.

29 R/CdR 14/2011.

Altogether, the same trends can be observed in 2011 as in 2010, with the exception of the fact that this year, more CoR opinions were adopted on legislative proposals – ten against four. Out of these ten opinions, two commented on initiatives within policy areas of shared competences, where consultation of the CoR is mandatory (Single European Railway Area³⁰ and Energy Efficiency³¹) and included a reference to the subsidiarity principle. Out of the other eight opinions on legislative initiatives, seven contained such a reference.

3.2.2 Qualitative observations

3.2.2.1 General remarks

As observed in 2010, subsidiarity is definitely becoming a point of reference for the drafting of opinions. However, given the CoR's new prerogatives and responsibilities, all opinions dealing with legislative proposals in areas of shared competences should include a systematic appraisal of compliance with the subsidiarity principle.

The CoR did not observe any breach of the subsidiarity principle. However, one of the opinions, commenting on the Common Consolidated Corporate Tax Base (CCCTB)³², stated that the proposal, as it stood, did not provide sufficient quantitative and qualitative indicators to allow a full assessment of its subsidiarity implications (more details below).

3.2.2.2 Main opinions adopted in 2011 with respect to subsidiarity

Freedom for MS to decide on the cultivation of genetically modified crops in their territory (R/CdR 338/2010)

The opinion adopted on 28 January 2011 for which Mr Santarella (IT/EPP) was rapporteur, welcomed the approach taken by the EC and the proposed measures which offer Member States additional freedom to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory. According to the CoR, the proposed rules "may be deemed to comply with the principles of subsidiarity and proportionality". However, the opinion regretted that the welcome possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory was to be curtailed by not allowing Member States or regions to invoke reasons pertaining to either human/animal health or environmental protection. Furthermore, the CoR called for this possibility to be extended to the competent LRA, without any restrictions. Finally, the CoR called for territorial IAs to be carried out before GMOs are introduced into a Member State, with due consultation of LRAs.

30 R/CdR 297/2010.

31 R/CdR 188/2011.

32 R/CdR 152/2011.

Policy orientations on road safety 2011-2020 (R/CdR 296/2010)

In March 2011, the CoR adopted an opinion on "Policy orientations on road safety 2011-2020". The rapporteur for this opinion, Mr Johan Sauwens (BE/EPP), had previously decided to submit his dossier for consultation of the SMN³³. The final Committee opinion makes explicit reference to that consultation and supports the policy orientations proposed by the EC since they "give no cause for concern regarding compliance with the principles of subsidiarity and proportionality, as the objectives of the proposed actions cannot be achieved by the Member States alone".

Seasonal workers and intra-corporate transfers (R/CdR 354/2010)

The CoR opinion on the Proposals for a Directive of the European Parliament and Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer³⁴ and for a Directive of the European Parliament and Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment³⁵, for which Mr Milia (IT/PES) was rapporteur, took note of the arguments set out in the reasoned opinions and positions adopted by national parliaments. However, for the CoR both proposals comply with the subsidiarity principle because it considers that legislation at EU level is necessary and that national measures alone would not be equally effective.

Although supporting the choice of legal instrument in both cases, the opinion stressed that some individual elements of the proposals might require closer analysis with reference to the proportionality principle. Disproportionate obligations should not be imposed upon individuals seeking to enter the EU as seasonal workers or intra-corporate transferees or their employers, nor should unnecessary costs or burdens be imposed on the national, regional or local authorities called to implement them (issue of the thirty-day time limit to consider applications and decide on admissions).

European platform against poverty and social exclusion (R/CdR 402/2010)

The CoR opinion on the European platform against poverty and social exclusion was adopted by the CoR in March 2011, with Ms Chapman (UK/PES) acting as CoR rapporteur. When preparing her draft opinion, Ms Chapman had access to the results of the working group set up in the framework of the first SMN Action Plan on this very subject. The working group was led by the association Arco Latino, a member of the SMN, and presented its final report during the Subsidiarity Conference held in March 2011 in Bilbao.

Single Market Act (R/CdR 330/2010)

In its opinion on the Single Market Act, for which Mr Jean-Louis Destans (FR/PES) was CoR rapporteur, the Committee calls on the Commission to carry out forthwith an in-depth prior analysis

33 The network was consulted in 2010; this is why it is not mentioned in the chapter "Targeted consultations".

34 COM(2010) 378 final.

35 COM(2010) 379 final.

of the social impact of all proposed legislation concerning the single market; and explicitly offers to "support the Commission by contributing its local and regional expertise to these impact assessments, inter alia by means of its Europe 2020 strategy monitoring platform and subsidiarity network".

Innovation Union (R/CdR 373/2010)

The Innovation Union³⁶ is a non-legislative initiative on which the CoR did not explicitly take up a position regarding its compliance with the subsidiarity principle. However, one of the working groups of the SMN Action Plan³⁷ focused on this topic and commented on the Communication. Furthermore, the CoR's opinion, for which Mr Knox (UK/EA) was rapporteur, stressed that "[...] often EU procurement rules are inconsistent and add red tape to domestic programmes, often testing the limits of the Treaty conferral and of subsidiarity by setting procurement criteria for domestic policies, often tying such provisions to seemingly unrelated legislation or being proposed by different Commission departments". Legislative follow-up given to this Europe 2020 flagship initiative will be watched closely.

The EU LIFE programme - the way forward (R/CdR 6/2011)

The opinion set out the CoR's position on the continuation beyond 2013 of the LIFE programme, the financial instrument for the environment, outlined in the Communication on that subject (COM(2010) 516).

It referred to subsidiarity only in the context of information policy by calling for the latter to be improved at national level and to take into account the subsidiarity principle and the obvious differences between individual Member States to this end, in order to decentralise information policy on LIFE. The contributions to the Territorial Impact Assessment consultation on the same subject (see point 3.1.3) were forwarded to the rapporteur, Ms Daiva Matonienė (LT/EA).

Smart regulation in the EU (R/CdR 353/2010)

Adopted on 11 October 2012, this opinion, for which the rapporteur was Lord Graham Tope (UK/ALDE), is particularly relevant to the CoR's approach to subsidiarity monitoring. It commented both on the Communication on Smart Regulation in the EU³⁸ and the Report from the Commission on Subsidiarity and Proportionality³⁹. While welcoming in general the Communication which firmly anchors the principles of smart regulation throughout the EU policy cycle, the CoR made a number of policy recommendations regarding the subsidiarity principle in particular. It reiterated the significance of both ex ante impact assessment and ex post evaluation in policy-making and legislation, and stated

³⁶ COM(2010) 546.

³⁷ See above part 3.1.2.4.

³⁸ COM(2010)543 final.

³⁹ 17th Report on Better Lawmaking covering the year 2009 (COM(2010) 547 final), with a reference to the 18th Report (COM(2011) 344 final).

its readiness to assist the EU institutions in these endeavours. Regarding the EWS, it requested that the EC forward reasoned opinions sent by national parliaments, as well as their translations and the reply given. It called for the establishment of a mechanism for the CoR's contribution to the Commission's annual report on better lawmaking. Finally, in accordance with the subsidiarity principle, it expressed concern about the fact that "increasingly the EC tries to stipulate when and how Member State governments enforce compliance by local and regional authorities" and recalled that "enforcement should be the responsibility of national governments themselves and regional governments where appropriate".

Less bureaucracy for citizens (R/CdR 148/2011)

Advising on the Green Paper "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records"⁴⁰, the CoR opinion made some recommendations as to possible future EU action in this field, in relation to the subsidiarity and proportionality principles. The rapporteur, Mr Patrick McGowan (IE/ALDE), could use elements provided by SMN partners⁴¹. The opinion considered "that the possibility for a European Civil Status Office should not be ignored if it could be shown to be more efficient and more effective than establishing a multitude of new offices or maintaining similar offices in Member States". It shared the Commission's broad objective of identifying and removing obstacles to exercising EU rights, particularly in cross-border situation, and "while respecting subsidiarity principles, would propose that the introduction of best practice guidance for Member States be considered to facilitate the provision of civil status documentation on a cross-border basis".

An EU framework for Roma integration strategies up to 2020 (R/CdR 247/2011)

Mr Alvaro Ancisi (IT/EPP), CoR rapporteur for "An EU framework for Roma integration strategies up to 2020" also submitted his dossier for SMN consultation when preparing his draft opinion. In a separate section, the opinion assesses compliance with the subsidiarity principle and summarises the main findings of the consultation. The opinion underlines that the "communication complies with the principle of subsidiarity, since the transnational character of the European Roma community, and the shared aspects of social exclusion that this community faces in various parts of Europe, are such that the measures proposed can best be implemented at EU level". The transnational nature of the problem justifies the need for EU action in this field. In this case, EU action can bring added value since this level is best placed to coordinate efforts and design a more comprehensive strategy at European level.

Common Consolidated Corporate Tax Base (CCCTB) (R/CdR 152/2011)

The CoR adopted its opinion on the "Common Consolidated Corporate Tax Base (CCCTB)" during its plenary session in December 2011, and Mr Graas (LU/ALDE) was CoR rapporteur. In its opinion, the CoR notes that some national parliamentary chambers had sent reasoned opinions to the presidents

⁴⁰ COM(2010) 747.

⁴¹ See above 3.1.1.

of the European Parliament, the Council and the Commission, expressing their concerns on compliance with the subsidiarity principle. Moreover, it "believes that the proposal should be reviewed taking into account the need for sufficient quantitative and qualitative indicators to allow a full assessment of the subsidiarity implications of a cross-border proposal of this nature; more data on the full implications of the CCCTB; and an analysis of the impact of the proposal on local and regional authorities". Subsidiarity analyses rely very much on indicators, be they qualitative or quantitative, since the assessment of the need for EU action in many cases needs to be justified and duly substantiated. The Committee asks in this case for more information and more exhaustive work in the pre-legislative phase.

Energy efficiency (R/CdR 188/2011)

This opinion related to the EC's Proposal for a Directive of the European Parliament and of the Council on energy efficiency and repealing Directives 2004/8/EC and 2006/32/EC⁴².

It pointed in general to the crucial importance of respecting the powers of different levels of governance and the subsidiarity principle when applying energy efficiency measures. Specifically, the opinion stressed the need to take account of the subsidiarity principle when rejecting the proposed requirement for the public sector to renovate 3% of its buildings annually and purchase high-energy-performance products, services and buildings. The rapporteur, Mr Jean-Louis Joseph (FR/PES), consulted the SMN on the draft Directive (see point 3.1.2.2).

Conclusions on the subsidiarity principle in CoR opinions in 2011

Even though the CoR did not observe any subsidiarity breach, it reinforced the references to the principle in its opinions, making them more systematic and substantiated. Moreover, opinions reflect the CoR's comprehensive approach that involves monitoring subsidiarity at all stages of the policy-making process. Indeed, opinions stress the importance of respecting subsidiarity right from the IA stage and express the CoR's willingness to assist the Commission, the Parliament and the Council in developing territorial impact assessments.

3.3 Subsidiarity Events

3.3.1 5th Subsidiarity Conference

The 5th Subsidiarity Conference (*Assises de la Subsidiarité*) took place on 20-21 March in Bilbao (ES). Jointly organised by the Basque Parliament and Government and the CoR, it was attended by

⁴² COM(2011) 370.

over 200 participants – CoR members, SMN partners, other LRA representatives such as the Presidents of CALRE and REGLEG, as well as representatives of the EU institutions⁴³.

The meeting was opened by the CoR president and first vice-president, followed by Arantza Quiroga, President of the Regional Parliament of the Basque Country and Patxi López, President of the Regional Government of the Basque Country and CoR member. The first session was dedicated to interinstitutional dialogue, with Nymand Christensen, European Commission, Director for Parliamentary and Interinstitutional Issues, Mr Rétvári, Hungarian Minister of State for Public Administration and Justice, representative of the Trio Presidency of the Council, and Luc van den Brande (BE/EPP), chairman of the CoR's CIVEX commission.

Discussions then turned to some specific policy areas, with two rapporteurs for CoR opinions on some legislative proposals – Mr Milia (IT/PES), on the two proposals for a directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment and in the framework of intra-corporate transfers⁴⁴, and Mr Martikainen (FI/ALDE), who spoke about the CoR opinion on the directive regarding distribution of food products to the most deprived persons in the Union. Discussions went on to the practical implementation of the subsidiarity principle in areas of multilevel governance. Lead partners of the working groups of the SMN Action Plan⁴⁵ presented their reports on Social innovation, Fighting poverty and social exclusion, Integration of immigrants in urban areas, Health inequalities and Fighting climate change in Europe's regions and cities.

The second part of the meeting was dedicated to the role of regional parliaments within the EWS, on the basis of the study on *The Role of Regional Parliaments in the process of subsidiarity analysis within the EWS of the Lisbon Treaty*⁴⁶ which had just been published. The round table included Ms Männle (DE/EPP), Ms Quiroga, Vittoriano Solazzi, President of the Regional Parliament of Marche, and Rossana Boldi, President of the Committee for European Policies of the Italian Senate.

In their conclusions⁴⁷, participants praised the work of the SMN and confirmed directions for future work – in particular setting up the REGPEX section on the SMN website, closer cooperation with CALRE and REGLEG, further interinstitutional cooperation, and more systematic involvement of local and regional authorities in the pre-legislative phase and territorial impact assessments.

43 Programme and report available on the SMN website, at <http://portal.cor.europa.eu/subsidiarity/Pages/BilbaoHome.aspx> (last consulted on 3 January 2012).

44 See above, part 3.2.2.2.

45 See above, part 3.1.2.4.

46 The study, which was commissioned by the CoR and drafted by the European Institute of Public Administration (EIPA), is available on the SMN website, at http://portal.cor.europa.eu/subsidiarity/SiteCollectionDocuments/Full%20Regional_parliaments_FINAL.pdf.

47 Available on the SMN website, at http://portal.cor.europa.eu/subsidiarity/SiteCollectionDocuments/Assise%20conclusions/Conclusions_adoptées_ENG.pdf (last consulted on 3 January 2011).

3.3.2 2011 Open Days thematic subsidiarity workshop: The integration of immigrants at local and regional level

The purpose of thematic subsidiarity workshops is to direct the subsidiarity debate towards practical issues in policy-making within specific sectors, i.e. policy domains where decisions are mostly made at the local, regional or national levels. Held on 12 October 2011 during the Open Days and co-organised with the CoR's CIVEX commission, this year the thematic subsidiarity workshop focused on the integration of immigrants at local and regional level. The event brought together around 130 representatives from local and regional authorities and their associations, NGOs and the European institutions. Chaired by the SMN coordinator, Mr Valcárcel Siso, first vice-president of the CoR, the panel included representatives from the EP, MEP Salvatore Iacolino (IT/EPP) and the EC, Stefano Manservigi, Director-General, DG HOME, as well as local and regional authorities, notably Mr Kalogeropoulos, CoR rapporteur for the Communication on a renewed "European Agenda for the Integration of Third-Country Nationals"⁴⁸.

The purpose of this particular thematic subsidiarity workshop was to showcase the experience gained by the cities and regions that took part in the consultation carried out by the CoR in February-March this year⁴⁹ in relation to the preparation of the Second European agenda for the integration of third-country migrants. It followed as well the work carried out by one of the working groups of the SMN Action Plan⁵⁰. It was an opportunity to illustrate the CoR's approach to subsidiarity monitoring upstream of EU policy-making and to identify avenues for cooperation following the recent release of the European Commission's Communication on the Second European agenda for the integration of third-country nationals.

Participants were strongly in favour of the idea of collecting examples of integration policies at local and regional level and setting up a database of these practices and a network of local and regional authorities for migrants' integration. In 2012, the Subsidiarity unit will cooperate with the CIVEX commission in collecting information and developing a database of best practices on the integration of immigrants at local and regional level, building on existing networks and experience in the field. This initiative will serve to give a concrete expression to the "strategic partnership" that the EC has called for with the CoR and associations of local and regional authorities⁵¹.

48 COM(2011) 455.

49 See above, part 3.1.3.

50 See above, part 3.1.2.4.

51 See COM(2011) 455 final, op. cit. note 24, as well as CoR opinion CdR 199/2011.

3.3.3 SMN website and Newsletter

The SMN website was further developed in 2011. It remains the network's main tool, as SMN activities essentially take place via electronic communication and the Internet – consultations, publication and exchange of documents, particularly within the working groups of the Action Plan.

As announced last year, partners' profiles are now visible, with a link to their own websites. The dedicated section to regions with legislative powers (REGPEX⁵²) is still being developed, however a first "test-file" was prepared at the end of the year on the Revision of EU public procurement legislation. A note was posted on the SMN website, providing a comprehensive overview of the potential impact of two proposals for directives aiming to modernise the EU public procurement system⁵³, on local and regional authorities and in relation to the subsidiarity principle. The note was intended to support regional parliaments in the context of the EWS when they prepared their own subsidiarity analysis of the draft directives. At the time of writing, potential regional subsidiarity analyses were to be uploaded and shared among SMN partners, and a link to IPEX, the database used by national parliaments to exchange information on EU documents, was to be set up. Finalisation of REGPEX is a key objective for 2012.

In addition to the SMN website, a Subsidiarity Newsletter was published for the first time in October 2011, in electronic and paper form. This news brief provides information on the activities carried out by the SMN in 2011, its main events and future projects, as well as the main subsidiarity developments within the EU institutions. It will be published twice a year.

⁵² See below, part 4. of this report.

⁵³ Proposals for directives COM(2011) 895 and COM(2011) 896 aiming to replace Directives 2004/17/EC and 2004/18/EC, as well as a proposal COM(2011) 897 for a directive on concessions.

4. REGIONAL PARLIAMENTS AND SUBSIDIARITY MONITORING

One of the main innovations introduced by the Lisbon Treaty is the EWS. In this framework, national parliaments can notify, by a reasoned opinion, the presidents of the European Parliament, the European Commission and the Council of any European draft legislative act which they consider to be in breach of the principle of subsidiarity, within an eight-week timeframe⁵⁴. This may then trigger the following two responses:

If the reasoned opinions represent at least one third of all the votes allocated to the national parliaments – one quarter for draft legislative acts related to the Area of Freedom, Security and Justice ('yellow card'), the draft must be reviewed. After the review the Commission⁵⁵ may decide to maintain, amend or withdraw the draft.

Furthermore, under the ordinary legislative procedure, when a simple majority of national parliaments contest the draft on grounds of subsidiarity ('orange card'), the proposal must be reviewed, and the EC may decide to maintain, amend or withdraw it. If the EC maintains the proposal, it must justify why it considers that there is no infringement of the subsidiarity principle, and the matter is referred to the European Parliament and the Council. Before concluding the first reading, the latter considers whether the proposal is compatible with the subsidiarity principle. If they are of the opinion that there is a breach of the subsidiarity principle, they may reject it (with a 55% majority in the Council, or a majority vote in the EP). In this case, the proposal is not given further consideration.⁵⁶

Protocol No 2 also stipulates that regional parliaments may be involved: "*it will be for each national parliament or each chamber of national parliament to consult, where appropriate, regional parliaments with legislative powers.*"⁵⁷

In this context and taking into account its own role in the field of subsidiarity monitoring, the CoR provides support to the regional parliaments with the aim of allowing them to meet their new responsibilities in the context of the EWS.

In 2010, the CoR launched a study on *The role of regional parliaments in the process of subsidiarity analysis within the EWS of the Lisbon Treaty*⁵⁸.

54 Art. 6 of Protocol No 2.

55 Or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, Art. 7 (2) of Protocol No 2.

56 Article 7.3(a) of Protocol No 2,

57 Art. 6 of Protocol No 2.

58 See footnote 46.

The aim of this study, carried out by the European Institute for Public Administration (EIPA) and looking at the eight Member States with regions with legislative powers⁵⁹, was to provide background information for SMN partners and all other regional parliaments with legislative powers on their potential role within the new EWS.

The study mainly identified the following needs for regional parliaments:

- coordination of subsidiarity monitoring at regional level
- timely transfer of information for a timely contribution
- better understanding of EWS implementation in Member States.

In 2012, another study will be published by the CoR with the aim of updating and completing the information already provided in the previous one. Furthermore, this study examines the involvement of regional deliberative bodies and relevant local and regional stakeholders in the EWS within the 19 Member States without regions with legislative powers.

Also in 2011, relations between the SMN, regional parliaments and CALRE were strengthened. CALRE's president, Mr Pagano took part in the Subsidiarity Conference held in Bilbao on 21 March 2011, and Ms Bresso participated in a CALRE workshop held in Pescara in July. On this occasion, a letter of intent was signed by both presidents inviting the secretaries-general of the CoR and CALRE to sign an annex to their Common Action Plan. This annex, signed in December 2011, envisages increased cooperation between the CoR and CALRE in the field of subsidiarity monitoring, especially through the use of REGPEX, a database/information centre specifically dedicated to regional parliaments. The use of this new tool was strongly promoted by Mr Pagano and supported by the Declaration of L'Aquila, unanimously adopted at the CALRE plenary session held on 25-26 November 2011.

At present, REGPEX is being developed and will take the form of a subsection of the SMN website accessible to the general public, but where only regional parliaments will be able to upload documents.

REGPEX meets the objective of providing access to:

- a complete catalogue of EU initiatives from 2011 onwards;
- subsidiarity analyses performed by regional parliaments in the EU;
- subsidiarity analyses provided by CoR commission secretariats;
- link to relevant websites with regard to the EWS (IPEX; EC's webpage dedicated to national parliaments' reasoned opinions; the EC's Impact Assessment Board; Eur-Lex; the EP's OEIL and

⁵⁹

Austria, Belgium, Germany, Finland, Italy, Portugal, Spain, the United Kingdom.

webpage dedicated to national parliaments; the European Council's Public Registry; COSAC; CJEU's Case Law database; CALRE and REGLEG);

- a forum with access restricted to regional parliaments for the exchange of comments in real time within the EWS deadlines;
- profiles of institutional set-ups between national and regional parliaments.

In the context of the development of REGPEX, a first "test-file" was prepared on the modernisation of EU public procurement legislation and made available to regional parliaments and SMN partners in general in December 2011⁶⁰. It presented background documents ahead of the publication of the new proposals for directives⁶¹, which were supplemented afterwards with impact assessments and links to the positions of national parliaments through IPEX, etc. The idea is to provide regional parliaments with direct access to relevant documents for the EWS subsidiarity checks.

⁶⁰ Available at <http://portal.cor.europa.eu/subsidiarity/Pages/RevisionofEUprocurementlegislation.aspx> (last consulted on 13 February 2012). See also above, part 3.3.3.

⁶¹ Op.cit. note 53.

5. THE APPLICATION AND MONITORING OF THE SUBSIDIARITY PRINCIPLE BY OTHER INSTITUTIONS⁶²

5.1 The European Commission⁶³

Interpretation of the subsidiarity principle

The full application of the principles of subsidiarity and proportionality is one of the European Commission's political priorities. The EC follows the general principles established by the TEU and Protocol No 2.

The EC uses the criteria of necessity and added value of EU action in its policy development process. For an EC proposal to comply with the subsidiarity principle, EU action should be needed and bring added value.

According to the EC, the appraisal of a European proposal must necessarily be set within the specific context of a given instrument; it is therefore difficult to lay down operational criteria except in the most general terms. This is why, according to the EC, the Protocol on subsidiarity and proportionality revised by the Lisbon Treaty has placed the emphasis not on analytical criteria but rather on procedural guarantees. In addition, the legislator must provide a justification regarding subsidiarity if an amendment it makes affects the scope of Union action. Therefore and according to this, respect of a number of procedural guarantees should serve to ensure compliance with the subsidiarity principle.

When assessing whether an objective can be sufficiently achieved by the Member States, the EC also takes into consideration measures at regional and local levels. For instance, through the established practice of broad stakeholder consultations, local and regional authorities have the opportunity to express their views, on subsidiarity or any other issue.

In addition, the revised IA Guidelines emphasise the analysis of regional and local aspects in impact assessments, should the planned initiative have differing regional and local aspects. Potential burdens for regional or local authorities are also taken into account. The EC has been improving its analysis and data availability in this regard, notably thanks to the participation of the CoR through its SMN and with IA consultations from the EC.

⁶² This section of the report is largely based on the information and data collected for the CoR by the European Institute of Public Administration (EIPA, Barcelona), under the framework contract CDR/ETU/106/2009 "Constitutional Affairs and European Governance". The relevant institutions have been invited to complete questionnaires.

⁶³ The relevant questionnaire was completed by the Secretariat-General of the Commission.

Description of the structures and procedures put in place

The Lisbon Treaty, while introducing the EWS, has not changed the substance of the subsidiarity principle but has extended its scope. Consequently, the EC was able to build on the procedures already in place. In line with the 1993 Inter-institutional Agreement⁶⁴, the EC has systematically been providing justifications in terms of subsidiarity and proportionality in the explanatory memoranda and recitals of its legislative proposals. Furthermore, subsidiarity is an intrinsic part of the EC approach to smart regulation, which has been high on its agenda since 2002. The revision of the IA Guidelines has further enhanced guidance by providing a set of structured questions, which were inspired by the work of the CoR.

As regards the implementation of the EWS, the EC had already introduced formal procedures in 2006 to implement the "Barroso initiative". According to this initiative, the EC sends its new proposals and consultation papers to national parliaments for their input⁶⁵. The EC then replies to their opinions and comments.

Nevertheless, attention should be drawn to the difference between this informal mechanism and the EWS, the official procedure set up by the Treaty according to which national parliaments are entitled to send their reasoned opinions on subsidiarity to the EC. On the other hand, the Barroso initiative allows a more informal exchange of views between the national parliaments and the EC, which is not necessarily focused on subsidiarity.

Interinstitutional cooperation

The EC appreciates the support and expertise offered by the CoR to reinforce the analysis of regional aspects in its impact assessments. It encourages its services to consult the CoR and its networks whenever the initiative has potentially significant regional impact.

The CoR networks have already been consulted on three occasions (the IA on the Communication on Reducing health inequalities in the EU, the IA on the revision of the Drinking Water Directive and the IA on the EU Strategy to conserve biodiversity); and the EC has found the outcome useful.

The EC considers that the CoR's SMN and EU2020 Monitoring Platform provide a good access point for regional and local authorities. Making use of these networks enables the EC to reinforce the analysis of regional and territorial aspects in impact assessments. They can also help the EC to strengthen its assessment of subsidiarity and proportionality.

64 OJ C 329, 06.12.1993, p.132.

65 Communication from the Commission to the European Council - A Citizens' Agenda - Delivering Results for Europe, 10.5.2006, COM(2006) 211 final.

Regarding administrative burdens and costs, the measuring of which is key to provide quantitative and qualitative elements to assess compliance of EU proposals with the subsidiarity and proportionality principles, it should be noted that the CoR is represented as an observer by Mr Karl-Heinz Lambertz (BE/PES) in the High Level Group of Independent Stakeholders on Administrative Burdens set up by the EC.

At the time of writing, the EC and the CoR were finalising a new cooperation agreement, to be signed on 16 February 2012⁶⁶, which will serve to improve cooperation and coordination especially in the field of territorial impact assessments and subsidiarity monitoring.

5.2 The European Parliament⁶⁷

Interpretation of the subsidiarity principle

The European Parliament (EP) follows the general framework for the application of the principles of subsidiarity and proportionality as laid down by Protocol No 2 to the TFEU. The EP is committed to ensure the effective application of the provisions on subsidiarity with national parliaments and to fully respect the rights that the Treaties bestow upon national parliaments. The criteria used by the EP when applying the subsidiarity principle are those established in Article 5 TEU and developed in Protocol No 2.

Moreover, the EP views subsidiarity as the principle guiding the actions of the EU institutions with the purpose of bringing added value to policies. For this reason, the EP attaches great importance to the requirement for the EC to justify all its proposals.

Description of the structures and procedures put in place

In order to enable the institution to comply with its responsibilities, the EP amended its Rules of Procedure (RP) on 25 November 2009. The amendments, which entered into force on 1 December 2009, facilitate the transposition of the new prerogatives of the national parliaments regarding the principle of subsidiarity.

In this regard, the EP decided to set out practical arrangements for the reception and transmission of documents between the EP and national parliaments and in particular for reasoned opinions⁶⁸.

⁶⁶ Protocol on the cooperation between the European Commission and the Committee of the Regions signed on 16 February 2012, R/CdR 39/2012 pt 7.

⁶⁷ See footnote 62. The relevant questionnaire was completed by the Directorate for Relations with national parliaments.

⁶⁸ The Legal Affairs Committee (JURI) has defined "reasoned opinions" as submissions which indicate the non-compliance of a draft legislative proposal with the principle of subsidiarity and have been communicated to the EP within the eight-week deadline referred to in Article 6 of Protocol No 2 of the Treaty of Lisbon. Any other submissions which do not comply with these criteria are considered to be "contributions".

Furthermore, the EP has established a common and coherent approach⁶⁹, ensuring the appropriate treatment at committee level of all the "reasoned opinions" and contributions; the Unit for Reception and referral of official documents in DG Presidency is responsible for attributing the reasoned opinions to the competent committee (the Legal Affairs Committee (JURI)) and associated committees.

Moreover, a practical arrangement is the translation of the reasoned opinions into all official languages – except Gaelic and Maltese – and their distribution to all committee members by including any reasoned opinion in the file for committee meetings and publishing it on the committee webpage, under the “meeting documents” section. Furthermore, any reasoned opinion received in relation to their subject matter must be referred to in draft legislative resolutions.

Finally, the European Parliament has set up informal channels of collaboration with national parliaments, the "Monday Morning Meetings", where national representatives meet within the European Parliament. This has been qualified as the “most positive cooperation experienced”⁷⁰ and enables Member of Parliament from national parliaments to exchange information at an early stage⁷¹.

Scrutiny of compliance with the subsidiarity principle is carried out by the committees in charge of a specific dossier together with the Committee on Legal Affairs (JURI)⁷² as described above. Contributions are referred to the Legislative Dialogue Unit within the Directorate for Relations with National Parliaments. Under Rule 130(4) RP, the contributions are then solely referred to the committee(s) responsible for that draft legislative act.

A procedure is also established should specific thresholds be reached. Where reasoned opinions on the non-compliance of a legislative proposal with the principle of subsidiarity represent at least one third of all the votes allocated to the national parliaments, or a quarter in the case of a proposal submitted on the basis of Article 76 TFEU, the Parliament would not take a decision until the author of the proposal has stated how he/she intends to proceed. Should they represent a simple majority, the committee responsible for that particular legislative proposal may recommend to the Parliament that it reject the proposal on the grounds of infringement of the principle of subsidiarity after hearing the JURI opinion. The lead committee may also submit another recommendation to the Parliament, which may include suggestions for amendments related to the respect of the principle of subsidiarity. Such recommendations should be annexed to the JURI opinion. The recommendations are submitted to the Parliament’s plenary assembly for debate and vote. If a recommendation to reject the proposal is

⁶⁹ Approved by the EP Conference of Committee Chairs at its meeting on 14 December 2010.

⁷⁰ Matarazzo, R. (2011), ‘National Parliaments after the Lisbon Treaty: A New Power Player or Mr. No in the EU Decision Making?’, *Democracy in the EU after the Lisbon Treaty*, Istituto Affari Internazionali, Edizioni Nuova Cultura, Roma, p. 59.

⁷¹ Kaczyński, P. M. (2011), ‘Paper tigers or sleeping beauties? National Parliaments in the post-Lisbon European Political System’, CEPS Special Report, Centre for European Policy Studies, 1.2.2011.

⁷² European Parliament, Annex 7 – XVI of the Rules of Procedure of the European Parliament, 2011.

adopted by a majority of the votes cast, the president declares the procedure closed. Conversely, where the Parliament does not reject the proposal, the procedure continues, taking into account any recommendations approved by the Parliament⁷³.

According to the results communicated by the EP⁷⁴, for 2011 a total of 156 draft legislative acts were sent to national parliaments for examination under the terms of Protocol No 2 of the Treaty of Lisbon. 155 of those draft legislative acts were Commission proposals, while the remaining one was a Council initiative. In response, the European Parliament received a total of 328 submissions from national parliaments, of which 68 were reasoned opinions while the remaining 260 were contributions.

Interinstitutional cooperation

The EP regularly draws up reports on the EC's annual reports on subsidiarity⁷⁵. The most recent report was adopted on 28 June 2011⁷⁶.

In terms of cooperation with the CoR, since the latter is a consultative body, it pays full attention to its opinions and reports. Moreover, the EP cooperates with the EC in the area of subsidiarity and relations with national parliaments within the Revised Framework Agreement on Relations between the EP and the EC. According to the provisions of this agreement, cooperation between the two EU institutions includes arrangements for the translation where necessary of reasoned opinions presented by national parliaments⁷⁷. Furthermore, the EP has stated that it will continue to cooperate with other EU institutions to improve the exchange of good practice on the processing of the reasoned opinions.

73 European Parliament, Rules of Procedure of the European Parliament – Rule 38a: Examination of respect for the principle of subsidiarity, 2011. Retrieved:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20110323+RULE-038-1+DOC+XML+V0//EN&language=EN&navigationBar=YES>.

74 Results communicated by the European Parliament (Legislative Dialogue Unit) on 10 February 2012. Given that some 2011 EC proposals have a deadline for the subsidiarity check in March, the consolidated data will only be available in April.

75 Within the frame of the implementation of the Better Regulation action plan, the EC publishes annually reports covering subsidiarity and proportionality issues.

76 European Parliament, Report on better legislation, subsidiarity and proportionality and smart regulation (2011/2029(INI)), prepared by the Committee on Legal Affairs, Rapporteur: Sajjad Karim, 28.6.2011. Retrieved from: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2011-0251+0+DOC+PDF+V0//EN>.

77 Revised Framework Agreement between the European Parliament and the European Commission, October 2010, Point 18. Retrieved from: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0279&language=EN#title3>.

5.3 The Council of the EU⁷⁸

Interpretation of the subsidiarity principle

Although the Council is bound by the legal definition laid down in the Treaties, it sees the principle of subsidiarity essentially as a political and subjective principle. The criterion used by the Council when applying the subsidiarity principle relies on a political assessment within a margin of discretion, in line with the political responsibilities conferred by the respective legal basis. The assessment to be done concerns whether the objectives of the proposed action can be sufficiently achieved by Member States.

The Council does not enter into the sub-national dimension of subsidiarity. It is up to each Member State, not the Council, to consider whether objectives of the proposed actions can be better achieved at national or at sub-national level.

Description of the structures and procedures put in place

On 1 December 2009, the Council amended its Rules of Procedure in order to integrate changes brought about by the Treaty of Lisbon. New provisions and minor internal adjustments now allow for the transmission of draft legislative proposals put forward by Member States or EU institutions to national parliaments and for the reception and circulation of reasoned opinions sent by national parliaments.

Generally speaking, the Council takes the principle of subsidiarity into consideration when discussing European draft legal acts, just like any other principle on which EU legislation is based. In the replies to the questionnaire, it stressed that it always takes utmost account of the impact assessments carried out by the Commission in all their aspects, including those related to subsidiarity. The Council points out that IAs are to be carried out by the institution issuing a proposal, and as a consequence, it does not carry out IAs itself (although some Member States do).

Logically, in accordance with Protocol No 2 which states that regional parliaments may only be consulted in the EWS by national parliaments should the latter deem this appropriate, the Council did not receive any reasoned opinion from regional parliaments, but only from national parliaments.

Finally, in the light of replies to the study, existing mechanisms are regarded by the Council to be sufficient to ensure full compliance with the principle of subsidiarity in the legislative process.

Interinstitutional cooperation

In terms of interinstitutional relations, it should be noted that the Council engaged in the dialogue with local and regional authorities on subsidiarity through its participation in the 2011 CoR Subsidiarity Conference held in March (see section 3.3).

⁷⁸

See footnote 62. The relevant questionnaire was completed by the Legal Service of the Council.

5.4 The Court of Justice⁷⁹

Interpretation of the subsidiarity principle

The Registry of the CJEU pointed out that the Court expressed its position through its judicial decisions and that it was not its practice to analyse or comment on its own case law. The observations below are therefore based on case law analysis performed at the CoR and scientific literature.

The CJEU has been responsible for monitoring the legality of EU acts with regard to the principle of subsidiarity since the Maastricht Treaty became effective in November 1993. Relevant case law over the period shows that only a few actions have been brought before the Court on these grounds; the principle has always been invoked alongside other pleas and is often confused with the principle of proportionality. Furthermore, monitoring of the substance of the subsidiarity principle blends in with monitoring of the legal basis⁸⁰.

One of the reasons evoked for the relatively small number of cases was the fact that only Member States could bring an action before the Court on subsidiarity grounds. The entry into force of the Lisbon Treaty has opened up new possibilities. In accordance with Article 8 of Protocol No 2, the Court has jurisdiction for actions brought by the CoR and national parliaments (through their respective governments) on grounds of infringement of the principle of subsidiarity by a European legislative act. Even if it is too early to draw firm quantitative conclusions, the number of cases is not likely to increase dramatically.

One aspect which might evolve is related to the formal monitoring of subsidiarity. In its case law to date, the Court of Justice takes the IA report into account when assessing compliance with subsidiarity⁸¹. The IA report therefore appears to be a key document for assessing whether the need for EU action is sufficiently founded and if this need exists. However, it is interesting to note that in comparison with the Amsterdam Protocol⁸², Lisbon Protocol No 2 on the application of the principles of subsidiarity and proportionality requires a more detailed justification of draft legislative acts with regard to subsidiarity. According to its Article 5, "[a]ny draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality." This requirement is of particular interest to the CoR since it includes the obligation for the statement to "[...] contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation".

79 See footnote 62. The relevant questionnaire was completed by the Registry of the CJEU.

80 Ibid.

81 Judgement of the Court, 8 June 2010, Case C-58/08 Vodafone Ltd v. Secretary of State for Business.

82 No 30 on the application of the principles of subsidiarity and proportionality.

This obligation to provide justification with regard to subsidiarity is interesting to analyse in the light of the EWS: contrary to the required statements included in the draft legislative act, the Impact Assessment reports are available only in English. Within the EWS eight-week deadline, national parliaments and, possibly regional parliaments, are not necessarily in a position to read and analyse these reports in English, nor to take them into account for their reasoned opinions. The existence of an Impact Assessment report should therefore be no excuse for an absent or incomplete justification statement in the draft legislative act itself. It will be interesting to follow developments of the case law in this respect, in the post-Lisbon context.

Beyond formal matters, the Court has developed criteria for monitoring compliance with subsidiarity. In accordance with Article 5(3) TEU, it first checks whether the "objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level" (i.e. the necessity of EU action) and then whether they "can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (i.e. the added value). In fact, the criteria applied by the Court seem to follow the guidelines set in the Amsterdam Protocol, such as whether the issue under consideration has transnational aspects which could not be satisfactorily regulated by Member States acting alone, whether action taken by Member States alone or lack of action at EU level would conflict with the requirements of the Treaties or would otherwise significantly damage Member States' interests; and whether action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States. Action at EU level would be justified by the absence of national legislation applicable to the situation or by differences in the national legislation of Member States which has a bearing on the internal market.

Altogether, judicial control over the subsidiarity principle remains complex and the CJEU cautious. So far, the Court has never annulled European legislation on this basis. The main reason, according to some academics, is that the Court is reluctant to substitute political judgement through its judicial function⁸³. The subsidiarity principle lies at the border between political and legal appreciations. The CJEU is reluctant to question the EU legislator's decision to take an action.

Description of the structures and procedures put in place

Following the entry into force of the Treaty of Lisbon, amendments to the CJEU's Statute, as well as the establishment of specialised courts, are subject to the ordinary legislative procedure⁸⁴. As draft legislative acts, proposals by the Court to that effect are subject to the requirements of Protocol No 2. The Court takes them into account when framing any such proposals.

⁸³ Raccach A. (2010), 'Les faux espoirs du principe de subsidiarité post-Lisbonne: Le principe de subsidiarité post-Lisbonne rationalise-t-il vraiment l'exercice des compétences de l'Union?', Colloque de lancement de l'Institut de Sciences Politiques Louvain-Europe (ISPOLE), Europe et mondialisation: quelles équations ?, 13- 14 octobre 2010, Belgique.

De Burca, G., (1998) 'The Principle of Subsidiarity and the Court of Justice as an Institutional Actor', *Journal of Common Market Studies*, vol. 36, no. 2, June.

⁸⁴ Articles 257 and 281, TFEU.

According to the Court, in procedural terms, as the actions of the national parliaments and the CoR are to be brought into accordance with the rules laid down in Article 263 TFEU, they would take the form of a classic annulment action. Consequently, the Court has not adopted any specific measures in view of such actions. In particular, it has not amended, or proposed to amend, its Rules of Procedure. Moreover, the Court has not, at this stage, recruited further staff in preparation for a possible increase in the number of actions resulting from Article 8 of Protocol No 2.

5.5 National parliaments

The Lisbon Treaty strengthens the role of the national parliaments in safeguarding the subsidiarity principle, and opens up a possibility for consultation of the regional parliaments with legislative powers⁸⁵. This stronger involvement in the EU legislative process is seen as a step towards more democratic legitimacy in the EU.

Interpretation of the subsidiarity principle

National parliaments approach subsidiarity in different ways⁸⁶. Several have expressly stated that they consider it to be a positive development for democracy and more specifically a means to guarantee that decisions are taken as closely as possible to EU citizens. In this respect, it is also regarded as a way to contribute to the shaping of better regulation at EU level. The dual nature of the principle, both legal and political, has been frequently underlined.

Interpretations likewise differ on whether regional and local dimensions should be included within subsidiarity appraisal. The eight Member States where regions enjoy legislative powers and may therefore be consulted in the context of the EWS, largely support this innovation. For the remaining 19 Member States, opinions differ and some consider that these dimensions should only be taken into account when the European draft legislative act has a regional and/or local impact.

Description of the structures and procedures put in place

Most of the parliaments or chambers formally adapted their Rules of Procedure with regard to the EWS or are currently adjusting them for that purpose (mainly in Member States whose regions have legislative powers). Most of the time, the EWS has not entailed any change in human resources.

Many national parliaments do not consult their regional counterparts and a few consult them only when the European draft legislative act has a regional and/or local impact. Moreover, participation of regions in the EWS largely depends on the level of power conferral: when regions enjoy legislative

⁸⁵ For details, please refer to Part 4 of this report.

⁸⁶ The findings of this section are largely based on "The role of regional parliaments in the process of subsidiarity analysis within the EWS of the Lisbon Treaty" (2011, op. cit. note 46) and on the information and data collected for the CoR by EIPA under the framework contract CDR/ETU/106/2009 (op. cit. note 62).

powers, procedures are mainly formal; for the others, participation in the mechanism generally takes place through more informal ways.

As regards the eight-week deadline, some of the national parliaments have to respect this timeframe without additional conditions. Many consider it to be too short for complex proposals. Sometimes, supplementary timing conditions have been added⁸⁷.

Finally, regarding the possibility of bringing an action before the CJEU, some assemblies formally established a procedure for bringing such an action in the event of infringement of the subsidiarity principle.

Interinstitutional cooperation

Cooperation between the parliament and the executive is essential if the subsidiarity scrutiny is to be carried out properly. In most cases, the government cooperates with the parliament. Moreover, various Member States established methods for collaboration enabling their government to present their views on the European draft legislative act to the parliament. In some countries, if requested, the ministers undertake not to express an opinion in the EU Council for a specified period as long as the assembly has not adopted a position (parliamentary scrutiny reserve).

The cooperation between the various levels of assemblies, national and regional, is also crucial to ensure the efficiency of the scrutiny. In the majority of Member States, existing mechanisms for cooperation with the regional assemblies are not directly related to the EWS. In some cases, informal channels of cooperation exist: consulting associations representing local and regional authorities and through debates within the national assembly where local and regional representatives are present. Moreover, cooperation may be ensured through contacts with the national delegation to the CoR.

Finally, cooperation also takes place at European level. Collaboration with other national parliaments may take place through the COSAC and IPEX. It may also take the form of bilateral contacts and multilateral parliamentary meetings. Meetings of the national parliaments' representatives in Brussels also constitute an important means of collaboration either through COSAC or the *Monday Morning Meetings* in the European Parliament. Adopted reasoned opinions and the results of their subsidiarity analysis are accessible; the most common means of accessing them is publication on the parliament's website and on the European Commission and IPEX websites.

87

For details, see the study referred to in footnote 62.

6. CONCLUSIONS

In 2011, the CoR continued disseminating a common subsidiarity culture; its activities in the field of subsidiarity monitoring have increased and been reinforced, and this is reflected in its opinions. As this report shows, there are three strands to the CoR's subsidiarity monitoring: looking inwards, its own procedures for subsidiarity monitoring; the CoR Subsidiarity Monitoring Network; and finally looking outwards towards other EU, national and regional institutions.

Firstly, the CoR has reinforced its internal procedures to improve and fine tune its own subsidiarity monitoring. CoR rapporteurs have increased the number of references to the subsidiarity principle in their draft opinions, highlighting the importance of this principle for the Committee and its institutional responsibility *vis-à-vis* its monitoring. In particular, the opinions highlighted in this report are a good example of how the CoR understands its task of subsidiarity monitoring at political level. Changes made to the CoR's Rules of Procedure in order to maximise subsidiarity references in CoR opinions are starting to bear fruit. In the future, the objective is to continue developing the active involvement of CoR members in all subsidiarity monitoring activities and to increase the number of subsidiarity assessments "adopted" in CoR opinions.

Secondly, in connection with the internal activity of the CoR and the preparation of CoR opinions, the Subsidiarity Monitoring Network has also been developed and its activities stepped up. In fact, during its fifth year of existence the SMN increased its membership. A number of steps have been taken to make the network more active and representative by including those actors most concerned by the application of the subsidiarity principle. The network is expanding, particularly towards regional governments and parliaments, making it an even more interesting forum where subsidiarity issues can be debated among those who are most concerned by the implementation, development and monitoring of this principle. Moreover, the development and dissemination of the Subsidiarity and Proportionality Assessment Grid have met the need to clarify and better communicate these principles to the general public and practitioners. The grid will become an essential tool for achieving common European terminology in the field of subsidiarity.

2011 saw the adoption, for the first time, of a work programme for the SMN, a document intended to rationalise the network's work and agenda and inform our partners which dossiers could be of most interest from the point of view of subsidiarity. In 2011, a total of five targeted consultations were launched, in cooperation with CoR rapporteurs Ancisi (IT/EPP), Joseph (FR/PES), Lamers (NL/EPP), McGowan (IE/ALDE) and Zagar (SI/EPP). The CoR thanks them for their support and points out that the network is at the service of CoR rapporteurs to collect quality input from network partners that can feed into the preparation of their draft opinions.

Thirdly, as regards interaction between the CoR and other institutions in the field of subsidiarity monitoring, it should be noted that 2011 was also the third year that the CoR and the EC have cooperated on the assessment of the territorial impact of proposals considered to be especially relevant from a local and regional point of view. Two exercises of this kind launched in 2011 show that local and regional authorities do have a real interest in participating in the pre-legislative phase of EU law and that local and regional authorities can provide valuable data/input for the CoR and especially the EC. The EC has acknowledged the value of this kind of consultation and encourages its services to establish contact with the CoR and its networks when assessing the territorial impact of relevant proposals. Furthermore, the new cooperation agreement between the CoR and the EC is expected to consolidate this practice, which has proved to be highly beneficial in ensuring compliance with the subsidiarity principle in the pre-legislative phase.

One chapter of this report is dedicated to regional parliaments, reflecting the growing importance that the Committee attaches to its relations with these institutions. In fact, 2011 saw an improvement and stepping up in the relations between the CoR and regional parliaments represented by their association CALRE. The letter of intent signed in July by presidents Bresso and Pagano testifies to the commitment of both organisations to build up effective cooperation in the field of subsidiarity monitoring. The launching of REGPEX, planned for the first half of 2012, will boost the involvement of regional parliaments in subsidiarity monitoring at European level. The Committee counts on its special partnership with CALRE in this area to make REGPEX a true point of reference for subsidiarity.

Similarly, in 2011 the Committee looked to the other EU institutions to find out more about how they treat the subsidiarity principle and what methodologies are in place to check compliance and monitor it. On the basis of a study launched by the CoR, this report presents an overview of what is happening with regard to the institutional treatment of subsidiarity two years after the entry into force of the Lisbon Treaty. In the future, the CoR will continue its collaboration with the EU institutions to ensure compliance with the subsidiarity principle.

Finally, the 5th Subsidiarity Conference in Bilbao in March 2011 was attended by a number of representatives from EU institutions, the CoR and local and regional authorities. Special emphasis was placed on regional parliaments whose representatives met to discuss subsidiarity at a transregional and transnational level. Building on this positive experience, the Committee expects to take the Subsidiarity Conference to the next level and make it a key feature of the EU's institutional agenda, just as the subsidiarity principle has become a key feature of the democratic framework of the EU.

Appendix: Overview of opinions adopted between 1 January and 31 December 2011

CoR commission	Number of opinions adopted from 1 January 2011 to 31 December 2011	Number of opinions on legislative proposals	Number of opinions containing an explicit reference to subsidiarity (Rule 51(2))*	Number of opinions containing an assessment of compliance with subsidiarity principle	Related SMN consultation	Number of opinions adopted in area of mandatory CoR consultation
CIVEX	10	1	7	1	2	0
COTER	9	1	7	3	1	7
ECOS	13	1	11	3	1	0
EDUC	9	0	7	3	0	4
ENVE	9	1	9	2	2	6
NAT	10	5	8	2	0	0
BUDG	2	1	2	0	0	0
TOTAL	62	10	51	14	6	17

* Rule 51(2) of the Rules of Procedure of the CoR, which states that "Committee opinions shall contain an explicit reference to the application of the subsidiarity and proportionality principles", entered into force on 10 January 2010.

CIVEX

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁸⁸	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking
Own-initiative opinion R/CdR 235/2010 fin	27 Jan 11	Local and regional government in Azerbaijan and the development of cooperation between Azerbaijan and the EU	No	No	No	No	No
COM(2010) 603 final; R/CdR 355/2010 fin (CIVEX)	31 Mar 11	EU Citizenship Report 2010	No	No	No	No	No
COM(2010) 378 final; COM(2010) 379 final; R/CdR 354/2010 fin (CIVEX)	31 Mar 11	Seasonal workers and intra-corporate transfer	Yes	No	No	Yes, in compliance	Yes (proportionality)
COM (2010) 629 final R/CdR 408 (2010) (CIVEX)	11 May 11	EU development policy in support of inclusive growth and sustainable development – Increasing the impact of EU development policy (Green Paper)	No	No	No	No	Yes (subsidiarity)
COM(2010) 660 final R/CdR 405/2010 (CIVEX)	1 July 11	Enlargement strategy and main challenges 2010-2011 (Communication)	No	No	No	No	Yes (subsidiarity)
COM(2010) 673 final R/CdR 407/2010 (CIVEX)	1 July 11	EU Internal Security Strategy (Communication)	No	No	No	No	Yes (subsidiarity)

⁸⁸ During the legislative procedure.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁸⁸	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking
COM(2010) 543 final COM(2010) 547 final R/CdR 353/2010 (CIVEX)	11 Oct 11	Smart Regulation in the EU (Communication)	No	No	Yes – Open consultation, with a few questions to guide contributions	N/A ⁸⁹	Yes (subsidiarity, proportionality and better lawmaking)
COM(2010) 573 final R/CdR 406/2010 (CIVEX)	12 Oct 11	Strategy for the effective implementation of the Charter of Fundamental Rights by the EU	No	No	No	No	Yes (subsidiarity)
COM(2011) 303 final R/CdR 198/2011 (CIVEX)	14 Dec 11	European neighbourhood policy review (Communication)	No	No	No	No	No
COM(2010) 747 final R/CdR 148/2011 (CIVEX)	14 Dec 11	Less bureaucracy for citizens (Green paper)	No	No	Yes, targeted consultation from 15 July to 2 September 2011; explicitly mentioned in the opinion	No	Yes (subsidiarity and proportionality)

⁸⁹

The opinion is an assessment of general proposals regarding the lawmaking methodology of the EU, therefore the principle of subsidiarity is an overall concern and an assessment of compliance of the latter is not relevant.

COTER

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁰	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
Own-initiative opinion R/CdR 100/2010 fin (COTER)	27 Jan 10	New perspectives for the revision of the EGTC regulation	No	Yes	No	No	No
COM(2010) 474 fin (Communication) COM(2010) 475 fin (Proposal for a directive) R/CdR 297/2010 (COTER)	28 Jan 10	A Single European Railway Area	Yes	Yes	No	No	Yes (subsidiarity)
R/CdR 86/2011 fin (COTER)	31 Mar 11	The Danube Region Strategy	No	No	No	No	Yes (subsidiarity)
COM(2010) 389 final; R/CdR 296/2010 fin (COTER)	31 Mar 11	Policy orientations on road safety 2011-2020	No	No	Yes – targeted consultation, 25 Oct to 10 Dec 2010. Explicitly mentioned in the opinion	Yes, in compliance	Yes (subsidiarity and proportionality)

⁹⁰ During the legislative procedure.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁰	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 642 final; R/CdR 369/2010 fin (COTER)	1 April 11	Fifth Cohesion Report	No	Yes	No	No	No
Outlook opinion R/CdR 370/2010 fin (COTER)	1 April 11	The future of the European Social Fund after 2013	No/ Outlook opinion	Yes	No	No	Yes (subsidiarity and proportionality)
COM(2011) 144 final R/CdR 101/2011 rev. 1 (COTER)	30 June 11	Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system	No	Yes ⁹¹	No	Yes, in compliance	Yes (subsidiarity)
Referral from the Polish Presidency R/CdR 167/2011 rev.1 (COTER)	11 Oct 11	The complementarity of national and EU interventions aimed at reducing the disparities in economic and social growth	No	Yes	No	No	Yes (subsidiarity)
Own-initiative opinion R/CdR 168/2011 rev.1 (COTER)	11 Oct 11	Territorial cooperation in the Mediterranean through the Adriatic-Ionian Macroregion	No	Yes	No	Yes, strategy for the Adriatic-Ionian area is in compliance	Yes (subsidiarity)

⁹¹ As far as transport is concerned – will depend on the legal basis of each forthcoming legislative proposal.

ECOS

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹²	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 365 final (Green Paper) R/CdR 319/2010 fin (ECOS)	27 Jan 11	Towards adequate, sustainable and safe European pension systems	No	No	No	Yes, in compliance	Yes (subsidiarity and proportionality)
COM(2010) 758 final; R/CdR 402/2010 fin (ECOS)	31 Mar 11	The European platform against Poverty and Social Exclusion	No	No	No However, SMN Action Plan working group on this issue forwarded its report and recommendations to CoR rapporteur.	No	No
COM(2010) 608 final; R/CdR 330/2010 fin (ECOS)	1 April 11	Single market act	No	No	No	No	Yes (subsidiarity and proportionality)
COM(2011) 15 final R/CdR 70/2011 rev (ECOS)	11 May 11	Modernisation of EU public procurement policy: towards a more efficient European procurement market (Green Paper)	No	No	No	No	No

⁹² During the legislative procedure.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹²	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 682 final R/CdR 401/2010 rev. 2 (ECOS)	1 July 11	Agenda for new skills and jobs (Communication)	No	Will depend on the legal basis of forthcoming legislative proposals which will cover various policy fields.	No	No	Yes (only better lawmaking)
COM(2011) 146 final R/CdR 150/2011 (ECOS)	1 July 11	Reform of the EU State aid rules on services of general economic interest (Communication)	No	No	No	No	Yes (subsidiarity and proportionality)
COM(2010) 614 final R/CdR 374/2010 (ECOS)	11 Oct 11	An integrated industrial policy for the globalisation era: Putting competitiveness and sustainability at centre stage	No	No	No	No	Yes (subsidiarity)
Own-initiative opinion R/CdR 71/2011 (ECOS)	11 Oct 11	Towards a European agenda for social housing	No	No	No	No	Yes (subsidiarity)
COM(2011) 146 final CdR 278/2011 (ECOS)	11 Oct 11	Revised opinion. Reform of the EU State aid rules on services of general economic interest (Communication)	No	No	No	No	Yes (subsidiarity and proportionality)
Optional referral from the Polish Presidency R/CdR 72/2011	12 Oct 11	The role of local and regional authorities in achieving the objectives of	No	No	No	No	Yes (subsidiarity and better lawmaking)

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹²	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
(ECOS)		the Europe 2020 Strategy					
COM(2011) 78 final R/CdR 151/2011 (ECOS)	12 Oct 11	Review of the "Small Business Act" for Europe	No	No	No	No	Yes (only better lawmaking)
COM(2011) 121 final – 2011/0058 (CNS) R/CdR 152/2011 (ECOS)	14 Dec 11	Common Consolidated Corporate Tax Base (CCCTB) (Proposal for a Council Directive)	Yes	No	No, however some regional parliaments were consulted – none adopted a "reasoned opinion" against the proposal on subsidiarity grounds	Yes - calls for more indicators to assess compliance. " [...] without directly calling into question the principle underpinning the directive, believes that the proposal should be reviewed taking into account the need for (a) sufficient quantitative and qualitative indicators to allow a full assessment of the subsidiarity implications of a cross-border proposal of this nature; (b) more data	Yes (subsidiarity, proportionality and better lawmaking)

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹²	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
						on the full implications of the CCCTB; and (c) an analysis of the impact of the proposal on local and regional authorities."	
COM(2011) 173 final R/CdR 247/2011 (ECOS)	14 Dec 11	An EU framework for national Roma integration strategies up to 2020 (Communication)	No	No	Yes, targeted consultation from 16 June to 5 August 2011; explicitly mentioned in the opinion.	Yes, in compliance	Yes (subsidiarity, proportionality and better lawmaking)

EDUC

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹³	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 187 final R/CdR 230/2010 fin	27 Jan 11	Simplifying the implementation of the research framework programmes	No	No	No	No	No
COM(2010) 477 final (Communication) R/CdR 292/2010 fin	27 Jan 11	Youth on the move	No	Yes	No	No	No
COM(2010) 487 final (Communication) R/CdR 293/2010 fin	27 Jan 11	European cinema in the digital era	No	Yes	No	Yes, in compliance	Yes (proportionality)
COM(2010)546 final R/CdR 373/2010 rev. 2 (EDUC)	30 June 11	Europe 2020 Flagship Initiative – Innovation Union (Communication)	No	No	No, but "Quick Survey" through EU 2020 Platform	No	Yes (subsidiarity)
COM(2011) 48 final – R/CdR 67/2011 rev. 1 (EDUC)	30 June 11	Towards a Common Strategic Framework for EU research and innovation funding (Green Paper)	No	No	No	Yes, in compliance	Yes (subsidiarity)
Own-initiative opinion	30 June 11	The protection and development of	No	Yes	No	No	Yes (subsidiarity)

⁹³ During the legislative procedure.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned⁹³	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
R/CdR 400/2010 (EDUC)		linguistic minorities under the Lisbon Treaty					
COM(2010) 743 final 144 R/CdR 65/2011 (EDUC)	12 Oct 11	The European eGovernment Action Plan 2011-2015	No	No	No	No	Yes (subsidiarity and proportionality)
COM(2011) 12 final R/CdR 66/2011 (EDUC)	12 Oct 11	Developing the European dimension of sport	No	Yes	No	Yes, in compliance	Yes (subsidiarity)
Own-initiative opinion R/CdR 114/2011 (EDUC)	12 Oct 11	European and international mobility for local and regional authority staff	No	No	No	No	Yes (subsidiarity)

ENVE

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁴	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 11 final R/CdR 312/2010 fin (ENVE)	28 Jan 11	Biomass sustainability (Report from the EC to the Council and the European Parliament)	No	Yes	No	Yes, in compliance	Yes (better lawmaking)
Outlook opinion requested by Hungarian Presidency R/CdR 5/2011 (ENVE)	30 June 11	The role of local and regional authorities in promoting sustainable water management	No	Yes	No	No	Yes (subsidiarity and better lawmaking)
COM(2010) 677 final R/CdR 7/2011 (ENVE)	1 July 11	Energy infrastructure priorities for 2020 and beyond (Communication)	No	Yes	No	No	Yes (better lawmaking)
Outlook opinion (requested: EC) R/CdR 104/2011 (ENVE)	30 June 11	Climate change mainstreaming and the future EU budget	No	Yes ⁹⁵	No	No	Yes (subsidiarity and better lawmaking)
COM(2010) 516 final R/CdR 6/2011 (ENVE)	1 July 11	The EU LIFE programme. The way forward. (Communication)	No	Yes	Yes, territorial impact assessment consultation from February to April 2011 (40 contributions)	No	Yes (subsidiarity)

⁹⁴ During the legislative procedure.

⁹⁵ As far as Structural Funds are concerned – will depend on the legal basis of each forthcoming legislative proposal.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁴	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2011) 21 final R/CdR 140/2011(ENVE)	11 Oct 11	A resource-efficient Europe - Flagship initiative under the Europe 2020 Strategy (Communication)	No	Yes ⁹⁶	No	No	Yes (better lawmaking)
COM(2011) 370 final – R/CdR 188/2011 rev. 1 (ENVE)	14 Dec 11	Energy efficiency (Proposal for a Directive of the European Parliament and of the Council)	Yes	Yes	Yes, targeted consultation from 6 July to 19 August 2011 (21 contributions)	No	Yes (subsidiarity)
COM(2011) 152 final R/CdR 163/2011 rev. 2 (ENVE)	15 Dec 11	Towards a space strategy for the EU that benefits its citizens (Communication)	No	No	No	Yes, in compliance	No
COM(2011) 363 final R/CdR 187/2011 rev. 1 (ENVE)	15 Dec 11	Contribution of the EU's local and regional authorities to the UN conference on sustainable development 2012 (Rio+20) (Communication)	No	No	No	No	Yes (subsidiarity and proportionality)

⁹⁶

As far as environment and energy related issues are concerned – will depend on the legal basis of each forthcoming legislative proposal.

Overview of opinions adopted between 1 January 2011 and 31 December 2011

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁷	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
Outlook opinion R/CdR 341/2010 fin	27 Jan 10	Local food systems	No	No	No	No	No
COM(2010) 486 final (Proposal for a regulation) R/CdR 340/2010 fin	27 Jan 10	Distribution of food products to the most deprived persons in the Union	Yes	No	No	No	Yes (subsidiarity)
COM(2010) 461 final (Communication) COM(2010) 494 final (Proposal for a regulation) R/CdR 339/2010 fin	27 Jan 10	The development of an Integrated Maritime Policy and Marine Knowledge 2020	Yes	No	No	No	Yes (subsidiarity)
COM (2010) 352 final (Communication) R/CdR 342/2010 fin	27 Jan 10	Europe, the world's No 1 tourist destination – a new political framework for tourism in Europe	No	No	No	Yes, in compliance	Yes (subsidiarity and proportionality)

⁹⁷

During the legislative procedure.

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁷	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
COM(2010) 375 final (Proposal for a regulation) COM(2010)380 final (Communication) R/CdR 338/2010	28 Jan 10	Freedom for Member States to decide on the cultivation of genetically modified crops	Yes	No (although Yes for public health aspects)	No	Yes, in compliance	Yes (subsidiarity and proportionality)
COM(2010) 672 final (Communication) R/CdR 16/2011	11 May 11	The CAP towards 2020: meeting the food, natural resources and territorial challenges of the future	No	No	No	No	Yes (subsidiarity and better lawmaking)
COM(2010) 600 final R/CdR 15/2011	11 May 11	Towards a stronger European disaster response: the role of civil protection and humanitarian assistance	No	No	No	No	Yes (subsidiarity)
COM(2010)733 final (Proposal for a regulation) R/CdR 14/2011	12 May 11	Agricultural product quality schemes	Yes	No	No	No	No
COM(2010) 727 final (Communication) COM(2010) 728	12 May 11	Milk package	Yes	No	No	No, however amendments proposed to improve compliance with the principle of	Yes (subsidiarity)

Opinion reference #	Date	Title	Legislative proposal?	CoR mandatory consultation in the policy field concerned⁹⁷	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion?	Other mention of subsidiarity / proportionality / better lawmaking?
final. (Proposal for a regulation) R/CdR 13/2011						subsidiarity	
COM(2011) 436 final R/CdR 240/2011 (NAT)	14 Dec 11	Promoting agricultural products (Green paper)	No	No	No	No	Yes (subsidiarity)

BUDGET

Opinion reference	Date	Title	Legis- lative proposal?	CoR mandatory consultation in the policy field concerned⁹⁸	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion	Other reference to subsidiarity / proportionality / better lawmaking in the opinion
COM(2010) 700 final R/CdR 318/2010	31 Mar 11	The EU Budget Review	No	No	No	No	Yes (subsidiarity)
Own-initiative opinion COM(2011) 500 final R/CdR 283/2011 (BUDG)	14 Dec 11	New Multiannual Financial Framework post-2013 (Communication, Proposals for Council Regulations laying down the Multiannual financial framework for the years 2014- 2020, COM(2011) 398 final; laying down implementing measures for the system of own resources of the EU, COM(2011) 511 final. European Commission, (2011), on the methods and procedure for	Yes	No	No	No	Yes (subsidiarity and proportionality)

⁹⁸ During the legislative procedure.

Opinion reference	Date	Title	Legis- lative proposal?	CoR mandatory consultation in the policy field concerned ⁹⁸	SMN consultation	Assessment of compliance with subsidiarity principle in the opinion	Other reference to subsidiarity / proportionality / better lawmaking in the opinion
		making available the traditional and GNI-based own resources and on the measures to meet cash requirements, COM(2011) 512 final; and Council Decision on the system of own resources of the EU, COM(2011) 510 final.)					

For further information please contact:

Unit E2 - Subsidiarity

subsidiarity@cor.europa.eu

<http://extranet.cor.europa.eu/subsidiarity>



EUROPEAN UNION



Committee of the Regions