



European Committee
of the Regions

WORKING GROUP ON EUROPEAN DEMOCRACY
CONFERENCE ON THE FUTURE OF EUROPE

CONTRIBUTION ON ' PROCEDURES AND SUBSIDIARITY'
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This report's contribution aims to build a culture of subsidiarity within the European Union. It takes into account both citizens' expectations, as they relate to reforming the governance of the European Union and its further democratization, as well as the experience stemming from 30 years of implementation of subsidiarity and proportionality principles, formally enriched by the Treaty of the European Union in 1992.

1. The political meaning of the principle of subsidiarity

In a Union of States and citizens and in a community of law, it is crucial to define, in an appropriate way, the competencies of all levels of governance, including all those between that highest level of governance and the citizens. We need to bear this in mind when we argue for a transfer of competencies on a ground of efficiency and added- value. This is why the principles of subsidiarity and proportionality enshrined in the Treaties are fundamental when

we address the question of the **democratic and efficient functioning of the EU decision-making process.**

The more a democracy is functioning, the more it meets citizens' expectations, and the more citizens feel closer to the institutions representing them. Reducing the gap between the citizens and the decision makers goes hand in hand with clarification and adaptation of how Europe legislates, and it is important in order to re-build their **trust.**

In all the Member States, citizens are questioning: Why does Brussels deals with this? Why does Europe legislate on these issues and what is the added-value of the EU legislation?

These are questions which illustrate that when discussing EU competences and subsidiarity we cannot stick to a purely legal or legalistic approach but have to fully take into account the political and democratic dimension behind these questions, and make its importance clear.

The recommendations adopted by the **European Citizens' Panel no. 2** do not refer directly to the principle of subsidiarity and to the local and regional dimension of democracy, except for specific issues such as public investment and the integration of migrants. However, a common thread is clearly visible throughout the 39 recommendations, and it is also reflected in many ideas posted to the Conference's multilingual digital platform and in some interventions of this Working Group: citizens call for a **more inclusive, transparent and understandable European democracy, for a Europe that is closer to them. In the CoR's view, these objectives can only be met through a stronger involvement of cities and regions in the EU policy making, therefore by injecting a stronger territorial dimension to European democracy.** Considering that local and regional authorities implement and use approximately 70% of the EU legislation, this call may even appear as a self-evidence.

As we are looking at the same final goal: making the EU closer to the citizens and ensuring effective and efficient decision-making processes, I am confident that we could find a common vision and approach in order to put in practice the principles of subsidiarity and proportionality and to reform some aspects of the current mechanism of compliance of these principles.

Proximity, partnership and participation, in a spirit of efficient multilevel governance, are the key concepts that should lead our work on European democracy in the framework of COFE. Local and regional authorities are by definition the authorities closest to the citizens and the citizens' trust; they are rightly to be considered the political bridge between citizens and the national and European level.

2. Subsidiarity in practice – state of play – overview from the European Committee of the Regions' point of view

The principle of subsidiarity means that the decisions must be taken as closely as possible to the citizens. In other words, in the areas of shared competences, action should only be taken at EU level if the policy cannot be achieved at local, regional or national level and can be achieved at Union level. It is an issue of **European added-value**. Subsidiarity is actually a European added-value stress test. Subsidiarity does not mean less legislation, but better legislation, better shaped on citizens' needs, taking into account the specificities of the territories they live in.

Subsidiarity is also linked to the **proportionality principle**, which addresses the question of the "how" EU legislation is implemented and which means that the EU should choose the legislative instruments that give the competent national, regional and local level the widest possible room of manoeuvre.

As underlined in the final report of the *Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently'*¹, effective European

¹ The final report of the Task Force was delivered on 10 July 2018, and it is available at https://ec.europa.eu/info/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en#report

legislation that brings real added-value and meets the high expectations of Europe's citizens can only be achieved through an inclusive and bottom-up approach ensuring that all levels of governance can contribute to EU decision-making throughout all phases of the European decision-making process. This is, in short, the concept of **active subsidiarity** as a new way of working for the EU.

The **Treaty and its Protocole no. 2** have given a say to the National Parliaments and the Regional Parliaments in EU legislation. Furthermore, the Treaty gives the CoR the right to challenge EU laws in the European Court of Justice if it believes that regional and local aspects have not been adequately addressed, and the subsidiarity principle is breached.

Such procedures regarding the application and monitoring of the subsidiarity are undeniably a step forward. We are convinced that we should not only reform some aspects of the mechanism but also, and above all, promote a **culture of subsidiarity**.

This is why the general tendency of the "subsidiarity actors" (i.e. national and regional parliaments and European Committee of the Regions) is to look for ways to **influence in a broader sense the early stages of EU policymaking** ("ex-ante") without self-restricting both to policy areas relevant to subsidiarity from a strictly legal point of view and to legislative texts only. It is also focussing more on the **proportionality issues**, and arguing that these should be given the same legal status when problematic as with the subsidiarity principle.

The CoR tries to influence the ex-ante phase by undertaking **territorial impact assessments** as well as playing its role in the **Fit for Future platform** and through its **RegHub** network: all of them contribute to a "circular assessment" of EU legislation.

Nonetheless, the CoR would wish to get an institutional recognition of its role in the ex-ante phase considering that (contrary to national parliaments) the Treaties only foresee its ex-post standing right before the Court of Justice for

the breach of subsidiarity, which means only when a piece of EU legislation has been adopted. In this context, a direct implication the CoR in the Early Warning System should be considered in order to strengthen the consistency of its right to bring action before the Court.

One of the concrete outcomes of the Task Force on Subsidiarity was the joint commitment of the involved institutions to a systematic use of the **subsidiarity assessment "grid"** developed by the CoR to assess whether a draft legislation meets the subsidiarity principle and is of European added-value. While the European Commission has applied that assessment grid in a number of the FIT for 55 legislative initiative, the use of this grid should be generalized.

With regard to the need to extend the subsidiarity analysis beyond legislative proposals, the CoR's analysis is that **broader policy processes such as the European Semester raise much more subsidiarity concerns than the traditional legislative proposals** because of the sometimes questionable European added-value of proposals made in a largely intergovernmental framework with little democratic participation.

*Following the 2009 Lisbon Treaty, and later based on its Subsidiarity Strategy, the CoR has been monitoring the principle of subsidiarity centred on a comprehensive governance system including a **Subsidiarity Monitoring Network** (with around 170 member organisations contributing to the monitoring of legislative initiatives), a Subsidiarity Expert Group and a Subsidiarity Steering Group, as well as REGPEX (a website where regional parliaments can post subsidiarity opinions) and a subsidiarity monitoring website.*

*In 2018, the Committee of the Regions was involved in the Commission's **Task Force on Subsidiarity and Proportionality**, which developed the concept of 'Active Subsidiarity'. The concept aims at linking all government levels to ensure that each level can take its responsibilities and provide inputs into the preparation and implementation of EU legislation, ensuring its added value over national/regional legislation. This also later led*

to the **CoR's RegHub network**² (analysing the implementation of EU legislation on the ground) to be involved in the new Commission "**Fit for Future**" platform³.

On 9 September 2022, the CoR will organize in Valencia the 10th Subsidiarity Conference: It should build on the momentum of the Conference on the Future of Europe for coming forward with proposals to make subsidiarity more operational, through a more circular approach to legislation, regulatory processes (in particular the European Semester) and EU spending programmes. One of the issues at stake will also be to reflect on the consistency of the active subsidiarity concept with the Better regulation agenda, the Fit for Future initiative and the work of the RegHub network as multi-governance tools for improving European legislation, evaluating European policies and effectively enabling a greater citizens' involvement.

3. CoR proposals and key recommendations from 30 regional and local delegates to COFE

In order to **strengthen active subsidiarity** and the territorial dimension of EU policies, the CoR has put forward a number of key proposals in the context of the Conference on the Future of Europe (see also resolution on the Conference on the Future of Europe adopted on 27 January 2022⁴). These proposals are based on the report of its High level group on European democracy chaired by President Emeritus of the European Council Herman von Rompuy, that highlight the importance of the principles of subsidiarity and proportionality enriched in the treaties and demonstrate the benefit of considering active subsidiarity as a general mean of achieving the objectives of the European Union by enhancing the involvement of local and regional authorities in the main stages of the European decision making process.

² <https://cor.europa.eu/en/our-work/Pages/networks.aspx#6>

³ Information on the Fit for Future platform in the [European Commission website](#) and updates on the CoR work in [this link](#).

⁴ <https://cor.europa.eu/en/news/Documents/COR-2021-06503-00-00-RES-TRA-EN.pdf>

Moreover, this report affirms that the inclusion of all levels of government in European affairs has to be granted⁵ in full respect of EU decision-making processes and in full respect of the different national systems.

From the lessons learned of the COVID crisis and management, the Conference on the future of Europe is a unique opportunity to reiterate the position of the local and regional authorities : the principle of subsidiarity should be reinforced by better incorporating sub-State and national authorities in the legislative and policy implementation cycle as a whole. We consider therefore that the following recommendations will improve the quality and accountability of the European legislation :

1.Firstly, the participation of national and regional parliaments and local and regional authorities in shaping and implementing EU policies should be improved. This should for instance be achieved by including a right of initiative for proposing or removing EU legislation (the so-called "**green card**" procedure). It could also be achieved by include the CoR in the Early Warning System, which would provide a more political route towards ensuring subsidiarity.

2.Secondly, **the principle of proportionality** (the question of "how" EU legislation is implemented) should be given the same legal recognition as subsidiarity. This means that the same system of 'cards' and 'reasoned opinions' would also apply to the proportionality principle, in the same as it does to the subsidiarity principle.

3.Thirdly, **territorial impact assessments** should systematically be included in order to anticipate or evaluate the impact of EU legislation in cities and regions, in particular for topics of high territorial relevance like climate, resilience, public health, transport.

⁵ See the recommendations proposed in chapter no. 3 of the report of the CoR's High Level Group on European Democracy (delivered on 3 February 2022), available here: <https://cor.europa.eu/en/news/Pages/Report-of-the-High-Level-Group-on-European-Democracy.aspx>

4. Fourthly, the **subsidiarity principle should also be applied in EU governance processes**, such as the European Semester, which up until now remains largely intergovernmental and lack democratic participation. This could be done by defining a code of conduct for the participation of local/regional authorities in the European Semester. An inter-institutional Code of Conduct could for a start be reflected in a revised **Inter-Institutional Agreement on Better Law-Making**, which would define in a broader sense the application of the principles of multi-level governance and partnership in EU policy making. This new Inter-Institutional Agreement on Better Law-Making should also include a clear mention of the principle of systematic local/regional impact assessments for all relevant policy areas.

In conclusion, a better shared and common understanding of these core principles for the European democracy and a more structured and consistent application of them throughout the decision making process will help to reduce some of the key concerns of the citizens regarding the functioning of the European Union.
