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ITEM 15

ANNUAL SUBSIDIARITY REPORT 2019

Submitted by the secretary-general

FOR INFORMATION

SUMMARY

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Annual Subsidiarity Report 2019

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Short description:

This tenth Annual Report on Subsidiarity sets out the subsidiarity and proportionality activities of the European Committee of the Regions (CoR) in 2019. The report presents the main features of the 2019 Subsidiarity Work Programme, summarises activities carried out with a view to its implementation in 2019, as well as details of the governance structure and tools for subsidiarity monitoring. It also describes the impact of the monitoring through an examination of the content of relevant CoR opinions with regard to subsidiarity.

The Bureau is asked to take note of this annual report.

Remarks:

N/A

1. Introduction

This tenth Annual Report on Subsidiarity sets out the subsidiarity and proportionality activities of the European Committee of the Regions (CoR) in 2019. In that year, in line with Article 5(3) of the Treaty on the European Union, which contains an explicit reference to the local and regional dimension and thus underlines the need to respect the competences of local and regional authorities within the EU, the CoR monitored application of the subsidiarity principle through its various instruments. In this Subsidiarity Work Programme, **three** priority initiatives were selected from the European Commission's 2019 Work Programme. In addition, using its own internal rules¹, the CoR assessed the compliance with the subsidiarity and proportionality principles of legislative proposals on which it issued opinions.

In order to achieve the best possible legislation, the CoR seeks to constructively contribute to the European decision-making process at an early stage. The purpose of its subsidiarity monitoring activities in 2019 was to detect any subsidiarity and proportionality concerns as early as possible in legislative and non-legislative procedures. It should be noted that in 2019, the initiatives presented in the (2019) European Commission Work Programme were mostly non-legislative, hence only **three** priority initiatives were selected for the 2019 Subsidiarity Work Programme, with all three identified exclusively on account of **proportionality**-related concerns.

This tenth Annual Report on Subsidiarity presents the main features of the 2019 Subsidiarity Work Programme and activities carried out with a view to its implementation in 2019 and details the governance structure and tools for subsidiarity monitoring. It also describes the impact of the monitoring through an examination of the content of relevant CoR opinions with regard to subsidiarity.

The final sections are devoted to the most important events of the year in the field of subsidiarity, as well as the conclusions and outlook for the following year.

2. 2019 Subsidiarity Work Programme

2.1 Adoption

Under the Subsidiarity Monitoring Strategy², a Subsidiarity Work Programme (SWP) was drawn up for 2019 using a procedure comprising several steps. The first step consisted of an initial pre-selection of legislative initiatives from the 2019 European Commission Work Programme by the Subsidiarity Expert Group (SEG)³ and the CoR commission chairs, based on the following criteria and information available at that stage:

- a) initiatives should present a clear political interest for local and regional authorities;
- b) initiatives should touch on competences of local and regional authorities;

¹ Rule 55(2) of the [CoR Rules of Procedure](#), OJ L 65, 5.3.2014, p. 41.

² R/CdR 606/2012 item 7a), adopted on 2 May 2012.

³ The SEG meeting took place on 11 November 2017.

- c) initiatives should bear a potential subsidiarity dimension;
- d) preference should be given to legislative proposals. Moreover, this selection takes account of CoR priorities and initiatives included in the work programmes of the thematic commissions.

The second step entailed endorsement by the Subsidiarity Steering Group (SSG) during the 12th meeting of the SSG held on 29 November 2018 and the presentation of the draft Work Programme at the CIVEX commission meeting on 25 January 2019.

2.2 Implementation

Under the Subsidiarity Work Programme (SWP), the CoR administration set up an early internal flagging system to ensure proper monitoring of the selected EU initiatives that might raise subsidiarity concerns. Implementation of the SWP requires the involvement at the earliest possible stage of all relevant political and administrative stakeholders, with a view to identifying and planning subsidiarity monitoring activities. Below are the priority initiatives included in the 2019 Subsidiarity Work Programme, as adopted by the CoR Bureau.

2.2.1 A sustainable European future

This initiative concerned the Reflection Paper "Towards a Sustainable Europe by 2030, on the follow-up to the UN Sustainable Development Goals (SDGs), including on the Paris Agreement on Climate Change" (non-legislative, Q4 2018). The area of sustainable development is important for local and regional authorities, as the common frameworks that are developed need to leave adequate space and avoid superfluous administrative burden for subnational levels to realise these goals. Since the SDGs largely focus on local development measures, any strategy presented by the European Commission has to adhere to the principles of subsidiarity and proportionality.

2.2.2 Fair and Future-proof Single Market

This initiative related to the Communication "Towards a fully functioning Single Market in a rapidly changing global environment: eliminating barriers and seizing new opportunities for the benefit of citizens and businesses" (non-legislative, Q4 2018). Any new measures for improvement of the single market could entail an increase in administrative burden which may not be proportional to the expected benefits to citizens and businesses.

2.2.3 Completing the Digital Single Market

This initiative covered the "Coordinated Plan on the development of Artificial Intelligence in Europe" (non-legislative, Q4 2018), "Action Plan on Disinformation" (non-legislative, Q4 2018), Commission Recommendation to establish a format for European Electronic Health Record" (non-legislative, Q1 2019). As many regional authorities, especially those with legislative powers, are integrated with the health care systems, establishing a format for a European Electronic Health Record could entail adjustments of administrative systems and their financing, so there is a risk in terms of proportionality compliance.

Based on its own Rules of Procedure, the CoR also assessed compliance with the subsidiarity and proportionality principles in the legislative and non-legislative proposals on which it issued opinions⁴. In 2019, the CoR adopted 49 opinions, of which only five related to legislative proposals. Three of those five opinions relating to legislative proposals contain either a direct assessment of compliance with subsidiarity and proportionality, or concrete recommendations for improving compliance with these principles.

While the overwhelming number of initiatives were non-legislative, the CoR maintained its commitment to implementing the "active subsidiarity" approach throughout 2019. Many opinions on non-legislative proposals included both an assessment of subsidiarity and proportionality in the relevant policy field, as well as constructive recommendations for dealing with potential issues. A most notable example is the opinion on the **Implementation report on public procurement**. Based on the first consultation of the CoR Network of Regional Hubs, that opinion gave a detailed overview of key challenges encountered by LRAs when implementing the provisions of the 2014 Directives on public procurement, as well as the most frequent sources of the Directives' incorrect application. In line with the active subsidiarity approach, the opinion demonstrated that compliance with the principles of subsidiarity and proportionality, based on the concept of EU added value, can and should be assessed on an ongoing basis. Using empirical data from the subnational levels, the opinion also highlighted major issues (e.g. "*...cross-border procurement has not brought any added value for local and regional authorities. Though EU-wide procurement procedures are carried out regularly, costing considerable time and money, few if any cross-border contracts are awarded*") and provided policy recommendations to overcome these.

2.2.4 Additional initiatives

No additional dossiers were chosen to replace one or more of the priority initiatives if the latter did not materialise, did not progress sufficiently in 2019 or were not considered sufficiently relevant on more detailed analysis.

3. Political governance and CoR tools for subsidiarity monitoring

3.1 Subsidiarity Steering Group

The Subsidiarity Steering Group was set up in September 2012 to provide political governance for subsidiarity monitoring at the CoR and to ensure coordination between the CoR's administrative and political activities on subsidiarity matters. The Subsidiarity Steering Group continued to direct subsidiarity monitoring activities in 2019.

Whereas 2018 was important for putting a spotlight on local and regional authorities within the decision-making and subsidiarity monitoring process, 2019 was decisive in ensuring that progress made in the previous year was not lost also in light of the change of the European Parliament mandate and the European Commission college.

Throughout 2019, we can record a number of important interventions which have been made:

⁴ Rule 55(2) of the [CoR Rules of Procedure](#), OJ L65, 5.3.2014, p. 41.

- On 5 February 2019, Klaus Welle, the Secretary-General of the European Parliament, spoke at the meeting of the CoR Bureau. In line with the recommendations of the *Task Force on subsidiarity, proportionality and doing less more efficiently*, he stressed that the local and regional levels know best what works on the ground and should have a prominent role within the European decision-making process. He further stated that linking the levels is one of the most important projects of the European Parliament's strategic execution framework.
- Following up on its *Communication on Better regulation: taking stock and sustaining our commitment*, the European Commission organised a large scale conference on better regulation, which was held in Brussels on 29 April 2019. As the rapporteur of the opinion on Better Regulation, Mr Geblewicz spoke at the conference, pointing out that subsidiarity cannot be properly upheld without the engagement of subnational levels.
- Lastly, the Subsidiarity Steering Group assumed responsibility for the pilot project to set up a network of regional hubs. The political launch of the network of regional hubs took place at the 8th European Summit of Regions and Cities in Bucharest on 15 March 2019, attended by CoR president Karl-Heinz Lambertz and CoR first vice-president Markku Markkula, as well as political representatives of the hubs. Attention was drawn to the network's role in the concrete application of the concept of active subsidiarity as a tool for better regulation. Accordingly, the hubs and their political representatives reaffirmed their commitment to contributing their relevant experiences to contribute to the improvement of EU legislation. In a recorded video message, **Commission vice-president Frans Timmermans** welcomed the launch of the network and expressed his hope that the network's reports would feed into the Commission's impact assessments and evaluations with first-hand knowledge and experience from those having to implement EU law in their daily work.

It is also important to note that, unlike in previous years, in 2019 the SSG did not take a decision on the Subsidiarity Work Programme for 2020, because the European Commission had not adopted its 2020 work programme by the end of 2019.

3.2 Subsidiarity Expert Group

Under the revised subsidiarity strategy, the Subsidiarity Expert Group was set up to provide back-up for subsidiarity monitoring based on expert knowledge from the local and regional level. The members of the group were selected from members of the Subsidiarity Monitoring Network for their expertise and experience in subsidiarity monitoring.

The preparation of the CoR Subsidiarity Work Programme, one of the Subsidiarity Expert Group's most important contributions, is drawn up at the beginning of the subsidiarity monitoring cycle. In 2019, it was not possible to assist the CoR with the selection of subsidiarity priorities, because the European Commission's Work Programme for 2020 had not yet been adopted.

The involvement of experts ensures that initiatives which are particularly relevant from the point of view of subsidiarity, and which are of interest to regional and local authorities, are selected for the CoR Subsidiarity Work Programme in order to be subject to thorough subsidiarity monitoring.

Two consultations of the Subsidiarity Expert Group (SEG) took place in 2019, one of which related to a priority initiative in the Subsidiarity Work Programme.

As part of the **Completing the Digital Single Market** priority initiative, the SEG was consulted to provide support for the CoR rapporteur drawing up the opinion on the *Action Plan against Disinformation*. With one expert response in total, no major subsidiarity or proportionality issues were highlighted, as activities outlined in the Action Plan rely on cooperation between the various levels of government. The analysis concluded that beyond the issues of subsidiarity or proportionality, the Action Plan against Disinformation would benefit from promoting the TEU principle of "sincere cooperation" or multilevel governance.

The second consultation of the SEG was to support the rapporteur of the opinion on **The European Semester and Cohesion Policy: aligning structural reforms with long-term investments**, where three experts provided contributions. The draft opinion contained substantial references to subsidiarity and proportionality, as well as an assessment of compliance with the subsidiarity principle. It is of particular note that the opinion, in line with the active subsidiarity approach, put forward proposals to address issues of compliance with subsidiarity and proportionality, stating that *the CoR "...stresses that the best way of avoiding infringements of the subsidiarity principle and ensuring that the policy is effectively coordinated is to get local and regional authorities fully involved in the European semester in a structured way, in line with the principles of partnership and multilevel governance"*.

The experts' contribution to the CoR's consultative activities creates a link with subsidiarity debate in the Member States, strengthens mutual understanding, and brings the CoR closer to its local and regional partners and thus to the needs of Europeans. In fact, the Expert Group also serves as a network of "core" CoR contact points for subsidiarity in the Member States. Thus the active participation of the SEG helps to create a "culture of subsidiarity" in Europe.

In 2019, the CoR's Subsidiarity Steering Group (SSG) held a joint meeting with the SEG aimed at considering possible changes in the functioning of the expert group and the CoR's subsidiarity monitoring strategy so as to better align with the active subsidiarity approach. The meeting highlighted the need to define a clear mandate.

3.3 Subsidiarity Monitoring Network (SMN)

The [Subsidiarity Monitoring Network](#) was launched by the CoR in 2007 to enable its partners to become involved at various stages in the EU decision-making process. This is an important function in light of the Lisbon Treaty, which underlines the local and regional dimension of subsidiarity and strengthens the CoR's role in subsidiarity monitoring.

The Subsidiarity Monitoring Network⁵ (SMN) did not see any change in its composition in 2019, with 156 partners. The CoR will maintain its efforts to encourage the active participation of network partners in consultations and subsidiarity-related activities.

⁵ Launched in April 2007, the SMN was set up to facilitate the exchange of information between LRAs and the EU level on various documents and legislative and political proposals from the European Commission. The network serves as an access point enabling all of its partners not only to obtain information but also to express their views.

There were no outstanding contributions on subsidiarity or proportionality to be submitted to the network by its partners in 2019.

In 2019 REGPEX⁶, the sub-network of the SMN open to parliaments and governments of regions with legislative powers, saw a steep decline in activity due to the lack of legislative proposals in 2019. There were only 2 unique contributions made in 2019, compared to 95 unique contributions in 2018, concerning:

- *Proposal for a Directive of the European Parliament and of the Council on the enforcement of the Directive 2006/123/EC on services in the internal market, laying down a notification procedure for authorisation schemes and requirements related to services – Austrian Federal Council (Bundesrat).*
- *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the Principles of Subsidiarity and Proportionality: Strengthening their role in EU policymaking – Upper Austria State Parliament.*

The REGPEX search engine facilitates the selection of priorities for subsidiarity monitoring and exchange of information between partners by providing direct access to information for subsidiarity analysis, and links to EurLex, IPEX, CoR opinions and other REGPEX partners' contributions. The search engine plays a vital role in the monitoring of initiatives under the Early Warning System and fosters the exchange of good practice and a more coordinated approach to subsidiarity monitoring.

4. Subsidiarity in CoR opinions

Under Rule 55(2) of its Rules of Procedure⁷, the CoR assesses in its opinions the compliance of legislative proposals on shared competences with the subsidiarity and proportionality principles.

The CoR adopted 49 opinions in 2019⁸. Five of these referred to a legislative proposal; eight included an assessment of compliance with the subsidiarity principle; and seven included an assessment of compliance with the proportionality principle. In terms of support for the assessment of compliance with the subsidiarity and proportionality principles at administrative level, the subsidiarity secretariat has provided administrative support by carrying out two analyses for opinions submitted to the CoR's plenary sessions.

5. Subsidiarity-related events and activities

Throughout 2019 the CoR maintained its efforts to ensure that the Task Force's recommendations become anchored in the EU framework and that active subsidiarity becomes a reality.

⁶ The [REGPEX \(REGional Parliaments information EXchange\) database](#) can be accessed via the CoR's Subsidiarity web page and is designed to help regions with legislative powers take part in the Early Warning System. It was launched by the CoR in 2012.

⁷ [CoR Rules of Procedure](#), OJ L65, 5.3.2014, p. 41.

⁸ See Appendix 2 for an overview of opinions adopted between 1 January and 31 December 2019.

A high-level debate took place on active subsidiarity at the 8th European Summit of Regions and Cities on 14 and 15 March 2019 in Bucharest. This not only maintained the high political momentum from 2018, but also served as the launching pad for the CoR pilot network of regional hubs to review of EU policy implementation.

On 15 April 2019, the European Commission published its Communication on *Better regulation: taking stock and sustaining our commitment*, on which the CoR decided to draw up an opinion. This milestone opinion, adopted at the 8 October 2019 plenary session, condensed the CoR's views on the Commission's better regulation agenda and the role of active subsidiarity in EU policy-making. While the opinion was in preparation, the rapporteur spoke at a major conference held by the Commission on better regulation, and after its adoption he presented the CoR's official position on opening up the EU framework for local and regional inputs, speaking at the 9th Subsidiarity Conference of the CoR held in Rome on 22 November 2019.

The conference *Active Subsidiarity: creating EU added value together* was organised jointly by the Committee of the Regions, the Italian Conference of the Presidents of Italian Regional Parliaments and the Italian Senate. This was the 9th edition of the biennial subsidiarity conference that has taken place since 2004. Speakers and participants at the conference expressed their appreciation of the Commission's commitment to follow up on the recommendations of the *Task force on subsidiarity, proportionality and doing less more efficiently*, most of them emphasising the need to better involve local and regional authorities in EU decision-making.

The conference endorsed the active subsidiarity concept developed by the Task Force that is intended to link all government levels so as to ensure that each level can shoulder its responsibilities and provide inputs into the preparation and implementation of EU legislation, ensuring the added value of the latter as against national/regional legislation. The speakers and participants agreed that the EU institutional framework should be opened up to more local and regional input, in particular in the policy preparation and evaluation phases, where that input matters most. On the other hand, local and regional authorities would need to step up efforts to provide constructive and timely input into the EU decision-making process. The representatives of the local and regional levels expressed their readiness to take up the challenge once they were given the opportunity to contribute to policy-making.

The Committee of the Regions signalled its willingness to act as a facilitator, showcasing its recent Regional Hubs project. At this conference it also launched a new pilot project with the **Conference of European Regional Legislative Assemblies (CALRE)** to organise debates in regional parliaments with a view to providing inputs from these into the Commission's annual work programme.

6. Conclusion and outlook

The CoR is strongly committed to its subsidiarity monitoring responsibilities under the Lisbon Treaty and is therefore continuing its efforts to ensure effective application of the subsidiarity principle and to contribute to the creation of a subsidiarity culture within the EU. It is also committed to implementing the recommendations of the *Task force on subsidiarity, proportionality and doing less more efficiently*, which would promote an inclusive and constructive approach to subsidiarity and proportionality monitoring within the EU and highlight the importance of the local and regional levels in the EU policy-making process.

In that regard, the CoR aims to continue its work to promote the implementation of these principles and recommendations in 2020/2021.

The CoR and the Subsidiarity Steering Group will continue to reflect on ways to raise awareness, improve working methods and increase the added value of the CoR's existing subsidiarity monitoring framework. The work of the Steering Group will also be linked to the new Strategic Planning Framework adopted by the Conference of Presidents in September 2020. In this context the Group will intensify its cooperation with the Conference on flagging and following-up of strategically important subsidiarity files.

As the active subsidiarity approach calls for involvement of all relevant actors within the EU decision-making process, the CoR will maintain its efforts to promote a partnership approach, in line with the principle of multilevel governance, between all institutional, national and subnational actors.

PROPOSAL:

Bureau members are asked to take note of this annual report.
