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EUROPEAN UNION



Committee of the Regions

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Contribution of the Secretary General on: SUBSIDIARITY INQUIRY OF THE NATIONAL ASSEMBLY OF WALES

Background

The CoR undertakes subsidiarity monitoring alongside a variety of actors, including other EU institutions, national and regional parliaments and governments and different inter-parliamentary and inter-governmental associations active at the European level such as COSAC and associations such as CALRE and REGLEG.

Under the Lisbon Treaty the principles of subsidiarity and proportionality have certainly gained a more substantial position in the European legislative architecture. Alongside the recognition of the local and regional dimension of subsidiarity, it is noteworthy that national parliaments have a role of capital importance in the EU legislative process: on the one hand, they are informed about all draft EU legislative proposals and, on the other hand, they are involved in the scrutiny of these proposals with relation to the principle of subsidiarity ("**early warning process**"). The Treaty also **acknowledges the institutional position of regional legislative bodies** by stipulating that they should be "consulted" by their respective national parliaments, where appropriate. However, it is left to the Member States to institute the procedures by which such consultations might be organised.

The CoR is committed to the institutional changes that the Lisbon Treaty purports to enforce, but even in the case that the Treaty cannot enter into force the Committee is convinced that a way will be found to enshrine the aforementioned architecture – which has the support of all Member States and EU institutions – into the European edifice. Even now, a mechanism exists whereby national parliaments are systematically informed of Commission initiatives and can comment upon them. Under the so-called "**Barroso political dialogue**" the Commission has received more than 160 reasoned opinions up to now, most of which touch upon issues related to subsidiarity. Yet regional parliaments are not officially involved in this process.

Hence, one of the challenges the CoR is facing is to devise efficient mechanisms that would allow local and regional authorities in general, but most importantly regional parliaments with legislative powers, (a) to be **directly informed of legislative and policy initiatives** at the European level and (b) to **effectively participate in the scrutiny of all relevant initiatives**, eventually leading to the development of a subsidiarity partnership among all actors concerned.

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In addition to pressing for the formal extension of the Barroso political dialogue to regional parliaments with legislative powers, the Committee's answer to this challenge has been two-fold:

- (a) By establishing the **Subsidiarity Monitoring Network**, the Committee offers local and regional authorities throughout the EU an effective information channel, which can also function as a medium through which they can make their voices heard regarding the scrutiny of EU legislative proposals. Therefore, the Network constitutes a relevant tool for ensuring a sound cooperation among the CoR and all committed stakeholders in the field of subsidiarity monitoring.
- (b) At the same time the CoR is aware of the efforts made within the Member States and inspired by their different constitutional history and traditions to encourage the participation of the local and regional level in the institutionalised parliamentary dialogue regarding the EU legislative process. **The CoR can be an effective clearing-house for capacity building in this domain and already provides its support to such a procedure, in particular by encouraging and facilitating the exchange of best practices.**

A few words on the Subsidiarity Monitoring Network

- Established in 2007, the network now comprises 96 partners¹, a large percentage of which represents parliaments or governments from regions with legislative powers. The National Assembly of Wales is a partner of the Network.
- All proposals on which the CoR is consulted are readily accessible on the Networks website. Thus, the Subsidiarity Monitoring Network is a central point of reference for local and regional authorities concerning information on the EU legislative process.
- The Network aims to provide CoR rapporteurs with constructive external input for the preparation of their reports regarding the compliance of European Commission proposals with the principles of subsidiarity and proportionality. The network partners are free to submit their subsidiarity and proportionality assessments of any policy or legislative proposal which is the subject of a CoR opinion (**open consultations**). Furthermore, they can be invited by a CoR rapporteur to make their contributions to opinions during their preparation stage, whether on subsidiarity and proportionality or on substantive matters (**targeted consultations**). Rapporteurs retain the right to determine the course and the content of consultations.
- In addition, the Network can be called to provide input in the early stages of the pre-legislative phase by participating in "**impact assessment consultations**" aimed to evaluate the territorial impact of selected legislative proposals, and feed into the European Commission's impact assessments. Finally, the Committee plans to use the network in order to support the operation of the national parliaments' early warning procedure foreseen in the Lisbon Treaty. In these potential "**early warning consultations**" network partners will be asked to provide input on a specific legislative proposal, which raises *prima facie*, subsidiarity concerns within a short time frame.
- Since the Network's establishment, three subsidiarity and proportionality consultations have been held (**3rd Energy Package in Electricity & Gas, Immigration & Employment, Patient Mobility**), while the Network also participated in the European Commission's open consultation on the **draft impact assessment guidelines**. In October 2008 a targeted consultation of the Network has been launched in relation to the European Commission's Green Paper on **Territorial Cohesion**.

¹ A list of partners is provided in Annex I.

Collecting best practices in subsidiarity monitoring²

- The Network has the potential to function as conduit for the exchange of best practices in subsidiarity monitoring on the local and regional level. Within the framework of **REGLEG and CALRE seminar on the implementation of the principle of subsidiarity** (May 19 2008) the Network produced a brochure outlining **the subsidiarity monitoring procedures in REGLEG and CALRE members**. A total of 14 institutions, also members of the Network, submitted their contributions. In particular, the seminar heard of the mechanisms put in place in two Member States, namely Belgium and Austria, which aim to guarantee the participation of sub-national levels of governance (Länder, regions and communities respectively) in the scrutiny of EU legislative proposals.
- The Committee's president, Mr Luc VAN DEN BRANDE, has also requested national delegations at the CoR to report on the **cooperation between national parliaments and the different tiers of government of the monitoring of the subsidiarity and proportionality principles in legislation originating from the EU**. Input so far received³ evidences different degrees of participation on behalf of local and regional levels of governance in this process, influenced naturally by the distinct constitutional arrangements and traditions of the member states. Reports are still being collected, but the resulting synthesis report will be a useful tool of reference for everybody concerned.
- Finally, the CoR aims to organise regular **Subsidiarity Fora** (*Assises de la Subsidiarité*). These are a useful tool through which the Committee can (a) get in touch with concerned actors and receive input from academia, politicians and civil society, and (b) reinforce effective relationships on the institutional level with its partners in subsidiarity monitoring, i.e. national and regional parliaments, as well as other EU institutions and local and regional authorities throughout the EU.
- This 3rd Forum is going to be held at the French Senate in Paris on 24-10-2008 (day following the SG's video link intervention to the National Assembly of Wales) and is co-organised by the CoR and the French Senate. The proceedings are set to focus on **multi-level governance and better lawmaking** (both in the EU and national contexts) and on the **political and judicial monitoring of subsidiarity**. The Forum's conclusions will consider the prospects of beefing up legal and political machinery for monitoring subsidiarity and the various institutional options open local and regional authorities for formalising and consolidating their involvement in the implementation of these principles. These conclusions will be forwarded to the French EU presidency, the Community institutions and COSAC.

² A short overview of the best practices in the Member States, of which the CoR has been made aware, is supplied as Annex II.

³ Germany, Spain, Italy, Cyprus, Latvia, Austria, Poland and Finland.

Annex I – Partners of the Subsidiarity Monitoring Network

Regional parliaments or councils

| | |
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| Legislative Assembly of the Region of Emilia Romagna | Italy |
| Legislative Assembly of the Principality of Asturias | Spain |
| National Assembly for Wales | United Kingdom |
| Flemish Parliament | Belgium |
| County Council of Åland | Finland |
| Legislative Assembly of the Autonomous Region of Madeira | Portugal |
| State Parliament of Vorarlberg | Austria |
| Schleswig-Holstein State Parliament | Germany |
| Legislative Assembly of the Region of Tuscany | Italy |
| Legislative Assembly of the Region of the Marches | Italy |
| Parliament of Catalonia | Spain |
| Lower Saxony State Parliament | Germany |
| North Rhine-Westphalia State Parliament | Germany |
| Parliament of the Brussels-Capital Region | Belgium |
| State Parliament of Carinthia | Austria |
| Regional Council of Aquitaine | France |
| Regional Parliament of Pomerania | Poland |
| County of Västra Götaland | Sweden |
| Parliament of the Province of Overijssel | Netherlands |
| State Parliament of Burgenland | Austria |
| Parliament of the French Community | Belgium |
| Basque Autonomous Parliament | Spain |
| Bavarian State Parliament | Germany |
| Lower Austria State Parliament | Austria |
| Legislative Assembly of the Region of Sardinia | Italy |
| Baden Wuttenberg Parliament | Germany |
| Assembly of Extremadura | Spain |
| The Wallon Parliament | Belgium |

Regional governments or executives

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|--|-------------|
| Bavarian State Government | Germany |
| Austrian State Governors' Conference | Austria |
| Government of the Autonomous Region of Košice | Slovakia |
| Silesian Region Government | Poland |
| Regional Government of the Azores | Portugal |
| Marshal of the Masovian Region | Poland |
| Government of the State of Saxony | Germany |
| Government of the State of Hesse | Germany |
| Regional Government of the Community of Valencia | Spain |
| Basque Government | Spain |
| Regional Government of the Community of Madrid | Spain |
| Government of the Province of Flevoland | Netherlands |
| State Government Lower Austria | Austria |

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| State Government Vorarlberg | Austria |
| Government of the Region of Skåne | Sweden |
| Government of the Region Veneto | Italy |
| Nitra Self Governing Region | Slovakia |
| Marshal of Lodzkie Region | Poland |
| Xunta of the Autonomous Community of Galicia | Spain |
| Government of the Autonomous Province of Bozen – South Tyrol | Italy |
| Government of the Region of Abruzzo | Italy |
| Government of Flanders | Belgium |
| Government of the Region Lombardia | Italy |
| Marshal of the Wielkopolska Region | Poland |
| Government of the Region of Piemonte | Italy |
| Government of the Canary Islands | Spain |
| Magistrate of the City of Vienna | Austria |
| Government of the State of Lower Saxony (Niedersachsen) | Germany |

Local authorities

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|-----------------------------------|----------------|
| City of Budapest | Hungary |
| City of Lodz (PL) | Poland |
| City of Zlín (CZ) | Czech Republic |
| Municipality of Patras | Greece |
| Urban Community of Dunkirk | France |
| City of Tavira | Portugal |
| Autonomous City of Ceuta | Spain |
| City of Izola | Slovenia |
| Galati County Council | Romania |
| Radviliskis District Municipality | Lithuania |
| City of Sofia | Bulgaria |
| City of Augsburg | Germany |
| Diputacio of Barcelona | Spain |
| City of Hunedoara | Romania |
| City of Madrid | Spain |

Associations of regional and/or local authorities

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| Council of European Regions and Municipalities | European association |
| Lithuanian Association of Local Authorities | Lithuania |
| German County Association | Germany |
| Local Government Denmark | Denmark |
| Union of Cyprus Municipalities | Cyprus |
| Association of the Provinces of the Netherlands | Netherlands |
| French Regions Association | France |
| Latvian Association of Local and Regional Governments | Latvia |
| Association of Mayors and Elected Representatives of Lozère | France |
| German Association of Towns and Municipalities | Germany |
| Association of Municipalities of Aragon | Spain |
| Danish Regions | Denmark |
| Conference of European Regional Legislative Assemblies (CALRE) | European association |
| Association of Prefectoral Authorities of Greece | Greece |

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| Arco latino | European association |
| Eurocities | European association |
| Association of Finnish Local and Regional Authorities | Finland |
| Federation of Provinces and Municipalities of Extremadura | Spain |
| National Union of County Councils | Romania |

CoR national delegations

| | |
|--------------------------------------|----------------|
| Luxembourg Delegation to the CoR | Luxembourg |
| United Kingdom Delegation to the CoR | United Kingdom |
| Irish Delegation to the CoR | Ireland |
| Maltese Delegation to the CoR | Malta |

National Parliaments

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| French Senate | France |
| Hellenic Parliament | Greece |

Annex II - Best Practices

1. Germany

In Germany the Länder participate in matters concerning the EU through the Bundesrat. The nature of the Länder participation depends on the degree whereby their competences are affected by the proposed EU measures. Subsidiarity and proportionality are usually prominent issues for the discussions within the Bundesrat. The latter has also been an active participant in the Barroso political dialogue, so far having sent 21 "reasoned opinions" to the European Commission.

The Bundesrat delivers opinions to the Federal Government, which the latter has to take into account regarding its position in the Council of Ministers.

If an EU project largely affects legislative powers of the Länder (for example, in the fields of culture, education, broadcasting, the media, inner security), the institution of their public agencies or their administrative practice, the Federal Government must "take appropriate account" of the opinion of the Bundesrat. In principle, this means a commitment of the Federal Government to the vote of the Bundesrat.

In the case of EU legislation based on art 308 EC Treaty (which makes it possible for the EU to take action in cases in which the Treaty does not provide the necessary powers to do so), the Federal Government, before giving its consent, is obliged to reach an agreement with the Bundesrat, in so far as its consent would be necessary under national law or in so far as the Länder would be competent at national level.

With projects affecting major interests of the Länder, their representatives appointed by the Bundesrat take part in the negotiations of the advisory bodies of the Commission and of the Council as members of the German delegation.

If exclusive legislative powers of the Länder in the fields of school education, culture or broadcasting are mainly concerned, the conduct of the negotiations in the Brussels committees and in Council meetings at minister level is to be transferred to a representative of the Länder appointed by the Bundesrat.

The Bundesrat has appointed minister-presidents or state ministers as representatives of the Länder for Council meetings in the (sub-) formations education, culture, audio-visual media, domestic affairs and research. Even if the conduct of the negotiations does not have to be transferred to them, they may participate in these Council meetings as members of the German delegation and deliver an opinion in agreement with the Federal Government.

2. Austria

Since 2008 an updated scheme for monitoring and following up of EU initiatives in connection with subsidiarity and proportionality is in place. The main elements of this scheme are the following:

- Länder parliaments (Landtage) will seek involvement in subsidiarity procedures to be developed by National Council and Federal Council, the two chambers of the federal parliament,
- Co-ordination between Länder governments and parliaments is subject to individual agreements or legislation by the Länder – partly covered already by existing participation rights of the regional parliament vis à vis the respective Land government,
- Exchange of analyses of dossiers with possible problems in view of subsidiarity between Länder and federal parliament.

The different steps of subsidiarity monitoring in the Austrian Länder are the following:

1. Evaluation of the European Commission's Legislative and Work Programme and joint identification of possible dossiers.
2. Appointment of the responsible Land as rapporteur for a subsidiarity and proportionality assessment for individual initiatives/ dossiers.
3. Negotiations in the Council of Ministers, the European Parliament and within the CoR (Subsidiarity Monitoring Network)

In practical terms, the federal government informs the Länder governments of European projects within their competence or which might be of interest to them. Regional Parliaments usually receive information on proposed European Legislation through the Federal Council (2nd Chamber of the Austrian Parliament, which represents inter alia the Länder). Nevertheless additional arrangements exist in some Länder whereby regional governments inform their respective parliaments.

Either individually or within the formation of the Joint Länder Liaison Office in Vienna, the Länder can comment on EU legislative projects. A minimum of 5 Länder can issue a binding opinion for the Federal Government, provided that no other Land opposes (uniform position). Otherwise the Länder can issue common positions, which although not binding on the federal government are in principle respected.

Theoretically, Länder can request the federal government to submit an action for annulment against Community legislative instruments before the CoR⁴. However this facility has not been used so far.

⁴ Article 10 of the agreement between the federation and the Länder, pursuant to article 15 of the Federal Constitutions.

3. Belgium

In Belgium federated entities dispose of exclusive competences at national level; some in fact correspond to shared Community competences. Belgium appended a declaration to the Lisbon Treaty⁵ stating that the Belgian sub-national parliaments are components of the Belgian Parliamentary system. Therefore the provisions of Protocols 1 & 2 apply equally to all national and sub-national Parliaments. This declaration in effect induces the obligation to put in place a "coordination mechanism/agreement" among the different parliaments.

In fact, a Parliamentary Cooperation Agreement has been signed by the presidents of 8 of different parliaments in anticipation of a ratification of the Constitutional Treaty on 19 December 2005. This agreement would be used as an inspiration to conclude a similar one under the Lisbon Treaty.

Three main types of dispositions are present in the text of the agreement.

1. Each Belgian Parliament should receive the **information** necessary to follow and scrutinise European issues. Therefore, a common internet mailbox has been created and is managed by the Federal Senate, to which all documents transmitted by the Commission to national parliaments are sent (cf Barroso initiative). These are then immediately and without filtering forwarded to all Belgian Parliaments.

2. The attribution of the 2 national votes during the new "**early warning system**" will be the subject of an ad hoc procedure: Basically, the procedure is based on the distribution of competences among the 8 different Parliaments and the balance between the language communities. In practice the parliamentary cooperation agreement refers to 4 distinct cases:

- a. If the draft EU legislation affects an area of exclusive competence on the federal level, one reasoned opinion can be issued by the Senate and the Chamber respectively, Each would correspond to one vote.
- b. If the draft EU legislation affects an area of competence shared between sub-national and national levels, one vote will be attributed to the national and one vote to the sub-national level, regardless of the number of parliaments from each level which actually end up issuing reasoned opinions.
- c. If the draft EU legislation affects an area of exclusive sub-national competence, then two votes are attributed to the sub-national parliaments along the lines of the linguistic regimes, which they adhere to. At least one parliament from a linguistic regime has to issue a reasoned opinion.
- d. Finally, if the draft EU legislation affects an area for which only one Parliament is exclusively competent, then two votes will be attributed to that Parliament if it issues a reasoned opinion⁶.

In practice, the different reasoned opinions issued during the procedure are collected and are brought together in one single document by the Senate administration. The final document is forwarded to the European institutions.

3. In practice any Belgian parliament would be able to empower the federal government to bring an action for annulment before the ECJ against an EU legislative act on grounds of infringement of the subsidiarity principle in matters of its competence. The Senate would again play a coordinating and information dispatching role.

⁵ A similar declaration was appended to the Constitutional Treaty,

⁶ In practice, this concerns only fisheries (exclusive competence of the Flemish Parliament)

4. Spain

Within the context of the Spanish system the concrete mechanisms have not yet been formally set up. However, it is proposed that a Joint Parliamentary Committee for EU Affairs (comprising of members of both Houses of the Cortes) would be responsible for the scrutiny of EU affairs. There is a proposal to also establish a Standing Sub-committee for subsidiarity monitoring.

It would be necessary that the European Commission proposals be automatically sent to the Autonomous Community Parliaments which would additionally forward them to their respective regions' governments so that they could report back to them. Possible reports or opinions of the Autonomous Community Parliaments of the latter would be forwarded to the aforementioned Standing Sub-committee within three weeks of receipt of the proposals.

The Joint Parliamentary Committee would in the end be the body forwarding reasoned opinions on behalf of the Spanish Parliaments to the European Commission. It could decide by a 3/5 majority on whether to annex to these opinions any possible input from the Autonomous Community Parliaments.

5. Italy

In Italy there exists no formally established coordination on European Union issues between local and regional and the Parliament. However, representatives of local and regional authorities are regularly heard by Parliamentary Committees, in both the Chamber and the Senate.

In parallel to the activities of the Parliament, extensive forms of cooperation also exist at the Government level. In particular, the CIACE (Inter-ministerial Committee for European Community Affairs) sees the ad hoc participation of LRAs through the Presidents of Regions, Autonomous Provinces of Trento and Bolzano and/or local authorities' associations, when questions of regional and local interest are addressed.

Additionally, a coordination body called the "State-Regions Conference" exists. This body holds twice yearly "Communitarian sessions" specifically devoted to discussions on major European issues, like for example the transposition and implementation of EU legislation on the regional level, the EU Presidency Priorities and specific operational instruments for European programmes, like the EGTC. In matters falling under a regional legislative competence, the State-Regions conference can be summoned, within 20 days from the request made from one of its members. Besides, regions and autonomous provinces of Trento and Bolzano can send opinions on EU policy and legislative proposals, through the State-Regions Conference, within 20 days from the date of reception.

Information and communication on EU-related issues from the government to the regions are normally channelled through the Presidency of the Council of the Ministries or the Ministry for European Community policies

A General Cooperation Agreement between the regions was signed in 2006, while in 2007 the regions formalised the guidelines by which their representatives are appointed to the various comitology committees and Council working groups.

In practice however the Italian Ministry of Foreign Affairs has compiled a database of the committees and working groups which deal with areas falling under regional legislative competence. It is on the basis of this information that the regions appoint their representatives.

The aforementioned mechanisms are based on Italian national laws n. 131/2003 and n.11/2005.