

Opinion of the Committee of the Regions on ‘Smart regulation’

(2012/C 9/04)

THE COMMITTEE OF THE REGIONS

- believes that smart regulation should entail a reduction in bureaucracy and administrative burdens not only for citizens and stakeholders but also for local and regional authorities; rejects, however, a purely quantitative approach to regulation;
- notes the increased references to the local and regional dimension of smart regulation, and to the related activities and capabilities of the CoR, as recognition of the role Europe's local authorities and regions have in EU policy making and the implementation of legislation;
- calls on the European Commission and other EU institutions to pay closer attention to local and regional government when designing legislation, assessing its impacts or devising ways to implement EU policies and objectives;
- feels that, in addition to the European Union's objective of territorial cohesion (Art 3 TEU), both the horizontal clauses in the Lisbon Treaty on social (Article 9 TFEU) and environmental (Article 11 TFEU) requirements together with the triple focus of the Europe 2020 strategy require impact studies taking a balanced look at the impact of regulation in territorial, economic, social and environmental terms;
- states its readiness to assist the EU institutions with impact assessment endeavours, if data from local and regional authorities is needed, whilst recalling its limited resources and core mission;
- considers that there should be a common approach to impact assessment by the EU institutions, and that the CoR should be involved in the formulation of any such approach;
- endorses plans to review the Cooperation Agreement between the CoR and the European Commission, taking into account the institutional changes brought by the Lisbon Treaty, the necessity to implement multi-level governance and the evolution of the political role of the CoR, while making provision for the improvement and development of cooperation on impact assessment as well as for establishing a mechanism for a CoR contribution to the annual report on better lawmaking.

Rapporteur	Lord Graham TOPE (UK/ALDE), Member of the London Borough of Sutton
Reference documents	Communication from the Commission on Smart Regulation in the European Union COM(2010) 543 final Report from the Commission on Subsidiarity and Proportionality (17th Report on Lawmaking covering the year 2009) COM(2010) 547 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

A. *Smart regulation*

1. welcomes the concept of smart regulation which confirms and expands on the idea of a EU policy cycle where legislation is constantly reviewed and adapted to new challenges and circumstances, based on thorough evaluation and the concrete experience of implementation;

2. **believes** that smart regulation should entail a reduction in bureaucracy and administrative burdens not only for citizens and stakeholders but also for local and regional authorities; rejects, however, a purely quantitative approach to regulation since political priorities cannot take second place to considerations regarding the overall volume of legislation; therefore calls for impact studies which, among other things, would discuss the costs of not having European rules in place;

3. regrets that smart regulation tools do not appear to apply to delegated and implementing acts ('comitology'). There is not enough clear oversight or transparency regarding these procedures;

Role of local and regional authorities

4. notes the increased references to the local and regional dimension of smart regulation, and to the related activities and capabilities of the CoR, as recognition of the role Europe's local authorities and regions have in EU policy making and the implementation of legislation;

Consultation

5. records that concerns have been expressed in most CoR opinions concerning the level of consultation or involvement of local and regional authorities in the preparation of EU initiatives. Opinions frequently call for more involvement of local and regional authorities in the preparation of new policies and legislation, in the evaluation of their potential impact and in their implementation;

6. calls on the European Commission and other EU institutions to pay closer attention to local and regional government when designing legislation, assessing its impacts or devising ways to implement EU policies and objectives;

7. welcomes therefore the intention to review current consultative procedures and to extend the period for response;

8. believes that the results of consultation should be published and analysed, e.g.: how were submissions used in drafting or modifying the proposal, what input was not used, etc.;

9. reiterates its concern that open consultations favour well-organised and well-resourced respondents or minority special interests; therefore continues to place high value on the responses of representative associations of local and regional government, as well as other responses;

Administrative and financial burdens

10. notes the activities of the High Level Group on Administrative Burdens ('Stoiber Group');

11. reiterates its concern that this Group and the European Commission focus almost exclusively on the direct burden of EU law upon small businesses. Whilst recognising this as an important impediment to economic growth, recalling that burdensome reporting obligations for national/regional/local authorities ultimately translate into administrative burdens for citizens and companies on a national or subnational level, considers that the burden on local and regional bodies must also be addressed and mitigated;

12. welcomes its current initiative of identifying good practice in implementing new laws in a less burdensome way, and recalls the CoR's active contribution, via a dedicated report and its permanent observer in the Stoiber group, to the collection of local and regional best practices in this regard, underlines, however, that the EU's focus should be on preventing excessive administrative burdens from arising in the first place;

13. takes note of the European Commission's Subsidiarity and Proportionality Report for 2010 (18th report on better lawmaking) and recognises the report as an indication that the European Commission takes the subsidiarity analysis performed by the CoR into account;

Impact assessment

14. recalls that, arising from the Lisbon Treaty, every EU draft legislative act has to contain an assessment of its potential impact, taking also into account the local and regional levels;

15. reiterates the significance of both *ex ante* impact assessment and *ex post* evaluation in policy-making and legislation, whilst welcoming an enhanced role for *ex post* evaluation;

16. recognises that efforts to simplify and improve European legislation involve striking a balance between conducting *ex ante* impact assessments and *ex post* evaluations while at the same time ensuring that such exercises do not impose additional administrative burdens on the various tiers of government;

17. notes the Annual Report of the Impact Assessment Board (IAB) for 2010. Considers that the IAB has an important role to play, but would benefit from greater independence from the European Commission;

18. believes that it shows that the impact assessment process and the role of the IAB provoke and sustain a closer monitoring of the subsidiarity principle on behalf of the services of the European Commission. A clear indication of this is where the report points to cases where data collected in the process of an impact assessment led the Commission Directorate-General to change its mind with regard to the necessity and possible added value of legislation;

19. notes that the IAB report identifies a tendency to perform and publish impact assessments on final legislative proposals, as opposed to early-stage policy communications. Calls for high-profile and high-impact policy initiatives to be accompanied by an impact assessment at an early stage, especially if the objective of such proposals is to inform decision-makers on the range of specific policy options at a later stage;

20. notes that the IAB report refers to the necessity to include an assessment of social impacts and administrative costs in the Impact Assessments prepared by the individual Directorates-General, however no reference is made to the assessment of specific territorial impacts and to the potential role of the CoR in assisting the European Commission in the process of Impact Assessment. Calls on the European Commission to address this, and for the IAB to report on progress made in its 2011 report;

21. deems it desirable that DG REGIO, as the directorate-general with the greatest understanding of the territorial dimension, be fully involved in the IAB;

22. feels that, in addition to the European Union's objective of territorial cohesion (At 3 TEU), both the horizontal clauses in

the Lisbon Treaty on social (Article 9 TFEU) and environmental (Article 11 TFEU) requirements together with the triple focus of the Europe 2020 strategy require impact studies taking a balanced look at the impact of regulation in territorial, economic, social and environmental terms;

23. feels that high-quality impact analyses and monitoring the implementation of legislation require time and significant human resources to ensure both expertise and an overall vision;

24. wishes to express its reservations regarding the trend of commissioning impact assessments from 'independent' bodies, in other words, externalising this task to designated consultancy firms or ad hoc committees. It is doubtful as to whether this externalisation genuinely achieves greater transparency or independence. It also amounts to denying the role of the Commission, which is to represent the general Community interest. Moreover, this approach could favour those with sufficient resources to carry out such studies, to the detriment of local and regional authorities, NGOs and representatives of civil society or workers on much lower salaries;

25. states its readiness to assist the EU institutions in these endeavours, if data from local and regional authorities is needed, whilst recalling its limited resources and core mission;

Interinstitutional arrangements

26. recalls that the impact of new EU laws on local and regional bodies can derive as much from amendments by the European Parliament and Council as from the initial European Commission proposal. Calls on the former two institutions to also pay greater attention to the territorial impact of their decisions throughout the legislative process, and offers its expertise in this matter. Considers that the concrete possibilities for such co-operation of the CoR with the European Parliament and the Council should be explored regarding impact assessments, the control of the subsidiarity principle and the implementation of EU legislation, both *ex ante* and *ex-post*;

27. calls on its own rapporteurs to consider the impact of their recommendations in terms of financial and administrative burdens, as well as the impact on the environment, the social fabric, small and medium-sized business and civil society;

28. considers that there should be a common approach to impact assessment by the EU institutions, and that the CoR should be involved in the formulation of any such approach;

29. welcomes the fact that the European Commission, in the context of the early warning system set up under the Lisbon Treaty gives adequate weight to national parliaments' reasoned opinions even though the necessary threshold for the 'yellow card' has not yet been met. Given its role and responsibilities in the subsidiarity monitoring process, the CoR requests from the European Commission the reasoned opinions sent by national parliaments, as well as their translations and the reply given by the Commission;

30. endorses plans to review the Cooperation Agreement between the CoR and the European Commission, taking into account the institutional changes brought by the Lisbon Treaty, the necessity to implement multi-level governance and the evolution of the political role of the CoR, while making provision for the improvement and development of cooperation on impact assessment as well as for establishing a mechanism for a CoR contribution to the annual report on better lawmaking;

High-Level Group on Governance

31. considers that this grouping provides a valuable forum for civil servants from the Member States and the European institutions, including the CoR, to debate practical issues in European governance and the exchange of good practice;

32. regrets therefore, that there will be no full meeting organised by the Hungarian nor Polish EU presidencies in 2011 and calls for its reinstatement in 2012;

B. Subsidiarity

33. recalls that the Lisbon Treaty makes explicit reference to local and regional self-government and to the local and regional dimension of the subsidiarity principle, which means that the EU has to respect the local and regional authorities' competences when proposing and adopting new legislation based on shared competences. Recalls also that the Lisbon Treaty confers upon the CoR a key role with regard to subsidiarity, which implies it defending not only the respect of the competences of local and regional authorities, but also promoting the respect of subsidiarity with regard to all levels of governance;

34. reiterates the CoR's commitment to continue working together with the European Commission to integrate multilevel governance into the major European strategies and common policies especially as regards the implementation of the EU 2020 strategy;

35. draws attention to the CoR 'Annual Subsidiarity Report for 2010' adopted by the CoR Bureau on 4 March 2011, together with the themes which will structure the work programme of the Subsidiarity Monitoring Network (SMN). The report identifies the strengthening of subsidiarity monitoring and the contribution to the mainstreaming of a subsidiarity culture in the EU decision-making process as key CoR priorities;

36. views positively the fact that no opinion has found a direct violation of the subsidiarity principle. This demonstrates the seriousness with which the European Commission respects the subsidiarity principle, and underscores the value of the CoR having a scrutiny role;

37. welcomes the increasing number of consultations of the Subsidiarity Monitoring Network, which has the potential to provide detailed practical comments from across a broad spectrum of local and regional bodies. Requests SMN partners to engage more fully in the activities and consultations of the network, in order to increase the representativity of the results of its consultative activities;

38. acknowledges the need for a timely, accurate and effective transposition of EU law and its proper application by all levels of government in the Member States and is aware that infringement procedures may sometimes be necessary to penalise non-compliance or act as a deterrent; expresses nevertheless concern that increasingly the European Commission tries to stipulate when and how Member State governments enforce compliance by local and regional authorities. Respecting the principle of subsidiarity, enforcement should be the responsibility of national governments themselves - and regional governments where appropriate - as long as the achievement of the overall objectives of the EU legislation is ensured.

Brussels, 11 October 2011.

The President
of the Committee of the Regions
Mercedes BRESSO
