CoR delegation to the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”

23 April 2018

Contribution of the CoR members of the EC Task Force on Subsidiarity

Objective (b)

Identification of policy areas where decision-making or implementation could be re-delegated in whole or in part or definitely returned to the Member States

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1. EXECUTIVE SUMMARY

This paper sets out some initial ideas of the three CoR members of the EC Task Force on Subsidiarity in the framework of the second objective of the Task Force – to identify in which policy areas decision-making or implementation could be re-delegated in whole or in part, or definitely returned to the Member States.

The approach that underpins the CoR members’ contribution is the following:

- To look at suggestions for policy areas of shared competence where the EU could either take back certain regulations or directives or revise the existing regulatory framework in order to simplify them or make them more flexible, and in this way to facilitate their implementation at the national, regional or local levels. In policy areas of exclusive competence, it is also necessary to assess whether the existing regulatory framework is proportionate to the objectives the EU is seeking to achieve.

- The CoR has not identified any entire policy areas of either shared or exclusive competence where it considers that no EU added value could ever be envisaged in the future, and therefore does not have suggestions to permanently remove any of the shared or exclusive competences enshrined in the Treaties by transferring them to the Member States.

The CoR members' approach to this second objective is consistent with, and significantly related to, their approach and suggestions with regard to the first and third objectives of the Task Force:

Firstly, in the context of the third Task Force objective (better involvement of regional and local authorities), the CoR members emphasised the need for greater flexibility towards local and regional authorities and have called for a better and more targeted involvement of LRAs in assessing the potential territorial impact of legislative proposals early in the process in order to anticipate and resolve potential difficulties in the implementation phase and reduce administrative burden. In many areas, a simplification of the regulatory framework could grant more flexibility to the Member States and their regional and local authorities and would also foster a culture of ownership.

Secondly, in looking at the first Task Force objective (better application of the principles of subsidiarity and proportionality), the CoR members considered that the strength and purpose of the subsidiarity principle in areas of shared competence is to ensure that the most appropriate levels take the right action at the right time and in the best interests of the citizens, with other levels supporting and complementing the action taken by the "lead" level. As was said by the President of the European Court of Justice, subsidiarity is a dynamic process of competence sharing between EU, national and sub-national levels where the "density" of European legislation in a field of shared competence can either increase or decrease having regard to the policy objectives, and it is the principles of subsidiarity and proportionality that define the degree of "density" needed in each case.

Subsidiarity and proportionality are legally-based principles that contain a significant element of political assessment. However, it is clear that there has been a significant problem of overlapping and blurring at national and sub-national levels between the political assessments that are part of the subsidiarity and proportionality scrutiny process, and political assessments that relate to the content of the policy proposal. It is therefore important that all relevant actors must have an agreed and shared understanding of subsidiarity and proportionality, and of the legal and political aspects of these assessments, and in this regard a common assessment grid would be a very useful tool, and would even be welcomed by the ECJ.
The CoR members consider that a more efficient application of the principles of subsidiarity and proportionality must be achieved within the existing Treaty structure by better exploiting the existing mechanisms and tools, and that subsidiarity must not only be done but must be seen to be done, by providing clearer explanations and justifications of the European added-value of legislative proposals for all levels of government and for the citizens, and this added-value must be presented in simple terms that ordinary citizens can understand.

In this paper, we have identified concrete areas where regulatory density could be reduced, based on adopted CoR opinions, recent submissions of stakeholders and studies (see overview in Annex I).

However, the CoR delegation also considers that the question of reducing the "density" of EU legislation or the possible re-delegation of competences to the Member States should not be separated from the question of whether there are areas where more EU action is needed. The starting point of the discussion should therefore be a subsidiarity assessment to identify where EU added-value can be shown and which level is most appropriate to achieve the agreed objectives.

As the EU is facing contemporary challenges not limited by clear confines, as well as issues stretching across borders, the CoR also sees a need for more EU action in several policy areas where EU added value can be identified into the future (for example in migration and asylum, tackling climate change, biodiversity conservation, social policy and in areas where the EU faces transnational issues, to name a few).

The broad approach of the CoR members to Objective (b) can be summarised in the graphic below, and the examples provided in this contribution serve as a non-exhaustive list, given that the CoR has not been able to scrutinise the entire EU Aquis in detail within the limited timeframe of the Task Force.

In view of the limitations of only examining the current legislative situation, the CoR members believe it is worthwhile considering a process or mechanism to assess these issues on an ongoing basis.
Accordingly, with a view towards the longer-term, the Task Force could also consider how debates on the role and competences of the EU could be framed in a more objective manner. In this regard, the CoR members are of the opinion that any debate on EU competences should be based on clearly defined criteria, rather than on ad-hoc proposals, and that the principle of subsidiarity, as developed by EU law since 1992, should be the guiding and sustainable approach for such a debate.

Accordingly, policy areas should be analysed on the basis of the existing subsidiarity criteria – and using the proposed common subsidiarity assessment grid - to determine whether the Member States can clearly exclude the possible need for EU action in the foreseeable future in order to defend the interests of the Member States (to avoid damage, higher costs or bureaucratic burden, or where a transnational dimension exists). If a possible need for EU action can be definitively excluded, then the relevant competence could be transferred to the Member States.
2. **AREAS WHERE LESS EU ACTION OR LESS DENSE EU ACTION IS NEEDED**

The CoR has not identified any policy areas of either shared or exclusive competence where it considers that no EU added value could be envisaged, either now or into the future, and therefore does not have any proposals to permanently remove any of the competences currently enshrined in the Treaties and to transfer them to the Member States.

However, the CoR delegation considers that, in some policy areas of shared competence, EU legislation has become too dense or complex and no longer offers adequate room for action or flexibility at other decision-making levels. In this regard, there is a clear link with the other objectives of the Task Force (better involvement of local and regional authorities and a more efficient application of the subsidiarity and proportionality principles). In this context, the CoR considers that a more structured and developed application of the subsidiarity and proportionality principles across the EU decision-making process, in particular in the context of a multi-level governance and partnership approach, could substantially address many of the issues that are putting pressure on the competences debate.

With regard to areas of exclusive competence, while it does not bend to subsidiarity scrutiny, it remains the case that local and regional authorities are affected by these policies and often have to implement them, and legislation in these areas is nonetheless obliged to comply with the principle of proportionality. Consequently, while not questioning the exclusivity of these competences, the CoR delegation suggests approaching these areas from the angle of genuine proportionality questions: how to reduce complexity and allow more room for a better involvement of local and regional authorities, who in the end are affected by these policies but often do not have an adequate role in their design.

With regard to areas of supporting competence, the CoR delegation emphasises that any EU action is clearly limited to supporting, coordinating or supplementing action of Member States under the Art. 6 TFEU. The CoR has not identified any issues in these areas of competence in its recent opinions in the context of the work of this Task Force.

Among several ways to render legislation more flexible and allow for more action at the national, regional or local levels in certain areas where it has become too dense, the CoR has focused on the following two approaches:

- The first is for the EU to fully withdraw certain regulations or directives, whereby the Member States may then exercise their competence in the area covered by that withdrawn legislative act, in accordance with Art.2 (2) of the TFEU:

  
  "...The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence."

- The second is to address those parts of the existing regulatory framework that are either considered disproportionate or unnecessary having regard to the objectives, or have given rise to difficulties in implementation on the ground due to their excessive complexity or lack of consistency with other actions. Adapting the regulatory framework to fix these shortcomings would offer more flexibility to the Member States to act at national, regional or local levels.
These revisions could bring about gains in efficiency and provide room for a better involvement of the local and regional levels, leading to an increased ownership of policies and thus a more active engagement.

The CoR delegation has identified several policy areas where legislation has become too dense or too complex, and no longer offers adequate room for action or flexibility at other decision-making levels, and suggests a more detailed consideration of the following areas:

1. Areas for simplification – shared competence;
2. Areas for simplification – exclusive competence;
3. Areas where more flexibility in implementation is needed for national and sub-national levels;
4. Areas to more effectively apply the principles of multi-level governance and partnership or to seek more ownership at national and subnational levels process in order to increase efficiency.

Each of these categories is described in detail in the subchapters below, highlighting examples in specific policy areas or concrete pieces of legislation.

2.1 Areas for Simplification - Shared competence

In several of its opinions, the CoR has raised the need for simplification in order to increase effectiveness. In the CoR’s understanding, simplification does not mean de-regulation, but rather that regulations, directives and single rules could be made more flexible (i.e. reducing targets, deadlines or requirements) or simplified (streamlining, reducing complexity, or ensuring consistency).

2.1.1 European Territorial Cooperation

Beyond the points raised on the simplification of Cohesion policy post 2020 (already sent to the Task Force members on the 23 March – see Annex II), the CoR members want to raise some further issues with regard to European Territorial Cooperation.

In the final report following a technical workshop organised by the CoR in cooperation with the European Commission/REFIT Platform and other partners in November 2017, as well as in several recent opinions\(^1\) the following points regarding the simplification of rules on eligibility and expenditure for cooperation programmes, designation of managing and certifying authorities and audit were put forward:


The implementation of ETC programmes could be facilitated by simplifying rules on the eligibility of expenditure, notably on the declaration of staff costs. In the interests of proportionality, managing authorities should not be required to verify or calculate the staff costs of beneficiaries.

Examples of measures to enable real simplification post-2020 would include: reinforcement of the use of simplified cost options (SCOs), more pre-defined options (off-the-shelf), availability of SCOs which more accurately reflect the expenditure patterns and project structure of ETC and increasing specific thresholds.

- **Re. Article 124 of the Common Provisions Regulation:**
  As for mainstream programmes, ETC stakeholders have expressed the need for a significant simplification of procedures for the designation of managing and certifying authorities, since these exist in parallel to the procedures for accreditation of programme authorities at national level and have resulted in damaging delays in the current programming period.
  Simplification measures proposed by the CoR include limiting requirements to a description of the roles of implementing authorities within operational programmes or ensuring that previously designated programme authorities only have to undergo a repeat designation procedure if there are significant changes in procedures or functions (stakeholders have expressed concern notably that audit bodies are reluctant to apply the possibilities provided under Article 124(2), last sentence).

- **Re. Article 127 of the Common Provisions Regulation (Functions of the audit authority):**
  The provisions on statistical and non-statistical sampling methods for audit of declared expenditure are creating difficulties in ETC programmes due to their cross-border nature and the small scale of financial allocations involved. The CoR recommends that the coverage rate (5% of operations, 10% of expenditure) should be reduced or entirely left to the professional judgment of the audit authorities taking due account of programme specificities.
  With regard to current practices in terms of error extrapolation practices, the CoR recommends that errors should not be extrapolated to the whole cooperation programme if the error concerns one project partner only. It would also appear proportionate to increase the materiality level for errors to 5% to encourage experimentation and to allow first-time project promoters to apply for support.
  The critical importance of applying the Single Audit principle to ETC programmes is also highlighted.

While the objective of ensuring maximum regulatory stability in the interest of legal and operational certainty is a key priority for local and regional authorities, the CoR calls for targeted simplification measures to reduce administrative burden and optimise the efficiency of the regulatory framework.

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2.1.2 Research, technological development and space

In this area, the CoR has looked more closely at the research and innovation funds and emphasised the need to simplify the processes of application for these funds, as well as the reporting processes. Simplification could be achieved through a greater use of standard costs, in particular as regards auditing.

2.1.3 Environment

In the area of environment, the CoR supports the streamlining of monitoring and reporting requirements in EU environment law and the intention to develop a more modern, efficient and effective environmental monitoring and reporting system in EU legislation. However, the CoR highlights the importance of allowing for an assessment by local, regional and national authorities and for a self-assessment by the regulated sectors of compliance with EU legal obligations. Such efforts would reduce the administrative burden on local and regional authorities and businesses without having a negative impact on relevant data reporting. In addition, it is suggested that the European Commission should set up an expert group, composed of representatives from Member States, local and regional authorities and key stakeholders, to provide advice on improving the quality and coherence of the EU environmental acquis and its implementation.

2.1.4 Freedom, security and justice

With regard to funding for the integration of migrants, the CoR welcomes the European Commission's commitment to support integration efforts. However, in CoR’s view, synergies must be found between the various European funds that could support integration policy. Besides the main source of support (AMIF), integration projects can also be funded under the Internal Security Fund (ISF), the European Social Fund (ESF), the European Regional Development Fund (ERDF), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime and Fisheries Fund (EMFF) and the Fund for European Aid to the Most Deprived (FEAD). Moreover, the CoR calls on the Commission to limit excessive administrative complexity and bureaucracy with regard to the monitoring mechanisms of the different European funds that are used for integration projects so that Member States and local and regional authorities can effectively focus all their energy on integration policy on the ground, while ensuring that monitoring is sufficiently strict to ensure that public funds are being used efficiently.

Similarly, with regard to the funding of security measures and the protection of public spaces, the CoR calls on the Commission to simplify and increase access to EU funds for non-state actors, opening them up to local authorities of all sizes, and ensuring that they are used efficiently, and that relevant links are established with national, regional and local security funding.

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4 Opinion on 'The REFIT Programme: the local and regional perspective', COR-2016-00983, rapporteur François Decoster (FR/ALDE)
5 Opinion on EU environment law: improving reporting and compliance, CDR 2015/5660, rapporteur: Andres Jaadla (EE/ALDE)
6 Opinion Action plan on the integration of third country nationals, COR-2016-04438, rapporteur Karl Vanlouwe (BE/EA)
7 Opinion Action Plan to support the protection of public spaces, COR-2017-05902, rapporteur Jean-François Barnier (FR/ALDE)
2.1.5 Value Added Tax (VAT)

VAT compliance costs represent a significant administrative burden for SMEs and micro-businesses, notably with regard to cross-border transactions. In several opinions and in the context of REFIT the CoR asked for simplification of VAT rules and called the following:

- A further simplification of rules and procedures linked to different VAT regimes in cross-border trade, an extension of the mini One Stop Shop principle, and a common EU cross-border threshold below which VAT would not be applied;
- Ensuring that enterprises carrying out commercial transactions within the single market will be able to settle any VAT-related issues with the competent authority in their country of origin and that they will not be required to register for VAT, submit returns and pay charges in all the EU Member States in which they conduct business transactions;
- Reducing the administrative burden on companies by extending the mini One-Stop-Shop (MOSS). An extension to the Single Electronic Mechanism for registration and payment of VAT and developing the complex VAT rules in a targeted way to facilitate cross-border digital trade. In the CoR’s view, this would benefit small and micro-businesses, as it is harder for them to contend with the administrative burdens that complex legal frameworks inevitably entail.

2.2 Areas for simplification - Exclusive competence

Simplification measures can also be considered in two areas of exclusive competence where local and regional authorities are mostly affected and involved in the implementation of the measures in these policy areas: competition rules (two examples SGEIs and Digital Single Market) and the conservation of marine biological resources.

2.2.1 Competition rules necessary for the functioning of the internal market

- Services of General Economic Interest (SGEI)
  
The current regulatory framework governing State aid in the context of SGEIs has given rise to difficulties in implementation on the ground due to its excessive complexity. The CoR therefore urges the Commission to tighten up the multiplicity of secondary legislation and "soft law" texts relating to aid (regulations, communications, guidelines, etc.) and, where appropriate, to collate them. Relevant stakeholders point to the complexity and possible inconsistencies between different documents to be taken into account, making it difficult for them to assess which rule is to be applied in a specific case (contradicting definitions, see also REFIT contributions on this point).

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8 Currently an opinion is being prepared on the Fair Taxation Package, ECON-VI/33, rapporteur Paul Lindquist (SV/EPP), which deals also with the Commission proposal to simplify certain VAT rules for small enterprises.
9 Opinion on Smart Regulation for SMEs, COR-2016-05387, adopted on 12-13 July 2017, rapporteur Christian Buchmann (AT/EPP).
12 Opinion on State Aid and Services of General Economic Interest, COR-2016-01460, rapporteur Markus Töns, adopted on 11 October 2016.
13 See Member States Reports on the application of the SGEI decision during 2012-2016.
Other proposals aimed at simplifying State aid control are; to increase the threshold for exemption from the notification obligation under Article 108(3) TFEU of state aid in the form of a public service compensation for companies entrusted with delivering SGEIs to the threshold in effect before 2011 (EUR 30 million per year); and a revision of the definition of reasonable profit of an SGEI, in particular to reflect the fact that, through incentives or an increase in the percentage of recognisable reasonable profit, such profit is often reinvested in SGEIs.

Member States have a wide discretion to determine the nature and scope of an SGEI mission. In the field of social housing, the definition contained in the Commission Decision of 20 December 2011 (restriction of social housing to "disadvantaged citizens or socially less advantaged groups") goes against the principle of subsidiarity since it limits Member States margin to define an SGEI. This restriction should be removed\textsuperscript{14}.

There is also a need to ensure a level playing field between ESI funds and centrally managed funds post-2020 by exempting all or part of ESIF from State aid notification requirements. The current application of different state aid regimes to different types of EU funding results in legal uncertainty, delays and even missed opportunities. This situation could be avoided by extending the non-applicability of Articles 107 et seq. of the Treaty recognised in the EAFRD and the EMFF to all funds or by significantly simplifying the application of state aid rules to the use of ESI Funds, for example by acknowledging state aid compatibility on the basis of simple criteria such as compliance with approved operational programmes\textsuperscript{15}.

- **Digital Single Market**
  
The CoR\textsuperscript{16} notes the important role that LRAs play in providing digital services for individuals and creating and managing digital infrastructure, often as part of cross-border or interregional cooperation. The CoR has identified rules on state aid among a number of administrative burdens resulting from over-regulation and lack of consistency that needs to be addressed\textsuperscript{17}. Furthermore, in the interests of competition in both the fixed and 5G markets, the CoR sees the need to separate services from networks, along the same lines as the energy sector (unbundling).

### 2.2.2 Conservation of marine biological resources

The conservation of marine biological resources is closely linked with the Common Fisheries Policy (CFP). However, it represents an exclusive Union competence. The CoR has recommended on many occasions to all European institutions and Member States to consider the territorial and the socio-

\textsuperscript{14} Opinion on The European Commission Report on Competition Policy 2016, (ECON-VI/013), rapporteur Michael Murphy (IE/EPP), adopted 1 December 2017, and CoR opinion on State Aid and Services of General Economic Interest (ECON-VI/013), rapporteur Markus Töns, adopted on 11 October 2016; see also EU Urban Agenda – Housing Partnership guidance on EU regulation and public support for housing.


\textsuperscript{16} Opinion on the “Digital Single Market: Mid-term review”, COR-2017-03224, rapporteur Alin-Adrian Nica (RO-EPP),

\textsuperscript{17} Opinion on Boosting broadband connectivity in Europe, COR-2017-06047, rapporteur Mart Võrklaev (EE/ALDE).
economic dimensions of the structural policies such as the CFP, which is particularly important in coastal and peripheral regions.

However, local and regional authorities have difficulties in providing systemic feedback even though they are directly concerned by developments in this policy area:
- Although small scale fisheries are an important part of the economic and social ecosystems of coastal communities, no systemsatics territorial impact assessments have been conducted, especially with regard to the socio-economic impact of nature conservation policies,
- Small scale fisheries are often based in harbours and small ports that are the property of a municipality. When problems arise, fishermen seek answers from their local authorities, who have no instruments to influence CFP implementation or the financing tools of the European Maritime and Fisheries Fund (EMFF).

The CoR has advocated for an increased regionalisation of the CFP, so that the knowledge and experience of all stakeholders, particularly local and regional authorities, can be used in the Common Fisheries Policy and has stressed the importance of macro-economic strategies. Regarding the conservation of biological marine resources, the CoR has drawn attention to the potential risks and negative effects of a compulsory introduction of a system of transferable fishing concessions and recommends such systems to be voluntary and within the competence of each Member State. The CoR urges the use of scientific research in implementing the reform of the CFP, protecting marine ecosystems and managing risks in crisis situations.

2.3 Areas where more flexibility in implementation is needed

The CoR suggests looking for potential efficiency gains through the granting of more flexibility in implementation measures, in particular in the areas of public procurement, environment and energy.

2.3.1 Public Procurement

In the view of the CoR, the consideration of green, social and innovative criteria, as introduced by the 2014 reform, should be left to the discretion of the public authority in question, in line with the principle of local autonomy in organising public services. The right of public authorities to provide and organise their services directly and the concepts of "in-house" and "public-public cooperation" were approved and defined by the 2014 reform. Public procurement is thus only one of many alternative ways of providing public services. There is a need to avoid adopting a de facto binding approach in the implementation of strategic criteria and/or innovative procurement, also because it

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18 Opinion on Legislative Proposals on the Reform of the Common Fisheries Policy, CdR 239/2011, rapporteur Mieczysław Struk (PL/EPP)
19 Opinion on Legislative Proposals on the Reform of the Common Fisheries Policy, CdR 239/2011, rapporteur Mieczysław Struk (PL/EPP)
20 Opinion on Innovation in the Blue Economy: Realising the potential of our seas and oceans for jobs and growth, COR-2014-04835, rapporteur Adam Banaszak (PL/ECR)
21 By 18 April 2016, Member States had to transpose the following three directives into national law: Directive 2014/24/EU on public procurement; Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors; Directive 2014/25/EU on the award of concession contracts
goes against the principle of local autonomy in providing public services and therefore against the principle of subsidiarity.

Imposing strategic criteria and/or innovative procurement or encouraging any form of conditionality\textsuperscript{22} may raise additional difficulties for public authorities, since the implementation of the public procurement framework is already difficult on the ground due to its excessive complexity. Strategic and innovative procurement requires higher levels of conceptual, operational and managerial skill, and smaller local and regional authorities sometimes lack the necessary know-how and therefore avoid using public procurement because they fear making procedural mistakes, or they may be reluctant to change traditional patterns of procurement or develop innovative public procurement.

Furthermore, state aid rules, EU accountancy rules (such as the ESA 2010 rule) and Commission practice in effect exert pressure on authorities to use public procurement as an "easier" way of complying with EU competition rules and avoiding challenges of "over-compensation". As a result, the discretion of Member States and regional/local authorities to organise their public services, particularly in the social field, is limited and runs counter to the provisions of Article 14 TFEU. The fact that there is no equivalent in the context of state aid to the “in-house exemption” available under the public procurement rules adds further strain on regional/local authorities. This issue should also be taken into account in the context of the harmonized European Public Sector Accounting Standards (EPSAS) that aim to increase fiscal transparency and achieve comparability of public sector accounting and reporting systems within and across MS.

2.3.2 Environment

In several opinions in the area of environment\textsuperscript{23}, the CoR has called for simplification, greater flexibility and a better reflection of the needs of the local and regional levels. The CoR's main focus and demand is to leave more room for action at sub-national level and to take better account of regional and local specificities to allow for a smoother implementation. Specifically, with regard to the Revision of the Environmental Impact Assessment Directive\textsuperscript{24} the CoR suggests granting more flexibility to facilitate easier implementation in four ways:

\begin{itemize}
  \item[a)] Public consultation: any deadlines exceeding the minimum deadline of 30 days should be a matter for the Member States to decide;
  \item[b)] Faster EIA procedures could be better achieved through differentiated national rules adopted by the Member States;
  \item[c)] New provisions in Article 8 on development consent should not be part of the EIA Directive, as they lead to overlaps or contradictions between EU and national sectoral law;
  \item[d)] Inclusion of environmental objectives established at regional or local levels in addition to objectives established at Union or Member State levels;
\end{itemize}

\textsuperscript{22} Draft opinion on the Public Procurement Package, COR-2017-05425, rapporteur Adrian Ovidiu Teban (RO/EPP), scheduled for adoption on 4-5 July 2018.


\textsuperscript{24} Opinion on Revision of the Environmental Impact Assessment Directive, CDR 2013/591, rapporteur: Marek Sowa (PL/EPP)
e) Reconsider the revisions (proposed amendments) in view of the impact on local and regional authorities, ensuring they do not lead to an increased administrative burden for local and regional authorities in terms of organisation, management and expenditure.

2.3.3 Energy

With regard to the renewable energy and internal electricity market, the CoR has emphasised\(^{25}\) that Member States, regions and local authorities must be granted more flexibility in relation to the development of next-generation renewable energy technologies and to the protection of small-scale projects. Local and regional authorities are currently not given an adequate role or recognition as actors in the field of energy, and the recent proposals\(^{26}\) fail to mention regional or local authorities and their important role in the energy sector. Through their actions, local and regional authorities can influence the development of energy infrastructure and the functioning of the market. They organise the provision of services such as transport and are responsible for spatial planning and land use policy, street lighting, management of housing; they make decisions on issuing permits and they educate and inform local people. Additionally, they control large budgets for public procurement of energy-consuming products and services, and in many cases local and regional authorities are also energy producers.

The CoR calls\(^{27}\) for the strict respect of the subsidiarity principle in all future legislation relating to the management of energy demand and decentralised renewable energy production, as well as the protection of consumers and of their rights, as well as for the proper consideration of the competences of local and regional authorities in order to ensure that they are afforded a level of intervention corresponding to their role in the implementation of policy in the area of energy.

2.3.4 Common Agricultural Policy (CAP)

In relation to farm inspections, the CoR advocates a risk based, more flexible and proportionate approach so that more than one type of inspection can be carried out on a single visit and, in justified cases, giving early notice of inspections to ensure they can be carried out efficiently and with limited disruption to the daily work of farmers and other beneficiaries. When there is a high chance of errors, pre-inspections could take place to help increase compliance and ownership of the beneficiaries\(^{28}\).

Regarding the CAP, the CoR suggests looking more closely into funding rules that are too complex and insists on the need to continue to harmonise the Structural Fund operating rules by means of the common strategic framework to facilitate the design and management of rural development programmes and to promote integrated and place-based approaches. Furthermore, the CoR suggests

\(^{25}\) Opinion on Renewable energy and internal electricity market, CDR 2017/832, rapporteur: Daiva Matonienė (LT/ECR)


\(^{27}\) Opinion on Delivering a New Deal for Energy Consumers, CDR 2015/5369, rapporteur: Michel Lebrun (BE/EPP)

\(^{28}\) Opinion on the simplification of the Common Agricultural Policy, CoR-2015-02798, rapporteur Anthony Gerard Buchanan (UK/EA)
developing the lead fund approach in order to standardise the management of projects financed from more than one fund\textsuperscript{29}.

2.4 Areas where the principles of multi-level governance and partnership should be more effectively applied

In some areas, more effectiveness could be achieved through the involvement of all government levels by giving them room for action according to their role and functions and taking the specific characteristics of each governance level into account when designing policies, thus better respecting the principles of multi-level governance and partnership. In this context, the CoR wishes to draw attention to the areas of the internal market for services, development cooperation and humanitarian aid, transport, energy, integration of migrants and common agriculture policy.

2.4.1 Internal market for services

In this area, the CoR has put forward proposals\textsuperscript{30} to make the rules more flexible and simple for both businesses and for regional and local authorities. The CoR supports measures to open up services markets but highlights that reforms should respect Member States' rights to regulate services in line with the principles in the Services Directive and take account of multi-level governance.

- With respect to the notification procedure, the CoR questions the added value of the new notification procedure, which imposes more restrictions on the national legislator, including at regional and local level, and is more complicated to implement. The CoR proposes substituting a non-binding recommendation for the proposed Decision under Article 7, as the latter would unduly restrict the freedom of legislators at national, regional and local level;
- In relation to the European services e-card, the CoR questions whether the right balance is achieved between the benefits for services providers and the red tape for Member State authorities, including at regional and local level;
- As regards the proportionality test, the CoR points out that the new rules will require thorough, objective and evidence-based proportionality tests involving wide stakeholder engagement, which will increase the workload and costs for Member States, including at regional and local level. In the CoRs view, it is excessive to make these tests obligatory for amendments to existing provisions on regulated professions.

2.4.2 Development cooperation and humanitarian aid

Regarding development cooperation and humanitarian aid, the CoR has called in recent opinions\textsuperscript{31} for the full involvement of regions and local authorities in transposing the Sustainable Development Goals, highlighting that the 2030 Agenda for Sustainable Development should be seen as a multi-level

\textsuperscript{29} Opinion on The CAP after 2020, COR-2017-01038, rapporteur Guillaume Cros (FR/PES)
\textsuperscript{31} Opinion on Next steps for a sustainable European future – European action for sustainability, rapporteur Franco Iacop (IT/PES), COR-2017-00137-00-00-AC and opinion on Proposal for a new European Consensus on Development - Our World, our Dignity, our Future, COR-2016-06940, rapporteur Jesús Gamallo Aller (ES/EPP).
and multi-stakeholder agenda that puts obligations on all public authorities at the various levels (local, regional, national and global). The ongoing OECD project on “Decentralised Development Cooperation: Financial Flows, Emerging Trends and Innovative Paradigms” also emphasises multi-stakeholder policy dialogue as particularly relevant and highlights that promoting a territorial approach to Decentralised Development Cooperation could be a powerful means to increase the effectiveness of action in this area.

2.4.3 Transport

In the area of transport, and in particular with regard to the issue of liberalising the market for bus services, the CoR is concerned as to whether these proposals are compatible with the need to provide services of general economic interest, as well as access to bus terminals. The CoR calls for the respect of multi-level governance, as public service obligations for transport and management of terminals at local level are competences of local and regional authorities and such services should not be compromised by opening access to both local terminals and public bus transport services.

Moreover, the rather technical specifications and definitions could give rise to an issue in terms of the respect of the subsidiarity principle and multi-level governance, as in case of the list of "clean technologies" set out in the Annex I to the Proposal for a Directive on the promotion of clean and energy-efficient road transport vehicles, which does not include bio-gas. The CoR considers that defining such a list at EU level may be incompatible with the right of Member States to determine their own energy mix (where bio-gas is one of the options).

2.4.4 Energy

With regard to energy, the CoR points to multi-level governance as a precondition for effective Energy Union governance and calls for a clear multi-level approach. Local and regional authorities are already heavily involved and many of them have already put together strategies, action plans and monitoring procedures. Therefore, in the view of the CoR, planning and reporting must be simplified and integrated on the basis of existing local and regional plans. The CoR would have preferred to see the governance system introduced via a Directive rather than a Regulation, which would allow for a more appropriate involvement of regional authorities, in particular in federal countries.

2.4.5 Area of freedom, security and justice: funding of migrant integration

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32 A version of project's draft report is presented in the CIJEX commission meeting on 11 April 2018; the final version is to be elaborated by summer 2018.


34 A forthcoming opinion on Delivering on Low-emission mobility, COR-2017-06151, rapporteur Michiel Scheffer (NL/ALDE), scheduled for adoption at the July 2018 plenary.


36 Opinion on Energy Union governance and clean energy, CDR 2017/830, rapporteur: Bruno Hranitelj (HR/EPP)


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With regard to migration and integration, the CoR emphasises\(^{38}\) that the particular role and responsibilities of local and regional authorities are not fully reflected in terms of funding and support, and the CoR therefore suggests committing to multi-level governance in this area.

Regional and local authorities manage all issues relating to migratory and refugee flows on the ground, and it is therefore essential that they are provided with the necessary financial resources to meet these challenges. This requires an EU budget commensurate with the increased needs and distributed among the authorities concerned according to the activities they actually carry out, under a coordinated EU responsibility for the protection of the Union's external borders and migration. In the view of the CoR, the close involvement of sub-national authorities and bodies would help to build up a system of governance capable of designing and implementing policies that are coherent and coordinated between the different levels. In this regard, local and regional authorities should be partly responsible for the management of the Asylum, Migration and Integration Fund.

### 2.4.6 European Semester: Strengthening ownership at national and subnational levels to improve performance and increase efficiency

Assessments provided by the Commission every year\(^{39}\) show that the overall performance of the European Semester in promoting structural reforms is unsatisfactory. This is due to a lack of ownership at country level, which makes it difficult to overcome other obstacles such as technical complexity, distributional impacts at territorial and social level, insufficient administrative capacity and a lack of coordination across levels of government\(^{40}\).

In order to improve the efficiency and performance of the European Semester, the CoR has (in several Resolutions\(^{41}\)) proposed the following:

- Designing and implementing the European Semester priorities through a mixed top-down and bottom-up process involving all levels of government and relevant stakeholders;
- Promoting the structured involvement of local and regional authorities as partners in the European Semester, in the light of the division of powers and competences across levels of government in EU Member States; to this aim, the CoR has proposed a Code of Conduct\(^{42}\);
- Including a specific chapter on the state of the regions and addressing the role of local and regional authorities in the Annual Growth Survey (AGS) and in the Country-Specific Recommendations, and asking Member States to do the same in their National Reform Programmes;
- Aligning the European Semester to the EU’s long-term goals of pursuing the UN 2030 Agenda for Sustainable Development.

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\(^{38}\) Opinion on Implementation of the European Agenda on Migration, COR-2017-05048, rapporteur Dimitrios Kalogeropoulos (EL/EPP).

\(^{39}\) See Country reports.

\(^{40}\) These obstacles are acknowledged in the latest Annual Growth Surveys, Country Reports and CoR Resolutions on the AGS and the European Semester, as well as in the letter “2017 European Semester Process: Peer pressure for better implementation”, addressed by the EFC Chair to the President of the Ecofin Council on 2 October 2017.


\(^{42}\) CoR Opinion on Improving the governance of the European Semester: a Code of Conduct for the involvement of local and regional authorities, COR-2016-05386, 11 May 2017, rapporteur Rob Jonkman (NL/ECR)
2.4.7 The European Semester and Cohesion Policy (revision of the Common Provisions Regulation, using the performance reserve to support structural reforms)

The CoR is opposed\(^{43}\) to making Cohesion policy subordinate to the European Semester, which would undermine its status enshrined in the Treaties. Indeed, the objective of cohesion policy – *to reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions* – does *not* include an obligation to finance structural reforms in the Member States.

In this context, the CoR has recently rejected\(^ {44}\) the Commission's proposal to change the Common Provisions Regulation (CPR) with a view to using the performance reserve to support structural reforms in the Member States through the "cash for reforms" system (see next point). The CoR expressed its concern that establishing such a system would be contrary to the principles of partnership, multi-level governance, co-financing and shared management upon which Cohesion policy is built and would not encourage local and regional ownership of EU-relevant structural reforms, given that most of them require local and regional government involvement. Moreover, this proposal would contradict the obligations of thematic concentration set by the CPR (art 18 CPR) and that the performance reserve is available only to programs and priorities that have achieved their milestones and give incentives for successful management and implementation.

2.4.8 New budgetary instruments for the euro area

The CoR also recently expressed its concerns\(^ {45}\) regarding Commission’s proposal for a centrally-managed structural reform delivery tool based on the principle of "cash for reforms", with no co-financing obligation on Member States\(^ {46}\), complemented by technical assistance provided by the Structural Reform Support Programme. This proposal, as presented in the communication, is insufficient as a basis upon which to develop the necessary legislative proposals and no impact assessment or stakeholder consultation has taken place before publishing it.

The CoR therefore suggests that the following principles be taken into account when developing a financial tool to support structural reforms:

- Budgetary support for structural reforms to promote economic, social and territorial cohesion and falling within the remit of Cohesion policy should be supported by the future ESIF programmes, while respecting the principles of subsidiarity, partnership and multilevel governance, instead of setting up a separate funding programme;
- This budgetary tool should be funded without crowding out private investment and other public funding schemes. In particular, the share of Cohesion policy funding in the next MFF must remain at the same level as today to ensure the effectiveness of the policy, and a "top slicing" of ESIF resources to fund structural reforms has to be avoided;
- EU funding for structural reforms falling outside the remit of Cohesion policy should be supported by providing loans instead of grants;

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\(^{43}\) CoR Opinion on Mid-term review of the ESF preparing the post-2020 proposal, COR-2017-06121, 23 March 2018, Rapporteur Marini (IT/PES)

\(^{44}\) CoR Resolution on changing the ESI funds Common Provisions Regulation to support structural reforms, 1 February 2018


\(^{46}\) COM (2017) 822 final
• Technical assistance, which should be coordinated under a single set of EU guidelines, should be open to local and regional authorities;
• The system of defining and deciding on structural reforms needs to be revised in order to include local and regional authorities in the European Semester;
• Any proposal for EU funding for structural reforms needs to include an ex-ante impact assessment and a stakeholder consultation and should also include provisions for a mid-term evaluation.

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## ANNEX I – SUMMARY OF PROPOSALS

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*This area includes migration and asylum, funding of migrant integration and of protection of public spaces.
ANNEX II – COR PROPOSALS ON THE SIMPLIFICATION OF COHESION POLICY

CoR proposals for Simplification of ESI Funds

At its initial meeting of the TF meeting in January it was agreed that “the results of the Task Force should not only be guidelines for a future European Commission but should also be taken into account in the current legislative process.”

Since the Commission has recently announced it will present the legislative proposals for all EU programmes for the post-2020 legislative framework on May 29th, the CoR members in the TF would like to use this opportunity to make some suggestions in view of effective simplification, reduced administrative burden and more flexibility at national and regional level for the future Cohesion Policy.

These proposals derive from a series of Opinions adopted over the course of the current programming period and a series of technical workshops staged over the course of 2016 and 2017 organised in cooperation with the Dutch and Slovak Council presidencies and other institutional partners.

It is emphasised that, while the objective of ensuring maximum regulatory stability between programming periods in the interests of legal and operational certainty is a key priority for LRAs, targeted amendments in the form of simplification measures are also called for in parallel to reduce administrative burden and optimise the efficiency of the regulatory framework. In this context and as a result of the actions outlined above, the following proposals are made:

- **Increased flexibility in implementing cohesion policy** should be achieved by the following measures:

  o reduce the complexity of the partnership agreement by focussing essentially on overall strategy; in this way the partnership agreements would better respect the scope provided in the ESIF regulations, in line with the principle of subsidiarity, whereby the way in which the provisions laid down in the regulations are fulfilled is to be determined according to regional requirements and defined in the corresponding Operational Programmes.

  o provide more flexibility in applying thematic concentration by reducing the complexity of the thematic objectives and investment objectives, tailoring them to the specific needs of different territories and increasing the focus on results.

  o increase flexibility by re-examining the suitability of the current requirements relating to the performance reserve and the performance review; a streamlined 'flexibility reserve' would

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2. The proposals set out in this paper are drawn notably from the CoR Opinions on (i) the Final conclusions and recommendations of the HLG on Simplification post-2020 (COR-2017-04842), (ii) the Future of Cohesion Policy beyond 2020 (COR-01814/2016) and (iii) the Financial rules applicable to the general budget of the Union (COR-2016-05838)
enable Operational Programmes to react more swiftly to evolving regional needs and opportunities while retaining the strategic focus of the corresponding OP;

- the use of financial instruments within ESIF should be based on regional needs rather than based on top down quotas, and the choice of the most suitable instrument (grant or financial instrument) for a given context left to the Member State. Measures to simplify the combination of grants and financial instruments would also encourage further synergies in this area.

- a differentiated approach to audit should be facilitated and underpinned by contracts of confidence between the EU and national audit authorities and managing authorities (taking account of such factors as programme scale, risk profile, administration standards, etc.). Member States and managing authorities could also be invited to choose to conduct the administrative implementation of their programmes based purely on either European or national law, which would avoid all potential conflict between national and EU provisions.

- **Reduction of complexity and administrative burden** should be achieved by the following measures:

  - A level playing field between ESI funds and centrally managed funds post-2020 in terms of State aid notification and public procurement rules. The current application of different state aid regimes to different types of EU funding results in legal uncertainty, undermining synergies between European instruments, delays and even missed investment opportunities. This situation could be avoided by extending the non-applicability of Articles 107 et seq. of the Treaty as recognised for the EAFRD and the EMFF to all ESI funds, or by significantly simplifying the rules, for example by acknowledging state aid compatibility of ESI investments on the basis of criteria such as compliance with approved operational programmes.

  - In view of the scale of investments and the multilateral nature of such programmes, full exemption from State aid notification requirements should be foreseen for European Territorial Cooperation (ETC)\(^3\).

  - With regard to audit requirements, we call for further facilitation of the Single Audit principle and for simplification of monitoring, reporting and evaluation requirements. We also recall the CoR’s suggestion to raise the materiality threshold to 5%, in line with international accounting standards and to move towards a more differentiated approach post-2020. This would enable better use to be made of duly certified national systems for audit, reporting and controls and more flexibility to accommodate existing national checks and procedures, in full application of the partnership principle.

\(^3\) Specific simplification proposals for ETC were examined in more detail in the context of the CoR’s involvement in the REFIT Platform and the joint workshop organised in November 2017 [http://cor.europa.eu/en/events/Pages/Simplification-of-the-ETC.aspx](http://cor.europa.eu/en/events/Pages/Simplification-of-the-ETC.aspx)
With regard to **programming**, we call for a reinforced commitment to **multi-level governance**, where a place-based approach through shared management is the most effective approach for delivering efficient and appropriate solutions on the ground while taking account of the full diversity of the Union's territories. To this end, we call for more formal implementation commitments post-2020 to the principles of the **Code of Conduct on Partnership which could become an ex-ante conditionality**. A more inclusive approach is essential to ensure that LRAs are actively involved in upstream programming decisions (for example, on thematic concentration) for which they will later assume implementation responsibility. We also note that coherent application of the subsidiarity principle also means support for LRAs in capacity-building with regard to administrative and programme management and implementation related initiatives and projects.

Specific simplification requests reiterated by stakeholders in relation to programming include streamlining post-2020 of the **designation process** (formal recognition by the Commission of existing national certification systems), which has resulted in disproportionate administrative burden in relation to certification systems duly accredited under national law and was a significant factor in the delayed start to programme implementation experienced at the start of the current MFF. Since exhaustive verification of these national systems has now taken place, we propose, for the successful programmes, that existing designations are carried over from one programming period to the next with the full designation process being carried out only in respect of new certification systems at national level.

The proportionality of the current provisions on net revenue calculation applied in the context of determining eligibility of expenditure could also be re-examined for the post-2020 framework.

In the interests of **legal certainty**, we call for a **reduction of delegated and implementing acts** to a minimum and for binding requirements to be set out in the operative provisions of EU regulations.

Increased flexibility for Operational Programmes would also facilitate more efficient and effective spending. Measures are required particularly to enable swifter adaptation of existing **operational programmes** for more rapid and targeted reaction to economic, social and environmental developments affecting the territories in question. A simplified procedure for such adaptations could also serve to facilitate the coordination process with the Commission. Increased flexibility for national authorities to transfer a certain proportion of funds between priority axes with simplified notification of the Commission would also enable more effective use of funds in response to evolving needs (for example 10% as allowed at the end of the 2007-2013 programming period). Administrative burden would thus be reduced by applying the current notification procedure for significant amendments to OPs only (ie. amendments corresponding to more than 10% of the financial allocation of a given priority axis).

Combining ESI funds with other funding streams available under the EU budget (centrally managed EU funds and loan instruments) has been a key challenge for LRAs and beneficiaries alike during the current programming period. To maximise synergies and better spending in future, we are calling for a new **Common Strategic Framework** for all EU
policies and funds with a territorial dimension. Since the objective of the ESI funds is to promote investment in public goods corresponding to many of the Union's strategic policy areas (energy, climate change, innovation, social inclusion etc.), a coordinated framework of this kind would reinforce strategic consistency, facilitate synergies and avoid duplication of interventions.

- **A Single Rulebook** would play a complimentary role in ensuring greater consistency and facilitating compatibility of funds at technical level. We note that 'One Stop Shops' have been set up by several Member States at national or regional level for precisely this reason – since authorities and beneficiaries have required assistance in managing and combining the present range of rules, requirements and opportunities.

- More flexibility should be put in place for an improved integration between EU funds and notably the ITI and CLLD tools. These **integrated investment tools** have important potential for addressing emergent subregional disparities as documented in the recent Seventh Cohesion Report, since they facilitate a holistic approach to territorial development, embracing urban and rural areas as complementary functional spaces⁴.

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Opinion on the Simplification of ESIF from the perspective of Local and Regional Authorities (rapporteur Petr Osvald (CS/PES)) (COR-08-2016)
Opinion on the Outcome of the negotiations on the partnership agreements and operational programmes (rapporteur Ivan Žagar (SI/EPP)) (COR-06248-2014)
Opinion on the Future of Cohesion Policy beyond 2020 (rapporteur Michael Schneider (DE/EPP)) (COR-01814/2016);
Opinion on the Financial rules applicable to the general budget of the Union (rapporteur Michiel Rijsberman (NL/ALDE)) (COR-2016-05838)
Opinion on the Final conclusions and recommendations of the High Level Group on Simplification post-2020 (rapporteur Oldřich Vlasák (CS/ECR)) (COR-2017-04842)
Opinion on Integrated territorial investments – a challenge for EU cohesion policy after 2020 (rapporteur Petr Osvald (CS/PES)) (COR-2017-03554)

Full details of findings and recommendations of the workshops on auditing, State aid and public procurement and Financial instruments in cohesion policy are available here: final report of the simplification workshops

The final report of the workshop on simplification of ETC is available here: http://cor.europa.eu/en/events/Pages/Simplification-of-the-ETC.aspx