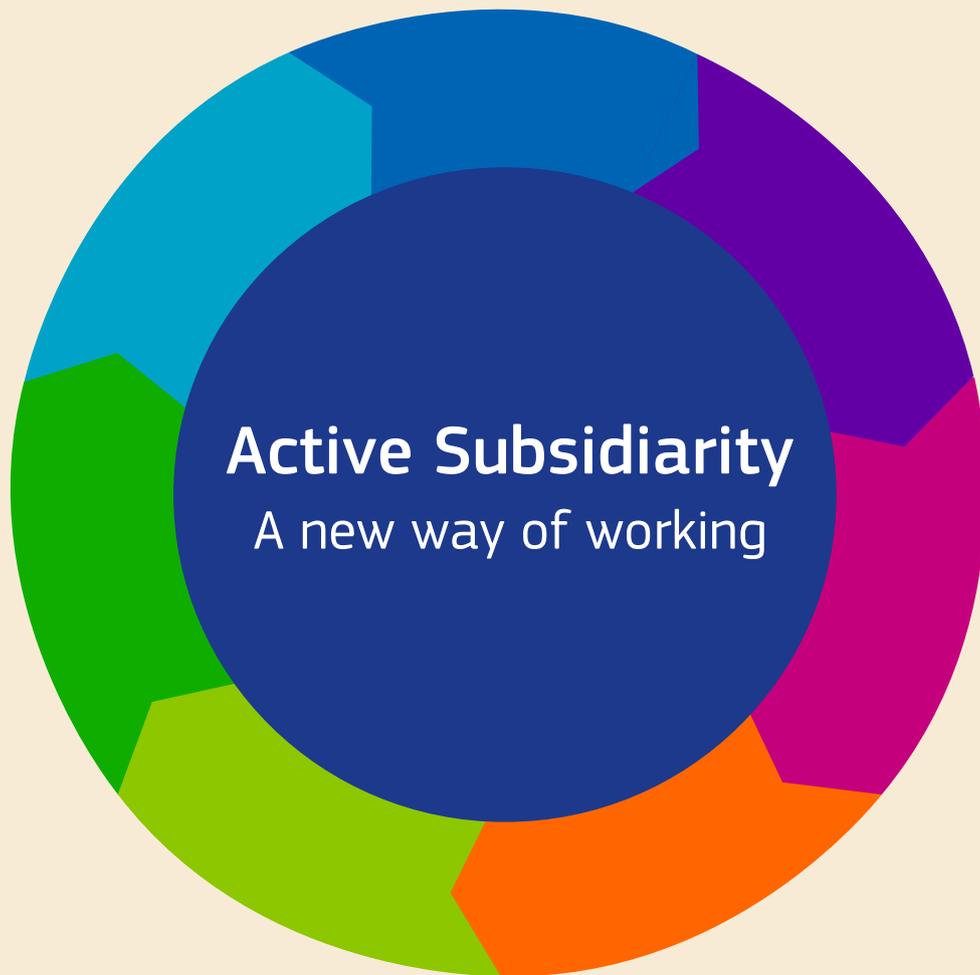




EUROPEAN UNION



Report of the Task Force on
Subsidiarity, Proportionality and
“Doing Less More Efficiently”





Task Force members (Mr Jaak Madison replaces the appointed member Mr Thoomas Vitsut. He is a Member of Parliament in Estonia and Deputy Chairman of the Conservative People's Party of Estonia).



Foreword from the Chair of the Task Force



The White Paper on the Future of Europe has stimulated a deep process of reflection about the Europe we need. This will culminate in the Leaders' summit in Sibiu in May 2019. The work of this Task Force should be seen as part of this broader discussion and I hope our report and its recommendations will find their place in the ongoing reflections.

The Treaties do not give the EU's institutions a blank cheque to do what they want. Subsidiarity and proportionality are the practical tools to ensure that the Union does not do what the Member States or regional and local authorities can better do themselves and to focus the Union's actions on where it can really add value. We need both principles and we need to apply them actively, collectively and in the same spirit if they are to work as our citizens expect them to do.

Today, we have 41 national Parliament chambers, 74 regional legislative assemblies, around 280 regions, and 80 000 local authorities. They are all engaged directly in applying the Union's policies on the ground. Their concerns and practical experience should be heard more systematically if we want policies that work

while respecting the character and identity of our nations, regions and localities. I hope that providing a more meaningful say in how things are done will also allow our national Parliaments and local and regional authorities to be more effective ambassadors and advocates of the European Union.

Finally, this report – a collective effort by the European Committee of the Regions, members of the national Parliaments, and the European Commission – is not an end in itself. It is the start of a process to open up our procedures more to the local and regional level and to make the Union's legislation work better for its citizens. While this report is addressed to President Juncker, the European Parliament, Council, European Committee of the Regions, European Economic and Social Committee, the national Parliaments, regional Parliaments, and local and regional authorities all have a responsibility to consider in responding to the Task Force's report.

Frans Timmermans, Chairman of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”
Brussels, 10 July 2018.

Executive Summary

The Task Force met seven times to discuss the three tasks presented by President Juncker in his decision establishing the Task Force. On the basis of those discussions, a public hearing and the inputs provided by numerous stakeholders, the Task Force reached several broad conclusions and presents nine recommendations in this report together with concrete actions addressed to national Parliaments, national, regional and local authorities, the European Parliament, the Council, the European Committee of the Regions and the European Commission.

The Task Force concluded that:

- The Union needs to address important emerging challenges where it has added value, such as security, defence and migration, and to intensify its actions in other areas such as climate change and innovation. Given that this has to be done against a background of limited resources, there is a clear need at European level to reflect on how to prioritise activities and to use available resources more efficiently.
- What is necessary is a new way of working to improve the current policymaking processes and to allow the Union to use its resources more efficiently. It will allow local and regional authorities and national Parliaments to make a more effective contribution to policymaking, to the design of (new) legislation and to ensuring respect for the principles of subsidiarity and proportionality.
- This new way of working requires a common understanding of subsidiarity and proportionality and a greater participation of all stakeholders and particularly national, local and regional authorities who often have a specific role in implementing Union legislation on the ground. Such “active subsidiarity” should promote greater ownership and understanding of what the Union does by those involved.
- A model grid should be used to assess subsidiarity and proportionality more consistently by the European Commission, the national and regional Parliaments, the European Committee of the Regions and the European Parliament and the Council throughout the decision-making process.
- The new working method should be applied to the existing body of Union legislation and to new political initiatives and, building on its existing experience of simplifying legislation, the European Commission should put in place a process to do so. The Task Force decided to highlight the input from numerous stakeholders as a way for kick-starting a more rigorous reflection on which pieces of legislation might be relevant for an evaluation from the perspectives of subsidiarity, proportionality, the role of local and regional authorities and legislative density, with the possibility of reviewing or repealing legislation if and when appropriate.
- There is EU value added in all existing areas of activity and the Task Force did not, therefore, identify any Treaty competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States.
- The work of the Task Force will need to be taken forward by all of the institutions and bodies identified above. The first steps will be the follow-up in the State of the Union speech in September 2018, the conference of the Austrian Presidency in Bregenz in November, and the European Summit of Regions and Cities in Bucharest in March 2019. The Task Force’s report should provide a firm basis for further discussion on how to implement the actions and recommendations contained in this report.



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1. PRESIDENT JUNCKER’S REQUEST

Following the declaration in Rome on the 60th anniversary of the European Union, President Juncker launched a public debate about the future of Europe. The Commission’s **White Paper on the future of Europe**¹ sets out possible paths for the future Union of 27 Member States. The White paper offers five illustrative scenarios for how the Union could evolve, depending on the choices made without expressing any particular preference.

The Commission has been clear that none of these scenarios represents a detailed blueprint for the future of Europe and that the final outcome will undoubtedly be different from any individual scenario. In the Letter of Intent to the European Parliament and the Council in 2017², President Juncker already presented a Roadmap for the Union (Scenario 6) based on the three principles that must anchor the Union – freedom, equality and the rule of law. To ensure, nevertheless, that all scenarios are explored fully, the President also announced in his state of the Union Address on 12 September the creation of a Task Force on Scenario 4 – “*Doing Less More Efficiently*”³. In this scenario, the Union would focus its attention and limited resources on a reduced number of areas so as to be able to act quickly and decisively in these chosen priority areas.

The Task Force itself was formally established on the 14 November 2017⁴ under the chairmanship of the First Vice-President Frans Timmermans and comprised three members from the national Parliaments of Austria, Bulgaria and Estonia and three members from the European Committee of the Regions. The European Parliament was also invited to nominate three members but did not do so⁵. Information about the seven Task Force members can be found in Annex I.

Task Force members were appointed in a personal capacity. As such, they did not represent the positions or views of any particular body or institution in relation to the Task Force’s work. Members were free to contribute to all aspects of the Task Force’s mandate

and not just on those issues of direct relevance to the institutions in which they work.

Article 3 of the President’s Decision establishing the Task Force set out the three tasks (a) to (c) which the Task Force was asked to address in its work:

- a. **How to better apply the principles of subsidiarity and proportionality in the work of the Union’s Institutions, notably regarding the preparation and implementation of Union legislation and policies.**
- b. **The identification of any policy areas where, over time, decision making and/or implementation could be re-delegated in whole or in part or definitively returned to the Member States.**
- c. **The identification of ways to better involve regional and local authorities in the preparation and the follow up of Union policies.**

The Task Force was asked to present its findings to the President of the European Commission by 15 July 2018. It worked transparently and received inputs from civil society via its dedicated web site which have contributed significantly to its reflections⁶. It has also kept the European Parliament, the Council and the Conference of Parliamentary Committees for Union Affairs of Parliaments informed of its work. The Task Force also held a public hearing to hear the views of key stakeholders⁷. Annex II describes how the Task Force worked and the inputs it received from citizens and other parts of civil society.

The remainder of this report presents the work of the Task Force which has to be seen against the current legal and policy frameworks governing the operation of the subsidiarity and proportionality principles in the Union. More detail on this is presented in Annex III.

¹ https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf

² https://ec.europa.eu/commission/sites/beta-political/files/letter-of-intent-2017_en.pdf

³ http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm: Followed by the Commission work programme COM(2017) 650 of 24.10. 2017: “*Building on the work that this Commission has already done, we should continue to be big on the big things. This means not regulating every aspect of citizens’ daily lives. We must reflect seriously on doing less more efficiently and giving back competences to Member States where it makes sense to do so.*” https://ec.europa.eu/info/publications/2018-commission-work-programme-key-documents_en

⁴ C(2017) 7810. https://ec.europa.eu/info/sites/info/files/2017-c-7810-president-decision_en_1.pdf

⁵ PV CPG : 11.01.2018; PE-8/CPG/PV/2018-01: http://www.europarl.europa.eu/RegistreWeb/search/simple.htm?leg=&year=&lg=&eurovoc=¤tPage=1&sortAndOrderBy=&fulltext=&reference=&relValue=&codeTypeDocu=CPGPPV&datepickerStart=&datepickerEnd=&autor=&code_auteur=&autInstDesc=&autInst

⁶ https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en

⁷ https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently/28-may-hearing_en

2. KEY REFLECTIONS: A NEW WAY OF WORKING

In the course of its work, the Task Force came to five broad conclusions which are reflected in its recommendations.

First, the Task Force fully recognised the need for more Union action to address important emerging challenges where it has added value, such as security, defence and migration, and the need for the Union to intensify its actions in other areas such as climate change and innovation. Given that this has to be done against a background of limited resources, there is a clear need at European level to reflect on a prioritisation of activities and on using available resources more efficiently.

Second, the Task Force concluded that – much more than identifying areas to be re-delegated to Member States – it is essential to remedy the weaknesses in the current policymaking processes. A key problem with these processes is the insufficient involvement of national, regional and local authorities and, as a result, a lack of ownership of EU policies. The Task Force believes that a new way of working is needed to ensure that EU policy actions and instruments continue to provide clear EU added value, are proportionate and are correctly articulated with the actions that are also necessary at national, regional and local level. This new way of working is based on a better shared understanding of subsidiarity and proportionality and an improved participation of national Parliaments and local and regional authorities in the design and implementation of policies, in line with the principle of multi-level governance. This should help us to develop a more “active subsidiarity” to ensure that there is a better appreciation and acceptance of why policies are implemented at the EU level, and ultimately greater ownership of those policies at all governance levels. Many of the Union’s 74 regional assemblies with legislative responsibilities, around 280 regions⁹ and 80,000 municipal authorities are directly involved in applying Union legislation. Their knowledge and experience must be used more actively when legislation is being designed. By being more closely involved in the policymaking processes, these actors will be able to explain better what the Union does and why.

Third, the better shared understanding of the subsidiarity and proportionality principles, and a more structured and consistent application of them throughout the decision-making processes, could help to reduce some of the concerns and frustrations that feed the view that the Union is doing too much. The Task Force is of the view that subsidiarity assessments must not only be done but must also ‘be seen to be done’. To a large extent this can be done by exploiting current mechanisms and tools more fully, and by giving better and more visible explanations of the added value of the Union’s actions in terms that can be readily understood. The Task Force recognises that the Commission already presents analyses of subsidiarity and proportionality in support of its legislative proposals as well as the distinct role of national Parliaments in checking the conformity of new legislative proposals with the subsidiarity principle⁹. However, the application of the subsidiarity and proportionality principles is a shared responsibility of all relevant actors – the national Parliaments, the European Parliament, the Council, the European Committee of the Regions and the European Commission. The Task Force notes that

a precise definition of subsidiarity no longer exists in the Treaties following the revision of the relevant protocol of the Amsterdam Treaty. It advocates, therefore, a shared and pragmatic approach to assessing subsidiarity and proportionality using a common assessment grid to foster a common understanding and create a more effective application of these principles by all bodies and institutions in preparing new legislation.

Fourth, the Task Force was of the view that EU legislation in some areas may have become too “dense” or complex. In the case of directives, it no longer leaves sufficient room for decision-making at other levels, or sufficient flexibility to implement legislation taking into account national specificities. The Task Force was aware that there are a number of reasons why this may be the case including a lack of sufficient trust between the Member States themselves and between the Member States and the Union’s institutions. This also contributes to the reduced reliance on mutual recognition of different national approaches as an effective policy tool¹⁰. The Task Force was also conscious of the fact that there are important trade-offs. Rather prescriptive legislation, with limited flexibility not only for local and regional authorities but also businesses, may be necessary to ensure compliance with Union legislation and the creation of a level playing field in the internal market. For example, adherence to the strict accounting rules for expenditure made under the Union’s spending programmes. Any attempt to address the issues of regulatory density by amending legislation would, therefore, have to be carefully calibrated and carried out in accordance with better regulation principles including a consultation of those affected and a sound evaluation to ensure that the issues are correctly understood¹¹. The Task Force recommends, therefore, that the Commission put in place a process to take such an exercise forward, possibly building on the Commission’s existing REFIT programme to simplify legislation and reduce unnecessary regulatory burdens. To kick-start reflections on this process, the Task Force highlights suggestions for such an evaluation which were identified by the Task Force members and by the submissions to the Task Force from various stakeholders. This could ultimately lead to reviewing or repealing existing legislation where appropriate. However, having examined the issue, the Task Force came to the conclusion that there is EU value added in all existing areas of activity and did not, therefore, identify any competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States. As such, the Task Force does not think that this aspect of Scenario 4 of the White Paper on the Future of Europe is the most appropriate way forward.

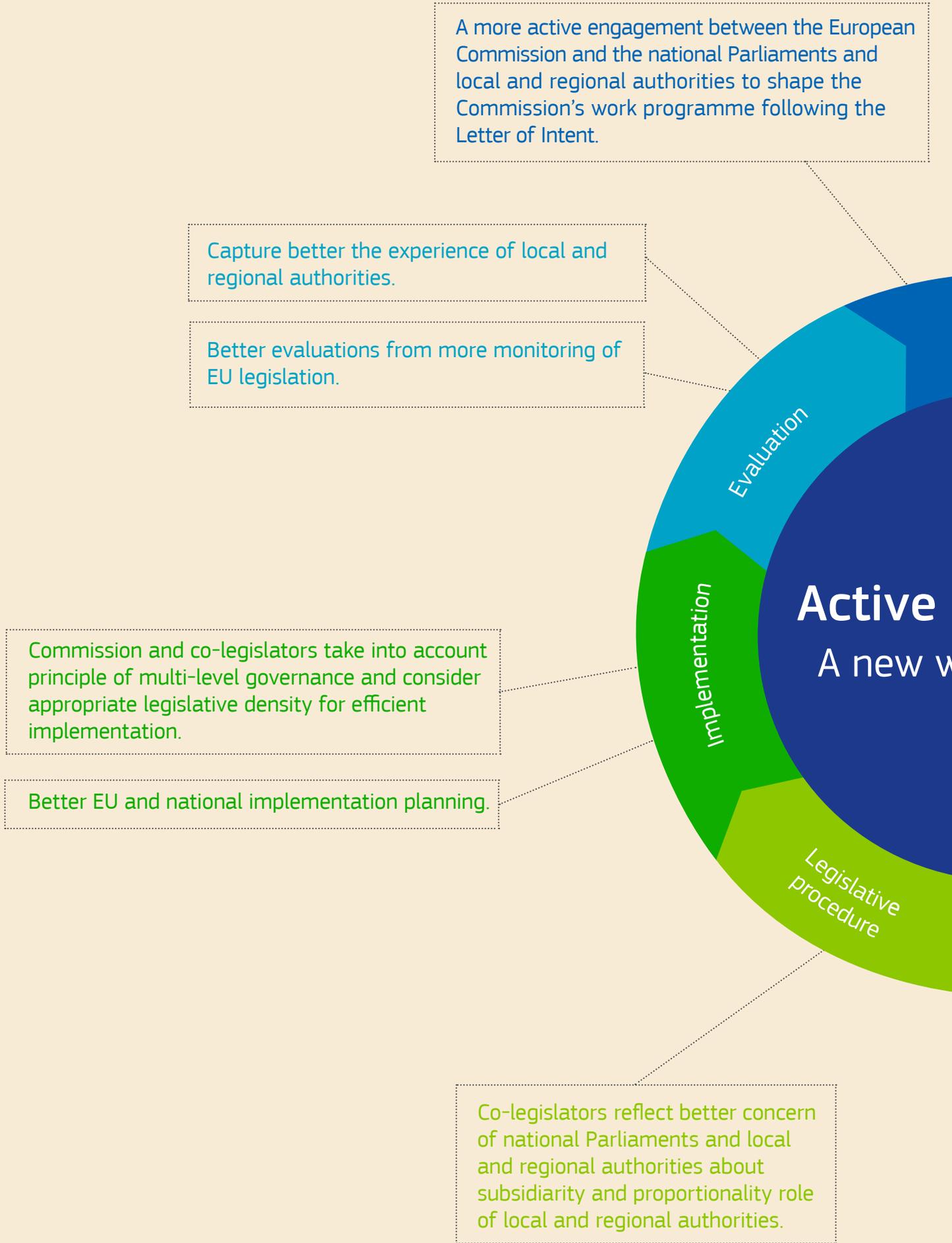
Finally, the Task Force believes that its findings should not be the end of a process, but rather the beginning of a more active engagement with the issues of subsidiarity and proportionality by all EU institutions, and national, regional and local authorities building on, and taking forward, the recommendations and actions of the Task Force presented in this report. It looks forward to the reaction of the President of the European Commission, and to further reflections on these issues at the Austrian Presidency conference in Bregenz in November 2018 and at the European Summit of Regions and Cities in Bucharest in March 2019.

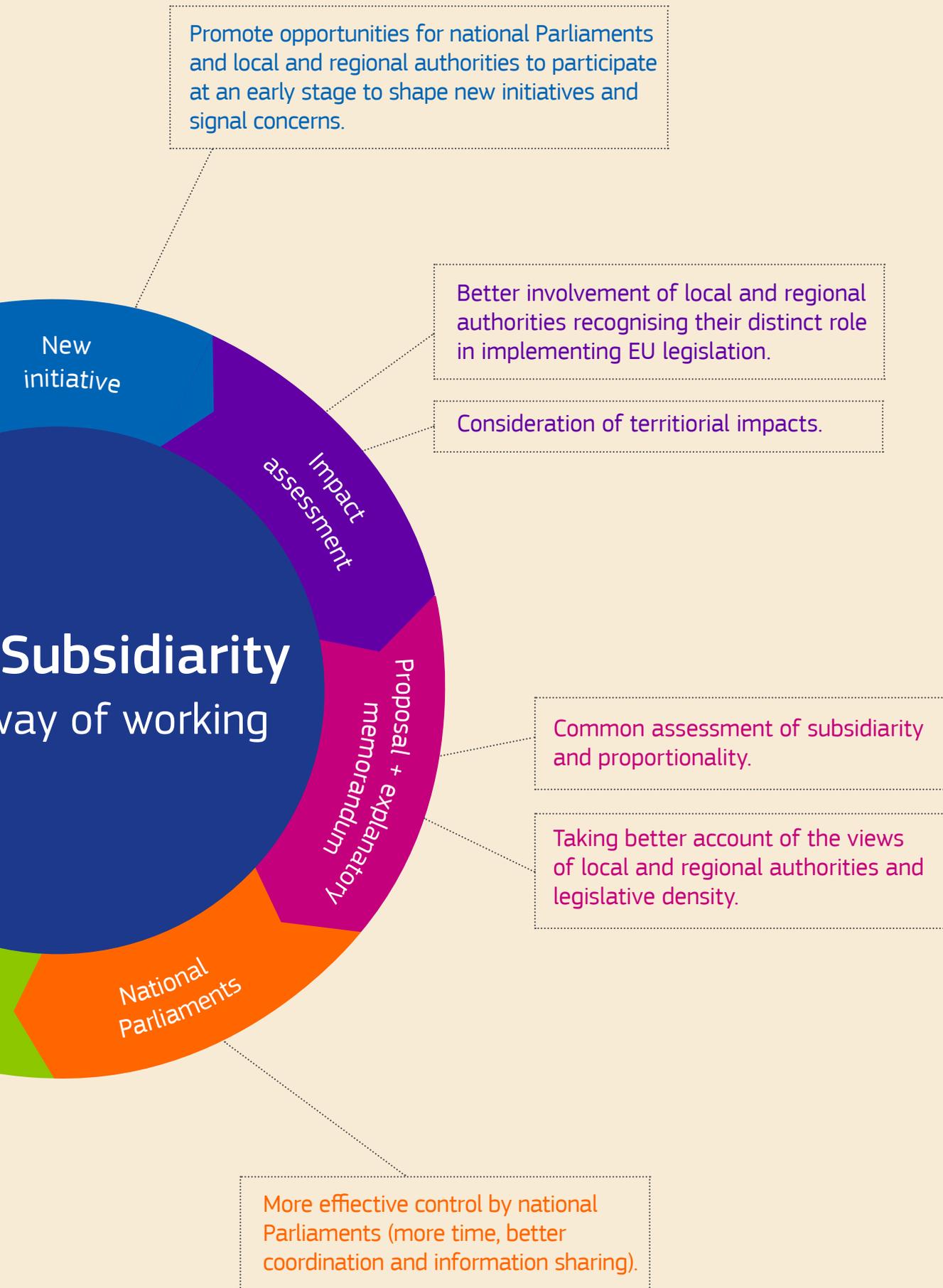
⁸ Eurostat: 281 “NUTS 2” regions as of 1 January 2018: <http://ec.europa.eu/eurostat/web/nuts/background>.

⁹ Protocol No. 2 of the Treaty on European Union & the Treaty on the Functioning of the European Union.

¹⁰ See minutes of the Task Force’s meeting of the 15 March 2018: <https://ec.europa.eu/commission/sites/beta-political/files/tf-minutes-meeting-15-march-2018.pdf>

¹¹ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en





3. THE WORK OF THE TASK FORCE

The Task Force discussed the three tasks (a), (b) and (c) of President Juncker’s mandate at its meetings and presents below the results of its work according to the various phases of the policymaking process starting with the need for a common approach to assess subsidiarity and proportionality.

3.1. A better understanding of subsidiarity and how to address proportionality

The Task Force notes that there is no common guidance on how to assess the substance of draft legislative acts or other policies and programmes in relation to the subsidiarity and proportionality principles. The Commission has produced its own detailed guidance and the European Committee of the Regions uses a subsidiarity “grid” to guide its assessments. Each national Parliament has its own approach to doing this assessment.

One consequence of this is that national Parliaments often raise issues in their reasoned opinions that go beyond what Protocol No. 2¹² foresees, so that the opinions reflect differing policy preferences rather than an appreciation of subsidiarity. When these opinions cannot be followed-up, this can be a source of misunderstanding and frustration. At the same time, the absence of a clear approach to subsidiarity in the legislative process creates the impression – possibly mistaken – that the issue is not addressed satisfactorily. Similarly, while the subsidiarity control mechanism laid down in Protocol No. 2 is integrated into the rules of procedure of the European Parliament (Rule 42¹³) and of the Council (Article 19¹⁴), and while the Interinstitutional Agreement on Better Law-Making highlights the importance of subsidiarity and proportionality, the Task Force was not aware of any procedural provisions on how the

European Parliament and the Council address the two principles in their legislative work.

The Task Force is convinced that a model assessment grid could bring greater visibility and coherence to the assessment of subsidiarity and proportionality and ultimately facilitate a better shared understanding of the concept by all those involved in assessing these principles as part of the decision-making process. This, of course, will not prevent them from raising other concerns outside those covered by the model grid for the assessment of subsidiarity and proportionality. It is of the view that this approach should highlight the concept of European added value, which is the key factor that determines whether the Union should act, and is also a concept more easily understood by the general public. The assessment could also be useful for the European Court of Justice in respect of any cases referred to the Court. The Task Force proposes a model subsidiarity assessment grid (in Annex V) that can be used as a foundation for further discussion among the EU institutions and national and regional Parliaments¹⁵. In the longer-term, an agreed common assessment grid could be incorporated in a future revision of the Interinstitutional Agreement on Better Law-Making to provide a more structured basis for its use by the European Parliament, Council and European Commission.

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E%2FPRO%2F02>

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20170116+TOC+DOC+XML+VO//EN&language=EN>

¹⁴ <http://www.consilium.europa.eu/en/documents-publications/publications/council-rules-procedure-comments/>

¹⁵ Where in this report reference is made to “regional Parliaments” this includes all regional Parliaments and regional assemblies in the Member States. Where reference is made specifically to regional Parliaments with legislative powers in the meaning of Protocol No. 2 to the Treaties, this is clearly indicated.

Task Force Recommendation 1

A common method (“assessment grid”) should be used by the Union’s institutions and bodies and by national and regional Parliaments to assess issues linked to the principles of subsidiarity (including EU added value), proportionality and the legal basis of new and existing legislation.

This assessment method should capture the criteria contained in the Protocol on subsidiarity and proportionality originally attached to the Amsterdam Treaty and relevant jurisprudence of the European Court of Justice. A proposed model assessment grid is annexed to this report.

During the legislative process, the European Parliament and the Council should systematically review the subsidiarity and proportionality of draft legislation and the amendments they make using the common method. They should take full account of the Commission’s assessment presented in its proposals as well as the (reasoned) opinions of national Parliaments and the European Committee of the Regions.

The Task Force considers that the recommendation could be implemented through the following actions:

- The co-legislators, national and regional Parliaments, the European Committee of the Regions and the European Commission should discuss the model grid further with a view to promoting a better understanding and a common approach to assessing subsidiarity and proportionality.
- The Commission should revise its Better Regulation Guidelines to reflect the agreed assessment grid for subsidiarity and proportionality. It should use the grid to present its assessments of subsidiarity and proportionality more explicitly in the impact assessment and/or the Explanatory Memorandum in accordance with paragraph 25 of the Interinstitutional Agreement on Better Law-Making and Protocol No. 2 of the Treaties.
- National and regional Parliaments, when using the subsidiarity control mechanism, and the co-legislators during the legislative procedure should use the grid as a basis for addressing the issues of subsidiarity and proportionality.
- The EU’s institutions and consultative bodies should highlight the European added value of EU initiatives and better communicate this aspect to citizens.

3.2. National Parliaments & more effective subsidiarity control

National Parliaments have a pivotal role in ensuring conformity with the subsidiarity principle, and they also have a positive contribution to make on the substance of new legislation. The subsidiarity assessment by national Parliaments looks at the substance of the Commission’s legislative proposals. This helps establish the democratic legitimacy of the Union. Between 2010 and the end of 2017 there were 409 reasoned opinions representing 582 votes from national Parliaments under the subsidiarity control mechanism. There have been three “yellow card” procedures up until now and no orange cards. The Task Force noted that this is a complex area and considered improvements that could be implemented in the current system as well as a number of issues that would require Treaty changes.

Several Task Force members were of the view that the low number of yellow card procedures that have been triggered demonstrates that the current control mechanism is ineffective, and therefore support a lowering of the thresholds, which would require Treaty change. The Task Force discussed the issue and noted that it was not clear that lowering the current “yellow card” threshold from one third to one quarter of available votes would have much effect on the number of yellow cards triggered, assuming a similar participation in the subsidiarity control mechanism by national Parliaments as now. A substantially lower threshold than one quarter is necessary to increase significantly the number of yellow cards procedures¹⁶ but it would raise concerns about the representativeness of the concerns expressed. However, underlining the importance of a serious policy dialogue that bolsters legitimacy of the legislative process, the Task Force calls on the Commission, to ensure it always provides a comprehensive, timely and public response to the reasoned opinions of national Parliaments even where a yellow card is not triggered under the current rules.

Several Members also raised the issue of a “red card” (veto) for national Parliaments, which would also require Treaty change, and the Task Force heard views that this may have unintended consequences given the current absence of a shared understanding of the meaning and scope of subsidiarity assessments by national Parliaments. On the other hand the Task Force took note of the desire of national Parliaments also to highlight the positive contribution that they can make to the European process by having a mechanism to allow them to propose to the Commission to take action – a “green card”. A formal process of this sort would require Treaty change and impact on the Commission’s right to initiate legislation and the role of the European Parliament and the Council. The Task Force was, however, of the view that there already is ample scope for national Parliaments to reinforce coordination among themselves to ensure that they have an effective voice and enough political critical mass to be heard. It encourages

them to do so and encourages the Commission to respond appropriately to any such initiative.

The time that national Parliaments have to prepare their reasoned opinions and to consult within their own Member States, particularly if there are regional Parliaments with legislative powers, is a sensitive issue. Given that the European Parliament and the Council refrain from acting in the period while the national Parliaments submit their reasoned opinions, there is a need to calibrate the period carefully. Several members felt that the current 8 week period should be extended to 12 weeks, and the Task Force noted that the European Council has considered doing so in the past¹⁷. In the absence of the Treaty change that this would require, the Task Force is of the view that the Commission could provide greater flexibility to national Parliaments to prepare their reasoned opinions. Such flexibility, together with the expected greater consistency in subsidiarity assessments based on a common grid, improved communication and information sharing between national Parliaments and local and regional authorities, could mitigate the perceived need to lower the thresholds that trigger yellow-card and orange card procedures.

The Task Force also discussed the fact that national Parliaments frequently go beyond subsidiarity issues in their reasoned opinions, which gives rise to misunderstandings and frustrations when no follow-up can be given on these points. While the use of a common subsidiarity grid as a basis for national Parliaments’ opinions could help to avoid these misunderstandings, some Task Force Members were of the view that the scope of the control mechanism and reasoned opinions should be extended so that it also covers proportionality and conferral (legal basis).

Finally, the Task Force considers that there is need for better coordination and information sharing on reasoned opinions between national and regional Parliaments with legislative powers and other regional and local authorities. For example, the national and regional Parliaments each have separate information sharing platforms while the Commission’s responses to reasoned opinions are made available on the inter-parliamentary platform as well as on the Commission’s website. National Parliaments should, where appropriate, consult regional Parliaments in the context of the subsidiarity control mechanism. Formal changes to the roles and interaction between national and regional Parliaments would require changes to the Treaties and should be considered in the longer term. However, within the constraints of the current Treaty provisions, a more structured but informal dialogue could ensure that regional Parliaments with legislative powers are more effectively involved.

¹⁶ Discussion paper No. 3: Application of subsidiarity and proportionality in the work of the institutions. https://ec.europa.eu/commission/sites/beta-political/files/5-3-2018-2018-tf-discussion-paper-no3-institutional-work_en.pdf

¹⁷ §3 of section C (Sovereignty) of the European Council’s Conclusions of 19 February 2016: <https://www.consilium.europa.eu/media/21787/0216-euco-conclusions.pdf>

Task Force Recommendation 2

The Commission should apply flexibly the Treaty-based 8 weeks deadline for national Parliaments to submit their reasoned opinions.

This flexibility should take account of common holiday periods and recess periods, while allowing the Commission to respond as far as possible, within 8 weeks of receiving each opinion.

The Commission should reflect in an appropriate way the reasoned opinions it receives from national Parliaments and feed-back it receives from regional Parliaments with legislative powers in its annual report on subsidiarity and proportionality. It should also make available to the co-legislators, in a comprehensive and timely manner, information about proposals where significant concerns have been raised in respect of subsidiarity.

Task Force Recommendation 3 (Treaty Change)

Protocol No. 2 TEU/TFEU should be revised when the opportunity arises to allow national Parliaments 12 weeks to prepare and submit their reasoned opinions and to express fully their views about subsidiarity, proportionality and the legal basis (conferral) of the proposed legislation. National Parliaments should consult regional Parliaments with legislative powers where their competences under national law are concerned by the proposal for EU legislation.

The Task Force considers that the following actions, which do not require changes to the Treaties, would increase the impact of national Parliaments on discussions on subsidiarity:

- The Commission should take account of the delays in transmitting individual elements of complex legislative packages to the national Parliaments and common holiday periods when most national Parliaments are in recess.
- National Parliaments, with the assistance of the Committee of the Regions and the REGPEX platform¹⁸, should consult appropriately with regional Parliaments in preparing their reasoned opinions.
- The Commission should present in an appropriate way the reasoned opinions and submissions it receives from national and regional Parliaments with legislative powers in its annual report on subsidiarity and proportionality.
- Where a proposal triggers a significant number of reasoned opinions, the Commission should prepare an overview of the reasoned opinions of the national Parliaments - and possibly submissions of regional Parliaments with legislative powers - it has received and make this available to the co-legislators in a timely manner in view of the legislative procedure.

¹⁸ REGPEX is a sub-network of the European Committee of the Regions' Subsidiarity Monitoring Network open to Parliaments and governments of regions with legislative powers: <https://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>

3.3. Better involvement of national, regional and local authorities in policymaking

3.3.1. The Commission’s approach to consultation and engagement with local and regional authorities on its activities and work programme

The Task Force notes that a major innovation of the Commission’s Better Regulation policy in 2015 was to open up its policymaking processes to all stakeholders. While this is happening progressively, the Task Force noted that the participation of local and regional authorities in the Commission’s consultation and feedback mechanisms is generally low. Since the middle of 2016, and combining all of the feedback mechanisms, almost 9,000 responses were received from stakeholders but less than 1% came from local and regional authorities. It would also seem that contributions from local and regional authorities to impact assessments and evaluations are also low.

While recognising that not all local and regional authorities have the capacity and resources to participate in these activities, the Task Force was of the view that more should be done to encourage their participation given the Treaty obligation to respect the national identities of the Member States inherent in their regional and local government structures, and their role and responsibility in implementing Union legislation¹⁹. Given the diversity of local and regional authorities and their varying capacities to participate, any processes and tools to boost their participation should be simple and practicable and exploit existing networks and platforms to the fullest extent. The Task Force welcomed the fact that the Commission has recently committed to making public consultations for major initiatives available in all official languages to improve accessibility.

As a further step, the Task Force felt that there is a need to recognise the specificity of local and regional authorities, compared to other stakeholders, in general consultations. The Task Force was also of the view that more meaningful feedback from the Union’s institutions would encourage greater participation of local and regional authorities. The Task Force also suggests that more targeted consultation of local and regional authorities should, when relevant, be undertaken in order to recognise their specific role.

The Task Force also welcomed the extensive engagement of this Commission with national Parliaments²⁰, and encouraged the Commission to build on this and engage further with national Parliaments, local and regional authorities and civil society when developing policies. For practical and resource reasons, it is unlikely that this could be done for all new initiatives each year, so the Commission should consider using the approach for its most significant initiatives. A good example is the Energy Union Tour in which the Commission engaged in an intensive dialogue with

governments, national parliaments, the European Parliament, social partners, representatives of the business community and Non-Governmental Organisations about the Commission’s strategy for an Energy Union. Another example is the 129 citizen’s dialogues on the Future of Europe that took place in more than 80 cities and towns some involving national Parliaments²¹. Similarly, the European Committee of the Regions will have completed over 200 local events and citizens dialogues in 28 European countries by December 2018 involving 230 of the Committee’s members and over 30 000 citizens²².

The Task Force also looked at two specific issues concerning the Commission’s engagement with local and regional authorities: its annual work programme, and the coordination of Member States’ national economic programmes (the “European Semester”). The Task Force recognises that the Commission’s work programme is prepared according to processes and timelines fixed in interinstitutional agreements. This makes engagement with local and regional authorities challenging. In September each year, the President of the European Commission delivers a State of the Union Address before the European Parliament. This is complemented by a Letter of Intent addressed to the President of the European Parliament and the Presidency of the Council. The letter is also sent to the national Parliaments and the Presidents of the Consultative Committees and is published online. The Commission Work Programme is then usually published in October. The Task Force was of the view that there should be a more active engagement between the European Commission and the national Parliaments and local and regional authorities during the period between publication of the Letter of Intent and the moment when the Commission adopts its work programme to enable their views to be better considered.

The economic policies of the Member States are coordinated at European level in the European Semester of economic governance. The Task Force strongly recommends that Member States follow the guidance the Commission has given on encouraging greater participation and ownership of the country-specific recommendations in light of the fact that the Union’s financial programmes increasingly support the Member States’ economic reforms that may have implications for all levels of governance in a Member State. This should go beyond the national administrations and include local and regional authorities, the social partners, and civil society generally.

¹⁹ For example, the Urban Agenda for the EU is a multi-level partnership of the EU, Member States and cities working together for better regulation, funding and cooperation, which is supported by the Commission’s proposals for the 2021-2027 Cohesion policy frameworks to create the European Urban Initiative, a new instrument for city-to-city cooperation, innovation and capacity-building across all the thematic priorities of the Urban Agenda for the EU. http://europa.eu/rapid/press-release_MEMO-18-3866_en.htm

²⁰ In the period from 1 November 2014 to 18 June 2018, Commissioners made 798 visits to the national Parliaments of the 28 Member States.

²¹ https://ec.europa.eu/commission/sites/beta-political/files/citizens-dialogues-future-europe_en.pdf

²² The European Committee of the Regions has also collected a similar number of responses through an EU-branded online survey and mobile phone app: “Have your say on Europe”. The Committee’s President will launch a continuous dialogue mechanism in the Autumn of 2018 linked to the implementation of the Task Force report.

Task Force Recommendation 4

Together with national Parliaments and the European Committee of the Regions, the Commission should raise the awareness of national, local and regional authorities of the opportunities they have to contribute to policymaking at an early stage.

The Commission should involve local and regional authorities fully in its consultation processes taking into account their specific role in implementing Union legislation. It should promote the participation of local and regional authorities by appropriate design of questionnaires and providing greater feedback and visibility to the views of local and regional authorities in its impact assessments, proposals and feedback transmitted to the co-legislators.

Member States should follow the European Commission's guidance and engage meaningfully with local and regional authorities when preparing their national reform programmes and designing and implementing structural reforms as part of the European Semester to improve ownership and implementation of these reforms.

In practical terms, the Task Force considers that the following concrete actions could be envisaged to give effect to this recommendation:

- The Commission should revise its Better Regulation Guidance to highlight the specificity of local and regional authorities, the need to do targeted consultations of local and regional authorities when it is clear that there will be important impacts on them, and in particular, when they raise concerns in their feedback on the Commission's inception impact assessments (roadmaps) and in public consultations.
- The Commission should ensure that public consultation questionnaires contain sections dedicated to local and regional authorities to make it easier for them to provide information on issues such as implementation and impacts at the local/regional levels.
- To encourage a higher response rate of local and regional authorities, the Committee of the Regions and national Parliaments together with the Commission should raise awareness among local and regional authorities about exploiting the existing consultation and feedback opportunities to contribute to policymaking and implementation.
- The Commission should provide better visibility and feedback on how it uses the input it receives from local and regional authorities on the issues relevant to them such as implementation and territorial impacts.
- The co-legislators, the European Committee of the Regions, and the Commission, together with its representation offices, should explore how best to raise awareness in their respective institutions of the issues and challenges that local and regional authorities face. This could be done by creating opportunities to exchange staff with local and regional authorities through events and training courses.
- The Committee of the Regions, national and regional Parliaments, the EU's institutions and local, regional, authorities should work together to develop and promote innovative actions to communicate better with citizens across the European Union²³ and build capacity for local and regional authorities to participate more effectively in policymaking by, for example, with an ERASMUS-like programme for local and regional politicians.
- Member States should make every effort to engage with local and regional authorities when preparing their national reform programmes and when designing and implementing structural reforms so as to reflect the administrative and constitutional set-up in each Member State.
- The Commission should aim to engage more intensively, including through its representation offices, with national, regional and local authorities in the Member States on selected and politically important initiatives and the European Semester process.

²³ Such as the programme of EU local councillors (Europagemeinderäte) developed in Austria.

3.3.2. Commission impact assessments, proposals and implementation plans

The Commission’s proposals for legislation are generally accompanied by an impact assessment that explores the costs and benefits (impacts) of alternative policy options designed to resolve a particular problem. Subsidiarity and proportionality are also addressed in the impact assessment. As many policies are to a large degree implemented at local and regional level, Task Force members have called for impacts at the local and regional levels to be assessed systematically in all impact assessments and evaluations in policy areas that significantly affect local and regional authorities. The Task Force notes that the Commission’s Better Regulation Guidelines require that all possible impacts are screened but only the significant economic, social and environmental impacts are assessed. The Commission’s impact assessment process (and its evaluations) works on the principle of proportionate analysis – i.e. assessing what is important for the specific policy file. This applies to the impacts that may be generated at the local and regional levels which may not be relevant or important for a particular proposal but which should be assessed where they are significant for a given initiative. In both cases the European Commission needs to explain in its impact assessments and/or Explanatory Memorandum whether or not it has specifically assessed the impact at regional and local level, or why it has not done so.

The Commission also aims to present implementation plans for significant directive proposals. These are transmitted to the co-legislators and will outline the activities the Commission envisages to ensure a good effective implementation and application of Union law. These activities may entail working with national, regional and local authorities. Local and regional authorities are often intimately involved in the application of Union law and programmes in a given Member State. Their direct experience is highly relevant when the Commission evaluates the performance of that legislation and wants to know whether it functions as intended, is problematic, overly complex or imposes unnecessary costs.

While the Commission’s Better Regulation Guidelines cover the preparation of implementation plans, the impact assessment does not systematically look at how new or modified legislation might be implemented particularly by those who might have responsibility for delivering an effective implementation at the local and regional levels. Moreover, these implementation plans target mainly national authorities who are ultimately responsible for preparing transposing measures and applying them correctly. While the Task Force was of the view that the Commission’s implementation plans can be significantly improved, it considered that in many cases the preparation of good national implementation plans involving local and regional authorities was likely to have greater added value.

Task Force Recommendation 5

The Commission should ensure that its impact assessments and evaluations systematically consider territorial impacts and assess them where they are significant for local and regional authorities. Local and regional authorities should help to identify such potential impacts in their consultation responses and feedback on roadmaps.

The Commission should revise its Better Regulation Guidelines and Toolbox accordingly and address issues linked to the implementation and EU added value of legislation, and to ensure greater visibility of the Commission’s assessments of subsidiarity, proportionality and relevant territorial impacts in its proposals and accompanying explanatory memoranda.

The above recommendation has to be seen together with the Task Force’s recommendations on the participation of local and regional authorities in policymaking and implementation as the issues are closely related. In concrete terms, the Task Force considers that the following actions could help deliver the recommendation:

- The Commission should include more elements of the impact assessment on territorial impacts, subsidiarity (including EU added value) and proportionality in the Explanatory Memorandum that accompanies each legislative proposal to give greater visibility to the assessments. (The Explanatory Memorandum is available in all official languages, unlike the impact assessment itself).
- The Committee of the Regions should support local and regional authorities to respond more systematically to roadmaps, inception impact assessments and consultations so that evidence about territorial impacts at local and regional scales of a particular initiative could be collected and used in the Commission’s impact assessments and evaluations.
- The Commission should assess territorial impacts in its impact assessments and evaluations when these are likely to be significant for local and regional authorities, who should help identify such impacts in the responses to consultations and feedback on roadmap.
- Given that the Commission’s implementation plans are unlikely to capture sufficiently-well the local and regional dimensions, national administrations and local and regional authorities should cooperate in preparing national implementation plans. There are clear advantages at the national level if the experience of local and regional authorities is captured. The means of doing this will vary across the Member States due to the different administrative and constitutional structures.

3.4. The legislative procedure

The Task Force noted a widespread perception that discussions on subsidiarity and proportionality do not occur systematically on proposals during the legislative procedure. In Council, for example, it is clear that the extent to which national delegations discuss legislative files with national Parliament representatives or local and regional authorities from their own Member State varies significantly. In the case of the European Parliament, the Task Force acknowledged that it reports periodically on the application of subsidiarity in response to the Commission’s annual reports. Its research service systematically appraises the Commission’s impact assessments in a report made available to the relevant Parliamentary committee and published online. The Parliament’s research service also undertakes and publishes its own impact assessments of a limited number of substantial amendments. This work, in principle, can cover subsidiarity and proportionality.

The Commission’s impact assessments are increasingly discussed in the European Parliament and in Council at the start of each legislative procedure. The Commission also makes available to both institutions the views of stakeholders collected in the eight-week period after it adopts its proposals. This feedback may cover subsidiarity and proportionality-related issues as well as impacts relevant for the local and regional levels.

The Task Force is aware, nevertheless, that the European Parliament and the Council often make substantial changes to the Commission’s proposal in the course of negotiations on legislation. These changes may entail significant impacts at the local and regional level, be less proportionate and less desirable from the perspective of subsidiarity and may well create challenges for the local and regional authorities who will have to implement them.

While the European Parliament may commission studies and hearings, and its committee discussions will be open to the public and web streamed, key discussions between the Council and the European Parliament during the legislative procedure (“trilogues”) are not open to the general public and information about the negotiations is therefore not easily available to national/regional Parliaments and local and regional authorities.

The Task Force is of the view that the co-legislators should be more aware of the legitimate concerns of local and regional authorities during the legislative procedure as this could lead to better outcomes and more effective implementation at the local and regional level. The legislative procedures are set out in the Treaty, and therefore could only be revised through Treaty change. This would be the case for a “late card” on subsidiarity which the Task Force considered – i.e. a formal subsidiarity check at the end of the legislative process. The Task Force therefore considered more practical short-term proposals to better involve local and regional authorities, which would not require Treaty change and which possibly could be included in a future revision of the Interinstitutional Agreement on Better Law-Making. The Task Force also welcomed the recent case law²⁴ on access to documents discussed at trilogues, the provisions on transparency in the Interinstitutional Agreement on Better Law-Making (including the development of a new database to increase the traceability of the legislative procedure), and the findings of the European Ombudsman on the transparency of trilogues²⁵. The Task Force would welcome rapid follow-up by the co-legislators on these issues as this would be a good first step in helping to promote the participation of local and regional authorities in the decision-making process.

²⁴ T-540/15 De Capitani v Parliament; http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddfb6ef4af4df246c6a5689c7889c65e8fe34Kaxil_c3qMb40Rch0SaxyNchb0?text=&docid=200551&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=100299

²⁵ <https://www.ombudsman.europa.eu/press/release.faces/en/69214/html.bookmark> <https://www.ombudsman.europa.eu/press/release.faces/en/69214/html.bookmark>

Task Force Recommendation 6

The European Parliament and the Council should use consistently the subsidiarity grid during their negotiations to promote a culture of better awareness of issues relevant for local and regional authorities.

The Commission should highlight to the co-legislators any views it receives from local and regional authorities in the scrutiny period following adoption of its proposals.

Member States' governments and national Parliaments should call on the views and expertise of local and regional authorities at the start of the legislative procedure. The Task Force invites the EU's co-legislators to consider inviting representatives of local and regional authorities to their meetings or hosting hearings and events where this is appropriate.

Practically, the Task Force considers that the recommendation could be achieved through the following actions:

- The co-legislators should invite representatives of local and regional authorities to present their views to Committee meetings and working party meetings in the European Parliament and the Council when this is relevant and appropriate for the proposal in question.
- The co-legislators should host hearings and expert meetings with the participation of local and regional authorities when this is relevant and appropriate for a specific legislative procedure.
- The Commission should highlight the views it receives from local and regional authorities in the report on stakeholders' feedback that the Commission sends to the co-legislators about its proposals.

Task Force Recommendation 7

Regional and national Parliaments should explore how to link more effectively their respective platforms for sharing information (REGPEX and IPEX²⁶) to ensure that the legislative procedure and the subsidiarity control mechanism reflect better their concerns.

The Task Force considers that the recommendation could be given effect via the following actions:

- National Parliaments, regional Parliaments and the Committee of the Regions should improve their communication by, for example, exploring how to make better use of, and to link more effectively, their IT platforms for sharing information between national and regional Parliaments.
- National Parliaments should consult appropriately with regional Parliaments in preparing their reasoned opinions.
- The European Parliament, the Council and the Commission should step up their work to develop an interinstitutional database to track better the legislative process with the aim of improving transparency about the legislative procedure, in line with the Interinstitutional Agreement on Better Law-Making.
- A future revision of the Interinstitutional Agreement on Better Law-Making should consider how to facilitate dissemination of information and documents to all bodies involved in a given legislative procedure and ensure appropriate monitoring of subsidiarity and proportionality throughout the legislative procedure.

²⁶ The platform for EU Interparliamentary Exchange: <http://www.ipex.eu/IPEXL-WEB/home/home.do>

3.5. Acting more efficiently

This section concerns Task (b) of the Task Force’s mandate. As indicated in section 2 above, the Task Force fully recognised the need for more Union action in areas where new challenges are emerging, such as security, defence and migration, and the need also for the Union to step up its efforts in existing areas of action such as climate change and innovation. Given that all of this work has to be done against a background of limited resources, the Task Force was of the view that there is a clear need at European level to reflect on how to prioritise activities and on how to use available resources more efficiently. Having examined the issue, the Task Force, nevertheless, came to the conclusion that there is EU value added in all areas where the Union is active and did not, therefore, identify any competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States. As such, the Task Force does not think that this aspect of Scenario 4 of the White Paper on the Future of Europe is the most appropriate way forward.

3.5.1. Evaluating and improving existing legislation

The new way of working presented in previous sections should help, not only to ensure that new legislation is better designed, but also to ensure that the existing body of Union law respects the principles of subsidiarity and proportionality and the appropriate levels of legislative density and discretion for local and regional authorities. The Task Force highlights the need to evaluate Union law periodically in respect of these issues and to make changes where necessary in line with Better Regulation principles.

The Task Force recognises that directives, in principle, give more flexibility to the Member States as regards the means to be used to achieve the objectives of legislation. From its discussions, the Task Force did not express a preference for one instrument over another but noted that directives and regulations have evolved so that in substance they have become quite similar. It had an interesting exchange on the possible causes for this, which includes limited trust among Member States themselves, and between Member States and the Union’s institutions, as to whether legislation will be implemented to a sufficient standard. This lack of trust can lead to a heightened level of detail and prescription in Union legislation (directives). It is also this lack of trust that weakens the effectiveness of “mutual recognition” of national legislation. The Task Force also recognises, however, that there are important trade-offs. In order to ensure compliance with Union legislation, and to create a level-playing field in the internal market, it may be necessary to have more prescriptive legislation that limits the flexibility for local and regional authorities and businesses.

Any change to existing legislation in terms of legislative density would therefore have to be carefully calibrated and carried out in accordance with better regulation principles, starting with an evaluation based on thorough evidence-gathering and consultation of those most affected in order to identify what could usefully be changed. The Task Force was of the view that the key issue is knowing how well legislation is working on the ground and the costs and benefits associated with the legislation, and for this the views of national, regional and local authorities are essential. The

Task Force is convinced, however, that the new way of working outlined above can potentially allow the Union to use its resources more efficiently. It would help to ensure that new legislation respects the principles of subsidiarity and proportionality, is not overly dense²⁷ and leaves sufficient flexibility for local, regional and national authorities. This should help to increase the efficient and effective implementation of legislation to ensure that it delivers the benefits it is intended to deliver on the ground. The Task Force also looked at two additional aspects of being more efficient. In particular, it looked at:

- Evaluating and improving existing Union legislation from the perspective of subsidiarity, proportionality, legislative density and the role of local and regional authorities;
- Intensifying efforts on an effective implementation of the existing body of law.

Task Force believes that the Commission has solid experience with the REFIT Programme and Platform of identifying on a case by case basis, using input from those most affected, which legislation can be simplified, improved and where unnecessary burdens can be reduced. It recommends, therefore, that the Commission build on this experience to take forward the exercise of evaluating legislation from the perspective of subsidiarity and regulatory density.

The Task Force members made a number of suggestions for such evaluations based on their own assessments and contacts with stakeholders, and the Task Force also received a number of contributions from different entities and individuals identifying legislation and legislative proposals which they thought problematic from the perspective of subsidiarity (added value), proportionality, legislative density or the degree of flexibility provided for local and regional authorities in their implementation. These are summarised in Annex VI and are available at the Task Force’s website²⁸. Given the number of proposals and the varied nature of the concerns they raise – some of which may not be directly related to subsidiarity – the Task Force was not able to assess the merits of the various suggestions. It therefore decided to highlight them as a way of kick-starting a more rigorous reflection on which pieces of legislation might be relevant for such an evaluation.

In this context, the Task Force noted two additional considerations. First, that preparing good evaluations is a challenging task that requires detailed data, which often does not exist or is not collected and is not, therefore, available to the Commission. The Task Force takes note of the commitment the European Parliament, the Council and the Commission have made in the Interinstitutional Agreement on Better Law-Making to consider including in each new basic act provisions on monitoring and evaluating the performance of legislation to help to ensure that the necessary data is made available. The Task Force notes that the Commission is already including these provisions in its proposals.

²⁷ In respect of legislation, “density” relates to the sufficiency of establishing principles and objectives against the need for setting out detailed technical prescriptions on how the objectives are to be attained which may influence the degree of discretion for national, regional and local authorities when implementing the legislation (see the paper from professor Dougan presented to the Task Force meeting of 15 March 2018): https://ec.europa.eu/commission/sites/beta-political/files/dougan-notes-for-task-force-march-2018_en.pdf.

²⁸ These include papers from (1) the Task Force members from the European Committee of the Regions https://ec.europa.eu/commission/sites/beta-political/files/subsidiarity-task-force-cor-members-contribution-for-tf-meeting-on-27-april-2018_en.pdf; and Dr Lopatka https://ec.europa.eu/commission/sites/beta-political/files/sg-2018-00573_en_0.pdf.

Second, several Task Force members also provided suggestions about how the programmes of the next Multiannual Financial Framework, and particularly for the Union’s Cohesion policy, could be designed to take account of the issues addressed by the Task Force²⁹ including legislative complexity³⁰. These ideas were

passed on to the Commissioners responsible for these financial programmes which the Commission adopted before the Task Force completed its report. The Task Force notes that a number of these ideas are now reflected in the Commission’s proposals.

Task Force Recommendation 8

The Commission should develop a mechanism to identify and evaluate legislation from the perspective of subsidiarity, proportionality, simplification, legislative density and the role of local and regional authorities. This could build on the REFIT Programme and Platform.

In general, the experiences of local and regional authorities and their networks should be fully taken into account when EU legislation is monitored and evaluated. The Committee of the Regions should implement a new pilot network of regional hubs to support reviews of policy implementation.

Practically, the Task Force considers that the following concrete actions could be envisaged to support the above recommendation:

- The Commission’s REFIT programme and Platform should be adapted in terms of approach and structure to review existing legislation from the perspective of subsidiarity, proportionality, legislative density and the role of local and regional authorities.
- The Commission’s on-going process of evaluating legislation in line with its better regulation policy should address the issues of subsidiarity, proportionality and legislative density, taking into account the suggestions presented by the Task Force members and those received from stakeholders.
- The Committee of the Regions should launch a pilot project for a new network of regional hubs to collect and channel systematically the views and hard information about the implementation of legislation. The Task Force thinks this is a useful initiative that could potentially plug the current data gaps and improve the evaluation of legislation.
- Once the pilot phase is complete, the Task Force believes that the European Parliament, Council and the Commission should consider supporting the network together with the Committee of the Regions if the results of the pilot are positive.
- The European Parliament, Council and the Commission should ensure effective implementation of paragraphs 22 and 23 of the Interinstitutional Agreement on Better Law-Making to ensure that sufficient monitoring of the application of legislation takes place, which can promote higher-quality evaluations.
- The Commission and the co-legislators should ensure that, when directives are chosen as the appropriate legislative instrument, sufficient consideration is given to the need for flexibility for national, regional and local authorities regarding their implementation.
- A future revision of the Interinstitutional Agreement on Better Law-Making should consider how to reflect the principle of multi-level governance in Union legislation.

²⁹ See the paper from the Task Force members from European Committee of the Regions presented to the Task Force meeting of 27 April about Cohesion policy reform; and the following inputs from the Potsdam Institute: https://ec.europa.eu/commission/sites/beta-political/files/lf_nkr_gutachten_vollzugsorientierte_gesetzgebung_de_0.pdf; the Bavarian state: https://ec.europa.eu/commission/sites/beta-political/files/positionspapier-subsidiaritat-bayern-englisch_en.pdf; and the Land of Baden-Württemberg: https://ec.europa.eu/commission/sites/beta-political/files/baden-wuerttember_de.pdf.

³⁰ <https://ec.europa.eu/commission/sites/beta-political/files/cor-contribution-on-the-simplification-cohesion-funds.pdf>

3.5.2. Greater focus on implementing legislation better

The Task Force noted that for many policy areas a comprehensive body of Union legislation now existed and that a key challenge was to ensure the effective application of that legislation through enforcement and other actions. The Task Force notes the need for continued coordination at EU level but suggests that there is limited necessity to add to the existing body of legislation. This would allow the Union to use its resources more efficiently by tackling the challenges of most concern to citizens while respecting the competences conferred on the Union and the principles of subsidiarity, proportionality, multi-level governance and the new way of working set out in this report. It was also suggested that the Commission should consider carefully the added value of publishing non-binding documents outside of its legislative activities. The Task

Force also considered the negative impact of the increasing number of delegated acts and implementing acts on legislative density and on the flexibility afforded to local and regional authorities. The Task Force recognised the usefulness of such acts for an effective implementation of Union law but notes the concerns of national Parliaments and local and regional authorities that such acts could be problematic because they may have a direct impact on them and given that they are outside the formal subsidiarity control mechanism in Protocol No. 2 of the Treaties. Task Force members felt that they should be used more sparingly by the co-legislators and the European Commission. All stakeholders can nonetheless comment on draft delegated and implementing acts via the Commission’s web site before they are finalised.

Task Force Recommendation 9

The next Commission, with the European Parliament and the Council, should reflect on re-balancing its work in some policy areas towards delivering more effective implementation rather than initiating new legislation in areas where the existing body of legislation is mature and/or has recently been substantially revised.

In concrete terms, the Task Force considers that the following actions could help deliver the recommendation:

- The European Parliament, the Council and the Commission should, pursuant to paragraph 5 of the Interinstitutional Agreement on Better Law-Making, exchange views and agree upon a focused multi-annual programme that reflects this recommendation and the report of the Task Force generally on subsidiarity and proportionality. For example, placing greater emphasis on implementation of legislation in the areas of the single market, tax, financial services, environment, transport, media/ICT, education, and tourism.
- The co-legislators and the European Commission should pay greater attention to the volume of delegated acts and implementing acts in relation to legislative density while national Parliaments and regional and local authorities should make better use of the opportunities to voice their concerns on draft acts during the 4-week feedback period.

ANNEX I – MEMBERS OF THE TASK FORCE

The Task Force was originally intended to comprise nine members in addition to its chair. However, the European Parliament did not participate and President Juncker appointed only six members to the Task Force³¹ although the option for the European Parliament to join was left open throughout the mandate of the Task Force.

Frans TIMMERMANS
(Netherlands)

Task Force Chairman and the First Vice-President of the European Commission for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights.

François DECOSTER
(France)

Member of the Committee of the Regions and Vice-President of the Nord-Pas-de-Calais-Picardie Regional Council and a Mayor of Saint-Omer (France). He is a Vice-President of the Alliance of Liberals and Democrats for Europe political group in the Committee of the Regions.

Karl-Heinz LAMBERTZ
(Belgium)

President of the Committee of the Regions since July 2017 and was previously its First Vice-President. He is also a member of the Belgian Senate representing the German-speaking Community of Belgium.

Reinhold LOPATKA
(Austria)

Chairman of the Permanent Subcommittee on EU affairs of the National Council of the Austrian Parliament. He was a former Leader of the parliamentary group of the Austrian Peoples' Party as well as State Secretary within the Federal Ministry of Finance and later in the Federal Ministry for European and International Affairs.

Michael SCHNEIDER
(Germany)

Member of the Committee of the Regions and State Secretary, Representative of the Land of Saxony-Anhalt to the Federal Government. He is a President of the European People's Party (EPP) political group in the Committee of the Regions.

Kristian VIGENIN
(Bulgaria)

Chair of the Committee on European Affairs and Oversight of the European Funds of the National Assembly of the Republic of Bulgaria and Member of the Bulgarian Socialist Party. He is also a former Minister of Foreign Affairs of Bulgaria, and a former Member of the European Parliament.

Toomas VITSUT
(Estonia)

Member of the Estonian Centre Party and Chairman of the European Union Affairs Committee of the Estonian Parliament (Riigikogu). He has also been Chairman of the City Council of Tallinn since 2005 and is also a former member of the Committee of the Regions.

³¹ C(2018) 406. https://ec.europa.eu/info/sites/info/files/task-force-members-appointment-c-2018-406_en.pdf

ANNEX II – OPERATION OF THE TASK FORCE & STAKEHOLDERS’ INPUTS

1. How the Task Force operated

The Task Force agreed its own working methods³² at its first meeting on 25 January 2018. It has met 7 times in total to discuss issues in relation to the three tasks identified by President Juncker. The discussion took place on the basis of papers prepared by the Task Force’s secretariat and the members of the Task Force. All agendas, minutes and discussion papers are available at the website³³ of the Task Force. This has allowed all stakeholders to remain informed about the work of the Task Force and to provide feedback directly via the website or in writing via the First Vice-President or Task Force members.

The members of the Task Force also undertook a series of outreach activities to keep stakeholders informed and to solicit their inputs into the work of the Task Force. The Chairman attended a meeting of the Legal Affairs Committee and the Constitutional Affairs Committee in the European Parliament on 23 April and 20 June respectively, as well as the plenary meeting of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union on 19 June. A hearing involving Task Force members was also organised by the European Committee of the Regions on 28 May 2018.

In February 2018, the European Committee of the Regions launched a broad consultation of more than 2,500 regional and local stakeholders (including regional parliaments and governments, national associations of local authorities, local authorities and national delegations of the Committee of the Regions)³⁴, and the preliminary results were presented to the Task Force at its second meeting on 23 February 2018. The Committee of the Regions also consulted its Subsidiarity Expert Group on Task (a) of the Task Force mandate and notably on the Subsidiarity Assessment Grid, and the

results were included in the European Committee of the Regions members’ contribution to the third meeting of the Task Force on 15 March 2018.

Dr. Lopatka participated in three events: the Conference “European talks on the future of the Union”, Den Haag, Netherlands, on 16th and 17th April 2018; “European politics”, Bern, Switzerland, 25th April, 2018; and a “Special briefing for journalists - Current EU topics” at the Austrian Economic Chamber, Vienna, Austria, on 15th May 2018.

Mr Vigenin established an interinstitutional working group which included experts on EU law from the Ministry of Foreign Affairs and the Council of Ministers. As chair of COSAC from January until June 2018, Mr Vigenin chaired a COSAC Working Group that was created with the aim of facilitating regular and comprehensive discussion related to the work of the Task Force. The group held one meeting on 26 March 2018. After this meeting, several national Parliaments submitted written contributions which are available online³⁵. Mr Vigenin also chaired the Plenary meeting of COSAC on 17-19 June 2018 in Sofia³⁶. During this meeting the delegations from national Parliaments and the European Parliament adopted unanimously the LIX COSAC contributions. Mr Vitsut and Dr Lopatka took part in all COSAC-related activities as members of the Presidential Troika.

The Task Force also invited the President of the Court of Justice, Koen Lenaerts, and Professor Michael Dougan (from the University of Liverpool in the UK) to its meeting on 15 March in relation to a discussion about the application of subsidiarity and proportionality in the work of the institutions.

³² https://ec.europa.eu/commission/sites/beta-political/files/working-methods-taskforce-subsidiarity_en.pdf

³³ https://ec.europa.eu/commission/priorities/democratic-change/better-regulation/task-force-subsidiarity-proportionality-and-doing-less-more-efficiently_en

³⁴ <https://ec.europa.eu/eusurvey/runner/TaskForceSubsidiarity>

³⁵ <http://www.cosac.eu/59-bulgaria-2018/cosac-working-group-26-march-2018/>

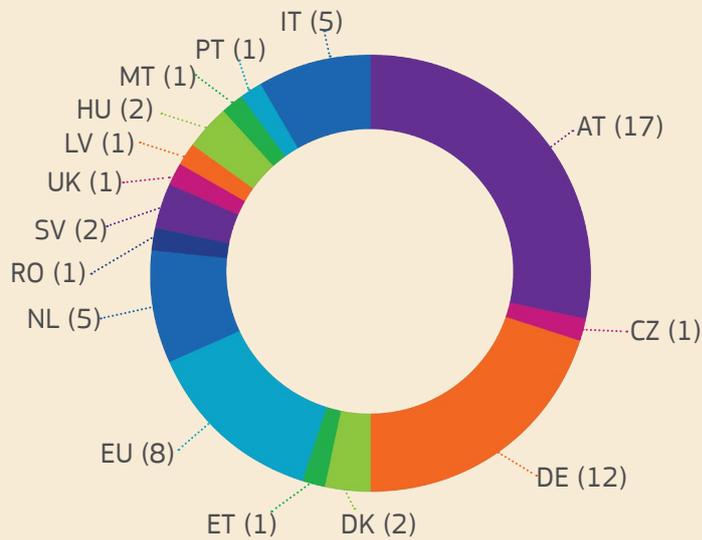
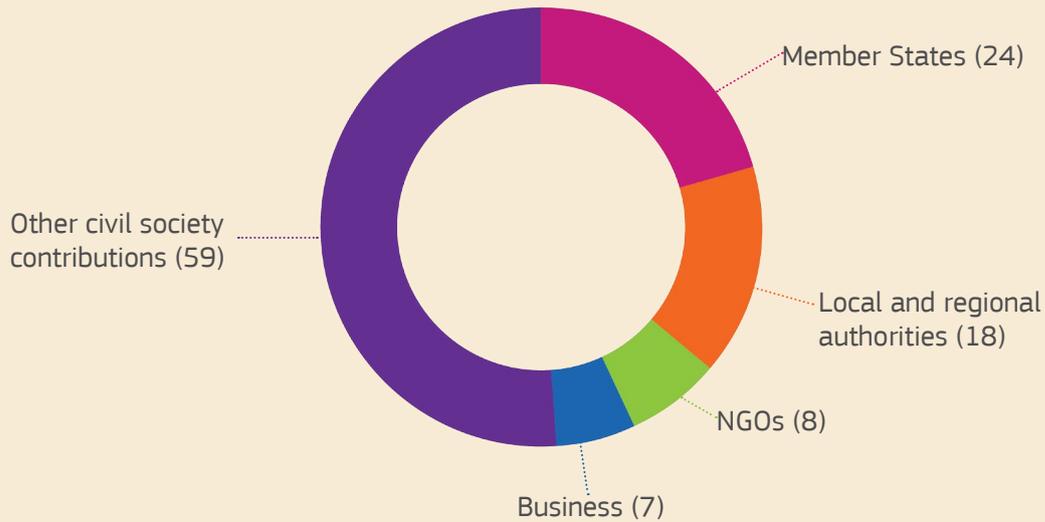
³⁶ <http://www.cosac.eu/59-bulgaria-2018/>

2. Overview of inputs received by the Task Force

The Task Force invited inputs from civil society via its website or via its Chairman. In total, the Task Force received 117 relevant contributions from its web site and 9 contributions addressed to the Task Force’s Chair. These are listed below. The origin of

the various inputs was classified by country and Member State (national authority), Non-Governmental Organisation (NGO), Local or Regional Authority (LRA), Business organisation and others including citizens (Other) as follows:

Box 1. Number and origin of the contributions received by the Task Force



Note: (1) as of 6 July 2018; (2) the country of origin of anonymous contributions is not always known.

Organisation	Type of organisation	Origin
Freistaat Sachsen on the Common Agricultural Policy	Local/Regional authority	Germany
Association of Austrian Towns and Cities	Local/Regional authority	Austria
Deutscher Bundestag, Mr Horst Risse	Member State	Germany
Estonian Parliament (together with Parliaments of Bulgaria and Malta)	Member State	Estonia
European Committee of the Regions (President Lambertz)	EU Consultative body	EU
Green10	NGO	EU
State of Baden-Württemberg (WOLF Guido)	Local/Regional authority	Germany
Mr. László KÖVÉR, the Speaker of the Hungarian National Assembly	Member State	Hungary
MEP Peter Jahr	Member State	Germany
WKÖ (Austrian Federal Economic Chamber)	Business Association	Austria
The Royal Society for the Protection of Birds (RSPB)	NGO	United Kingdom
COSAC delegation of the Senate of Parliament of the Czech Republic	Member State	Czech Republic
Serafin Pazos-Vidal, PhD European Union, UNED	NGO	EU
Association of the Austrian Municipalities	Local/Regional authority	Austria
Austrian Province of Vorarlberg	Local/Regional authority	Austria
Austrian Province of Carinthia	Local/Regional authority	Austria
Austrian Chamber of Agriculture	NGO	Austria
Presidents of the German and Austrian regional Parliaments and of the South Tyrolean Parliament	Local/Regional authority	Austria
Austrian Federal Council	Member State	Austria
Regional Parliament Lower Austria	Local/Regional authority	Austria
Regional Parliament Upper Austria	Local/Regional authority	Austria
Association of Austrian Towns and Cities	Local/Regional authority	Austria
Statement Association Austrian Municipalities	Local/Regional authority	Austria
Declaration of the Country Leaders/ Austria	Member State	Austria
President of the Regional Parliament of Upper Austria	Local/Regional authority	Austria
Dr Reinhold Lopatka	Task Force member	Austria
Austrian Chamber of Labour	Business Association	Austria
Austrian Trade Union Federation	Other	Austria
European Committee of the Regions	EU Consultative body	EU
Danish Parliament	Member State	Denmark
Dr Reinhold Lopatka	Task Force member	Austria
European Committee of the Regions	EU Consultative body	EU
European Casino Association	Business Association	EU
Danish Government	Member State	Denmark

Organisation	Type of organisation	Origin
Board of Swedish Industry and Commerce for Better Regulation NNR	Business Association	Sweden
European Committee of the Regions	EU consultative body	EU
European Committee of the Regions	EU consultative body	EU
EU4health	NGO	EU
Office of Committee on European Affairs Chamber of Deputies Parliament of Romania	Member State	Romania
ZDH	Business Association	Germany
COSAC representatives	Member State	Netherlands
Johannes Maier, Member of the Committee of the Region's Subsidiarity Expert Group; Head of the EU Coordination Unit, Office of the Carinthian Regional Government	Local/Regional authority	Austria
Bavarian State Chancellery	Local/Regional authority	Germany
The Potsdam Institute for eGovernment	NGO	Germany
Dr. Pafitī Marianna, Neoellīnikīs Filologías	Other	Greece
Calabria Regional Council	Local/Regional authority	Italy
Dr Alessandro Simonato, University of Padova	Other	Italy
European Committee of the Regions	EU Consultative body	EU
Parliament of Finland	Member State	Finland
Parliament of Sweden	Member State	Sweden
Government of Hungary	Member State	Hungary
Conferenza delle Assemblée Legislative delle Regione Italiane	Local/Regional authority	Italy
Vereniging van Nederlandse Gemeenten (VNG)	Local/Regional authority	Netherlands
European Lotteries Association	Business Association	EU
Deutsche Bundesregierung (non-paper)	Member State	Germany
Insurance Europe	Business association	EU
Latvia National Parliament	Member State	Latvia
Parliament of Portugal	Member State	Portugal
Parliament of France (Sénat)	Member State	France
Parliament of Malta	Member State	Malta
WWF	NGO	EU
Birdlife International	NGO	EU
Dr Diane Fromage	Other	Netherlands
Regions with Legislative Powers (RLEG)	Local/Regional authority	EU
Anonymous x 59	Other	Various

ANNEX III – LEGAL AND POLICY BACKGROUND FOR THE TASK FORCE’S WORK

1. The existing legal and policy framework within which the institutions operate

The work of the Task Force has to be seen against the current legal and policy frameworks governing the operation of the subsidiarity and proportionality principles in the Union.

1.1. Conferral: Demarcation between Union and Member State competences

The Member States have expressly limited the areas in which the Union can act by conferring specific competences on the Union in the Treaties. Competences not conferred on the Union remain with the Member States. This represents a clear demarcation of the responsibilities of the Union and the Member States.

The Treaty on the Functioning of the European sets out three main categories of Union competence: exclusive, shared and supporting competences. In areas of exclusive competence³⁷, only the Union can act unless the Union empowers the Member States to do so. In policy areas where competence is shared³⁸ with the Member

States, both the Union and the Member States may enact legally binding measures but the Member States can act only to the extent that the Union hasn't. Conversely, where the Union ceases to act, the Member States may again exercise their competence to do so. No such pre-emption exists in areas where the Union only has competence to support, coordinate or supplement the actions of Member States³⁹ and Union action must not, therefore, harmonise or supersede the Member States' right to act. This categorisation is important because the principle of subsidiarity does not apply in areas where the Union acts exclusively.

1.2. The exercise of the Union's competence: principles of subsidiarity, proportionality and sincere cooperation

Action by the Union is governed by the principles of subsidiarity and proportionality⁴⁰ and the institutions have a specific obligation to ensure respect for the two principles⁴¹. Subsidiarity means that the Union should act only (and to the extent) that the envisaged objectives cannot be achieved sufficiently by the Member States (centrally or at regional or local levels) but can be better achieved at Union level because of the scale or effects of the proposed action⁴². These criteria are commonly referred to as the EU necessity and EU added value criteria.

The content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties⁴³. This is the principle of proportionality. The Union is also obliged to respect the equality of Member States and their national identities inherent in their political and constitutional structures including local and regional government⁴⁴. Moreover, the Union and the Member States must adhere to the principle of sincere cooperation and assist each other in carrying out tasks which flow from the Treaties including the pursuit

of Treaty objectives via secondary legislation. All of these factors may affect the content and intensity of the Union's actions.

The Treaties encourage the involvement of national Parliaments in the Union's policymaking activities⁴⁵. Protocol No. 1 to the Treaty on European Union and the Treaty on the Functioning of the European Union requires the Commission to transmit green papers, white papers, Communications, annual work programmes and legislative proposals to national Parliaments at the same time as they are sent to the European Parliament and to the Council. The national Parliaments may send reasoned opinions to the European Parliament, the Council and the Commission on whether a particular legislative proposal conforms to the principle of subsidiarity. National Parliaments should also receive agendas of Council meetings and the minutes of Council meetings where draft legislative acts are discussed. Finally, national Parliaments are primarily responsible to ensure compliance with the principle of subsidiarity using the procedure set out in Protocol No.2 TEU/FEU on the application of the principles of subsidiarity and proportionality.

³⁷ In the following areas: customs union, competition rules for the functioning of the internal market, monetary policy for Member States whose currency is the euro, conservation of marine biological resources under the common fisheries policy, and the common commercial policy (Article 3 TFEU).

³⁸ In the following areas: internal market; social policy (defined in the Treaty); economic, social and territorial cohesion; agriculture and fisheries (excluding conservation of marine biological resources); environment, consumer protection, transport; trans-European networks; energy; area of freedom, security and justice; and common safety concerns in public health matters (defined in the Treaty) (Article 4 TFEU).

³⁹ In the following areas: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; and administrative cooperation (Article 6 TFEU).

⁴⁰ Article 5(1) TEU.

⁴¹ Article 1 of Protocol No. 2 TEU/TFEU.

⁴² Article 5(3) TEU.

⁴³ Article 5(4) TEU.

⁴⁴ Article 4(2) TEU.

⁴⁵ Article 12 TEU.

1.3. The subsidiarity control mechanism (Protocol No. 2, TEU/TFEU)

Protocol No. 2 TEU/TFEU sets out the parameters of the subsidiarity control mechanism⁴⁶. It applies in areas where the EU does not have exclusive competence. In cases where national Parliaments consider that draft legislative acts do not comply with subsidiarity, they can send a reasoned opinion to the Commission, the European Parliament and the Council within 8 weeks from the transmission of the proposal in all official languages. The Commission must take account of the reasoned opinions it receives. The effect of the reasoned opinions on the legislative procedure depends on how many national Parliaments react and how many votes they represent. Each of the 28 national Parliaments is allocated two votes. If there are 2 chambers, each has 1 vote.

When reasoned opinions represent at least one third⁴⁷ of all the votes allocated to the national Parliaments, the Commission must review its proposal and can decide whether to maintain, change or withdraw its proposal. The Commission must give reasons for its decision. This is known as the ‘yellow card’ procedure and there have been three so far.

When reasoned opinions represent a majority of the votes and the draft act falls under the ordinary legislative procedure, the

Commission must review its proposal and decide whether to maintain, change or withdraw it. If the Commission decides to maintain its proposal, it must justify its decision to the European Parliament and the Council as to why the proposal complies with the principle of subsidiarity. This is known as the ‘orange card’ procedure and none have so far occurred. If a simple majority of members of the European Parliament, or 55% of Council members, decide that the proposal breaches the principle of subsidiarity, the proposal will not be given further consideration.

Since the entry into force of the Lisbon Treaty, the Committee of the Regions has greater responsibilities regarding subsidiarity. It has the right to bring an action before the EU Court of Justice on the grounds of infringement of the subsidiarity principle⁴⁸. The Committee of the Regions has also established a subsidiarity monitoring network⁴⁹ which aims to facilitate the exchange of information between local and regional authorities in the European Union and the EU institutions on European Commission documents and legislative proposals which have a direct impact on regional and local authorities.

1.4. Better Regulation and Better Law-Making: key changes since 2015

The Commission’s better regulation framework aims to deliver evidence-based policymaking. It promotes transparency, accountability and informed decision-making. The Commission’s approach to better regulation explicitly recognises the policy lifecycle and its different steps from inception, preparation, implementation, evaluation and subsequent modification. Better regulation is built on three key pillars which are complementary and closely related:

- Impact assessment;
- Evaluation; and
- Stakeholder consultation.

Substantial changes were introduced by the Commission in 2015 to its better regulation policy. The Commission has developed and published Guidelines⁵⁰ which direct Commission staff on how to apply better regulation in their work throughout the policy cycle. They also address how the Commission will assist Member States in their national implementation of Union legislation. A complementary Toolbox⁵¹ contains 65 separate tools which provide more detailed assistance on how to tackle specific issues such as subsidiarity and proportionality⁵², drafting the explanatory memorandum⁵³ accompanying Commission proposals, territorial impacts⁵⁴, the choice of policy instrument⁵⁵ and implementation plans⁵⁶.

The President of the Commission also established a new Regulatory Scrutiny Board⁵⁷ in May 2015. The Board is comprised of a chairperson and six members with expertise in the social, economic and environmental fields given the pivotal role of better regulation to mainstream sustainable development in the Union’s policymaking. The members all work full-time for the Board and do not have any responsibility for policymaking. Three of the members are recruited from outside of the institutions via open, merit-based selection procedures. The remaining four members come from within the Commission services selected through similar but internal procedures. Candidates with experience and expertise related to the operations of local and regional authorities are eligible and indeed encouraged to apply. The Board checks the quality of all impact assessments and selected evaluations against the requirements of the Commission’s better regulation Guidelines. It issues positive and negative opinions. Initiatives accompanied by an impact assessment will generally require a positive opinion from the Board in order that the file can proceed to the College of Commissioners for decision.

Stakeholder consultation

Article 11 of the Treaty on European Union requires the Union’s institutions to give citizens and representative associations the opportunity to express their views on all areas of Union action. The Commission must also conduct broad consultations to ensure

⁴⁶ http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2016.202.01.0001.01.ENG&toc=OJ%3AC%3A2016%3A202%3ATOC#d1e182-201-1

⁴⁷ This threshold is one quarter for draft legislative acts related to justice, freedom and security.

⁴⁸ Article 8 of Protocol No. 2 on the application of the principles of subsidiarity and proportionality.

⁴⁹ <http://cor.europa.eu/en/activities/networks/Pages/subsidiarity-monitoring-network.aspx>

⁵⁰ https://ec.europa.eu/info/files/better-regulation-guidelines_en

⁵¹ https://ec.europa.eu/info/better-regulation-toolbox_en

⁵² https://ec.europa.eu/info/files/better-regulation-toolbox-5_en

⁵³ https://ec.europa.eu/info/files/better-regulation-toolbox-38_en

⁵⁴ https://ec.europa.eu/info/files/better-regulation-toolbox-33_en

⁵⁵ Tool #18 on the choice of policy instruments: https://ec.europa.eu/info/files/better-regulation-toolbox-18_en

⁵⁶ https://ec.europa.eu/info/files/better-regulation-toolbox-36_en

⁵⁷ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en

transparency and coherence of Union action⁵⁸. This is part of citizens’ right to participate in the democratic life of the Union and is important in establishing the Union’s legitimacy. President Juncker asked all College Members to be politically active in the Member States and in dialogues with citizens⁵⁹, by presenting and communicating the common agenda, listening to ideas and engaging with stakeholders. As of the 15 May 2018, there had been approximately 400 citizens’ dialogue events held under the Juncker Commission. There has also been a specific consultation on the future of Europe⁶⁰. The European Committee of the Regions will have completed over 200 local events/citizens’ dialogues in 28 European countries by December 2018, involving around 230 Committee members and over 30,000 citizens, and it has collected a similar number of responses through an EU-branded online survey and mobile phone app: *“Have your say on Europe”*. The President of the European Committee of the Regions will also launch a continuous dialogue mechanism in autumn 2018 linked to the implementation of the Task Force report and its communication/outreach recommendations.

Consulting stakeholders allows views to be expressed and hard evidence to find its way into the preparation of new initiatives or the evaluation of existing policies. Consultation is now underpinned by a strategy to identify the information which is required, the stakeholders from whom relevant information can be obtained and the methods by which stakeholders will be engaged. The initial description of the initiative and consultation strategy will be published in the roadmap or inception impact assessment. This allows all stakeholders to comment at an early stage and to prepare themselves for the more detailed consultation activities which follow. All consultations and feedback opportunities are now accessed through a single web-based portal (see section on *“Contribute to law-making”*⁶¹).

Evaluation and impact assessment depend on good quality stakeholder consultation and will generally be accompanied by a web-based public consultation of 12 weeks duration as part of the consultation strategy. For major initiatives in the Commission’s work programme, the Commission aims to consult in all official languages and at least in English, French and German in other cases.

Stakeholders are able to provide feedback on policy preparation and implementation throughout the policy cycle. Via the *“Contribute to law-making”* website, stakeholders are able to:

- Provide comments on Commission roadmaps and inception impact assessments which are published at the very outset of a new initiative (during a period of 4 weeks);
- Participate in public consultations accompanying new initiatives or evaluations of existing legislation or policies (generally during a 12-week period);
- Provide comments on proposals adopted by the Commission during a period of 8 weeks following adoption. These will be aggregated by the Commission and transmitted to the European Parliament and the Council; and
- Provide comments on the legal texts of draft delegated acts and implementing acts before finalisation by the Commission (during a period of 4 weeks);
- Provide comments and suggestions about how to simplify specific legislation. These suggestions are then taken up by the REFIT Platform who may adopt opinions and recommendations to the Commission.

All stakeholders are able to participate in such activities and can request to receive automatic notifications when new documents are uploaded to the “Contribute to law-making” website. Stakeholders can also submit views and other evidence to the Commission outside of the formal consultation and feedback processes.

Evaluation & Regulatory Fitness

The Commission also evaluates Union legislation and policies. It applies the “evaluate first” principle so that the functioning and performance of legislation is checked before proposals are made to change it. An evaluation will assess the effectiveness, economic efficiency, relevance, coherence and EU added value. It should look to see whether the legislation functions as envisaged and the expected impacts actually materialised.

In addition, and as part of the Commission’s Regulatory Fitness Programme, all revisions of legislation should investigate systematically the potential to simplify and reduce unnecessary costs⁶². A REFIT Platform comprising experts from the Member States and civil society advise the Commission about problematic legislation aided by a website where stakeholders can make their ideas and experience known⁶³.

⁵⁸ Article 11(3) TEU.

⁵⁹ <https://ec.europa.eu/info/events/citizens-dialogues>.

⁶⁰ https://ec.europa.eu/commission/consultation-future-europe_en

⁶¹ https://ec.europa.eu/info/law/contribute-law-making_en

⁶² COM(2017) 651: Completing the Better Regulation Agenda – Better solutions for better results: https://ec.europa.eu/info/sites/info/files/completing-the-better-regulation-agenda-better-solutions-for-better-results_en.pdf

⁶³ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform_en

Interinstitutional Agreement on Better Law-Making

The Interinstitutional Agreement on Better Law-Making entered into force in April 2016. It is based on Article 295 TFEU and sets out the commitments of the European Parliament, the Council and the Commission on many aspects regarding the preparation and implementation of Union legislation. Paragraphs 12 and 25 are particularly relevant in respect of ensuring respect for subsidiarity and proportionality via impact assessments and presenting the Commission's justification in the explanatory memorandum⁶⁴ accompanying its legislative proposals.

Delegated acts

The European Parliament and the Council (as EU co-legislators) may empower the Commission to adopt certain delegated acts which supplement or change the non-essential elements of Union legislation. Such acts facilitate the implementation of Union legislation by the European Commission. The use of delegated acts is governed by Article 290 of the Treaty on the Functioning of the European Union. The Co-legislators have the power to veto each individual delegated act or to revoke the empowerment in its entirety.

Implementing powers may also be given to the Commission to develop the conditions for a uniform implementation of Union acts. These are governed by Article 291 TFEU and follow detailed rules for their preparation agreed in Union law. The co-legislators also

have the power to reject such acts and Member State experts are involved in their preparation via appropriate committees comprising representatives of the Member States.

The preparation of each delegated act is governed by the Interinstitutional Agreement on Better Law-Making and involves the experts of the European Parliament, the Council and the Member States. Preparatory processes are transparent and can be followed on a new interinstitutional register of delegated acts⁶⁵. Prior to adoption by the European Commission, the draft delegated acts are posted online⁶⁶ so that all interested parties can make their views known to the Commission which may amend the text in response to stakeholders' concerns. In some cases, delegated acts may also be supported by an impact assessment or similar document prepared by a decentralised agency supporting the implementation of Union legislation.

As part of the implementation of the Interinstitutional Agreement on Better Law-Making, the European Parliament, the Council and the Commission are negotiating on criteria to distinguish between the use of delegated acts and implementing acts. This problematic issue arises frequently in the negotiations between the co-legislators on individual legislative files. In addition, the Commission has made proposals to update the body of EU legislation regarding empowerments that are not yet consistent with the requirements of Articles 290 and 291 introduced by the Lisbon Treaty. This addresses empowerments using the regulatory procedure with scrutiny.

⁶⁴<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2016:123:TOC>

⁶⁵<https://webgate.ec.europa.eu/regdel/#/home>

⁶⁶https://ec.europa.eu/info/law/contribute-law-making_en

ANNEX IV – KEY DOCUMENTS FROM THE MEMBERS OF THE TASK FORCE

Discussion papers prepared by the Task Force secretariat

1. Background Paper No.1: Information related to the work of the Task Force⁶⁷.
2. Background Paper No 2: Better Regulation⁶⁸.
3. Discussion paper No. 1: Initial exchange of views on the work of the Task Force⁶⁹.
4. Discussion Paper No 2: The participation of local and regional authorities in the preparation and follow-up of Union legislation⁷⁰.
5. Discussion paper No. 3: Application of subsidiarity and proportionality in the work of the institutions⁷¹.
6. Discussion paper No. 4: Re-delegation of policy responsibility and delivering policies more efficiently⁷².

Papers presented by members of the Task Force

7. Contribution of the Committee of the Regions’ members of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”: “Better involvement of local and regional authorities in the preparation, coordination and implementation of Union policies”⁷³.
8. Contribution from Dr Reinhold Lopatka: Working Paper for the meeting on 23 February 2018: ‘The involvement of the local and regional levels in the preparation and implementation of EU policies’⁷⁴.
9. How to better apply the principle of subsidiarity and the subsidiarity control mechanism: Recommendations to the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently” based on Contributions of the Conference of Parliamentary Committees for Union Affairs (COSAC)⁷⁵.
10. Contribution of the Committee of the Regions’ members of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”: “How to better apply the principles of subsidiarity and proportionality”⁷⁶.
11. Contribution from Dr Reinhold Lopatka: Working Paper for the meeting on 15 March 2018: ‘Application of subsidiarity and proportionality in the work of the institutions’⁷⁷.
12. Contribution of the Committee of the Regions’ members of the Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently”: 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 State⁷⁸.
13. Contribution from Dr Reinhold Lopatka: Working Paper for the meeting on 27 April 2018: ‘Re-delegation of policy responsibility and delivering policies more efficiently’⁷⁹.
14. Contribution of the LIX COSAC⁸⁰.
15. 29th Bi-annual Report of COSAC⁸¹.

⁶⁷ https://ec.europa.eu/commission/publications/background-paper-no-1-information-related-work-task-force_en

⁶⁸ https://ec.europa.eu/commission/publications/background-paper-no-2-better-regulation_en

⁶⁹ https://ec.europa.eu/commission/publications/discussion-paper-no-1-discussion-paper-no-1-initial-exchange-views-work-task-force_en

⁷⁰ https://ec.europa.eu/commission/sites/beta-political/files/discussion-paper-2-taskforce-subsidiarity_en.pdf

⁷¹ https://ec.europa.eu/commission/sites/beta-political/files/5-3-2018-2018-tf-discussion-paper-no3-institutional-work_en.pdf

⁷² https://ec.europa.eu/commission/sites/beta-political/files/19-4-2018_tf-discussion-paper-no4-redelegation-efficiency_en.pdf

⁷³ https://ec.europa.eu/commission/sites/beta-political/files/contribution-cor-taskforce-subsidiarity_en.pdf

⁷⁴ https://ec.europa.eu/commission/sites/beta-political/files/working-paper-lopatka-taskforce-subsidiarity_en.pdf

⁷⁵ https://ec.europa.eu/commission/sites/beta-political/files/subsidiarity_paper-cosac-recommendations_en.pdf

⁷⁶ https://ec.europa.eu/commission/publications/contribution-european-committee-regions-members-task-force-subsidiarity-and-proportionality-principles_en

⁷⁷ https://ec.europa.eu/commission/sites/beta-political/files/sg-2018-00573_en_0.pdf

⁷⁸ https://ec.europa.eu/commission/sites/beta-political/files/subsidiarity-task-force-cor-members-contribution-for-tf-meeting-on-27-april-2018_en.pdf

⁷⁹ https://ec.europa.eu/commission/sites/beta-political/files/sg-2018-00573_en.pdf

⁸⁰ https://ec.europa.eu/commission/sites/beta-political/files/contribution-lix-cosac-18-06-2018_en.pdf

⁸¹ <https://parleu2018bg.bg/upload/2702/29+Bi-Annual+Report+EN.pdf>

ANNEX V – COMMON ASSESSMENT OF CONFORMITY WITH THE SUBSIDIARITY AND PROPORTIONALITY PRINCIPLES

Task Force on Subsidiarity, Proportionality and “Doing Less More Efficiently” – Model grid to assess subsidiarity and proportionality throughout the policy cycle.

Institution*	
Title of the proposal or initiative	
Institutional Reference(s)	

Purpose and explanation of this assessment grid

This grid aims to provide a shared and consistent approach to assess conformity of a given proposal or initiative with the Treaty-based principles of subsidiarity and proportionality. It is intended to be used by the European Commission when initiating its proposals, the national Parliaments when preparing their reasoned opinions pursuant to Protocol No. 2 of the Treaty on the Functioning of the European Union (TFEU) as well as the European Parliament and the Council as the EU’s legislators. The grid is also intended to be used for initiatives from a group of member States, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of legislative acts (Article 3 of Protocol No. 2)

The subsidiarity principle helps determine whether it is justified for the Union to act within the shared or supporting competences it has been given under the Treaties or whether it is more appropriate that Member States act at the appropriate national, regional or local levels. The two cumulative aspects of EU necessity and EU added value should both be satisfied if the subsidiarity test is to be fulfilled. These are explained further below.

The proportionality principle helps ensure that the intensity of the legislative obligations or policy approach match the intended

objectives of the policy or legislation. This means that the content and form of Union action must not go beyond what is necessary to achieve the intended objectives.

Impact assessments prepared by the European Commission to support its proposals will include an assessment of subsidiarity and proportionality. In addition, each Commission proposal will be accompanied by an explanatory memorandum which also presents the Commission’s assessment of subsidiarity and proportionality as this is a requirement of Protocol No. 2 of the TFEU together with the requirements to consult widely before proposing a legislative act and to take into account the local and regional dimension of an envisaged action.

While this assessment grid only addresses subsidiarity and proportionality, each institution using it is free to add elements which are useful for their own internal processes and priorities. For example, the grid could be adapted to include an assessment of the Commission’s use of better regulation instruments or political aspects of the Commission’s proposals.

** Not all questions in this model assessment grid are relevant for all institutions.*

1. Can the Union act? What is the legal basis and competence of the Union’s intended action?

1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?

1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?

*Subsidiarity does not apply to policy areas where the Union has **exclusive** competence as defined in Article 3 TFEU. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU sets out the areas where competence is shared between the Union and the Member States and Article 6 TFEU sets out the areas for which the Union has competence only to support the actions of the Member States.*

2. Subsidiarity Principle: Why should the EU act?

2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2:

- Has there been a wide consultation before proposing the act?
- Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding conformity with the principle of subsidiarity?

2.3. Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

(a)	Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

(b)	Would national action or the absence of EU level action conflict with core objectives of the Treaty or significantly damage the interests of other Member States?

(c)	To what extent do Member States have the ability or possibility to enact appropriate measures?

(d)	How does the problem and its causes (e.g. negative externalities, spill over effects) vary across the national, regional and local levels of the EU?

(e)	Is the problem widespread across the EU or limited to a few Member States?

(f)	Are Member States overstretched in achieving the objectives of the planned measure?

(g)	How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

2.4 Based on the answers to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of the scale or effects of that action (EU added value)?

(a)	Are there clear benefits from EU level action?

(b)	Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

(c)	What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

(d)	Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, local and regional levels)?

(e)	Will there be improved legal clarity for those having to implement the legislation?

3. Proportionality: How the EU should act

3.1. Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

(a)	Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
(b)	Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with, the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-regulation, etc.)?
(c)	Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit European action to minimum standards or use a less stringent policy instrument or approach?).
(d)	Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
(e)	While respecting Union law, have special circumstances applying in individual Member States been taken into account?

ANNEX VI – STAKEHOLDER CONTRIBUTIONS SUGGESTING REVIEW OF LEGISLATION AND PROPOSALS

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
Task Force members from the European Committee of the Regions	<ul style="list-style-type: none"> • Competition rules: Services of General Economic Interest (SGEIs) and the complexity of rules for local and regional authorities who provide services. • Competition policy (State aid rules): Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid. • Energy: Renewable energy, energy efficiency and electricity markets including climate and energy plans in relation to the role of local and regional authorities and respect for the principles of subsidiarity and proportionality. • Environment: Potential simplification of the monitoring and reporting under environmental legislation to reduce administrative burdens on public authorities. • Environment: More flexibility for local and regional authorities in implementing the Environmental Impact Assessment Directive. • Public Procurement rules: Potential unnecessary complexity caused by inclusion of “green”, social and innovative criteria in public procurement. • Transport: Greater consideration needed of the role of local and regional authorities in relation to the liberalisation of coach and bus services and services of general economic interest. • Internal market for services: Potential need to simplify and provide for greater flexibility in the rules for the provision of services in the internal market. For example, regarding the notification procedure, European services e-card, and proportionality test for regulated professions. • Value Added Tax (VAT): Simplifying VAT rules for SMEs particularly for cross-border transactions. • Freedom, security and justice: migration: Involvement of local and regional authorities can better exploit multiple funding programmes supporting the integration of migrants into society . • Semester & Cohesion policy: Possible need to simplify rules on eligibility and expenditure in the common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument: COM(2018) 375. • Cohesion policy: Possible need to consider greater simplification and to reflect the role of local and regional authorities. • Research, technological development and space: Potential need to simplify the rules for beneficiaries. • Conservation of marine biological resources (CFP): Possible need to include territorial and the socio-economic dimensions of the structural policies in the Common Fisheries Policy. • Common Agricultural Policy (CAP): Potential need to simplify and make the funding rules more proportionate.

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
Dr Lopatka (member of the Task Force)	<ul style="list-style-type: none"> • Environment: Nature protection legislation. Greater flexibility could be considered for national authorities to classify the protected status in order to be able to respond to natural changes in the environment. • Transport: clean vehicles (procurement): The list of “clean technologies” in Annex I to the Proposal for a Directive on the promotion of clean and energy-efficient road transport vehicles does not include biogas which features a source of energy and road fuels in several Member States. • General civil law: A review of the Union’s acquis should be undertaken in the sphere of civil law from the perspective of subsidiarity. • Consumer protection: The Consumer Rights Directive 2011/83/EU is overly complex and more proportionate approaches could be considered. • Consumer protection: More proportionate rules could be considered for Regulation (EC) No 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws. • Consumer protection: Regulation (EU) No 2018/302 on addressing unjustified geo-blocking and other forms of discrimination based on customers’ nationality, place of residence or place of establishment within the internal market places disproportionate burdens on business. • Consumer protection: Delegated Regulation (EU) 2017/2158 on the reduction of the presence of acrylamide in certain foodstuffs contains potentially disproportionate provisions. • Consumer protection: Proposal for a directive on sales of goods (COM(2017) 637) should consider more proportionate approaches rather than a fully-harmonised guarantee scheme. • Social policy: The proposal for a directive on work-life balance for parents and carers should be looked at from the perspectives of subsidiarity and proportionality (COM(2017) 253). • Transport: Proposal for a directive on the charging of heavy goods vehicles for the use of certain infrastructures should be looked at from the perspectives of the regions when requiring distance-based tolls (COM(2017) 275). • Single Market: The proposal for a regulation setting out the conditions and procedure by which the Commission may request undertakings and associations of undertakings to provide information in relation to the internal market and related areas could be looked at from the perspectives of subsidiarity and proportionality (COM(2017) 257). • Single Market: The proposal for a regulation on the mutual recognition of goods lawfully marketed in another Member State could be revisited from the perspectives of subsidiarity and proportionality (COM(2017) 796). • Single Market: Proposal for a regulation laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products could be revisited from the perspectives of subsidiarity and proportionality (COM(2017) 795). • Single Market: The proposal for a directive establishing an individual right of redress under the Unfair Commercial Practices Directive could be looked at from the perspectives of subsidiarity and proportionality (COM(2018) 173). • Single Market: The proposal for a directive on a proportionality test before adoption of new regulation of professions could be looked at from the perspectives of subsidiarity and proportionality (COM (2016) 822). • Financial rules: The proposal for a European Deposit Insurance Scheme (EDIS) could be reviewed from the perspective of subsidiarity and national decision-making (COM (2015) 586). • Tax policy: The proposal for a directive amending Directive 2006/112/EC as regards rates of value added tax (COM(2018) 20) could be looked again with a view to extending the flexibility for Member States to establish VAT rates. • Tax policy: The proposal for a directive on the harmonisation of the corporation tax base (COM(2016) 685) should be reviewed to see whether the legislation is necessary for the functioning of the internal market and whether the appropriate legal base is used. • Common agricultural policy: The ongoing review should consider the need for simplification of funding rules

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
Danish Government (non-paper)	<ul style="list-style-type: none"> • The necessity for EU action should be reconsidered in the Commission proposal regarding a Directive on improving gender balance among non-executive directors of companies listed on stock exchanges (COM/2012/0614) • The proposed Directive on Work-Life Balance (COM/2017/0253) could better take into account different national circumstances and approaches. • Proposal for a Regulation on common rules for access to the international market for coach and bus services (COM/2017/0647) could be reconsidered from the perspective of subsidiarity and the sufficiency of national action. • Proposals for EU Water Regulation (COM(2017) 753) could take better account of the national and regional differences. • Directive on accessibility requirements of products and services (COM/2015/0615) could better reflect national approaches to legislation in this area. • The minimum standards for physical and mental fitness for driving (Annex 3 Directive in 2006/126/EC) are potentially overly complex and bureaucratic. • The rules for sector specific ePrivacy regulation (COM/2017/010) are possibly too complex and overlap with general rules on data privacy. • There is a need to consider simplification of the rules governing the Common Agricultural Policy (CAP).

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
German Government (non-paper)	<ul style="list-style-type: none"> • Recommendation for a Council Decision on opening negotiations for amending the Treaty of the Energy Community (restricted document COM/2017/5751): could be reconsidered from a subsidiarity perspective. • Proposal for a Directive of the European Parliament and the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas (COM/2017/660): absence of an impact assessment despite significant economic impacts and the proposed extension of reciprocal rights and obligations. • Proposal for a Decision of the European Parliament and of the Council amending Decision no 1313/2013/EU on a Union Civil Protection Mechanism (COM/2017/0309): absence of an impact assessment despite risks that “rescEU” would go beyond coordinating and complementing missions. • Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/2009 on common rules for access to the international market for coach and bus services (COM/2017/647) and Proposal for a Directive of the European Parliament and of the Council amending Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (COM/2017/648): could be revisited from the perspective of subsidiarity and its significant impact on domestic (non-cross-border) traffic. • Judicial cooperation in criminal matters: could be revisited from the perspective of subsidiarity. In particular for the proposal of a Directive of the European Parliament and of the Council amending Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC (COM/2016/450); and the proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (COM/2017/489). • Determination of specific criminal and penalty provisions in Union law: Member States should have more flexibility to determine these provisions (e.g. New Deal for Consumers, COM/2018/183, COM/2018/185 and COM/2018/184) • Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (COM/2017/478 and COM/2017/479): could be revisited from the perspective of subsidiarity as the proposals also include civil servants, judges and soldiers that fall under originally national tasks. • Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No. 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (COM/2017/481): the proposed provisions on information on the gender balance on websites had an impact on websites of national parties. But this has been revised during the trilogue. • Commission Implementing Regulation (EU) 2017/543 of 22 March 2017 laying down rules for the application of Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses as regards the technical specifications of the topics and of their breakdowns (C(2017) 1728): to be revised from a subsidiarity perspective, alternative ways of action should be considered. • Standardisation in health care: could be revised from a subsidiarity perspective. While the objective is reducing inequalities in care between Member States, standardisation can lead to higher costs and reduced quality standards (e.g. European Commission Initiative on Breast Cancer) • Regulation of information requirements, in particular in civil and commercial law: risk of over-regulation with administrative burden especially on SMEs (e.g. Single Digital Gateway, COM/2017/256). • European Semester: risk of going beyond EU competence. The focus should be on economic and fiscal policy. But an increasing focus on health and care in Member States should be revised in view of Member States’ primary competence for health care policy. • European pillar of social rights: risk of going beyond EU competence. Special attention for subsidiarity and proportionality when transposing the social pillar in the health care sector. • Proposal for a Regulation of the European Parliament and of the Council on health technology assessment and amending Directive 2011/24/EU (COM/2018/51): to be revised from a subsidiarity perspective as the proposal interferes in the Member States’ competences for health care.

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
	<ul style="list-style-type: none"> • Public procurement: to be revisited from a subsidiarity perspective as some requirements from certain sectoral acts interfere in the Member State’s prerogative to determine the object of the procurement (e.g. energy efficiency COM/2016/761 and clean vehicles Directive COM/2017/653) • Delegated acts: there is a need to consider more carefully subsidiarity aspects in delegated acts. E.g. Commission Delegated Regulation (EU) No 3/2014 of 24 October 2013 supplementing Regulation (EU) No 168/2013 of the European Parliament and of the Council with regard to vehicle functional safety requirements for the approval of two- or three-wheel vehicles and quadricycles (: annex XV no. 4.2.2 contains requirements for M/S tyres which could better be determined by Member States according to specific local conditions. Or Commission delegated Regulation amending and correcting Delegated Regulation (EU) 2015/208 supplementing Regulation (EU) No 167/2013 of the European Parliament and of the Council with regard to vehicle functional safety requirements for the approval of agricultural and forestry vehicles (C/2018/863): the proposed increase of the maximum width of agricultural vehicles is not compatible with German infrastructure. Such questions are currently also discussed in the context of the “Clean Energy for all Europeans” package.
Hungarian government	<ul style="list-style-type: none"> • Judicial cooperation in civil matters could look generally at the efficiency of legislation, the need for harmonising procedural rules and considering greater contact between Member States and third countries (Regulations No 662/2009 and 664/2009) • Proposal on the Succession Regulation (EU) No 650/2012 could better reflect the different situations of Member States. • Consideration should be given to using directives rather than Regulations on confiscation and e-evidence (COM(2018) 225). • The Proposal for a directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union could be revisited from the perspectives of subsidiarity and proportionality (COM/2017/0797). • The Proposal for a directive of the European Parliament and of the Council on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (COM/2017/0253) could be revisited from the perspectives of subsidiarity and proportionality. • Proposal for a Regulation of the European Parliament and of the Council establishing a European Labour Authority (COM/2018/0131) could be reviewed from the perspectives of subsidiarity. • Council recommendation on access to social protection for workers and the self-employed (COM(2018) 132) could be revisited from the perspectives of subsidiarity and proportionality.

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
WKÖ (Austrian Federal Economic Chamber)	<ul style="list-style-type: none"> • In the area of Cohesion policy, more responsibility could be given to the national authorities concerning implementation. • Competition Policy (State Aid): Commission Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid. • Proposal for a Directive on a proportionality test before adoption of new regulation of professions (COM(2016) 822). • The Proposal for a Single Market Information Tool (SMIT) (COM(2017) 257) could be reviewed from the perspective of the necessity of EU action. • Proposal for a Regulation on addressing Geoblocking (COM(2016) 289) could be revisited from the perspectives of subsidiarity and proportionality . • Proposal for a Regulation to establish a European Deposit Insurance Scheme (COM(2015) 586) could be revisited from the perspectives of subsidiarity. • Commission Regulation (EU) 2017/2158 for the reduction of the presence of acrylamide in food could be looked at to see whether a Recommendation would be more proportionate. • The proposal for a Directive on work-life balance for parents and carers (COM(2017) 253) could be revisited to look at subsidiarity-related issues. • Common Corporate Tax Base (COM(2016) 685) could be reviewed to see whether the legislation is necessary for the functioning of the internal market and whether the appropriate legal base is used.. • Consumer Rights Directive 2011/83/EU could be reviewed from the perspective of simplifying requirements for certain (off-premises) contracts. • Proposal for a Directive on certain aspects concerning contracts for the sales of goods (COM(2017) 637) should consider more proportionate approaches rather than a fully-harmonised guarantee scheme. • EU-wide sanctions regarding the infringement of consumer protection provisions (COM/2018/0185) could be looked at afresh from the perspective of subsidiarity and proportionality. • Business Avenues under the Partnership Instrument - certain aspects of European Economic Diplomacy (EEAS) – support of businesses should be looked at from the perspectives of subsidiarity and member State competences.
Insurance Europe	<ul style="list-style-type: none"> • The proposal for Single Market Information Tool (SMIT) (COM(2017)257) should be looked at again because of concerns about subsidiarity and proportionality. • Review of European supervisory authorities (including the Insurance and Occupational Pensions Authority, EIOPA) raises concerns about subsidiarity and proportionality (COM(2017)536). • The services e-card (COM(2016) 824 final) raises concerns about the proportionality of its impacts on insurance providers.
Board of Swedish Industry and Commerce for Better Regulation (NNR)	<ul style="list-style-type: none"> • A simplification of EU VAT legislation and the rules for invoices (Council Directive 2006/112 EU) to reflect the concerns of SMEs. • Payment Services Directive (EU) 2015/2366. (PSD 2). • ESAs (European Supervisory Authorities) COM(2017)536. • The risks for farmers from late payments should be assessed with a view to compensation for late payments in Regulation (EU) No 1306/2013 Article 75 and Commission Implementing Regulation (EU) No 809/2014. • The provisions of Regulation (EU) No 1303/2013 could be simplified regarding the use of investment aid under the Rural Development regulation. • Commission Delegated Regulation (EU) No 639/2014 could be revised to mitigate the risks that bovine animals are disqualified from support schemes following sale and erroneous registration formalities.

Stakeholder/ contributor	Legislative act, policy area or legislative proposal
Der Zentralverband des Deutschen Handwerks (ZDH)	<ul style="list-style-type: none"> • Consideration should be given to whether any new legislation is needed in the internal market for services given that comprehensive rules already exist (e.g. Directive 2006/123/EC for approvals and other requirements regarding establishment). • Directive 2005/36/EC on the recognition of professional qualifications should be reviewed from the perspective of subsidiarity and Member State competences. • The area of vocational education and training (VET) should be looked at from the perspective of subsidiarity and Member State competences. • Union action in the field of social policy should be looked at from the perspectives of subsidiarity and member States' autonomy (e.g. the Working Time Directive 2003/88/EC, Maternity Leave Directive, and the Posting of Workers Directive (COM(2016) 128). • The state aid rules applying to SMEs could be looked at with a view to make them more proportionate for example, in relation to de minimis aid (Commission Regulation (EU) No 651/2014). • The State aid rules for VET infrastructures could be simplified to take better account of national circumstances.
Johannes Maier, Member of the CoR Subsidiarity Expert Group; Head of the EU Coordination Unit, Office of the Carinthian Regional Government	<ul style="list-style-type: none"> • A renationalisation of Structural and Cohesion Funds could be considered. • The Union should restrict itself to asking for regional/cross-border strategies in the area of territorial cooperation and development of rural areas. • Enforcement of consumer protection rights with infringement procedures and fines should be reconsidered as this is a Member State competence. •
Bavarian State Chancellery - Subsidiarity and competencies	<ul style="list-style-type: none"> • Problematic legal bases of the Treaty (Articles 114, 153, 192, 194, 113, 79, 196 on the single market, social policy, environment, energy, indirect taxes, immigration policy and civil protection) • Excessive activities in the field of criminal law (e.g. European Public Prosecutor) • Limit “soft” law coordination activities (e.g. Education and professional training, social protection, culture and tourism). • Excessive recourse to delegated acts (e.g. in the area of agriculture, creative Europe, statistics). • Flexibility to implement EU spending programmes (Structural and investment funding, Common agricultural policy). • Excessive monitoring and reporting obligations (e.g. COM(2017) 795 on harmonising legislation for products; COM(2016) 822 proportionality test for new regulations on professions; and services of general economic interest, EU Justice scoreboard).
Calabria Regional Council	<ul style="list-style-type: none"> • Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs could be made more proportionate by taking into account regional differences and characteristics. • Less regulation and greater flexibility should be considered for Cohesion policy and the European structural and investment funds

