

Zu den Fragen im Einzelnen

(1) Subsidiarity, proportionality and working more efficiently.

- *How can the institutions account better for the principles of subsidiarity and proportionality in their work?*

The fundamental problem with the principle of subsidiarity is that there is a fundamental misunderstanding about what it means. For the representatives of regions and local authorities this means that “decisions are taken as closely as possible to the citizen”. This provision, which is in the Preamble of the Lisbon Treaty is not part of the legal definition of subsidiarity as defined in article 5(3) TEU which is the one that the EU institutions and in particular the Commission interpret the principle: actions that “by reason of the scale or effects of the proposed action, be better achieved at Union level.”

This notion of “scale” and “effect” is the reason why most subsidiarity impact assessment that accompany Commission proposals invariably argue that the principle of Subsidiarity backs up intervention at EU level.

A fundamental problem is the fact that the list of shared competences as outlined in article 4 (2) TFEU, to which the Principle of Subsidiarity contends with, is exceedingly vague, for it broadly outlines a given policy e.g. “transport” instead of using more precise clauses as “cross border transport”.

This Task Force should build upon earlier work to find a new interpretation of the principle of Subsidiarity that is able to combine the two above mentioned notions of subsidiarity: the “proximity” one and the “scale and effect” one.

- *Are there ways to enable the Union and its institutions to work more efficiently?*

This is a matter that is not necessarily related to the principle of subsidiarity and should be subject to a separate discussion.

(2) Re-delegation of policies to the Member States.

- *On what basis can Union policies be identified with a view to passing some of these responsibilities back to the Member States?*

We need to move from a deterministic notion of subsidiarity. As mentioned above, local authorities, regions and certain parliaments argue a definition of subsidiarity just on the basis of that the Preamble says, in order to justify no transfer of powers to the EU level. By contrast the EU institutions and some Member States interpret subsidiarity as an argument to justify further transfers of powers to the EU. For instance, the recent press release of the CoR while welcoming their inclusion on the Task Force, it warns against any interpretation of subsidiarity that could mean re-nationalising powers.

Such biased interpretations are misguided. Subsidiarity is a mechanism whereby shared powers can be transferred to the EU level or being returned to the national and subnational level; it is a dynamic process and any apportionment of powers is not irreversible. If circumstances change over time a power can be re-nationalised and if circumstances change once again, be transferred back at EU level. While most countries do not have subsidiarity as a legally defined principle, this is how multilevel governance works in countries with several tiers of government.

A key issue is the need for better impact assessment that embed the local and regional impacts of proposed EU actions.

(3) Involving local and regional authorities in EU policymaking and its implementation.

- *How can local and regional authorities be more effectively involved in designing and implementing Union legislation nationally and at Union level?*

At national level there is a deficit of involvement in most Member States with the exception of a few Member States with a constitutional mandate for such involvement of regional and local governments in EU policies (e.g. Germany, Austria) or with a political tradition of central-local involvement (Denmark, Netherlands, Sweden, Finland). These internal deficits generate in turn pressure for compensating this by the EU institutions, when the

most efficient way of influencing EU decisions by subnational authorities is to do so via the national position.

A basic proposal is to discard the notion of local and regional governments as “stakeholders” as they are referred to in the 2015 Better Regulation Package

- *How can EU institutions better reflect local and regional authorities' contributions when designing Union legislation?*

See the answers above and below. However the key starting point is to respect the principle of sincere cooperation and respect of internal constitutional arrangements that are enshrined in the Lisbon Treaty. The recent attempt to treat local and regional authorities as lobbyists in the so called “Transparency Register” is an evidence on the difficulty that the Commission has in assuming this.

- *How can stakeholder consultation and feedback processes more systematically attract contributions from local and regional authorities?*

The first notion to discard is to treat consultation of local and regional levels of government as “stakeholders”, in all the EU27 Member States the principle of local self-government is a constitutional principle. They are democratically elected tiers of government as the national government is. Any consultation or impact assessment need to be designed by specifically addressing the distribution of powers within each Member States rather than treating them as “black boxes”.

Equally the existing practice of contracting out impact assessment and asking external consultants to randomly select which regions or local authorities should be included should be discarded. Instead the Commission should work with the national associations of regions and local authorities to design and collect the evidence of such consultations.