

EUROPEAN UNION



**Committee of the Regions**

# **CoR's Future Role and Institutional Positioning**

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# **Executive Summary**

Good governance is based upon foresight that allows decision makers to make informed choices. The Committee of the Regions (CoR) has turned to strategic foresight to anticipate the forthcoming changes within the EU political system. The exercise is a second step in strategic foresight at the horizon of 2025, which follows the report on the future challenges facing the CoR and European local and regional authorities (LRAs).

The aim of this second report is to address the CoR's future role and institutional positioning within the European political architecture. It draws up five future-based scenarios with predictions about the evolution of the CoR's institutional and political role, its associated powers and relations with other EU institutions and stakeholders. For each scenario, the report analyses the consequences for the overall EU institutional setup, the evolution of parliamentarism, the supranational decision-making process and the CoR mandate.

The report invites debate on the policy options for the CoR and its membership given the challenges ahead at the horizon of 2025. The future evolution of the CoR's institutional and political role necessarily involves a reflection of the impact of each scenario on the CoR's role in the legislative process, the checks and balances among and institutional prerogatives of the Council of the European Union, the European Commission, the European Parliament (EP) and national parliaments.

Today, European integration is again at a point where choices have to be made that loom large over the future of the EU. In this context, the five scenarios provide a narrative about the future evolution of the CoR's institutional and political role.

For each scenario, the report formulates recommendations in view of core choices that the CoR and CoR Members need to make against the background of the future development of the European institutional architecture. Across each of the independent trajectories, the scenarios underline three common and distinct elements. First, all scenarios implicitly assume respect for the Community method. Second, they demonstrate the need for further development of the CoR's unique expertise. Third, all scenarios highlight the fundamental impact of the CoR's composition on the CoR's future role and institutional positioning in the European political architecture. Even smaller, well-designed changes in these three interrelated domains would have significant impact.

Strategic foresight essentially presents a trade-off between short-term and long-term choices. The choices made today may close the door to other options in the long run. In institutional design, these choices constitute critical junctions that initiate path dependent processes. In this context, choices may constitute trade-offs. For instance, the clear separation of powers at the EU level prescribes that, when the CoR integrates with the Parliament, it gradually closes the options for the set-up of a European Senate. Depending on these choices, some scenarios are more likely than others. The five scenarios lay out these core choices and invite CoR policymakers to debate, reflect and shape the CoR's course over the next decades.

## **The Scenarios**

### **Scenario 1 – A dynamic status quo**

The CoR reinforces its consultative and political powers without a treaty change. While not having a formal vote, the CoR reinforces its voice by increasing the quality and the impact of its opinions on the legislative process. Improvement of form and content of the opinions, early delivery, strong political support and first rate expertise on LRA matters underpin the growing standing and prestige of the CoR as an advisory body. Moreover, in the area of subsidiarity and proportionality the CoR's impact reporting tools (including their media impact) contribute to increasing the value that other EU institutions attach to the CoR's work.

To achieve the dynamic status quo, the CoR would draft CoR internal guidelines and complement the CoR rules of procedure with a so-called 'Opinion Impact' section. Initiatives that focus on the improvement of the CoR opinions would be carried forward. The CoR would also expand and strengthen the introduction and training sessions for its members to make up for the relatively high turnover of its representatives. Such training courses would also improve the expert capacity of the CoR Members, supported by online dynamic aggregate statistics on the characteristics of LRAs, bringing direct value added to CoR Members, the LRAs and raising the CoR's expert profile.

The CoR would further strengthen the level of information it provides on how it makes decisions. Similar to the EP and the Council, it would publish the details of the CoR Commissions' and Plenary vote. Publishing the voting details underlines the support and the distribution of the support among the CoR Members. In addition, the publication of the voting details increases good governance practices such as transparency, legitimacy and accountability. It would help reconnect CoR Members with their constituencies.

To further strengthen the ties with all subnational European LRA associations, the CoR would draw up a detailed map of their membership and their selection procedures. On the basis of the map, the CoR would establish better links with the associations of subnational authorities that are in favour of introducing an additional criterion on the basis of expertise for designating CoR membership. Finally, the CoR would improve its collective co-ordination with clear-cut priorities. CoR subcommittees organised on the basis of provenance would overcome internal cleavages structures, streamline decision-making and exchange information and generate more capacity to speak with one voice. As a result, the mandate for CoR Members is likely to become more attractive. However, it should be noted that the expression of political preferences from all political groups in the CoR would remain an important element.

## **Scenario 2 – LRA Assembly within the European Parliament**

The CoR integrates into the European Parliament following a EU treaty change, resulting in the Parliament becoming a bicameral institution with two kinds of representation. As an independent sub-chamber of the Parliament, the CoR gives voice to the territorial diversity of the LRAs. The CoR would maintain an independent plenary based on its distinct membership. Within the European Parliament, the CoR acts as a prudent reviser, considering subsidiarity and proportionality, and using its expertise in the area of implementing EU legislation at the LRA level.

The move towards integration within the European Parliament would be prepared by an internal opinion of both the CoR and the EP on the future institutional architecture of the EU and would be based on the already close cooperation between the CoR and the EP. The opinion would lay out the necessary changes and the policy options, and would argue strongly in favour of integrating the CoR as a sub-chamber of the EP. The CoR would further strengthen the ties between the CoR's six permanent commissions and their standing Committee counterparts in the EP. Most importantly, the CoR would convince standing EP Committees of the CoR's unique expertise and its constructive contribution to their work by offering information, issuing timely reports and opinions that could reduce the Committees' workload. In this context, the CoR would be regarded as an even more valuable partner in the areas of subsidiarity and proportionality.

In line with the election of MEPs, the CoR would make a case for replacing the current designation procedure with an electoral procedure for CoR membership. No more than 350 CoR Members would be indirectly elected (on a country by country

basis) by the respective associations of subnational authorities that currently select the CoR membership. The elections would be brought in line with those of the European Parliament.

### **Scenario 3 – LRA Assembly associated with the Council**

The CoR is closely associated with the Council after an EU treaty change. The CoR works alongside the Council's working parties. The CoR Members formally act as revisers with expertise in the legislative process, paying close attention to subsidiarity and proportionality in the CoR core policy domains for which consultation is mandatory. The CoR would maintain an independent plenary on the basis of its electoral status and distinct membership. To give the LRA assembly more prominence, a total of 200 CoR Members would be indirectly elected next to the Council.

To achieve close association with the Council, the CoR would need to explore in more detail the necessary institutional changes and the policy options that such association would entail. To align itself with and work alongside the Council working parties, the CoR would further strengthen the relationship with the Council Presidency and reinforce established contacts with the Presidency Trio. Particularly, the CoR would offer its expert knowledge in its core policy domains to seek synergies with the Presidency Trio's 18-month programme. The respective CoR national delegations play the role of frontrunners for organising informal and formal inter-institutional exchanges. Most importantly, the CoR would need to convince the Council Presidency and Secretariat of its unique expertise and constructive contribution to legislative work by offering information and issuing timely reports and opinions that could reduce their workload.

### **Scenario 4 – The CoR as a territorial platform supporting the work of the European Commission**

Only a limited EU treaty change would be needed for the CoR to become a territorial platform that works closely with the European Commission in the pre-legislative phase and in the adoption of delegated and implementing acts. The Commission Directorate Generals dealing with LRA matters would draw on the CoR's representatives' expert functions in the areas of subsidiarity, proportionality and impact assessments. The CoR would participate as an observer with speaking rights followed by the issuance of better informed opinions. As a result, the CoR would provide a new avenue for LRAs to participate and strengthen the legitimacy of Commission policy making at an early stage.



Involvement in the pre-legislative phase and the adoption of delegated and implementing acts procedure requires a high level of expertise. The CoR would further strengthen this type of expertise on the basis of stronger ties developed with all the LRA associations in the Member States. Moreover, the subnational LRA associations would introduce an additional criterion for designating CoR membership based on expertise.

Most importantly, the CoR would need to convince the Commission of its unique expertise and its constructive contribution to the legislative work by issuing timely reports and offering information and opinions that could reduce the Commission's workload.

### **Scenario 5 – A Third Legislative Chamber representing the European LRAs**

An extensive EU Treaty revision results in a strong and independent third house – the European Senate – with law-making powers on a par with the EP and the Council. Within such structure, the European Senate influences EU policy, guarantees institutional stability and represents a diversity of European collective constituent units that the other two legislative chambers cannot represent. The powers of the Senate depend on whether it will stand on an equal footing with or be subordinated to the European Parliament and the Council.

Given that the EU would need to reconcile efficient and effective decision-making with creating more LRA legitimacy into the EU legislative process, the CoR would first need to study and learn from ongoing practices and processes of existing Senates in the EU. The findings of such study would reveal interesting practices that would inform the manner in which the CoR could become a third legislative chamber. The study should lay out the successful territorial practices in Member States that would form an illustrative basis for the CoR to move towards a third chamber, i.e. the EU Senate.

Subsequently, the CoR would project a higher level of decision-making capacity and develop further unique expertise in preparation for a potential convention and treaty change. It would make the CoR more credible when arguing in favour of the expansion of its legislative powers. In terms of membership, the CoR would become a fully elected body. The process leading to the change of the procedure should ideally be bottom up. The key players in that process would be the subnational LRAs. Therefore, the CoR would need to strengthen its ties with all LRA associations.

## **Likelihood and Timing of the Scenarios**

Given the initial conditions, the most genuine and linear option is Scenario 1. It is the most conceivable scenario in both the short and medium term and should be tried first.

While unlikely, scenario 5 is the most coherent alternative to the extent that it has the least impact on the internal dynamics of the other EU institutions. Scenario 5 connects most with the idea of territorial representation in federal states that currently exist in the EU. It is a scenario with a long-term horizon, as an EU Senate cannot be formed in the short- or medium-term. It results in the most transparent strengthening of the CoR as co-legislator on a par with the EP and the Council. While such a scenario could be welcomed from a democratic perspective, it would require a major revision of the Treaties to streamline the decision-making procedures and re-equilibrate the balance of power between the institutions. Scenario 4 envisages a narrative of how the Commission could benefit from the CoR expertise even knowing that the Commission and other institutions would take more note of the CoR's work when realising scenario 1. Scenario 4 has a short- and medium-term perspective.

Scenarios 2 and 3 are the least likely of all scenarios. Adding another form of sizable representation within or associated with the EP would be more conceivable as the institution is set up with a clear representative function. Against this background, it is noteworthy that the CoR already co-operates closely with the EP. In comparison another form of sizable representation would be less conceivable for an LRA Assembly within/associated with the Council. Going beyond the advisory functions for the CoR, there is a distinct likelihood that conflicts between the Member States and the LRAs would arise, resulting in decision-making bottlenecks. Both scenarios 2 and 3 have a medium- to long-term horizon.

<b>Likelihood and Timing of the Scenarios</b>			
<b>Scenarios</b>	<b>Timing</b>	<b>Impact on EU institutions</b>	<b>Ranking by likelihood</b>
<b>Scenario 1: a dynamic Status Quo.</b>	short term	Low	1
<b>Scenario 2: LRA Assembly within/associated with the European Parliament.</b>	short to medium term	High	4
<b>Scenario 3: LRA Assembly within/associated with the Council.</b>	medium to long term	high	5
<b>Scenario 4: The CoR as a Territorial Platform supporting the work of the European Commission.</b>	medium to long term	low	3
<b>Scenario 5: A Third Legislative Chamber representing the LRAs.</b>	long term	high	2



# 1 Introduction

In light of the CoR's 20<sup>th</sup> anniversary, this report identifies the possible room for manoeuvre to optimise the CoR's legitimacy and the impact of its actions on the institutional architecture of the European Union (EU). To this end, the report on the CoR's Future Role and Institutional Positioning is a foresight exercise that envisions **five possible scenarios** with respect to the CoR's institutional status and strategic positioning within the European political scene at the horizon of 2025.

The report is motivated in part by the changes facing the EU over the coming months. The institutional and political uncertainty is linked inter alia to the May 2014 European Parliamentary Elections, the perceived legitimacy crisis in the EU and the possibility of a new EU Treaty revision.

## **The May 2014 European Parliamentary Elections**

In May 2014, EU citizens elected a new European Parliament. For the first time, the European political parties presented their preferred candidate for the post of European Commission (henceforth the Commission) President. The electoral choices of EU citizens, therefore, not only determined the composition of the Parliament, but they could also influence the designation of the Commission President and the composition of the College of EU Commissioners. Moreover, the European elections could influence the direction the EU would take and that of its policies over the upcoming legislative cycle. The elections could also generate a debate about the future of Europe, the post-2015 period, as well as the potential revision of the European treaties.

## **A perceived EU Legitimacy Crisis**

The elections take place at a time when EU citizens have grown discontented with the functioning of the EU as a political system. A variety of trends in opinion polls over the past few years make for uncomfortable reading.<sup>1</sup> Less people hold a positive view about the EU and less than one in three trusts the EU and national institutions.

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<sup>1</sup> EUROBAROMETER (2009) The role and impact of local and regional authorities within the European Union, European Commission (Spring 2013) Standard Eurobarometer. s.l. see graph QA22.a.3 (My voice counts in the EU).

Undoubtedly, the financial and economic crisis has increased discontent among EU citizens, putting pressure on the process of EU integration. Nationalist parties are emerging throughout the EU. Growing resentment has resulted in increased visibility and presence of these outsider political movements in the 2014 European Parliamentary elections, affecting the composition of the new European Parliament and possibly the direction EU integration might take over the coming years. In short, some trends highlight that for several dimensions of EU integration, broad support can no longer be assumed- addressing these concerns is high on the agenda.

## **Growing calls and complications for EU Treaty revision**

The protracted financial and economic crisis has led to more coordinated fiscal discipline, economic coordination and policymaking at EU level. Several policy initiatives herald a major step forward in the EU integration process: the new EU financial, economic and fiscal governance (with the agreement of the European Semester); the reformed Stability and Growth Pact; the creation of the intergovernmental Treaty on Stability, Coordination and Governance (TSCG) among 25 Member States; the making of the so-called Two Pack and Euro-Plus Pact; and the set-up of the European Stability Mechanism (ESM).

These policy responses stretched the EU treaties to their limits and gave rise to growing calls for their revision<sup>2</sup>. The clearest indication for the need of a European treaty revision can be found in the TSCG of 12 March 2012.

To incorporate the substance of the TSCG into the legal framework of the EU, the 25 EU signatories (excluding Denmark and the UK) envisage an EU treaty reform procedure before 2018.<sup>3</sup> The degree of such treaty revision remains unclear and depends on the extent of substance and institutional revisions. At minimum, one could envisage the addition in the TEU or TFEU of a reference to a new protocol on the TSCG. Should a complete treaty integration of the TSCG including

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<sup>2</sup> A. Duff *The EU and Federalism: Politics and Policies Compared*, in: Laursen (ed.) *JCMS: Journal of Common Market Studies*, Oxford, UK, 189-190. table 1.3, P. de Schoutheete and S. Micossi (2013) *On Political Union in Europe: The Changing Landscape of Decision-Making and Political Accountability. Politics and Institutions, CEPS Essays*, G. Ricard-Nihoul. (June 2007) *The revision of the European treaties: the Convention moment: Six arguments for its continuation, six proposals for its reform*, in: *Visions of Europe* [Online].

<sup>3</sup> (2 March 2012) *The Treaty on Stability, Coordination and Governance*. Brussels. Article 16 of the TSCG stipulates that “Within five years, at most, of the date of entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in accordance with the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union in view of the mandate of the Convention”.

procedures be executed, Title VIII of Part III of the TFEU (Economic and Monetary Policy) and protocols 12, 13 and 14 would have to be reviewed.

To initiate such a procedure, it suffices that one Member State so requests<sup>4</sup>. Subsequently, the decision to call a convention in the run up to a treaty revision needs to be taken by the European Council after consulting the Commission and the EP. Several factors contribute to making the outcome of such Convention uncertain. Firstly, recommendations on the reform of the EU treaties require a consensus among all parties to the Convention. Secondly, it is the Conference of Member States that has the final say. Finally, a ratification procedure takes place in all EU Member States.

In this context, some Member States have indicated a preference for limited Treaty change. However, there is currently a consensus about the direction. Unless unforeseen events occur, the most optimistic calendar for such as a treaty revision foresees the calling of a European Convention in 2017-2018, with a new treaty taking effect around 2025.

## Improving Legitimacy

Questions have been raised about the democratic legitimacy and accountability of the strengthening of EU powers in the area of economic, fiscal and financial policy-making.<sup>5</sup> National parliaments and the EP do not have a clear oversight of EU economic policy-making, while the process of further economic and financial integration continues apace towards a ‘genuine economic and monetary union.’<sup>6</sup> The EU is at a crossroads. One option is to limit itself to little or no European treaty reform. Alternatively, the EU may strengthen ‘the necessary democratic legitimacy and accountability of decision-making within the European Monetary Union (EMU), based on the joint exercise of sovereignty for common policies and solidarity.’<sup>7</sup> While a crucial building block for the future viability the European

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<sup>4</sup> Article 48 of the TEU.

<sup>5</sup> Union of European Federalists (2013) *Commentary on a fundamental law of the European Union*. Brussels, P. de Schoutheete and S. Micossi (2013) *On Political Union in Europe: The Changing Landscape of Decision-Making and Political Accountability*. *Politics and Institutions, CEPS Essays*, The Spinelli Group and Bertelsmann Stiftung (2013) *A Fundamental Law of the European Union*, Gütersloh: Verlag Bertelsmann Stiftung.

<sup>6</sup> European Commission (30/11/2012) *Communication From the Commission: A blueprint for a deep and genuine economic and monetary union: Launching a European Debate*. Brussels. Herman Van Rompuy, José Manuel Barroso, Jean-Claude Juncker and Mario Draghi (5 December 2012.) *Towards a genuine Economic and Monetary Union*. Brussels.

<sup>7</sup> President of the European Council Herman Van Rompuy (26 June 2012) *Towards a Genuine Economic and Monetary Union*. Brussels.

project, the strengthening of EU powers in the area of economic, fiscal and financial policy-making challenges the existing EU institutional balance between EU institutions, the Member States, the Local and Regional Authorities (LRAs) and their citizens.

The process is further complicated by calls in the Member States for repatriation of EU competences (see the so-called Balance of Competences Review (UK) and wish list (the Netherlands) and the possible UK referendum in 2017 on the terms of EU membership).

## **The CoR's contribution to the democratic life of the EU**

The current situation in the EU also concerns the CoR as an institutional actor in the EU decision-making process. The uncertainty directly affects the CoR as a representative body of LRAs and its contribution to the democratic character of the EU. The CoR is all the more affected when the functional boundaries for social and economic policy in the EU, such as economic, labour market and welfare policies, are blurred across national, regional and local levels, with regions and cities taking on more responsibility in less unitary Member States.<sup>8</sup> Therefore, the objective of enhancing the adequate role and representation of European LRAs will continue to define the agenda of the CoR in the decades to come. What implications might a changing EU have for the CoR? Which changes might the CoR have to make to its day-to-day functioning, its formal status and its relations with institutional partners and territorial stakeholders?

In answering these questions, this report presents five scenarios informed by academic and other types of analyses on the institutional status and activities of the CoR.<sup>9</sup> The first scenario centres on 'a dynamic status quo,' reinforcing the CoR's consultative and political powers without treaty change. The second scenario depicts an LRA Assembly associated with the EP. In the third scenario, the CoR is pictured as an LRA Assembly associated with the Council of the European Union

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<sup>8</sup> M. Keating (2013) *Rescaling the European State, The Making of Territory and the Rise of the Meso*, Oxford: Oxford: Oxford university press, 2013.

<sup>9</sup> D. Panke and C. Hönnige (2013) The Committee of the Regions and the European Economic and Social Committee: How Influential are Consultative Committees in the European Union?, *Journal of Common Market Studies*, 51, 452-471, J. Loughlin (2007) Reconfiguring the State: Trends in Territorial Governance in European States, *Regional & Federal Studies*, 17, 385-403, J. Loughlin (1997) Representing Regions in Europe: The Committee of the Regions in: Jeffery (ed.) *The regional dimension of the European Union : towards a third level in Europe?*, London: Frank Cass, M. Brunazzo and E. Domorenok (2008) New Members in Old Institutions: The Impact of Enlargement on the Committee of the Regions, *Regional & Federal Studies*, 18, 429-448.



(the Council). In the fourth scenario, the CoR is represented as a territorial platform supporting the Commission. Finally, the fifth scenario centres on the CoR as a third legislative chamber representing the European LRAs and acting as a Senate next to the EP and Council.



## 2 Scenarios

For each of the five scenarios, the relative impact is assessed with regard to: (a) the institutional set up; (b) the decision-making procedures; (c) the inter-institutional relations; and, (d) the CoR member status.

Across these variables, the five scenarios systematically analyse a number of transversal issues such as: (a) the need for possible Treaty reforms (the revision of new tasks to existing or new players, the emergence of new institutions and bodies); (b) the impact on the CoR and its prerogatives (the CoR's role in the legislative process); (c) the impact on other institutions (its impact on the checks and balances among, and institutional prerogatives of, the Council, Commission, EP and national parliaments); and, (d) the coexistence of several parallel political and socio-economic dynamics in Europe.

The combination of the four vertical variables with four cross-sectional variables allows for 16 observations for each individual scenario. These permutations should allow the scenarios to answer the following questions:

- How can the CoR further legitimise the EU and contribute to the democratic character of the EU?
- How can LRA representatives be involved at EU level?
- Should the CoR's competences be expanded so as to include the CoR in the inter-institutional balance?
- What role can the CoR play at the EU level and how can it differentiate itself from the other EU institutions?
- How can the CoR increase its visibility both at the European and national/local level?
- How can CoR membership provide more value added to its members?

The five scenarios provide some indications for an answer to these questions in view of the CoR's future role and institutional positioning. At this stage, it is important to note that all scenarios implicitly assume respect for the Community method. This assumption is based on recent comprehensive analysis of the

evolution of the Community method and its centrality to the functioning of the EU today and tomorrow.<sup>10</sup>

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<sup>10</sup> Y. Bertoncini and V. Kreilinger (February 2012) Seminar on the Community Method: Elements of Synthesis. Brussels.

## **2.1 Scenario 1: a dynamic Status Quo**

This first scenario assumes that, despite having access to decision-making arenas in the EU, the CoR will still lack formal voting power ('voice without a vote'). Its contribution to the democratic character of the EU has maximised its competences without changing the EU Treaty, thanks to strengthening the influence of CoR opinions. Such reinforcement rests upon the improvement of the form and content of the opinions and the unique information and expertise they offer to the EU institutions.

Also, the CoR's functioning and its relations with other EU institutions can become more effective and efficient without changing the EU treaties. Under such a scenario, the CoR's consultative and political powers are reinforced with respect to policies with greater territorial impact, namely cohesion policy; economic and social policy; education, youth, culture and research policy; environment, climate change and energy policy; citizenship policy; and natural resources policy. The reinforcement occurs primarily through gains in efficiency and effectiveness, close cooperation with EU institutions and improved decision-making. Membership of the CoR would be adjusted either through Member States designating specific profiles to CoR positions per policy role, or by adding an additional criteria for selecting candidates at the level of associations of subnational authorities.

### **2.1.1 Institutional Set-Up**

The Lisbon Treaty strengthened the role of the CoR as an advisory body within the institutional structure of the EU. It furthermore granted the CoR direct access to the European Court of Justice (ECJ) 'for the purpose of protecting [its] prerogatives'<sup>11</sup> or on grounds of infringement of the subsidiarity principle.<sup>12</sup> Moreover, the CoR plays a role in the inter-institutional balance of the EU and enhances the EU's democratic legitimacy by expressing the opinions of subnational authorities and guaranteeing that decisions are taken at the level closest to EU citizens.

### **2.1.2 Decision-making procedures**

The CoR can formally influence the legislative procedure in three distinct ways. First, the Commission, the EP and the Council must consult the CoR in those

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<sup>11</sup> Art. 263(3) TFEU.

<sup>12</sup> Protocol (No 2) on Subsidiarity and Proportionality, Art.8.

policy areas explicitly mentioned in the Treaties. Second, in all other cases (in particular those which concern cross-border cooperation<sup>13</sup>) in which the Commission, EP and the Council consider it appropriate, so-called ‘optional or facultative opinions’ may be requested.<sup>14</sup> Last, the CoR ‘may issue an opinion on its own initiative in cases in which it considers such action appropriate.’<sup>15</sup> It has the possibility, furthermore, to bring actions before the ECJ.<sup>16</sup>

Despite the fact that the opinions of the CoR in the consultation procedure are not binding on EU institutions, they carry some legal weight, particularly in the area of subsidiarity and proportionality. The opinions present a procedural requirement in cases of compulsory jurisdiction.<sup>17</sup> In addition to the current practice, the CoR should encourage the EP and the Council to establish the practice of referring to the opinions in the preamble of the legal act and to explain whether and how the CoR opinions were taken into consideration.<sup>18</sup> While the EP and the Council formally refer to the CoR opinions, the Commission Secretariat reports periodically on the CoR opinions, explaining whether and how they have been taken into consideration.

## Improvement of CoR Opinions

The ability of the CoR to shape the content of a position or a policy outcome to match its own opinions has improved. Increasing the CoR's political impact means increasing the influence of LRAs in the EU.<sup>19</sup> To this end, the CoR has established several impact reporting tools that measure the follow-up in the legislative processes of the Commission, EP and Council, including their media impact. A number of independent studies evaluated the CoR's impact on the legislative

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<sup>13</sup> In all market creating and market correcting policies, the CoR is obliged to provide advice to the Council and the EP before the first reading of the policy proposal. These include policy areas such as internal market, environment, sustainable development, agriculture, employment, social policy, cohesion policy, youth and education, vocational training, research and innovation, culture, health, transport and energy, consumer policy and trade.

<sup>14</sup> The consultative role of the CoR is dealt with in Article 13(4) TEU, and Art 307 TFEU. See specifically Article 307 (1) TFEU.

<sup>15</sup> Article 307 (4) TFEU. More broadly the consultative role of the CoR is dealt with in Article 13(4) TEU, and Art 307 TFEU.

<sup>16</sup> Article 263 (3) TFEU and Article 8 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

<sup>17</sup> K. Lenaerts and N. Cambien (2010) Regions and the European Courts: Giving Shape to the Regional Dimension of Member States, *European Law Review*, 35, 609-635.

<sup>18</sup> Article 296 (2) TFEU.

<sup>19</sup> D. Panke and C. Hönnige (2013) The Committee of the Regions and the European Economic and Social Committee: How Influential are Consultative Committees in the European Union?, *Journal of Common Market Studies*, 51, 452-471.-456, M. I. Neshkova (2010) The impact of subnational interests on supranational regulation, *Journal of European Public Policy*, 17, 1193-1211.

process and came to the conclusion that the CoR is able to influence 25% to 60% of the (depending on the accounting method) Commission's legislative decisions.<sup>20</sup> Particularly on regional matters, the Commission appears to value the expertise of the CoR, a fact reflected by the higher rate of CoR proposals being taken up. The analyses further demonstrate that the Commission is more likely to listen to decentralised interest when the public has become dissatisfied with the EU's democratic process. The influence also grows if the CoR opinions are delivered in a timely fashion via the formal decision-making process. **When opinions are taken into account, their influence enhances cooperation with the Commission and EP and reinforces the CoR's place in the legislative process.**

Improving the content and delivery of the CoR opinions will undoubtedly allow the CoR to more significantly contribute to the EU legislative process. **To improve CoR opinions, some changes can be made to their form, delivery and content.** The more concise the opinion, the easier it is for the EU institutions to take them into account or request additional information. Moreover, the CoR opinions should be delivered early in the policy process in a more uniform and easy to digest language, both towards the Members and other EU institutions. **Most importantly, the opinions should provide unique information and policy tools, and set out clear amendments to improve legislative proposals.**

### **Expertise and the CoR Opinions**

Crucially, improving the weight of the CoR opinions in the EU legislative process depends **on the quality and uniqueness of the information in the opinions** it provides. This information comes in part from other EU institutions with respect to the anticipated EU policy programme and the progress of the policy agenda. However, the most important ingredient in the CoR opinions is the CoR's **unique expertise**, which stems from up-to-date data and analysis coming from a network of members (out of a total of over 90.000 LRAs throughout the EU). The CoR draws on the 146 partners of the 'CoR Subsidiarity Monitoring Network,' the members of the 'Europe 2020 Monitoring Platform,' and those that are part of the 'Register of European Groupings of Territorial Cooperation.'<sup>21</sup> The CoR should

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<sup>20</sup> D. Panke and C. Hönnige (2013) The Committee of the Regions and the European Economic and Social Committee: How Influential are Consultative Committees in the European Union?, *Journal of Common Market Studies*, 51, 452-471, W. E. Carroll (2011) The Committee of the Regions: A Functional Analysis of the CoR's Institutional Capacity, *Regional & Federal Studies*, 21, 341-354, M. I. Neshkova (2010) The impact of subnational interests on supranational regulation, *Journal of European Public Policy*, 17, 1193-1211.

<sup>21</sup> Committee of the Regions (2014) Europe 2020 Monitoring Platform.

insist on this unique expertise based on its representative legitimacy of all the subnational interests. The CoR should strive to base **such expertise on a rich and constant feed of quantitative and qualitative data that back up the arguments and views in the CoR's opinions.** In this respect, the CoR opinions may have an indirect influence on the policy priorities of EU institutions. The influence will rest on items for which the CoR has developed a strong and unique expertise, where only the CoR can provide sound opinions on the basis of bottom-up policy and input processes.

The CoR has a variety of options it can explore to improve its expert functions. One is the development of a *European LRAs' knowledge hub* and *LRA network*, which gathers information from the LRAs in a number of clearly defined policy areas. This could take the form of an online portal. The CoR could launch common guidelines, indicators, benchmarking and the sharing of best practices on the basis of its network. It could also hold competitions among LRAs in the different policy areas with awards and grants offered in cooperation with the Commission for the boldest and most practical ideas to improve the lives of citizens in LRAs.

### **The CoR and Citizens' Initiatives**

The CoR has the possibility to indirectly access the legislative and subsequent policy processes by supporting European Citizens Initiatives (ECI). The ECI is a quasi-legislative, pre-initiative that can reduce the distance between the EU and EU citizens<sup>22</sup>. However, the institutional hurdles for an ECI to succeed are considerable. While the CoR's neutrality limits its role, it can contribute as communicator and facilitator for issues that are close to its mandate and supported by a majority of the CoR Members. Such a role for the CoR would not only legitimise the institution, but the CoR would also gain privileged access to information and legislative proposals in an embryonic phase, allowing it to develop expertise necessary for formulating its opinions.

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<http://portal.cor.europa.eu/europe2020/Knowledge/Pages/CurrentMembers.aspx>; See also the List of Partners of the CoR Subsidiarity Monitoring Network: Parliaments or assemblies representing regions with legislative powers (10 June 2013), available at

[https://portal.cor.europa.eu/subsidiarity/Documents/SMN%20-%20List%20of%20Network%20Partners/SMN%20-%20List%20of%20Network%20Partners%20-%20EN%20-%202010%20Jun%202013\\_MASTER%20LIST.pdf](https://portal.cor.europa.eu/subsidiarity/Documents/SMN%20-%20List%20of%20Network%20Partners/SMN%20-%20List%20of%20Network%20Partners%20-%20EN%20-%202010%20Jun%202013_MASTER%20LIST.pdf).

<sup>22</sup> The legal basis of the citizens' initiative is set out in Article 11(4) TEU and Article 24(1) TFEU. European Parliament and European Council (16 Februari 2011) Regulation (EU) No 211/2011 on the Citizens' Initiative. *L65/1, 11/03/2001*.



### 2.1.3 Inter-institutional Relations

The CoR's role at the EU level in the inter-institutional balance and cooperation with the EU institutions such as the EP, the Council and the Commission is essential in fulfilling its mandate. Through cooperation across all stages of the EU decision-making, LRAs participate in the definition of EU policies and thereby define the CoR's role in the system of re-equilibration and re-positioning competences of the EU institutional framework. At the most basic level, these checks and balances centre on **the separation of powers and the distribution of competences** in the EU.<sup>23</sup> Cooperation with EU institutions is based on formal agreements, sharing of information, and where applicable, assets.

#### Cooperation with the EP

- *Formal*

On 5 February 2014, the CoR and the EP signed a new cooperation agreement, strengthening their political relationship on the basis of 'anticipation, coordination and optimisation.'<sup>24</sup> The agreement creates synergies between administrative resources. CoR Members will be able to use translation, research and documentation services of the new Parliament Research Service (DG EPRS).

The agreement also creates a structured dialogue that allows the CoR's members to participate in the EP's legislative activities. It creates a new, intensified cooperation procedure that offers an opportunity for CoR rapporteurs to directly contribute and influence the outcome of the legislative procedure by participating in discussions in the EP. As a result, cooperation will be reinforced upstream- by own-initiative opinions, amongst others- and downstream- by territorial assessments of the impact of European legislation. Such developments could happen full scale in the distant future. While the new cooperation brings CoR and EP closer, a joint inter-institutional meeting between CoR and EP at the level of the plenary or that of the CoR Commissions and EP Committees would enhance synergies between the two institutions further.

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<sup>23</sup> According to interpretation of Art 13 of the TEU.

<sup>24</sup> Cooperation Agreement Between the European Parliament and the Committee of the Regions. Brussels (05/02/2014).

- ***Information-sharing***

The CoR and the EP exchange information through their respective directorates. The information sharing is **sideways and top-down**, predominantly concerning the CoR's and EP's procedural functions and political dynamics in the legislative process, but also on such issues as impact assessments and communication. Improvements relate to ensuring timely delivery of opinions on the work of the EP (e.g. working programme EP), with positive effect on the political debate in the committees and the plenary. To maximise the effect, opinions should be formulated in such a way that they are concise and carry amendments for improvement. This would encourage the practice of including CoR opinions in EP meeting documents.

The CoR opinion take-up would benefit from advances in the development of the CoR's expert function. Such expertise would also increase the CoR's visibility provided it could be mobilised at short notice. It would enhance the standing of the CoR as the voice of LRAs. This type of expertise results from information and analyses based on **a bottom-up approach and informed** by survey data and information that comes from a network of partners of the 'CoR Subsidiarity Monitoring Network,' the members of the 'Europe 2020 Monitoring Platform,' and those that are part of the 'Register of European Groupings of Territorial Cooperation'. The topics of importance (*les domaines d'excellence*) include territorial cohesion, urban policy, macro regions and impact assessments because of their direct relevance to LRAs. The topics would also involve issues related to governance mechanisms such as territorial and subsidiarity analyses and multilevel governance.

- ***The CoR's assets: Political Groups, the Committee work and the Plenary***

The political groups tie the EP and CoR together. Any reinforcement of the political groups in the CoR and the EP via political group meetings, contacts between presidents and the bureau, parliamentary invitations to outside meetings of the CoR, conferences and seminars organised by the CoR, and contacts between committee rapporteurs and shadow rapporteurs are beneficial to the legislative work and the influence of the CoR. Particularly important are the close political and institutional contacts between CoR's six permanent commissions. These are: (1) Territorial Cohesion Policy (COTER); (2) Economic and Social Policy (ECOS); (3) Education, Youth, Culture and Research (EDUC); (4) Environment, Climate Change and

Energy (ENVE); (5) Citizenship, Governance, Institutional and External Affairs (CIVEX); and, (6) Natural Resources (NAT) and their respective counterparts in the EP. The COTER and the EP Commission on Regional Policy (REGI) have a joint session during the Open Days.

There is room for improvement to contribute to an early delivery of CoR opinions. In particular, this could be achieved through the reinforcement of: (a) cooperation in the preparatory phase of the working programme and coordination of activities; (b) contacts between the rapporteurs and the administrators of the two institutions early in the legislative procedure; and, (c) close contacts in the run-up to trilogues. Finally, the CoR's visibility and that of its opinions benefits from increasing the presence of the CoR Members in EP committees' meetings. This is also the case for EP rapporteurs participating in CoR Commissions' meetings and Plenary Sessions.

## Cooperation with Council

- *Formal*

The CoR and the Council have not established a formal cooperation agreement. Despite the fact that the CoR monitors and verifies the subsidiarity principle in EU draft legislation, the CoR has little access to the Council proceedings in the legislative phase.

There is a need for the CoR to develop formal capabilities vis-à-vis the Council throughout the legislative process. It would allow the CoR to identify and signal to the Council those parts in its position that it deems to infringe the subsidiarity and proportionality principle. Moreover, in a similar vein to agreements with the EP and Commission, the CoR would be able to formally structure the dialogue and follow-up with the Council. So far, the Council-CoR dialogue has been rather ad-hoc (e.g. participation in informal ministerial meetings). The CoR could improve its relations with the Council particularly in those areas where the CoR is required to provide its opinion, as well as in those areas that are the *domaines d'excellence* of the CoR, such as territorial cohesion, urban policy and macro-regions- these are directly related to the CoR's Political Priorities 2012-2015. In partnership with LRAs, these priorities focus on the achievement of "Europe 2020" as part of the EU's roadmap for smart, sustainable and inclusive growth, with better investment roles for local and regional authorities (LRAs) in the Single

Market. Also, the territorial dimension of EU external relations is an important priority.<sup>25</sup>

These *domaines d'excellence* and political priorities also involve issues related to governance mechanisms, such as territorial and subsidiarity analyses of the Council work and multilevel governance. A formal cooperation agreement would also guarantee an improved and continuous flow of information about the legislative process in the Council. Such an agreement could envisage sharing information amongst others concerning the meeting schedule, the agendas and the work in the Council. It would allow the CoR to adjust and synchronise (when possible) its own work.

- ***Information sharing***

The CoR established informal working relations with the Council Presidency and Secretariat. A formalisation of such cooperation would greatly enhance the CoR's visibility, as well as its influence on the EU legislative process in terms of access to information, anticipation of the legislative agenda and the timely delivery of opinions to the Council.

One area of particular importance to the CoR is the Presidency Trio, i.e. the three successive Council Presidencies that combine their respective priorities into an 18-month policy programme. The CoR could reinforce the relationship with the Presidency Trio via the General Secretariat's Directorate for Inter-institutional Relations and the relevant national delegations to the CoR, and propose initiatives to be included in the Trio Presidency programme<sup>26</sup>.

Additional reinforcement of the information flow could be achieved in the following areas:

- Opinion: Concise, timely and uniform CoR opinions help Presidencies and generate visibility. Presidencies often have limited resources and a short time frame to leave their mark on the EU legislative process.

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<sup>25</sup> Committee of the Regions (2013) Political Priorities 2012 - 2015, available at <http://cor.europa.eu/en/documentation/brochures/Documents/political-priorities-2012-2015/political-priorities-en.pdf>.

<sup>26</sup> Committee of the Regions (2010) Follow-up to the Lisbon Treaty. Drafted by European Institute of Public Administration (Maastricht and Barcelona).

Most importantly, the opinions should provide policy tools, information and amendments on how legislation can be improved.

- Domaines d'Excellence: bring the rapporteurs of the CoR in contact with the Presidency on key files and associate the Presidency with key dossiers in the CoR. The CoR may also want to systematically invite the Presidency to the CoR commissions' meetings and to plenary sessions.
  - Territorial know-how: Provide the Council with an improved territorial impact analysis
  - Budgetary issues: the CoR may organise one major conference in the budgetary cycle with the EU Presidency, the EP, the national governments and the LRAs to discuss budgetary issues.
- *National Delegations*

The national delegations bind the Council and the CoR together. Given their proximity, the CoR national delegations'- particularly the chair and co-ordinator- and the Permanent Representatives of the Council would benefit from regular contacts. A practical improvement would be **to reinforce the cooperation between the CoR and those ministers in the Council that are also ministers in their respective regions.**<sup>27</sup> With their double-hatted function as both representatives of regions and national delegations members in the Council, they are ideally placed to have both a regional and Council view on EU legislative activity. Regardless of whether they are CoR Members, given their institutional position at the regional and the EU level, they are likely to be interested in the CoR's mission. Therefore, the CoR could organise a yearly event (conference, workshop or seminar) to exchange views and information on CoR-Council relations and co-operation. The representatives of the three successive Presidencies (the Presidency Trio) could also be invited.

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<sup>27</sup> K. Lenaerts, F. Delmartino, I. Govaere, H. Vos and P. Foubert (31/03/2003) Voorbereiding van de Vlaamse standpunten voor de Intergouvernementele Conferentie 2004. s.l.

## Cooperation with the Commission

- *Formal*

The CoR and the Commission have a longer established formal cooperation based on the Protocol on Cooperation between the Commission and the Committee of the Regions, with the latest protocol agreed in February 2012.<sup>28</sup> The protocol strengthens the relationship between the CoR and the Commission and improves the implementation of the Lisbon Treaty's Protocol (No 2) on the application of the principles of subsidiarity and proportionality.<sup>29</sup> The protocol leaves plenty of room for further improvement for information sharing and the CoR expert function.

- *Information Sharing*

As the Protocol on Cooperation demonstrates, the CoR and the Commission have an intense collaboration requiring a systematic and exhaustive exchange of information in the pre-legislative and legislative phase. The exchange of information concerns the CoR's and Commission's functions in the legislative process. In the pre-legislative phase, the CoR and the Commission's interaction relates particularly to the Commission's work programme for the forthcoming year, the medium-term Commission initiatives and the consultative procedure of the CoR. In the legislative phase, the CoR and Commission interact on the consultation procedure, the re-consultation and the developments in negotiations between the co-legislators and the subsidiarity monitoring.

Such information exchanges concern the CoR's information and Commission's procedural functions in the (pre-) legislative process. The Protocol on Cooperation envisages interactions that comprise a number of elements necessary for the reinforced cooperation to work well. They are: (a) a complete and timely (early) exchange of information on the annual work programme and medium-term initiatives of the Commission; (b) the close

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<sup>28</sup> Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

<sup>29</sup> Committee of the Regions (2010) Follow-up to the Lisbon Treaty. Drafted by European Institute of Public Administration (Maastricht and Barcelona), p. 33. Based on the reaffirmation of the LRA dimension and the CoR's prerogatives in the Lisbon Treaty as well as the consideration of multilevel governance highlight the future reinforcement of the collaboration.

cooperation and interaction with the Secretary General of the Commission on the list of upcoming proposals for consultation; and, (c) the involvement of CoR expertise in the area of impact assessment, subsidiarity monitoring and expert participation, possibly through observer status.

Strengthening mandatory opinions involves ensuring timely delivery of opinions against the work of the Commission. The opinions should be formulated in such a manner that they are concise and carry amendments for improvement. The opinions would also generate more impact if uniform and backed up by larger majorities in the CoR.

## **Expertise and Opinions**

Developing the CoR's expert function would, in turn, increase the impact of the CoR's opinions. Furthermore, the CoR may reinforce the impact of its opinions on the Commission provided the opinions **enjoy broad support within the CoR**. Finally, concise, high-quality opinions with clear recommendations and amendments delivered in a timely manner are likely to boost the CoR's impact on the legislative process.

### **2.1.4 CoR Member Status**

The CoR membership represents the cornerstone of its representative legitimacy and its role in the democratic life of the EU. In 2014, the CoR had 353 members from the 28 EU Member States. The members are appointed for a five-year term. They hold a political mandate at the regional or local level, or they have to be accountable to an elected assembly.<sup>30</sup> As a result, CoR membership is varied and characterised by the different legislative and administrative competences of the LRA that they originate from. Some of these LRAs have extensive legislative competences in their respective Member State while others carry out more administrative functions within their jurisdiction. In the CoR the Members are organised in 28 national delegations crossing five political groupings (EPP, PES, ALDE, EA and ECR). The CoR Members are not based in Brussels, a feature that allows them to be in closer contact with their respective LRAs throughout the EU. **These characteristics allow the CoR to have the finger on the pulse of EU**

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<sup>30</sup> Pursuant to Article 300(3) of the Treaty on the Functioning of the European Union the CoR shall be composed of 'representatives of regional and local bodies who either hold a regional or local authority electoral mandates: or are politically accountable to an elected assembly'.

**LRAs and bestow the assembly with large input legitimacy and a truly representative function.**

However, the set-up of the CoR membership has three main drawbacks. First, the CoR Members are appointed by the Council and as a result the Member States control their appointment. Second, the heterogeneity of the CoR membership often results in an output legitimacy gap with policies at times representing the lowest common denominator. In the past, the diversity of the CoR's membership has often resulted in internal cleavages, which limited the CoR's capacity to speak with one voice.<sup>31</sup> Finally, the members are not permanently present in Brussels and have to make do with more limited resources, compared to the EP and the Commission.

How can the CoR address these shortcomings without an EU treaty change? First, CoR membership can be influenced through policy platforms at the subnational level. Usually, the Council and Member States respect the subnational selection procedure. For each national delegation the respective associations of regional and local authorities play a key role in the selection procedure. They draw up a list of candidates on the basis of political party association/representation, gender and territorial balance that is subsequently submitted to the national government for final decision. The national governments accept the list of candidates and usually approve it before forwarding it to the Council. The Council then officially appoints the members.<sup>32</sup>

Additional selection criteria for making up the candidacy list can be added on the basis of matching LRA and CoR policy and political priorities. This would allow the candidate list to also include a selection on the basis of expertise on the more pressing policy issues that can be brought to the fore in the CoR assembly. In practice this can be achieved through improving the ties between the CoR and the associations of LRAs in the Member States. The CoR as representative of the territorial component at the EU level would be well placed to communicate the European agenda to the local level and bring up policy issues of relevance for LRAs at the EU level, thereby making use of its extensive LRA network

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<sup>31</sup> W. E. Carroll (2011) *The Committee of the Regions: A Functional Analysis of the CoR's Institutional Capacity*, *Regional & Federal Studies*, 21, 341-354, E. Domorenok (2009) *The Committee of the Regions: in Search of Identity*, *ibid.*19, 143-163, A. Elias (2008) *Introduction: Whatever Happened to the Europe of the Regions? Revisiting the Regional Dimension of European Politics*, *ibid.*18, 483-492, E. Hepburn *ibid.*The Rise and Fall of a 'Europe of the Regions', 537-555, M. Keating *ibid.*A Quarter Century of the Europe of the Regions, 629-635.

<sup>32</sup> Committee of the Regions (2009) *The selection process for Committee of the Regions members. Procedures in the Member States*, available at

<http://cor.europa.eu/en/Archived/Documents/840ed860-60ca-4af6-8be9-70b795f42207.pdf>.



throughout the EU. For instance, as an EU body with an inter-institutional agreement with the Commission, it is well informed about the annual work programmes, which it can easily communicate to the LRAs and their associations of subnational authorities (a top-down approach). Moreover, on the basis of its extensive network and information coming from the associations of subnational authorities, the CoR can inform itself and receive input about LRA related policy issues. In this sense, the LRA network, the associations of subnational authorities and the CoR Members, represent the link between local and regional levels on the one hand, and the EU level of governance on the other hand. As a result of linking the different levels of EU government, the CoR would also gain visibility at the level of the associations of subnational authorities.

Second, CoR membership can be strengthened by adjusting the CoR's rules of procedure while reinforcing the link between the CoR membership and the output of the CoR's work in the EU's institutional set up.<sup>33</sup> For example, the CoR could organise its membership on the basis of their provenance (regions, cities and localities) and introduce a set of criteria, such as competences or population requirements. The CoR could group its membership in working groups on the basis of LRAs with similar population size and competences. These working groups of localities, cities and regions would allow for better information exchange and co-ordination within and between these working groups. Given that policy issues among regions, cities and localities are more similar, such working groups would also allow for swifter and more effective action that EU decision-making requires. They would also produce more uniform opinions according to the level of LRAs, as internal cleavages based on competences and level of subnational interest are reduced. It would also make the mandate of CoR membership more valuable and attractive to the members, as the information exchange and work of the CoR would rise and have more value and likely impact the visibility for its members.

Third, the non-permanent presence in Brussels of CoR Members, coupled with limited resources, affects the representation and visibility of LRA issues at the EU level. For example, the dissemination of the CoR political priorities and work: the Commission policy priorities and efforts that have a distinct impact on LRAs can be addressed via a number of ICT and environmentally responsible solutions. Today, ICT platforms, video conferencing and social media allow for LRA representatives to organise themselves better at lower costs compared to the past. Such platforms could also be used by CoR Members and bridge the high turnover

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<sup>33</sup> The CoR has the right to adopt and change its own rules of procedure. Article 306 of the TFEU.

of CoR representatives. There are examples of bottom-up coordination between LRAs on specific issues such as the Covenant of Mayors.<sup>34</sup> The role of the CoR administration as coordinator is crucial in this respect.

## **2.1.5 Recommendations**

Against the background of reconciling efficient and effective decision-making with injecting more LRA legitimacy in the EU law and policy making, the ‘Dynamic Status Quo’ Scenario makes the following recommendations:

- **Opinion impact:**

1. Draft CoR internal guidelines and complement the CoR rules of procedure with a so-called ‘Opinion Impact’ section. Elements such as **‘short, concise, large majority, clear recommendations in the form of amendments and regulatory proposals, and early delivery’**, on which the CoR has already taken initiatives, should be the main focus of the ‘Opinion Impact’ guidelines and additional rules of procedure. When properly applied in the preparatory and drafting stages, these concepts would increase the impact of CoR opinions. In view of the comparably high membership turnover, the guidelines and supplemental rules would form the basis for an **introduction or training sessions** for new CoR Members to bring them up to speed with effective European policy making. Such introductory courses are present in the CoR and political groups also take part. However, the CoR could strengthen this element particularly against the background of the high turnover of CoR representatives.
2. **Develop and project a high level of unique expertise through quantification of CoR qualitative information that can be rapidly mobilised in support of CoR opinions.** Currently the CoR has a website hosting a significant number of documents. However, online dynamic aggregate statistics on the number of LRAs, their characteristics, the number of opinions by policy domain, their acceptance rates, are not present and impact assessments are not yet available. They are not

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<sup>34</sup> One example is the so-called ‘Covenant of Mayors’, which is the mainstream European movement involving local and regional authorities, voluntarily committing to increasing energy efficiency and use of renewable energy sources in their territories. Another example is the ‘Mayors Challenge’ under a platform on the competition for bold ideas from city leaders.

available elsewhere either. Having such a tool at the fingertips would bring added value to CoR Members and the LRAs and raise the CoR's profile as an expert. The CoR should prioritise the use of infographics and more compelling types of presentation. Informal influence on legislative processes is associated with expertise and its quality reflected in proposals.

- **Decision-making:**

1. **Publish the details of the Commission and Plenary vote within the CoR opinions (name, political party, vote).** While the CoR opinions have been standardised, publishing the voting details as practiced in the EP and Council, particularly when large majorities prevail, commands more political clout. It underlines the support of the opinion and the distribution of the support, opposition and considerations among the CoR Members. In addition, the publication increases EU good governance practices such as transparency, legitimacy and accountability. It would also reconnect CoR Members with their LRA constituency and subnational association and make CoR Members more accountable to the greatest extent possible, within their constituency.
2. **Map the other institutions' political position on a legislative proposal. In case of conflict facilitate the policy position of the EU institutions by providing support to the EU institutions' position.** The mapping of political positions could be carried out on a case by case basis by the CoR services and graphically represented in an information note, as has been done in more academic studies.<sup>35</sup> The CoR Members could, on the basis of such representation, take a strategic political position vis-à-vis those EU institutions that are closer to the views of the CoR, in order to obtain the best legislative results for the LRAs. The CoR's position to be expressed in the opinions is likely to be accepted more often to the extent that it seeks to resolve conflicts between the Commission, the EP and the Council. Such strategy allows other EU institutions to align their position with that of the CoR and justify policies and argumentation on the basis of additional support coming from the CoR and the LRAs. Such strategy would raise the influence of the CoR on the eventual policy outcome.

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<sup>35</sup> R. Thomson (2011) *Resolving controversy in the European Union : legislative decision-making before and after enlargement*, Cambridge: Cambridge University Press.

- **Membership:**

1. **Develop expertise: Strengthen the ties with all subnational European LRA associations** and draw up a **detailed map** of their membership and their electoral/appointment procedures. Subsequently, lobby the associations of subnational authorities in favour of introducing an additional criterion on the basis of expertise for designating CoR membership. Lay out the reasons why adding such criterion would be beneficial for LRAs and the associations and how they would benefit (rising input in the European legislative process, addressing LRA concerns at an early stage, growing visibility on a European stage).
2. More **Common Collective coordination with clear-cut priorities:** Create CoR subcommittees organised on the basis of provenance to overcome internal cleavages, streamline decision-making and exchange information and generate capacity to speak with a single voice. As a result, the mandate for CoR Members is likely to become more attractive. However, it should be noted that the support of all political groups would be an important element.

## 2.1.6 Synoptic Table

Scenario No. 1: A Dynamic Status Quo			
	TEU Changes (if needed)	Impact on the CoR and its prerogatives	Impact on other EU institutions
<b>Overall institutional setup (as defined by the Treaties)</b>	<b>No:</b> the CoR will increase the effectiveness, efficiency and impact of its functioning within the boundaries of the EU Treaty, Art. 295 TFEU.	<b>consultation:</b> quality of opinions and expert function greatly enhanced. <b>subsidiarity:</b> quality and expert function greatly enhanced. <b>facilitator</b>	<b>Commission:</b> follow-up of inter-institutional agreement. <b>EP:</b> follow-up of inter-institutional agreement. <b>Council:</b> establishment of inter-institutional agreement.
<b>Decision-making procedures</b>	<b>No:</b> the CoR will increase the effectiveness, efficiency and impact of its functioning within the boundaries of the EU Treaty.	<b>consultation:</b> issuance of more timely, concise opinions with clear amendments. <b>subsidiarity:</b> CoR monitoring capacity ex ante and ex post is significantly enhanced. <b>citizens initiatives:</b> CoR becomes an informal platform and <b>facilitator</b>	<b>Commission:</b> better cooperation with Commission and more influence of CoR opinions on legislative proposals. <b>EP:</b> better cooperation with EP and more influence of CoR opinions on legislative decisions. <b>Council:</b> better cooperation with Council and more influence of CoR opinions on legislative decisions.
<b>Inter-institutional relations and existing checks and balances</b>	<b>No:</b> the CoR will increase the effectiveness, efficiency and impact of its functioning within the boundaries of the EU Treaty.	<b>consultation:</b> CoR influence on EU legislative work grows significantly based on a/the bottom-up approach. <b>subsidiarity:</b> CoR influence on territorial impact of EU legislative work grows significantly.	<b>Commission:</b> CoR opinions and ex-ante subsidiarity checks have higher impact on Commission proposals. <b>EP:</b> CoR opinions and ex-post subsidiarity checks have higher impact on EP decisions. <b>Council:</b> CoR opinions and ex-post subsidiarity checks have higher impact on Council decisions.

Scenario No. 1: A Dynamic Status Quo			
<p><b>CoR Member's status</b></p>	<p><b>No:</b> changes to the CoR rules of procedure do not require EU Treaty change. - expert criteria added.</p>	<p><b>consultation:</b> more uniform opinions based on bottom up expertise</p> <p><b>subsidiarity:</b> more uniform subsidiarity scrutiny based on bottom up expertise.</p> <p><b>increased visibility and communication capacity.</b></p>	<p><b>Commission:</b> more acceptance of opinions and expertise and therefore a higher profile for CoR Members.</p> <p><b>EP:</b> more acceptance of opinions and expertise and therefore a higher profile for CoR Members more acceptance of opinions and expertise.</p> <p><b>Council:</b> more acceptance of opinions and expertise and therefore a higher profile for CoR Members.</p>

## **2.2 Scenario 2: LRA Assembly within/Associated with the European Parliament**

The second scenario assumes the CoR acting as a Local and Regional Assembly within the European Parliament. The EP would comprise both a sub-chamber of popularly elected members representing citizens and a sub-chamber giving voice to sub-national authorities.

In such an environment, the CoR would give up its current status as a distinct advisory body in the EU architecture and the EU treaties would have to be amended for EU institutional set up, the decision-making procedures, the inter-institutional balance and the CoR membership.

As part of the EP, the CoR would adopt the name of the European Parliament and CoR Members would become CoR-MEPs, with a more permanent presence in Brussels. However, within the EP, the CoR would continue to operate as a distinct body and subnational territorial chamber. The merger would enable EU citizens to make a choice about their MEP and, indirectly, also the representation of subnational territorial politics at the European level. Citizens would not only be aware that they elect the representatives of the EP but also influence selection of the CoR-MEPs selected from the representatives of LRAs.

The scenario assumes a more explicit federal structure in the representation of sub-national authorities that provides more consistency between legislative and executive powers, as is the case in other federal structures. The assumption is based on the ongoing institutional development and the current and future growing coordination of policies in the EU, such as those in the area of economic governance, telecom and EU transport policy services. The (need for) further coordination is likely to trigger spill-over effects that future changes of the EU institutional architecture would address.

Within the EP, the CoR would act as a sub-chamber of revision, passing legislation debated by the MEPs elected on the basis of universal suffrage. In that role, it would act as a prudent reviser considering subsidiarity and proportionality, but it would also develop expertise in the monitoring of EU legislative proposals within its remit. The scenario would not have an impact on the CoR's current role in formulating general, but also specific policy advice such as reacting to specific policy proposals, including tabling amendments to legislative proposals from the Commission with policy recommendations addressed to the EP.

## 2.2.1 Institutional Set Up

The scenario has an impact on the internal and external set-up of the EP. **Internally**, the EP would become a bicameral institution with a double representation<sup>36</sup>. **Externally**, the bicameral legislature of the EU would become more explicit. The EP would be a lower house resting on both popular and subnational representation while the Council continues to act as an upper house representing the Member States. This would address the heterogeneous constitutional traditions and different types of territorial representation that exist within the EU Member States today.

How could such an assembly work alongside the national assemblies and regional parliaments? The role and involvement of national parliaments in EU decision-making varies significantly in the EU and affects their role in subsidiarity scrutiny. There is also a large variation in their cooperation with regional parliaments.<sup>37</sup> The present scenario assumes a convergence of the Europeanisation of national parliaments and an increased coordination in the *Conférence des organes spécialisés dans les affaires communautaires* (COSAC). Bottom-up and top-down pressures would result in reform of COSAC, leading to a higher level of coordination and exchange of ideas.<sup>38</sup> In view of strengthening multilevel governance and increasing regional parliamentary cooperation with COSAC, the CoR could serve as a bridge and go beyond consultation.

## 2.2.2 Decision-making procedures

The EP procedures following integration of the CoR define the internal policy space in which MEPs and CoR Members interact. The CoR can support the EP's activity in its main areas of expertise and reinforce aspects such as subsidiarity monitoring and impact assessments of EU legislation. The CoR may also impact the external policy space of the ordinary legislative procedure in the EU.

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<sup>36</sup> Norway had a kind of semi-bicameral legislature with two chambers, or departments, within the same elected body, the so-called Storting. The department were called the Odelsting and Lagting and were abolished after the general election of 2009. According to Morten Sjøberg, there was a related system in the 1798 constitution of the Batavian Republic.

<sup>37</sup> A. J. Cygan (2013) *Accountability, parliamentarism and transparency in the EU: the role of national parliaments*, Cheltenham: Edward Elgar Pub. Ltd.

<sup>38</sup> Protocol 1, Article 9 and 10.



## **Internal decision-making**

The organisational structure of the CoR would be integrated within that of the EP. The new EP would resemble a semi-bicameral legislature with two chambers, where the CoR would maintain an independent plenary based on its distinct membership. The CoR commissions would be able to coordinate their work in the Conference of Committee Chairs (CCC) and the EP Bureau. The representation of the political parties and national delegations in the EP and the CoR would overlap and reinforce both the political element and national elements in the EP.

CoR Members would specifically pay attention to the territorial impact (subsidiarity and proportionality) of new legislation and its implementation. The territorial focus would enhance the democratic legitimacy of the EP and improve the legislative output. Following the preparatory work in the EP/CoR Committees, the legislative proposals, reports and opinions would be tabled in both the EP and the CoR plenary requiring a double majority.<sup>39</sup> The vote in the CoR plenum would formally be confined to the issues of subsidiarity, proportionality and their implementation rather than any policy consideration, which would be limited. As a consequence, the CoR would become a mini-EP within the EP, paying close attention to the functions of the EP Committees of the Parliament dealing with regional and local matters.<sup>40</sup>

## **External decision-making**

Having merged with the EP into a single institution, the CoR enjoys reinforced powers in the ordinary legislative procedure. The CoR's participation would ensure that policies take account of LRA realities at an early stage in the legislative process. The CoR Members of the EP, the so-called CoR-MEPs, would raise awareness and contribute to the prevention of problems that local and regional authorities experience when implementing EU policies. In other words, the CoR is expected to provide precise proposals on the basis of regional and local expertise.

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<sup>39</sup> Instead of applying the standard principle of simple or absolute majorities for the approval of legislation one could use concurrent majorities. A measure would pass in the EP if it obtains a majority in each of the two sub-chambers. This should reassure the LRAs that they will not be outvoted as a smaller chamber within the EP. Within each chamber the normal majority rule would apply and members would still face the imperative of convincing a sufficient number of fellow members to pass a measure. P. C. Schmitter (2000) *How to democratize the European Union ... and why bother?*, Lanham MD: Rowman & Littlefield.-85.

<sup>40</sup> J. Loughlin (1997) *Representing Regions in Europe: The Committee of the Regions in: Jeffery (ed.) The regional dimension of the European Union : towards a third level in Europe?*, London: Frank Cass.

This strengthened role would be particularly significant for those areas where the Treaties provide for mandatory consultation of the CoR.

De facto, the CoR would reinforce its role in these areas alongside the co-legislators, enjoying the right to table amendments to the EP plenary. The CoR would cooperate with the relevant committees and contribute to reaching a double majority, needed for approval of the opinion. Should the legislative procedure arrive at the Conciliation stage, the CoR might be represented in the EP's delegation to guarantee its prerogatives. The political groups in the EP would have shadow rapporteurs also among the CoR Members. The CoR-MEPs could thus become part of the **trilogues** (the three-party meetings) attended by representatives of the EP, the Council and the Commission.<sup>41</sup> Owing to the ad-hoc nature of trilogues, the format of the CoR's representation may vary. Nevertheless, as a rule they would involve a CoR MEP – which could be the CoR MEP rapporteur – when issues within the CoR's remit would be discussed.

The scenario has likely only limited impact on the extra parliamentary dimension of **the consultation procedure** and **the consent procedure**. It is noteworthy that, because of its integration in the EP, the CoR will have more impact on a number of important procedures such as the **budgetary procedure**, the **appointment procedure** and the **conclusion of international agreements**. The most visible would be the election of the President of the European Commission, the European Ombudsman and many others.<sup>42</sup> While informal, the impact of the integration between the CoR and the EP should not be underestimated as MEPs and CoR-MEPs will be working together on a daily basis.

## **Resources**

One key advantage is the synergies that a merger between the CoR and the EP entails. These synergies relate to the sharing of resources and assets. Following the 2014 cooperation agreement between the CoR and the EP, the two would share and cooperate in the areas of administrative resources, communication and research.<sup>43</sup> The agreement strengthens the role and engagement of the CoR's members in the

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<sup>41</sup> Assuming that the measure would be adopted in the third phase when the conciliation committee reaches a double majority in the EP-CoR, the institutional consequence being a defacto quadrilogue instead of a triologue. The conciliation proposal would only be deemed adopted if there is QMV for the Member State fraction and a majority in the EP group and the CoR group.

<sup>42</sup> Article 14(1), 17(7) TEU, Article 228 TFEU.

<sup>43</sup> Cooperation Agreement Between the European Parliament and the Committee of the Regions. Brussels (05/02/2014).

EP activities within the EU legislative process. The CoR also occupies an adjacent building to the EP premises. Further integration between the CoR and the EP would result in more efficient use of EU resources.

### **2.2.3 Inter-institutional Relations**

The consequences of this scenario on inter-institutional relations are described below.

#### **Cooperation with EP**

With the CoR integrating the EP, the formal cooperation agreement of 5 February 2014 would become obsolete. The cooperation within the bi-cameral EP would become intra-institutional and part of the EP's rules of procedure. The new rules would be adopted by the EP, acting by a double majority of its Members in both chambers of the new EP on subsidiarity issues, on territorial policies and structural funds.<sup>44</sup>

#### **Cooperation with the Council**

The CoR and the Council have not established a formal cooperation agreement. With the CoR integrated within the EP, this is no longer necessary and the relationship between EP and the Council would also govern the relationship between the CoR and the Council. That relationship would primarily be defined by the legislative procedures and the new Parliaments' rules of procedure.

#### **Cooperation with the European Commission**

Following the CoR's integration within the EP, the longer established formal cooperation based on the Protocol on Cooperation between the European Commission and the Committee of the Regions would become obsolete.<sup>45</sup> To better reflect the new special partnership between the CoR and the Parliament, the most important elements of the protocol agreed in February 2012 would have to be

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<sup>44</sup> Article 232 TFEU. European Parliament (February 2014) Rules of Procedure of the European Parliament: 7th parliamentary term.

<sup>45</sup> See Art. 295 TFEU and the Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

incorporated in the Framework Agreement between the EP and the Commission.<sup>46</sup> The new Framework Agreement covers the scope, the relationship, the political responsibility, the constructive dialogue and flow of information, the cooperation regarding legislative procedures and planning, as well as the Commission's participation in parliamentary hearings. The Framework Agreement would also need to fully appreciate the implementation of the Lisbon Treaty's Protocol (No 2) on the application of the principles of subsidiarity and proportionality.<sup>47</sup>

## **2.2.4 CoR Member Status**

Integration within the EP would bring significant changes to the method of constituting the CoR membership, the composition and possibly the size of the CoR of 350 CoR-MEPs.

A successful merger requires three fundamental characteristics. First, to achieve greater legitimacy the CoR membership would need a stronger representative function. Moreover, the Members of the CoR would need to be directly accountable to the national associations of LRAs for their decisions and actions at the European level. Second, to maintain their independence with the EP, CoR Members would need to have stronger LRA identity that goes beyond loyalty to their respective political party group and differentiates them from the MEPs. Finally, to fulfil its mandate, the CoR would have to bring weight to the negotiation table. It would therefore require high-profile and stable membership, allowing for the development of local and regional expertise as well as EU decision-making.

To maximise its effectiveness under this scenario, the CoR would need to reconcile direct legitimacy of the so-called third level of governance and the representation of the diversity of European LRAs with the elements traditionally associated with a strong and independent legislative chamber. **Ideally, these elements are combined in an elected membership of a relatively small and independent legislative chamber characterised by a lower turnover with an internal organisation that balances expertise with party allegiance.**

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<sup>46</sup> Interinstitutional Agreements: Framework Agreement on relations between the European Parliament and the European Commission. *L 304/47*. Brussels (20/11/2010).

<sup>47</sup> Committee of the Regions (2010) Follow-up to the Lisbon Treaty. Drafted by European Institute of Public Administration (Maastricht and Barcelona). Based on the reaffirmation of the LRA dimension and the CoR's prerogatives in the Lisbon Treaty as well as the consideration of multilevel governance highlights the future reinforcement of the collaboration.

The CoR MEPs would be indirectly elected to the EP on a country by country basis by the respective associations of subnational authorities. Ideally, their composition and functions would have to be mapped out and harmonised over time as the CoR legislative power and visibility grows. CoR MEPs would ultimately be held accountable to the national associations of LRAs. Such electoral procedure would firmly anchor the CoR MEPs in the national LRAs and their preferences and interests. It would also guarantee the diversity of LRAs in Europe. As is currently the case, to encourage a low turnover, CoR MEPs would serve a term of 5 years similar to the EP and there would be no limit to the number of terms served.

To further strengthen the CoR's independence and legislative influence, its size could be further reduced. Traditionally, the **cube-root-rule** has been used to determine the ideal size of a legislative chamber with the number of representatives adding up to the cubic root of the proportions of the national chambers (+/- 10%).<sup>48</sup> A smaller and more influential independent chamber would be more visible and also attract a higher profile membership.

## **2.2.5 Recommendations**

Against the background of reconciling efficient and effective decision-making with injecting more LRA legitimacy in the EU law and policy making process, the scenario of a LRA Assembly within the European Parliament makes the following recommendations:

- **The redefinition of the European Parliament:** Prepare an opinion on the future institutional architecture of the EU on the basis of the already close cooperation between the CoR and the EP laid down in the formal cooperation agreement of 5 February 2014 and this scenario. The opinion should be approved by a large majority of CoR Members. It would lay out the necessary changes, the policy options and argue strongly in favour of integrating the CoR as a sub-chamber of the EP. To start the conversation in Europe, publish the CoR opinion with the details of the vote and distribute the text widely among CoR Members, MEPs, the European LRAs, the Council, national ministries and other public authorities.

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<sup>48</sup> A. Lijphart (1999) *Patterns of democracy : government forms and performance in thirty-six countries*, New Haven: Yale University Press.

- **Decision-making:** Further strengthen the ties between the CoR's six permanent commissions and their standing Committee counterparts in the EP. In addition to the 2014 CoR-EP cooperation agreement, this can be achieved formally and informally through inter-institutional exchanges, meetings of members at all levels, workshops and conferences. Most importantly, convince these EP standing Committees of the CoR's unique expertise and their constructive contribution to their legislative work by offering information, issuing timely reports and opinions that could reduce the Committees' workload. Subsequently, the CoR would be regarded as a valuable partner in the areas of subsidiarity and proportionality and experience with implementation of European legislation.
- **Membership:** Argue in favour of a replacement of the designation procedure with an electoral procedure for the CoR membership. The argument is based on the necessity to achieve greater legitimacy and accountability, to maintain independence and guarantee a value added to the EP. The CoR Members would be indirectly elected to the CoR chamber within the EP by the associations of subnational authorities that currently select and designate the CoR membership. The number of representatives would add up to the cubic root of the proportions of the national chambers (+/- 10%). The elections would be envisaged to be brought in line and take place at the same time as the European elections throughout the EU. To achieve such objective the CoR should strengthen its ties with all subnational European LRA associations. As a first step, the CoR would need to draw up a detailed map of their membership and their electoral/appointment procedures. Subsequently, the CoR would lobby the subnational association in favour of an electoral procedure for its members, their growing input in the European legislative process and their rising visibility.

## 2.2.6 Synoptic Table

<b>Scenario No. 2: LRA Assembly within/Associated with the European Parliament</b>			
	TEU Changes (if needed)*	Impact on the CoR and its prerogatives	Impact on other EU institutions
<b>Overall institutional setup (as defined by the Treaties)</b>	<p><b>Perhaps:</b> new institution (EP).</p> <p>- <b>TEU changes:</b> Art. 13), Title III.</p> <p>- <b>TFEU changes:</b> Part VI, (Chapter 1, new Section; Chapter 3 deletion of CoR references), Art. 263, Art. 265, Art. 295.</p>	<p>Strengthened legislative powers for the CoR Members in the new EP (consent procedure, bicameralism within EP.)</p> <p>- political assembly.</p>	<p><b>EP:</b> change in the structure and composition, as well as in its rules of procedures, change in legislative procedure to the extent that the CoR is now part of the EP.</p> <p><b>Council:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p> <p><b>Commission:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p>
<b>Decision-making procedures</b>	<p><b>Yes:</b> recognition of the CoR in the EP</p> <p>- <b>TEU changes:</b> Art. 10, Art. 14.</p> <p>- <b>TFEU changes:</b> Part VI, Title I (Chapter 1, Section I; Chapter 3, Section 2, deletion of CoR references), Title VI (Chapter 2, Section 2), Title II (financial provisions, Chapter 1-4).</p> <p>- <b>Removal of all references to advisory role of the CoR in TEU, TFEU</b></p>	<p>Strengthened legislative powers for the CoR Members in the new EP (consent procedure, bicameralism within EP).</p> <p>- political assembly.</p>	<p><b>EP:</b> change in the structure and composition, as well as in its rules of procedures, change in legislative procedure to the extent that the CoR is now part of the EP.</p> <p><b>Council:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p> <p><b>Commission:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p>

Scenario 2: LRA Assembly within/Associated with the European Parliament

<b>Scenario No. 2: LRA Assembly within/Associated with the European Parliament</b>			
<b>Inter-institutional relations and existing ‘checks and balances’</b>	<p><b>Yes:</b> new-inter-institutional balance:</p> <ul style="list-style-type: none"> <li>- <b>TEU and TFEU:</b> removal of all references to CoR advisory functions new institution:</li> <li>- <b>TEU changes:</b> Art. 13), Title IV.</li> <li>- <b>TFEU changes:</b> Part VI, (Chapter 1, new Section; Chapter 3 deletion of CoR references), Art. 263, Art. 265, Art 295.</li> </ul>	Strengthened legislative powers for the CoR Members in the new EP.	<p><b>EP:</b> change in the structure and composition, as well as in its rules of procedures, change in legislative procedure to the extent that the CoR is now part of the EP.</p> <p><b>Council:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p> <p><b>Commission:</b> change in legislative procedure and change in inter-institutional agreements to the extent that the CoR is now part of the EP.</p>
<b>CoR member’s status</b>	<p><b>Yes</b></p> <ul style="list-style-type: none"> <li>- TFEU: Art 300(3).</li> <li>- new rules of procedure for the CoR or one set of integrated CoR-EP rules of procedure.</li> </ul>	Reduction in the number of CoR-MEPs.	<p><b>EP:</b> change in the structure and composition, as well as in its rules of procedures, to the extent that the CoR is now part of the EP</p> <p><b>Council:</b> no specific impact</p> <p><b>Commission:</b> no specific impact</p>

\*Excluding technical changes, protocols and ad hoc solutions



## **2.3 Scenario 3: LRA Assembly within or associated with the Council**

The third scenario assumes that the CoR integrates the Council. The CoR and the Council have a number of elements in common. The two bodies represent the principle of territorial representation in the EU on a non-permanent membership basis. There are also political similarities with regional and ethno-linguistic specificities. Some of the LRAs already have an input on Council decision-making when issues concerning their competences are being dealt with, but this remains a minority.<sup>49</sup> Depending on the Member State and internal constitutional order these competences differ.<sup>50</sup> The Council also plays an important role in the composition of the CoR.

Integrating the CoR in the Council would raise the CoR's status, with the Committee functioning as the guardian of the subsidiarity principle for the LRAs. In such environment, the CoR would give up its current status as a distinct advisory body in the EU architecture. The EU treaties would have to be amended with regard to the EU institutional setup, the decision-making procedures, the inter-institutional balance and the CoR Membership.

### **2.3.1 Institutional Set Up**

The scenario has an impact on the internal and external set up of the Council. **Internally**, the Council would incorporate the CoR in the Council working party structure. Currently, the EU Member States are the representatives of their citizens in the EU and the Council representation remains an essential part of political legitimacy at the EU level. The association of the CoR with the Council would lead the latter to represent both EU Member States and their subnational authorities. To compensate for the lack of local and regional territorial dimension and the higher homogeneity of legislative power within the Council<sup>51</sup>, this scenario assumes that

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<sup>49</sup> The strongest form appears to be the representation of the Belgian constituent federal entities that directly prepare the position Belgium will defend in the Council in areas that concern them, and whose ministers may actually participate in some Council formations, see in this respect l'accord de coopération du 8 mars 1994 entre l'Etat fédéral, les Communautés et les Régions relatif à la représentation du Royaume de Belgique au sein du Conseil des Ministres de l'Union européenne, as amended.

<sup>50</sup> Following the revision of article 146 of the Maastricht Treaty the Member States may delegate their vote in the Council to a ministerial representative of a sub-national tier of government. The only countries which have made use of this possibility in practice are Belgium, Germany and Austria.

<sup>51</sup> While the Lisbon Treaty has made the ordinary legislative procedure standard with the legislative power mostly shared between the Council and the EP, the Council up to this point has maintained a higher concentration of

the CoR would be associated at the level of working parties but that formal decision-making would occur at the level of the CoR plenary. The CoR would become a prudent reviser considering the core elements of its mandate, and in particular safeguarding the principles of subsidiarity and proportionality similarly to national jurisprudence where there are similar competences for national constitutional courts.

Following the association with the Council, the CoR would maintain its name and distinct role. The role of the Council in the designation procedure of CoR membership would need to be altered. CoR membership would be established according to an indirect electoral procedure at LRA level in each Member State. The procedure would guarantee the CoR's independence within the Council. A closer relationship between the sub-national LRA associations and the CoR would strengthen the CoR's role in this respect.

**Externally**, the scenario assumes a more explicit EU federal structure in the representation of sub-national authorities that provides more consistency between legislative and executive powers as is the case in other federal structures in the world. The assumption is based on the on-going institutional development and the current and future growing coordination of policies in the EU such as those in the area of economic governance, telecom services, as well as transport and energy to a certain degree. The (need for) further coordination is likely to trigger spill-over effects that future changes of the EU institutional architecture would address.

Against this background, the EU would be legitimated by means of a bicameral legislature with the Council representing both national and subnational territorial interests and the EP giving voice to the interests of EU citizens. Within the Council, the CoR would act as an assembly contributing to legislation prepared in the working parties. In that role, it would act as a prudent reviser considering subsidiarity, proportionality and its general expertise on the implementation of legislation at the level of LRAs. In this sense, the CoR would be more of an institutional partner rather than a political partner for the Council.

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legislative power due to its limited membership relative to the EP. Moreover, there are a number of distinct institutional advantages for the Council to speak with a single voice vis-à-vis the EP. For a more extensive discussion see W. Van Aken (2012) *Voting in the Council of the European Union: Contested Decision-Making in the EU Council of Ministers (1995-2010)*. Stockholm.

The Commission-CoR cooperation agreement would need to take account of the new association between the Council and the CoR.<sup>52</sup> As part of the Council the CoR and the Commission would have to study whether the Commission-CoR cooperation agreement could stay in place or what elements could be maintained. Being associated with the Council, the CoR would gain relevance in the cooperation with the EP in the ordinary legislative procedure. The merger of the CoR into the Council would have no impact on the European Council, but it would bring the CoR closer to the impetus given by the European Council through its association with the Council.

### **2.3.2 Decision-making procedures**

The Council remains the more-than-equal partner in EU decision-making. Its decisions are the result of negotiations among delegates receiving instructions from their capitals. Beyond the European level impact assessments, LRAs cannot gauge the consequences of these decisions in advance. The solution is more transparent decision-making, feeding the interests of territorial representation and their voice into the Council decision-making.

Following the association with the Council, the Council's internal rules of procedure would frame the cooperation between the Council and the CoR. The ordinary legislative procedure would also gain legitimacy. Finally, a new avenue for the participation of regional and local authorities at EU level would be provided.

#### **Internal decision-making**

The new Council would move in the direction of a semi-bicameral legislature for the CoR core policy domains for which treaties provide for mandatory consultation. However, the CoR would maintain an independent plenary, largely related to the electoral status of its distinct membership. The CoR would complement the activity of some working parties on specific legislative proposals within the CoR's remit. The CoR Commissions' structure would work alongside the Council working parties in the area of obligatory consultation. The rules of procedure of the CoR and those of the Council working parties would need to provide for the new relationship.

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<sup>52</sup> Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

The association of the CoR Commissions with these working parties would occur through the participation of a CoR delegation alongside the 28 Member States and one Commission representative in the respective working party deliberations. The delegation would comprise a CoR Member assisted by experts from CoR staff. Following the preparatory work of Council working parties, involving a back-and-forth coordination with the CoR, the proposals for Council's position would be tabled at the CoR plenary for matters related to its domain of competence, requiring a majority of votes. The CoR opinion would then be transmitted to the COREPER for finalisation and subsequently to the relevant Council formation. The increased subnational territorial focus would enhance the democratic legitimacy of the Council and ensure more attention to the territorial dimension of EU legislation.

The Council Presidency would continue to chair the Council working parties, and the CoR would establish a close relationship in those areas of obligatory consultation. In other areas, such as those covered by the External and General Affairs Councils, the CoR would be involved at a later stage to allow for the development of its expertise. In the areas of facultative consultation, the CoR would help Presidencies to generate visibility of the Council's activities at sub-national level.

With the Council and the CoR associated, the CoR national delegations and Member States representations will become parallel actors within a single institution. Given their proximity, the CoR national delegations' (particularly the chair and coordinator) and the Permanent Representations to the EU would benefit from regular contacts.

### **External decision-making**

The CoR would gain a stronger say in the ordinary legislative procedure, where it would inject a territorial focus and the experience of legislative implementation at the level of the LRAs. This is particularly true for those areas for which the Treaties foresee obligatory CoR consultation. The CoR Members would raise awareness and contribute to the prevention of problems that local and regional authorities experience when implementing EU policies. In other words, the CoR is expected to provide precise proposals on the basis of regional and local expertise. In those cases where the co-legislators cannot reach an agreement and a Conciliation Committee is convened, the CoR could be part of the Council delegation, particularly for acts in those areas where the Treaties provide for obligatory CoR consultation.

### **2.3.3 Inter-institutional Relations**

The consequences of this scenario on inter-institutional relations are described below.

#### **Cooperation with the Council**

With the CoR associated with the Council, the need for a cooperation agreement would become obsolete. Any cooperation with the Council would become part of that association and be intra-institutional. The cooperation would become part of the Council's rules of procedure. In addition, the effects on the decision-making procedures of the new CoR-Council association would need to be spelled out in the EU Treaty.

#### **Cooperation with the EP**

Following an association with the Council, the formal cooperation agreement of 5 February 2014 would need to be altered and take into account the new relationship.<sup>53</sup> The sharing of resources and synergies would conflict with the separation of powers between the EP and the Council.

#### **Cooperation with the European Commission**

Following the CoR's association with the Council, the longer established formal cooperation between the European Commission and the CoR would become obsolete.<sup>54</sup> To better reflect the new special partnership between the CoR and the Council, the most important elements of the protocol agreed in February 2012 would have to be taken into account with respect to the association with the Council.<sup>55</sup> The principle of separation of powers would potentially prevent any extensive cooperation between the Commission and the CoR in the domain of obligatory CoR consultation.

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<sup>53</sup> Article 232 TFEU. European Parliament (February 2014) Rules of Procedure of the European Parliament: 7th parliamentary term. It would be difficult for the CoR to maintain its current relationship with the EP in view of a closer relationship with the Council. Hence, the cooperation agreement would need to be altered.

<sup>54</sup> See Art. 295 TFEU and the Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

<sup>55</sup> The closer relationship between the CoR and the Council will also influence the relationship between the EP and the Council and therefore the Interinstitutional Agreements between them.

### **2.3.4 CoR Member Status**

The LRAs have influence on EU policy making through their respective governments, their own structures in Brussels and more formally via the CoR. When the CoR was set up, it was left to the EU Member States to establish the criteria based upon which sub-national authorities would be represented and how they would be chosen. Usually, the associations of LRAs within each Member State draw up a list of candidates, to which the national government agrees. Subsequently, each Member State sends the list to the Council for adoption, which requires a unanimous decision.<sup>56</sup>

From a perspective of separation of powers, re-enforcement of the EU's territorial legitimacy and accountability, the designation procedure is problematic. It underlines the association between the Council and the CoR but it also lays bare one crucial weakness. The CoR Members and the representatives of the Council Member States are, from a strictly legal perspective, both accountable to the EU Member States.<sup>57</sup> Simultaneously, it weighs on the CoR's independence and the requirement of a strong LRA representation vis-à-vis the Council.

#### **Prerequisites for a successful membership**

A successful association with the Council would require two fundamental elements to be enacted. First, to achieve greater legitimacy, the CoR membership would need a stronger representative function of LRA units. Moreover, the members of the CoR would need to be directly accountable to the national associations of LRAs for their decisions and actions at the EU level. Second, to fulfil its mandate, the CoR would have to be a strong and independent chamber bringing weight to the negotiation table. It would require a high profile and stable membership with a low turnover, allowing for the development of local and regional expertise as well as EU decision-making.

#### **Size**

Under a scenario of an LRA assembly associated with the Council, the CoR Members would be indirectly elected. Ideally, CoR membership would be of no

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<sup>56</sup> Committee of the Regions (2009) The selection process for Committee of the Regions members. Procedures in the Member States, available at

<http://cor.europa.eu/en/Archived/Documents/840ed860-60ca-4af6-8be9-70b795f42207.pdf>.

<sup>57</sup> Admittedly, the role of political groups should not be underestimated.

more than 200 members. The selection would be operationalised by applying the square root value for allocating the number of seats in the CoR. The scenario proposes three groups of countries (large, middle-sized and small) based on the relative size of their population. Each cluster of countries would have a similar average of citizens per seat but the average would be higher for the large countries and lower for the small countries. The allocation procedure would bring the voting power of the CoR national delegations in line with the weighted votes of the Member States under a qualified majority procedure in the Council.<sup>58</sup>

## **Electoral Procedure**

The associations of subnational authorities would elect their respective CoR Members. Such electoral procedure would firmly anchor the CoR Members in the national LRAs and their preferences and interests. It would also guarantee the diversity of electoral representation. One crucial aspect would be the stronger ties between the national LRA associations and their representatives at the EU level as CoR Members would ultimately be held accountable to the national associations of LRAs. To encourage the territorial representation instead of party allegiance, candidates would be elected from a party-list proportional representation.

The electoral procedure would allow the CoR to attract more high-profile candidates and allow them to develop expertise on EU policy-making. This would benefit visibility, independence and improve the balance between the CoR and the Council. The ministers acting in the Council are usually well known nationally because they serve as government leaders and ministers in their respective domain. Similarly, the CoR membership would be based on representing subnational interests, thereby reinforcing the subsidiarity principle.

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<sup>58</sup> Some have suggested an alternative system based on a so-called split vote giving LRAs a part of the weighted vote of their respective Member State. The proposal suggests a composite Member State vote. The scenario did not include this proposals based on accountability and transparency arguments. Moreover, a composite vote would not be applicable throughout the EU. For the explanation of a 'split vote' see K. Lenaerts, F. Delmartino, I. Govaere, H. Vos and P. Foubert (31/03/2003) Voorbereiding van de Vlaamse standpunten voor de Intergouvernementele Conferentie 2004. s.l.-70.

## **Resources**

The CoR and the Council represent the principle of territorial representation on a non-permanent basis with members hailing from their constituency. However, in contrast to the CoR, the Council and the Member States can count on a strong administration in the Council Secretariat and the Member States' national administrations. With its diverse membership, the CoR cannot count on similar administrative resources for all its members.

### **2.3.5 Recommendations**

Against the background of reconciling efficient and effective decision-making with feeding more LRA legitimacy into the EU legislative process, the scenario of a LRA Assembly associated with the Council makes the following recommendations:

- **Redefinition of Council:** The CoR would need to explore in more detail the necessary changes and policy options that association with the Council would entail. To this end, the CoR would organise conferences, seminars and workshops to gain knowledge about how it could work together with the Council in more detail. The results of these more research-oriented activities would be published widely, generating a debate at the EU level and within the Member states on how association with the Council would benefit the LRAs.
- **Decision-making:** prepare the ground for establishing informal and formal ties between the CoR and Council. Given the importance of the Presidency as the chair of the Council working parties, reinforce established contacts or approach the Presidency Trio. The CoR would subsequently offer its expert services in its core policy domains to seek more synergies with the 18-month programme of the Presidency trio. The respective CoR national delegations could play the role of frontrunners for the organisation of informal and formal inter-institutional exchanges. Most importantly, convince the Presidency and the Council Secretariat of the CoR's unique expertise and its constructive contribution to the legislative work by offering information, issuing timely reports and opinions that could reduce their workload. Subsequently, the CoR is likely to be regarded as a valuable partner in the areas of subsidiarity, proportionality and experience, with the implementation of European legislation.
- **Membership:** Argue in favour of a replacement of the designation procedure with an electoral procedure for the CoR membership. The argument would be substantiated by added EU legitimacy and accountability on the basis of direct



LRA representation with a bigger influence, lower turnover and hence a high profile membership. As the CoR gains in prominence it is likely that over time the membership would also become more prominent and that LRAs would select more high profile candidates or candidates who get involved on a long-term basis. The 200 CoR Members would be indirectly elected to the CoR. To achieve such objective the CoR should strengthen its ties with all subnational European LRA associations. As a first step, the CoR would need to draw up a detailed map of their membership and their electoral/appointment procedures. Subsequently, the CoR would lobby with a long-term view the associations of subnational authorities making the case for an electoral procedure. The case for an electoral procedure at the subnational level would benefit from the resulting growing input in the European legislative process and the rising visibility of the CoR Members on the European stage.

### 2.3.6 Synoptic Table

<b>Scenario No. 3: LRA Assembly within/associated with the Council</b>			
	TEU Changes (if needed)*	Impact on the CoR and its prerogatives	Impact on other EU institutions
<b>Overall institutional setup (as defined by the Treaties)</b>	<b>Perhaps:</b> redefine institution (Council). - <b>TEU changes:</b> Art. 13), Title IV. - <b>TFEU changes:</b> Part VI, (Chapter 1, new Section; Chapter 3 deletion of CoR references), Art. 263, Art. 265.	Strengthened legislative powers for the CoR Members in the Council.	<b>Council:</b> legislative procedure and composition. <b>EP:</b> legislative procedure, inter-institutional agreements <b>Commission:</b> legislative procedure, inter-institutional agreements.
<b>Decision-making procedures</b>	<b>Yes:</b> recognition CoR in the Council. - <b>TEU:</b> Art. 16. - <b>TFEU:</b> Part VI (Chapter 1, Section 3; Chapter 3: deletion of CoR references, deletion of all references to advisory functions). - <b>Removal of all references to advisory in TEU, TFEU.</b>	Strengthened legislative powers for the CoR Members in the Council.	<b>Council:</b> legislative procedure and composition. <b>EP:</b> legislative procedure, inter-institutional agreements. <b>Commission:</b> legislative procedure, inter-institutional agreements.
<b>Inter-institutional relations and existing 'checks and balances'</b>	<b>Yes:</b> new inter-institutional balance: - <b>TEU:</b> Art. 16. - <b>TFEU:</b> Part VI (Chapter 1, Section 3; Chapter 3: deletion of CoR references, deletion of all references to advisory functions), Art. 295. - <b>Removal of all references to advisory in TEU, TFEU.</b>	Strengthened legislative powers for the CoR Members.	<b>Council:</b> legislative procedure and composition. <b>EP:</b> legislative procedure, inter-institutional agreements. <b>Commission:</b> legislative procedure, inter-institutional agreements.
<b>CoR member's status</b>	<b>Yes</b> - TFEU: Art 300(3).	Strengthened legislative powers for the CoR Members in the Council.	<b>Council:</b> change in the structure and composition, as well as in its rules of procedures, to the extent that the CoR is now part of the Council. <b>EP:</b> no specific impact. <b>Commission:</b> no specific impact.

\*Excluding technical changes, protocols and ad hoc solutions.

## **2.4 Scenario 4: The CoR as a Territorial Platform supporting the work of the European Commission**

The fourth scenario assumes the CoR working as a territorial platform and supporting the work of the Commission. With the CoR and the Commission cooperating closely together, the scenario underlines **the expert dimension** of the CoR membership in the decision-making process, and particularly in the **pre-legislative phase** and in the **procedure for delegated and implementing acts**<sup>59</sup>. Moreover the scenario assumes a reinforced Community method in relation to the CoR's political nature, its consultative powers and the member status.

### **2.4.1 Institutional set-up**

The scenario has an impact on the internal and external set up of the Commission and the CoR with regard to the CoR's new role in the pre-legislative phase and the procedure for adopting delegated and implementing acts.

**Internally**, the Commission would involve the CoR in **the pre-legislative phase** across the Commission Directorate Generals (DGs) in areas related to the CoR core competences. Such cooperation in the pre-legislative phase would enhance the CoR's **expert function** with respect to subsidiarity and proportionality and impact assessments. This stronger cooperation would affect the relationship between the Commission and the CoR.

As to the **procedure for adopting delegated and implementing acts**, following a CoR request the Commission would invite the CoR representatives to participate in the meetings when draft delegated and implementing acts are being discussed. The CoR would participate as an observer with speaking rights. The CoR would subsequently issue an opinion on the consultation and the act on the table. As a result, the CoR's expert function would be significantly enhanced.

**Externally**, the scenario would enhance the EU's democratic legitimacy by guaranteeing that decisions are taken closest to EU citizens and expressing the opinions of a variety of subnational interests. It would also bring added transparency to the procedure for adopting delegated and implementing acts.

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<sup>59</sup> As a second step the CoR could also be involved in the post legislative phase for monitoring the implementation of EU legislation.

The scenario assumes no changes to the so-called political dialogue<sup>60</sup> between the Commission and the national parliaments owing to the involvement of the CoR at an earlier stage. On the contrary, the CoR acting as a territorial platform supporting the work of the Commission in the pre-legislative phase would facilitate political dialogue and reduce the number of concerns about compliance with the principle of subsidiarity.<sup>61</sup>

## **2.4.2 Decision-making Procedures**

The Commission takes the lead in the pre-legislative phase when drawing up legislative proposals and in the procedure for adopting delegated and implementing acts. Beyond the impact assessments carried out by the Commission and those the CoR would carry out on its own initiative, the LRAs cannot measure the consequences of legislative proposals in advance. Involvement of the CoR in the pre-legislative phase and the procedure for adopting delegated and implementing acts would provide a solution and inform concerns with respect to the territorial impact at an early stage into the legislative process.

The pre-legislative phase and the procedure for adopting delegated and implementing acts define the policy space in which Commission lawmakers and CoR Members would operate. Involvement of the CoR would provide a new and early avenue for the participation of regional and local authorities and strengthen the legitimacy for EU citizens of the Commissions legislative proposals.

### **The Pre-legislative Phase**

Access to the Commission services during the conception of EU legislation would significantly increase the possibilities for the CoR's concerns to be reflected in draft legal acts. The CoR's participation would ensure that policies take account of LRAs' views and concerns at the drafting stage. This would not require significant **EU Treaty or institutional changes**.<sup>62</sup> Instead, the Commission would draft **internal guidelines for all DGs** working on LRA matters to involve the CoR in the pre-legislative phase. The guidelines would also apply to the work of the six permanent CoR Commissions and be incorporated in a new Protocol on

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<sup>60</sup> Protocol 1.

<sup>61</sup> Protocol 1, Article 9 and 10.

<sup>62</sup> Perhaps treaty changes with policy area mention.

Cooperation between the European Commission and the Committee of the Regions.<sup>63</sup>

At first, these new guidelines would only apply to those policy areas where the Commission is required to consult the CoR. The content of the CoR-Commission consultation would be added to the documentation of the dossier when the proposal is introduced in the EP and the Council. In policy areas not belonging to the CoR's core competences but with an anticipated impact on the LRAs such as **enlargement** or **Neighbourhood Policy** the Commission could invite the CoR representatives following a **reasoned request** to participate in the meetings within the Commission services during the conception of EU legislation.

### **The procedure for adopting delegated and implementing acts**

The Lisbon Treaty reformed the traditional Comitology procedures to the extent that it introduced a distinction between delegated and implementing acts. These acts may directly affect the governance of LRAs with regard to project financing and the enforcement of delegated and implementing acts. With the CoR, as a territorial platform, supporting the Commission, CoR representatives would be invited to participate in meetings where draft delegated and implementing acts are being discussed. During the discussion, the CoR could systematically check against the principle of subsidiarity and proportionality, respect for multilevel governance and insert more legitimacy into the procedure.<sup>64</sup>

- ***Delegated Acts***

In the area of delegated acts, the Commission is authorised to supplement or amend non-essential elements of a basic legislative act by means of adopting a non-legislative act.<sup>65</sup> When the Commission prepares delegated acts it needs to ensure simultaneous, timely and appropriate transmission of relevant documents to the **EP** and the **Council**.<sup>66</sup> The Commission also needs to carry out appropriate and transparent consultations, including at expert

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<sup>63</sup> Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

<sup>64</sup> The comitology procedure may have a significant impact upon LRAs. The procedure has been criticised for its lack of transparency and democratic legitimacy on subsidiarity grounds. A. J. Cygan (2013) *Accountability, parliamentarism and transparency in the EU: the role of national parliaments*, Cheltenham: Edward Elgar Pub. Ltd.-13.

<sup>65</sup> Art. 290 TFEU.

<sup>66</sup> Common Understanding on Delegated Acts. Brussels (04/04/2011).

level. In this process, the EP and the Council exercise direct supervision over the Commission and have the right to object to an individual act or to revoke the delegation. However, they cannot impose a mandatory consultation of representatives of the Member States.

As a rule, the Commission systematically consults experts. These expert consultations include observers with the EP having the possibility to attend relevant meetings of national experts preparing the delegated acts. The Commission provides the EP with full information on these meetings in the preparatory and implementation stage. The Commission would extend these prerogatives to the CoR, acting as a territorial platform in its support. The CoR's participation in the expert groups in the course of the preparation of the delegated act would allow the CoR to feed LRA concerns into the debate.<sup>67</sup>

- ***Implementing Acts***

Implementing acts ensure the uniform implementation of EU law in the Member States.<sup>68</sup> Implementing acts remain subject to discussion and approval in Comitology Committees. According to different Comitology procedures, the Member States are involved in the committees to supervise the Commission to varying degrees while the EP's involvement is more peripheral.<sup>69</sup> The Commission would extend these prerogatives and the CoR would participate in an observer capacity beyond the current practice. The participation would provide a platform to the CoR to express its opinion about the impact of these acts on LRAs. The CoR's opinions would be integrated into the documentation for the meeting.

- Both for delegated and implementing acts, the CoR would need to develop internal expertise and designate participants to the meetings. These participants would be CoR Members speaking on behalf of the CoR and supported by CoR staff.<sup>70</sup> Alternatively, highly specialised CoR Members of the six standing Commissions could be selected but their participation would

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<sup>67</sup> Committee of the Regions (2010) Follow-up to the Lisbon Treaty. Drafted by European Institute of Public Administration (Maastricht and Barcelona), p. 41.

<sup>68</sup> Art. 291 TFEU.

<sup>69</sup> Art. 290 TFEU and Art. 291(3) TFEU. In contrast to delegated acts where the Council is involved for implementing acts the control is exercised by the Member states.

<sup>70</sup> Committee of the Regions (2010) Follow-up to the Lisbon Treaty. Drafted by European Institute of Public Administration (Maastricht and Barcelona), p. 42.

need to be decided on the basis of expertise rather than political grounds. The nature of the expertise would need to be judged against the neutrality of the Commission, and respect for the Community method. Further, it would be anticipated and reflected in the composition of the CoR. These elements would be reflected in internal guidelines for the choice of this designated CoR participants.

### **2.4.3 Inter-institutional Relations**

The consequences of this scenario on inter-institutional relations are described below.

#### **Cooperation with the European Parliament**

The scenario under which the CoR acts as a territorial platform supporting the work of the Commission has little influence on the CoR-EP relationship. The new cooperation agreement strengthening the political relationship between the CoR and the EP would remain in force as it would not be affected.<sup>71</sup> Perhaps when renewed it could take into account the CoR's role in the pre-legislative phase and the procedure for adopting delegated and implementing acts as well as with regard to the exchange of information between the two bodies. The EP would also welcome the CoR related documents in the dossier.

#### **Cooperation with Council**

The CoR and the Council have not established a formal cooperation agreement. The CoR acting as a territorial platform supporting the work of the Commission has no influence on the CoR-Council relationship as such. As to the procedure for adopting delegated and implementing acts, it is important to note the clear distinction between the Member States acting and the Council. For delegated acts, the Council is involved while for implementing acts, even though the comitology regulation is adopted by Council and EP, the Member States exercise the control over the Commission's implementing powers.<sup>72</sup>

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<sup>71</sup> Cooperation Agreement Between the European Parliament and the Committee of the Regions. Brussels (05/02/2014).

<sup>72</sup> Art. 290, 291(3) TFEU.

## **Cooperation with the Commission**

With the CoR acting as a territorial platform supporting the work of the Commission, formal cooperation would need to be strengthened. The cooperation protocol would need to be updated and renewed to take into account the CoR's new role in the pre-legislative phase and the procedure for delegated and implementing acts.<sup>73</sup> The protocol would make a reference to the new internal guidelines on the pre-legislative phase for all DGs involved in LRA matters. These guidelines would set the criteria and the procedures on how to involve CoR Members in the pre-legislative phase and the procedure for adopting delegated and implementing acts. The guidelines would also make reference to the documentation and the manner in which they would be shared. At first, these guidelines would only apply to those policy areas where the Commission is required to consult the CoR. Only in a second stage other policy areas could be envisaged, giving the CoR sufficient time to further develop its expert function.

### **2.4.4 CoR Member Status**

The scenario has no influence as such on the composition of the CoR membership. It assumes, however, a high level of in-house expertise and a need for uniform decision-making capacity. Also, the expert element of the CoR membership would become an important element in addition to the party and the country characteristics of the CoR membership.

### **Expert Function**

To improve the expertise of the CoR membership, the designation procedure would need to be altered at the subnational level. More specifically, in addition to the criteria of political party, gender and territorial balance, the selection procedure would need to take policy expertise into account. On the basis of these criteria the subnational associations would draw up a list of candidates that would be subsequently submitted to the national government for decision. The national governments would accept the list of candidates and forward it to the Council for adoption with a unanimous decision confirmation.<sup>74</sup>

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<sup>73</sup> Protocol on Cooperation between the European Commission and the Committee of the Regions. Brussels (16 February 2012).

<sup>74</sup> Committee of the Regions (2009) The selection process for Committee of the Regions members. Procedures in the Member States, available at <http://cor.europa.eu/en/Archived/Documents/840ed860-60ca-4af6-8be9-70b795f42207.pdf>.



The expert-related selection criteria for making up the candidacy list can be added on the basis of matching the Commission's longer term priorities, the medium-term Commission initiatives and if possible the consultative procedure of the CoR with the required expertise. This would allow the candidate list also to include a selection on the basis of specific expertise that can be brought to the CoR assembly. In practice, this can be achieved through improving the ties between the CoR and the associations of LRAs in the Member States. The CoR would be well placed to communicate the Commission's agenda to the local level and bring LRA expertise to the EU level. As such, the CoR would also gain in visibility at the level of the associations of subnational authorities.

### **Uniform decision-making capacity**

The heterogeneity of the CoR membership often results in an output legitimacy gap with policies at times representing the lowest common denominator. In the past, the diversity of the CoR's membership has often brought internal cleavages to the fore risking the capacity of the CoR to speak with a coherent and single voice. The present scenario assumes a stronger expert function for the CoR acting as an advisor in the pre-legislative phase and the procedure for adopting delegated and implementing acts. The scenario's objective is to improve the interest of LRAs and incorporate their concerns at an early stage in the legislative procedure.

The heterogeneity and the output legitimacy gap of the CoR can be reduced by adjusting the CoR's rules of procedure<sup>75</sup>. More specific, more uniform, swift and effective action would greatly benefit the CoR's expert function in the pre-legislative phase and the procedure for adopting delegated and implementing acts. It would also allow the CoR to produce more uniform opinions according to the level of the LRAs as internal cleavages based on competences and level of subnational interest are reduced. It would also make CoR membership more valuable and attractive to the Members as output legitimacy of the CoR would rise, with ensuing higher impact and visibility for its Members.

### **Resources**

To develop an extensive expertise function requires staff and other types of resources. The CoR administration has to make do with more limited resources compared to the EU institutions. In this context, resort to ICTs could significantly

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<sup>75</sup> The CoR has the right to adopt and change its own rules of procedure.

increase the CoR's capability to draw on LRAs' experience and channel it to the EU institutions.

## **2.4.5 Recommendations**

Against the background of reconciling efficient and effective decision-making with feeding more LRA legitimacy into the EU legislative process or policy making, the scenario of a LRA Territorial Platform supporting the Commission makes the following recommendations:

- **Involvement in the pre-legislative phase and the procedure for adopting delegated and implementing acts:** Explore within the CoR the arguments why the CoR would need to be involved in the pre-legislative phase and the procedure for adopting delegated and implementing acts. These arguments would form the basis for the necessary changes and the policy options the CoR would enact to functioning as a territorial platform supporting the European Commission.
- **Decision-making:** Make preparations for closer cooperation between the CoR and the Commission establishing informal and formal ties. Simultaneously lobby the Commission to be invited in the pre-legislative phase and the procedure for adopting delegated and implementing acts. Most importantly, convince the Commission of the CoR's unique expertise and its constructive contribution to the legislative work by offering information, issuing timely reports and opinions that could reduce the Commission's workload. Subsequently, the CoR is likely to be regarded as a valuable partner in the areas of subsidiarity and proportionality and experience with implementation of European legislation.
- **Membership:** Strengthen the ties with all subnational European LRA associations and draw up a **detailed map** of their membership and their electoral/appointment procedures. Subsequently, lobby the associations of subnational authorities in favour of introducing an additional criterion on the basis of expertise for designating CoR membership. Lay out the reasons why adding such criterion would be beneficial for the LRAs and the associations and how they would benefit from the CoR's role as a territorial platform supporting the work of the Commission.

## 2.4.6 Synoptic Table

Scenario No. 4: The CoR as a territorial Platform supporting the work of the European Commission			
	TEU Changes (if needed)*	Impact on the CoR and its prerogatives	Impact on other EU institutions
<b>Overall institutional setup (as defined by the Treaties)</b>	<b>Limited treaty change:</b> participation requires only change of TFEU. Art. 291 and most likely no change to Art. 307, Art. 305, Art. 263, Art. 8, protocol on subsidiarity.	<b>consultation:</b> expansion of competences to reinforced comitology procedure. <b>subsidiarity:</b> expansion of competences to reinforced comitology procedure. <b>informal facilitator</b>	<b>Commission:</b> new inter-institutional agreement. <b>EP:</b> follow up of inter-institutional agreement. <b>Council:</b> potential for the setup of inter-institutional agreement on information sharing in certain policy domains.
<b>Decision-making procedures</b>	<b>Limited treaty change:</b> participation requires only change of TFEU Art. 291 and most likely no change to Art. 307	<b>consultation:</b> expansion of competences to reinforced comitology procedure <b>subsidiarity:</b> expansion of competences to reinforced comitology procedure <b>informal facilitator</b>	<b>Commission:</b> formal cooperation in the legislative procedure and new inter-institutional agreement. <b>EP:</b> follow up of inter-institutional agreement. <b>Council:</b> no specific impact.
<b>Inter-institutional relations and existing ‘checks and balances’</b>	<b>Limited treaty change:</b> participation requires only change of TFEU. Art. 291 and most likely no change to Art. 307, Art. 295.	<b>consultation:</b> expansion of competences to reinforced comitology procedure. <b>subsidiarity:</b> expansion of competences to reinforced comitology procedure. <b>informal facilitator</b>	<b>Commission:</b> new inter-institutional agreement. <b>EP:</b> follow up of inter-institutional agreement. <b>Council:</b> potential for the setup of inter-institutional agreement on information sharing in certain policy domains.
<b>CoR member’s status</b>	<b>No:</b> changes to the CoR rules of procedure do not require EU Treaty change	<b>consultation:</b> expansion of competences to reinforced comitology procedure <b>subsidiarity:</b> expansion of competences to reinforced comitology procedure	<b>Commission:</b> new inter-institutional agreement allowing CoR Members to fulfil their new work better. <b>EP:</b> no specific impact. <b>Council:</b> no specific impact.

\*Excluding technical changes, protocols and ad hoc solutions

## **2.5 Scenario 5: A Third Legislative Chamber representing the LRAs**

The fifth scenario assumes that the CoR would act as a third legislative chamber representing the LRAs in a European Senate. The CoR would become a new EU institution and a territorial chamber next to the EP and the Council. Under this scenario the EU takes on the more explicit federal structure of a constitutional union mirroring a ‘United States of Europe’ with different types of government providing more consistency.<sup>76</sup> The more federal structure represents the citizens in the EP, the Member States in the Council and the LRAs in the EU Senate. The legislative decision-making would rest with these three chambers. The Commission would maintain its right of initiative and its current executive role.

In such environment the European treaties would have to be significantly amended, designing a new institutional balance between legislative and executive decision-making. The Commission would increasingly resemble a government held accountable by a three-house legislature, with the CoR acting as an influential upper house. The CoR would have a new name (the European Senate, the EU Senate or simply the Senate). It would influence policy, guarantee institutional stability and represent a diversity of European collective constituent units that an institution based on universal suffrage (one person, one vote) cannot represent. The CoR Members (the European Senators) would be indirectly elected among the European LRAs. The CoR would not initiate legislation but act as a chamber of revision passing legislation approved by the EP and Council with eventual veto powers in an up-or-down vote. In this role, it would act as a prudent facilitator and, when needed, delay legislation. However, the European Senate would need to be an efficient and effective upper chamber to prevent the EU decision-making from becoming too burdensome. The scenario takes this into account in the decision-making procedures and the parameters of the CoR membership.

### **2.5.1 Institutional Set Up: The design of the parliamentary institution**

The creation of upper houses to represent local and regional interest is not unique. It follows a trend in institutional design where the number of upper houses of world

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<sup>76</sup> T. O. Hueglin and F. Alan (2006) *Comparative federalism: a systematic inquiry*, Peterborough Ont.: Broadview Press.-16

parliaments has been rising.<sup>77</sup> All 20 federal parliamentary systems in the world have an upper house<sup>78</sup>, next to a representation of the people in the lower house. A tricameral system is however quite rare.<sup>79</sup> Yet it can be argued that a European Senate representing various LRAs and a European Parliament representing the people is actually fully in line with this international trend. The third chamber is however required to also give proper weight to the special status of the still sovereign member states within the EU through the Council.

How then could the CoR acting as a European Senate differentiate itself from the other EU institutions, particularly the EP and the Council? In answering this question, the scenario considers two options: (a) **a symmetric and egalitarian tricameralism**; and, (b) **asymmetric and subordinate tricameralism**. In both options the level of (a-)symmetry or (non-)egalitarian tricameralism would depend on the composition of the European Senate and the level of autonomy of the constituent LRAs. The representation of the LRAs in the EU Senate would be key without losing the capacity for EU decision-makers to act effectively.

According to the institutional design of symmetric and egalitarian tricameralism, the CoR would be one of three legislative chambers exercising similar powers and functions. The CoR would revise and could delay legislation, influence policy and have the power to request that the Commission propose legislation. The legislative initiatives would need the approval from both the EP and the Council. The CoR acting as a European Senate would also be able to consider financial legislation that was passed by the other two chambers.<sup>80</sup>

The CoR's main role would be to revise legislation in its core policy domains that are tabled in the EP and the Council. Given the importance of the EU's budget in

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<sup>77</sup> S. C. Patterson and A. Mughan (eds.) 1999. *Senates: bicameralism in the contemporary world*, Columbus: Ohio State University Press. Inter-Parliamentary Union (2014) PARLINE database on national parliaments. Geneva. S. C. Patterson and A. Mughan (2001) Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers, *The Journal of Legislative Studies*, 7, 39-60. In 2000 there were 79 bicameral parliaments or just over 40% of the total global parliamentary systems with just fewer than 60 % being unicameral having only one house. Counter intuitively, the number of senates with their particular senate institutions in the world has been growing.

<sup>78</sup> S. C. Patterson and A. Mughan (2001) Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers, *The Journal of Legislative Studies*, 7, 39-60. It is important to note that nearly a third of the unitary countries in the world practise bicameral parliamentarism.

<sup>79</sup> <https://en.wikipedia.org/wiki/Tricameralism>.

<sup>80</sup> The best known examples of symmetric and egalitarian Senates are the US Senate, the German Bundesrat and the Australian Senate. For an overview see S. C. Patterson and A. Mughan (eds.) 1999. *Senates: bicameralism in the contemporary world*, Columbus: Ohio State University Press. table 1.3

the areas of agricultural and regional policy, the CoR would have a say in the area of the EU's budgetary legislation passed by the EP and Council.

## **2.5.2 Decision-making Procedures**

The scenario of the CoR acting as a European Senate would have a significant impact on the decision-making procedures and in particular on the ordinary legislative procedure. The scope of the European Senate's law-making powers would differ depending on whether it would be equal or subordinate to the EP and the Council.

### **Option 1: Three equal chambers: symmetric and egalitarian tricameralism**

Under the European egalitarian tricameralism, the **European Council** continues to set the general political direction of the Union, while the Commission has the right of legislative initiative. The EP, the Council and the Senate may request the Commission to submit a proposal if they deem it appropriate. The **ordinary legislative procedure** would involve the EP, Council and the Senate as co-legislators. As a first step, the areas where the three chambers jointly adopt legislation would only involve the domains for which the Treaties provide for CoR obligatory consultation. For other policy domains currently under the ordinary legislative procedure, the EP and the Council would continue to be the sole co-legislators.<sup>81</sup> In this new structure, the CoR acting as the European Senate considers legislative proposals and has an amendment right within strict time limits when the proposals are introduced in the EP and the Council.

More specifically, **the modalities** of the ordinary legislative procedure place the EP, the Council and the EU Senate on an equal footing. The three institutions adopt legislative acts at first or second reading. Inter-cameral disagreement triggers the convening of a Conciliation Committee with the EP, Council and Senate appointing some of their members to serve on a joint committee and hammer out a compromise law for each house to adopt.<sup>82</sup> During the conciliation phase, the Commission would act as a facilitator between the three chambers.

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<sup>81</sup> As the CoR gains additional expertise these policy domains could be expanded over time.

<sup>82</sup> G. Tsebelis and J. Money (1997) *Bicameralism*, Cambridge U.K. New York: Cambridge University Press.

## **Option 2: A Subordinate European Senate: Asymmetric Tricameralism as a more realistic scenario**

Subordinate tricameralism assumes that the European Senate would be ancillary to the EP and the Council with lower levels of legislative activity, but scrutinising the majority of EU legislation. Instead of fulfilling the role of a full co-legislator, the European Senate would be a *chambre de reflexion et de dialogue* enjoying only limited legislative power. It would influence policy by engaging in dialogue with the EP and the Council and suggest amendments that combine argument and revision, intervention and accommodation, pressure and withdrawal. Nevertheless, in the legislative phase the MEPs and Member States' would have the last word.

Asymmetric tricameralism assumes that the **European Council** continues to set the general political direction of the Union, while the Commission maintains its right of initiative. The modalities of the ordinary legislative procedure involve the EP, Council and the EU Senate on those legislative proposals currently within the CoR's remit adopted jointly by the three chambers. However, while the EP and Council are equal co-legislators, the EU Senate has only a minimal formal legislative role. This could take the form of the CoR acting as an EU Senate scrutinising Commission proposals before they are submitted, possibly taking account of the CoR's amendments, to the Council and the EP. Alternatively, the European Senate would suggest amendments during the first reading only. Downstream, the Senate would be requested to give its consent and would enjoy a right to veto within strict time limits. In this system, the EP and the Council can overrule the EU Senates' opinion with a persisting majority vote at the end of the second reading. In that event, the Senate could only delay legislation.

### **2.5.3 Inter-institutional Relations: influence**

A **clearer separation of powers** is essential in the inter-institutional balance and cooperation among all EU institutions (the EP, the Council, the Senate, the Commission and the European Council). Such separation of powers would make it easier for each EU institution to be held accountable. The strength of tricameralism would lie in the capacity of the CoR acting as a European Senate to check the actions of the elected EP and the Member States in the Council.

#### **Cooperation with the Commission**

The Commission would become a European government indirectly elected by EU citizens with the outcome of the European Parliamentary elections having a large

influence as is currently underway for the selection of the Commission President. The European government would have a fully-fledged economic and finance as well as foreign minister. This government would be accountable to the EP, Council and the European Senate. The Senate would have a degree of oversight in the selection of the College of Commissioners with a tri-cameral confirmation hearing of the Commission President. The role of the European Senate would be limited to the confirmation procedure. As a result, the Commission government would be invested by and legitimated at all levels of representation, i.e. the EU citizens, the European LRAs and the EU Member States.

Obviously, these new procedures would result in a far-reaching revision of the formal cooperation agreement with the Commission, reinforced sharing of information and a stricter separation of inter-institutional assets to guarantee the independence of the European Senate.

### **Cooperation with the European Council**

The CoR acting as a European Senate would have no impact on the institution and functioning of the European Council setting the general political direction of the Union with the Commission having the legislative initiative. Nonetheless, the European Council could consult the European Senate in its expert capacity on matters directly relating to LRAs.

### **Cooperation with the EP and Council**

The strength of tricameralism would lie also in the capacity of the European Senate to check the actions of the other two chambers, the Council and EP.<sup>83</sup> Provided the European Senate would be an equal partner, it could amend and veto legislation adopted by the other chambers. The co-legislative powers would guarantee that the three houses would check and balance one another. In a more subordinate advisory role, the European Senate would only delay passages of laws. Specific treaty provisions would empower the European Senate to revise, reconsider or delay legislation. However, the existence of a persisting vote in the EP and Council would ultimately prevail and allow for the rejection of the EU Senate's veto. Under

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<sup>83</sup> J. S. Mill (2007) *Considerations on representative government*, s.l.: Dodo Press. According to Mill 'a majority in a single assembly, when it has assumed a permanent character [...] easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority'. James Bryce repeated Mill's perspective arguing that 'the chief advantage of dividing a legislature into two branches is that the one may check the haste and correct the mistakes of the other'. J. Bryce (2007) *The American Commonwealth* -, Volume 1: Cosimo, Inc.



the two options the Senate's prerogatives of checks and balances would contribute to institutional continuity and the integrity of the European treaties.

Tricameralism would result in a far-reaching revision of the formal EP cooperation agreement, reinforced sharing of information and a stricter separation of inter-institutional assets to guarantee the independence of the EU Senate from the EP. It would require a cooperation agreement with the Council, including information sharing. To guarantee the independence of the European Senate, a strict separation of inter-institutional assets (offices, proper budget, personnel, research and documentation, etc.) would need to be guaranteed.

#### **2.5.4 CoR Member Status: Organisation**

When the CoR was set up, it was left to the EU Member States to establish the criteria for which collective units would be represented and how they would be chosen. As a rule subnational LRA associations draw up a list of candidates and the national governments agree to the list of candidates. Subsequently the Member States send the list to the Council for adoption with a unanimous decision.<sup>84</sup> In short, the Member States control admittance to the CoR.

From a perspective of separation of powers and reinforcement of the EU's territorial legitimacy and accountability, the designation procedure for the CoR membership is problematic in a scenario where the CoR acts as a European Senate. The internal organisation of the European Senate would have to balance expertise with political party allegiance.

The European Senate would have a maximum of 200 members, elected uniformly by the associations of subnational authorities in the Member States.<sup>85</sup> The Senators would have a renewable mandate with a similar term to the European Parliament. Elections would be held simultaneously with the EP.

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<sup>84</sup> Committee of the Regions (2009) The selection process for Committee of the Regions members. Procedures in the Member States, available at

<http://cor.europa.eu/en/Archived/Documents/840ed860-60ca-4af6-8be9-70b795f42207.pdf>.

<sup>85</sup> Usually, the cube-root-rule has been used to determine the ideal size of a legislative chamber with the number of representatives adding up to the cubic root of the proportions of the national chambers (+/- 10%).

## **Size and Composition**

The CoR acting as a European Senate would have a maximum of 200 Senators explicitly recognising the unequal size and identity of the LRAs within. The scenario proposes three groups of countries (large, middle-size and small) based on the relative size of their population. Each cluster of countries would have a similar mean number of citizens per seat but the average would be higher for the large countries and lower for the small countries.

Apart from respecting the diversity principle, limiting the size of the CoR has a distinct number of advantages. First, a smaller European Senate is more likely to be effective in countering arguments about the EU becoming too large with a third chamber. Second, a smaller legislative chamber is likely to be more independent and guarded from state capture of vested interests. The objective of the European Senate is the territorial representation of European LRAs above other types of representation. It would counterbalance the direct representation of the popular majorities in the EP and the Member States in the Council. Third, a smaller European Senate either subordinate or equal to the EP and Council would attract more high-profile candidates sufficient to guarantee the Senates' independence and visibility.

## **Indirect Elections**

The European Senate would be conceived as representing self-governing municipalities, localities, cities, regions and provinces. These subnational units have acquired their level of autonomy and self-governance as a result of a longstanding process and a carefully crafted balance with other levels of government. The European LRAs would guard their prerogatives in the EU Senate as counterbalance to the more centripetal EP and Council at the heart of the EU. In other words, the LRAs in the European Senate would protect the federal representative principle of the LRAs on the basis of subsidiarity and proportionality.

To guarantee the counterbalance to the popular majority represented in the EP and the EU Member States *raison d'état* in the Council, a European Senate would have to draw its representation from a subnational range of European collective entities. Against this background, the legitimacy of the CoR membership would be served by an electoral instead of appointment procedure.

General elections in the Member States would determine the membership of associations of subnational authorities. Subsequently, these associations would function as an electoral college and draw up a list of candidates for the European Senate. The members of the associations of LRAs in the Member States would subsequently elect their preferred candidates to the European Senate. As a result of this procedure, Senators would have to hold office at the LRA level and be accountable to their respective LRA and subnational LRA association. Preferably, the electoral rules to be applied by the LRA associations in the different Member States would be harmonised.

Following the indirect electoral procedure, the membership of the Senate is likely to be more stable with a lower turnover. This would allow the members of the Senate to develop political experience at the European level and visibility in the EU legislative process. It would also allow them to develop more harmonious preferences and function more effectively.

## **Organisation**

The European Senate's value added for checks and balances and the importance of the role of protecting local and regional interests would rest with a self-standing institution that directly represents the LRAs. A **transparent, simple and resilient committee system** would encourage such independence, raising the policy influence on the legislative process and strengthening the institutional treaty stability of the Union.<sup>86</sup> The Senator's party loyalty to extra-parliamentary leadership would weigh on the Senates' Committee system but it would not fully replicate the partisan structure present in the plenary, the EP or potentially the Council. Instead, the indirect election, the strong committee system and the stronger bipartisan character would institute a European Senate that ultimately safeguards and gives voice to the European territorial representation on the basis of the subsidiarity and proportionality principle.<sup>87</sup>

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<sup>86</sup> S. C. Patterson and A. Mughan (2001) Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers, *The Journal of Legislative Studies*, 7, 39-60.-50

<sup>87</sup> Ibid., -50

## **2.5.5 Recommendations**

Against the background of reconciling efficient and effective decision-making with feeding more LRA legitimacy into EU policy-making, the scenario of a third legislative chamber representing the LRAs implies the following recommendations:

- **A new EU institution:** Prepare an opinion or resolution about the future institutional architecture of the EU. The opinion or resolution should be approved by a large majority among the CoR members. The document should lay out the policy options and argue strongly in favour of the set-up of a European Senate. Subsequently, publish the opinion with the details of the vote and distribute the text widely among the European LRAs and EU institutions to launch a debate on the sufficient and necessary changes.
- **Decision-making:** Project a higher level of decision-making capacity and develop further a unique expertise in preparation of a potential convention and treaty change. This would make the CoR more credible when arguing in favour of the expansion of its legislative powers. As a first step, strengthen the unique expertise and the collective action of the CoR Members and take a clearer position in the area of its core competences when drawing up opinions. Simultaneously, develop a close relationship with the LRAs and subnational association. The role of the CoR Members and National Delegations is crucial as they are the go-between for the CoR and the subnational LRA associations. They should convince their respective association to aggregate their LRA expertise and information in the CoR while strengthening the CoR's role as the preferred EU policy channel for the associations of subnational authorities. As a second step, the CoR needs to mobilise and present its aggregate LRA policy function and expertise to the EP, Commission and Council. It would then improve its position to argue of more legislative powers at the European level. At a more technical level, develop in-house ICT expertise or solicit outside IT expertise to build an expert platform that allows for the uploading, distribution and the aggregation of data among CoR Members, the LRAs and their associations.
- **Membership:** Argue in favour of a replacement of the designation procedure with an electoral procedure for the CoR membership. The process leading up to the change of the procedure ideally should be bottom-up and the key players in that process are the subnational LRAs. Therefore, the CoR should strengthen its ties with all subnational LRA associations. These associations would not only elect CoR Members but would also hold these members to account. The process

would increase the legitimacy of CoR membership at the level of citizens and collective subnational units, increase the visibility and influence of CoR Members on the EU legislative process.

## 2.5.6 Synoptic Table

<b>Scenario No. 5: A Third Legislative Chamber Representing the LRAs</b>			
	TEU Changes (if needed)*	Impact on the CoR and its prerogatives	Impact on other EU institutions
<b>Overall institutional setup (as defined by the Treaties)</b>	<p><b>Yes:</b> new institution (EP).                      - <b>TEU changes:</b> Art. 13), Title IV (new Section).                      - <b>TFEU changes:</b> Part VI, (Chapter 1, new Section; Chapter 3 deletion of CoR references), Art. 263, Art. 265.</p>	<p>- Co-decision with full legislative powers for the CoR Core competences following a consent procedure for the CoR.</p>	<p><b>EP:</b> legislative procedure, inter-institutional agreements.   <b>Council:</b> legislative procedure, inter-institutional agreements.   <b>Commission:</b> legislative procedure, inter-institutional agreements.</p>
<b>Decision-making procedures</b>	<p><b>Yes:</b> recognition CoR as a third Chamber:                      - <b>TEU changes:</b> Art. 10, Art. 14, Art. 16                      - <b>TFEU changes:</b> Title VI (Chapter 1, Part I; Chapter 3, Part 1, deletion of CoR references), Part VI (Chapter 2, Section 2), Title II (financial provisions, Chapters 1-5), Art. 263, Art. 265                      - <b>Removal of all references to advisory in TEU, TFEU</b></p>	<p>- Co-decision with full legislative powers for the CoR Core competences following a consent procedure for the CoR.                      - political assembly.</p>	<p><b>EP:</b> legislative procedure, inter-institutional agreements.   <b>Council:</b> legislative procedure, inter-institutional agreements.   <b>Commission:</b> legislative procedure, inter-institutional agreements.</p>
<b>Inter-institutional relations and existing 'checks and balances'</b>	<p><b>Yes:</b> recognition of the Cor as a Third Legislative Chamber:                      - <b>TEU changes:</b> Art. 10, Art. 14, Art. 16.                      - <b>TFEU changes:</b> Title VI (Chapter 2, Section 2; Chapter 3, Part 1, deletion of CoR references), Part VI (Chapter 2, Section 2), Title II (financial provisions, Chapters 1-5), Art. 263, Art. 265 Art.</p>	<p>- Co-decision with full legislative powers for the CoR Core competences following a consent procedure for the CoR.</p>	<p><b>EP:</b> legislative procedure, inter-institutional agreements.   <b>Council:</b> legislative procedure, inter-institutional agreements.   <b>Commission:</b> legislative procedure, inter-institutional agreements.</p>

Scenario 5: A Third Legislative Chamber representing the LRAs

Scenario No. 5: A Third Legislative Chamber Representing the LRAs			
	295. - <b>Removal of all references to advisory in TEU, TFEU.</b>		
<b>CoR member's status</b>	<b>Yes</b> - TEU: Art. 10. - TFEU: Art 300(3). - new rules of procedure. - designation procedure: optimal size of the CoR composition.	- Co-decision with full legislative powers for the CoR Core competences following a consent procedure for the CoR. - increased visibility and communication capacity.	<b>EP:</b> no specific impact.  <b>Council:</b> no specific impact.  <b>Commission:</b> no specific impact.

\*Excluding technical changes, protocols and ad hoc solutions

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