

Follow-up to the Lisbon Treaty

The potential of a new institutional and political role of the Committee of the Regions for stronger inter-institutional cooperation following the broadening of the principle of institutional balance and key actions for achieving a reinforced cooperation with EU Agencies/Bodies.

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It does not represent the official views of the Committee of the Regions.

More information on the European Union and the Committee of the Regions is available online at <http://www.europa.eu> and <http://www.cor.europa.eu> respectively.

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List of Acronyms and Figures

List of Acronyms

CEDEFOP	European Centre for the Development of Vocational Training
CEPOL	European Police College
CoR	Committee of the Regions
EACEA	Education, Audiovisual and Culture Executive Agency
EAHC	Executive Agency for Health and Consumers
EASA	European Aviation Safety Agency
ECDC	European Centre for Disease Prevention and Control
ECJ	European Court of Justice
EEA	European Environment Agency
EIGE	European Institute for Gender Equality
EMCCDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ERA	European Railway Agency
ETF	European Training Foundation
EU	European Union
EU-OSHA	European Agency for Safety and Health and Work
Eurofound	European Foundation for the Improvement of Living and Working Conditions
Europol	European Police Office
FRA	Fundamental Rights Agency
Frontex	European Agency for the Management of Operational Cooperation at External Borders
IIB	Interinstitutional balance
LRA	Local and Regional Authority
MLG	Multilevel governance
TEN-T EA	Trans-European Transport Network Executive Agency
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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Figure 1: Matrix for governance of bilateral relations among the EU institutions.

Table 1: Selected EU Agencies active in territorial areas

EXECUTIVE SUMMARY

Background and terms of reference

- ¹ The Lisbon Treaty enhanced the position of the Committee of the Regions (CoR) as an institutional body within the institutional framework of the EU by strengthening its consultative role (Art. 13(4) TEU and Art. 307 TFEU), granting the CoR direct access to the European Court of Justice (ECJ) ‘for the purpose of protecting [its] prerogatives’ (Art. 263(3) TFEU), as well as granting it the right to bring actions before the Court of Justice on grounds of infringement of the subsidiarity principle against legislative acts on which it has to be consulted (Protocol on Subsidiarity and Proportionality, Art.8).
- ² This new role is a result of recognition of the CoR’s activities, acknowledgement of its role in the legislative cycle, as well as being a declaration of the need for its active contribution to democracy, transparency and effectiveness in EU governance and in the EU’s pursuit of the role as a global actor – the goals pursued in the reforms leading to the adoption of the Treaty of Lisbon.¹
- ³ In order to be able to truly live up to its role as entrusted to it by the Treaty of Lisbon, the CoR needs to be better integrated into the policy-making cycle in the EU, and thus strengthen its cooperation with other EU institutions and institutional bodies.
- ⁴ This report presents a comprehensive analysis of the potential for governance of bilateral relations between the CoR and selected EU institutions: the European Commission, European Parliament, Council and European Council, as well as a selection of European Agencies active in territorial policy areas vitally important to the CoR’s activities. It is based on the premise that the CoR forms part of a broadened principle of inter-institutional balance (IIB) in the EU and that it contributes to the democratic life of the Union.

¹ See European Council Presidency Conclusions, *Laeken Declaration on the Future of the Union*, Laeken, 14-15 December 2001.

Methodology

- ⁵ The analysis of bilateral institutional relations and the subsequent recommendations are based on a matrix approach, which distinguishes between the dimension of activities (with a focus on stages in the policy-making cycle), dimension of cooperation (information, involvement, investigation) and the depth of cooperation (level, stage, scope, intensity).

The dimension and depth of cooperation represent aspects according to which it is possible to benchmark progress in strengthening of relations. Information can be accompanied with observer participation and even following up in terms of exchange of views. *Ad hoc* invitations to participate in a meeting may evolve into an observer status and eventually into a membership status. These are examples of strengthened relations. As recommendations below show, strengthening is cross-dimensional and types of cooperation and aspects of depth of relations vary across the policy cycle and depending upon the institution in question.

- ⁶ The matrix represents an analytical tool. The analysis of a potential for strengthened bilateral relations between the CoR and selected EU institutions seeks to provide recommendations, as appropriate, by using the matrix, and based on a functional approach, taking into account the objectives, principles and best practices guiding the inter-institutional relations in the EU.

Main findings and policy recommendations

- ⁷ A strengthened cooperation of the CoR with the major EU institutions rests on two premises: (i) inclusion of the CoR into the broader IIB at the EU level and (ii) the CoR's contribution to the democratic life of the Union. Our analysis of the components of the IIB, based on the ECJ's ruling, relevant advocate generals' opinions and scholarly work, shows the move from a strict understanding of the IIB in a basic sense of a principle of separation of powers, to one which departs from a narrow interpretation of institutions in the sense of Art. 13 TEU and which allows for a broadened understanding of the IIB, including the CoR.

- ⁸ With regard to the CoR's contribution to the democratic life of the Union, we identify a real and potential role for the CoR to increase input and output democracy (i.e. representation, accountability and effectiveness) of the EU level by increasing representation closest to the citizens; by increasing the potential of accountability of governments, who otherwise are not accountable to any representative body at the EU level; and by contributing

to quality of legislation directly corresponding to efforts to make EU policy-output more effective. The latter is especially pertinent in the efforts to overcome current financial and economic crisis, given its effects on the economy at the local and regional levels.

It follows that giving utmost effect to the consultation role of the CoR and the consultation process is the rationale behind strengthening of the relations between the CoR and EU institutions. Our recommendations are based on such functional approach.

A comprehensive overview of the recommendations is included in Annexes II-IV of this report by means of the completed original analytical matrix. Clarifications, especially with regard to the depth of cooperation, are incorporated in the corresponding chapters within the body text of the report. The completed matrix for the strengthening of relations with the Commission, the European Parliament and the Council are presented. The matrix for the European Council is omitted. The executive summary includes the most important recommendations.

⁹ **Potentials for reinforced cooperation with the European Commission**
Recommendation 1 (medium- to long-term recommendation):
Participation in Commission expert groups

It is recommended to consider proposing a working arrangement, whereby the Commission, upon request by the CoR (in line with its interests and capacities), invites the CoR to participate in expert groups discussing proposals for which the opinion of the CoR is obligatory, or where the Commission and the CoR agree upon the optional delivery of the opinion (including in cases of delegated acts), and in cases where the Commission requests the opinions of the CoR or involves the CoR in the process of impact assessment.

Initially, such cooperation could be pursued with the CoR participation in an observer capacity. In the long term, membership of the CoR to the expert groups discussing proposals for which the opinion of the CoR is obligatory, could be pursued.

The transmission of relevant documents by the Commission on the expert group meeting could be linked to the observer and membership status in the expert groups.

A designated participant should be able to express his/her expert opinion with regard to the observation of the principle of subsidiarity and questions

of multilevel governance and other issues of impact at the local and regional level. The CoR would need to set up internal guidelines for the choice of a designated participant. It is recommended for this participant to be an expert, including staff from the CoR's Secretariat General, speaking on behalf of his/her own expertise and not a member of the CoR. This designated expert would prepare a report for the relevant Commission of the CoR.

Recommendation 2 (medium- to long-term recommendation): *Early warning explanation in case of concerns over the observation of the subsidiarity principle*

It is recommended to agree with the Commission that, in cases of legislative proposals for the adoption of which consultation with the CoR is obligatory (and therefore grants the CoR standing in front of the ECJ), and in case of concerns regarding the respect of the principle of subsidiarity by a significant number of Member States' parliaments or sub-national parliaments with legislative powers, or also local and regional authorities without legislative powers and local government associations, the CoR and the Commission agree that the latter will respond to the former's concerns. Such a response, on a par with the Commission's commitment to the national parliaments in the framework of the political dialogue, would allow the CoR to further assess the observation of the principle of subsidiarity in the draft legislative text and in the changes envisaged as a result of the legislative work of the co-legislators and eventually in the final adopted text.

Recommendation 3 (medium- to long-term recommendation): *Participation in the preparation of delegated and implementing acts*

It is recommended to establish a working arrangement, whereby the Commission, upon the request by the CoR (in line with its interests and capacities), would invite the CoR to participate in meetings where draft delegated and implementing acts are being discussed.

The designated participant should be able to express his/her expert opinion with regard to the observation of the principle of proportionality and questions of multilevel governance and other issues of impact at the local and regional level. This opinion should be integrated into the documentation on the meeting.

The CoR would need to set up internal guidelines for the choice of this designated participant. It is recommended for this participant to be an expert, including staff from the CoR's Secretariat General, speaking on behalf of

his/her own expertise and not a member of the CoR. This designated expert would prepare a report for the relevant Commission of the CoR.

¹⁰ **Potentials for reinforced cooperation with the European Parliament**
Recommendation 4 (medium- to long-term recommendation): *Annual meeting of the Conference of Presidents of the European Parliament and the President and the Vice-Presidents of the CoR*

It is recommended to establish a practice whereby the European Parliament and the CoR would meet annually, at the level of the Conference of Presidents of the European Parliament and the President and Vice-Presidents of the CoR, in order to discuss the priorities of the coming year and agree on a list of proposals to which the CoR will be invited to provide an opinion, as well as on the list of proposals where the two bodies may cooperate more closely.

Such list should be relatively small in order to increase the effect of the cooperation.

A possibility of the organisation of joint events, especially those taking place outside of Brussels, could also make part of the agenda of the meeting.

Recommendation 5 (medium- to long-term recommendation): *Strengthened cooperation with the European Parliament's Committees along their deliberations on a proposal*

Strengthened cooperation on a Committee level, on subjects agreed at the annual meeting between the Conference of Presidents of the European Parliament and the President and the Vice-Presidents of the CoR, could gradually be deepened and intensified.

Such cooperation could include invitations to meetings of the Committees/Commissions to hear the opinion of the rapporteurs, joint consultation meetings, and joint stakeholder hearings on particularly landmark proposals. Dossiers on which such cooperation would be pursued should be limited in order to allow for the effectiveness of cooperation and for gradual customisation of it.

A systematically included substantial reference to the CoR opinion in the European Parliament's resolution on the legislative act (beyond the reference in the preamble acknowledging the regard of the opinion of the CoR) could mark the effect of such cooperation.

Adaptation of CoR's Rules of Procedure, to allow for different forms of possible cooperation, including stressing of the importance of sharing of the information, could be considered. It could raise the momentum and ensure that the CoR has capacities for such strengthened cooperation.

Recommendation 6 (short- to medium-term recommendation): *Mutual information sharing and explanation in case of concerns with regard to the observation of the principle of subsidiarity*

It is recommended to gradually establish cooperation with the European Parliament in cases of concern raised by the CoR with regard to the observation of the principle of subsidiarity. As a first step European Parliament could be invited to share with the CoR any information with regard to the concerns over subsidiarity raised by the national parliaments, following its regular meetings with the national parliaments ("Monday Morning Meetings").

Furthermore, the CoR's participation in an observer capacity in the meetings between the representatives of the EP and the national parliaments could be an appropriate effective channel also for the CoR to share its own concerns, as well as those concerns of regional parliaments with the national parliaments and the European Parliament, as it represents an early information exchange between the parliamentarians. Should such concerns arise from the original proposal, the CoR could be invited to present its concerns in the "Monday Morning Meeting" and subsequently arrangements could be pursued for the CoR to present its concerns in the relevant European Parliament committee. Should such concerns arise in the course of negotiations over the proposal, the CoR may invite the European Parliament representatives to inform the relevant CoR Commission of the developments in the negotiation over the proposal.

Recommendation 7 (medium-term recommendation): *Support the European Parliament's role with regard to delegated and implementing acts*

It is recommended for the CoR and the European Parliament to consider a working arrangement, whereby the CoR would submit to the European Parliament an opinion on the draft delegated act in case it invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the European Parliament deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality. A feasibility of such actions would be greatly increased in cases where the CoR would be involved, in an observer capacity

or as a member, in the Commission's expert groups preparing a delegated act.

¹¹ **Potentials for reinforced cooperation with the Council Recommendation 8 (short- to medium-term recommendation):** *Exchange of views and identification of joint priorities in the course of preparation of the 18-month programme*

CoR could gradually seek information, prepare recommendations (e. g. as 'Messages to the incoming Trio Presidency') and request to attend consultative meetings in the course of the preparation of the 18-month programme. In this process the CoR could also identify on which projects it could offer support to the incoming Presidencies with its own expertise and information network, also in view of joint organisation of events in the Member States holding the Presidency.

Finally, cooperation could extend to forwarding of the Council planning tools to the CoR as soon as they are endorsed (18-month programme) or presented (draft agendas of the Council formations) to the Council.

The next Trio (Ireland, Lithuania and Greece) needs to present its 18-month programme in December 2012. The CoR could request the General Secretariat of the Council in the autumn of 2012 to inform it upon the state of the consultations and seek more involvement in the preparation of the next Trio programme (due in June 2014).

Recommendation 9 (short- to medium-term recommendation): *Identification of dossiers for closer cooperation at the meeting with the representatives of the Presidency ((Deputy) Permanent Representative) upon its entry into the office*

It is recommended to upgrade a working meeting with the Council Presidency upon its entry into office, at the level of Permanent Representative and/or Deputy Permanent Representative, to discuss possible input by the CoR in non-legislative initiatives and identify dossiers on which exchange of views could take place at the Council Working Party/Committee meetings.

Recommendation 10 (medium- to long-term recommendation): *Exchange of views in the Council Working Party/Committee on legislative acts and non-legislative initiatives*

CoR could identify dossiers, legislative and non-legislative (policy-making) on which it would welcome exchange of views at the level of a Council Working Party, both on current agenda items as well as on recurring themes, where it could eventually aim to be invited by custom. It could then gradually attempt to agree with the subsequent Presidencies to be invited to exchange views with the Council Working Party.

Recommendation 11 (short- to medium-term recommendation): *Explanation in case of concerns with regard to the observation of the principle of subsidiarity*

Presentation of the CoR's views at a Council Working Party meeting could also be envisaged, and identified at the initial meeting with the Presidency, in cases of concern raised by the CoR with regard to the observation of the principle of subsidiarity in an original proposal or in an adapted proposal.

¹² **Potentials for reinforced cooperation with the European Council**
Recommendation 12 (short-term recommendation): *Formalisation of current practices*

It is recommended that the CoR and the European Council formalise the cooperation that has evolved in the course of the first and second mandate of the first President of the European Council. Formalisation of this cooperation will be essential for building an effective working relationship with the next President of the European Council. Formalisation could be sought by means of an exchange of letters between the CoR's President and the President of European Council. In the letters both Presidents could adhere to continuing with hitherto established practice, whereby the CoR, ahead of the Spring European Council, submits results of the territorial dialogue and consultations with local and regional communities in relation to the Europe 2020 strategy and the Annual Growth Survey, as well as recommendations for future action.

The effect of these steps could be deepened by also adhering, in the letters, to the following:

- (i) the CoR's recommendations to form part of the documentation sent to delegations in an invitation to the European Council meeting;

- (ii) the CoR's recommendations to form part of the General Affairs Council materials, which discusses the Conclusions of the Spring European Council.
- (iii) the President of the European Council to refer specifically to the impact of the CoR's recommendations on the debate and outcome of the spring European Council meeting in his address to the CoR.

¹³ **Potentials for reinforced cooperation with EU Agencies**
Recommendation 13 (medium-term recommendation): *Assigning CoR representatives to Management Board*

It is recommended to assign CoR representatives (a Member or staff from the CoR's Secretariat General) as stakeholders' representatives to Management Boards of EU Agencies active in policies with an impact at regional and local level. In line with the Common Approach on decentralised agencies, this guarantees participation of local and regional elected representatives in the democratic life of the EU. As the 'eyes and ears' of the CoR they constitute a valuable source of information for the competent CoR Commissions with respect to the direct involvement of the CoR in the monitoring of subsidiarity. They should report on the CoR's position within the Management Board and may be directly involved in the CoR's activities. The more active they are in the Board, the more useful an interlocutor they are for the CoR. [In parallel, CoR Commissions organise hearings of the candidates for the positions of executive director in order to clarify the CoR's expectations.](#)

Recommendation 14 (long-term recommendation): *Engaging the CoR in nominating the Director and assessing the performance*

It is recommended to invite without delay any Director candidate nominated by the Management Board from one of the EU Agencies active in territorial policy areas vitally important to the Committee of the Regions' activities to make a statement before the CoR and to answer questions put forward by its members. In the long term, the CoR indirectly and informally influences the nomination of an Executive Director when it has nominees in the Management Board to promote the regional dimension at the European and international level. Based on future (territorial) performance indicators Directors indirectly become accountable to the CoR's concerns.

Recommendation 15 (medium-term recommendation): *Nominating members of Advisory Groups and Networks*

It is recommended that the CoR nominates members (a Member or staff from the CoR's Secretariat General) to Agencies' Advisory Groups, such as Experts Forums and is consulted on the composition of Scientific Committees and established networks to strengthen its interactions with public, private and civil society players in the making and implementation of public policies. Networking is seen as a decisive factor in better legislation. Linking up within European and worldwide networks helps to steer developments in European governance towards an integrated territorial approach.

Recommendation 16 (short-term recommendation): *Benefiting systematically from EU Agencies' know-how*

It is recommended to benefit systematically from EU Agencies' know-how and expertise to develop a sense of shared responsibility at the EU level. To achieve the territorial cohesion objective and provided that the purpose of the consultations is an exchange of views and the outcome is not binding on the Agency, the CoR could regularly invite Agency experts and/or the Executive Director to address the CoR Commissions during hearings or seminars on relevant topics.

Recommendation 17 (short-term recommendation): *Promoting shared activities together with EU Agencies*

In order to foster the multilevel dimensions of EU policies it is recommended that the CoR promotes shared activities together with EU Agencies. Based on a pro-active partnership approach allowing common policies to take regional and local concerns into account, the CoR should formalise its relationship with EU Agencies. To promote a territorial approach to specific EU policies, the CoR should agree on shared projects and organise visits to EU Agencies.

DETAILED REPORT ON THE REINFORCEMENT OF INTER- INSTITUTIONAL COOPERATION

PART 1 – Analysis of potential for a reinforced cooperation between the CoR and selected EU institutions

1. Introduction: the need for and the merits of the strengthened cooperation between the Committee of the Regions and other EU institutions and institutional bodies

¹ The Lisbon Treaty enhanced the position of the Committee of the Regions (CoR) as an institutional body within the institutional framework of the EU. With regard to the assistance in an advisory capacity, the Treaty adds the European Parliament on a par with the Council and Commission as an institution, which shall consult the CoR (and the Economic and Social Committee) (Art. 13(4) TEU and Art. 307 TFEU). The Lisbon Treaty grants the CoR direct access to the European Court of Justice (ECJ) ‘for the purpose of protecting [its] prerogatives’ (Art. 263(3) TFEU). The protocol on the application of the principles of subsidiarity and proportionality² grants the CoR the right to bring actions before the Court of Justice on grounds of infringement of the subsidiarity principle against legislative acts on which it has to be consulted (Protocol on Subsidiarity and Proportionality, Art.8). Finally, the Treaty also aligned its mandate (and that of the Economic and Social Committee) with those of the European Parliament and the Commission (Art. 305 TFEU).

² This new role is a result of recognition of the CoR’s activities, acknowledgement of its role in the legislative cycle as well as a declaration of the need for its active contribution to democracy, transparency and effectiveness in EU governance and in the EU’s pursuit of the role as a global

² Protocol on the application of the principles of subsidiarity and proportionality, Protocol (No 2) attached to the Treaty on the European Union and Treaty on the Functioning of the European Union; ‘Protocol on subsidiarity and proportionality’ thereon.

actor – the goals pursued in the reforms leading to the adoption of the Treaty of Lisbon.³

In an effort to give effect to its new role with regard to the observation of the subsidiarity principle and in assuming its position as representative of the local and regional authorities in the EU, the CoR undertook broad consultation resulting in an endorsement of the White Paper on multilevel governance (MLG)⁴ and subsequently designed a scoreboard for monitoring MLG at the EU level and to foster the culture of MLG in EU governance and among the European institutions.⁵

³ In order to be able to truly live up to its role as entrusted to it by the Treaty of Lisbon, it is indispensable for the CoR to be better integrated into the policy-making cycle in the EU, and thus to strengthen its cooperation with other EU institutions and institutional bodies. Article 13 (2) of the Treaty on European Union contains a new general norm for the EU institutions to practice mutual sincere cooperation. The CoR (as well as the Economic and Social Committee) assists the European Parliament, the Commission and the Council in an advisory capacity. The above-listed new provisions in the Treaty enhance the need for governance of relations between the CoR and other EU institutions and institutional bodies.

⁴ In addition to the above-listed new provisions directly related to the role and prerogatives of the CoR, the Lisbon Treaty slightly, but significantly, changed the understanding of the principle of subsidiarity and also asserted a number of democratic principles. Article 5(3) TFEU now reads:

⁵ “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, *either at central level or at regional and local level*⁶, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”⁵

³ See European Council Presidency Conclusions, *Laeken Declaration on the Future of the Union*, Laeken, 14-15 December 2001.

⁴ Committee of the Regions, *The Committee of the Regions’ White Paper on Multilevel Governance* (CdR 89/2009).

⁵ European Institute of Public Administration (EIPA) for the Committee of the Regions, *Scoreboard for monitoring Multilevel Governance (MLG) at the European Union level*, December 2011.

⁶ Emphasis added. Art. 5(1) TEU also explicitly stipulates that “[t]he use of Union competences is governed by the principles of subsidiarity and proportionality.” The latter is further explained in Art. 5(4): “under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaty.” This definition, however, remains largely the same as from its insertion by the Maastricht Treaty.

Among the provisions on democratic principles (Title II: Provisions on democratic principles TEU), principles such as equality of citizens,⁷ and rights of participation, transparency and proximity⁸ translate into a renewed view on democracy at the EU level. Consequently the inclusion of these democratic principles implies a broadened understanding of the inter-institutional balance (IIB), as a legal and political principle. In parallel, it also calls for adaptation of the Community method as a mechanism through which the principle of IIB is sustained.

Finally, the Treaty of Lisbon for the first time recognizes “regional and local self-government” as part of “national identity, inherent in [...] fundamental structures” of Member States, which the Union respects (Art. 4(2) TEU). It also introduces ‘territorial’ cohesion, on a par with already existing economic and social cohesion as an objective (Art. 3(3), Para 3 TEU and Art. 4(2c) TFEU) and as part of a policy (Title XVIII TFEU). With these provisions the observation of local and regional level of government and the territorial aspect of Union’s policies horizontally enter the EU governance and thus the scope of CoR’s involvement in the EU decision-making.

- ⁶ This report presents a comprehensive analysis of a potential for the governance of selected bilateral relations between the CoR and other EU institutions and institutional bodies. It is based on the premise that the CoR forms part of a broadened principle of IIB in the EU, and an adapted Community method.

It first presents arguments resulting from a legal and political analysis, placing the CoR in the institutional framework and the IIB of the post-Lisbon EU. This is followed by an explanation of the approach to the analysis. The report then analyses the potential for strengthening of relations between the CoR and a selection of the EU’s institutions, taking into account the objectives, principles and best practices guiding the inter-institutional relations in the EU. Throughout the analysis it presents the recommendations for future governance of relations between the CoR and the selected EU institutions: European Commission, European Parliament, Council and European Council, as well as a selection of European Agencies active in territorial policy areas vitally important to the CoR’s activities.

⁷ “In all its activities, the Union shall observe the principle of the equality of its citizens, /.../” (Art. 9 TEU).

⁸ “Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizens.”(Art. 10(3) TEU) and “The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. The European Commission shall carry out broad consultations with parties concerned to ensure that the Union’s actions are coherent and transparent.” (Art. 11(1-3) TEU).

2. Strengthened cooperation between the CoR and other EU institutions and institutional bodies: rationale

¹ The Lisbon Treaty introduced a general norm of “mutual sincere cooperation” between the EU institutions (Art. 13(2) TEU). CoR is an advisory body with a right of direct access to the European Court of Justice (ECJ) ‘for the purpose of protecting [its] prerogatives’ (Art. 263(3) TFEU) and the right to bring actions before the Court of Justice on the grounds of infringement of the subsidiarity principle against legislative acts on which it has to be consulted (Protocol on Subsidiarity and Proportionality, Art.8).

These three provisions bring the CoR to a position, whereby it is not an EU institution in the sense of Art. 13 TEU (which explicitly lists EU institutions). However, at the same time, the CoR is given equal access to the ECJ as the Court of Auditors and the European Central Bank are given (Art. 263, Para. 3 TEU), which are both institutions in the sense of Art. 13 TEU. Furthermore, this position of the CoR resembles the position of the European Parliament – also an institution – as asserted through the case law of the ECJ following the *Isoglucose* ruling in 1980.⁹

² At the same time, the Lisbon Treaty asserted a number of democratic principles to be observed in the decision-making in the EU, among them proximity to the citizens, as well as extending the observation of the subsidiarity principle to include regional and local levels of government. The CoR as an assembly of political representatives of local and regional governments takes part in the decision-making at the EU level by being consulted in cases when the Treaty so requires “and in all other cases, in particular those which concern cross-border cooperation, in which one of these institutions considers it appropriate” (Art. 307 TFEU).

³ The above paragraphs outline two main streams of argument – legal and political – in favour of a strengthened cooperation between the CoR and EU institutions. The analysis of the arguments for and the potential of the strengthened cooperation between the CoR and selected EU institutions is summarised below.¹⁰ We start by placing the CoR within the renewed and broadened IIB and then show the merits of such understanding for the democratic life of the EU.

⁹ 138/79, *Roquette Frères v. Council* [1980] ECR 3333

¹⁰ The full background analysis is in annex to this report, Annex 1: Background analysis placing the Committee of the Regions into a renewed and broadened principle of interinstitutional balance.

2.1. CoR and renewed and broadened inter-institutional balance

- ⁴ The principle of IIB in the then Community was invoked by the ECJ as early as 1958 essentially as a substitute for the principle of separation of powers. From its introduction, the principle of IIB has been inextricably linked to the decision-making process by defining precisely the extent and limitations of roles and tasks of institutions as they have been stated in the treaties. Changes to the Treaties and later rulings of the ECJ enabled an evolution of the concept, which also goes beyond strictly legalistic nature, to include a legitimising aspect and with it an opening of an interpretation that allows for a broadened understanding.
- ⁵ The analysis of the ECJ's ruling, relevant advocate generals' opinions and scholarly work with reference to the IIB allows us to draw major components of the IIB:
- (i) IIB is held in place by institutions exerting their powers as provided for by the Treaties.
 - (ii) This balance primarily comes to an expression in a decision-making process.
 - (iii) Consultation as part of a decision-making process is an essential element of the IIB.
 - (iv) Sincere cooperation among the institutions is necessary for the effective carrying out of their roles and with that an effective participation in a decision-making process as envisaged by the Treaties (e.g. consultation).
 - (v) Different IIB can be in place in different policy fields, depending on the provisions in the Treaties.
 - (vi) IIB is not limited to legislative decision-making. Non-legislative decision-making in a given area also has to abide by the IIB as envisaged by the Treaties in the given area.
 - (vii) IIB not only has a function of a fundamental guarantee for the distribution of powers, but also a legitimising function through guaranteeing that several interests are (effectively) represented in the decision-making process.
- ⁶ These components show the move from a strict understanding of the IIB in a basic sense of a principle of separation of powers, to one which departs from a narrow interpretation of institutions in the sense of Art. 13 TEU and which allows for a broadened understanding of the IIB. Such an understanding includes other institutional bodies, which represent various interests and citizens in the decision-making at the EU level.¹¹

¹¹ Both, President van Rompuy and President Barroso alluded to such understanding in recent speeches: President van Rompuy in a speech given on 27 February 2012 to the Interparliamentary Committee meeting on

- ⁷ In the analysis of the evolution of the IIB¹² we also see a number of general principles of the EU law invoked in defence of the IIB. The *Principle of sincere cooperation* is written in the Lisbon Treaty (Art. 13(2) TEU), but it was the jurisprudence of the Court, as shown above, which expanded its original meaning, thus requiring Member States and EU institutions to cooperate loyally in its equal application by EU institutions when cooperating among themselves. Also the *principle of effective participation* is invoked as an essence of the IIB. Among the general principles which relate to the decision-making process, the *principle of transparency* is intrinsically linked to the principles of sincere cooperation and effective participation.¹³ Two of the most prominent features of the principle of transparency are the right of access to documents and the right of information. Sincere cooperation and effective participation can only be realised in an open, clear and simple decision-making, where the rights of access to documents and to information are granted to participants in the decision-making (and those directly or indirectly affected by it).
- ⁸ In addition to this process-related general principles, also substance-related general principles act in support of a broader view of the IIB.
- ⁹ Definition of the *principle of subsidiarity* (Art. 5(3) TEU) includes a reference to the local and regional level. Protocol on the application of the *principles of subsidiarity and proportionality* (Art. 2) requires the Commission to consult widely, and where appropriate, take into account the regional and local dimension of the action envisaged.
- ¹⁰ As early as in 1969¹⁴ the ECJ established that the protection of fundamental rights forms part of the general principles of EC law. It held for the first time already in 2006, that the Charter, although not legally binding, can be employed to establish general principles of EU law.¹⁵ Finally, with the eventual recognition of the binding nature of the Charter of Fundamental rights of the European Union (by way of a Declaration (No 1) attached to the Treaty on the European Union and Treaty on the Functioning of the European Union, the fundamental rights undoubtedly belong among the general principles of the EU law. Among these are also *right of access to*

the European Semester for Economic Policy Coordination. President Barroso, speaking in a BEPA/Notre Europe seminar on Community method included sub-national levels and the Committee of the Regions as their representative as part of the Community method.

¹² See Annex 1.

¹³ Though the Court in Case C-260/04 *Commission v. Italy*, in a judgment of 13 September 2007, for the first time, used the term “general principle of transparency”, the inclusion of the principle of transparency among the general principles of EU law is disputed. See debate in Craig and de Burca (2003, 392ff) and in Prechal and de Leeuw (2008).

¹⁴ In Case 29/69, *Stauder v. City of Ulm* [1969] ECR 419.

¹⁵ In Case C-540/03, *European Parliament v. Council* [2006] ECR I-5769.

documents (Art. 42 of the Charter),¹⁶ which is thus strengthened,¹⁷ firstly via the *principle of transparency* and secondly via the *principle of fundamental rights*. The same applies also to the principle of equal treatment/non-discrimination (*inter alia* Art. 9 TEU).

2.2. Strengthened cooperation in a renewed and broadened inter-institutional balance: contribution to the democratic life of the Union

- ¹ The CoR was established in 1995 and has since provided an open and public forum for deliberation among a variety of actors, contributing to the shared perspective on the EU politics, especially by horizontally linking the sub-national levels of government. By doing so, it has broken up the hitherto monolithic institutional structure of the EU and contributed to its decentralisation in the direction towards a multilevel governance system (*cf.* Christianssen and Lintner: 2005, 11). The Commission acknowledged this role of the CoR by regularly consulting it and establishing cooperative relations in a pre-consultation stage. It also called upon it to “[p]lay a more proactive role in examining policy” in its 2001 White paper on European Governance.¹⁸ The working group on Simplification of the European Convention, in its final report and under the heading on quality of legislation called for “the need to intensify consultation with interested circles, throughout the legislative process, including regional and local authorities [...],” and concluded that “[t]he role of Economic and Social Committee and the Committee of the Regions should be highlighted.”¹⁹
- ² While the CoR’s position was strengthened in the Lisbon treaty precisely towards the direction of giving more importance to its consultative role, it fell short of formally giving it a bigger stake in the democracy at the EU level by granting it the status of an institution and transforming it in a *de iure* third legislative chamber. The lack of such a formal status, however, does not diminish the *de facto* role the CoR plays in enhancing democracy at the EU level. On the contrary, as the above analysis suggests, the CoR as part of the IIB, and strengthened by the Treaties can effectively contribute – in cooperation with other institutions – to the democratic life of the Union.

¹⁶ Charter of the Fundamental Rights of the European Union, OJ 18. 12. 2000(2000/C 364/01).

¹⁷ Regulation (1049/2001) of the European Parliament and of the Council on the public access to documents. However, as noted by Driessen (2008: 11), “European institutions are not legal persons falling within the scope of Regulation 1049/2001. Additionally, for information exchanges between the institutions special, interinstitutional rules apply.”

¹⁸ Commission of the European Communities: European Governance: A White Paper, Brussels, 25.7.2001, COM(2001) 428 final, p. 14.

¹⁹ European Convention, the Secretariat: Final report of Working Group IX on Simplification, Brussels, 29. 11. 2002, CONV 424/02, p. 22.

- ³ The reasons for a need to enhance democracy at the EU level need not be elaborated here. Let it suffice to illustrate it by way of an example. Eurobarometer 76, conducted in autumn 2011, shows an alarmingly steep fall in the percentage of those for whom the EU conjures a totally positive image, and correspondingly a steep rise among those who see the EU totally negatively. Only 31% of respondents see the EU totally positively (in comparison to 40% in the spring 2011 Eurobarometer survey), while 26% see it totally negatively (a rise from 20% half a year earlier), while for a full 41% respondents, the EU has a neutral image. The latter number has also been rising consistently, at the expense of those with a positive opinion. Similarly, trust in the EU institutions continues to fall, with a drop of around 4% for the European Commission, the European Parliament and the Council between the last two Eurobarometer surveys. At the same time, when asked who, according to their own opinion, is best able to take effective action against the effects of the financial and economic crises, the respondents put the EU first; the exact number even rose slightly since the spring Eurobarometer (from 22% to 23%, in comparison to a stable 20 % for the (national) governments).²⁰ This is representative of a situation whereby citizens show rising expectations of effectiveness at the EU level, but at the same time mistrust it and view it with suspicion. In political science this translates into the need for input and output democracy.²¹
- ⁴ The CoR is well suited to contribute to both. Its ‘early warning’ role with regard to observation of principles of subsidiarity and proportionality, as the clearest example of involvement in the constitutional aspect of the IIB, has a clear legitimising function. In the complex interest representation at the EU, the CoR adds a territorial level representation beneath the level of Member States and thus contributes to a direct legitimisation of the EU; the role which is most visible in the countries with devolved regions. It is also relevant to those with administrative regions which are directly affected by implementing the EU legislation and for which, therefore, the representation in the observation of principle of proportionality presents a legitimising factor for the EU-level decision-making.

²⁰ Standard Eurobarometer 76: Public Opinion in the European Union. First results. Publication: December 2011, p. 20, 21 and 17. Available at: http://ec.europa.eu/public_opinion/archives/eb/eb76/eb76_en.htm.

²¹ See also debates on substantive legitimacy, where “[...] legitimate power is understood to be the power that responds best to the expectations and needs of the public and that is capable of resolving the problems affecting it [...]” (quoted in Senden, 2005) referring to Pescatore, P. (1974) *Les exigences de la démocratie et la légitimité de la Communauté Européenne*. Cahiers de Droit Européen, pp. 505-506. Alternatively, substantive legitimacy can also be incorporated as ‘effectiveness’ dimension of the democratic legitimacy, whereby the other dimension is represented by representation and accountability (for a debate, see Weiler, J. H. H. (2003)).

- ⁵ It brings together decision-makers nearest to the citizens. In this way it provides a forum for exchange of opinions, which are promoted in the policy-making process at the EU level via its consultative role. Through the established networks and mechanisms, the CoR contributes to the quality of the EU legislation, by providing input throughout the policy cycle, most notably in cooperation with the Commission in the consultation and evaluation stages (a role which goes beyond the strictly Treaty-based tasks). The strengthened consultative role is thus directly linked to effectiveness of the EU. The partnership principle well rooted within the cohesion policy exemplifies the merits of multilevel governance with regard to involvement and effectiveness.
- ⁶ Through its activities at the regional and local level, the CoR contributes to raising awareness and promotes active involvement of the local and regional levels in EU-level decision-making via the CoR as a representative body. Equally importantly, it also contributes to legitimacy of the EU by the potential contribution to national level decision-making. By providing information and directly involving local and regional actors in the consultation process, it empowers them to scrutinise the way in which national governments act at the EU level. This is equally important in Member States with regions holding legislative powers, as it is in those where regional levels hold administrative responsibilities and are directly involved in implementation of the EU legislation. While the CoR thus presents the one EU body which contributes to multilevel governance at the EU level, it also, at the same time, contributes to more informed, transparent and accountable national governments' decisions in the EU.
- ⁷ Finally, expectations of European citizens of the EU's role in overcoming the ongoing financial and economic crises are closely related to the real economy output at the regional and local level; 99.8% of all European businesses are small and medium enterprises (SMEs), with nine out of ten SMEs employing less than 10 people.²² SMEs contributed 85% of the new jobs created between 2002 and 2010, whilst holding a 67% share in total employment. At the same time, the crisis beginning in 2008 had a strongly negative impact on real economic performance of SMEs.²³ The growth stalled and indeed declined; 2.1% of all SMEs were lost due to the crises, the combined gross value added declined by 6.4% in 2009. The gross value added subsequently

²² Wymenga, P., V. Spanikova, J. Derbyshire, and A. Barker. Are EU SMEs recovering from the crisis? Annual Report on the EU Small and Medium sized Enterprises 2010/2011. A Study conducted for European Commission, DG Enterprise. Rotterdam, Cambridge, 2011. Available at: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/files/supporting-documents/2010-2011/annual-report_en.pdf.

²³ For details see: OECD (2012), *Financing SMEs and Entrepreneurs 2012: An OECD Scoreboard*, OECD Publishing. <http://dx.doi.org/10.1787/9789264166769-en>, p. 22ff.

turned to growth, though unevenly across the EU. This was not matched by the growth in employment; 823,000 jobs were lost between 2008 and 2010 in the EU's SMEs.²⁴

- ⁸ As the study on regional and local dimensions in establishing new forms of governance in the EU found out, in contrast to large enterprises, which are strongly organised at national and multinational levels, SMEs see regional and local public authorities as their natural reference point, able to respond to their needs, their dimensions and their local market coverage. SMEs identify local authorities as the intermediary to represent them with central governments and with EU institutions.²⁵ The variety of responses to the crises and an uneven recovery across the EU, call for even better understanding of local and regional economic environment and conditions and stronger links between local and regional governance levels which directly co-shape the economic environment and the EU-level governance, with its programmes for promotion of SMEs. The CoR is the best placed EU-level body to present the link between the two levels and contribute to effective solutions.
- ⁹ The merits of closer binding of the CoR in the democratic life of the Union can be summed up as follows:
- (i) The CoR's consultative activities and functions along the policy-making cycle at the EU level increase the legitimacy of the EU level by increasing representation closest to the citizens;
 - (ii) In parallel, the consultative role of the CoR increases legitimacy of EU-level decision-making by increasing the potential of accountability of governments, who otherwise are not accountable to any representative body at the EU level;
 - (iii) The consultative role of the CoR contributes to quality of legislation and its extensive network and local and regional level expertise, applied in the pre-consultation phase, corresponds to efforts to make EU policy-output more effective;
 - (iv) The necessity for effectiveness of EU democracy is most notable in overcoming the ongoing financial and economic crises, where the magnitude of SMEs, the effect of the crisis on their contribution to economic output and their direct link to local and regional governments. The CoR acts as a link between the two levels.

²⁴ Wymenga et al., supra note XXX.

²⁵ Committee of the Regions. The Regional and Local Dimensions in establishing new forms of governance in Europe. Luxembourg: office for Official Publications of the European Communities, 2003, p. 23.

¹⁰ The analysis of the legal and political arguments in favour of a strengthened cooperation between the CoR and the EU institutions undoubtedly points to the merits of a strengthened cooperation of the CoR with the other institutions. It would lead to an effective exertion of its role within the decision-making process in the EU, whilst also allowing for an effective representation of the local and regional interests. These two elements – the effective exertion of the role (given by the Treaty) and the effective representation of the interest (with broader legitimising gains for the EU) – form the fundamental principles upon which strengthened cooperation between the CoR and the EU institutions can be based. In the absence of a clear legal base that would elevate the CoR's status to that of an institution or would provide for a Treaty-based provision on cooperation arrangements between the CoR and the EU institutions, such a functional approach to closer cooperation with the EU institution is most appropriate.

As the analysis of the evolution of the IIB shows, the departing point is the elevation of the status of the consultation role and of the consultation process. The legitimising arguments listed in the previous section strongly support a more prominent status of consultation in the EU's policy process. The importance of consultation as such needs to be matched with the capacity of the CoR to effectively represent local and regional interests, which otherwise fall short of being represented in the EU's complex representation of interests in the political process. For this purpose, divisions in the representational base between the CoR and the EP on the one side, and the CoR and the Council on the other, need to be stressed, while the CoR's accountability towards its representational base needs to be maintained.

3. Strengthening cooperation between the CoR and other EU institutions and institutional bodies: approach to the analysis of governance of bilateral institutional relations

¹ The analysis of bilateral institutional relations and the subsequent recommendations in this study are based on a matrix approach, which distinguishes between the dimension of activities (with a focus on the policy-making cycle), dimension of cooperation and the depth of cooperation.

Before analysing these three components of the analytical framework, we first need to consider the legal and material base for the cooperation among the institutions, i.e. the sources on which the cooperation is based, as well as types of instruments that can be put in place in order to govern the said cooperation.

² *Sources determining and shaping relations between the institutions*

Inter-institutional relations in the EU are governed and shaped by five sources:

- (i) Primary law, i.e. the Treaties, provide for the general framework of inter-institutional relations.
- (ii) Secondary legislation and rules governing procedures of the institutions clarify many aspects of relations between institutions.
- (iii) In its practice, the ECJ defined and delineated these, as well as the use of general principles of EU law.
- (iv) The use of inter-institutional agreements is rather limited; however, there are bi-lateral and pluri-lateral agreements into which several institutions have entered in order to give effect to the provisions in the Treaties and the established practice.
- (v) The latter, the ongoing day-to-day practice of inter-institutional relations is the fifth source of governance of relations, and the one which in a medium- to long-term perspective gives inspiration to the changes in the agreements and also in the Treaties.

These five sources form the legal, political and practical background, in terms of best practices, to the analysis and recommendations in this study. Based on these sources this report distinguishes between recommendations that can be pursued without the need to change the Treaties, and those which would require Treaty changes. In the analysis we only specifically point to the need for the Treaty change (and do not mention it where no Treaty change is needed).

³ *Instruments governing relations between the institutions*

The agreements can take various forms, the formal inter-institutional agreement being the most formalised way to determine relations between two or more institutions. Among the options, by degree of formalisation are:

- (i) exchange of letters,
- (ii) memorandum of understanding or common understanding,
- (iii) joint (political) declaration,
- (iv) protocol on cooperation, and
- (v) inter-institutional agreement.

The choice of the form of the instrument to guide relations between two or more institutions depends primarily on their (mutually shared) view on the need for the formalisation of the relations and the legal effect of it. The Treaty (Art. 295 TFEU) in fact limits the use of agreements, including the inter-institutional agreements which may be of a binding nature, to the European Parliament, the Council and the Commission. This provision is inserted in the section of the Treaty dealing with decision-making procedures and states that “[t]he European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation.” As de Witte (2008: 102-103) notes, inter-institutional agreements “are seen as ancillary legal mechanism to be used in specific context of the inter-institutional decision-making procedures.” While inter-institutional agreements as legally binding instruments are limited to the three institutions, other arrangements for the cooperation among those involved in the decision-making procedures, however, are not. In view of the political and legal arguments presented above, the CoR may therefore pursue making arrangements with other institutions in order to give utmost effect to its role as consultative body.

The choice of the instrument also depends on the scope of the agreed cooperation. Governance of relations on broad issues related to the policy-making is more likely to be more formalised than conduct with regard to (a single) specific provision in the Treaties, which is to an extent formalised by way of interpretation.²⁶ Guidance of relations in specific procedures or for specific issues, often of a technical nature, however, tends to be agreed via a

²⁶ Examples for the former are the Interinstitutional Agreement of 16 December 2003 between the European Parliament, the Council and the Commission on better law-making or the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management; while examples of the latter are the Joint Declaration on practical arrangements for the codecision procedure of 13 June 2007 and the Joint Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents (2011/C 369/03).

formal inter-institutional agreement.²⁷ Also provisions guiding supporting activities, rather than relations in the core activities related to policy-making, can be more ad hoc and less formalised.

⁴ *Dimension of activities*

We distinguish between constitutional activities, activities related to the policy-making cycle and activities in relation to a specific field, such as external representation. The background rationale for this distinction is the dimensions of inter-institutional balance.²⁸

Activities related to the shaping of the polity fall under the constitutional dimension. Examples are practices and procedures in the nomination and election of the Commission. These are based on the constitutional-type provisions in the Treaties and feature prominently for example in relations, and in an agreement, between the Commission and European Parliament.

⁵ Activities related to the policy-making cycle can be broken down into the following dimensions which form the consecutive stages of the cycle:

- (i) policy initiation, where we further distinguish between the programming phase and the consultation phase;
- (ii) decision-making, where we distinguish between the legally binding and the non-legally binding decision-making;
- (iii) implementation,²⁹ with a distinction between the adoption of the delegated and implemented acts on one side and the transposition, application and enforcement at the Member State (national/regional/local) level on the other;
- (iv) evaluation.

²⁷ Examples of such agreements are: Interinstitutional Agreement of 28 November 2001 between the European Parliament, the Council and the Commission on more structured use of the recasting technique for legal acts; Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning internal investigations by the European Anti-fraud Office (OLAF).

²⁸ See Monar, J. (2010). Monar identifies the following dimensions to an interinstitutional balance (calling it multidimensional balance): (1) Constitutional position, (2) Policy initiation, (3) Decision-making, (4) Implementation, (5) Institutional strength and (6) Public visibility. While these are identified as dimensions of the inter-institutional balance, some of them are only in a limited way subject to interactions among the institutions in order to give effect to the balance. Constitutional position and institutional strength (in terms of leadership and coherence) are less prone to be subject of inter-institutional relations. With regard to public visibility, arrangements on external representation form parts of the cooperation among the institutions which we discuss only briefly in the report.

²⁹ This report refers to a specific concept of implementation, i.e. the stage after the adoption of the legislative act. It therefore involves the assessment of both, Articles 290-291 TFEU, delegated and implementing acts. While Article 290 allows the legislator to delegate to the Commission the power to adopt legal acts of general application to supplement or amend certain non-essential elements of a legislative act, under Article 291 TFEU, where uniform conditions for implementing legally binding acts are needed, implementing powers must be conferred on the Commission (or on the Council in very exceptional cases).

For the purpose of this study, we distinguish between four types of activities in special fields: governance of technical aspects of decision-making; governance of relations in external representation; arrangements in event organisation; and arrangements with regard to communication. While we focus on governance of relations in the policy-making cycle, we briefly touch upon the last three aspects, leaving the technical aspects aside, as they primarily relate to legislators.³⁰

⁶ *Dimension of cooperation*

In each stage (and also in cases of specific arrangements) institutions govern relations among themselves along three major issues:

(i) Information. We distinguish among the passive type – right to be informed – and active type – right of access to documents.

(ii) Involvement. We look at right of participation and right of expression. Both have a very clear gradual component. Participation can take the form of an observation status; it can include the right to be heard, the right to enter an item on the agenda, forming a joint working party or a joint committee, etc. Right of expression can mean the right of expressing the opinion (right to be heard), it can be formalised into statements added to the minutes of the meetings or included in the Official Journal.

(iii) Investigation. This mainly means the right to pose questions, to request an explanation, to launch an investigation (and request cooperation).

Dimensions of cooperation inherently offer a possibility to recognise (and benchmark) the strengthening of cooperation. For example, when participation in a Commission expert group grows from an *ad hoc* invitee, to an observer status and finally to a member status, this shows strengthening of relations.

⁷ *Depth of cooperation*

The nature of cooperation on the above mentioned dimensions is a result of the choices with regard to several aspects, such as:

(i) Level: at what level do relations take place? Is it just a top level or are there horizontal links envisaged across the institutional hierarchies?

(ii) Stage: at which stage of the given dimension are relations envisaged? The extreme ends can be portrayed as conception (or the idea) on one end, and

³⁰ E. g. Interinstitutional Agreement of 28 November 2001 between the European Parliament, the Council and the Commission on more structured use of the recasting technique for legal acts.

information following the adoption on the other end (this is linked to the teleological aspect under the intensity of relations, see below);

- (iii) Scope: is it general across all activities, or only when it complies with certain conditions? Concretely, the question is whether the arrangements cover legally binding decision-making as well as non-binding policy making, are they limited to the areas where the CoR has to be consulted or do they cover all policy areas, are relations limited to the question of the subsidiarity check or do they also refer to the substance of the proposal.
- (iv) Intensity: especially the temporal aspect, i.e. how often? As examples we can say once a year, or quarterly, or after each meeting discussing certain matters. Intensity can also be understood in a teleological sense: for what objective? Is it just to provide the information, should there be an opinion produced, how should the opinion be observed, what is the feedback on it? Is it voluntary, mutually agreed, customised (i.e. automatic in certain cases)?

The level, stage, scope and intensity of cooperation also represent aspects by which it is possible to benchmark progress in strengthening of relations over time. A few examples illustrate the use of the analytical tool to benchmark progress: initially the CoR may attain agreement from a number of consecutive Presidencies to be invited to present its opinion and to exchange views in a Council Working Party. In cases when the CoR's participation is no longer subject to agreement with each Presidency but its presence becomes customary, this presents a greater intensity and thus a stronger relation. In a similar vein, the European Parliament may initially only provide information related to national parliaments' concerns with regard to observation of the principle of subsidiarity. Granting an observation status to the CoR in "Monday Morning Meetings" would include the CoR in an earlier stage and represent a strengthening of relations. A follow up in the form of the CoR's presentation of opinion in the European Parliament's committee discussing the proposal under question, would represent a further step in strengthening relations.

Together, dimensions of activities and cooperation and strength of cooperation form a type of matrix, presented in Figure 1. The matrix serves as a tool for analysis. In this way it identifies the nature of relations for different aspects of cooperation during the policy process. It does not suggest that all spaces should be filled in. Analysis is governed by the functional approach and centres on the question of what would contribute to the effective execution of the CoR's consultation role.

Figure 1: Matrix for analysing governance of bilateral relations among the EU institutions

		<i>Dimension of cooperation</i>					
		Right of information (when, oral or written, scope, automatic or request, etc)	Right of access to documents (similar as right of information)	Right of participation (observer status, to be heard, to enter an item on the agenda, joint committee, meeting, etc.)	Right of expression (where, when, statement added to the act, statement in the OJ, etc.)	Right of investigation/control (to pose questions, to request explanation, etc.)	
<i>Dimension of activities (policy-making cycle)</i>	Policy initiation	Programming					
		Consultation					
	Decision-making	Legally binding					
		Non-legally binding					
	Implementation	Delegated and implementing acts					
		Application and enforcement					
	Evaluation						

4. The potential of a reinforced cooperation with selected EU institutions

¹ This report covers the four EU institutions directly involved in EU policy-making. These are: European Commission, European Parliament, Council and European Council. The potential for reinforced cooperation of the CoR with each of them is discussed below. For relations with each institution we first discuss the potential for reinforced cooperation throughout the policy-making cycle. In the end, when relevant, we briefly look at the potential for cooperation with regard to external representation and other activities. Recommendations are included throughout the analysis. We differentiate between (i) short-term recommendations, which may be pursued shortly, without preconditions; (ii) medium-term recommendations, which could be pursued in the course of the next legislative term and when the next Commission comes into office; and (iii) long-term recommendations, which go beyond 2020.

4.1. Reinforcing cooperation between the CoR and the Commission

² The CoR and the Commission's current relations are framed by a Protocol signed in February 2012.³¹ In the Protocol the CoR's status as a political assembly is affirmed, the local and regional dimensions of the Lisbon Treaty are recognised, the CoR's new prerogatives as regards the monitoring of the subsidiarity principle and the CoR's right to defend its prerogatives before the Court of Justice are observed and multilevel governance as a mode of governance within the EU is recognised. This Protocol thus already paves the way for strengthened cooperation between the CoR and the Commission. Our analysis and subsequent recommendations are thus more future-oriented; however, they also show how the implementation of the current Protocol can pave the way for closer cooperation in the future.

³ *Policy initiation:*

According to the current Protocol “the Committee will adopt a resolution addressed to the Commission outlining the Committee's key positions regarding the Commission's work programme for the forthcoming year.” (Protocol, pt. 1).

According to the current Protocol “[t]he President of the Commission or the Vice-President responsible for the relations with the CoR presents each year

³¹ European Commission and Committee of the Regions. *Protocol on cooperation between the European Commission and the Committee of the Regions*, (2012/C 102/02), OJ C 102/6 of 5.4.2012

to the Committee the strategic priorities for the following year. The Committee shall take into account the Commission's priorities and deadlines in the establishment of its annual policy priorities and the organisation of its own work." (Protocol, pt. 3, Paras. 1 and 2).

The Commission's right of planning and intra-institutional programming is its own prerogative according to its tasks listed in Art. 17(1) of the TEU. The co-legislators have a right (vested in Art. 225 and 241) to ask the Commission to prepare a proposal in order to pursue the objectives of the Treaties. While granting such a right to the CoR would require a Treaty change,³² the CoR could nevertheless, without the need for the Treaty to be changed, pass a non-binding resolution, where it might put forward a proposal for the Commission to consider preparing a proposal, which would pursue Treaty objectives within the area of territorial cohesion.

Medium-term to long-term recommendation:
Response to the Commission's Work Programme

It is recommended to respond to the Commission's Work Programme and, to request the Commission to respond, if applicable, within three months, to the invitations by the CoR to consider preparation of a proposal in the area of territorial cohesion to pursue Treaty objectives, explaining whether or not it will pursue the proposal and on what grounds.

For the Commission's response to be obligatory, this recommendation would, however, require a Treaty change whereby the CoR would be given a right to request the Commission to prepare a legislative proposal with the aim to pursue a Treaty objective.

A starting point could be presented by the inclusion in the CoR's Rules of Procedure a provision on passing of a resolution in response to the Commission's Work Programme.

- ⁴ An annual meeting between the services of the Commission and the CoR, "could be organised [...] in order to review medium-term Commission initiatives on which the Committee could provide a substantial contribution and to monitor their implementation." (Protocol, pt. 4).

In preparation of this meeting, CoR would profit from having an overview of all the Commission's projects, in order to make a proposal for projects to the content of which it may opt to provide a substantive contribution. Such an

³² This right is so far given to the legislators on the basis of their democratic representation. The precondition for this right to be extended so as to include the CoR would be a recognition, written in the Treaties, of the CoR being a political assembly representing local and regional authorities.

engaged approach responds to the CoR's right to ensure its own prerogatives, therefore to have an overview of the projects underway.

- ⁵ Timely information on the upcoming proposals as well as sufficient time to react to it is essential for the CoR to effectively exercise its consultative role. The Treaty on Functioning of the European Union stipulates a possibility for a time limit for the CoR to give an opinion, "which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action." EU (Art. 307, Para. 2). It is therefore of utmost importance that the CoR is informed in advance of the upcoming proposals and can prepare accordingly.

According to the current Protocol "[o]n the basis of the Commission's work programme, the Secretary General of the Commission shall forward to the Committee a list of proposals for mandatory consultation, along with proposals for possible optional consultation including outlook opinions. This list could also include documents of a non-legislative nature on which the Commission intends to request the Committee's opinion and the proposals for collaboration in the field of compliance with the principles of subsidiarity and proportionality." (Protocol, pt. 8).

Internal as well as external events may lead to deviations in the implementation of the Commission's Work Programme. Timely information to the CoR on the changes in the implementation of the Work Programme would be in line with both institutions' commitments to effective cooperation.

Medium-term recommendation:

Mid-term overview and information on the implementation of the Commission's Work Programme

It is recommended to establish a practice whereby the Commission will send, prior to the organisation of the mid-term working meeting, information with regard to the Commission's implementation of its Work Programme, as well as information with regard to the co-legislators' requests to prepare a proposal in pursuit of Treaty objectives.

Should the implementation of the Work Programme or new requests affect the priority areas as identified at an annual joint meeting between the President of the Committee and the President of the Commission or the Vice-President responsible for relations with the CoR, such changes may be discussed at the mid-term meeting with a view to agreeing on the new timetable.

⁶ In the course of consultation in preparation of a proposal, the Commission's expert groups provide advice and expertise to the Commission and its services.³³ Expert group members may also be organisations in the broad sense, which also includes the CoR.³⁴ The Commission's representative in an expert group may also grant observer status to such organisations, among others.³⁵ In cases when an expert group includes members from all Member States, the Commission transmits all the documents concerning the group's meeting to the European Parliament, which, in turn, may request to send experts to attend such meetings.³⁶

In cases where the delivery of the opinion by the CoR is obligatory as well as in cases of optional delivery of the CoR's opinion, and in cases where the Commission requests the outlook opinions of or involves the CoR in the process of impact assessment,³⁷ timely receipt of information and relevant documentation as well as participation of an expert participant designated by the CoR in a meeting with national experts, would contribute to the observation of the principles of multilevel governance and other issues, when applicable.

Medium-term to long-term recommendation:

Participation in Commission expert groups

It is recommended to consider proposing a working arrangement, whereby the Commission, upon request by the CoR (in line with its interests and capacities), invites the CoR to participate in expert groups discussing proposals for which the opinion of the CoR is obligatory, or where the Commission and the CoR agree upon the optional delivery of the opinion

³³ The Commission's expert groups provide advice and expertise on the preparation of the legislative proposals and policy initiatives, but also on the preparation of delegated acts and the implementation of existing Union legislation, programmes and policies, etc. (see European Commission (2010) Communication from the President to the Commission. Framework for Commission Expert Groups: Horizontal Rules and Public Register, Annex on Horizontal rules for Commission Expert Groups, Rule 3 (C(2010)7649 final.)

³⁴ The CoR was and is for example a member of the following expert groups: [Steering Group on Adaptation to Climate Change](#), [Expert Group of Stakeholders on the European Year 2010](#) and [Expert group on the Annual European Tourism Forum](#), [European Commission Expert Working Group on Green Infrastructure](#) (in 2011), [European Commission Stakeholder Expert Group on the Review of EU Air Policy](#) (ongoing), [European Commission Expert Working Group on No Net Loss of Ecosystems and their Services](#) (ongoing), [European Resource Efficiency Platform \(CoR President as member, ongoing\)](#) (see Register of Commission expert groups and other similar entities, available at: <http://ec.europa.eu/transparency/regexpert/index.cfm>).

³⁵ Horizontal rules for Commission Expert Groups, Rule 11(4).

³⁶ Horizontal rules for Commission Expert Groups, Rule 12 and 13; this rule follows a strengthening of the involvement of the European Parliament as agreed in the 2010 Framework Agreement between the Commission and the Parliament (see Annex 1). Previously (according to the 2005 Framework Agreement) the Commission only agreed to provide the European Parliament with the list of expert groups.

³⁷ Outlook Opinion of the CoR on the Role of Local and regional Authorities in Future Environmental Policy (CdR 164/2010) of 5-6 October 2010, addresses specificities of closer cooperation with the Commission on outlook opinions and impact assessment (specifically Paras 45-47). Such intensification of cooperation in this stage could gradually be pursued in other policy areas.

(including in cases of delegated acts), and in cases where the Commission requests the opinions of the CoR or involves the CoR in the process of impact assessment.

A designated participant should be able to express his/her expert opinion with regard to the observation of the principle of subsidiarity and questions of multilevel governance and other issues of impact at the local and regional level.

The CoR would need to set up internal guidelines for the choice of a designated participant. It is recommended for this participant to be an expert, including staff from the CoR's Secretariat General, speaking on behalf of his/her own expertise and not a member of the CoR. This designated expert would prepare a report for the relevant Commission of the CoR.

⁷ *Decision-making:*

The CoR's advisory role is executed at this stage. The Treaty stipulates the legal bases on which it is obligatory to consult the CoR. Furthermore, the Commission and CoR agreed on the conditions for the choice of optional consultation. The effective exercise of the consultative role of the CoR needs to be ensured in order to fulfil the Treaty obligations.

⁸ The effective exercise of the advisory role depends on a number of factors with regard to the timely information on the upcoming proposals, documentation exchange, direct contact and political interaction between the Commission and the CoR and the follow up by the Commission to the opinion by the CoR, as well as a possibility of a re-consultation of the CoR in the event of substantial modifications to the proposal.

⁹ In the course of consultation, and with regard to the proposals which fall under the obligatory or optional consultation by the CoR, “[t]he Commission and the Committee exchange any necessary documentation” (Protocol, pt. 5).

It is understood that the necessary information includes the full information and documentation which leads to its impact assessment, including the impact assessment itself.

¹⁰ In order to keep the Commission fully informed, the Protocol stipulates that “the Committee shall communicate, as quickly as possible, to the Commission Secretariat-General the minutes of the Committee meetings and Plenary Sessions whose content could be of specific interest to the Commission, in particular when it concerns the implementation of the principle of subsidiarity.” (Protocol, pt. 13).

Furthermore, and in order to enable direct exchange and clarifications, “Commission officials in charge of the dossiers which the Committee is examining shall take part as far as possible in the meetings of the Committee's commissions to which they are invited in order to clarify the Commission’s proposals and take note of the positions expressed by members of the Committee.” (Protocol, pt. 7).

Such a direct exchange and clarification shall be possible even in cases where the Commission official in charge of the dossiers is not able to attend the meeting. In the interest of timely delivery of the opinion by the CoR, based on the mutual understanding of the proposal, the CoR may request for a written clarification. Such a request remains in the spirit of the current Protocol and merely extends the current practice to ensure that the clarification is delivered, regardless of the possibility of the Commission’s official to attend the debate in the CoR or not.

Medium-term recommendation:

Request for written clarification with regard to a proposal under the examination of the CoR

It is recommended to request that the Commission provide written clarification to the questions from the CoR following its Commission or Plenary meetings at which the representative of the Commission was not present, in order to address the questions by the CoR directly.

A starting point might be the inclusion in the CoR’s Rules of Procedure a provision stating that the CoR will request information and relevant documentation in the process of its preparation of an opinion from the Commission and the legislators (in case of resubmission of an adapted proposal).

¹¹ In reaction to the CoR’s opinion, the current Protocol stipulates that “[t]o enable the Committee to issue regular impact assessment reports of its work, the Commission services shall provide it at least twice a year with substantive replies, setting out the reasons how the comments contained in the Committee opinion have been taken into account.” (Protocol, pt. 13).

While this enables the CoR to prepare its impact report as well as to see the direct impact of its proposals in the amended proposal, it does not include follow-up information by the Commission to the CoR with regard to the developments with the draft proposal in the course of negotiations among the co-legislators.

In order for the CoR to be fully aware of the impact of its opinion in the adopted legislative text, further information by the Commission on the

negotiating process as such would be required. Such information is a logical continuation of the Commission's endeavour to report twice a year to the CoR with the aim of the latter being able to prepare the report on the impact of its work.

- ¹² When the Treaty so requires, the CoR needs to be consulted prior to the adoption of the legislative proposal in question. Current Protocol stipulates that “[t]he Commission may invite the Committee to issue a new opinion about the implications for regional and local authorities of an emerging result of the legislative process.” (Protocol, pt. 11, Para. 1). Moreover, “[i]f the Commission modifies substantially its proposal subsequent to the initial Committee referral and where the Treaties provides for mandatory consultation, it will ensure that the Committee is re-consulted.” (Protocol, pt. 11, Para. 2).

Given the often tight schedule within the negotiations and in order not to impede the momentum of negotiations as well as due to the fact that the co-legislators are not required to halt their action until they receive the opinion by the CoR, it is indispensable for the CoR to be regularly informed of the developments in the negotiations on the proposal between the co-legislators.

Medium-term recommendation:

Request of an early announcement of the re-consultation of the CoR in cases of substantial modification of the proposal

It is recommended to agree with the Commission that in case of substantial modifications of the proposal in the course of negotiations on the proposal by the co-legislators and subsequent adaptation of the proposal by the Commission, the latter informs the CoR as soon as possible by means of a note from the Secretariat-General of an upcoming request for a re-consultation. In such a note the Commission may indicate the nature of the substantive change.

- ¹³ In Art. 8 (Para. 2) the Protocol on the application of the principles of subsidiarity and proportionality grants the CoR the general right to stand before the ECJ for the review of legality by the ECJ in cases of legislative acts for the adoption of which it has to be consulted according to the TFEU. Throughout the legislative process the CoR pays particular attention to compliance of EU legislative proposals with the principles of subsidiarity and proportionality. The current Protocol envisages cooperation and information sharing regarding subsidiarity monitoring between the Commission and the CoR. The Protocol also instructs the CoR to inform the legislators immediately, if, during the legislative procedure, it raises substantial

concerns regarding the respect of the principle of subsidiarity (Protocol, pt. 23).

Complete and timely information of the CoR on behalf of the Commission is a necessary precondition for the CoR to be able to effectively pay attention to the compliance with the principles of subsidiarity and proportionality as well as to be able in general to exercise effectively its consultative function. This is especially important during the negotiations among the legislators as the proposals may undergo changes. It is therefore necessary for the Commission to inform the CoR in a timely manner of any developments in the negotiations between the two legislators. One way of doing so would be for the Commission to provide the CoR, in parallel with the legislators, with an adapted proposal, also in cases where the adaptation does not mean significant modification of the proposal.

Medium-term recommendation:

Transmission of an adapted proposal

It is recommended to agree with the Commission that in cases where the consultation of the CoR is obligatory, the Commission transmits adapted proposals to the CoR (in parallel to the European Parliament and the Council), accompanied with the appropriate documentation.

- ¹⁴ Outside of the procedural framework provided by the Protocol on Subsidiarity and Proportionality, the Commission responds to each reasoned opinion from national parliaments as part of its political commitment in the context of political dialogue with national parliaments, and thereby “put forward into account in the ensuing interinstitutional discussions and negotiations”.³⁸

Given the CoR’s right of standing in front of the ECJ in cases where delivery of its opinion is obligatory, early cooperation and information sharing in the legislative procedure, specifically with regard to subsidiarity check, would increase the effectiveness of the procedure. Though the real subsidiarity breaches observed by the CoR will be very rare (in fact there have been none in 2010 and 2011),³⁹ the CoR’s opinions gradually and systematically include subsidiarity assessments. Similar to the abovementioned response by the Commission to the national parliaments, the CoR could – if, in its opinion, it raises concerns regarding the respect of the principle of subsidiarity or if such concerns are raised by sub-national parliaments with legislative powers (and

³⁸ European Commission. *Report from the Commission on subsidiarity and proportionality*, Brussels, 10.7.2012, COM(2012) 373 final, p. 4.

³⁹ *Ibid.*

transmitted directly to the Commission for information), or also by local and regional authorities without legislative powers and local government associations through the Subsidiarity Monitoring Network (SMN) – agree with the Commission to respond to its concerns.

Medium- term to long-term recommendation:

Early warning explanation in case of concerns over the observation of the subsidiarity principle

It is recommended to agree with the Commission that, in cases of legislative proposals for the adoption of which consultation with the CoR is obligatory (and therefore grants the CoR standing in front of the ECJ), and in case of concerns regarding the respect of the principle of subsidiarity by a significant number of Member States' parliaments or sub-national parliaments with legislative powers, or also local and regional authorities without legislative powers and local government associations, the CoR and the Commission agree that the latter will respond to the former's concerns. Such a response would allow the CoR to further assess the observation of the principle of subsidiarity in the draft legislative text and in the changes envisaged as a result of the legislative work of the co-legislators and eventually in the final adopted text.

¹⁵ *Adoption of delegated and implemented acts:*

The Treaty of Lisbon introduced a distinction between delegated and implemented acts. Though of a lesser scope than the basic act, delegated and implementing acts may directly affect the regional and local levels of government. They may have a substantial impact with regard to financing of projects or with regard to actions necessary to be taken by the local and regional governments in enforcing these acts.

¹⁶ According to Article 290 TFEU, a basic legal act may empower the Commission to adopt a non-legislative act by which it may supplement or amend non-essential elements of the basic act. The European Parliament and the Council exercise direct supervision over the Commission. The powers of the legislators are considerable, with the discretionary right to object to an individual act or to revoke the delegation altogether. In preparation of such an act, no comitology committees are foreseen – instead the Common Understanding on Delegated Acts states that “the Commission, when preparing and drawing up delegated acts, will ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council and carry out in advance and in a transparent way appropriate consultations, including at expert level.” (2011, pp. 1). Consequently, the Commission enjoys a large measure of autonomy in this

matter. In particular, the legislator cannot impose a mandatory consultation of representatives of the Member States. ‘Comitology procedures’ or any other similar systems are clearly excluded from the scope of Article 290.

Meetings of experts may include observers, where appropriate. It is particularly relevant where international organisations (such as the European Space Agency) or third countries (especially EEA countries, or Switzerland) are directly interested in the acquis as a consequence of either a basic act or an international agreement. The Parliament has the possibility to attend relevant meetings of national experts preparing delegated acts. The new framework agreement between the European Commission and the Parliament states that the Commission commits to providing Parliament with full information on the national experts' meetings in the preparatory and implementation phase, including the meetings on delegated acts. If requested by Parliament, the Commission may also invite Parliament experts to attend those meetings.

The preparation of delegated acts may also include consultations with stakeholders, which should, however, not take priority over the conclusions drawn up by the Commission after the meetings with the experts designated by the Member States.

All in all, except in cases where the preparatory work does not require any new expertise, or where delegated acts are to be adopted under the urgency procedure, the Commission services should systematically consult experts. Participation of the CoR in these expert groups, which are consulted by the Commission in the course of the preparation of the delegated act, would allow the CoR to express its opinion with regard to the observation of the interest of local and regional authorities.

¹⁷ According to Article 291 TFEU, when uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases, on the Council. Implementing acts remain subject to comitology committees and the process of the Commission submitting draft implementing acts to a respective comitology committee for discussion and vote. The European Parliament and the Council are involved in this system of committees – to a varying degree – by supervising the Commission according to different ‘Comitology procedures’. They have the limited (but not to be neglected) right of scrutiny. There is no agreement concerning the invitation of Parliament experts to Comitology committees. There have however been examples of Parliament representatives attending meetings of stakeholders

used by the Commission to consult on pre-Lisbon draft implementing measures.

Involvement in the preparation of implementing acts and/or participation of the CoR in these committees in an observer capacity, would allow the CoR to point to the specific impact that suggested measures might have on local and regional authorities.

By participation in the preparation and discussion on both types of tertiary acts, the CoR would systematically draw attention to the observation of the principle of proportionality as well as strengthening the principle of multilevel governance across the entire policy cycle.

Medium-term to long-term recommendation:

Participation in the preparation of delegated and implementing acts

It is recommended to establish a working arrangement, whereby the Commission, upon the request by the CoR, would invite the CoR to participate in meetings where draft delegated and implementing acts are being discussed. The designated participant should be able to express his/her expert opinion with regard to the observation of the principle of proportionality and questions of multilevel governance and other issues of impact at the local and regional level. This opinion should be integrated into the documentation on the meeting.

The CoR would need to set up internal guidelines for the choice of this designated participant. It is recommended for this participant to be an expert, including staff from the CoR's Secretariat General, speaking on behalf of his/her own expertise and not a member of the CoR. This designated expert would prepare a report for the relevant Commission of the CoR.

- ¹⁸ In the current and ongoing financial and economic crisis, the EU external action policies also contribute to overcoming the crisis. The Commission's initiatives in the realm of economic diplomacy, such as European Chambers Abroad, would profit from the inclusion of the CoR in the earliest stages of consultation on the set-up of the chambers. The CoR could establish itself as a partner, which is able to deploy its networks for purposes of analysis on necessity and feasibility of setting up chambers in relation to the promotion of European SMEs abroad.

4.2. Forging ties between the CoR and the European Parliament

- ¹⁹ The CoR and European Parliament share the fundamental objective of working towards a more democratic and legitimate EU. The European Parliament evolved from the initial role of a consultative assembly given to it by the Treaty establishing the European Economic Community, to a co-legislator on par with the Council in a vast field of policies, including in the adoption of the Union's budget. The Treaty of Lisbon further expanded the policies on which the European Parliament acts as co-legislator, including a number of policies highly relevant for local and regional governments, such as agriculture, common commercial policy and services of general economic interest. The CoR is a much younger institutional body with a right to be consulted on a number of policies of the Union.
- ²⁰ The Treaty of Lisbon introduced full equality for the European Parliament in its right to consult the CoR in cases where the Treaty so provides, but also in other cases, in particular those which concern cross-border cooperation, if the European Parliament (as well as Council and Commission) consider it appropriate (Art. 307, Para. 1 TEU). The Treaty thus provides for direct relations with the European Parliament.
- ²¹ This new direct link between the European Parliament and the CoR is recognition of an added value in a joint pursuit of the above-stated common objectives that the CoR via its advisory role brings into the decision-making process. By nature of its membership and mission, the CoR contributes to the legitimacy of the decision-making process on one side, and on the other, it brings in invaluable expertise, including a potential for expertise in decision-making. This new direct link thus also offers a possibility to enter into more formalised and structured relations than previously.

There is a potential to capitalise on this direct link all throughout the policy-making process, but also more broadly, with regard to the democratic life of the Union, proximity to citizens and its external representation and visibility. These relations, so far not formalised in any way, could be formalised by an exchange of letters between the two Presidents.

²² *Planning and programming:*

In order to fully profit from the new possibility of a direct request for a consultation by the European Parliament, the latter and the CoR may hold an annual meeting, following their respective meetings with the President (or Vice-President) of the European Commission and with regard to its working programme. At this meeting, the European Parliament and the CoR could

review their annual political priorities and planning, and agree on a list of proposals on which the European Parliament will request the CoR's opinion. This meeting could take place at the level of the Conference of Presidents of the European parliament and the President and Vice-Presidents of the CoR. This level seems most appropriate to hold a working meeting and to ensure political commitments at the same time. The meeting could be prepared by the Secretariats of both bodies.

Due to a different representative nature but shared objectives, especially with regard to closing the legitimacy gap, the draft legislative acts on which the European Parliament might request the CoR's opinion might differ from those for which the CoR may request to deliver its opinion by the Commission or the Council. Both bodies may also agree on a specific substantial input in the non-legislative initiatives of the Commission and own-initiative resolutions of the European Parliament. In order to ensure the best possible quality of the CoR's contribution, it would be therefore beneficial for the two bodies to agree on a list of all types of proposals and initiatives on which the European Parliament will consult the CoR.

- ²³ The CoR's opinions, whether in cases where the consultation is obligatory, or in cases where the European Parliament requests the opinion of the CoR, contribute to the decision-making in the European Parliament, by providing analysis which complements the Commission's impact assessment and yet puts private interest, at the local and regional level, at the forefront.

To give utmost effect to the CoR opinions, the two bodies could also agree on a (sustainable) number of proposals and initiatives on which they will cooperate more closely.

Medium- to long-term recommendation:

Annual meeting of the Conference of Presidents of the European Parliament, and the President and Vice-Presidents of the CoR

It is recommended to establish a practice whereby the European Parliament and the CoR would meet annually, at the level of the Conference of Presidents of the European Parliament and the President and Vice-Presidents of the CoR, in order to discuss the priorities of the coming year and agree on a list of proposals to which the CoR will be invited to provide an opinion, as well as on the list of proposals where the two bodies may cooperate more closely. Such list should be relatively small in order to increase the effect of the cooperation. The possibility of organising joint events, especially those taking place outside of Brussels, could also form part of the meeting agenda.

²⁴ *Decision-making:*

Opinions of the CoR have a very specific added value to the decision-making in the European Parliament. They provide expertise as well as bringing to the forefront the public interests at the level closest to the European citizens.

In order to give utmost effect to the opinions of the CoR, the European Parliament and CoR may agree on a deeper cooperation in cases when this was agreed upon at the annual meeting, and, systematically, in cases of those opinions requested by the European Parliament. Such deeper forms of cooperation may take place in cases of legislative proposals as well as the European Parliament's non-legislative initiatives. Such forms of strengthened cooperation may include commitments to exchange information, invitations to hearings in respective Committees of the European Parliament, where the CoR (at the level of the rapporteur or the chair of the relevant CoR Commission) may present the opinion of the CoR and answer questions from the members of the European Parliament Committee, or the Commissions of the CoR. Furthermore, the possibility could be explored for the CoR to join (to second) the European Parliament's questions to the Commission or to the Council. The opinion of the CoR shall form part of the documentation of the meeting of the European Parliament at which the CoR presents the opinion.

The European Parliament and CoR may also jointly organise consultation events on the subject of the proposal in question, such as a workshop or a roundtable. A joint stakeholder hearing could be considered on a particularly landmark proposal. A systematically included substantial reference to the CoR opinion in the European Parliament's resolution on the legislative act (beyond the reference in the preamble acknowledging the regard of the opinion of the CoR) could mark the effect of such cooperation.

Particularly close cooperation could be sought with the European Parliament's Committee on Regional Development (REGI). Here, closer and more structured cooperation could take place between REGI and the CoR's Commission for Territorial Cohesion (COTER). The current informal and occasional practice of inviting the CoR's Rapporteur to present the opinion in the Committee meetings could be made customary for specific policy areas (e.g. territorial cohesion, structural funds) and the sharing of information could become automatic.

Medium- to long-term recommendation:

Strengthened cooperation with the European Parliament's Committees along their deliberations on a proposal

Strengthened cooperation at Committee level, on subjects agreed upon at the annual meeting between the Conference of Presidents of the European Parliament, and the President and the Vice-Presidents of the CoR, could gradually be deepened and intensified. Such cooperation could include invitations to meetings of the Committees/Commissions to hear the opinion of the rapporteurs, joint consultation meetings, and joint stakeholder hearings on particularly landmark proposals. Dossiers on which such cooperation would be pursued should be limited in order to allow for the effectiveness of cooperation and for gradual customisation of it. A systematically included substantial reference to the CoR opinion in the European Parliament's resolution on the legislative act (beyond the reference in the preamble acknowledging the regard of the opinion of the CoR) could mark the effect of such cooperation. Adaptation of the CoR's Rules of Procedure, to allow for different forms of possible cooperation, including stressing the importance of sharing information, could be considered. It could raise the momentum and ensure that the CoR has capacities for such strengthened cooperation.

- ²⁵ The CoR agrees (according to the Protocol on relations with the Commission) to immediately inform the co-legislators if, during a legislative procedure, the CoR raises substantial concerns regarding the respect of the principle of subsidiarity (see Protocol, pt. 23, Para. 2). The CoR's participation as an observer in meetings of the EP with the representatives of national parliaments could serve as a channel whereby the CoR could express its concerns with regard to the application of the principle of subsidiarity, also on behalf of the participants of the Subsidiarity Monitoring Network who do not have a direct relationship with the EP. In this way the CoR would also act as vehicle for regional parliaments and their subsidiarity concerns. At the same time, by the CoR participating in these meetings the information exchange would be mutual, as the CoR would learn, at the earliest point, of any concerns raised by national parliaments. With regard to the CoR's standing in front of the ECJ in cases where delivery of its opinion is obligatory, early cooperation and information sharing in the legislative procedure, specifically with regard to the subsidiarity check, the CoR's presence in these meetings would raise awareness about its new role; it would also be mutually beneficial to the national parliaments, to the European parliament and to the CoR; and it would increase the effectiveness of the procedure.

The European Parliament and CoR could agree on a follow up to such concerns raised by the CoR. The CoR could then be invited to present its concerns at the meeting of the European Parliament's committee which discusses the proposal.

Should the CoR's concerns arise from the changes in the course of negotiations among the legislators, the CoR could then invite the European Parliament to inform it of the changes and explain them to the relevant Commission of the CoR.

Short- to medium-term recommendation:

Mutual information sharing and explanation in case of concerns with regard to the observation of the principle of subsidiarity

It is recommended to gradually establish cooperation with the European Parliament in cases of concern raised by the CoR with regard to the observation of the principle of subsidiarity. As a first step the European Parliament could be invited to share with the CoR any information with regard to the concerns over subsidiarity raised by the national parliaments, following its regular meetings with the national parliaments ("Monday Morning Meetings"). Furthermore, the CoR's participation in an observer capacity in the meetings between the representatives of the EP and the national parliaments could be an appropriate effective channel also for the CoR to share its own concerns, as well as those concerns of regional parliaments with the national parliaments and the European Parliament, as it represents an early information exchange between the parliamentarians. Should such concerns arise from the original proposal, the CoR could be invited to present its concerns in the "Monday Morning Meeting" and arrangements could subsequently be pursued for the CoR to present its concerns in the relevant European Parliament committee. Should such concerns arise in the course of negotiations over the proposal, the CoR may invite the European Parliament representatives to inform the relevant CoR Commission of the developments in the negotiation over the proposal.

²⁶ *Adoption of delegated and implementing acts:*

The powers of the European Parliament have been raised significantly by the Lisbon Treaty in terms of the adoption of delegated acts (see also point 16). The European Parliament acquired the same powers as the Council – standing on a perfect equal footing together with the Council for delegated acts. It may vote down the Commission's proposal for a delegated act on any grounds; it can also revoke the powers of delegation to the Commission (fully or partially). The European Parliament is normally given two months to consider the Commission's proposed delegated act.

As for implementing acts, the new Comitology Regulation contains provisions on the transmission of documents and information. Article 10 indicates which documents need to be sent to the Parliament and the committee members simultaneously. The Commission includes the implementing acts in the register which also contains the voting results, agendas, the summary records of the meetings and the lists of the authorities and organisations to which the Member State representatives belong. In the interinstitutional agreement between the Parliament and the Commission on procedures for implementing the comitology decision it was agreed that the register will enable inter alia: □ a clear identification of the documents and of any changes to the implementing act; □ an indication of the stage of the procedure and the timetable, including the time limits; a clear distinction between the draft measures received by the Parliament at the same time as the committee members in accordance with the right to information, and the final draft following the committee's opinion that is forwarded to the Parliament. The agreement furthermore specifies that in addition to the summary records, the European Parliament may request access to minutes of committee meetings. The Commission will examine each request, on a case-by-case basis under the applicable confidentiality rules.

The CoR has no powers with regard to delegated and implementing acts. Delegated and implementing acts may, however, have a direct effect at local and regional level. In order to foster mutual links and to use the CoR's expertise and in pursuit of the objective of adopting the rules as closely as possible to the citizens, the CoR and European Parliament may agree for the European Parliament to invite the CoR to access the information received via the registers and to submit to it its opinion on a draft delegated and implementing act – the basic acts upon which the European Parliament, Commission or Council invited the CoR to operate in its advisory capacity.

Medium-term recommendation:

Support the European Parliament's role with regard to delegated and implementing acts

It is recommended for the CoR and the European Parliament to consider a working arrangement, whereby the CoR would submit to the European Parliament an opinion on the draft delegated act in case it invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the European Parliament deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality. A feasibility of such actions would be greatly increased in cases where CoR would be involved, in an observer capacity or as a member, in the Commission's expert groups preparing a delegated act.

4.3. Establishing formal links between the CoR and the Council

²⁷ Two provisions in the Treaties relate to the nature and the possibility of relations between the Council and the CoR. The Council, acting unanimously on a proposal from the Commission, adopts a decision determining its composition (Art. 305 TEU). The Council has the right to consult the CoR in cases where the Treaty so provides, but also in other cases, in particular those which concern cross-border cooperation, if the Council (as well as the European Parliament and Commission) consider it appropriate (Art. 307, Para. 1 TEU).

The CoR's opinions represent a specific contribution to the decision-making in the Council. By adding a sub-national perspective to the policy-making, the CoR presents a unique link between the decision-making in the Council and the activities of the Member States in implementing and enforcing these decisions in the domestic context. While there are working meetings on several levels between the Presidency, the Council and the CoR, the arrangements governing these working relations are not constant or formalised. By strengthening the cooperation between the Council and the CoR, the link between the EU and domestic level could be more effective. Relations could be governed by means of an exchange of letters between the two Presidents.

²⁸ *Planning and programming:*

The Council plans its work by means of an 18-month programme, which the pre-established group of three consecutive Presidencies ('Trio' Presidency) prepares in close cooperation with the President of the Commission and the President of the European Council, and after appropriate consultations (Art. 2 Para. 6 of the Rules of Procedure of the Council). Each six-monthly Presidency submits draft agendas for Council meetings immediately prior to assuming the office of Presidency (Art. 2 Para. 7 of the Rules of Procedure of the Council).

The Council's planning of its legislative work is closely related to the Commission's annual programme; but the Council's 18-month programme, as well as the draft agendas of the Presidency-in-office, also includes non-legislative initiatives, mostly in the form of Council conclusions. Especially for these initiatives, CoR and Council might find common interests and cooperate in the preparation of those initiatives with a specific potential impact on LRAs.

The 18-month programme is prepared in close cooperation with the General Secretariat of the Council. The General Secretariat's Directorate for

Interinstitutional Relations represents the Council at the meetings of the bureau of the CoR. The bureau could request information from the General Secretariat of the Council on the coming about of the 18-month programme. The CoR could also prepare recommendations for the inclusion of specific initiatives in the 18-month programme (e.g. as ‘Messages to the incoming Trio Presidency’) and request to be heard at a working meeting of the Trio (and the General Secretariat of the Council and the Commission representatives). Finally, cooperation could extend to forwarding the Council planning tools to the CoR as soon as they are endorsed (18-month programme) or presented (draft agendas of the Council formations) to the Council.

Short- to medium-term recommendation:

Exchange of views and identification of joint priorities in the course of preparation of the 18-month programme

The CoR could gradually seek information, prepare recommendations (e. g. as ‘Messages to the incoming Trio Presidency’) and request to attend consultative meetings in the course of the preparation of the 18-month programme. In this process the CoR could also identify on which projects it could offer support to the incoming Presidencies with its own expertise and information network, also in view of joint organisation of events in the Member States holding the Presidency.

The next Trio (Ireland, Lithuania and Greece) needs to present its 18-month programme in December 2012. The CoR could request the General Secretariat of the Council in the autumn of 2012 to inform it about the state of the consultations and seek more involvement in the preparation of the next Trio programme (due in June 2014).

Finally, cooperation could extend to forwarding of the Council planning tools to the CoR as soon as they are endorsed (18-month programme) or presented (draft agendas of the Council formations) to the Council.

²⁹ At the beginning of each term, the Presidency – at the level of Permanent Representative and the Vice-President of the CoR – meet with a view to identifying those initiatives to which the CoR could contribute with its expertise and the expertise drawn from its networks. Other possible areas of cooperation could also be identified at such a meeting. These could primarily include the invitation from the Presidency to the CoR to attend a relevant Council Working Party/Committee meeting with a view to exchanging views on previously identified priority dossiers (depending on the current agenda), in cases where the CoR raises concerns with regard to the observation of the principle of subsidiarity or on dossiers for which a more structured and permanent dialogue could be envisaged.

Short- to medium-term Recommendation:

Identification of dossiers for closer cooperation at the meeting with the representatives of the Presidency ((Deputy) Permanent Representative) upon its entry into the office

It is recommended to upgrade a working meeting with the Council Presidency upon its entry into office, at the level of Permanent Representative and/or Deputy Permanent Representative, to discuss possible input by the CoR in non-legislative initiatives and identify dossiers on which an exchange of views could take place at the Council Working Party/Committee meetings.

³⁰ *Decision-making:*

It is by means of the CoR's opinion on draft legislative acts that the CoR brings attention to the effects of EU-level policy-making on the local and regional levels. In order to give utmost effect to the opinions of the CoR, the Council and CoR may agree on a closer cooperation in cases of opinions which they identify as being of mutual priority (in a meeting with the Presidency representatives) and those requested by the Council. Such forms of cooperation may include an invitation to a meeting of the Council Working Party/Committee which discusses the proposal for the purpose of the presentation of the CoR's opinion and the exchange of views. The opinion of the CoR shall form part of the documentation for the meeting and be distributed by the Presidency.

³¹ In addition to the legislative decision-making, the Council's work also includes non-legislative work, which usually results in a form of Council conclusion (sometimes also resolutions; they are both legally non-binding instruments). A Council conclusion can present political commitments, guidance for future actions (also as requests for the Commission's actions), as well as having a true policy-making nature. An exchange of views with the CoR on a limited area of a specific issue would allow the Council's attention to be brought to the views and impact on the local and regional levels of the issue under discussion, and could also present a beginning of closer cooperation on the future initiatives on the issue area or the organisation of joint events. This could be especially fruitful in cases when the CoR's views coincide with those of the Presidency or if the CoR can support the presidency in the organisation of events.

Medium- to long-term recommendation:

Exchange of views in the Council Working Party/Committee on legislative acts and non-legislative initiatives

The CoR could identify dossiers, legislative and non-legislative (policy-making) on which it would welcome an exchange of views at the level of a Council Working Party – both on current agenda items as well as on recurring themes – where it could eventually aim to be invited by custom. It could then gradually attempt to agree with the subsequent Presidencies to be invited to exchange views with the Council Working Party.

- ³² The CoR agrees (according to the Protocol on relations with the Commission) to immediately inform the co-legislators, if, during a legislative procedure, the CoR raises substantial concerns regarding the respect of the principle of subsidiarity (see Protocol, pt. 23, Para. 2).

The Council and CoR could agree on a follow-up to such a concern raised by the CoR. The CoR could be invited to present its concerns at the meeting of the Council Working party which discusses the proposal.

Should the CoR's concerns arise from the changes in the course of negotiations between the legislators, the CoR could invite the Presidency to inform it of the changes and explain them to the relevant Commission of the CoR.

Short- to medium-term Recommendation:

Explanation in case of concerns with regard to the observation of the principle of subsidiarity

A presentation of the CoR's views at a Council Working Party meeting could also be envisaged and identified at the initial meeting with the Presidency, in cases of concern raised by the CoR with regard to the observation of the principle of subsidiarity in an original proposal or in an adapted proposal.

- ³³ *Adoption of delegated and implementing acts:*

The CoR has no powers with regard to delegated and implementing acts. Delegated and implementing acts may, however, have a direct effect at local and regional level. The CoR could therefore be invited by the Commission to attend preparatory meetings of expert groups to discuss relevant delegated acts. In addition, the CoR could be invited to comitology committee meetings to discuss relevant implementing acts (see above). It could also cooperate

more closely with the European Parliament with regard to the relevant delegated acts (see above). In a similar vein as with the European Parliament, the Council and CoR may cooperate in any way with regard to delegated and implementing acts to share information received via the Council's functional mailbox (for delegated acts) and/or the comitology register (for implementing acts) (in cases when the Council invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the Council deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality), with the aim to observe the principles of proportionality and proximity.

4.4. Relations between the CoR and the European Council

- ³⁴ The Treaty of Lisbon established the post of full-time President of the European Council, elected for two-and-a-half years, renewable once, by the members of the European Council. With this new post the European Council received a permanent representative in Brussels, as well as abroad.

The President of the European Council chairs and drives forward the work of the European Council, is in charge of the preparations of the European Council meetings as well as of the continuity of its work. S/he facilitates cohesion and consensus among the members of the European Council and presents a report to the European Parliament following the meetings of the European Council. At her/his level and in that capacity, the President also represents the EU externally in matters other than common foreign and security policy (Art. 15(6) TEU).

- ³⁵ The CoR, in its privileged role in relations between the EU-level institutions and bodies and local and regional authorities, can facilitate and make more effective consultations with local and regional authorities in relation to economic, social and territorial cohesion and especially in the implementation of cross-border, interregional and transnational cooperation in the context of the 'Europe 2020' strategy. The CoR stimulates territorial dialogue in the context of the 'Europe 2020' strategy, primarily through the Europe 2020 Monitoring Platform, which publishes its report at the end of the calendar year.

The European Council traditionally discusses economic and growth issues at its Spring European Council. The CoR Bureau issues a Declaration to the European Council on a better implementation of Europe 2020 on the eve of the Spring European Council, with the intention for the recommendations

provided in the Declaration to be included in the Conclusions of the European Council. The President of the European Council addresses the CoR annually, acknowledging its role in the Europe 2020 governance process.

- ³⁶ To make the involvement of the CoR in the Europe 2020 governance process more effective, the direction of including the recommendations provided in the Declaration should be pursued. For this purpose the CoR would need to present the recommendations to the President of the European Council in a timely manner, leaving enough time for the recommendations to also be discussed by the General Affairs Council prior to the European Council meeting. Simultaneously, the annual address of the President of the European Council in the CoR plenary is already tightly bound to the meeting of the European Council, and is delivered as a report on the meeting. It could also include special references to the CoR's recommendations and to the possible contribution of the CoR in executing the Europe 2020 strategy in the coming year.

Following recent developments in economic governance of the Union, the CoR is also ideally placed to represent the voices of the LRAs. This has been recognised, among others, by the Commission (Protocol, pt. 20) and the President of the European Council.⁴⁰ This recognition could be upgraded to a more structural dialogue, as an upgrade to the relationship already established with regard to the Europe 2020 strategy.

⁴⁰ Van Rompuy, H. (2012). Speech by Herman Van Rompuy, President of the European Council, at the Plenary Meeting of the Committee of the Regions. Brussels, 3 May 2012.

Short-term recommendation:

Formalisation of current practices

It is recommended that the CoR and the European Council formalise the cooperation that has evolved in the course of the first and second mandate of the first President of the European Council. Formalisation of this cooperation will be essential for building an effective working relationship with the next President of the European Council. Formalisation could be sought by means of an exchange of letters between the CoR's President and the President of European Council. In the letters both Presidents could adhere to continuing with hitherto established practice, whereby the CoR, ahead of the Spring European Council, submits results of the territorial dialogue and consultations with local and regional communities in relation to the Europe 2020 strategy and the Annual Growth Survey, as well as recommendations for future action.

The effect of these steps could be deepened by also adhering, in the letters, to the following:

- (i) the CoR's recommendations to form part of the documentation sent to delegations in an invitation to the European Council meeting;
- (ii) the CoR's recommendations to form part of the General Affairs Council materials, which discusses the Conclusions of the Spring European Council.
- (iii) the President of the European Council to refer specifically to the impact of the CoR's recommendations on the debate and outcome of the spring European Council meeting in his address to the CoR.

PART 2 – Analysis of the Committee of the Regions’ potential new role in a reinforced cooperation with EU Agencies/Bodies

5. The potential of a reinforced cooperation with selected EU Agencies active in territorial policy areas

¹ One of the most important evolving actors in the EU policy cycle is the EU Agencies. They come in a variety of forms, shapes and sizes; they are geographically spread throughout the EU, with almost all Member States hosting at least one Agency.

² Today there are more than 40 Agencies. In addition, some EU Agencies’ mandates have been – or are in the process of being – considerably broadened. In total, these entities employ almost 8,000 members of (mostly temporary) staff and their combined annual EU administrative budget (or subsidy) is around 1 billion Euros (excluding the Joint Undertaking for ITER, Fusion for Energy).

Following the Commission Communication “European agencies: the way forward”, addressed to the EP and the Council in March 2008, the three institutions have recognised the important role of decentralised agencies in implementing the policies of the EU as independent legal entities and the need to make them a more effective tool in this respect. With a view to assessing the coherence, effectiveness, accountability and transparency of these agencies, the EP, the Council and the Commission agreed to launch an inter-institutional dialogue on decentralised agencies in March 2009. In June 2012 they agreed on a Common Approach containing a range of improvements, including: the need for an objective impact assessment before deciding to create a new agency; the introduction of sunset or review clauses foreseeing the option of merging or closing down agencies; and a streamlined governance structure. The Commission will propose a roadmap for implementing this agreement by the end of 2012 at the latest, taking into account the unique features of each Agency.

³ EU Agencies are not mentioned in the Treaties (with the exception of the European Defence Agency, Europol and Eurojust) and they are not EU institutions. They are EU bodies governed by European law, set up by secondary legislation, operating within the EU policy cycle to assist the Commission and the Member States to fulfil various specific tasks.

5.1. EU Agencies active in territorial policy areas

- ⁴ The possibility to create Agencies resided in the ability of the Commission to delegate tasks to a separate body – something that was established by the 1958 Meroni doctrine (C9-10/56 *Meroni v. High Authority*). Ever since, numbers have grown for a variety of reasons.
- ⁵ The rationale behind Agencies is to *assist* in the carrying out of Community activities; to *reduce the workload* of the European Commission; lack of expertise in the European Commission; need for independent expertise and advice; to *facilitate European-wide cooperation* between stakeholders; to *increase transparency* within policy fields and across EU decision-making; to *enable more efficient and flexible implementation* of EU legislation.
- ⁶ Two broad types of Agencies, each with different characteristics and raising different issues, can be distinguished: ‘Traditional’ Executive Agencies carry out tasks related to the day-to-day management of Union programmes, are created for limited periods of time, and are located close to the European Commission in Brussels or Luxembourg (examples: TEN-T EA, EAHC, EACEA). They are strictly supervised and dissolved by the European Commission. Regulatory Agencies are independent bodies with their own legal personality, are involved in assisting, informing and working with the Commission on all proposals, legislative or Delegated and Implementing Acts, throughout the drafting, decision-making and implementation phases.
- ⁷ Most EU Agencies are vitally important sector-specific actors – potentially throughout all stages of the EU policy cycle. The importance of engaging with EU agencies derives from an Agency often being the main EU source of technical and scientific expertise on specific subject matters – their voice counts. The work of Agencies directly – or indirectly – influences the work of the Commission and the legislators. Agencies develop their own stakeholder networks – through contacts, events, sub-committees, open hearings. Agencies are frequently requested to assist the Commission as it drafts legislative texts, Delegated and Implementing Acts and monitors the implementation of EU law.
- ⁸ Overall, 19 EU Agencies have been active in territorial policy areas vitally important to the Committee of the Regions’ activities.

Regional and local components of EU policies are covered by: Agencies responsible for *gathering, analysing* and *forwarding* objective, reliable and easy-to-understand information/networking (CEDEFOP, Eurofound, EEA, ETF, EMCCDA, EU-OSHA, ECDC, FRA, EIGE); Agencies *providing direct*

assistance to the Commission, and where necessary, to the Member States, in the form of technical or scientific advice and/or inspection reports (EMSA, ERA); Agencies *in charge of operational activities* (Frontex, Europol, CEPOL); Agencies *adopting individual decisions* which are legally binding on third parties (EASA). Table 1 lists the selected Agencies with some information on key characteristics.

Table 1: Selected EU Agencies active in territorial areas

Policy areas with regional and local components	EU agency (full name)	Location	Budget	Staff
Transport	TEN-T EA (Trans-European Transport Network Executive Agency)	Brussels (BE)		
	EASA (European Aviation Safety Agency)	Cologne (DE)	139,554/34,399	574
	EMSA (European Maritime Safety Agency)	Lisbon (PT)	56,143/54,936	208
	ERA (European Railway Agency)	Valenciennes (FR)	25,989/25,304	154
Environmental protection	EEA (European Environment Agency)	Copenhagen (DK)	41,285/35,957	134
Security	Europol (European Police Office)	The Hague (NL)	83,949/83,469	457
	CEPOL (European Police College)	Bramshill (UK)	8,641/8,341	26
	Frontex (European Agency for the Management of Operational Cooperation at External Borders)	Warsaw (PO)	86,384/81,000	143
	EASO (European Asylum Support Office)	Valetta (MT)	8,000/8,000	38
Health	EAHC (Executive Agency for Health and Consumers)	Luxembourg (LX)		
	ECDC (European Centre for Disease Prevention and Control)	Stockholm (SE)	56,656/55,400	200
	EMCDDA (European Monitoring Centre for Drugs and Drug Addiction)	Lisbon (PT)	16,310/15,400	84
	EU-OSHA (European Agency for Safety and Health and Work)	Bilbao (ES)	14,897/14,540	44
Social welfare and fundamental rights	Eurofound (European Foundation for the Improvement of Living and Working Conditions)	Dublin (IE)	20,450/20,210	101
	FRA (Fundamental Rights Agency)	Vienna (AT)	20,180/20,000	72
	EIGE (European Institute for Gender Equality)	Vilnius (LT)	7,530/7,530	27
Vocational training, education and culture	Cedefop (European Centre for the Development of Vocational Training)	Thessaloniki (EL)	17,764/17,270	101
	EACEA (Education, Audiovisual and Culture Executive Agency)	Brussels (BE)		
	ETF (European Training Foundation)	Turin (IT)	21,028/20,350	96

5.2. Potential of a reinforced cooperation between the CoR and selected EU Agencies

- ⁹ In order to foster the multilevel dimensions of EU policies, the CoR's first experience with forms of enhanced cooperation with EU Agencies was with the Vienna-based Agency for Fundamental Rights (FRA), which is in place since 2008. It has served as a model of good practice engaging all levels of governance in the protection and promotion of fundamental rights and to sensitise local and regional authorities throughout the European Union to fundamental rights issues.
- ¹⁰ Following this good practice of enhanced cooperation between the CoR and an EU Agency, potential for reinforced cooperation between the CoR and relevant EU Agencies lies mainly within three areas: exercising political supervision, benefiting from Agencies' know-how and expertise, and promoting shared activities.

5.2.1. Exercising political supervision over EU Agencies

- ¹¹ To improve the performance of EU Agencies who have been active in territorial policy areas vitally important to the Committee of the Regions' activities, the Agencies' governance structure is pivotal.

Political supervision of the governance structure is based on practical arrangements, rather than on legal requirements. Following the spirit of the Common Approach on decentralised agencies on Agencies' governance structures, the CoR and relevant Agencies will have to find medium- and long-term arrangements to systematise the Agencies' capacity to deal with the territorial aspects of EU policies.

- ¹² *Composition and designation of Management Board:*
There is no single model concerning the composition and designation of Management Boards. In fact, Management Boards can include representatives from EU Member States, the European Commission, European Parliament, EU candidate countries, non-EU countries, other agencies and/or institutions, as well as individuals (see detailed fact sheets for selected Agencies in Annex).

All but the 'third pillar Agencies' have European Commission representatives as members of the Management Board. Instead, the European Parliament has two representatives in the Management Boards of three Agencies (ECDC, EEA, EMCDDA) active in territorial policy areas.

Other Management Boards include particular types of members, such as CEDEFOP with two representatives of employees' and employers' organisation, EMSA and four representatives from the industry field, ERA with six members representing at the European level railway undertakings, infrastructure managers, railway industry, worker unions, passengers and freight customers, and FRA with one independent person appointed by the Council of Europe.

According to the Common Approach on decentralised Agencies, the composition of the board should be: one representative from each Member State; two representatives from the Commission; where appropriate, one member designated by the EP; where appropriate, a fairly limited number of stakeholders' representatives (2012, pp. 5).

Medium-term recommendation:

Assigning CoR representatives to Management Board

It is recommended to assign CoR representatives (a Member or staff from the CoR's Secretariat General) as stakeholders' representatives to Management Boards of EU Agencies active in policies with an impact at regional and local level. In line with the Common Approach on decentralised agencies, this guarantees participation of local and regional elected representatives in the democratic life of the EU. As the 'eyes and ears' of the CoR they constitute a valuable source of information for the competent CoR Commissions with respect to the direct involvement of the CoR in the monitoring of subsidiarity. They should report on the CoR's position within the Management Board and may be directly involved in the CoR's activities. The more active they are in the Board, the more useful an interlocutor they are for the CoR. [In parallel, CoR Commissions organise hearings of the candidates for the positions of executive director in order to clarify the CoR's expectations.](#)

Appointment of Director:

Given the wide range of tasks attributed to Agencies' Directors, their role is crucial for Agencies' governance, notably as regards overall Agency management and relationship towards EU institutions.

The Director of an Agency is appointed either by the Management Board, by the Council of Ministers, or by the European Commission. In seven Agencies (ETF, EMCDDA, EFSA, EASA, ECDC, EIGE and FRA) the Director also has to appear at a hearing before the European Parliament's competent Committee before being appointed.

‘Before being appointed, the candidate selected by the Management Board shall be asked to make a declaration before the competent committee(s) of the European Parliament and answer questions from its/their members.’ (Article 12 of EIGE Regulation 1922/2006).

Agencies’ Directors are foremost accountable to their Management Board, to whom they submit an annual report, including accounts. They are also accountable to the Council and EP for the use of the EU contribution through the annual discharge procedure. However, the discharge procedure focuses on accountability and regulatory compliance, rather than on performance per se. This is due, inter alia, to the lack of performance indicators. In line with the Common Approach on decentralised agencies, Directors should therefore be more clearly accountable for performance. To this end, tailored performance indicators should be introduced allowing for effective assessment of the results achieved in terms of objectives (2012, pp. 6).

Long-term recommendation:

Engaging the CoR in nominating the Director and assessing the performance

It is recommended to invite without delay any Director candidate nominated by the Management Board from one of the EU Agencies active in territorial policy areas vitally important to the Committee of the Regions’ activities to make a statement before the CoR and to answer questions put forward by its members. In the long term, the CoR indirectly and informally influences the nomination of an Executive Director when it has nominees in the Management Board to promote the regional dimension at the European and international level. Based on future (territorial) performance indicators Directors indirectly become accountable to the CoR’s concerns.

Advisory Bodies and Networks:

The majority of Agencies’ Management Boards share the same administrative and budgetary tasks. In addition, each Agency’s Management Board has supplementary specific tasks concerning the scope of the activities of the Agency.

The Common Approach on decentralised Agencies states that “when relevant stakeholders are not represented in management boards, they should be involved in agencies’ internal bodies and/or advisory groups/working groups, if appropriate” (2012, pp. 13). In addition, Agencies should exchange information on their experience with scientific committees and possibly

contribute to developing a coordinated approach to common problems in dealing with other internal bodies and networks (2012, pp. 6-7).

EASA's Management Board established an Advisory Body of interested parties, which the Management Board consults prior to making decisions in the following fields: work programme, procedures for the Director to make decisions, functions relating to the Agency's budget and opinions on the fees and charges regulation. The Management Board may also decide to consult the Advisory Body on other issues related to the Agency's tasks. The Management Board is not bound by the opinion of the Advisory Body. In addition, many Agencies' constituent acts establish networks comprising various actors from participating Member States.

EASO's national contact points are responsible for communication with the Agency on all matters pertaining to the asylum support teams.⁴¹

ECDC coordinates the European networking of bodies operating in the fields falling within the Agency's mission, including networks arising from public health activities supported by the European Commission and operating the dedicated surveillance networks.

EEA has a partnership network, the European environment information and observation network (Eionet), and its member and cooperating countries involving approximately 900 experts and more than 300 national institutions. The network supports the collection and organisation of data and the development and dissemination of information concerning Europe's environment.

EIGE's Experts Forum supports the Director in ensuring the excellence and independence of activities. It ensures close cooperation between EIGE and competent bodies in the Member States.

EMCDDA established the European Information Network on Drugs and Drug Addiction (Reitox), consisting of focal points in the Member States, including one for the European Commission. They contribute to the establishment of key indicators and data, including guidelines for their implementation with a view to obtaining reliable and comparable information at European Union level. FRA established the Racism and Xenophobia European Network (Raxen Network), which is also integrated by national focal points, collecting data on racism, xenophobia and related intolerance

⁴¹ Note that the Stockholm programme also refers to the setting up of an EU coordinator for immigration. In this light it might be an interesting endeavour to look into further cooperation with the EU coordinator for immigration, EU antiterrorist coordinator, EU data protection supervisor and the future EU prosecutor.

issues. An additional network, the Fundamental Rights Agency Legal Experts (Fralex), provides for information by country on legal issues concerning fundamental rights.

Medium-term recommendation:

Nominating members of Agencies' Advisory Groups and Networks

It is recommended that the CoR nominates members (a Member or staff from the CoR's Secretariat General) to Agencies' Advisory Groups, such as Experts Forums and is consulted on the composition of Scientific Committees and established networks to strengthen its interactions with public, private and civil society players in the making and implementation of public policies. Networking is seen as a decisive factor in better legislation. Linking up within European and worldwide networks helps to steer developments in European governance towards an integrated territorial approach.

5.2.2. Benefiting systematically from EU Agencies' know-how

- ¹⁵ In order to become a more direct beneficiary of Agencies' expertise, the CoR should systematically use Agencies' reports, studies, and scientific opinions in the framework of the CoR's day-to-day activities. In this light, the CoR may also submit to Agencies specific requests for particular reports, studies and/or scientific opinions. In 2008, for example, the FRA initiated an informal annual seminar with the CoR on multilevel protection of fundamental rights, which – thanks to a positive assessment by both partners – was formalised in 2010 as a regular Annual Dialogue.
- ¹⁶ In order to develop proper territorial strategies, the CoR should appoint under each Commission's responsibility a 'contact person' for particular Agencies, and give a specific CoR administrator the task of following up one or several Agencies respectively. This would also guarantee a systematic information flow on a regular basis from the Agencies to the relevant CoR Commissions and administration. For example, the CoR should receive Agencies' work programmes and activity report as a voluntary practice.
- ¹⁷ In order to promote participatory democracy and to draw attention to local and regional experiences with deliberative and participatory democracy, the CoR should regularly invite Agency experts and/or the Executive Director to address the CoR Commissions during hearings or seminars on a particular topic and/or an exchange of views on a report published by the Agency, in order to achieve the territorial cohesion objective, provided that the purpose

of the consultations is an exchange of views and the outcome is not binding on the agency.

The FRA, for example, provides regular input into the consultative work of the CoR, such as into the Opinion of the CoR, *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union*, adopted on 11-12 October 2011.

Short-term recommendation:

Benefiting systematically from EU Agencies' know-how

It is recommended to benefit systematically from EU Agencies' know-how and expertise to develop a sense of shared responsibility at the EU level. To achieve the territorial cohesion objective and provided that the purpose of the consultations is an exchange of views and the outcome is not binding on the Agency, the CoR could regularly invite Agency experts and/or the Executive Director to address the CoR Commissions during hearings or seminars on relevant topics.

5.2.3. Promoting shared activities together with EU Agencies

- ¹⁸ The Common Approach on decentralised Agencies promotes the Agencies' relations with stakeholders. Agencies "should exercise their functions in coordination with the different actors charged with the definition and implementation of the given policy" (2012, pp. 13).
- ¹⁹ To create a 'culture of subsidiarity' throughout all EU Agencies, the CoR should formalise its relations with Agencies active in territorial policy areas. The European Parliament's ENVI committee, for example, formalised its relations with the EEA through an exchange of letters.
- ²⁰ To monitor the principle of subsidiarity the CoR should organise visits of its Commissions' members to Agencies. The European Parliament Committee on Employment and Social Affairs, for example, organised a delegation to the European Training Foundation (ETF) in Torino in 2012. The main subject was the Perspectives of Training and Employment in ETF Partner Countries. As a consequence the rules on travel by CoR Commission delegations should include the possibility to regularly send a small delegation to all relevant Agencies to establish and maintain an important link with 'their' EU Agencies.
- ²¹ To promote a 'culture of subsidiarity' throughout the European Union, the CoR should engage in shared projects together with EU Agencies. The FRA

joined-up governance project, for example, seeks to pool knowledge and experience on effective multilevel cooperation in implementing fundamental rights-related policies and measures across various government levels. The project particularly responds to the need to find ways of how to support the implementation of human/fundamental rights at the local and regional level.

Short-term recommendation:

Promoting shared activities together with EU Agencies

In order to foster the multilevel dimensions of EU policies it is recommended that the CoR promotes shared activities together with EU Agencies. Based on a pro-active partnership approach allowing common policies to take regional and local concerns into account, the CoR should formalise its relationship with EU Agencies. To promote a territorial approach to specific EU policies, the CoR should agree on shared projects and organise visits to EU Agencies.

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Annex I: Background analysis on renewed and broadened inter-institutional balance

- ¹ The Lisbon Treaty introduced a general norm of “mutual sincere cooperation” between the EU institutions (Art. 13(2) TEU). The CoR is an advisory body with a right of direct access to the European Court of Justice (ECJ) ‘for the purpose of protecting [its] prerogatives’ (Art. 263(3) TFEU) and the right to bring actions before the Court of Justice on grounds of infringement of the subsidiarity principle against legislative acts on which it has to be consulted (Protocol on Subsidiarity and Proportionality, Art.8).

These three provisions bring the CoR to a position, whereby it is not an EU institution in the sense of Art. 13 TEU, which lists EU institutions. At the same time it is given equal access to the ECJ as the European Central Bank is given (Art. 263, Para. 3 TFEU), which is itself an institution. Furthermore, this position of the CoR resembles the position of the European Parliament, also an institution, as asserted through the case law of the ECJ following the *Isoglucose* ruling in 1980.⁴²

- ² At the same time, the Lisbon Treaty asserted a number of democratic principles to be observed in the decision-making in the EU, among them proximity to the citizens, as well as being extended to the observation of the subsidiarity principle to include regional and local levels of government. The CoR as an assembly of political representatives of local and regional governments takes part in the decision-making at the EU level by being consulted in cases when the Treaty so requires “and in all other cases, in particular those which concern cross-border cooperation, in which one of these institutions considers it appropriate” (Art. 307 TFEU).
- ³ The above paragraphs outline two main streams of arguments – legal and political – in favour of a strengthened cooperation between the CoR and EU institutions. The arguments for and the potential of the strengthened cooperation between the CoR and selected EU institutions are developed below. We start by placing the CoR within the renewed and broadened IIB and then show the merits of such understanding for the democratic life of the EU.

⁴² 138/79, *Roquette Frères v. Council* [1980] ECR 3333

2. 1. Renewed and broadened inter-institutional balance

- ⁴ The principle of IIB in the then Community was invoked by the ECJ essentially as a substitute for the principle of separation of powers. In case 9/56, *Meroni v. High Authority* [1958], the Court ruled that institution A cannot delegate powers to B which the Treaty did not confer to A. As Jacqué (2004: 384) observed: “In the absence of a separation of powers, the principle of institutional balance made it possible to guarantee to undertakings that a modification of the institutional balance would not call into question the decision-making process envisaged by the treaties.” From its introduction the principle of IIB has been inextricably linked to the decision-making process. Lenaerts (1993: 23) pointed out that a further argument “supporting the prohibition of delegation of powers was drawn from the specific institutional balance representing the several interests involved in the decision-making process.” However, as Jacqué (*idem.*) immediately points out “[the] protective aspect of the principle seems to have been gradually lost as other means of protection appeared, including the guarantee of the respect of fundamental rights.” Instead, the principle continued to act in support of “a ‘fundamental guarantee’ contained in the balance of powers between the European institutions” (Lenaerts and Verhoeven 2002: 37) and defined precisely the extent and limitations of roles and tasks of institutions as they are stated in the treaties (*cf.* Monar 2010: 1-2, Smismans 2002: 1-2).
- ⁵ Most notably this meant giving effect to the roles and tasks of the European Parliament. Originally, the European Parliament was part of the Community’s institutional framework, however, with only a consultative role.⁴³ The ECJ in a series of rulings elaborated on the consultative role of the European Parliament. In 138/79, *Roquette Frères v. Council (Isoglucose)* [1980] and 139/79, *Maïzena v. Council* [1980] the Court stated that in the legislative process the consultation of the European Parliament by the Council constitutes an essential factor in the institutional balance, and that this requirement can be considered as being observed only after the Parliament has expressed its opinion.
- ⁶ With its judgment in case C-392/95, *European Parliament v. Council* [1997], the Court made a further step in the protection of the effective participation of the European Parliament in the legislative process (*cf.* Senden 2005: 86, fn. 40). In the case, the Parliament applied for the annulment of Council Regulation (EC) No. 2317/95 for failure on the side of the Council, to re-

⁴³ Art. 100 of Treaty establishing the European Economic Community: “The Assembly and the Economic and Social Committee shall be consulted concerning any directives whose implementation in one or more of the Member States would involve amendment of legislative provisions”.

consult the European Parliament after the receipt of its opinion and after having introduced substantial modifications to the proposal. While the Council argued that the amendments were minor and that it was not necessary to consult the European Parliament again since it was already aware of the European Parliament's position on the issues in question, the Court disagreed. It deemed the amendments substantial and it affirmed that effective participation of the European Parliament in the legislative process is a fundamental factor in the institutional balance, and that to accept the Council's argument would undermine that institutional balance, and would deny the influence that the consultation of the Parliament can have in the legislative process.

- ⁷ Furthermore, cooperation between the institutions, like between the Member States and EU institutions is governed by the principle of sincere cooperation. The principle originally required Member States and EU institutions to cooperate loyally with each other and between themselves.⁴⁴ Respect of the principle entails the fulfilment of the positive obligation to take all possible measures to attain the objectives of the Union, and the respect of the negative obligation to abstain from taking any action which could be an obstacle to the attainment of such objectives.

In Case 204/86 *Greece v. Council* [1988] ECR 5323 the ECJ affirmed that the interinstitutional dialogue "is subject to the same mutual duties of sincere cooperation which [...] govern relations between the Member States and Community institutions" (Para. 16). The Court reaffirmed and specified this principle in case C-65/93, *European Parliament v. Council*. The Court found that while the Council had not waited for the European Parliament's opinion, it had, however, exhausted all possibilities for obtaining the Parliament's opinion. The Court therefore stated that "inter-institutional dialogue, on which the consultation procedure is based, is subject to the same mutual duties of sincere cooperation that exist between Member States and the Community institutions" (Para. 23).

- ⁸ In these rulings the ECJ not only defined the role of consultation as an essential element of the IIB and in the decision-making process as well as acknowledging the right of the European Parliament to protect its prerogatives, but it also invoked a duty of sincere cooperation in the interinstitutional dialogue and the principle of effectiveness in the decision-making. Furthermore, Smismans (2002: 2) noted that these court cases also permit a differentiated interpretation of the institutional balance. While the

⁴⁴ Art. 5 of TEEC contain the norm of sincere cooperation between the Member States and Community institutions. The explicit norm of sincere mutual cooperation between the institutions was only introduced by the Lisbon Treaty (in Art. 13(2)).

intergovernmentalist interpretation sees the IIB primarily as “a device to retain the supranational bureaucracy of the Commission under control of the European Parliament and especially of the Council”, the Parliamentary interpretation focuses on the ‘legitimizing role’ of the European Parliament, which, in the words of the Court “although limited, reflects at the Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly.”⁴⁵ This interpretation is in line with Lenaerts’ (1993: 23) notion, quoted above in relation to the basic definition of the IIB in the *Meroni case*, on the link between the IIB and decision-making process for the purpose of representing several interests in the decision-making process. Lenaerts and Verhoeven later (2002: 42) strengthen such understanding of the IIB by defining “a balanced interaction between representatives of various interests” as a fundamental component of the Union’s institutional balance (rather than an organic separation of powers). They continue by exemplifying institutions which represent various interests at the EU, including the Committee of the Regions, which “gathers ‘regional and local bodies’” and Economic and Social Committee, which “represents ‘the various categories of economic and social activity’”.⁴⁶⁴⁷

It is precisely this direction that later case law of the ECJ took. While the cases and the rationale so far show the ECJ’s definition and protection of the European Parliament’s prerogatives as an essential element of the IIB, later cases show the protection of the IIB itself via acknowledgment of (new) roles for the European Parliament.

- ⁹ In case C-70/88, *Parliament v. Council (Chernobyl)* [1990] the European Parliament brought an action in front of the ECJ under Art. 173 TEEC and Art. 146 Euratom Treaty for the annulment of Council Regulation (Euratom) No. 3954/87 of 22 December 1987. In the process of consultation on the mentioned Regulation, the European Parliament expressed its disagreement with the legal base chosen and requested a change of a legal base, which would result in a change from a consultation procedure to the cooperation procedure. The Commission did not comply with the request, and the Council adopted the Regulation. Under Art. 173 TEEC and Art. 146 Euratom Treaty, the European Parliament at the time did not have a right to institute

⁴⁵ Case 139/79, *Maïzena v. Council*, [1980] ECR 3393, at 3424, Para.34.

⁴⁶ In citation quote/unquote is in the original, referring to citation of Art. 257 and 263 of the TEC (consolidated version after the Nice Treaty.).

⁴⁷ In response to the quoted analysis by Lenaerts and Verhoeven (2002), Smismans (2002: 10-11) warns against a proliferation of bodies taken into the IIB, since this could mean reducing the IIB to a simple application of the rule of law. And “would be emptied of its ‘legitimizing potential’, be it either its link with territorial representation as in the traditional reading, or its role of balanced interest representation geared towards the formulation of the common good as in the new reading.” It need to be noted though that Smismans analysis focuses on functional representation and not another level of territorial representation.

proceedings against an adopted act. However, the Court concluded that in the given case the choice of the legal base caused a breach of the European Parliament's prerogatives and "those prerogatives are one of the elements of the institutional balance created by the Treaties. [...] Observance of the institutional balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions. It also requires that it should be possible to penalize any breach of that rule which may occur. The Court [...] must therefore be able to maintain the institutional balance and review the observance of the Parliament's prerogatives when called upon to do so by the Parliament" (Paragraphs 21-23). As a consequence, the Court argued that the maintenance of the institutional balance prevails over the absence of a Treaty provision entitling the Parliament to bring an action for annulment.

¹⁰ With this ruling the Court highlighted two fundamental observations: the role of the Masters of the Treaties as the setters of the certain balance and its own role of a protector of that IIB. As Lenaerts and Verhoeven (2002: 37) observed: "[I]nstitutional balance is a fundamental rule which may [...] move the Court of Justice to take a corrective action – even acting *contra legem* – when this is needed to see that rule respected." However, as argued by Advocate-General in the stated case Van Gerven, while it is in the province of the Court to uphold the institutional balance as it is set out in the Treaties (and grant the necessary procedural rights thereto, even *contra legem*), the Court cannot change the institutional balance in favour of one or another institution or political actor. The task of rendering the institutional balance more 'balanced' is one that belongs to the constituent power of the Union, i.e. to the Member States themselves as *Herren der Verträge*" (Lenaerts and Verhoeven 2002: 46, Opinion of Mr Advocate General Van Gerven⁴⁸).

¹¹ The Court confirmed this stance by ruling as inadmissible the case brought to it by the Belgian Walloon Region (C-95/97, *Région Wallonne v. Commission*). The Walloon Region brought an action under the first paragraph of Art. 33 of the ECSC Treaty and with reference to the fourth Paragraph of Article 173 EC Treaty for the annulment of Commission Decision of 18 December 1996, with a legal base in the ECSC Treaty. Both Articles provide that the ECJ has jurisdiction to review the legality of the acts of the Community institutions referred to in those Articles, but that its jurisdiction according to Art. 33 of the ECSC Treaty is limited to actions brought by a Member State or Community institutions and undertakings, and associations of undertakings. Referring to this point, the ECJ held: "The term

⁴⁸ C-70/88, *Parliament v. Council* (Chernobyl) [1990] ECR I-2041, Opinion of Mr Advocate General Van Gerven from 30 November 1989.

'Member State', for the purposes of the institutional provisions and, in particular, those relating to proceedings before the courts, refers only to government authorities of the Member States of the European Communities and cannot include the governments of regions or autonomous communities, irrespective of the powers they may have. If the contrary were true, it would undermine the institutional balance provided for by the Treaties, which govern the conditions under which the Member States, that is to say, the States party to the Treaties establishing the Communities and the Accession Treaties, participate in the functioning of the Community institutions” (Para. 6).⁴⁹

¹² At the same time these rulings again confirm the connection between the IIB principle and the decision-making process. It is in the decision-making process that the IIB comes to an expression and it is this process that maintains the IIB as set up by the Treaties. In case C-233/02 *France v Commission* [2004], the Court expanded on this link. It established that “determining the conditions under which [a non-binding soft-law] measure may be adopted requires that the division of powers and the institutional balance established by the Treaty in the field of the common commercial policy be duly taken into account.” (Para. 40) (*cf.* Senden 2005: 88). The Court thus expanded on the link between the IIB and decision-making process by recognising (i) that the IIB may differ between different policy areas, depending on the decision-making process in place and (ii) that the adoption of instruments of soft law can also have an impact on the institutional balance in the EU.

¹³ This overview of the ECJ’s ruling, relevant advocate-generals’ opinions and scholarly work with reference to the IIB allows us to draw major components of the IIB:

(i) The IIB is held in place by institutions exerting their powers as provided for by the Treaties.

(ii) This balance primarily comes to an expression in a decision-making process.

(iii) Consultation as part of a decision-making process is an essential element of the IIB.

⁴⁹ It is worth noting that in case T-288/97, the Court allowed the Italian autonomous region Friuli Venezia Giulia to apply for the annulment of Commission Decision 98/182/EC, by which, however, the Court did not change its previous ruling. In this case, the disputed act was based on the EC Treaty, whereby paragraph 4 of Art. 173 TEC confers the right to bring an action for annulment expressly on 'natural and legal persons', without excluding legal persons governed by public law. Accordingly, it follows from the difference in the wording of the provision from Art. 33 ECSC which only granted admissibility to Member States and EU institutions and above explained wording of Para. 4 of Art. 173 TEC that the principle of judicial protection under the EC Treaty is wider in scope and is not restricted to undertakings” (Para. 42).

(iv) Sincere cooperation among the institutions is necessary for the effective carrying out of their roles and with that an effective participation in a decision-making process as envisaged by the Treaties (e.g. consultation).

(v) Different IIB can be in place in different policy fields, depending on the provisions in the Treaties.

(vi) The IIB is not limited to legislative decision-making. Non-legislative decision-making in a given area also has to abide by the IIB as envisaged by the Treaties in that area.

(vii) IIB not only has a function of a fundamental guarantee for the distribution of powers, but also a legitimising function through guaranteeing that several interests are (effectively) represented in the decision-making process.

- ¹⁴ These components show the move from a strict understanding of the IIB in a basic sense of a principle of separation of powers to one which departs from a narrow interpretation of institutions in the sense of Art. 13 TEU and which allows for a broadened understanding of the IIB. Such an understanding includes other institutional bodies, which represent various interests and citizens in the decision-making at the EU level.⁵⁰

⁵⁰ Both, President van Rompuy and President Barroso alluded to such understanding in recent speeches. President van Rompuy in a speech given on 27 February 2012 to the Interparliamentary Committee meeting on the European Semester for Economic Policy Coordination. President Barroso, speaking in a BEPA/Notre Europe seminar on Community method included sub-national levels and the Committee of the Regions as their representative as part of the Community method.

Annex II: Matrix showing potential for strengthening of cooperation with the Commission⁵¹

		<i>Dimension of cooperation</i>					
		Right of information (when, oral or written, scope, automatic or request, etc)	Right of access to documents (similar as right of information)	Right of participation (observer status, to be heard, to enter an item on the agenda, joint committee, meeting, etc.)	Right of expression (where, when, statement added to the act, statement in the OJ, etc.)	Right of investigation/control (to pose questions, to request explanation, etc.)	
<i>Dimension of activities (policy-making)</i>	Policy initiation	Programming	Providing information on the implementation of the Commission's Work Programme prior to the mid-term meeting. (M)			<i>Passing of a non-binding resolution on the Commission's Work Programme (S), if applicable also including an invitation to the Commission to prepare a proposal in the area of territorial cohesion to pursue Treaty objectives. (M, L)</i>	Request the Commission to respond in cases of an invitation by the CoR to consider preparation of a proposal in the area of territorial cohesion to pursue Treaty objectives (L; Treaty change needed for obligation).
		Consultation		Full document transmission to the CoR, on par with other members of Commission expert groups. (M, L)	Observation status (M) and full membership (L) in the Commission expert groups <i>(Precondition: setting up internal rules on designation of a</i>	In line with a membership status in Commission expert groups. (M, L)	

⁵¹ Table represents the gist of the recommendations by means of filling-in the original analytical matrix. Unnecessary rows and columns are omitted. For clarifications, especially on the depth of cooperation, see corresponding chapter in the body text of the report. Text in italics refers to internal actions to be undertaken by the CoR. In final brackets to each item, a short- (S), medium- (M) and long-term (L) nature of the recommendations is indicated.

					<i>participant on behalf of the CoR in the expert group).</i>		
Decision-making	Legally binding	<p>Written information/answers to be provided to the CoR in cases of absence of Commission's representatives from the debate in the preparation of the opinion. (M)</p> <p>Early information on the upcoming request for re-consultation, including information on the nature of the change. (M)</p>	<p><i>Amending the CoR's Rules of Procedure with a provision stating that the CoR will request information and relevant documentation in the process of its preparation of an opinion from the Commission and the legislators.</i> (M)</p> <p>Transmission of the adapted proposal by the Commission. (M)</p>			<p>Joining (seconding) European Parliament's questions to the Commission or to the Council. (M, L)</p> <p>Commission to respond, upon request, to the CoR's concerns over the observation of the subsidiarity principle in cases where the CoR's consultation is obligatory. (M)</p>	
Implementation	Delegated and implementing acts		<p>Document transmission as needed for the formulation of the opinion. (M)</p>	<p>Participation in groups preparing implemented and delegated acts in an observer capacity <i>(Precondition: setting up internal rules on designation of a participant on behalf of the CoR in the expert group).</i> (M)</p>	<p>CoR's participation (in an observer capacity) to enable the participant to express the expert opinion with regard to the observation of the principle of proportionality and questions of multilevel governance and other issues of impact at the local and regional level. This opinion should be integrated into the documentation on the meeting. (M)</p>		

Annex III: Matrix showing potential for strengthening of cooperation with the European Parliament⁵²

		<i>Dimension of cooperation</i>				
		Right of information (when, oral or written, scope, automatic or request, etc)	Right of access to documents (similar as right of information)	Right of participation (observer status, to be heard, to enter an item on the agenda, joint committee, meeting, etc.)	Right of expression (where, when, statement added to the act, statement in the OJ, etc.)	Right of investigation/co ntrol (to pose questions, to request explanation, etc.)
<i>Dimension of activities (policy-making)</i>	Policy initiation	Programming			Annual meeting of the Conference of Presidents of the European Parliament and the President and Vice- Presidents of the CoR, in order to discuss the priorities of the coming year and agree on a list of proposals to which the CoR will be invited to provide an opinion, as well as on the list of proposals where the two bodies may cooperate more closely. (M, L)	
	Decision- making		Legally binding	Joint commitment to exchange information and automatic exchange of information/documentation on a number of concrete cases (e.g. territorial cohesion,	Invitation to Committee/Commission debates and hearings, joint organisation of	Systematic substantial reference to the CoR opinion to be included in the legislative resolution

⁵² Table represents the gist of the recommendations by means of filling-in the original analytical matrix. Unnecessary rows and columns are omitted. For clarifications, especially on the depth of cooperation, see corresponding chapter in the body text of the report. Text in italics refers to internal preconditions to be undertaken by the CoR. In final brackets to each item, a short- (S), medium- (M) and long-term (L) nature of the recommendations is indicated.

		<p>structural funds). (M, L)</p> <p><i>Adaptation of CoR's RoP to include stressing of the importance of sharing of the information.</i> (S, M)</p> <p>Sharing with the CoR any information with regard to the concerns over subsidiarity raised by the national parliaments, following its regular meetings with the national parliaments, and when such concerns are raised in the course of negotiations over a proposal. (S, M)</p>	<p>consultation hearings, joint stakeholder meetings on landmark proposals. (M, L)</p> <p>Participation in an observer capacity in the meetings between the representatives of the EP and the national parliaments. (S, M)</p> <p><i>Adaptation of CoR's Rules of Procedure, to allow for different forms of possible cooperation.</i> (S, M)</p>	<p>of the European Parliament (in cases of deepened cooperation). (M, L)</p> <p>Invitation to present CoR's concerns with regard to the observation of the principle of subsidiarity in the "Monday Morning Meeting". (S, M)</p> <p>Presentation of CoR's concerns with regard to the observation of the principle of subsidiarity in the relevant European Parliament committee. (S, M)</p>	<p>questions to the Commission or to the Council. (M, L)</p>
Implementation	Delegated and implementing acts	<p>Sharing with the CoR information received via the European parliament's functional mailbox (for delegated acts) and/or the comitology register (for implementing acts) (in cases when the European Parliament invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the European Parliament deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality). (M)</p>		<p>Submission by the CoR to the European Parliament an opinion on the draft delegated act in cases when the latter invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the European Parliament deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality. (M)</p>	

Annex IV: Matrix showing potential for strengthening of cooperation with the Council⁵³

		<i>Dimension of cooperation</i>				
COUNCIL		Right of information (when, oral or written, scope, automatic or request, etc)	Right of access to documents (similar as right of information)	Right of participation (observer status, to be heard, to enter an item on the agenda, joint committee, meeting, etc.)	Right of expression (where, when, statement added to the act, statement in the OJ, etc.)	Right of investigation/control (to pose questions, to request explanation, etc.)
<i>Dimension of activities (policy-making)</i>	Policy initiation	Request information by the General Secretariat of the Council on the coming about of the 18-month programme. (S)	Forwarding of the Council planning tools to the CoR as soon as they are endorsed (18-month programme) or presented (draft agendas of the Council formations) to the Council. (M)	Request to be heard at a working meeting of the Trio (and the General Secretariat of the Council and the Commission representatives). (M) At a working meeting with the Council Presidency upon its entry into office, at the level of Permanent Representative and/or Deputy Permanent Representative, to include possible input by the CoR in non-legislative initiatives and to identify dossiers on which exchange of views could take place at the Council Working Party/ Committee meetings. (S, M)	Prepare recommendations for the inclusion of specific initiatives in the 18-month programme (e. g. as 'Messages to the incoming Trio Presidency'). (S, M)	
	Programming					

⁵³ Table represents the gist of the recommendations by means of filling-in the original analytical matrix. Unnecessary rows and columns are omitted. For clarifications, especially on the depth of cooperation, see corresponding chapter in the body text of the report. Text in italics refers to internal preconditions to be undertaken by the CoR. In final brackets to each item, a short- (S), medium- (M) and long-term (L) nature of the recommendations is indicated.

	Decision-making	Legally binding			Invitation to attend and engage in an exchange of views at the level of a Council Working Party on pre-agreed themes. In cases of recurring themes (L) as well as in cases of concern raised by the CoR with regard to the observation of the principle of subsidiarity in an original proposal or in an adapted proposal (S, M), CoR's presence to become customary.		Joining (seconding) European Parliament's questions to the Commission or to the Council. (M, L)
		Non-legally binding					
	Implementation	Delegated and implementing acts	Sharing with the CoR information received via Council's functional mailbox (for delegated acts) and/or the comitology register (for implementing acts) (in cases when the Council invited the CoR to submit an opinion to the basic act on which the draft delegated act is based or in any other delegated act where the Council deems the opinion of the CoR would contribute to proximity, legitimacy and observation of a principle of proportionality). (M)				