



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 March 2014  
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**OPINION**

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**From:** Committee of the Regions  
**On:** 28 February 2014  
**To:** Council of the European Union

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**Subject:** Proposal for a regulation of a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny  
– Opinion on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached the Opinion of the Committee of the Regions for a regulation of the European Parliament and of the Council adapting to Article 290 and 291 of the Treaty on the Functioning of the European Union a number of legal acts providing for the use of the regulatory procedure with scrutiny.

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SECRETARIAT DU CONSEIL DE L'UNION EUROPÉENNE	
SGE14/02378	
REÇU LE	03 MARS 2014
DEST. PRINC.	M. CLOOS
DEST. COP.	

The President

EUROPEAN UNION



Committee of the Regions

28.02.14 00373

Brussels,  
PresCab/SG/ST/ED/cd/D-435/2014→ klas  
GT  
25.03.

Mr Evangelos Venizelos,  
Minister for Foreign Affairs  
Vassilissis Sofias 1  
GR-106 71 Athens

Mme G. TUTS

Your excellency,

I would like to thank you for the consultation request of the Council of Ministers dated 10 December 2013 to the Committee of the Regions regarding the following dossier:

**Proposal for a regulation adapting to Articles 290 and 291 of the TFEU a number of legal acts providing for the use of the regulatory procedure with scrutiny [COM (2013) 751 final – 2013/00365 (COD)].**

At its meeting on 10 February 2014, the CoR commission responsible for Citizenship, Governance, Institutional and External Affairs (CIVEX) decided not to issue an opinion on this proposal, but to reply in form of the present letter, recalling the CoR's recommendations on this matter put forward in a number of previous opinions which dealt with the issue of the delegation of powers<sup>1</sup>.

The participation of local and regional authorities in the decision making process at EU level contributes to democratic accountability and legitimacy, strengthens subsidiarity and proportionality monitoring, and is a concrete example of the principle of multilevel governance in action. What is more, local and regional authorities are often in possession of factual and empirical data, which can be useful in the assessment of the territorial impact of specific legislation.

<sup>1</sup> Inter alia the following opinions:

- Opinion CdR 239/2011 on the legislative proposals on the reform of the common fisheries policy, rapporteur Mieczysław Struk (PL/EPP)
- Opinion CdR 4/2012 proposal for a general regulation on the funds covered by the common strategic framework, rapporteur Catuscia Marini (IT/PES)
- Opinion CdR 86/2012 on the proposal for a regulation on the programme for the environment and climate action (LIFE), rapporteur Kay Twitchen (UK/NL)
- Opinion CdR 625/2012 on the data protection package, rapporteur Ursula Minnie (DE/EPP)
- Opinion CdR 1120/2012 on priority substances in the field of water policy, rapporteur Urve Erikson (EE/EA)
- Opinion CdR 1683/2012 on the code of conduct on partnership, rapporteur Stanisław Szwałski (PL/EA)
- Opinion CdR 591/2013 on the revision of the EIA directive, rapporteur Marek Sowa (EL/EPP)

The EU's Assembly of Regional and Local Representatives

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In this context, the Treaty specifies the areas within which the CoR is consulted by the legislator on an obligatory basis, but also provides for the possibility for consultation on legislation where cross-border cooperation or local and regional concerns are at stake (Art. 307 par. 1 TFEU). The Treaties also entrust a particular role to the CoR as regards the proper application of the subsidiarity principle. In addition, the CoR shares with the EU institutions the responsibility to ensure that EU legislation conforms to the principles of better law-making.

The Committee of the Regions, up to now, has not participated in expert groups which assist the European Commission in the preparation of delegated acts, or in comitology committees. It does, however, have a responsibility to scrutinize whether delegated powers are properly attributed and whether they are exercised within the limits set by the Treaty and the base legislative acts. This requirement is strongest in the areas of obligatory consultation, a fortiori for legal acts on which the CoR issued an opinion.

The Committee has addressed the issue of delegation of powers in previous opinions, where it dealt with the extent and the nature of the delegation and it has emphasised the need to restrict it to cases where indeed an amendment or supplementation of non-essential elements is sought. It should also be remembered that the Committee had been in the past critical of the wide-spread use of the comitology procedures in certain policy areas, e.g. the environment<sup>2</sup>.

**In particular:**

1. The CoR recognises that amending or supplementing the non-essential parts of legislative acts is a technical, but politically sensitive process, and therefore the co-legislators should be able to supervise the powers delegated to the European Commission.
2. For an effective scrutiny of the delegation and in the interest of legal certainty, the CoR has requested that the objectives, content, scope and duration of the delegation must be sufficiently precise in each case (cf. CdR 239/2011 point 45 and CdR 625/2012 points 11 and 26).
3. The CoR has repeatedly underlined that the subsidiarity and proportionality principles, as well as the principles of better law-making, should also apply to legislation adopted under the delegation of powers (cf. CdR 239/2011 point 46 and CdR 625/2012 point 24). Therefore, appropriate consultations with stakeholders and the performance of impact assessments may be necessary. Consultations should include public stakeholders at the local and regional level in matters where the CoR would be obligatorily consulted.
4. In the field of environmental policy, the CoR has been critical of the use of comitology and the wide spread delegation of powers to the European Commission on the grounds that it reduces transparency in the EU decision-making and operational process for local and regional authorities (eg. CdR 86/2012 point 35).

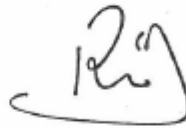
<sup>2</sup> See for example: Opinion CdR 159/2008 on industrial emissions, rapporteur Cor Lamers (NL/EPP).

The CoR will continue to examine along these lines those new legislative proposals, which stipulate that the European Commission retains the right to issue delegated acts, especially if this concerns areas within which the consultation of the Committee is obligatory. What is more, the CoR invites the European Commission, the Parliament and the Council to consider the participation of experts representing local and regional interests in expert groups assisting the European Commission in those areas that are of direct concern to local and regional authorities.

The CoR trusts that these recommendations will be duly considered and endorsed in your future work on this issue.

Should you require any further information, please do not hesitate to contact the CIVEX commission secretariat (email: [civex@cor.europa.eu](mailto:civex@cor.europa.eu) – telephone: +32 2 282 2502)

Yours sincerely,



Ramón Luis Valcárcel Siso

Copy to:

Mr Uwe CORSEPIUS, Secretary General of the Council of the European Union