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Beyond mere 'consultation': Expanding the European Committee of the Regions' role

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Abstract

The Committee of the Regions is commonly seen as a 'minor' part of the EU's policy-making system, but its institutional development and action offer interesting examples of the strategies used to actively expand the body's role. By tracing how the CoR is developing its institutional capacity, pushing the boundaries of its consultative mandate and deploying activities beyond its formal role, the article illustrates the institutional activism which characterizes much of the development of the EU institutional structure.

Keywords

Committee of the Regions; Institutional Activism; Multilevel Governance; EU institutions; Covenant of Mayors

The European Committee of the Regions (CoR)¹, created by the Maastricht Treaty in 1991-93 as a 'consultative body', has been studied from an institutional perspective mainly with a focus on how and to what extent it can exercise direct influence on EU decision making (Warleigh 1999; Christianssen 1996; Christansen and Lintner 2005; Hönnige and Panke 2013). Despite high expectations at the beginning, the rather limited competence of the CoR as anchored in the Treaties, and the ensuing difficulty to show clear evidence on where CoR recommendations found their way directly into EU legislation (McCarthy 1997; Hönnige and Panke 2016), have led to an overall decrease in the academic interest, and a relatively widespread dismissal as the CoR as a 'minor' element of the EU system.

More recently, however, the CoR has also been examined in the wider context of 'shaping EU policy from below' (Carrol 2011; Piattoni and Schönlau 2015), where the analytical approach includes special attention to how the CoR has developed over the years both the internal rules and mechanisms, and the external links and networks to try and increase its influence beyond the limited consultative task. Also, more recent empirical studies have underlined that the CoR (and the Economic and Social Committee) have more chance to exercise any influence on EU decision-making when they 'proactively promote their positions through extracurricular activities' (Hönnige and Panke 2016: 624). It is in this latter sense that the present piece, within the framework of this special issue on the notion of 'activism of the EU supranational institutions', will focus on the CoR as a relatively new addition to the EU's system which has indeed been actively seeking to consolidate and expand both its formal standing, and its informal tools to make its members' voices heard. The CoR, as a 'supra-national body' within the EU's institutional system representing a particular sub-national dimension with its own distinctive legitimacy, views and perspectives on European integration, has been active over the past 25 years in trying to make the link between these different levels stronger and more visible, while trying to meet diverse expectations of different actors in the EU's institutional system.

The article will therefore briefly set out why and how a notion of 'institutional activism' fits well to try and describe the development of the CoR since its creation. It will present an overview of some of

the ‘mile-stones’ (CoR brochure 2014a) of the CoR’s institutional path since its creation, both at the level of primary law (successive changes to the EU Treaties) and at the level of the CoR’s internal rules and institutional practices, trying to identify how the institution’s or its members’ interest to expand their role may be contributing to understanding their actions. We will then look at two examples of policy initiatives in the context of which the CoR has employed different strategies and developed specific activities in order to raise awareness for the local and regional dimension in EU policy, to establish itself as a credible policy actor and to create access points for its own perspective, thus ‘actively’ seeking to consolidate and expand its role. The focus here is not primarily on whether the individual policy actions can be said to have been ‘successful’ in increasing the CoR’s institutional standing, but rather to examine in how far the goal and logic of institutional activism can serve to explain some of the developments and choices of the Committee.

INSTITUTIONAL ACTIVISM

In the wider debate on the drivers and dynamics of European integration, and whether ultimately institutions matter – and if so, whether it is supranational institutions that matter *more* than national ones – or vice versa, the CoR as such plays only a minor role. Yet, the Committee and the first 25 years of its existence do offer some interesting insights into the particular opportunities and limitations within the process of ‘institutionalization of Europe’ (Stone Sweet et al. 2001), and some illustrations and indicators of how the evolving EU structures shape and are shaped by the activism of a particular set of actors, in this case the representatives of local and regional levels of governance (CoR members) and EU functionaries who work for them (CoR staff). Beyond the CoR’s concern with the question of whether it will be eventually recognized ‘officially’ by the Masters of the Treaties as an EU ‘institution’ or not – a demand which has consistently been made by the Committee, but not been granted in three successive rounds of Treaty revision at Amsterdam, Nice and Lisbon – the development of this relatively new body within the wider framework of the EU institutions does offer some opportunity to investigate the process of progressive European integration through institutional lenses.

The notion of ‘activism’ in this context is understood as individual or collective actors making ‘a particularly energetic effort’ to use gaps or openings in the EU’s legal-political framework to ‘fulfil an expansively defined understanding of [their] officially prescribed powers and goals and/or an effort, explicitly or implicitly, to expand these powers and goals’ in order further their own visibility, role, influence and interests (Howarth and Roos 2017). In this endeavour, they use a variety of strategies which have been studied for different actors in the EU policy process, such as trying to ‘frame’ issues or policies (Daviter 2007), to set or at least to influence the agendas of policy makers (Princen 2011) and to make use of the various ‘opportunity structures’ to influence decision making (Princen and Kerremans 2008). In engaging in these activities, the institutional actor (in this case, the CoR) is clearly being shaped by the wider EU institutional context, while trying to influence it. It is therefore only of secondary importance for this study whether the Committee of the Regions, its members or its staff, are ‘successful’ in actually shaping the EU structures or their role within them in the direction they desire: through (potentially negative) feedback loops, the experience of the policy process leads to adjustments, new attempts, institutional learning and thus shapes the CoR as an institution (Carpentras and Stone Sweet 2001). This is why an ‘institutional activism perspective’ is considered to be a valuable tool to understand the Committee’s institutional development so far.

The Committee of the Regions, which was created with a ‘weak’ institutional role, offers a particularly instructive example of these dynamics, because it was forced from its inception to develop the necessary tools and activities to fit into the existing structures, and to justify its role.

Precisely, it has been argued, because it is not directly involved in making legislative decisions, it has had to make virtue out of necessity and has explored other ways of ‘activating’, ‘proposing’, ‘receiving’ and ‘surveilling’ other EU actors and their decisions (Piattoni and Schönlau 2015). In doing so, it has had to reckon with, and tried to adapt to, two different sets of expectations on the part of the other EU institutions (which in turn influence the CoR’s self-perception): the expectation, on behalf mainly of the European Commission that it can provide expertise on the reality of implementation of EU policy on the ground, and local/regional situations; and the, initially somewhat ambivalent, expectation mainly by the European Parliament that the elected representatives of local and regional authorities could provide additional democratic legitimacy for European integration by bringing local concerns to the EU level, and explaining EU decisions back in their regions (Domorenok 2009).

With regard to the terminology used in the literature of institutionalization in the EU context (Stone Sweet et al. 2001), it is important to bear in mind that the Committee of the Regions, often referred to as an EU ‘body’ (to distinguish it from the EU ‘institutions’ formally listed in Art. 13 TEU) is a meso-level ‘organization’, and as such must be considered analytically at the same level as the European Commission, Parliament and Council, despite the considerable differences in relative power and influence. In the following, the term ‘EU institutions’ will however be used in the sense of the Treaty on European Union, unless specified otherwise. In this perspective, part of the CoR’s ‘institutional activism’ is aimed at becoming more like the ‘real’ EU institutions and thus achieve eventually, in a future round of Treaty change, even formal inclusion in this particular club – as an outward recognition of its fulfilling functions which are comparable and of similar importance to those carried out by the formally ‘institutional’ parts of the EU system.

While the Committee of the Regions may be presented as a particularly instructive example below, it is certainly not alone in being ‘active’ in self-promotion among the EU institutions, with the notion of ‘activism’ having been applied most comprehensively to the European Court of Justice (Dawson et al. 2013), but also to virtually all other bodies making up the EU (see other contributions to this volume). In trying to understand the overall direction of the EU’s integration, the question then is to what extent the creation, development, expansion and interaction of the different bodies is shaped by the activism of any one part of the system, and how potential conflicts between different, competing activisms are managed. In the case of the CoR, this requires to identify the different influences of these institutional dynamics and to see what contribution the ongoing evolution of this particular body can make to the wider EU polity. The study of this exemplary case should also contribute to fine-tuning the concept of ‘institutional activism’ as a tool with which to better understand the development of, and the interaction between, different elements of the evolving EU system.

THE CREATION OF THE COR AND ITS DUAL ROLE

Many contributions to this special issue are focusing on the question why the EU’s system has been evolving the way it has and especially on what factors drive institutional change and innovation in this context. Regarding the CoR, both questions are particularly interesting and they have to do with two quite distinct concrete dimensions: firstly, why did the ‘Masters of the Treaties’ in the Intergovernmental Conference in 1990-1991 (and the European Commission) decide to create a new ‘quasi-institutional’ actor at the supranational level in the shape of a consultative committee of local and regional representatives; and secondly, what role does institutional activism by/within this newly created structure play in shaping its current position in the EU system.

In trying to explain the 'origin' of the CoR, analysts most commonly point to the interplay between the relatively powerful interests of some subnational actors (notably the German Länder) and the 'activist' institutional support from the European Commission (Warleigh 1999). As for the former, the story goes that they were increasingly concerned about the impact of progressive European integration on their room for manoeuvre in many policy areas where they were more and more often presented with ever more sophisticated EU-legal frameworks, limiting their own institutional space. Notably in the German federal system, and in the regionalizing/federalizing systems of Spain and Belgium, sub-national entities were contesting the national governments' role in negotiating compromises at EU level behind closed doors, which were then presented to the regions/Länder as 'unalterable'. Moreover, in particular since the deepening of integration with the Single European Act (1985-87), sub-national levels of governance have been called upon to implement ever more complex EU legislation and thus demanded more information about, and say over, European level policy making (Jeffrey 2002).

The European Commission, on the other hand, had been seeking over the years to build direct links with sub-national levels of governance notably in the area of cohesion policy, to improve the effectiveness of policy design and delivery (Hooghe and Marks 1996). Some saw the Commission's initiatives in this area even as a deliberate attempt to by-pass Member States and create a 'Europe of the Regions', which would ultimately give more influence to the sub- and supranational levels of governance at the expense of the national one (Jeffery 2002). In this sense, the setting up of a Committee of the Regions by inserting a new article into the Treaty itself could be seen as an example of institutional activism, at the moment when a Treaty change IGC provided the window of opportunity to build on the existing, less formal structures of a consultative committee of regional and local representatives chosen by the Commission (which had been set up in 1988, Warleigh 1999).

Clearly, the eventual structure that was set up by including Art 198a in the Maastricht Treaty - a Committee which would have no formal decision making power, and which brought together representatives of very different kinds of sub-national structures, with a relatively limited set of policy areas to be consulted on, and with a membership to be determined essentially by national governments - represents a typical EU compromise (Piattoni and Schönlaue 2015). While the member states with strong regional governments (notably Germany, Spain, Belgium) had pushed for a strong CoR, other member states had been rather sceptical of the whole idea, or had tried to suggest integrating the requested regional dimension into the existing European Economic and Social Committee (EESC) (Feral 1998). Against this minimalist view, the European Commission did play an active role in the process, proposing itself the setting up of 'a body to represent the Community's regions', to the intergovernmental conference, while noting immediately, however, that the '...wide variety of regional structures in the Member States precludes, and will probably continue to do so, the involvement of such a body in the decision-making process' (European Commission 1990).

This compromise, with the CoR being modelled in structure on the EESC and containing a great number of internal cleavages (local-regional, political, legislative and executive representatives, as well as rich and poor, big and small etc.) has been taken by some as one of the main reasons for the CoR's relative 'weakness' (Christiansen 1995; Brunazzo and Domorenok 2007). Yet, at the same time this diverse structure has also provided scope for some of the CoR's activism in terms of expanding its own role and profile. As mentioned above, it is important to note that the Committee has been faced from its creation with two sets of rather different 'expectations' in terms of the role it could/should play in European integration, both among its members and from the 'other' actors in the European process, notably Commission, Parliament and, to a lesser extent, the Council/ individual member states: on the one hand, the Commission was at least initially looking mainly for technical expertise and feedback on EU policies' impact 'on the ground', in particular with regard to regional/cohesion policy, whereas some in the European Parliament, and certainly many of the

newly appointed members of the CoR, saw their role from the beginning as a more general political one, providing additional legitimacy to European integration and policy making by bringing in a different set of democratically legitimated stakeholders (Clement 1995; Cole 2005; Domorenok 2007).

In this latter perspective, the CoR's mission statement, adopted in 2009 to commemorate the 15th anniversary of the first CoR plenary meeting in 1994 and addressed not least to the EU institutions, starts off by claiming 'We are a political assembly of holders of a regional or local electoral mandate serving the cause of European integration. Through our political legitimacy, we provide institutional representation for all the European Unions' territorial areas, regions, cities and municipalities', and further on the CoR members add that as part of their activity they also '... keep watch to ensure that the principles of subsidiarity and proportionality are upheld, so the decisions are taken and applied as close to the citizens as possible and at the most appropriate level. Thus, we ensure that common policies are implemented more effectively and at greater proximity'. Further on still, the CoR members explain that to fulfill these tasks they '...set up platforms and networks, organize forums, so as to facilitate cooperation and the pooling of experience between regions, cities and municipalities, and develop partnerships with their representative organisations.' (CoR brochure 2009a). These two quite distinct, though certainly not mutually exclusive 'logics' are very present in many of the CoR's activities and expressions. While, of course, they carry the risk of disappointing one or the other group of expectations, they also offer the possibility for the Committee and its members and administration to exploit these different expectations in the pursuit of recognition and access. It may be exaggerated to claim that the CoR tries to 'play off' such different expectations by its institutional interlocutors against each other, but it does mean that different techniques and different messages can be employed when trying to promote the CoR and its role to different audiences.

GROWING INTO THE NEW ROLE(S)

In terms of the concrete development of the CoR and its activities, the ambiguous starting conditions meant that the capacities to fulfill both 'roles' had to be expanded in parallel. It is indeed important to notice the significant changes which have taken place at the level of the institutional standing in the EU Treaties since the Committee started its activities in 1994. Most obviously, the areas of 'mandatory consultation' of the CoR have increased from the original five, under the Treaty of Maastricht (social and economic cohesion, public health, trans-European networks, education and youth, culture), to ten, under the Treaty of Amsterdam (which added environment, social policy, vocational training, transport, employment), to which the Lisbon Treaty then added further (civil protection, climate, energy, services of general interest). Thus, at successive rounds of Treaty revision, the institutional rules have been changed in favour of the CoR, not least due to active lobbying by the Committee and its members both with the European Commission and with the member states (Piattoni and Schönlau 2015).

Possibly even more importantly, with the Convention drafting the European Constitution (2002-2003) and the subsequent Lisbon Treaty, the CoR did achieve further progress at the level of its 'formal' role in interacting with the EU institutions. Six members of the CoR participated as observers in the Convention and put forward a number of proposals to promote the role of the CoR, but also a number of its central political ideas (CoR opinion CdR 127/2002). Some of these demands were then indeed included into the Draft Constitution and 'survived' into the Lisbon Treaty – notably the recognition of social, economic and *territorial* cohesion as a goal of the EU (Art. 3.3 TEU), and the inclusion of the CoR's right to take action to defend its own prerogatives, and the principle of subsidiarity, before the European Court of Justice (Art. 263 and Art. 8 of Protocol No. 2, respectively).

This kind of increased institutional standing was certainly possible only because a number of factors made the preferences of other actors converge in their favour, but they would probably not have happened without the determined 'policy entrepreneurship' of the CoR itself (Jeffrey 2003). While the overall debate on 'governance' launched by Commission president Romano Prodi with the White Paper on Governance in 2001 (with some explicit references to the role of sub-national levels of governance), and growing concerns about the EU's legitimacy were clearly conducive to some institutional innovation, it did need an active approach by the CoR on its own behalf to achieve the recognition of these elements at Treaty level (Piattoni and Schönlau 2015).

At the same time, and in response to the changes of the CoR's standing, but also to exogenous events such as EU enlargement, the Committee's membership has grown significantly over the years, and with it its 'organizational capacity' in terms of staff and budget. From the original 189 CoR members (plus the same number of alternate members) in the Treaty of Maastricht – that is, an EU of 12 member states - the Committee grew to 353 in 2013 (after the accession of Croatia), a figure that was then brought down to 350 through re-distribution of members between countries, in order to meet the membership ceiling introduced by the Lisbon Treaty (Art. 305 TFEU). In parallel, the CoR has seen a steady growth in both its staff and budget, from the very humble beginnings, when its running was assured through human and financial resources provided by the Economic and Social Committee, to a situation in 2015 when the Committee of the Regions had its own budget of 89.2 million Euros and a permanent staff of around 520.²

These ongoing processes of change have also been reflected in an increase in complexity and sophistication of the Committee's internal and external structures, to ensure that it maximizes the impact of the political process of adopting its opinions and feeding the results of its debates into the EU policy making process. While the CoR originally had been given only a 'conditional' mandate to devise its own rules of procedure (Art. 198a of the Maastricht Treaty foresaw that it should submit its rules 'for approval to the Council, acting unanimously'), this requirement was removed with the Treaty of Amsterdam in 1996. Subsequently, the CoR has revised and expanded its internal rules on numerous occasions, with a clear emphasis on increasing the visibility of the political process in the CoR thematic Commissions and in the CoR plenary.

These elements are crucial in underlining the democratic legitimacy of the CoR's contribution and in a similar vein, rule changes frequently try to emulate, as far as possible, similar developments in the European Parliament (Piattoni and Schönlau 2015; Roos 2017). In this sense, while the European Parliament's own institutional development was originally based on bringing together elements of different national parliamentary systems and the EP could achieve its own empowerment by reference to a common 'standard of legitimacy' (Rittberger 2012), the Committee could not invoke any clear national models. It therefore had to find its frame of reference within the EU system and depends on it for its institutional advancement. Therefore, the Committee has actively sought to expand and formalize its relations with the other key players of the EU system, which it considers as the main addressees of its political work, the European Commission and the Parliament. The CoR has now formal cooperation agreements with both institutions (with the EC since 2001, with the EP since 2014), ensuring direct contacts between members, access to information, joint activities and overall visibility for the Committee. It remains to be seen if these first steps of formalization of informal practices of cooperation may, in the medium to long term, lead even to a formalization at Treaty level, as has been the case for the European Parliament (Roos 2017).

Over the years, the Committee has consistently pursued these 'obvious' and to some extent more 'technical' elements of institutional growth through lobbying the three main EU institutions, where the European Commission was initially seen as the main 'ally' of the CoR, while in the European Parliament there were some reservations in the early years for fear that local and regional

representatives could become competitors for legitimacy (Warleigh 1999). At the same time, in financial matters the CoR depends for its annual budget and any increase to that on the two branches of EU budgetary authority, the European Parliament and the Council, which are jointly holding the purse-strings. In this sense, the CoR has to continuously push for institutional growth with the main EU institutions, and therefore justify its own role and contribution. Apart from these formal activities, however, the Committee of the Regions has also tried to explore other avenues of pushing the limits of its prescribed role. It is to this more 'political' activism that we will turn in the following section.

BEYOND THE CONSULTATIVE MANDATE

Against the backdrop of the need to establish itself as a new player in the inter-institutional EU arena and the relatively weak consultative mandate as set out above, the CoR from early on has sought to devise additional strategies and activities to maximize its influence (Schönlau 2010; Piattoni and Schönlau 2015). Far from being content with just responding to European Commission, and occasional European Parliament requests to deliver opinions in the areas of consultation defined as mandatory in the Treaties, the CoR has produced policy input on many subjects beyond. In this, the Committee has frequently made use of the instrument of 'own initiative opinions', which had been foreseen from the beginning in the Maastricht Treaty, again following the example of what had been the case for the EESC since the Treaty of Rome. While these 'own initiatives' are also common to 'anticipate' more formal consultations when the CoR wants to intervene in the very early stages of policy-formation or policy-revision, this instrument also allows for ideas which are not directly related (yet) to the other institutions' agenda, to be formally put forward. Interestingly, the use of own-initiative opinions has been subject to some debate within the CoR because it was felt by some (CoR members and CoR staff) that an 'excessive' use of this instrument could be considered by the other EU institutions as a) too outlandish; b) too much driven by the CoR's institutional self-interest, or c) overly particularistic, lacking a horizontal EU-dimension, and could thus damage the Committee's credibility.

It is interesting to note that in response to these fears and the relatively high number of own-initiative opinions especially in the early years of the CoR (for example, in 1996, 18 out of 43 CoR opinions were own initiative ones, and in 1999, the number was 30 own initiative opinions out of 70, but later declined, for instance in 2006, only 2 out of 39 opinions were drafted at the CoR's own initiative).³ This led to the development of an internal 'filtering' process which is by now partly formalized in the Committee's rules of procedure (CoR Rules Rule 44), and partly is based on a gentlemen's agreement between the CoR political groups. According to this process, a proposal for an own-initiative opinion from an individual member needs to be first approved by the member's political group, then supported by the relevant thematic commission, and then (formally) approved by a 3/4 majority of the CoR bureau. While this procedure appears rather heavy, proposals for own-initiative opinions are rarely rejected at the bureau-stage, but the process does give incentives to members to make sure their proposals are put forward with reference to the CoR's political priorities and its relations with the other EU institutions, so that the 'activism' of individual CoR members is channeled in a way that is conducive to the CoR's overall institutional interest.

Many of these own-initiative opinions, as mentioned, are in fact used to avoid having to wait until a formal consultation is received from Commission or Parliament, in areas where it is clear from the annual working programme of the European Commission or the general political debate that something is going to be presented in the future. For instance, CoR own-initiative opinions in 2015 have covered issues such as the European Citizens' Initiative (CoR opinion CdR 2606/2015), where

the Committee wanted to contribute early to the review of the ECI regulation which the Commission was to propose; the Transatlantic Trade and Investment Partnership (TTIP) (CoR opinion CdR 5385/2014), where the Committee wanted to underline that this agreement will have an impact on many areas of regional competence, and in some countries will also have to be ratified by regional parliaments; or on the ‘outcome of the negotiations on the partnership agreements and operational programmes’, under the EU cohesion policy (CoR opinion CdR 6248/2014), where the CoR had been already formally involved in the earlier debates on EU cohesion policy framework 2014-2020 (Schönlau 2016). On the other hand, the CoR also adopted a series of own-initiative opinions in 2015, which went beyond a strict interpretation of its consultative role, for instance on ‘Local and Regional support for Fair Trade in Europe’ (CoR opinion CdR 5704/2014). This brings to the attention of other EU institutions the key role played by existing local and regional twinnings and fair-trade promotion schemes (while also asking that this role be recognized in EU trade policy in the future); or on ‘Developing the Potential of Ocean Energy’ (CoR opinion CdR 1693/2015), suggesting that maritime regions need support and possibly a clearer legislative framework at EU level in order to exploit this potential; or finally on the ‘Local and Regional Dimension of the Sharing Economy’ (CoR opinion CdR 2698/2015), which tried to make the voice of sub-national governments heard in the emerging debate about the profound impact that new forms of economic exchange due to digitalization will have at all levels of governance.

These are just a few examples of opinions through which the Committee of the Regions is actively seeking to expand its activities beyond the narrow confines of being consulted by the other EU institutions and influence the wider EU agenda. Clearly, this activism takes place within the context of ongoing inter-institutional dialogue, political exchange and institutional development. It is difficult in this context, and given the complexity of the debates, to precisely show whether/ how the CoR is ‘successful’ in permanently pushing the boundaries of its treaty mandate – apart from the observation that these activities have not been challenged by any of the other institutions in any formal way.⁴ Yet, in trying to understand how institutional activism may shape the way that the CoR has developed so far, initiatives such as these, which take up a lot of the political capital of the CoR and its members, and which are also subject to substantial activity after their adoption,⁵ need to be taken into account. But the Committee has also embarked on other activities beyond the mere production of opinions in order to expand its role in the EU policy process. It is to two particularly relevant examples of this kind of ‘extra-curricular activity’ (Hönnige and Panke 2016) that we turn next.

ACTIVELY PUSHING THE BOUNDARIES

For any actor, in order to gain influence in a given political context, and *a fortiori*, for a new actor who arrives without strong formal powers, the strategic options are: they must try to be heard/seen by other actors, they must try to build credibility with them and they must develop the instruments and skills to play the political game. As Princen notes, in the EU context, these phenomena have been studied often with regard either to the central institutional actors (Commission, Council, Member States, European Parliament) or with regard to non-institutional interest groups (Princen 2011). Yet, it seems obvious that the same logic should also apply to other actors such as the quasi-institution CoR. Writing on the issue of ‘agenda setting’, Princen identifies indeed two main challenges for every policy actor, namely ‘gaining attention and building credibility’ and two ‘key factors that actors can affect (venues and frames)’ (Princen 2011: 928). While this is true for attempts to ‘set the agenda’, the challenges are similar also for influencing decision making even on issues which are already on the agenda. Princen describes further the four strategies that an actor can use to gain attention, either by ‘mobilizing supporters or by arousing interest’ and to build credibility, ‘by building capacity

or by claiming authority' (Princen 2011: 931). Not all four of these strategies are of equal relevance for the CoR's activities in the examples below, but they do provide a useful reference framework to identify different elements.

Case one: Multi-Level Governance

A particularly instructive example of institutional activism is constituted by the CoR's initiative to develop and promote its own concept of 'multi-level governance' not just as an analytical notion in the way it was coined by Hooghe and Marks (1996), but as a more normative-political concept and thus as a blue-print for a reformed European Union in which the CoR itself, and the local and regional authorities represented in it, would play a more prominent role in order to increase the legitimacy and effectiveness of EU policy making.⁶ In fact it is this very understanding of the EU as a multi-level governance system with a focus on the sub-national level in the 1990s which has been identified as the origin of the 'governance turn' in EU studies (Kohler-Koch and Rittberger 2006). The Committee of the Regions itself started in earnest to discuss the issue of European governance and its own role in it with an opinion adopted in 2002 on the 2001 European Commission White Paper on Governance (COM (2001) 428). Interestingly, in this opinion the CoR does not yet refer to the concept of 'multi-level governance' explicitly, but it does welcome '...the European Commission proposal to improve its system of relations with all its partners - the European institutions, the Member States, regional and local authorities and civil society' (CoR opinion 103/2001, point 1.4). In fact, the debate launched by the Commission White Paper did recognize, as noted by Piattoni and Schönlau, explicitly the need to connect European integration more strongly with the local and regional levels of governance and contained some specific recommendations on the CoR, 'but without proposing concrete changes to its legal or institutional standing' (Piattoni and Schönlau 2016: 49).

In response to this political opportunity, provided by the general debate among the EU's institutional actors on how to react to growing concerns about the legitimacy of European integration in the face of impending enlargement and the difficult path towards institutional reform with the Constitutional Convention, the failed referenda and the slow ratification of the Lisbon Treaty, the CoR adopted a classical 'agenda setting strategy' (Princen 2011). The Committee began by organizing a series of academic-political debates called 'ateliers on multi-level governance', in 2008-2009, and thus tried to build its own credibility on this subject. Bringing together a 'multi-disciplinary network of recognized experts and think tank managers in order to develop innovative ideas and integrate the concept, tools and concrete examples of local and regional governance into the EU decision-making process',⁷ the ateliers focused specifically on multi-level governance as a way to bring sub-national levels of government closer to EU decision making. From these exchanges between academics and politicians (CoR members) as well as EU officials, and based on the wide array of analytical and normative understandings of multi-level governance (Stephenson 2013), the Committee of the Regions then distilled its very own 'political' notion in an own-initiative opinion, called the 'White Paper on Multi-Level Governance (CoR opinion 89/2009).

Using this institutional tool, which allowed the CoR to communicate its ideas and views to the wider EU institutional setting, and linking it explicitly to the widely known and discussed 2001 Commission White paper, the Committee was trying to frame the multi-level governance issue in a way that would 'arouse interest', employing both approaches described by Princen as using 'big words' and 'small steps' (Princen 2011: 933-934). Positioning the CoR with its perspective 'from below' in the overall debate on EU governance, and at a time when the European integration project was being challenged because of its remoteness from the citizens, the CoR linked its activity to the 'big words' of 'democracy' and 'legitimacy'. This tactic did provide the hope to get at least some interest from

the European Commission and Parliament. In fact, the EU's Heads of State and Government had recognized in their Berlin declaration on the 50th anniversary of the Treaty of Rome in 2007 that in the EU system 'tasks are shared between the European Union, the Member States and their regions and local authorities' (European Council 2007) – and the CoR built on this recognition to present its concept of multi-level governance as a 'new' and 'dynamic' way of building Europe in Partnership (CoR opinion 85/2009).

Yet, in order to frame the multi-level debate and to 'arouse the interest' of other actors, sufficiently to 'mobilise' support, the CoR also needed to build, and to be seen to develop, 'capacity' on the subject (Princen 2011: 935). Following on from the ateliers, the Committee went further not just commissioning outside expertise on developing a 'score-board' for multi-Level governance⁸, but then also drawing on the experience of the regions and local authorities represented in the CoR, as well as other institutional actors in and beyond the European Union. It organized a quite wide-ranging 'consultation' on multi-level governance in 2009 based on a CoR-designed questionnaire, to which not only 24 local or regional authorities and 13 regional Parliaments responded, but also more than 35 associations of local and/or regional governments, as well as an impressive list of international organizations from the Council of Europe, to the OECD and various UN bodies with whom the CoR has working relations.⁹

The results of this consultation were further 'promoted' by the Committee of the Regions in yet another own-initiative opinion in 2012 on the issue of 'building a European Culture of Multilevel Governance, a follow up of the Committee of the Regions White Paper' (CoR opinion 273/2011). In this further political statement, the CoR announces the multilevel governance scoreboards as a tool to 'measure annually to what extent the main principles and mechanisms of this type of governance have been taken into account in the European Union's political cycle, focusing on the regional dimension of the policies and strategies analysed' (CoR opinion 273/2011: 1). Furthermore, to increase the political momentum of its campaign, the CoR developed the idea of a 'European Charter for Multilevel Government', as an instrument where political representatives (not only those who are CoR members) could sign and pledge, on behalf of their authorities, that they adhere to the principles of multilevel governance as spelled out by the CoR for different policy areas. While this Charter (formally adopted in 2014) had only gathered 220 signatories by 2016¹⁰, and clearly had so far not realized wide-scale mobilization of support, it can still be seen as one of the 'small steps' trying to increase the credibility of the Committee.

Clearly, it is very difficult to measure the absolute impact of the CoR's set of policy initiatives on multi-level governance in terms of real policy change. Yet, it is clear that multi-level governance has been one of areas where the CoR has tried to actively promote its very own contribution to European integration and by this token to extend its own 'institutional' standing.¹¹ The range of activities and instruments employed by the Committee to push this notion forward and develop its credibility with the EU institutions, building on the debates about cohesion policy (Schönlau 2016), but also applying it to other policy areas, is quite interesting. By making use of the 'political opportunity structure' (Princen & Kerremans 2008) of the governance debate, and by different agenda setting strategies, the CoR has shown that it is willing to become an active 'institutional' player, who seeks to push the boundaries of its relatively narrow mandate, in the interest of both its members and its collective institutional interest. Multi-level governance, traditionally perceived by other institutional actors as a specific structural feature referring to the EU's cohesion policy, is promoted by the CoR as a general principle of organizing EU decision making in the interest of legitimacy and proximity of the EU to the citizens. In this sense, the CoR is going beyond the letter of the Treaty in the way it interacts with the European Commission, Parliament and Council and is trying to further its institutional interest by linking this principle to other policy areas.

Case two: Covenant of Mayors

An example, which is clearly linked to the more abstract logic of multi-level governance, but applies it to a concrete policy area, is the range of activities which the Committee of the Regions has developed in the field of fighting climate change, and its role in supporting and promoting the Covenant of Mayors. The idea that sub-national actors and their networks can and do play a crucial role in developing and implementing action to mitigate climate change has been on the political and scientific agenda at least since the mid-1990s (Betsill and Bulkeley 2007). The Committee of the Regions has also discussed these issues since 1997, in view of the global climate negotiations in Kyoto that year (CoR opinion 104/1997), long before climate change was added to the areas of 'mandatory consultation' of the CoR by the European Commission following the entry into force of the Lisbon Treaty. It was, however, quite a long way from the general affirmation by the CoR and its members of the role that local and regional authorities should play in addressing climate change in 1997, to the Committee becoming directly involved in the institutional implementation of EU policies in this field. Yet, already in the 1997 opinion, the CoR underlined the need to support the coordination of local and regional climate initiatives at EU level, for instance by carrying out coordinated surveys of local energy consumption and greenhouse gas emissions, drawing up a 'business as usual scenario', identifying ways of reducing emissions and setting local targets (CoR opinion 104/1997: 4.8). In this context, the CoR identified the Commission-supported network of local and regional energy agencies as a great tool to work in this direction (CoR opinion 104/1997: 4.7).

Yet, getting the European Commission to move further in developing this tool seems to have proven rather difficult at the outset: in its 2001-2002 opinion on the proposed Council Decision on EU ratification of the Kyoto-Protocol, the CoR complained that its 'proposals for initiating a dialogue with local and regional authorities [...] have largely been ignored by the Commission' (CoR opinion 458/2001: 2.1). In fact, emphasis on concrete steps and enthusiasm towards the involvement of cities and regions directly in EU climate governance via the CoR seem to have diminished in the following years, even within the CoR itself. The CoR opinion issued in 2005 on 'Winning the Battle against Global Climate Change' (CoR opinion 65/2005) only makes very general recommendations and references to the role of sub-national actors, but does not provide any concrete institutional suggestions. On the contrary, it appears that the impetus for the next step in this direction seems to have come from the European Commission, rather than the Committee of the Regions. In the European Commission's 2006 'Action Plan on Energy Efficiency', the idea of a 'Covenant of Mayors to be created in 2007' is launched, to bring 'together in a permanent network the mayors of 20-30 of Europe's largest and most pioneering cities.' (European Commission COM (2006) 545 final: 18). Di Martino notes in this context that the Committee of the Regions was subsequently even 'invited by DG-TREN to implement the Covenant, running its central office and through it the Covenant relations with regions and cities', but declined this invitation (Di Martino 2012: 3).

The reasons why the CoR did not want to take up this particular task in the way apparently envisaged by the European Commission would require further research. It does, however, seem obvious that the original idea of bringing together just '20-30 mayors of Europe's largest and most pioneering cities' (European Commission COM (2006) 545 final: 18) would not have been easily compatible with the diverse membership structure of the CoR, bringing together as it does both large and small cities, but also regions and intermediate authorities of various sizes and competencies. Moreover, and apart from general reservations regarding the available administrative, financial and human resources within the CoR structures, another concern probably also played a part in making the Committee reluctant. Taking up such a task on behalf of the European Commission would have risked to be seen as not recognizing the wider *political* role of the Committee, and tipping the balance too far towards the CoR being 'merely' a provider of expertise/administrative linkage with the sub-

national levels of government. This is an example of the conflicts which can at times be induced by the different sets of expectations by different institutional partners mentioned above. In this example the Committee, when it came back in 2008 to the issue of the Covenant, after it had been launched, decided to tackle the issue head-on: in its opinion on 'How Regions Contribute to Achieving European Climate Change and Energy Goals, with a Special Focus on the Covenant of Mayors', the CoR welcomes the Covenant politically, but also raises a number of critical points and challenges. Specifically, the opinion includes the suggestion to 'relaunch the Covenant' in order 'to make explicit the opportunity for *all* sub-national authorities, including regions, to be members' (CoR opinion 241/2008: cover page; emphasis added). Moreover, the CoR also stresses the need for local action plans to be embedded in 'regional and national plans' (CoR opinion 241/2008), thus pointing again to the challenge of ensuring coordination and synergies between the different levels of governance.

In the event, the Covenant was established by the European Commission 'in partnership with the Committee of the Regions' (and the European Parliament), and its operational functioning entrusted to a consortium of networks of local and regional authorities (Energy Cities, CEMR, Climate Alliance, Eurocities, Fedarene).¹² Since the official launch in 2008-2009 (in the run-up to the Copenhagen UN Conference of Parties), the Committee of the Regions has gradually not just stepped up its involvement and support for the Covenant, but has contemporarily tried to assert its own institutional role by, for instance, sending CoR delegations to the COP negotiations from COP 15 at Copenhagen in 2009 onwards (CoR brochure 2009b). These delegations have been supported by opinions or resolutions adopted before each COP event to re-iterate the central role of local and regional authorities in developing climate change action, as well as the CoR's support for the Covenant of Mayors. Moreover, the CoR has also formulated its own ambitions on climate action, sometimes going beyond those formulated by the European Parliament and the EU as a whole, while at the same time insisting on being part of the EU's institutional representation at these international conferences (see for example CoR resolutions CdR 176/2009; 284/2010; 269/2011).

In terms of the Covenant itself, apart from hosting and co-organizing numerous events on the Covenant, the CoR has also supported the very idea of Covenant-like structures regularly in opinions dealing not just with climate change and energy policy, but also other policy areas. Moreover, the CoR has provided specific suggestions on the further development of the Covenant instrument,¹³ in particular when in 2013-2014 it appeared that, due to internal competition between the European Commission's DG ENER ('home' of the Covenant of Mayors) and DG CLIMA, a new, separate initiative was to be set-up by DG Clima under the title 'Mayors Adapt'.¹⁴ On this occasion, the CoR was quick to recall the need to avoid duplication and asking the Commission to integrate both initiatives (CoR opinion 3752/2013: point 46). This issue clearly represented one of those policy framing opportunities identified by Daviter, where competing interpretations/competency struggles between different parts of the European Commission provided openings for outside actors to gain influence (Daviter 2007: 657). Clearly, the Committee was not alone with its view that two similarly structured, parallel initiatives on mitigation and adaptation would not make sense and risk confusion, but the CoR made this institutional point very clearly and the European Commission reacted soon afterwards by stressing that Mayors Adapt was an initiative 'within the framework of the Covenant of Mayors' and ensured that Mayors Adapt and the former Covenant of Mayors 'merged under the new integrated initiative named Covenant of Mayors for Climate and Energy' at the end of 2015.¹⁵

The COP 21 agreement at Paris in 2015 and the ensuing debate about the implementation of the Paris commitments within the EU, have triggered a new phase of activity on the Covenant. The CoR opinion on the future of the Covenant (CoR opinion 2575/2015) set out the idea not only for the CoR to be more active in spreading the idea of the Covenant beyond the EU's borders (notably through its cooperation with local and regional authorities in the EU neighborhood via its platforms for the

Southern neighborhood, ARLEM, and the Eastern neighborhood, CORLEAP), but also to create a network of CoR 'ambassadors' for the Covenant (CoR opinion 2575/2015: points 14, 19). Through such a structure, which was formally launched by the Committee of the Regions together with the EU Commissioner on Energy on June 14th 2016, CoR members, who are also representing territorial units which have signed up to the Covenant, commit to inform other local and regional representatives of the Covenant, promote new signatures and help each other in fulfilling the Covenant requirements, supported by information material provided by the Committee of the Regions.¹⁶ In the run-up to the launch event of the Covenant Ambassadors, the CoR had also carried out a consultation of its own networks of local and regional authorities in trying to identify their needs and expectations of a future Covenant, and commissioned a substantial study on technical issues of 'Multi-level governance and partnership practices in development and implementation of Sustainable Energy Action Plans (SEAPs)', which are an essential tool for local and regional authorities to plan and achieve their climate change targets.¹⁷ Following the Paris agreement, it was decided to extend the Covenant initiative to the global scale by merging it with another similar initiative mainly in the US, the Compact of Mayors, to form the new 'Global Covenant of Mayors for Climate and Energy' (launched on Jan 1st, 2017).¹⁸ In this new initiative, again the Committee of the Regions is seeking to link the sub-national level and individual cities signed up to the Covenant to the EU institutions.

This example of the Committee of the Regions' activity in the area of climate change serves to illustrate how the institution managed to exploit 'opportunity structures' (in the shape of the European Commission's recognition of the role of local and regional authorities in developing and implementing climate policy) and to progressively 'gain attention' and 'build credibility' as a partner (Princen 2011). Even though the European Commission had apparently sought the Committee's cooperation for the 'wrong' reasons (as an administrative structure to run the Covenant of Mayors) at one point, the CoR managed to insist on its political/institutional role as part of the EU's policy-making structures and thus consolidate its political profile. It may even be interesting to the European Commission to try and use the CoR and the local and regional authorities represented in it, to 'strike at the heart of national governments' (Piattoni 2010: 60) in an area where cities and regions are often more advanced/ready to commit to ambitious policy action than national governments. Throughout this process, however, the Committee has managed to maintain a clear focus on the fact that it represents both local authorities and regions, and has made sure that the interaction with the EU institutions is not narrowed down to 'cities' or even just 'large cities'. The issue of climate change as an emerging and rapidly developing policy area for the European Union thus provides a fertile ground also for the institutional activism of a relatively new player such as the CoR to bring both the local expertise of its members and their political capital in order to promote multi-level governance and thus to expand its own role.

CONCLUSION

The Committee of the Regions has had to find, define and consolidate its own institutional space as a late arrival to the EU's complex and evolving policy-making system. Having been created with a relatively weak, but also vague (and consequently flexible) institutional mandate, it is not surprising that a body which brings together a substantial number of elected representatives with their different claims to democratic legitimacy, has tried to expand its sphere for action. Moreover, the fact that the CoR was created to respond to at least two different kinds of expectations as to what it should deliver, means that a process of institutional self-definition was inevitable. The present article has tried to highlight some of the dynamics of this 'institutional activism' in order to understand and interpret some of the changes which the CoR has seen since its creation in 1991. The aim was to show how the Committee has slowly increased not just its formal institutional standing (through the

increase in the areas of mandatory consultation in successive treaty reforms), but has also continued to address new policy areas and has tried to build the necessary institutional and administrative capacities to become a credible voice on many subjects which the original 'design' of the CoR's role had not foreseen.

In doing so, the CoR has employed several of the strategies identified by Princen as the crucial steps to eventually influence decision making: the case studies of the CoR's promotion of its own brand of multi-level governance, and the recent activities on climate change, with the promotion of the Covenant of Mayors show, how the CoR has tried to 'gain attention' and to 'build credibility' (Princen 2011). Since these activities take place in the context of the EU's political process, it depends on opportunity structures provided by, and interactions with, many other institutional actors, but most importantly the European Commission and the European Parliament. Here the Committee of the Regions continues to be faced with different expectations and consequently has to balance its role between providing expertise and formal linkage of the local and regional level to the EU on the one hand, and the more political role of providing legitimacy to EU decision-making on the other. In this situation and given the nominally weak starting position, not all attempts to increase the institutional standing or visibility of the CoR can be successful. Apart from the considerable, but slow progress in expanding the formal powers of the CoR according to the EU Treaties (with the notable last step of the right to take legal action on presumed infringements of the subsidiarity principle before the ECJ), the effect of other changes in the institutional standing (such as reinforced cooperation with the European Commission or the European Parliament on a daily basis) may be less obvious. Yet the focus of the present analysis was not primarily on whether or not the ambition of individual or collective actors in the EU system to gain influence in the institutional system, are immediately fulfilled or not, but rather on trying to show how a notion of institutional activism may help to understand and interpret some of the actions and developments which we observe.

The CoR sees itself as an integral part of the EU's peculiar governance structure which is characterized by 'a unique set of multi-level, non-hierarchical and regulatory institutions, and a hybrid mix of state and non-state actors' (Hix 1998: 39). The Committee constitutes a visible 'institutional' expression of the multi-level nature of this structure, providing representation to a particular group of non-state actors. In the ongoing development of the EU governance system, responding to both internal and external changes, the CoR like other players is trying to consolidate and extend its role and influence. While in some cases, such as the progressive 'empowerment' of the European Parliament, this may be explained by the gradual institutionalization of 'representative democracy [as a] common constitutional principle' and thus emulating nationally established institutional structures (Rittberger 2012: 34), the Committee of the Regions has less of a clear blueprint to follow. Given the fluid nature of EU governance, the 'institutional' representation of very different kinds of sub-national structures requires imaginative policy action to prove its relevance and to move beyond the merely consultative role. Yet, reference to shared principles like the legitimacy of (EU) policy making and the effectiveness of policy implementation provide the leverage points which the Committee tries to use in this endeavor. Thus, while the CoR continues to be a relatively minor part of the EU system (and not even formally an institution), its case can contribute to our understanding on how the EU governance systems develops, and what role institutional activism may play in these changes.

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ENDNOTES

1 Since 2015, the Committee of the Regions refers to itself as ‘European Committee of the Regions’, in the following, however, the name will be used as in the Treaty on European Union (Art. 300) as ‘Committee of the Regions’, and the corresponding abbreviation ‘CoR’.

2 A part of this staff is still managed jointly with the European Economic and Social Committee

3 It has to be noted, however, that recently the rate of own-initiative opinions has risen again, because of a general decrease of European Commission legislative activity. It seems that in 2015 the majority of the 53 opinions adopted were ‘own-initiative’ ones based on Art. 307.4, see also CoR RoP 41b i and ii, which distinguish between own initiative opinions based on documents by the other EU institutions (rule 41b i) and those which are ‘entirely on its own initiative’ (rule 41 b ii).

4 There are, however, occasional ‘political’ challenges to the ‘usefulness’ and the appropriateness of the CoR’s activities by some exponents of political views which generally question the legitimacy of the European Union and its institutional system (for example, with regard to EP Draft Resolution B7-0270/2014 The Abolition of the Committee of the Regions, tabled in the EP AFCO Committee, 17.03.2014, by Philip Claeys MEP, Vlaams Belang, Belgium, non-aligned MEP, and Marine Le Pen MEP, Front National, France, ENF)

5 See, for example, the annual CoR Impact Reports. Available at <<http://cor.europa.eu/en/activities/opinions/Pages/impact-reports.aspx>>. [Last accessed 26 January 2017].

6 The following section draws heavily on Piattoni and Schönlau 2015: 49-54.

7 CoR website, available at <<http://cor.europa.eu/en/activities/governance/Pages/cor-ateliers.aspx>>. [Last accessed 27 June 2016].

8 See <<http://cor.europa.eu/en/activities/governance/Pages/mlg-scoreboard.aspx>>. [Last accessed 02 July 2016].

9 CoR website, <<http://cor.europa.eu/en/activities/governance/Pages/contributions.aspx>>. [Last accessed 27 June 2016].

10 CoR website, <<https://portal.cor.europa.eu/mlgcharter/Pages/default.aspx>>. [Last accessed 27 June 2016].

11 In the annual ‘impact reports’, which the CoR publishes for its own opinions, the report for 2010 lists quite an impressive number of references of other institutions to the CoR opinion on white paper (CoR document CdR 149/2011, pp. 5-6).

12 See <<http://www.covenantofmayors.eu/+Covenant-of-Mayors-Office,37-+.html>>. [Last accessed 02 July 2016].

13 CoR opinion CdR 2015-2592 on the Future of the Covenant of Mayors cites all of the following CoR opinions: CdR 1536/2015; CdR 1535/2015; CdR 4084/2014; CdR 2691/2014; CdR 6902/2013; CdR 5810/2013; CdR 140/2011; CdR 408/2010; CdR 164/2010; CdR 241/2008.

14 See, Mayors Adapt launch announcement on DG Clima Website (of 19.03.2014) without any reference to the Covenant of Mayors, available at <http://ec.europa.eu/clima/news/articles/news_2014031901_en.htm>. [Last accessed 02 July 2016].

15 See, Mayors Adapt website, <<http://mayors-adapt.eu/>>. [Last accessed 02 July 2016].

16 See <<http://cor.europa.eu/en/news/Pages/Local-and-regional-leaders-become-new-EU-climate-action-ambassadors.aspx>>. [Last accessed 02 July 2016].

17 CoR report available at <<http://cor.europa.eu/en/events/Documents/SEAP.pdf>>. [Last accessed 02 July 2016].

18 Covenant Website available at <<http://www.covenantofmayors.eu/The-Covenant-of-Mayors-going,2332.html>>. [Last accessed 31 January 2017].

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