

Is There a Tomorrow for the Economic and Social Committee (EESC) and the Committee of the Regions (CoR)?

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Title: Is There a Tomorrow for the Economic and Social Committee (EESC) and the Committee of the Regions (CoR)?¹

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Abstract:

The main purpose of the two Committees is to engage participation from citizens in order to ensure that EU laws are geared to economic, social and regional conditions. In their core, the Committees are advisory bodies whose purpose is to give interest groups a formal say on EU legislative proposals. Moreover, the CoR has a legal mechanism (an action for annulment) to control the EU legislation. Thus far, there has been much criticism about the effectiveness of their work and the irrational costs that the two Committees produce. However, they represent the decrease of the democratic deficit, which seems to be one of the EU's incurable diseases. In order to reach a conclusion on the necessity and effectiveness of the two Committees, this paper shall focus on their influence in the legislative procedure and try to determine whether the influence is visible and valuable. Finally, the paper shall assess the effectiveness of the single judicial instrument for control: an action for annulment that the CoR can bring before the CJEU. In accordance with the research results, the paper shall propose one of the possible solutions for the Committees' future: status quo, the merger of the EESC and CoR into a more effective body or their complete abolition.

Key words: European Union, subsidiarity, representation, Economic and Social Committee (EESC), Committee of the Regions (CoR)

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Working paper for the 5th Conference on European Law and Policy in Context: Is There Tomorrow for the Economic and Social Committee (EESC) and the Committee of the Regions (CoR)?²

1. Introduction

The structure of the European Union is very specific. Several institutions take part in the adoption of EU legislation. The European Commission proposes legislative acts and the European Parliament and the Council of the European Union (or the Council of Ministers) jointly adopt them. The legislative procedure also includes the Committee of the Regions and the Economic and Social Committee, but as advisory bodies. This means that they should be consulted in certain situations. They do not have legislative power or the right to prevent the adoption of an act (i.e. the power of veto).

In its Chapter 3 "The Union's advisory bodies", the Treaty on the Functioning of the European Union (TFEU) prescribes the composition, structure and competence of the Committee of the Regions and of the Economic and Social Committee (Art. 300-308 TFEU).

The main purpose of the two Committees (the CoR and the EESC) is to engage participation from citizens in order to ensure that EU laws are geared to economic, social and regional conditions. The CoR thereby represents the interests of local and regional Member State authorities and the EESC represents the interests of the employers, workers and other interest groups (e.g. farmers, consumers etc.).

Thus far, there has been much criticism about the effectiveness of their work and irrational costs that the two committees produce. However, they represent the decrease of the democratic deficit, which seems to be one of the EU's incurable diseases. In order to reach a conclusion on the necessity and effectiveness of the Committees, the paper shall focus on their influence in the legislative procedure and establish whether this influence is visible and valuable. Finally, this paper will assess the effectiveness of the only judicial instrument for control: the action for annulment, which the CoR can bring before the CJEU. In accordance

² This paper contains parts of the previously published paper : Petrašević, Tunjica; Duić, Dunja, Representation of the regions in the decision-making process in the EU in Mašek Tonković, Anka (ed.). : 5th International Scientific Symposium "Economy of Eastern Croatia - Vision and Growth", Osijek : Ekonomski fakultet Osijek, 2016, pp. 961-971.

with the research results, the paper shall propose one of the possible solutions for the Committees' future: either status quo or the merger of the EESC and CoR into a more effective body or their complete abolition.

2. European Economic and Social Committee

The (European) Economic and Social Committee (the EESC) EESC was established in 1957 by the Rome Treaties in order to give representatives of Europe's socio-occupational interest groups and others a formal platform to express their points of view on EU issues. Its opinions are forwarded to the Council, the European Commission and the European Parliament.³

The EESC consists of representatives of workers' and employers' organisations and other interest groups (the civil society, notably in socioeconomic, civic, professional and cultural areas). The maximum number of members in the EESC is 350. Members are nominated by national governments and appointed by the Council of the European Union for a renewable 5-year term of office. The latest renewal was in October 2015 for the 2015-2020 mandate.

In spite of the fact that according to the Treaty the term of office of the members of the Committee is renewable, it is unlikely that the national government will propose the same members who had not won mandates in local elections (Art. 302/1 TFEU). It is in the general interest of the Union that the Members of the EESC be fully – or at least they should be – independent in the performance of their duties.

The EESC is consulted by the European Parliament, by the Council or by the Commission where the Treaties so provide. This is the so-called mandatory consultation. The institutions may choose to consult the Committee in all cases in which they consider it appropriate. This is the so-called optional consultation. The EESC may also issue an opinion on its own initiative and when deemed appropriate.

The consulting institution (Parliament, the Council or the Commission) shall set a deadline for delivery of the opinion if it deems it necessary. Upon expiry of the time limit, the absence of an opinion shall not prevent further action. The opinion of the Committee, together with a record of the proceedings, should be forwarded to the European Parliament, to the Council and to the Commission.

³ See more at: <http://www.eesc.europa.eu/?i=portal.en.about-the-committee>

The Committee has seven sections: Agriculture, Rural Development and the Environment (NAT), Economic and Monetary Union and Economic and Social Cohesion (ECO), Employment, Social Affairs and Citizenship (SOC), External Relations (REX), The Single Market, Production and Consumption (INT), Transport, Energy, Infrastructure and the Information Society (TEN) and Consultative Commission on Industrial Change (CCMI).

Section opinions are drafted by study groups. These usually have 12 members, including a rapporteur. Study group members may be assisted by experts. The full Committee (plenum) meets in plenary sessions nine times a year. At the plenary sessions, opinions are adopted based on section opinions by a simple majority. They are forwarded to the institutions and published in the OJ.

The motto of the EESC is "*a bridge between Europe and organised civil society*". Below we examine how much of it is reality.

2.1 Representation of the Republic of Croatia in the EESC

The Republic of Croatia has nine members in the EESC, three per grouping (workers, employers and others), who are more or less evenly divided into sections. With its Decision of 21 March 2013, the Government of the Republic of Croatia appointed representatives to the EESC. The new EESC mandate in which the Croatian Government and the Council of the European Union have confirmed their current members runs from September 2015. Their arrangement in individual sections is shown below.

Table 1. Croatian members of the EESC in the EESC Groups

	Agriculture, Rural Development and the Environment (NAT)	Economic and Monetary Union and Economic and Social Cohesion (ECO)	Employment, Social Affairs and Citizenship (SOC)	External Relations (REX)	The Single Market, Production and Consumption (INT)	Transport, Energy, Infrastructure and the Information Society (TEN)	Consultative Commission on Industrial Change (CCMI)
Hanževački, Marija (G II)			x	X			
Jelić, Violeta (G I)	X	x			x		
Majetić, Davor (G I)		x			x	x	X
Martinović Džamonja, Dragica (G I)				X	x	x	X
Milićević-Pezelj, Anica (G II)			x				X
Pavić-Rogošić, Lidija (g III)	X			X			
Ribić, Vilim (G II)		x		X	x		
Škrabalo, Marina (G III)			x	X	x		
Vidan, Toni (G III)	X					x	

Source: <http://www.eesc.europa.eu/?i=portal.en.home>

The activity of the Croatian representatives is average both on the European and the national level with the exception of certain members, such as ODRAZ Director Lidija Pavić-Rogošić

who publishes relevant information on the work of the EESC on the ODRAZ' webpage.⁴ This is what their assignment should be: to create a bridge with the ones whose interest they should be representing on the European level. It is not our intention to criticise either of representative individually. However, the impression that persists is that our representatives were not appointed according to their expertise, but to the function they perform, which in turn entails the seat at the EESC. We do not question their competences at national level, but rather their understanding of the structure of the EU and especially the legislative procedure. In order to be able to give constructive suggestions/opinions, one must possess profound knowledge of the matter that observations are being made on.

3. Committee of the Regions

The Committee of the Regions (hereinafter: the CoR) is the body that represents the interests of local and regional authorities at the European level. It was established in 1992 by the Maastricht Treaty. The Committee of the Regions was established to solve two crucial issues. Firstly, around three quarters of EU legislation is implemented at the local or regional level, so it is logical that local and regional authorities should have a say in the passing of new EU laws by way of the CoR. Secondly, it is being said the EU citizens have been alienated from the decision-making process on the EU level. The CoR should bridge this large gap.

The CoR is composed of local and regional bodies' representatives that either have electoral mandates in the respective regional or local body or are politically accountable to the elected assembly. Members are not bound by their national mandates and are completely independent in the performance of their duties in the general interest of the European Union. Economic, social and demographic changes in the Union are taken into account in the appointing of the representatives. Representatives as well as their deputies are appointed for a renewable term of five years. The number of members must not exceed 350 (Piattoni, 2014, 176-215). According to Article 305(2) TFEU, the Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in Article 300(3) based on which they were proposed ends, the term of office of members of the Committee terminates automatically and they are then replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee can simultaneously be a Member of the European Parliament.

⁴ See: <http://www.odraz.hr/hr/o-nama/odraz-ov-tim> (Accessed 15 June 2016)

Regarding the internal structure, the CoR elects the President and the Bureau from among its members for a term of two and a half years. In addition to this, the Committee structures its work by means of six thematic commissions that specialize in different policy areas and are responsible for the support and drafting of opinions and resolutions that are then submitted for adoption to the Plenary Assembly. Currently, the Commissions of the CoR include: Citizenship, Governance, Institutional Affairs and External Affairs (CIVEX); Territorial Cohesion Policy (COTER); Economic and Social Policy (ECOS); Education, Youth, Culture and Research (EDUC); Environment, Climate Change and Energy (ENVE); Natural Resources (NAT); Temporary ad hoc Commission on EU Budget; Financial and Administrative Affairs (CFAA). Members of the CoR sit on political groups, but also meet in national delegations to discuss issues through the prism of the national position. The Committee of the Regions is assisted by the General Secretariat, which is located in Brussels, as is the Committee itself (Piattoni, 2015, 7-57). The Committee of the Regions should by all means be considered a multi-dimensional body that brings national and regional influence to the EU legislation relating to the supranational level (Warleigh, 1990).

3.1 Competences of the CoR

The CoR is an advisory body and its powers reflect this role. Its main function is to ensure the legally non-binding opinion in the legislative process. It is therefore necessary to point out primarily that the European Parliament, the Commission and the Council are obligated to consult the Committee of the Regions if the Treaty (TFEU) itself prescribes it. This means that the CoR has the possibility to express its opinion on the issues relating to education, vocational training and youth (Art. 165 TFEU), culture (Art. 167 TFEU), public health (Art. 168 TFEU), trans-European transport, telecommunications and energy infrastructures (Art. 172 TFEU) as well as economic and social cohesion (Art. 175, 177, 178 TFEU).

It is necessary to stress that there is a fair number of EU policies that do not have a significant regional dimension and that do not require consulting the Committee of the Regions (e.g. market or industry policy) (Chalmers, 2010, 90). The Commission, the European Parliament and the Council may also consult the CoR on their own will on any topic. This is the so-called optional consultation. Lastly, the Committee of the Regions may issue an opinion on its own initiative when deemed necessary. Seeing as how the Lisbon Treaty has entered into force, the

CoR may bring action for annulment of an act to the CJEU (Duić, Mohay, Petrašević, 2010, 21).

The European Commission traditionally supports regional representation in the European political process. Since the CoR has been established, the two bodies have been actively communicating and cooperating: the interest and the support of the Commission stems from the striving to achieve better implementation of EU policies at the national and sub-national level and the willingness of the Commission to include proposals and initiatives coming from European regions. The cooperation of the Commission and the Committee of the Regions is defined by the Protocol on their cooperation (Christiansen, Lintner, 2005, 8).

3.2 The CoR and the Principle of Subsidiarity

In the last few years, a new area of activity of the CoR has been brought to the fore: the role of the CoR in ensuring the principle of subsidiarity. The principle of subsidiarity means that decisions should be made at a level as close as possible to the citizens. The Maastricht Treaty made it one of the principles the EU should take into account when exercising its legislative powers (Tridimas, 2006, 183-193). Seeing as how the CoR gathers representatives or officers that act on the level that is closest to the citizens, it was logical to entrust the CoR with the control of the principle of subsidiarity. Immediately after its establishment, the CoR recognized this role and declared itself the "guardian" of subsidiarity (Opinion of the CoR, CdR 302/98 fin) OJ 1999 C 198/7). However, it was not until the Lisbon Treaty that the CoR was made the "guardian" of the principle of subsidiarity. The Lisbon Treaty placed great focus on the further democratization of the EU, on the strengthening of the role of national parliaments – and in line with these objectives – the strengthening of the principle of subsidiarity, thereby significantly changing the Protocol on the application of the principles of subsidiarity and proportionality as annexed to the Treaties.

Article 2 to Protocol (No 2) on the application of the principles of subsidiarity and proportionality requires that – prior to proposing legislative acts – the Commission carry out extensive consultations and that such consultations, where appropriate, take into account the regional and local dimension of the proposed measures. In cases of exceptional urgency, the Commission may omit such extensive consultation, but it must state the grounds for its decision in its proposal. The European Commission is obligated to submit to the European

Council, the European Parliament, the Council of the European Union and the national parliaments an annual report on the application of Art 5 TEU. In accordance with Art 9 to Protocol (No 2), this report is then forwarded to the Economic and Social Committee and the Committee of the Regions.

The control mechanism that the Lisbon Treaty provides for the CoR is the action for annulment (legal procedure brought before the Court of the European Union (CJEU)). This action enables the Court to review the legality of acts adopted by the European institutions, bodies, offices or organizations. Thus, the Court shall annul the act concerned if it is judged to be contrary to European Union (EU) law. Moreover, Article 2 of Protocol (No 2) provides that "the Committee of the Regions may bring actions for annulment against those legislative acts whose adoption requires prior consultation of the CoR and those that the CoR deems contrary to the principle of subsidiarity" (Petrašević, 2016). According to EUR-Lex search results, not a single action for annulment has been brought by the CoR thus far.

In response to the newly gained authority, the CoR first amended its 2010 and then the 2014 Rules of Procedure to ensure that all its opinions refer to the principle of subsidiarity. The CoR also established the "Subsidiarity Monitoring Network" (hereinafter: SMN) even before entry into force of the Lisbon Treaty amendments. The most important task of the SMN is certainly the drawing up of the Subsidiarity Annual Report (Ritzel, Ruttloff, Linhart, 2013, 747).

3.3 Representation of Republic of Croatia in the CoR

Croatian members of the CoR have been appointed by the Government Decision of 8 January 2015 for the period 2015-2020.⁵ Their arrangement in individual sections is shown below.

⁵ See: http://narodne-novine.nn.hr/clanci/sluzbeni/2015_01_4_67.html

Table 2. Croatian members of the CoR in the CoR Commissions

	Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX)	Commission for Territorial Cohesion Policy and EU Budget (COTER)	Commission for Economic Policy (ECON)	Commission for the Environment, Climate Change and Energy (ENVE)	Commission for Natural Resources (NAT)	Commission for Social Policy, Education, Employment, Research and Culture (SEDEC)
Vojko Obersnel		x		X		
Nikola Dobroslavić	X	X Rapporteur (opinions)				
Valter Flego			X	X		
Predrag Štromar		x				
Jelena Pavičić Vukičević						x
Željko Turk	X				X	
Snježana Bužinec					X	x
Danijel Marušić	X				X	
Bruno Hranić			x	X		

Source: <http://www.cor.europa.eu/>

Croatian members of the CoR are more or less equally engaged in each Committee, but the most active member is Nikola Dobroslavić, who is also the rapporteur to one of the Commissions and is the only member actively taking part in the international cooperation within the CoR and as such in the Euro-Mediterranean Regional and Local Assembly (ARLEM).

At this point there are a few questions i.e. dilemmas that need to be addressed. The first question that arises is whether they have any political responsibility whatsoever. Next is the question of whether the option of replacing representatives in the CoR even exists (of course, other than in the event of losing their term in the national elections Thirdly, what are their duties and obligations within the CoR? Fourthly, does their partaking in the work of the CoR have any effect on the "regions" that they come from and thereby on the Republic of Croatia overall? Lastly, how can the stand of the Government be aligned with the delegation?

Pursuant to Article 2 Act on the Government of the Republic of Croatia, (*Official Gazette*, no. 119/14): "*Within the framework of European affairs, the Government deliberates on issues and passes acts pertaining to the harmonization of the Croatian legal system with the legal system of the European Union and discusses, harmonizes, confirms and adopts the standpoints of the Republic of Croatia that Croatian representatives will advocate in the work of the institutions and bodies of the European Union.*" It remains unclear with whom the national representatives of the CoR should harmonize the standpoints in the Government of the Republic of Croatia. Is it the Ministry of Public Administration that is responsible for conducting the member appointment process? Or the Ministry of Foreign and European Affairs that notifies the Union of the appointments pursuant to the Decision of the Croatian Government (*Official Gazette*, no. 35/13)? Or is it the Ministry of Regional Development and EU Funds that together with the CoR organized the conference on the very topic with the aim of finding the best way for "Citizen's dialogue in partnership with the Government of the Republic of Croatia?"⁶ The decision in terms of jurisdiction still has not been made and coordination is non-existent.⁷ To our knowledge, the only working meeting of the Delegation of the Republic of Croatia in the CoR has been held with Parliament Representatives.⁸ All of the above leads to the conclusion that our representatives do not have an active role in the CoR.

4. Assessment of the Effect of the EESC and the CoR in the EU Legislative Procedure

We started the assessment of the effect of the EESC and the CoR in the EU legislative procedure by analysing the Subsidiarity Annual Reports that provide an overview of subsidiarity monitoring activities of the CoR for the previous year. We wanted to examine the ability of the CoR to use the legal mechanism (action for annulment) if EU institutions are not respecting the subsidiarity principle. Subsidiarity Annual Reports are published in April and are included in the Commission's Annual Report on Subsidiarity, which is published in July or August. Reports are created by the Subsidiarity Monitoring Network and presented to the Bureau, which adopts the Report on their regular meetings (Subsidiarity Work Programme CoR 2336/2012). All Subsidiarity Annual Reports are more or less similar in structure:

⁶ See more at: www.cor.europa.eu/debatzagreb (Accessed 13 June 2016)

⁷ See: <http://www.hazud.hr/koliko-toga-zna-hrvatski-narod-o-odboru-regija-u-republici-hrvatskoj/> (Accessed 13 June 2016)

⁸ See: <http://www.edubrovnik.org/novost.php?id=5684> (Accessed 13 June 2016)

introduction, subsidiarity monitoring strategy or work plan, political governance and CoR tools for subsidiarity monitoring, a brief analysis of subsidiarity in CoR opinions, detailed tables containing all opinions. Lastly, they contain analyses of the opinions that are highlighted for their relevance from a subsidiarity point of view: some have raised concerns with regard to compliance with the subsidiarity and proportionality principles or have even invoked actual infringements (Subsidiarity Annual Report 2012, 10). Nevertheless, the biggest issue with this Report adoption system is evident in the fact that reports are adopted more than half a year after the analysed period.

Table 3. *Number of opinions containing an assessment of compliance with the subsidiarity principle (compliance or non-compliance with subsidiarity)*

Year	Number of opinions	Number of opinions - assessment of compliance with subsidiarity	Percentage in total number of opinions	Compliance	Non-compliance	Unknown
2015 (1/1/2014 to 31/12/ 2014)	57	12	21.05 %	9	3	0
2014 (1/1 2013 to 31/12/ 2013)	72	26	36.11 %	23	1	2
2013(1/1/2012 to 31/12/ 2012)	71	31	43.66 %	19	6	6
2012(1/12011 to 31/12/ 2011)	62	14	22.58 %	14	0	0
2011 (10/1/2010 to 31/12/2010)	45	8	17.77 %	0	0	8

Source: Subsidiarity Annual Reports

<https://portal.cor.europa.eu/subsidiarity/Publications/Pages/Publicationsandstudies-.aspx> (March 23, 2016)

It is clear from the above that following a continuous increase in the number of opinions between 2010 and 2014, the number of opinions declined rapidly in 2014. The reason for this lies in the changing of the Rules of Procedure that narrow the thus-far greater power of the CoR by excluding the right of the CoR to issue opinions on acts that fall under exclusive field

of competence of the Union. Rule 55(2) of the new Rules of Procedure of the CoR states that "Committee opinions on proposals for legislative acts in areas not falling within the Union's exclusive field of competence shall express a view on the proposal's compliance with the principles of the subsidiarity and proportionality principles. Other Committee opinions may refer, if necessary, to the application of the principles of the subsidiarity and proportionality principles whenever appropriate." Moreover, it is evident that 2012 was the most active year in terms of the total number of opinions, the number of opinions on legislative procedures and the number of opinions containing an assessment of compliance with subsidiarity principle. The analysis shall focus on the number of opinions containing an assessment of compliance with the subsidiarity principle. The highest percentage of opinions containing an assessment of compliance with the subsidiarity principle was in the 2012 Report and the lowest, as expected, in the first year of the adoption of the Opinion. However, the trend of a decreasing number of opinions containing an assessment of compliance with the subsidiarity principle is evident, and so the number of these opinions in 2014 is half of that in 2012. Additional emphasis shall be put on the analysis of the number of opinions that fall under Compliance and Non-Compliance. Also, the category Unknown as an additional one was required since there are certain opinions for which there is no information on whether they are or are not in compliance with the subsidiarity principle even though they have been categorized as "opinions containing an assessment of compliance with subsidiarity" based on the existing documentation from Subsidiarity Annual Reports.

Table 4. Opinions containing an assessment of compliance with subsidiarity principle through Commissions

CoR Commission	2015	2014	2013	2012	2011	Total
CIVEX	0	3 (2 compliance; 1 unknown)	3 (1 compliance; 2 unknown)	1 compliance	0	7
COTER	0	4 (3 compliance; 1 unknown)	6 (3 compliance; 3 non-compliance)	3 compliance	1	13
ECOS	5 (4 compliance; 1 non-compliance)	7 compliance	5 (3 compliance; 2 non-compliance)	3 compliance	1	22
EDUC	1 (compliance)	5 compliance	8 (7 compliance; 1 non-compliance)	3 compliance	3	18
ENVE	1 (compliance)	4 (3 compliance; 1 non-compliance)	7 (4 compliance; 3 unknown)	2 compliance	1	14
NAT	5 (3 compliance; 2 non-compliance)	3 compliance	2 (1 compliance; 1 unknown)	2 compliance	2	14
BUDG	0	0	0	0	0	0
TOTAL	12	26	31	14	8	91

Source: Subsidiarity Annual Reports

<https://portal.cor.europa.eu/subsidiarity/Publications/Pages/Publicationsandstudies-.aspx> (March 23, 2016)

Since the CoR works in seven Commissions (Citizenship, Governance, Institutional Affairs and External Affairs (CIVEX); Territorial Cohesion Policy (COTER); Economic and Social Policy (ECOS); Education, Youth, Culture and Research (EDUC); Environment, Climate Change and Energy (ENVE); Natural Resources (NAT); Temporary ad hoc Commission on EU Budget; Financial and Administrative Affairs (CFAA)), we analysed opinions that contain an assessment of compliance with the subsidiarity principle through the Commissions. What is clear is that the most active Commission is the Commission for Economic and Social Policy (ECOS), but there is no significant difference compared to other Commissions, with the exception of the Commission on EU Budget that never included assessments with subsidiarity in its opinions.

We have decided to focus on a specific year (2012) and compare CoR opinions that detected non-compliance with subsidiarity with the EESC opinions on the same substance issue. Subsidiarity Annual Report for 2012 states: "six of the opinions that did not comply with Rule 51(2) of Rules of Procedure were adopted on legislative proposals in policy fields where consultation of the CoR is mandatory, i.e. proposals that meet the formal criteria for a CoR judicial action for annulment on subsidiarity grounds (Subsidiarity Annual Report 2012, 8)". According to EUR-Lex search results, not a single action for annulment has been brought.

Table 5. Opinions not in compliance with subsidiarity 2012

No	Opinion CoR	Opinion EESC	Legislative procedure situation in June 2016
1	Opinion on the proposal for a Regulation on the funds covered by the Common Strategic Framework (COM(2011) 615 final, CdR 4/2012, adopted on 3 May 2012)	Opinion of the European Economic and Social Committee on the proposal for a Regulation on the funds covered by the Common Strategic Framework COM(2011) 615 final — 2011/0276 (COD)	Regulation was adopted - 17 December 2013 ⁹
2	Opinion on the proposal for a Regulation on the ESF (COM(2011) 607 final, CdR 6/2012, adopted on 3 May 2012)	Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No 1081/2006' COM(2011) 607 final — 2011/0268 (COD)	Regulation was adopted - 17 December 2013 ¹⁰

⁹ <http://eur-lex.europa.eu/procedure/EN/200889> (Accessed 20 June 2016)

¹⁰ http://eur-lex.europa.eu/procedure/EN/2011_268 (Accessed 20 June 2016)

3	Opinion on the Airport Package (COM(2011) 823 final, COM(2011) 828 final, COM(2011) 824 final, COM(2011) 827 final, CdR 649/2012, adopted on 19 July 2012)	Opinion of the European Economic and Social Committee on the ‘Airport Package COM(2011) 823 final, COM(2011) 824 final — 2011/0397 (COD), COM(2011) 827 final — 2011/0391 (COD), COM(2011) 828 final — 2011/0398 (COD)	still in the legislative procedure ordinary legislative procedure ¹¹
4	Opinion on the Public Procurement Package and Opinion on the award of concessions contract (COM(2011) 895 and 896 final, CdR 99/2012, adopted on 9 October 2012; and COM(2011) 897 final, CdR100/2012, adopted on 19 July 2012)	Opinion of the European Economic and Social Committee on the on public procurement and on the award of concession contracts COM(2011) 895 final — 2011/0439 (COD), COM(2011) 896 final — 2011/0438 (COD), COM(2011) 897 final — 2011/0437 (COD)	still the legislative procedure ordinary legislative procedure ¹²
5	Opinion on the Data Protection package (COM(2012) 9, 10, 11 final, CdR 625/2012, adopted on 10 October 2012)	Opinion of the European Economic and Social Committee on the ‘Proposal for General Data Protection Regulation	still the legislative procedure ordinary legislative procedure ¹³

¹¹ <http://eur-lex.europa.eu/procedure/EN/201116> (Accessed 20 June 2016)

¹² http://eur-lex.europa.eu/procedure/EN/2011_439 (Accessed 20 June 2016)

¹³ <http://eur-lex.europa.eu/procedure/EN/201286> and <http://eur-lex.europa.eu/procedure/EN/201286>

		COM(2012) 11 final — 2012/011 (COD)	
6	Opinion on the posting of workers in the framework of the provision of services (COM(2012) 131 final; COM(2012) 130 final; CdR1185/2012, adopted on 29 November 2012)	Opinion of the European Economic and Social Committee on the ‘Proposal for a Directive concerning the posting of workers in the framework of the provision of services’ COM(2012) 131 final — 2012/0061 COD	Proposal was withdrawn ¹⁴

Source: Subsidiarity Annual Reports

<https://portal.cor.europa.eu/subsidiarity/Publications/Pages/Publicationsandstudies-.aspx> (March 23, 2016)

Since three out of six questionable proposals are still in the legislative procedure, this paper shall analyse two adopted and one withdrawn proposal. In accordance with the initiative of the national parliament, the Commission withdrew Opinion No 6 from Table 3. The opinion of the CoR was not relevant in the Commission decision (Commission Annual Report on subsidiarity COM/2013/0566 final).¹⁵ On the contrary, Regulation on the funds covered by the Common Strategic Framework and Regulation on the ESF were adopted in December 2013 and are still in force.

Regarding the Proposal for a Regulation on the funds covered by the Common Strategic Framework (COM(2011) 615), in its Opinion the CoR insisted that – in accordance with the subsidiarity principle – regional and competent local authorities should be responsible for choosing investment priorities and distributing the Structural Funds between the ERDF and the ESF. Specifically, in Amendment 59 they reject the proposed accreditation of

¹⁴ http://eur-lex.europa.eu/procedure/EN/2012_61 (Accessed 20 June 2016)

¹⁵ Commission annual report on subsidiarity COM/2013/0566 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013DC0566> (Accessed 25 February 2016)

management and control authorities. In this case, the CoR suggestion was respected and the adopted Regulation is in line with the CoR Opinion.

On the other hand, in its Opinion regarding proposal for a Regulation on the ESF, the CoR has expressed concern over a number of points in the Commission proposal. They include those relating to thematic concentration, because they will limit the scope to tailor the ESF support to the needs and particularities of individual regions, which in turn raise issues of conflict with the subsidiarity and proportionality principles. Explicitly, the CoR is against the Commission's chosen method and procedure for pursuing this goal, as set out in Article 4(3) of the proposal for a Regulation. The prescribing of very high rates of concentration for allocations to each operational program (ranging from 80 % to 60 % depending on the category of region) in up to four of the total 18 investment priorities is incompatible with the principles of subsidiarity and proportionality. The reasoning behind this is that it may prove to be inadequate to cover the particular needs and priorities of each region (Opinion of the Committee of the Regions OJ C 225, Point 11, 37 and Amendment 5). Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and the repealing Council Regulation (EC) No 1081/2006 were adopted, whereas suggestions of the CoR to remove this range were not respected. Most importantly, there is no procedure in the CJEU relating to this violation of CoR suggestions. Herein lies a legal basis for action for annulment that the CoR never brought. The question is who is responsible for the oversight of or the failure to use the right to bring action for annulment? The impression is that the CoR does not address the already adopted legislation even if it had had remarks concerning subsidiarity in the process of adopting legislation that are binding for the participants of the legislative procedure.

The EESC has also delivered opinions on the same issues and we have analysed the EESC opinions on two questionable legislative proposals. Firstly, the opinions of the EESC are as expected more general than the CoR opinions. The CoR opinions examine the proposed Regulation Article by Article, whereas the EESC opinions give general remarks on the legislative proposals. For this reason, the same analysis method as the one used for CoR opinions cannot be applied on the EESC opinions. What we can conclude is that in its opinions, the EESC is focused on more general topics that are in line with the nature of the Committee itself. For example, in its Opinion on the proposal for a Regulation on the ESF, the EESC emphasises that the goals and instruments set out in this strategy, essentially positive in nature, have to be more precisely geared to the new circumstances and adjusted

accordingly. To do so, there has to be a regulated, inclusive employment market, providing Europeans – especially those who are most isolated from the labour market (such as young people, women, migrants, long-term unemployed, people of age, people with disabilities and ethnic minorities etc.) – with opportunities for stable, high-quality jobs making use of the skills they have acquired. At any rate, this is a political message that advocates the rights of "weaker groups", but seeing as how it has not been geared to a specific regulation, the Opinion on the ESF Regulation has little effect. In order to improve the effectiveness of the opinions of the EESC, certain articles in the legislative proposals that are considered problematic should be invoked and the problem specified.

5. Conclusion

The paper focused on two advisory bodies: the CoR and the EESC. What is clear at first glance is that the more "modest" political influence – at least based on the provisions in the Treaty – lies with the CoR seeing as how it has the power to bring actions for annulment. However, in addition to having rather "modest" powers, the CoR is also faced with internal challenges. It has to bring together and unite different interests of members who come not only from different Member States but also different regions within the individual States. Furthermore, the regions within the same State may have conflicting interests. To exemplify, even though Croatia is a relatively small country, there are significant differences in the development (level) of individual regional and local units, causing our representatives to maybe even have mutually conflicting views on certain issues. Considering the affiliation to different political options, it is certain that they do not speak with one voice.

The fact that the members of the CoR and EESC are not directly elected representatives affects its democratic legitimacy. However, the opinions of the CoR must be taken into account by the institutions of the EU. However, building on the analysis in this paper, the opinions of the CoR are not respected even in cases in which consulting the CoR is mandatory. On the other hand, the CoR remains passive and is not using its legal mechanism (action for annulment). This is substantiated by the analysis that has shown that the CoR has not yet brought an action for annulment even though they had the opportunity and justification to do so. On the other hand, the opinion of the EESC has an even lesser effect seeing as how the EESC does not have a legal instrument to control the implementation of its

opinions and moreover, the opinions are general and declaratory, which downplays their already weak effectiveness.

We cannot comment on the EESC and CoR representatives of other Member States, but as far as Croatian representatives, the conclusion is that they are not overly active, with certain exceptions such as ODRAZ Director Lidija Pavić-Rogošić.¹⁶ In terms of activity, we refer to their activity in the CoR or the EESC sections, but also their activity on the national level and to the extent in which they try to familiarize the citizens, i.e. those whose interests they represent with their work. In order for someone to be active and give constructive proposals, one must possess relevant knowledge on EU policies. Seeing as how Croatia has been a Member State for only three years, maybe we can turn a blind eye and say that they are still "young".

An idea for further research would involve the conduction of a survey directly among the EESC and CoR members to test their overall knowledge of EU policy and especially their knowledge of the decision-making processes. The result of the research should be the conclusion on the extent to which the representatives are aware of their role in general.

According to the available data, each of the two bodies count some 50 officials with a minimum annual wage of 123,890 EUR, and some even over 180,000 EUR. Another interesting fact is that the EESC issued 181 opinions on different legislative proposals in 2010. Adding their total annual costs (wages, daily allowances, travel expenses etc.) to this, it follows that the cost of one opinion amounts to 660,000 EUR, which is frightening data.¹⁷

The two bodies should be a sort of bridge between the EU and its citizens, but it seems that citizens are not familiar with the work thereof and the two bodies do not care too much (Komadina, Petrašević, 2012). This is evidenced by social media. We visited the webpages of the two bodies as well as their social media accounts. For example, the EESC Facebook profile has a mere 13,054 likes and the Employers Group counts no more than 393 likes. The EESC has 23,920 likes, while the Employers group has no more than 787 Twitter followers.¹⁸ For the sake of comparison, the European Parliament has 2,094,215 likes on Facebook and some 9831 followers on Twitter. So much for communication with citizens. Additionally, seeing as how the opinion of the academic community is considered relevant, we noticed that

¹⁶ See: <http://www.odraz.hr/hr/o-nama/odraz-ov-tim> (Accessed 15 June 2016)

¹⁷ See: <https://euobserver.com/opinion/115175> (access on 15th June 2016)

¹⁸ See the Facebook and Twitter profiles.

EU law textbooks pay the least attention to these bodies and cover them under the title "EU Advisory bodies" on no more than one to two pages, which also indirectly shows the unimportance of these bodies (Craig, De Burca , 2011 , 68-69).

To conclude, in accordance with the idea from the Introduction and based on the analysis undertaken thus far (which we plan on supplementing as previously suggested), we are of the opinion that the most diplomatic solution would be the merger of the EESC and CoR into a more effective body for a transitional period. This would decrease the financial cost and the transitional period would serve for the analysis of the effectiveness of the newly formed hybrid body. If this would not prove to increase their effectiveness, the complete abolition of the two bodies should be the direction to move in.

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