



**Local & Regional  
Europe**

# Better Regulation

## Position Paper on the “Better Regulation for Better Results – An EU Agenda”

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## CEMR key messages

CEMR calls on the European institutions to:

1. reaffirm their commitment to a European multi-level governance model, built on active and constructive cooperation between the different levels of governance, and to further develop this towards a 'governance in partnership' model, where all relevant actors work together to find common solutions on policies and legislation.
2. acknowledge a more preeminent role for local and regional authorities as in the partnership principle introduced in the EU cohesion policy.
3. include local and regional government via its representative bodies at all stages of the policy cycle; their expertise can be useful to assess the financial costs, the administrative and regulatory dimension of new legislation.
4. recognise local authorities "as public institutions with legal personality, component of the State structure, below the level of central government and accountable to citizens, encompassing different tiers of government"<sup>1</sup> as expressed in the Council conclusions on local authorities in development.
5. respect the provisions of article 4 of the Treaty on EU, respecting regional and local self-government, Protocol 2 on the application of the principles of subsidiarity and proportionality, and Protocol 26 on services of general interest.
6. revoke the need for national associations of local and regional governments to register in the EU [Transparency Register](#) within the Inter-institutional Agreement on Transparency. They perform a governance role, often recognised by national constitutional or legal provisions, to articulate and represent the views of local government at national, European and international level.
7. include 1 person familiar with the impact of legislation at the local and regional levels within the 3 external members of the Regulatory Scrutiny Board to complement the work of the member of the Committee of the Regions.
8. strengthen and further develop territorial impact assessments. The EU Urban Agenda and other initiatives such as RURBAN, the mid-term review of the Europe 2020 Strategy and the Territorial Agenda 2020 have the potential to introduce such an approach and providing a working method of partnership with cities and municipalities.
9. not limit the local and regional representation in the REFIT Platform to a single representative of the Committee of the Regions, to the exclusion of the representative European associations of local government.
10. improve the planning of consultations and provide a more detailed definition of the tools and methods to proceed with consultations and impact assessments. A mechanism of "stakeholder weighting" to assure legitimacy and representativeness in consultations, impact assessments and evaluations is also desirable.

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<sup>1</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/foraff/138243.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/138243.pdf)

## 1. Introduction

CEMR welcomes the European Commission Communication “Better Regulation for Better Results” and acknowledges the Commission’s aspirations for greater clarity in its decision-making. Accordingly, we welcome this new culture of greater simplification of EU rules, stronger and more independent impact assessments, as well as a more thorough and structured consultation process.

The importance and status of local and regional authorities in the EU is enshrined in the Lisbon Treaty. The principles of subsidiarity and proportionality are recognised in article 5 TEU<sup>2</sup>, as well as in articles 2, 5 and 6 of Protocol No. 2 on the application of the principles of proportionality and subsidiarity<sup>3</sup>. Moreover, these provisions stress the financial impact of regulation at the local and regional levels, the role of regional and local authorities in EU decision-making, and the need for pursuing “*wide consultation before proposing legislation*”.

The better regulation agenda, therefore, should focus on implementing those principles, thereby advancing the aim of achieving a more transparent, open and inclusive EU decision-making process for local and regional governments, at all stages. The result of such efforts would see a marked improvement in the quality of EU legislation, greater support from local and regional authorities in the policy-making process and would reduce unnecessary regulatory burdens. However, better regulation should not only mean opting for simpler and lighter regulation, focusing on common agreed objectives, rather than on detailed provisions that limit flexibility in implementation.

It is essential to include local and regional government from the start of the policy cycle, when policy options are still being shaped and when final decision are yet to be taken by the European Commission. Therefore the link between the consultation process and the inception impact assessments as well as the impact assessments and proposals is of particular importance.

In this paper CEMR presents its views on the Better Regulation initiative from the local and regional governments’ perspective. It contains general comments and addresses specific issues.

## 2. New Integrated Guidelines on Better Regulation and toolbox: Consultations and Impact Assessments

We welcome the institutionalisation and formalisation of consultation and impact assessment processes. The new integrated guidelines on better regulation are a step in the right direction and in order to build on this, CEMR wishes to make several suggestions.

### 2.1 Subsidiarity

The Commission wishes to reinforce the application of the principles of subsidiarity and proportionality. To this end, the Communication promises an improved explanatory memorandum that is already attached to each legislative proposal. Yet, the Integrated Guidelines on Better Regulation contain no specific procedures and guidelines to test whether subsidiarity is being truly respected. Therefore CEMR would like to see a more ambitious approach.

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<sup>2</sup> <http://euwiki.org/TEU> \ | "Article\_5

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[http://www.cvce.eu/en/obj/protocol\\_no\\_2\\_on\\_the\\_application\\_of\\_the\\_principles\\_of\\_subsidiarity\\_and\\_proportionality\\_lisbon\\_13\\_december\\_2007-en-ce113c75-4521-47f6-a471-cc2467007197.html](http://www.cvce.eu/en/obj/protocol_no_2_on_the_application_of_the_principles_of_subsidiarity_and_proportionality_lisbon_13_december_2007-en-ce113c75-4521-47f6-a471-cc2467007197.html)

A good reference can be made highlighting the work developed through the Subsidiarity Assessment toolkit by the Committee of the Regions.

## 2.2 Consultations

The Commission wishes to broaden and improve the consultation process and for CEMR, this development is to be applauded. In order to enhance involvement by local and regional authorities, we would suggest a more structured and developed guide to consultation processes.

We regret that no distinction has been made between “stakeholders” and the different tiers of government – including local authorities - with respect to consultations. There should be recognition of the multi-level governance nature of many areas of EU policy making, in which powers are shared between local, regional, national and European authorities.

As a good example we wish to highlight the Code of Conduct of the European Structural and Investment Funds, which enshrined the partnership principle in an EU legislative form for the first time, in order to ensure the proper involvement of those implementing legislation, as well as distinguishing between “partners” (the different tiers of government) and other kinds of “stakeholders”.

We believe that for consultations to be successful, local and regional governments should be systematically involved in the process during the entire policy cycle (including law-making and review process), while more clarity on retro-planning, feedback mechanisms and linkages to impact assessments are also needed.

The design of consultations should be based on the relevant target group. In the past, a large number of consultations specifically targeted local and regional authorities. There have been cases where the complexity of the matter under consideration and the “legal” language of documents has made it difficult for single authorities to participate. In addition, several consultations have shown that the assessment of the tabled contributions was based on criteria that were set “ex-post”, that is after the consultation process. Consequently, this led to an inconsistent assessment practice, either based on a qualitative or a quantitative approach. To provide a more efficient assessment, the criteria to be applied should be published together with the consultation notice, thereby providing a transparent pertinent basis for all consultations.

## 2.3 Impact Assessments

Impact assessments are becoming increasingly important as a tool for evidence-based policymaking. In reflection of this trend, the Better Regulation package contains many ideas regarding the use of impact assessments. CEMR has several suggestions for how to improve them and the overall impact assessment process.

An important novelty introduced by the Commission’s proposals, is the use of inception impact assessments at the beginning of the policy cycle. A short document containing the different options that will be part of the impact assessment and the proposal is very important. It is at this inception stage too, that subsidiarity concerns should be raised. Furthermore, inception impact assessment should also be the subject of consultation. Once the inception impact assessments has taken place, the Commission will prepare its actual impact assessment.

In the past the preparation of the impact assessment has been a somewhat opaque and closed process. In general, a more detailed description of how the process will take place, would be welcome.

Very often, the European Commission contracts external consultants with very narrow terms of reference while the selection of case study samples chosen are often based on a limited perspective. This results in a reduced ability of those directly concerned by EU legislation to provide the Commission with the evidence that would otherwise result in a truly comprehensive assessment of the impact of existing and newly proposed legislation.

The impact assessment guidelines include general and formal criteria that are to be assessed by the Commission administrators. The assessment of different policy options should be central to a good impact assessment, given that in cases where there are insufficient requirements to justify the respective policy options (binding, non-binding), the outcome can lead to policy elaborations that are too broad and general. To improve this situation, different policy options should include detailed and thorough explanations of the expected impacts with respect to economic, territorial, fiscal and administrative level concerns.

The need for **territorial impact assessments** is of particular importance. The Better Regulation “toolbox” that accompanies the Integrated Guidelines includes a tool that provides recommendations on how to pursue territorial impact assessments. CEMR views this positively. However, the territorial dimension of impact assessments has not been included in the rest of the documents of the overall Package, nor in the Communication itself. We see this as a missed opportunity to more fully take into account the territorial dimension in policy preparation.

An important feature of the European Commission’s proposals on impact assessments is for these to be used more widely. It should be recognised that the European Parliament already has its own impact assessment unit. Under the new approach, impact assessments would be drafted for important amendments to Commission proposals, for important secondary legislation (delegated and implementing acts) and after the final negotiations have been concluded (and before implementation of the policy). CEMR not only welcomes this new approach, we feel that the appropriate consultation should also be part of the impact assessment process. The likely outcome will lead to more effective and efficient EU legislation and a reduction of the regulatory burden on those responsible for implementing legislation.

These issues have been addressed by the CEMR in 2014, as part of our public consultation response addressing consultation guidelines and impact assessments. Our responses can be found on our [website](#) and the key messages are available in the annex of this document.

### 3. Inter-institutional Agreement on Better Law-Making

CEMR supports the proposal to renew the Inter-institutional agreement between the European Commission, the European Parliament and the Council. It is the instrument to achieve a transparent and predictable policy making process and a key ingredient for quality policy outcomes. However, it is regrettable that there is no mention of the Committee of the Regions in the text. The institutional position of the Committee as an advisory body and as guardian of the subsidiarity principle is entirely overlooked. Yet at the same time, the role of the national parliaments as guardians of subsidiarity is mentioned.

The Committee of the Regions has already established cooperation agreements with both the European Commission and the European Parliament and therefore, including it in the Inter-institutional Agreement would be a logical next step.

### 3.1 Transparency Register

CEMR and its member associations are concerned about the impact of the recent and unexpected changes to the Inter-Institutional Agreement (IIA) on the Transparency Register that has resulted in Local Government being asked to sign the same registry as private and commercial lobbyists when contributing to EU policy discussions. We are in the nonsensical position of local authorities now having to comply with the register (sections 16 and 17 of the IIA) if they want to continue to engage in EU policy development, whereas regions remain exempt from this requirement, as they are rightly recognised as public authorities and not as private or voluntary sector lobbyists.

Furthermore, it is worrying that the Guidelines on the IIA foresee that those local government organisations unwilling or unable to register face penalties in terms of meeting EU officials to discuss forthcoming EU legislation or participate in consultation or impact assessment exercises. This is their democratic political task and constitutes an important element of the multi-level governance model that the European Union promotes, and which is reflected in the respect of the fundamental structures, political and constitutional, regional and local self-government in article 4 (2) of the Lisbon Treaty.

Ignoring the local democratic mandate and treating local government elected members and their officials as lobbyists, would rightly be seen as a significant and unacceptable change of tone between the different spheres of government. The European Union institutions will be perceived as acting in a centralising manner, treating representatives of local governments in a remote and high handed way. Were we to choose not to co-operate with the European institutions, the EU policy processes will be deprived of much needed information, accountability and acceptance. This is why we are calling that these provisions are removed from the IIA, taking into account the criteria described in the *CEMR response to the public consultation on the revision of the Commission's Impact Assessment guidelines*<sup>4</sup>.

## 4. Other key aspects the Better Regulation Package

### 4.1 Trilogues

During the last years, more and more legislative proposals follow a ‘fast track procedure’, where the Council and the European Parliament complete the negotiations in first reading. An important phase in this process is the ‘trilogue’ where both institutions meet together with the Commission, to negotiate behind closed doors, in order to reach a final agreement. Often this results in changes to the legislative texts and compromises that are not always very easy to apply when it comes down to the implementation. Also, the opaque process makes it hard for stakeholders to be involved. CEMR welcomes the call from the Commission for more transparency in this trilogue process.

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[http://www.ccre.org/img/uploads/piecesjointe/filename/CEMR\\_response\\_consultation\\_impact\\_assessment\\_EN.pdf](http://www.ccre.org/img/uploads/piecesjointe/filename/CEMR_response_consultation_impact_assessment_EN.pdf)

#### **4.1 Delegated and implementing acts**

Since the Lisbon Treaty the process of comitology has been replaced by the delegated and implementing acts.

These acts play an important role and where the intention of secondary legislation is to regulate non-essential and technical aspects, the repercussions for local and regional government can be significant. The Commission is proposing to make the procedure regarding secondary legislation more transparent. The membership of committees dealing with these acts will be published, as well as agendas and minutes of the meetings and the concept-acts. This will help stakeholders in providing their input.

#### **4.2 Expert groups**

Increasingly the European Commission makes extensive use of expert groups the preparation of its policies and programmes. While the composition of these groups can be very diverse, decisions regarding the selection of individuals as members of expert groups may often be ambiguous. This issue has rightly been identified as one requiring closer inspection by the European Ombudsman, who has called for more openness on the existence, the composition and the working of these expert groups. CEMR supports the report of the Ombudsman on this matter and calls on the Commission for more transparency in this early part of its policymaking process.

#### **4.3 The REFIT Platform**

The Commission has proposed the creation of a REFIT Platform, which will be chaired by the first Vice-President of the Commission. The Platform will be used as a forum to improve and revise legislation, together with Member States and different types of stakeholders. The Committee of the Regions will have a representative in this Platform.

For this Platform to be successful, it is important that there be satisfactory representation of local government. CEMR has always advocated for a thorough and structured dialogue between the EU institutions and the different levels of government, in view of the multi-level governance principle, as a means of addressing regulatory burden that cuts across the different governance levels.

For this reason, we feel that local and regional government representation should not solely be restricted to that of a single Member of the Committee of the Regions. To ensure the representativeness of local and regional authorities' views on the Platform, associations of local and regional government should also be afforded the opportunity of participating. This will help the Commission to properly identify case-studies, good examples and provide the Platform with rigorous background information in order to better assess the territorial impact of EU legislation at the local and regional levels. A number of similar platforms currently exist at the national level and whose objective is to consult local and regional authorities. We would urge the Commission to draw inspiration from successful examples of such platforms.

#### **4.4 An independent Regulatory Scrutiny Board**

The Commission has transformed the impact assessment board into a regulatory scrutiny board. With more resources and the inclusion of external advisors, the board will look at impact assessments and the main evaluations. CEMR supports the strengthening of the scrutiny board. The inclusion of three external members too, is a welcome development.

However, this should be a first step towards the creation of a truly independent body as exists in some Member States at the national level (UK, Scotland, Netherlands, Germany, etc.). In addition, the European Commission should develop more transparent mechanisms for the selection of these Board members. CEMR calls that a person with experience and background on the territorial dimension of the impact of EU legislation at the local and regional level will be member of the Regulatory Scrutiny Board.

## 5 Final remarks

CEMR looks forward to providing its contribution to shaping the various actions foreseen (permanent fitness checks, evaluations, impact assessments, etc.) as well as the new tools established, in particular, with regard to those initiatives of specific concern to local and regional governments. This on-going and constructive contribution will ensure that a decision-making process involving the local and regional perspective at all stages of policy development and implementation is achieved.

## ANNEX

### CEMR's key messages on consultations:

1. Long-term planning of consultations
2. In-depth "matrix model" (levels of participation, stages and methods) in order to achieve a structured dialogue with regional and local government through all the stages of the decision-making process
3. Consultation at an early stage of the decision-making process on policy options
4. Consultation documents in all languages and at least 12 weeks of time to respond before the deadline comes to an end
5. Recognition that Local Government representatives are partners in EU policy development, not as lobbyists
6. Mainstreaming of Multi-Level Governance principle based in a partnership approach
7. More in-depth definition of tools and methods of consultation in accordance with the requirements of each stage of the decision-making process
8. Better mapping of stakeholders and co-design of consultations with participating stakeholders and local and regional authorities
9. National and European associations of local government are also "experts" and their inputs should be always be considered as being equivalent to those coming from "expert groups"
10. Introduction of "stakeholder weighting mechanism" in order to better assess the representativeness and legitimacy of stakeholders participating in a consultation.
11. Adapt the language to each national context, simplify it and disseminate through innovative channels

## **CEMR's key messages on impact assessments**

### **On the impact assessment process**

1. Guarantee the presence of a person with experience and background on the territorial dimension of impact assessments in the Regulatory Scrutiny Board
2. Provide a more Structured Dialogue beyond the 'standard consultations' mechanisms with regional and local government as an integral part of Impact Assessments:
3. Recognise Local and Regional Government representatives as partners in EU policy development, and not as lobbyists;
4. In the case of studies, and preliminary impact assessments concerning regional and local government, and which have been contracted out to external parties, these should be carried out in partnership with regional and local government representative bodies.
5. The REFIT Platform should guarantee the presence of more representatives of local and regional authorities beyond the representative of the Committee of the Regions.

### **On the impact assessment content**

1. Separate the 'territorial impact assessment' tool of the Guidelines into separated approaches on the impact at national, regional and local level;
2. Terms of Reference for Impact Assessments and Consultations should be open for comments from national, regional, local government;
3. A proper assessment of costs and benefits across different policy options to describe the specific costs of European action non-European action for local and regional government is crucial. All the different cost-benefit elements (regulatory, financial, etc.) of the different policy options then, need to be properly reflected in policy choices;
4. Mainstreaming of Multi-Level Governance principle;
5. Assessment of all legal bases across the Treaty (horizontal competence assessment) and across national, regional and local government (vertical competence assessment);
6. Assessment of the situation in the Member States; greater taking into consideration of the existing legislation is necessary, and differences between the Member States should not automatically give rise to calls for harmonisation;
7. The Subsidiarity Assessment Toolkit and the Territorial Impact Assessment should be mainstreamed into the Guidelines.

## Contact

### **Carlos Mascarell Vilar**

Policy Officer on Governance and Citizenship

1 square de Meeûs, 1000 Brussels

Tel. + 32 2 213 86 96

Carlos.mascarellvilar@ccre-cemr.org

## About CEMR

The Council of European Municipalities and Regions (CEMR) is the broadest organisation of local and regional authorities in Europe. Its members are over 50 national associations of municipalities and regions from 41 European countries. Together these associations represent some 150 000 local and regional authorities.

CEMR's objectives are twofold: to influence European legislation on behalf of local and regional authorities and to provide a platform for exchange between its member associations and their elected officials and experts.

Moreover, CEMR is the European section of United Cities and Local Governments (UCLG), the worldwide organisation of local government.

[www.ccre.org](http://www.ccre.org)