



Subsidiarity Monitoring Conference, 17 November 2015, Flemish Parliament, Brussels

Speech for Dr Elisabeth Vitouch on Better Regulation

Better regulation in practice

Ladies and Gentlemen,

I am pleased to have this opportunity to be here to present my insight to the impact of better regulation within the context of public services. As a spokesperson for CEMR, Chair of the European Affairs Committee in Vienna, and whose job it is to ensure that the right policies are being delivered to improve the lives of those who I represent, my initial response to the European Commission's draft proposals on Better Regulation was one of optimism. I believe that the Better Regulation package could potentially clear the way for important changes to the way the EU reflects on the introduction of new legislation and on occasions where changes to existing legislation are felt necessary.

However this will depend on how the Better Regulation package will be implemented. On that basis, I have a number of key messages that I wish to share with you, and which I believe can make the difference to whether or not the European Commission will achieve its aim of making the process of preparing legislation a more open, transparent and inclusive one. I will also take this opportunity to highlight as example, the **2014 public procurement directives** where the Commission can learn important lessons and which it should avoid replicating in future, if it wishes to be successful in its goal of improved law-making.

First then some key messages. Our meeting today is centered on the key issue of subsidiarity and central to that debate, is the issue of the multi-level governance model, built on active and constructive cooperation between different levels of governance. CEMR urges the Commission

to consider how to reinforce the **“governance in partnership”** model, as part of its efforts to improve the quality of EU law-making. This means seeing how provisions of **article 4** of the Treaty on European Union, 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, can all be taken further in the EU policy making process.

In its proposals presented earlier this year, the Commission stressed its wish to improve the consultation process. We are wholly supportive and to this end, CEMR would encourage the EU’s decision-makers to include local, urban and regional government via our representative bodies such as the CEMR, in the consultative process, on the basis of a **structured and regular dialogue**. Not only would this help to seal a genuine partnership with local and regional authorities, but would also enable us to be involved in the policy preparation throughout the entire policy cycle. In this way, we could provide policy-makers with unique and early insight to the potential financial costs and the administrative and regulatory dimension of new and amending legislation that cuts across the different governance levels.

Another aim of the Commission Better regulation package is to strengthen the impact assessment approach in policy making. CEMR views this as a positive step and one that we welcome. This will help the EU to improve policy outcomes resulting from its legislative decision and to this end, CEMR would encourage the EU institutions to make further progress in developing territorial and urban impact assessments, to better capture the outcomes of policies in the real world. To safeguard the high aspirations of the Better Regulation Agenda, it is essential that an expert with experience at the subnational level has the chance to be member of the Regulatory Scrutiny Board, to complement the work provided by the Committee of the Regions. The EU Urban Agenda and the mid-term review of the Europe 2020 Strategy are but two initiatives underway that I could mention and that provide real opportunities for building a working method of partnership with cities and municipalities.

A first pilot exercise on **territorial impact assessment** was conducted last week, led by DG REGIO and the Committee of the Regions, in close association with the CEMR and EUROCITIES:

ten cities' representatives participated in a workshop to assess the impact of the Energy Performance of Buildings Directive. I have been told that the exercise was very interesting and that valuable aspects could be identified for DG Energy who is currently preparing a recast of the directive. I would encourage the Commission to fully exploit these and other possibilities that exist for dialogue with those responsible for the delivery of EU policies.

It is for this reason that the CEMR believes that the local and regional government representation on the REFIT Platform should not solely be restricted to that of a single member of the European Committee of the Regions in the stakeholder group. This Platform will be used to improve and revise legislation with member States and different types of stakeholders. Participants on the Platform will be able to shape EU legislation through the provision of case-studies and specific knowledge and insight to the most effective way of delivering EU policies. Similar platforms to that of the REFIT Platform already exist and whose objective is to consult local and regional authorities. CEMR urges the Commission to draw inspiration from successful examples of such platforms in taking forward its plans for the REFIT Platform which will be a key means of consultation. We also hope that the government group of the Platform will build its work heavily on subnational knowledge.

Furthermore CEMR urges the Commission to 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. Associations such as CEMR 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. The engagement of local government in policy making cannot be treated in a similar way to those representing private sector vested interests. We should be viewed as partners in EU policy development and not as lobbyists. Were we to choose not to cooperate with the European Institutions, the EU policy processes would be deprived of much needed information, accountability and credibility for the outcomes that result.

We have seen how the Commission places increasing reliance on the use of **expert groups** in the preparation of its policies and programmes. This is entirely understandable given that producing qualitative legislation often requires in-depth, technical knowledge that is lacking within Commission services. While the composition of Commission expert groups can be very diverse, decisions regarding the selection of individuals as members of these groups may often be ambiguous.

This issue has rightly been identified as one requiring closer inspection by the European Ombudsman. CEMR supports the Ombudsman on this matter, insisting that the Commission be more transparent in its decisions on the make-up of its expert groups and we shall continue to be active in raising our concerns on this issue, many of which are shared by the European Parliament. We need a systematic inclusion of representatives from regions, cities and municipalities in expert groups. If it is the case that the majority of European legislation is implemented by them on the ground, it is simply logical to strengthen Commission expert groups with their participation, enabling the input of their hands-on experience.

As a concrete example highlighting this issue, I wish to mention the last call for the Commission stakeholder expert group on public procurement. CEMR had supported the application of an expert from the City of Vienna, but unfortunately he was not selected. The recently published composition of the group lists a huge number of lawyers without providing any further information about their professional background or affiliation. And the same holds true for three members that were appointed as representative of an interest group; for only one of them it is mentioned that she represents labour interests and that is the European Public Sector Union. We really regret that no representative has been selected to represent local and regional governments, which do the biggest part of public procurements in our countries.

In a similar fashion we would ask for greater transparency in the **trilogue procedures**, which are used increasingly as a fast track means of reaching agreement on draft legislative proposals, but which often end in the agreement of compromise texts that are difficult to implement in the real world. Here, the trilogue on the **public procurement and concessions directive** decided

on relevant issues behind closed doors and without an open debate about political choices that had to be made.

My intervention has identified concrete proposals that we believe can help improve the quality of EU legislative procedures going forward. Nevertheless, we can and also should learn from past mistakes where the results of EU law-making has produced far from those which are desired.

The Commission's proposal for **the public procurement directives from 2011** comprised 243 pages and 96 articles; it contained very detailed provisions on many elements that it had more the character of a regulation than a directive. For example, the 'Governance' chapter had 5 articles on 5 pages with very concrete description on reporting. Luckily, Member State representatives in the Council reduced these obligations drastically; however, other detailed provisions remained and even new ones were introduced by the European Parliament.

Therefore, I hope that the better regulation approach will make a difference in the future, starting with a better preparation phase of the European Commission and also an assessment of the changes introduced by the European Parliament and the Council. What we also should not forget is that the game is not over once legislation is passed on the EU-level. Evaluation and REFIT, the Regulatory Fitness and Performance Programme, which are part of the Better Regulation Agenda, must play an essential role in the policy cycle.

CEMR looks forward to taking active role in this debate and being a prominent voice in these discussions where much is at stake. Our aim is to provide an on-going and constructive contribution, enabling the local and regional perspective to be taken into account at all stages of policy development. My hope is that this process will provide a genuine boost for the quality of future EU legislation that my elected counterparts and I must deliver to our citizens beyond the boundaries of Brussels.

Thank you for your attention.