COM-Inst.Aff./003

Brussels, 4 October 1999

OPINION

of the

Committee of the Regions

of 15 September 1999

on the

Implementation of EU law by the regions and local authorities

The Committee of the Regions,

HAVING REGARD TO its Bureau's decision on 15 July 1998, under the fourth paragraph of Article 198c of the Treaty establishing the European Community, to draw up an opinion on the subject and to direct the Commission for Institutional Affairs to prepare this opinion;

HAVING REGARD TO the draft opinion (CdR 51/99 rev. 2) adopted by the Commission for Institutional Affairs on 6 July 1999 (rapporteur: **Mr Lars Nordström**);

adopted the following opinion unanimously at its 30th plenary session of 15/16 September 1999 (meeting of 15 September):

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1. **Introduction**

1. The Member States bear sole responsibility to the EU for the implementation of EU law. This applies both to the implementation of EC directives under national law and to administering their enforcement. Within the individual states, however, these tasks can be divided between the central government and the regional and local authorities. In many cases, the regions and the local authorities bear a considerable part of the burden resulting from this obligation to implement EU law.

2. Participation of the regions and local authorities at a national level in the process of implementing EU law reflects the practical significance which EU law has for them. EU law is more and more affecting areas of regional and local competence.. Consequently, inclusion of the regions and local authorities at national level both in the process of legislative implementation of Community law under national law and also in the administration of its enforcement, offer the regions and local authorities an important opportunity to:

- contribute their expertise,
- have their specific, individual characteristics taken into account,
- preserve their diversity and their peculiarities,
- allow for efficient administration of enforcement at a level close to the citizen.

3. For the regions and local authorities, participation in the implementation of EU law is therefore a necessary extension of their involvement in the EU law-making process currently exercised via the Committee of the Regions and, in some Member States, by means of an additional special procedure for involvement of the regions and local authorities in the central government´s European policy.

2. **Legislative implementation of EC directives**

1. Within the EU Member States, there are various forms of including the regions and local authorities in the legislative implementation of EC directives. In some countries EC directives are partially implemented under national law by the legislature in the regions. This applies to regions with own legislative competence within the scope of their exclusive powers under national law. Another possibility is the implementation by central government legislative bodies in collaboration with a national Regional Panel. Besides, there are various other forms of participation by regions and local authorities in the process of implementation of EC directives into national legislation. This may also include informal ways of cooperation. The transposition of EU Directives may have consequences for the powers exercised by devolved authorities. Application of EU rules may in certain cases regulate or even curtail the executive powers of devolved authorities and may have financial consequences for their budgets.

2. The active participation of the regions and local authorities in the legislative implementation of EC directives allows for greatest possible flexibility and extensive consideration of regional singularities. Besides, a particularly high degree of expertise

is concentrated into the legislative process.

3. The adaption to local requirements enhances administrative efficiency and provides for increased democratic legitimation. It also enhances the acceptance of Community law by the citizen.

4. The different ways of participation of the regions and local authorities in the legislative implementation of EC directives depend upon the specific constitutional background in each Member State. These differences must be fully respected.

3. **Administrative implementation of EU law**

1. It is possible to identify three ways in which EU law is enforced by the administration within the individual Member States, namely,

- enforcement principally by regional/local administrations,
- enforcement dependent upon content, partially by national and partially by regional/local administrative bodies,
- enforcement exclusively by the central authorities of the Member States.

2. The appointment of responsibility among national, regional and local authorities varies from Member State to Member State. Any harmonisation in this regard is not desirable. There should be taken care, however, within the constitutional framework of each Member State, that the administrative implementation of EU law is guided by the following principles:

- greatest possible closeness to the citizen,
- contribution of local and regional expertise,
- administrative efficiency by giving consideration to specific characteristics,
- improved control and prevention from abuse by transferring responsibility to local and regional politicians,
- best prerequisites for acceptance by the people.
- assignment of administrative responsibility to the level nearest the citizen.

3. Being close to the citizen is a strength itself for the administration. It stimulates a democratic society. It is also the most cost-effective way of administration. This also provides for direct accountability of and control by local and regional politicians, so preventing misapplication of EU funds.

4. Accountability and control can best be realised in areas of limited size. This in turn contributes to the efficiency and acceptance of the political system. Therefore, with all regard and due respect of the constitutional situations in the Member States, a good administrative implementation of EU law is in most cases depending on regional and local bodies.

4. **Some problems of enforcing EU law**

1. **General comments**

1. A sound balance between the EU, the Member States and, on a subnational

level, the regions and local authorities is a prerequisite for effective implementation of EU legislation.

2. Another key factor is that legislation must be of a generally high quality and account must be taken of the financial and administrative impact of implementation on regional and local authorities.

3. The Amsterdam Treaty and its protocol on the application of the principles of subsidiarity and proportionality is a welcome, clear expression of the importance the EU attaches to a balance between the various levels (EU, Member States, regions and local authorities).

4. Here, for instance, points 5,7 and 9 of the protocol and article 203 of the Treaty are of particular relevance, especially the protocol's formal statement that the financial and administrative impact of Commission proposals must be assessed.

5. The Amsterdam Treaty therefore provides a unique base for creating a sound balance and cooperation between the various levels, where differing regional and local situations can be taken into account.

6. Further, the Amsterdam Treaty helps to highlight the need for the EU to take reasonable heed *inter alia* of the regional and local authorities' capacity to finance tasks resulting from new legislation and their ability to cope with the administrative consequences of such legislation.

7. In this connection, the work carried out by the Commission and the progress achieved as regards improving the quality of legislation etc. calls for due recognition.

8. Though the above development can be seen as positive, attention should be drawn to a number of areas which can give rise to problems at regional and local level.

9. It must be remembered that views on the scale of the problems set out below may differ, depending on factors such as tradition, the constitutional situation and the degree of regional and local self-government.

2. **The quality of the legislation**

1. The principle of subsidiarity is of utmost importance to the quality of Community legislation[1].

2. It has to be borne in mind that the ideas regarding the principle of subsidiarity and related items can be different in certain aspects. On the one hand there are those that have the opinion that the principle of subsidiarity should be applied in a dynamic way. On the other hand there are those who believe that the main purpose of the principle of subsidiarity is to protect the Member States and the regions as well as local authorities from unnecessary Community action, thus restricting the scope of action of the EU and its institutions in some areas.

3. Similarly, different approaches can be seen when it comes to the question of a clear division of powers between the respective levels [EU, Member States and regions/local authorities]. Some argue (amongst them the Commission) that a

more precise fixing of the powers of the EU would be detrimental to the flexibility of Community action and therefore might hinders progress of Community legislation. Others postulate the necessity of a clearer fixing of the EU powers in addition to the strict appliance to the principle of subsidiarity.

4. Besides, there are differences concerning the interpretation of the term "exclusive powers of the Community". The Commission claims that, for example, all legislation concerning the common market belongs to the sphere of exclusive powers of the Community with the consequence that the principle of subsidiarity does not apply. Others believe that the area of exclusive powers of the Community should be more limited so that the principle of subsidiarity can be applied more frequently.

5. These various ideas regarding important aspects of the quality of EU legislation can themselves be seen as an expression of the differences – cultural, historical and constitutional – that exist between the Member States and regions in EU. In this sense the differences must be fully respected, as a valuable part of the European dialogue.

3. Increasing EU activity in areas typically belonging to the sphere of competence of the regions and local authorities restricts the scope of action allowed to regions and local authorities.

1. In some areas of [exclusive] competence of the local and regional authorities – for example: local and regional planning – there is a clean [bottom-up] desire for more exchange of information, mutual consultation and co-ordination at the European level.

2. If there is a European dimension to the subject in question, transnational co-ordination is only to be welcomed. However, these initiatives may turn into EU legislation or programmes and agreements with a binding character, thus restricting for example the sovereign planning powers of regions and local authorities.

3. It has to be borne in mind that voluntary cooperation and coordination at the European level between the parties concerned can arrange many things. There is no significant need for centralised EU legislation or regulations to achieve certain goals.

4. Further, in some cases it may be wondered whether the EU's areas of competence need to be specified in the Treaty. On earlier occasions the COR has taken the view that such clarification is justified and necessary in the case of local and regional planning strategy[2].

4. **Administrative expenditure**

1. Community legislation and programmes – for example in the area of collecting statistical data – often require a considerable administrative effort by regional and local authorities, sometimes disproportionate to the benefits. Furthermore, the purpose of some administrative obligations is sometimes unclear, or they seem to be an end in themselves.

2. It is understandable that an increasing administrative burden without a clean

purpose or benefit will easily lead to general feelings of annoyance and fading support for European integration.

3. Regional and local authorities are confronted with expanding tasks and an increasing administrative burden emanating from both European and national legislation, whereas they have to execute these tasks with their normal [or in some cases even decreasing] capacity. The capacity of local and regional authorities to perform the tasks conferred upon them by European [and national] legislation must therefore be taken into account before new legislation is adopted.

4. The EU institutions must therefore scrutinise European legislation – existing and new – and eliminate any requirements that are not strictly necessary. The necessity must be established not only in absolute, but also in relative terms, taking into account the cost/benefit aspect. Any administrative requirement must have a clear purpose.

5. **Financial impact**

1. In this respect, reference is made to the observations in the Opinion of the Committee of the Regions on the Evaluation of the financial and administrative consequences for local and regional authorities of EU legislation of 15 November 1995[3].

2. Particular reference should also be made to the frequent disparity between administrative costs and the "return" in the case of numerous smaller promotion schemes, e.g. in the sector of architectural conservation in cases where there is no concentration on measures of exceptional supraregional significance. Therefore, in the case of smaller development programmes, the return must be proportional to the administrative expense. Furthermore it must be checked whether preference should not rather be given to concentrating funds on individual measures of particular importance.

6. **Implementation within the Member States**

1. The problems that may occur when enforcing Community legislation can in some cases be related to the legislation or implementation within the individual Member States. Although this must be fully recognised, the principle must be that a specific problem suitably is handled at the same level that it can be related to.

2. Local and regional authorities have a duty to observe the provisions of Community directives from the dates set for their entry into force, even when the relevant laws have not been adopted by national government (the case law of the Court of Justice refers to this as the "vertical effect of directives"). Local and regional authorities must also play a monitoring and implementation role when Community directives have been wrongly or imprecisely transposed into national law.

5. **Conclusions and proposals**

1. A good implementation begins with good law-making. This means on the one hand, that the principles of subsidiarity and proportionality have to be fully applied.

Reaffirming the findings and conclusions of the COR in its report "For a New Culture of Subsidiarity"[4], the principle of subsidiarity must be consistently implemented in all areas of EU activity.

2. The principle of subsidiarity as a rule for the **exercise of authority** should be supplemented by a better defined demarcation of functions in the form of rule for the **allocation of authority**.

3. Besides, due regard has to be given to the financial and administrative consequences for the local and regional authorities in the purpose of avoiding over-regulation and unnecessary administration. It would moreover be interesting for the Commission to be able to gauge the financial impact on local/regional authorities of Community draft legislation and for the Member States to involve such authorities in assessing the financial cost of legislation which is currently under negotiation.

4. On the other hand, the regions and local authorities have to be most effectively included in the EC law-making process. This will enhance the legitimacy and effectiveness of EU law. It will also help to preserve diversity within Europe and contribute significantly to the acceptance of EU law amongst the citizens.

5. There are, according to the respective constitutional and historical background in the Member States, a lot of different ways for the regions and local authorities to gain influence on the EC law-making process. These may include formal participation in formulating the position of the national government in the Council by means of at least partially binding resolutions of the regional chamber within a Member State or lobbying activities by special representations of certain regions or local authorities in Brussels. The only possibility to gain influence, however, which is at hand to all regions and local authorities irrespective of the constitutional background in each Member State is the COR.

6. Therefore, it is essential that the effectiveness of the participation of the COR in the EU law-making process be strengthened. This requires among others:

- The provisions in the Treaty of Amsterdam concerning the own administrative body of the COR have to be fully applied. To that end, the COR has to be provided with the necessary funds for its own administrative body. The COR strongly requests the respective EU institutions to take care for the adequate funding of the COR, which is of ultimate importance for its good functioning.

- Since no other EU institution disposes of the full knowledge of the practical impact of EU legislation on the regions and local authorities, the Commission should be required to consult the COR on possible cooperation already during an early preparatory stage of EC law-making. In this regard, the COR refers to the findings in its Opinion on the Evaluation of the financial and administrative consequences for local and regional authorities of EU legislation.

7. The COR welcomes the common practice of the Commission to prepare EC legislation by publishing Green Papers and White Papers for public discussion and debate. This practice, however, does not eliminate the necessity of participation of the COR as a bank of knowledge in the early stages of *concrete* law-making projects.

8. The nature and extent of inclusion of regions and local authorities in the process of implementation under **national legislation** depends on the organisation and internal structure of each Member State. However, in every case, appropriate consideration of the specific concerns of regions and local authorities should be guaranteed. This is the indispensable prerequisite for the preservation of direct authority and the specific characteristics of each region and local authorities, as well for increased contribution of local and regional expertise.

9. To this end, the Committee of the Regions reaffirms its view that the Committee of the Regions, as the representative of local and regional authorities, should be formally consulted at a formative stage by the Commission and national governments on legislative proposals that may significantly affect the general public.

10. Of pre-eminent importance in attaining closeness to the citizen, efficiency and contribution of local and regional expertise, as well as in guaranteeing most effective control of the correct use of funds is the implementation of Community law by regional and local authorities. The regions and local authorities should be allowed adequate scope for administrative enforcement in accordance with their specific situations. The implementation of EU law by the national administration alone without strong participation of the regional and local administration can hardly guarantee the necessary closeness to the citizen and acceptance of EU law by the citizen.

11. For Community law to be implemented completely and effectively, local and regional authorities must equip themselves with the appropriate skills and resources to monitor cases where Community directives have been transposed wrongly or inadequately or not at all by the relevant legislative authorities.

12. The following proposals are made for further in-depth research of the COR:

- The COR should initiate studies of long-term effects of EU activities on the scope of action of the regional and local authorities in specific areas, especially in planning law and public services.

- The COR should initiate studies on how the effectiveness of the participation of the COR in the EU law-making process can be further enhanced. Special attention should be given to an increased participation at an early stage of the EC law-making process.

- The COR should when needed initiate comparative studies regarding the implementation of EU law within specific areas of interest. The aim should be to gain greater knowledge of implementation, that could serve as example throughout the community. One way is to use existing programmes for interregional cooperation and partnership, for example Karolus, to investigate the implementation.

- The COR recommends the Commission to put forward a list of existing aid programmes and budget items, thus making it possible for the COR to evaluate the implementation regarding the administrative efforts required by the regions and local authorities and the European value

of the programmes.

- The COR should take the necessary initiatives that could follow dependent on the results of investigations and studies mentioned above.

Brussels, 15 September 1999

The President of the Committee of the Regions	The Acting Secretary-General of the Committee of the Regions
Manfred Dammeyer	**Vincenzo Falcone**

1 In this respect, reference is made to the observations in the Opinion of the Committee of the Regions on Better lawmaking 1998 - a shared responsibility (rapporteur: **Mrs Bresso**) (CdR 50/99 fin).

2 CdR 340/96 fin - "Spatial planning in Europe", OJ C 116 of 14.4.1997, p. 1.

3 CdR 368/95, OJ C 126 of 29.4.1996, p. 1

4 CdR 302/98 fin, OJ C 198 of 14.7.1999, p. 73

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