

# The Committee of the Regions after 10 Years: Lessons from the Past and Challenges for the Future\*



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This article reviews the past, present and future challenges facing the Committee of the Regions, 10 years after its creation. It looks first at the way in which politics inside the Committee have developed, in particular how internal divisions have been managed, prior to examining the relations between the Committee, the EU institutions and other actors on the national level. Based on these observations, the article then briefly assesses the effectiveness of the Committee's work, taking not only account of the opinions it has delivered, but also the wider impact its activity has had on the role of regions in the European Union. By way of conclusion the article then identifies some long-term trends in the institutional life of the Committee of the Regions, and against this background looks ahead towards the challenges the Committee faces after the enlargement of the European Union and the adoption of the Constitutional Treaty.

## 1. Introduction

The creation of the Committee of the Regions (CoR) in 1994, following the entry into force of the Maastricht Treaty, was a milestone for the representation of local and regional interests in the European Union (EU). On the one hand, almost a decade after the agreement on the Single European Act (SEA), it constituted the culmination of efforts by regional and local actors to be taken more seriously in the EU policy process. It was the SEA, with its economic and regulatory impact on regional and local authorities, that demonstrated the extent to which Europe mattered to subnational levels of government. On the other hand, it was a high-point in this long-standing quest by regions for direct access to the summit of EU decision-making. There were some expectations that this achievement would soon be followed by even bolder steps towards an institutionalisation of the 'third level', with the more utopian scenarios going as far as speculating that the CoR would eventually be transformed into a new legislative chamber, alongside the European Parliament (EP) and the Council.

The actual development of the CoR has been more modest, and some of the great expectations have not been met. Ten years on, the CoR is essentially still the same

institution that was established by the Maastricht Treaty. However, it has established itself as a fixture in the institutional setting of the European Union, and as such has made its mark on the political life of the continent.

The Committee's 10<sup>th</sup> anniversary provides an opportunity to assess its performance so far, evaluate its current status and consider its future challenges and opportunities. This paper starts this overview by briefly looking at the way in which the CoR has organised itself internally, and in particular how it has managed to deal with the diversity of different interests that it has to bring together. A second section looks at the relations between the CoR and the other European institutions and actors, while also discussing its relationship with civil society in the EU. The subsequent section contains a brief assessment of the effectiveness of the Committee's work, both in terms of the opinions given on EU policies and in terms of its place in the constitutional politics of the Union. Finally, we look at the more long-term effect of the CoR's presence in the institutional architecture of the Union, beyond the impact of individual opinions and decisions. By way of conclusion, the implications for the Committee of the dual processes of constitutionalisation and of enlargement are discussed, providing the framework of opportunities and constraints in the coming years.

Throughout the paper the emphasis will be on raising issues and critical questions about the CoR at this particular juncture, seeking to develop an understanding of what has been accomplished, where more could be achieved, and what challenges remain to enhancing the legitimacy and effectiveness of the CoR within the politics of the European Union.

## 2. The Internal Politics of the Committee

The CoR represents a diversity of interests, and brings together a multitude of different actors from regional, local and intermediate levels of government. Both in terms of their origin and actual participation in the work of the Committee, there are different categories of members. The most obvious distinction is that between regional and local representatives. But even among the regional actors there are significant differences, such as between representatives of the more administrative regions and those that can be considered legislative. The latter distinction already indicates that competence rather than size is a key issue in uniting or dividing the members of the CoR around a particular issue. This is in fact one of the central and persistent dilemmas of the CoR: a diverse membership whose responses to proposals from the European Commission depend on the varying degrees to which these are felt to have an impact. To the degree to which the competences of regional and local authorities depend on the constitutional arrangements within each Member State, this diversity creates a set of national divisions, with groups of regions echoing the national interests of Member States. However, regions and localities have sought to overcome national lines of conflict in order to create transnational alliances, bringing together entities with similar interests from across the European Union. But even such transnational groupings still constitute sub-divisions within the CoR, preventing it from developing the kind of consensualism that was initially expected from it, given the discourse of a 'Europe of the Regions' that preceded its creation.

In addition to size and national- or competence-based differences, the CoR membership also divides along party political lines, and this is in fact a division that is becoming increasingly significant. Reflecting the growing politicisation of EU affairs more generally, the political groups in the CoR have become more significant in terms of the internal organisation of work, allocation of resources and preparation of opinions, something that is also reflected in the recent decision to change the seating arrangements in the plenary session. At least procedurally the party political division of the CoR has turned out to be more significant than the many other divisions that cut across its membership. We will return to the issues arising from this in the following section.

Finally, one can also discuss the relationship between

lected members and the Secretariat-General of the CoR. Part of the benefit of institutionalisation has of course been the creation of a permanent staff of the CoR, financed out of the EU budget and serving the interests of its members. The Secretariat-General of the Committee is a valuable resource, not only in terms of the logistics of Commission and plenary meetings, but also in terms of the research support and the drafting of opinions. Just as with the Secretariats of the European Parliament and the Council of Ministers, much of the responsibility for continuity and effective representation rests on the shoulders of the officials working for the Secretariat-General.

However, given the frequent controversies that have surrounded the appointment of senior staff in the Secretariat, this has also been an area that has caused difficulties for the CoR. In terms of overall administrative support, there are clear limits to what is on offer for the Committee – a situation that in turn raises questions about the decision taken early on to disengage the administration of the CoR from that of the Economic and Social Committee (something which raises questions about the wisdom of the CoR's decision to embark on an expansive strategy given the subjects it covers).

## 3. The Committee's Relationship with other European Institutions, the Member States and Civil Society

The European Commission has been a long-standing ally of regions and localities having a role in the EU policy process, and this strong link between the regional level and the Commission was strengthened with the creation of the CoR. From the beginning, the Commission was present in CoR plenary sessions. Based on a cooperation protocol between the CoR and the Commission, the Committee has emphasised its desire to further promote dialogue between its own high-level representatives and those of the Commission, and to actively involve and invite Commission members to CoR meetings.

The Commission's interest in regional and local representatives arises from its desire to achieve better application of its policies, to gain first-hand information and to spread its ideas. In its White Paper on European Governance, the Commission encourages the CoR to "play a more proactive role in examining policy, for example through the preparation of exploratory reports in advance of Commission proposals."

Thus the CoR not only appeals to the Commission with its opinions and other statements, but is also actively encouraged by the Commission to come up with proposals, reports and policy advice. Despite this information exchange between the Commission and the CoR, formal channels of communication and cooperation could still be improved. Such an

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improvement would not only make the CoR less dependent on the goodwill of the Commission, but also – and perhaps mainly – improve transparency and make its work more open and accessible to the public. To provide a more fruitful input, the Commission and the CoR itself continue to stress the need for a better, more formal and more effective involvement of the Committee in preliminary consultations, the pre-proposal phase and in the design of long-term policy strategies which have an impact at the local or regional level.

The relationship between the CoR and Parliament has always been a rather ambiguous one: being potential allies and rivals at the same time. It is only in the last few years

that better interaction between CoR Commissions and their respective EP Committees has taken place. In March 2002, for the first time since this possibility was opened up by the Treaty of Amsterdam, Parliament made use of its right to consult the CoR. A further strengthening of cooperation can be expected due to the new seating order reflecting the party political affiliation of CoR members. On the one hand, this change may facilitate better lobbying with Members of the European Parliament (MEPs) through the political party groups, but on the other hand such a seating order also carries the risk of CoR opinions being taken less seriously by the Commission and Council who may come to regard the CoR as a pale imitation of the EP.

The CoR's relationship with the Council is clearly the weakest one. As an advisory body the CoR already gives its opinion on Commission proposals and there seems to be little purpose in the Council consulting the CoR again subsequently. Neither does the Council issue official reports on whether or not it has taken CoR opinions into account. And even according to the Constitutional Treaty, the presence of regions with legislative capacities in the Council will continue to depend on individual Member States and their internal structure.

Recently the CoR has made greater efforts to involve other institutions and relevant associations in its seminars and events – in particular the leading European local and regional associations... In response to the Commission's Working Paper on "ongoing and systematic dialogue with local-government associations", the regions themselves generally thought that the CoR should (only) have a complementary and auxiliary function to such associations, rather than the principal role that had been proposed by the Commission. In this sensitive field of inter-regional cooperation, a greater systematisation of the permanent dialogues between the Commission and the single associations could lead to the rather paradoxical outcome of competition between the regions and the CoR, with the latter claiming



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that it is the only body to officially represent regional interests at the European level. In addition, while the conclusion of tripartite contracts with single regions to better ensure implementation of legislation and programmes with strong territorial impact is generally welcomed by the CoR, it also strongly advocates its own involvement. A vertical decentralisation, probably supplemented by horizontal interregional cooperation and partnerships with other local authorities and civil society, would allow for a more flexible and efficient approach to protect regional interests – but it might come at the expense of the central position that the CoR currently holds. In such a scenario, the CoR could end up serving as a platform for a variety of different actors, rather than being seen as an actor in its own right.

In the context of EU enlargement, the CoR has taken an important initiative by serving as a forum for discussions and cooperation between the regional and local authorities of the EU and the regional and local authorities of the new Member States and the Candidate Countries. To give one example, at the moment the CoR cooperates with national regions of Bulgaria, via the specially set up Joint Consultative Committee, discussing regional issues in the context of EU accession.

Generally, the CoR also sees itself as a channel for the flow of information to the wider public and seeks to maintain direct contact with citizens and civil society. However, the CoR itself remains a Brussels-based body and – along with the other European institutions – suffers from the problems associated with being distant from the Union's citizens. A broader, more structured and more systematic engagement of the CoR with individual regional and local authorities as well as with civil society organisations and the CoR itself might enhance participation of the wider public – something that could help to strengthen the legitimacy of the CoR in the policy process.

#### 4. The Effectiveness of the Committee's Work

The CoR has to be consulted on all areas likely to have repercussions at local or regional level. That initially meant that its responsibilities were limited to five areas: economic and social cohesion, trans-European infrastructure networks, health, education and culture. The CoR itself may adopt an own-initiative opinion on any matter it considers appropriate and the three main institutions can consult it on any matter for which they deem its opinion and expertise to be of interest. Considering that according to estimates between 70 and 80 per cent of EU policies require implementation by regional and local authorities, the Union's interest in consulting the CoR to ensure coherent and better implementation should be obvious.

To assess the impact of CoR opinions systematically would require looking into each single case in which the CoR was consulted and then checking retrospectively the original proposal against the amendments contained in the legislative act. And even then one cannot be certain whether an amendment was due to the CoR's opinion, or whether the Commission, Council or EP changed the original wording due to requests from elsewhere. For the time being, the Commission adopts a report twice a year giving substantive replies, setting out the reasons why it intends to follow the CoR's recommendations or why it does not feel itself in a position to follow them. The Commission report covers all opinions delivered by the CoR, whether these were mandatory, voluntary or the CoR's own initiative.

Even if few of the opinions actually lead to substantive changes, the ones which the Commission takes most account of are – unsurprisingly – in the CoR's main field of expertise: regional policy and the Structural Funds. Impact is also attributed to opinions on economy and employment. Generally it seems that the Commission does follow the CoR in areas where one can expect the CoR to actually possess additional and substantive expertise – as is the case with the Structural Funds, small and medium-sized undertakings, and transport affecting local and regional authorities. In other areas where the Commission has started programmes with regional impact, for example with the involvement of local and regional authorities in setting up Territorial Employment Pacts, the Commission also attaches importance to the CoR's opinion.

One can only speculate about the degree to which the quality of the CoR's opinions influences the Commission's follow-up. But it can be assumed that the CoR Commissions do draw up better and more substantive reports in their core areas, while having difficulty providing special knowledge in the more technical fields of agriculture and the environment and the general area of culture. These are

also the fields where the CoR's opinions do not very often result in amendments. In part, one may attribute these weaknesses to the limited access CoR members have to administrative and scientific support, which was discussed in the previous section. However, it may also reflect the preferences of CoR members, who might pay greater attention to the issues affecting the regions and localities they represent.

In terms of possible judicial review of the institutional reaction to CoR opinions, the fact remains that – despite repeated requests to change this situation – the Committee does not (yet) possess a privileged standing before the European Court of Justice (ECJ). Such a right to access the ECJ would allow the CoR to protect its prerogatives. If and when the Constitutional Treaty comes into force, however, consultation of the CoR, in areas where the Treaty provides for it, will become a directly enforceable formal and legal requirement. The CoR would have the right to bring in an action of annulment against a legislative act which had been adopted without it being consulted.

These prospective changes do not at all make the CoR's opinions binding. But what might happen in the future is that the CoR could indicate in its opinions whether it considers the principle of subsidiarity to have been taken into account or not: Even though the CoR has formally not been involved in the so-called 'early warning procedure' to protect the application of the principle of subsidiarity, it

might use its right to issue an opinion as a *de facto* 'early warning'. The Committee could do that by threatening in the text of the opinion to bring an action of annulment should the act be adopted without amendment and taking subsidiarity into account. In this way the CoR's future *ex post* control powers could boost the 'legal weight' of its opinions in areas where consultation is obligatory. (This state of affairs is comparable to the EP's right of scrutiny regarding the adoption of draft implementing measures in comitology procedures: EP resolutions are not at all binding, but are regarded as important because they may contain an announcement to make use of its right to claim judicial review).

These gains, however, fell some way short of the more far-reaching demands advanced in the course of the last round of Treaty reform. In particular, the CoR was not given an active involvement in the legislative procedure itself, as had been demanded by the RegLeg group. While such an involvement of a second direct representative body might enhance the democratic legitimacy of the decision-making process one could also expect that the full participation of the CoR as a sort of 'second chamber' would also lead to a more complicated and cumbersome decision-making process, and thus imply significant efficiency costs for the EU. It would also be contrary to the very aims of the



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Constitutional Convention and the subsequent Intergovernmental Conference (IGC) to clarify, simplify and rationalise the policy process and the institutional arrangements.

Thus, discussion shows that the CoR not only seeks to influence the normal policy process through its opinions, but that it has also had ambitions to effect the Treaty reform process, in order to change the legal foundations of its work. The CoR does normally issue opinions in the run-up to Intergovernmental Conferences, but here the impact is even more doubtful (and difficult to measure) than in the legislative procedure. Insofar as region-friendly changes are introduced in the course of Treaty revisions, this has generally been attributed to the domestic power of regions from certain Member States, where their support is required for ratification.

The most recent instance of Treaty change was novel in the sense that the Convention method invited other actors beyond national governments, and civil society more generally, to participate in the debate about the 'future of Europe'. The CoR, which also had representatives at the Convention, did respond to the invitation to participate in this debate. Here, as elsewhere, it was crucial for the Committee to rely on alliances with other actors, be they regional and local government associations, the European Parliament or, through the Contact Group, leading members of the Convention.

The ultimate outcome of these efforts by the CoR to play a role in the constitutional politics of the Union is difficult to assess, not only for the reasons described above. There is also disagreement among CoR members about the best way of interpreting the result: for some the achievement of the long-standing aspiration of a right of access to the ECJ is a successful outcome of CoR lobbying on this issue, and this also seems to be the official line from the CoR. For others, though, the failure to be recognised as an EU institution and to achieve an active legislative role is a sign of the continuing weakness of the CoR. The group of regions with legislative powers (the so-called RegLeg Group) is in this camp, and they have been explicit in their frustration with the limitations of the CoR. Thus, the constitutionalisation process also demonstrates the internal divisions among its members, and divergent expectations of what the CoR should do and develop into are apparent.

##### **5. The Committee after 10 Years: Long-term trends and developments**

Beyond the issue of an immediate and direct impact of the CoR on the legislative process and on Treaty revision, the CoR can claim to have contributed to the integration process more generally. It can be argued that it does make a valuable contribution in a number of ways. First, independent of what subsequently happens to the opinions it issues, the CoR provides an open and public forum for deliberation among a variety of actors. Such regular

debate and deliberations can have long-term benefits in terms of the search for better understanding among these different actors, the development of common perspectives on policy issues and the search for solutions to problems, whether these are already on the agenda or not. To be sure, the CoR is not the only such forum in the EU, but there are also not that many fora in which elected politicians from the domestic domain are forced to confront the different cultures, traditions and perspectives of other Member States. The long-term effect to be expected from this regular interaction is a shared perspective on EU matters, which might help to find solutions to policy problems in the future, even if there is disagreement in the present.

A second effect, related to these observations, is the potential for the CoR to act as a generator or catalyst for horizontal networking among regional and local actors. The Committee does bring together representatives from different national domains who – without the presence of the CoR – might not have the chance, or even see the need, to discuss EU policies with one another. While the CoR was founded on the back of an existing advisory committee to the Commission, and thanks in a large part to the foundations laid by transnational associations such as the Assembly of European Regions (AER) and the Council of

European Municipalities and Regions (CEMR), it has also since its establishment facilitated further networking among the various actors: either directly through meetings in the chamber or more generally through the focus it has provided for discussions among regional and local representatives about the institutional arrangements in the EU. In the same vein, the idea of horizontal networking also implies that the CoR has been a meeting

place for regions to share ideas, experiences and problems, and to engage in a long-term process of policy-learning.

A third long-term effect of the CoR can be seen in the symbolic strengthening of the regional idea. To a large extent, the establishment of the Committee was a symbolic act, placing regions and localities on the map of an institutionalised Europe, even if its powers did not at all match the discourse about a 'Europe of the Regions' which was so powerful in the early to mid-1990s. This symbolic empowerment of regions and sub-national government was no small thing: it did indicate a departure in the thinking about Europe from a monolithic institutional structure in Brussels, towards a more decentralised, multi-level governance system.

The symbolic strengthening of regions at the European level in turn has had an impact on the domestic standing of regions. In most Member States, the existence of the CoR has legitimated the European aspirations of regions and localities, and has further accelerated the trend towards establishing dedicated representative offices in Brussels. But also within domestic systems, which witness continuous struggles about the allocation of powers across different levels, the CoR has, on the whole, strengthened the case of those who have wanted to see more powers given to the

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regional level.

However, the issue of the impact of CoR on domestic structures is a tricky one, given the diverse nature of CoR members and of domestic constitutional arrangements in the Member States. At least as far as the RegLeg group members are concerned, there is some concern about the impact of the CoR domestically – clearly there is a limit to how useful an association with local government representatives can be for the authority of Prime Ministers of the bigger German *Länder*. At worst, there could be the concern that such ‘company’ might compromise the domestic role of the stronger regions, use up valuable time, expertise and other resources to the detriment of domestic bargaining, and thus ultimately weaken rather than strengthen their standing within the national system.

In fact, there has been some disappointment with the work of CoR among the ‘stronger’ regions who are – perhaps ironically – precisely those political actors that have fought hardest for its establishment and like to see themselves as its founders. The CoR is bound to represent all forms of local and regional authorities, with the inevitable dilution of the high ambitions of its vanguard that comes with such broad membership. Thus, if the CoR is not strengthened further, there is a danger that it may lose the support of its strongest members, as these will look for other ways to represent their particular interests. The CoR has also several times expressed its position that it does not want to sub-divide itself into

local, regional, or any other divisions, thereby frustrating the minority of regions with legislative powers among its members. In response, there is a growing tendency of these regions to look for other ways of representing their interests and influencing the European decision-making process.

## 6. Future Perspectives and Challenges

Ten years after the creation of the CoR by the Maastricht Treaty the local and regional level is explicitly recognised in the Constitutional Treaty. The new Treaty explicitly calls for the Union to respect regional and local self-government and obliges the Commission to take the regional dimension of its legislative proposals into account. Demonstrating the strengthened status of the CoR, its current President, Peter Straub, also attended the official signing of the Constitutional Treaty in Rome on 29 October 2004.

The Constitutional Treaty does not alter the nature of the European Union fundamentally: it is a revised Treaty rather than a constitution in the traditional sense of the concept. In the present context it needs to be recognized that the CoR failed in its attempt to be elevated to the formal status of an EU institution and thus remains merely a body with consultative status alongside the ESC. Nor does the

involvement of the sub-national level in the subsidiarity test (i.e. in assessing whether a certain policy area should be the subject of legislation at the European or at the national level), make the regional level in itself an actor in the allocation of legislative powers. By contrast, the CoR is not to be involved in the early warning system which national parliaments can use to ensure the application of the subsidiarity principle during the drafting stage of a Commission proposal (*ex ante* political scrutiny).

The significant gain for the CoR under the Constitutional Treaty would be its role in monitoring the application of the principle of subsidiarity. This principle is in the Treaty and, for the first time, defined to take into account the regional level. Furthermore, in order to ensure that the principle of subsidiarity is respected and its own prerogatives are being protected, the CoR will be given the explicit right to take action against the relevant Community bodies.

Recent proposals from the Commission on the consultation of regional and local authority associations

place the CoR in the position of intermediary between these associations and EU institutions. The key development with regard to regional associations is the organisation of constitutional regions, or regions with legislative powers. It seems clear that the RegLeg regions aim more and more to protect their interests in the new Europe outside the CoR.

Finally, the CoR, like other bodies in the EU, will have to confront the impact

of enlargement, both in terms of what that means for EU policies, and for its own identity. With respect to the former, there are likely to be problems given the distributional conflicts that are looming over the next multi-annual financial settlement. These may pitch the old against the new, and the economically richer regions against the weaker ones. In other words, the greater and more diverse membership of the CoR is likely to make it yet more difficult for members to reach agreement. Enlargement also means that the CoR itself has to adapt to a greater membership, with the associated logistical and political problems... The fact that most countries in Central and Eastern Europe have rather centralised systems could also further strengthen the existing majority in the CoR, and might discourage the stronger regions from seeing the Committee as an instrument for protecting their interests.

By way of conclusion, we can therefore note that the CoR has come a very long way since its inception: there has been a gradual increase in powers, culminating in the provisions agreed (though not yet ratified) in the Constitutional Treaty, and a growing membership. But long-standing problems such as internal divisions and the lack of cohesion when it comes to passing opinions persist and may even be mounting. At the same time, the new members should also



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be expected to inject new ideas and fresh momentum into the Committee's debates. However, at this point it is still premature to speculate on the impact of enlargement on the CoR, given that the participation of representatives from the new Member States is still quite a recent phenomenon. This, like many of the other issues raised in this paper, will remain on the CoR agenda for some time to come, and will provide material for discussions beyond the 10<sup>th</sup> anniversary of the Committee.

## NOTES

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- \*\* We are grateful for valuable comments received on an earlier draft from Edward Best, Christian Engel and Gracia Vara Arribas. The responsibility for the content of the paper lies with the authors. ::

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