



## **CALRE 2017 – Working Group Subsidiarity**

### **Working programme**



#### **1. INTRODUCTION**

The CALRE working group for subsidiarity is also to become involved in the **impact of the pending withdrawal negotiations** between the Commission and the United Kingdom and the discussions surrounding the Commission’s **white paper** on the future of the European Union: The impact will not just be confined to the EU budget, the multiannual finance framework after 2020 and the member states’ budget in order to make up for the **shortfalls in funding** which will occur as a result of the UK’s withdrawal: the withdrawal of the UK according to article 50 of the TEU and the subsequent negotiations for a (mixed) treaty according to article 218 of the TFEU also affect the parliaments: To ensure that the **constitutional legislative and budgetary competencies of the parliaments** can be respected and exercised, **sub-national and regional parliaments** must also be **informed** of the developments surrounding the withdrawal negotiations on a specific, substantiated and prompt basis - by the government in question as well as by the EU institutions, so that the parliaments can become involved at an early stage. The parliaments are able to and will have to assert this right. It will only be possible to counter the **democratic deficit** which has also been criticised by the Commission on the basis of the **reliable provision of information**.

At the same time, the EU Commission is showing a clear tendency to focus more strongly on certain key topics such as security, migration and the protection of the EU’s external borders. It would be premature to talk of **“self-restraint” on the part of the EU Commission**. It is evident, however, that certain areas of responsibility should be left to the member states and the regions to a greater degree – as intended by the principle of subsidiarity. One particular example of **over-regulation** is the **area of state aid**, an area in which every potential possible effect is already sufficient (also known as the **inter-state clause** in terms of art. 101 para. 1 TFEU) for ensuring the application of the European state aid law - including in cases which do not have a

noticeable impact on the single market. This is another area in which the regions are in a better position for being able to issue reasonable demands to the EU Commission.

## 2. CHALLENGES

For this reason, now is the right time to configure the **application of the principle of subsidiarity in the single market more effectively**. At time of changing framework conditions in particular, the regional parliaments can make a substantial contribution to determining the principle of subsidiarity. This also contributes to the strengthening of these parliaments in terms of their institutional relationships with the European Union.

To date, the biggest difficulties with the application of the principle of subsidiarity and the early warning system have been:

- the excessively short **8-week time-limit**,
- an insufficient **justification for the choice of legal basis and the legislative acts**,
- the **insufficient standardisation of processes and documents**.

## 3. GOALS

It is before this backdrop that the following topics should therefore be addressed at the pending meeting of the working group:

### 3.1. Extension of the 8-week time-limit (art. 6, proceedings no. 2)

The current 8-week time-limit is overwhelmingly assessed as being too short. At the level of the regional parliaments with legislative authorities in particular, it has prevented statements of comment and opinion from being voted on within the required period of time. So far, a treaty change has not appeared to be feasible. If the discussions surrounding the white paper provide some starting points in this respect, they should be taken into account accordingly. Without a treaty change, a 12-week regulation, as proposed in the Council Conclusion<sup>1</sup> dating from February 2016, would be a starting point for **voting on a common position for an (informal) extension of the time frame**.

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<sup>1</sup> [http://www.consilium.europa.eu/en/meetings/european-council/2016/02/EUCO-Conclusions\\_pdf/](http://www.consilium.europa.eu/en/meetings/european-council/2016/02/EUCO-Conclusions_pdf/).

### 3.2. Substantiated obligation to provide reasons for the choice of legal basis and the legislative act

The Commission is basing increasingly complex packages of measures on its general single market competency according to art. 114 TFEU, frequently without providing individual justification. Subsequently, such measures prove impossible to either revise or to check on an individual basis. In the future, when it intends to implement measures on the basis of this directive, the Commission should provide substantiated, rather than occasional justification, of why a guideline is insufficient.

The fact that issues can be presented to the Commission on the basis of direct communication is an important step in the right direction towards a far less bureaucratic form of collaboration.

To develop an effective shared position on the part of the regional parliaments, however, and to be able to work on a possible course of action, a **substantial obligation to provide reasons** is of key importance. For the meeting of the working group, a discussion has therefore been planned regarding **projects and areas of work which result in subsidiarity issues**, regarding the **assessment of the direct communication** with the European Commission and the presentation of **examples and differences** concerning the choice of legal basis and the substantiation. At present, subsidiarity issues have been raised regarding the **package of services** surrounding the choice of legal basis and proportionality, especially the directive concerning the process of notification<sup>2</sup> and the proportionality test<sup>3</sup>.

### 3.3. Effectiveness through standardisation

A **standardisation and comparability** of procedures, documents and reports can further improve the effectiveness of the early warning system. In this respect, the working group should provide impetus for the further **flow of information and dialogue** between the regional parliaments and EU institutions, also during the withdrawal negotiations.

## 4. AGENDA 2017

Meeting	Date	Location
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<sup>2</sup> Proposal for a directive of the European Parliament and Council regarding the implementation of directive 2006/123/EC concerning services in the single market for the stipulation of a **process of notification** for service-related approval regulations and requirements, as well as on the amendment to directive 2006/123/EC and ordinance (EU) no. 1024/2012 regarding the administrative cooperation with the use of single market information systems, COM(2016) 821 final; BR Drs. 6/17.

<sup>3</sup> Proposal for a directive of the European Parliament and Council for a **proportionality test** before the enactment of new occupational regulations, COM(2016) 822 final; BR Drs. 45/17

1st meeting	28th June 2017, starting in the morning approx. 10:00am until 3:00pm	Brussels, CoR
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