Still the Committee of ‘Legislative Regions’?

On Heterogeneity, Representation and Functionality of the Committee of the Regions after 2004

Thomas Vandamme

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Abstract

This article attempts to draw the picture of the Committee of the Regions after Treaty of Lisbon and the 2004 and 2007 enlargements of the European Union. The Committee of the Regions has received several new legal tools to influence EU decision taking, such as an increase in mandatory consultation rights and for the first time locus standi before the ECJ. Yet, the main reason to revisit the Committee was to assess the impact of the recent enlargements on its composition.

The composition of the Committee has been a thorny issue from the outset. According to some authors it has always been the main handicap of this advisory body of the EU. To what extent have the 2004 and 2007 enlargements upset the delicate balance between the local and regional players in the Committees (if such a balance was there to begin with)? In this study that questions was tackled by using the 'legislative regions' of the Union as a ‘prism for research’. This research approach was based on the fact that the legislative regions were the main driving force behind the Committee’s establishment and on the premiss that their continued interest and support are vital for the 'institutional survival' of the Committee.

In a series of interviews with members of the Committee representing ‘legislative regions’ (Belgian and Spanish entities) as well as with members representing local authorities (Dutch provinces and municipalities) the question on the (continued) importance of the Committee as a channel for influencing EU decision taking for the Union’s legislative regions was discussed.
I. Introduction

1'We must rid ourselves of the European paradox that countries such as Malta, Cyprus or Luxembourg are directly involved in EU decision taking whereas regions such as Flanders, The Basque Country or Scotland are not'.

Statements like these are meant to underline the (continued) necessity of the Committee of the Regions, if not the further expansion of its current powers. Yet, it is no coincidence that its author is the former prime minister of a federated state (Flanders). Nor is it a coincidence that the examples mentioned (Flanders, the Basque Country and Scotland) are all ‘legislative regions’ (see infra). In this contribution on the search for a new role (if any) for the Committee of the Regions (hereinafter ‘CoR’ or ‘Committee’), the special relationship between this subsidiary body of the EU and the ‘legislative regions’ in the EU will serve as the prism for research. Two lines of development must be taken into account for that purpose. First, there is the institutional development of the CoR itself, especially after the Lisbon Treaty entered into force (1 December 2009). Secondly, there is the geographical expansion of the CoR after the 2004 and 2007 enlargements and the effect that has had on its composition in terms of the regional - local divide.

In the years following its establishment by the Maastricht Treaty, the Committee of the Regions received a fair deal of attention in scientific literature. That is of course not surprising considering the sheer novelty of this subsidiary body at the time as well as its specific feature of being the first official direct channel for sub-national government to EU policy making. Thus it aroused interest, enthusiasm or even anxiety with many. The enthusiasm is understandable. It is argued here that the CoR

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1 Assistant Professor EU Law at the University of Amsterdam and researcher with the Amsterdam Centre for European Law and Governance.
2 Luc van den Brande, Vice President of the Committee of the Regions, former President of the Committee of the Regions and former Prime Minister of Flanders, Speech held at the University of Duesto, Bilbao, 29 May 2007.
3 Prior to the establishment of the CoR there was an embryonic, sadly ineffective, advisory body for regional government established by the Commission itself. See Commission Decision 88/487/EEC of 24 June 1988 setting up a Consultative Council of Regional and Local Authorities, OJ 1988, L 247, 23. This body was disbanded after the establishment of the CoR.
can be considered a type of multilevel governance *avant la lettre*. Indeed some enthusiasts proclaimed in the early nineties that the regions were to become the most important ‘units’ of the European integration process even bypassing the Member States by ‘bringing together federalist and regionalist opponents of the nation state’. At this point it seems fair to say that bold predictions such as these have not materialised and as a consequence, both the political as well as the scientific interest in the Committee has dwindled by the end of the 1990’s. Moreover, in the recent search to cut public expenditure, voices can be heard to simply abolish the Committee all together. Whether it will come to that remains to be seen but fact remains that the question as to why the Committee has not quite delivered upon its promises of the early 1990’s remains an interesting one. In times where multilevel governance is a concept *en vogue* it seems intriguing that the one official body where this concept is ‘institutionalised’ does not seem to be enjoying the status one might expect. One explanation for this decreased interest could of course be the lack of formal competences of the Committee (see *infra*). Yet, a second explanation one frequently comes across in (older) literature focuses on the Committee’s institutional design, more in particular the lack of homogeneity of its constituent members. Some argue that indeed this diversity of sub-national government in Europe handicapped the Committee more than the relatively modest powers it was attributed in ‘Maastricht’ and the subsequent Treaties.

Heterogeneity of the Committee was certainly not part of the early ambitions of the legislative regions in the EU. Indeed, the legislative regions seem to always have had a

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4 Or almost *avant la lettre*, the writings of Liesbet Hooghe and Gary Marks on ‘MLG’ date roughly from the same period.
7 Which would amount to a cut of about EUR 89 million as budgeted for the fiscal year 2013, see also OpenEurope, *The rise of EU Quangos*, [online] London: OpenEurope (2012), <http://www.openeurope.org.uk/Content/Documents/Pdfs/RiseoftheEUquangos2012.pdf >. In 2011 a number of MEP’s of the ALDE fraction have issued similar statements (although these were later withdrawn).
8 Over the years, the budget of the Committee has not decreased. The 2012 EU budget sets it at 78.335.747 Euro, see OJEU, 2012, L/399.
specific relationship with the Committee. The historic significance of the EU’s legislative regions for the CoR as a EU body cannot easily be overestimated. Without them the EU, in particular the German Länder, the Belgian Régions and Communautés and the Spanish Comunidades Autonómas, the CoR would never have seen the light of day. Consequently their imprint on the Committee in its early days was considerable. This drives home the main reason to revisit the CoR: the dramatic geographic expansion of the EU after 2004 and 2007. It is an undisputed fact that the 2004 and 2007 rounds of EU enlargement had an impact on the composition of the Committee in terms of the local – regional divide. None of the new Member States maintain a federal or strongly decentralised state structure. Does this development unbalance the Committee? Are the legislative regions likely to lose interest in an EU body that would not have been established without them but in which they now form a ‘minority’? Their continued interest in the Committee does seem essential if only for their importance in guaranteeing its institutional survival. The possible abolishment of the CoR without the consent of at least some of the legislative regions seems very difficult as a Treaty amendment would be required that would have to pass by inter alia the German Länder or the Belgian Gewesten as part of the national ratification by these respective Member States.

In order to fully grasp the wider context of this question it is helpful to realize that of all sub-national entities in the EU the ‘legislative regions’ dispose of the best alternative channels to influence the EU institutions. As such one can name the possibility of some of the legislative regions to delegate a regional minister to the Council, transnational networks (such as CALRE and REGLEG, see infra) and through Members of the European Parliament that are elected in regional constituencies (and possibly with a stronger sensitivity to regional issues).

Interesting in this regard is the study of Hepburn into the Bavarian, Scottish and Sardinian interests in influencing EU policy shaping by bypassing the state. She

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describes as one of the weakening factors as far as Sardinia is concerned the fact that Sardinia is not a constituency for the European Parliament elections.\textsuperscript{11}

Probably the most important reason for the legislative regions to possibly lose interest in the CoR is their ability to shift their attention towards the central institutions of their respective Member State.\textsuperscript{12} In Germany this process can most clearly be discerned. On the political level, it is interesting to note there that the Bavarian Christian Democrats (CSU) were amongst the driving forces behind the establishment of the CoR in the early 1990’s whereas in the late 1990’s it became the official policy of that party to focus more on the German Federal Government as the possible vehicle to further the Bavarian interest in the EU.\textsuperscript{13} To some extent the same development has been noted in relation to the Spanish Comunidades Autónomas. Whereas in an earlier stage (again early 1990’s) many Comunidades started to ‘face outwards’ by establishing direct contacts with the EU Institutions (information desks were set up to channel lobby activities from the private and public sector within the Comunidades etc) and by ‘manning’ the CoR.\textsuperscript{14} Yet in more recent years the Comunidades too seem to choose increasingly the national route to EU policy making.\textsuperscript{15} One of the effects of the so-called ‘CARCE agreements’ was to endow them with more influence on the leading Spanish negotiators in the EU (who are still members of, or answerable to, the central government).\textsuperscript{16}

\textsuperscript{12} See for instance Jeffery: ‘the alliance with the state will always be the most effective and safe strategy to promote sub-national interest in the EU’, Jeffery, 2000, 14.
\textsuperscript{13} Under the motto ‘protection of German competences includes the protection of Bavarian competences’, see for a further discussion Hepburn, 2008, 543.
\textsuperscript{14} Giving the Comunidades (and in particular the historic ‘nationalities’ such as Catalonia) a more prominent place in EU policy shaping was believed to secure the votes from those who favour a stronger position of the Comunidades both within Spain and in the EU context, see Ricard Ramon i Sumoy, Multilevel Governance in Spain, building new patterns of sub-national participation in EU policy-making, \textit{Congreso Español de Ciencia Política y de la Administración: Democracia y Buen Gobierno}, <http://www.aecpa.es/uploads/files/congresos/congreso_07/area05/GT20/RAMONiSUMOY-Ricard%28UAB%29.pdf>, 113-127, 118.
\textsuperscript{15} See Börzel, 2002, 123 and 130.
\textsuperscript{16} C.A.R.C.E is the acronym for the Conferencia de Asuntos Relacionados con las Comunidades Europeas and comprises the ministers of the 17 Comunidades in Spain. The 2005 agreements concluded in this forum were to arouse support in Spain for the 2005 referendum on the Constitutional Treaty.
In sum, there are a number of alternative channels available for the legislative regions and these are increasingly used. Yet such availability need not necessarily lead to their diminishing interest in the activities of the Committee. After all, why would the availability of one channel exclude the other?

I.1 Research Design

The starting point for this contribution was a study of relevant legal and political science literature as well as legal documentation such as EU legislative- and non-legislative acts and case law of the European Court of Justice. The study of those sources formed the basis a number of interviews conducted with (full) members of the CoR. In these interviews the geographical (post 2004) enlargement was the main theme. The overarching question was as follows: What effects did the institutional and geographical developments of the Committee of the Regions after 2004 have on the position of the ‘legislative regions’ in this EU body?

In the course of these interviews old dilemma’s surrounding the CoR were revisited. Most notably, the dilemma of the Committee’s heterogeneous composition as either a strengthening factor in terms of legitimacy or as a weakening factor in terms of efficacy came to the fore. These questions were put before members of the Committee representing ‘legislative regions’ (as defined in section II), more in particular representatives from the Belgian Gewesten/Régions and from the Spanish Comunidades Autónomas). These answers were then contrasted with those from representatives from Committee members that represent the lower authorities from a decentralised unitary state (The Netherlands). The results of the (anonimised) interviews form the basis of section VI (‘The legislative regions in the Committee; current views’).

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17 As was also stressed by Hepburn, 2008, 539.
18 For every full member of the CoR there is an alternate member that may replace her or him at commission meetings and at the plenary meeting.
19 The responses to these questions were used in an anonymous fashion. A draft text of this contributions has been sent for approval to the respondents prior to publication.
20 The questionnaire used to conduct these interviews is attached to this paper in Annex I.
21 As all interviewees hold political offices, anonimity was used as a tool to prevent possible political coloration of the repsoneses. It may also serve to prevent possible ‘institutional bias’ as the members of the Committee may wish to defend ‘their’ institution.
II. What’s in a ‘Legislative Region’?

When focusing on ‘legislative regions’ in the EU there is the preliminary question of their identification that merits attention. What entities can indeed be singled out as ‘legislative regions’ and to what extent are they themselves a sufficiently ‘homogenous group’ for research purposes? As the Committee’s ‘institutional birth’ can be traced back to a number of active regions in the Union (most notably in Belgium and Germany) the concept of federalism appears at first sight to be an attractive candidate to fill in the term. Yet, the concept of federalism may bring up more questions than it solves in this respect. For one, the fact that federalism is a living term, and can mean different things at different times and on different places must caution one for using it too lightly.²² For example, federalism has in the past meant something different in Europe than in the U.S.A.²³ and within the U.S.A. the term meant something quite different under the first Constitution (1777 - 1787) than under the second Constitution.²⁴

Probably as a consequence of such wide-ranging understandings of federalism, very general definitions of the concept can be found. It is suggested that it may be understood as ‘any system based on a balancing act between representation of functional and territorial interest within a system where at least two levels of government enjoy a considerable degree of autonomy’.²⁵ Particularly significant for this study is that such definition leaves unanswered the question as to where the centre of gravity of power within a given system resides. Depending on the centre of gravity, a state or an organization such as the EU is, commonly, regarded as either ‘confederal’ or ‘federal’. In order not to deal with that distinction in too rigid terms, the heuristic term of ‘federality’ may be helpful. Kelsen already made a point of toning down the absolute distinction between federation and confederation in

²² M. Burgess, Federalism and European Union, the Building of Europe (London: Routledge, 2000), 269.
²⁴ See S. Fabbrini and M. Burgess, 2000.
European constitutionalism. The umbrella term of ‘federality’ helps to neutralize this point as it allows for systems to have both elements of federalism and confederalism. Thus, one can apply different theories or models to the different EU Member States in order to place them somewhere on the continuum of ‘unitary’, federal’ or ‘confederal’ states depending on the amount of ‘federality’ that can be identified in their domestic constitutional systems.

Yet, the problem is that the broader the concepts and terminology become, the less distinctive value they may have for practical research purposes. Since the possible influence on EU decision taking is the key objective of research, it is suggested here that ‘legislative regions’ are those entities that consider themselves to be entities with sufficient autonomy domestically. This study is thus operationalized not so much by ‘power’ in the strict sense as by the ‘self-perception’ of such power. That is admittedly an unconventional approach but perhaps one that in the context of this research on the evolution of the CoR serves more purpose than theoretical – doctrinal classifications from the established literature dealing with federalism.

This ‘self perception’ is greatly facilitated by the fact that the (self-proclaimed) legislative regions of the EU have organised themselves in two exclusive networks, only open to sub-national entities that enjoy considerable legislative power domestically. The two networks of these ‘self-proclaimed’ legislative regions are REGLEG (the acronym for REGions with LEGislative powers) and CALRE (Conférence des Assemblées Législatives Régionales d’Europe). They consist respectively of the executive and the legislative branches of the exact same group of 74 sub-national entities. The exclusivity of these two networks might be seen as a confirmation of their domestic power but it can also be regarded as a tool for the further enhancement of that power. The mere potential to pool resources could attribute the individual members of these entities a distinctive quality that sets them apart from other sub-national entities. Thus, to operationalize this study, the entities allowed by their ‘peers’ to join these two exclusive networks will be regarded as ‘legislative regions’.


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Self identification may also be a useful tool in other contexts of research. For one, the concept of ‘national parliament’ is also less straightforward as might be thought (considering the constitutional diversity in this respect). A focus on the ‘approved’ members of COSAC (Conférence des Organes Spécialisées dans les affaires communautaires) is one way of tackling that issue. There too, membership of such an exclusive network may be regarded as a means to strengthen the influence of the institutions at hand and even as a ‘self fulfilling’ promise. Ask for example a German what his ‘national parliament’ is, and he will name the directly elected Bundestag. Yet, ask the COSAC secretariat the same question, and the answer will be the Bundestag and the Bundesrat. Both institutions are indeed members of the Conférence. 28

Both exclusive networks are to some extent ‘institutionalized’. Thus, REGLEG (the collective of executive power) explicitly presents itself as an informal political network rather than as an organization yet some institutionalization seems undeniable. 29 Its mission statement is to improve the rights of ‘legislative regions’ in respect of subsidiarity and to raise their profile in general with the EU institutions. In particular, it believes ‘legislative regions should be directly involved in the EU legislative process and should be directly consulted by the European Commission’. 30 CALRE (the collective of legislative power) is institutionalized to the extent that is has a rotating presidency, a standing committee and a plenary body. Eligible for membership are only the Chairmen/women of the 74 regional parliaments. 31

In more detail; these concern 21 autonomous provinces of Italy, the 17 Comunidades Autónomas of Spain, the 16 German Länder, the 9 Austrian Länder, the Belgian

29 It has a rotating presidency (operating as a ‘troika’ with the preceding and the succeeding presidency) and a coordination committee comprising of members of the regions with domestic political mandates or at least who have the power of attorney to represent these governments.
30 See www.REGLEG.eu (last visited on 18 May 2012).
31 See Art. 1 of the ‘Regulations of C.A.L.R.E.’ that can be downloaded from www.calre.be under ‘documents’. Despite the fact that actualisation of the C.A.L.R.E website is mentioned in art. 11 of the Regulations, it seems to be badly maintained.
The approach to focus on REGLEG and CALRE does not discard the fact that this group of 74 ‘self proclaimed’ legislative regions is still highly diverse. First, the exact range of domestic power they wield is evidently very different (one might call this the level of ‘federality’ as mentioned above). Second, their position in national constitutional terms is also very different when comparing their influence on domestic national politics. At this juncture, the differentiation between ‘dual’ federal systems (Belgium or Spain) and ‘cooperative’ federal systems (Germany) can be mentioned. Third, legislative regions’ may be part of a symmetric domestic system of government (where the state is sub-divided in regions with roughly the same powers, e.g. Germany) or highly ‘asymmetrical’ systems, such as the United Kingdom, Portugal and Finland. Portugal for instance consists of two autonomous regions (Madeira and the Azores) with highly developed political institutions, a separate legal system and constitutionally guaranteed autonomous legislative powers whereas in mainland Portugal there is not even an intermediary layer of government between the municipalities and the central state.

III. A brief history of the Committee of the Regions

To appreciate the special relationship between the Committee and the EU’s legislative regions it is important to unearth the Committee’s institutional history. Already in the early years of the former European Economic Community it was clear that there was going to be a regional policy on the European level. In 1975 the ‘ERDF’
(European Regional Development Fund) was established. Later, this fund was to be integrated in the European Structural Funds (1988).\(^{36}\) Obviously, the huge financial interest in this area of European policy signified an early stimulus for regional and local authorities to be more directly involved in European policy shaping (particularly regional development programmes).\(^{37}\) Eventually this led to the establishment of the CoR as an advisory body by the Treaty of Maastricht (1993).\(^{38}\)

From its very inception it was evident that the Committee’s relation with the EU’s legislative regions would be of a special nature. Although designed to accommodate all levels of sub-national government, it appeared from the outset that the new advisory body would be heavily dominated by these sub-national entities. It may be remembered that in the run up to the Maastricht Treaty it were the Belgian Régions and Communautés teaming up with the German Länder who were the main advocates of the establishment of the CoR.\(^{39}\) Not surprisingly, France and the United Kingdom (at the time both still a classic unitary state) were opposed to the establishment of the CoR, fearing such a platform for local government might compromise their unitary state structures.\(^{40}\) Thus, the compromise reached at Maastricht was to allow sub-national entities for the first time a direct input in EU decision-taking (other than by means of the central government of their respective member states) but, on the downside, that input would be restricted to non-binding advice on only a limited number of EU policy areas.\(^{41}\) Moreover, the Committee would not be attributed locus standi before the ECJ, not even for protecting its prerogatives.

Under the consecutive Treaties of Amsterdam and Nice, the position of the Committee was further strengthened by expanding the areas of EU policy where its advisory opinion was mandatory but in terms of judicial protection nothing changed. Probably the most important change was in the amount of funds available to it. It

\(^{36}\) The present legal foundation can be found in Article 174 to 178 TFEU.
\(^{38}\) Although the actual constitutive first meeting of the Committee only took place in 1994.
\(^{41}\) See for an interesting early study: Van der Knaap, 1994, 86. He describes the Committee’s ‘congested cohabitation with the ECOSOC’ in its early days.
may be recalled that in its early days, the half-hearted start of the CoR was obvious from its limited funding.\textsuperscript{42} That undoubtedly had an effect on the quality of its opinions and hence its reputation.\textsuperscript{43} Overall the Committee had to await the Lisbon Treaty to really see an important difference regarding its position in the EU institutional complex.

IV. Institutional Position of the Committee of the Regions after Lisbon

The Treaty of Lisbon presents a reason in its own right for re-visiting the CoR.\textsuperscript{44} Although it is safe to say that after ‘Lisbon’ the list of institutional desiderata of the CoR is all but fulfilled some significant changes were achieved. The major shortcoming is the failure to promote the CoR to a full-fledged EU institution with a more extensive role in the EU legislative process as well as a direct role in the early warning system on subsidiarity. Yet, the number of areas on which its consultation is mandatory has again increased after ‘Lisbon’.\textsuperscript{45} In fact, a recent study undertaken by Neshkova demonstrated that opinions of the CoR do often produce effects in particular vis-a-vis the European Commission. Especially in certain areas of policy, the Commission proves quite willing to take on board suggestions of the Committee. As the Commission proposal is hard to change for the ‘bicameral legislature’ of the EU, successful influence on the Commission is not unlikely to result in ultimate success in the EU’s Official Journal.\textsuperscript{46}

Another major achievement is the Committee’s locus standi before the ECJ.\textsuperscript{47} The amended art. 263 TFEU now lists the Committee as one of the ‘semi-privileged

\begin{itemize}
  \item \textsuperscript{43} See Van der Knaap, 1994, 94.
  \item \textsuperscript{44} See the new prominent place of the Committee in Art. 13(4) TEU.
  \item \textsuperscript{45} Consultation rights for the CoR relate to the following areas: Art. 91 TFEU (Transport), Art. 102 TFEU (Air Transport), Art. 148 TFEU (Employment Policy), Art. 153 TFEU, Art. 164 TFEU (European Social Fund), Art. 165 TFEU (Education), Art. 166 TFEU (Vocational Training), Art. 167 (5) TFEU, Art. 168 (4) TFEU (health care), Art. 168 (5) TFEU, Art. 172 TFEU (Trans European Networks), Art. 175 TFEU, Art. 177 TFEU (Structural Funds), Art. 178 TFEU (European Regional Development fund), Art. 192 TFEU (Environment) and Art. 194 TFEU (Energy).
  \item \textsuperscript{46} Neshkova, Milena I., The Impact of subnational interests on supranational regulation, \textit{Journal of European Public Policy}, 2010, p. 1193-1211.
\end{itemize}
plaintiffs’ that may initiate proceedings to safeguard its prerogatives. The scope of this new procedural right has not yet crystallized yet. It could be narrowly construed as simply the failure to consult the Committee altogether when its advice was mandatory. Yet, in analogy with the incremental improvement of the former legal position of the European Parliament, there are reasons to assume that in the future the ECJ might opt for a broader legal interpretation of this right. Thus, if the EU legislature has established an act that strongly diverges from the original Commission proposal, should the Committee then not have the right to be re-consulted? It may be remembered that this approach was also deemed necessary to guarantee the effet utile of the advisory powers of the European Parliament. To know the definite answer to that question, it is necessary that the Committee will explore its new powers actively as once the European Parliament did. Yet, there are no signs that the Committee is following in the Parliament’s footsteps. At the time of writing, the CoR is yet to use its newly acquired judicial powers.

Probably the most spectacular innovations brought by the Lisbon Treaty are in the field of subsidiarity, both in substance and in procedure. In terms of substance, the new article 5 (3) TEU limits Union action to that which ‘cannot be sufficiently achieved by the Member States either at central or at regional and local level’. On top of that, the recast ‘identity clause’ in Article 4(2) TEU seems to strengthen this new ‘sub-national addition’ to the subsidiarity principle by requiring the Union’s respect for the Member State’s ‘fundamental structures inclusive of regional and local self-government’. At this stage, it seems doubtful whether these substantive changes have a bearing on the actual legal application of the subsidiarity principle. An ‘intra state’ application of subsidiarity as a European legal norm would seem an impossible task for the ECJ due to the diversity of national constitutional arrangements into which it would have to tread. Challenging EU legislation for failure to comply with such a broad, intra-state, notion of subsidiarity may even risk infringement of another norm.

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48 The same legal position the European Parliament held prior to the Treaty of Nice.
49 See however Barents (2009) on p. 405: It remains odd that a body that is only to be consulted during the process of adoption of legislation can challenge it in court afterwards.
51 The wording is an exact copy of the preceding Art. I-5 of the Treaty establishing a Constitution for Europe.
of EU law: respect for the ‘constitutional identity’ of the Member States (art 4(2) EU). Having said that, the Committee has traditionally favored this wider notion of subsidiarity as its major concern (decision taking ‘as closely to the citizen as possible’).\(^{52}\)

To ascertain whether the new formulation of the subsidiarity principle post Lisbon produces any legal effects in court, the final test would of course be to bring a case before the ECJ. At this juncture it is interesting to mention the second important ‘Lisbon’ innovation in this respect. The Lisbon Treaty opened to the CoR the right to initiate direct subsidiarity review of EU ‘legislative acts’\(^ {53}\) for which its consultation was mandatory (by now an extensive list). Protocol Nr 2 on the application of the principles of subsidiarity and proportionality has (finally) accorded to the Committee an independent right to initiate ex post such legal action before the Court of Justice\(^ {54}\) although ex ante its participation is restricted to its general advisory role (thus lacking the tools of the ‘yellow’ or ‘orange’ card that the national parliaments were accorded under by Protocol Nr. 2). Symbolically, entrusting the Committee with the task of legal scrutiny of the subsidiarity principle is very significant. It may even be regarded as the acceptance of subsidiarity as one of the CoR’s prerogatives it should be able to protect in court (see supra). Also this new judicial right has not yet been put into effect at the time of writing but needless to say such cases might shed an interesting light on the way the Committee deals with subsidiarity as a ‘legal’ norm of EU law.

V. The Institutional Design of the CoR: Multilevel Governance versus Divide et Impera?

V.1 The ‘heterogeneity’ of the constitutional identities of the EU Member States

The composition of the CoR has been from the outset a heavily debated issue. Its heterogeneity allowing for all sub-national levels of government to be represented

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\(^{52}\) See Art. 1 TEU.

\(^{53}\) As defined in Art. 289 (3) TFEU: acts adopted under the ‘ordinary legislative procedure’ or under a ‘special legislative procedure’.

\(^{54}\) See Art. 8 of Protocol Nr. 2 on the application of the principles of subsidiarity and proportionality.
has been perceived as both a strengthening factor (improving the legitimacy of the CoR and its opinions) as well as a weakening factor (‘on whose behalf does the Committee with such an amalgamous composition really speak?’). The heterogeneity issue led to various ideas, some of them quite extravagant. For instance, when the European Parliament organized a meeting with the regions of Europe as early as November 1991 it was suggested that ‘the regions are accommodated by the European Treaties in their definition of their respective national constitutional orders and that, if the legal order of the Member State does not provide for regions (emphasis added), provision should be made on the European level for the representation of entities that are comparable with the existing regions’. A suggestion such as this would amount to the creation of regions ‘top down’ and would evidently result in a grotesque violation of the principle of constitutional identity of the EU Member states.

Leaving aside fantastic ideas such as these, the CoR itself has always shown great interest in developments in EU Members States with an impact on the (constitutional) position of local authority. One interviewed member of the CoR expressed great concerns about the way the régions were delineated in France (ignoring to some extent their historic boundaries) whereas another member expressed his enthusiasm for the strengthening of the regional level of government in Poland (woiwods).

Furthermore, there are a number of EU legal instruments that (be it indirectly) affect the sub-national division of Member States. For instance, the Water Framework Directive provides for transnational cooperation between regions that share the same (international) river in so-called ‘River Basin Districts’. In a more general fashion, the ‘European Grouping of Territorial Cooperation (‘EGTC’)’ provides for regions in adjacent Member States to establish new transnational structures (with legal personality) for broad ranging purposes such as ‘territorial cooperation and economic and social cohesion’. Yet in deference to the Member States, the
constitutive regulation emphasizes that regions cannot use the EGTC instrument to ‘bypass’ national (constitutional) law. On other occasions, EU legislation may ‘re-label’ existing local entities for the purposes of EU law application. As such, Directive 94/80/EC defines which local levels of government are considered ‘basic local government units’ for the purposes of the right of EU citizens to vote and stand candidate in local elections. The ‘River basin Districts, the EGTC and the electoral units are all examples of a European renvoi to existing national territorial subdivisions. If EU legislation does adopt a new ‘grid’ of territorial sub-division unknown in the Member States, it is not supposed to produce any legal effects on the domestic level. An example thereof is the ‘NUTS’ Regulation (Nomenclature of Territorial Units for Statistics).

The ‘NUTS’ regulation on a common classification of territorial units for statistical purposes seems to come closest to a top-down definition of a ‘regional level’ where that does not exist domestically. It gave legal status to Eurostat’s practices that date back already to the 1970’s. If for the purposes of the ‘NUTS’ regulation existing sub-national entities are not adequate, new, non-existing, subdivisions will be created on the EU level (so-called ‘non administrative units’) but of course, for nothing more than statistical purposes.

Despite the Committee’s interest in national constitutional developments and the (at best) indirect effects of EU legislation on the geographic sub-division of the Member States, the diversity of the Committee in terms of the local-regional divide remains as it is. If one follows the logic of the constitutional identity, this respect for the status quo makes sense. The Committee serves the purpose of existing forms of sub-national government and not vice versa. Thus, some Member States only delegate the local

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58 See Arts. 4(3) and 7 (2) of Regulation 1082/2006.
59 Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, OJ L 368, 38, in particular Art. 2(1)(a) and the annex thereto.
level of government; others both the local and the regional government and some Member States exclusively the regional/federated level.

V.2 Legislative Regions in the Committee: Sketching the Problem

The issue of the heterogeneous composition of the CoR, is as old as the Committee itself. Discussions over the distinct dominance of ‘regional’ over ‘local’ Europe started immediately in early 1992. At one point, the large regions of the E(E)C wanted to exclude the local level from the CoR altogether.61 Obviously, this did not go down well with the representatives of local government, nor with the Member States. Both local and national actors feared that a power block might develop that would be hard to contain.62 At this point a ‘divide et impera’ approach to the CoR from the part of some of the Member States at the time was unmistakable. Noferini et al even go so far as to state that ‘the CoR provided the central states with an opportunity to mobilize local demands against regional ones’.63

In the same line of reasoning, it has also been argued that the CoR should be divided in two sections or ‘chambers’: one for regional representatives and one for local representatives.64 Under a ‘two-tier’ system the regional and local authorities would then be represented separately at the European level.65 This proposal never materialised, nor did the idea that the presidency of the CoR should rotate between representatives of the regional and the local/municipal level as it was strongly rejected by the representatives of the regions.66

Although local authorities were never blocked from participation in the CoR (an unlikely scenario anyway considering that there are EU Member States where the

62 See Van der Knaap, 1994, 94: ‘National governments have an interest in an ineffective, or even impotent, CoR’.
64 See Van der Knaap, 1994, 93.
65 They proposed this institutional change for the IGC of 1996 that was to prepare the Treaty of Amsterdam, see Ingelaere, 1995, 387.
regional level of government is either weak or absent) or given a separate status, it is nevertheless evident that the EU’s legislative regions had a heavy imprint on the new EU body. The number of representatives emanating from these regions was so overwhelming that in December 1993 the Council of European Municipalities and Regions (C.E.M.R.) even filed a complaint with the Commission on the disbalancing effect this had on the CoR as an EU body which, after all, was meant to represent ‘regional and local bodies’.

The C.E.M.R. made a particular point of the discrepancy that the legislative regions who, since ‘Maastricht’, were allowed to delegate regional ministers to the Council of Ministers, could advise in the CoR on proposals on which they might later decide in Council. This complaint had little effect, but it does give a good impression of the controversy surrounding the institutional makeup of the Committee in its early days.

Indeed, also from a theoretical perspective the dominance of the legislative regions may be regarded as problematic. One concept that clearly demonstrates a weakness at this point is that of ‘descriptive representation’ as positioned by Hanna Pitkin. Descriptive representation requires the representative to ‘resemble’ those that are represented in terms of common features, functions, interests, backgrounds etc. Under such a concept, the heterogeneity of the Committee can be a positive feature, but only if such heterogeneity is a reflection of the same heterogeneity one finds in the Member States. The fact that the Belgian, German, and Spanish seats are for a disproportionately large part taken by politicians representing the legislatures or the executives of those countries’ federated states seems from that perspective problematic. The German, Spanish or Belgian citizens may wonder if their interests as ‘citoyens’ of a local political community (other than that of a ‘legislative region’) will be taken seriously on the European level as that level of government is either not, or very poorly, represented in the Committee. In sum, the heterogeneous composition of the Committee remained a thorny issue for several years with opposing views as to its effectiveness and its representativity.

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67 E.g. Luxemburg, the Netherlands or mainland Portugal
68 This requirement is nowadays laid down in Art. 300(3) TFEU.
69 See the text of Art. 146 EEC (old’) as it read after the Maastricht Treaty.
70 In its older significance, as derived from cité.
V.3 The Legislative Regions in the Committee: Current Situation

What is the situation today as regards the situation between the Committee and the legislative regions? One important factor to assess this question is the relatively important domestic mandate of the politicians that are delegated to the CoR. In this respect the legislative regions (the members of CALRE and REGLEG) definitely form an interesting category of CoR members. Measured by the number of political ‘heavyweights’ the importance they attach to the Committee, at least on paper, appears to be very impressive.\textsuperscript{72} By that standard the most striking example is the Belgian delegation to the CoR that consists exclusively of high ranking officials representing legislative regions as full members (ministers of regional government or members of regional parliaments).\textsuperscript{73} Belgium is in fact the only EU Member State that delegates (as full members) to the CoR no representatives of the local level (province or municipality) at all.\textsuperscript{74}

For instance, Charles Picqué (Prime Minister of the Brussels Capital Region) is a full member of the CoR.\textsuperscript{75} Pascal Smet (minister in the Brussels Government) is an alternate member. Another Belgian full member is Karl-Heinz Lambertz, Prime Minister of the German Community, (\textit{Ministerpräsident der Regierung der Deutschsprachigen Gemeinschaft}; Dirk van Mechelen is Flemish Minister for Finance, Budget and Planning and a full member of the CoR.

In Germany too, the centre of gravity is very much on the representation of the \textit{Länder} that occupy 21 of the 24 German seats in the CoR. Representatives of the

\textsuperscript{72} In some Member States the procedure for appointing the CoR members is not well defined or based on unwritten rules. In Portugal and the Netherlands for example the official procedure has never been established. In Austria by contrast, the procedure has achieved constitutional status.

\textsuperscript{73} Mr. Luc van den Brande, former Prime Minister of Flanders and now a Member of the Flemish Parliament has been appointed President of the CoR since February 2008.

\textsuperscript{74} Belgium has now only two alternate members that come from the municipal level (the mayors of Dilbeek and of Verviers). The procedure is established in the ordinary law of 5 May 1993, \textit{Moniteur Belge} of 8 May 1993: an inter-ministerial conference on political affairs appoints the candidates that are proposed by the Regions and the Communities. Note that this ‘inter-ministerial conference’ also consists of federal ministers.

\textsuperscript{75} Mr Picqué is actually prime minister in two different governments as he also holds the office of Prime Minister of the Joint Community Commission. Furthermore, he is also an ordinary minister in the Executive of the French Community Commission.
German municipalities only occupy the three remaining seats.\textsuperscript{76} The Austrian delegation also consists predominantly of representatives of the Länder (9 of the 12 Austrian seats). In Austria this rule is even given a constitutional status in the Bundesverfassungsgesetz.\textsuperscript{77} Furthermore, there is an agreement that the head of the Austrian delegation in the CoR must be a representative of one of the 9 Austrian Länder. The same is true for Spain considering that the vast majority of its 21 seats are taken by representatives of the 17 Comunidades Autónomas and only 4 seats are reserved for Spanish municipalities. In comparison with Germany, Belgium and Spain, the Italian delegation to the CoR shows more deference to lower levels of government although here too the majority of the 24 Italians seats are allocated to the Regions (14 seats).\textsuperscript{78}

The greatest variation in the general pattern is shown by the United Kingdom. The 24 British seats are distributed amongst the 4 component parts of the UK (England Scotland, Wales and Northern Ireland). Yet, unlike Belgium, Germany or Spain, the level of the British legislative regions (Scotland, Northern Ireland and Whales) is very poorly represented. Only four seats are allocated to members of the regional parliaments (two members of the Scottish Parliament, one each for the Welsh Assembly and the Northern Ireland Assembly). The majority of the seats is allocated to members of the County Councils and the District-, City- and Borough Councils.\textsuperscript{79}

The asymmetry of constitutional systems like the Portuguese is clearly reflected in the Portuguese delegation to the CoR: two of the twelve Portuguese seats are reserved for the presidents of the two autonomous regions of Portugal (Madeira and the Azores)\textsuperscript{80} whereas the other 10 seats are distributed among the municipalities

\textsuperscript{76} The legal basis for the German CoR representation is Art. 14 of the Law of 12 March 1993. Furthermore, the Conference of Prime Ministers (Ministerpräsidentenkonferenz) on 27 May 1993 further filled in the procedure: one seat per land and a rotation system for the 5 remaining seats.

\textsuperscript{77} See Art. 23c (4) Austrian Constitution: every Land submits one candidate, whereas the Österreichische Städtebund and the Österreichische Gemeindebund together submit three candidates. See also Art. 23c (1) Bundesverfassungsgesetz.

\textsuperscript{78} The Italian municipalities (5 full members / 12 alternate members) and Provinces (5 full members / 4 alternate members) appoint their candidates independently, see Gazetta Ufficiale della Repubblica Italiana, 18 January 2002.

\textsuperscript{79} None of the 24 UK representatives holds an executive position.

\textsuperscript{80} Presently Carlos César, President of the Azores and Alberto João Jardim, President of Madeira.
from the mainland.\textsuperscript{81} All the full members of the Portuguese delegation are in an executive position domestically (besides the two Regional Presidents, they all hold the position of mayor domestically). This is no different for Finland (another asymmetrical system) where the Åland Region, despite its tiny population, is always guaranteed one representative in the CoR.\textsuperscript{82} All other Finnish representatives are of the municipal level, most of whom do not hold an executive position.

The example of Finland also brings a related subject to the fore. The protection of political rights of a national minority may increase the legitimacy of a body such as the CoR. Yet the question seems justified whether there is not a certain point where this principle unbalances the collective body too much. The fact that 1 of the 9 Finnish seats on the Committee is always occupied by someone who only represents the 27,000 inhabitants of the Åland archipelago may also be questioned from the perspective of legitimacy. The same can be said for other minorities such as the Deutschsprachige Gemeinschaft in Belgium (not more than 74,000 people) that also is guaranteed one of the 12 Belgian seats in the CoR.\textsuperscript{83}

The important representation of the legislative regions in the Committee is evident with arguably negative effects for the representation of local government from those EU Member States. Yet it is also clear that the differences between the legislative regions inter se are not insignificant in terms of the number of the seats allotted to them nationally. Moreover, this numerical dominance may have been impressive in the early years of the Committee when the Union counted 15 Member States (as of 1995), the 2004 and 2007 enlargements seem to have changed that picture dramatically.

\textsuperscript{81} Two of these are occupied by the respective mayors of Lisbon and Oporto, Portugal’s largest two cities.
\textsuperscript{82} See Law No 138/1993 on the integration of the Provisions on the Åland Islands in the Finnish Constitution. Presently Mr. Folke Sjölund, member of the regional parliament is a CoR member.
VI. Still the Committee of Legislative Regions?

A series of interviews was conducted with several Committee members of the CoR in order to validate / falsify the assumption that the local – regional divide of the CoR hampers the functioning of the CoR, in particular after the 2004 and 2007 enlargements. The interviewed members that represent a legislative region as well as those representing a local authority downplayed such tensions. Although these tensions were acknowledged to have existed in the past, thus confirming the early literature described above, it transpired that over time a modus vivendi has been achieved. Most members emphasized that the local – regional divide across the Committee produces presently no any systemic problems, even not as a result of the most recent enlargements. One member, although himself a representative of a legislative region, particularly stressed the added value of local government in this regard since it is this level of sub-national government that often has a great interest in the proportionality of EU legislation whereas regional governments with substantive legislative powers are more concerned with subsidiarity review. This view was mirrored by interviewed Committee members representing local government.

An example is EU legislation dealing with carbon emissions. Since 70% of these emissions take place in urban areas, local government is very keen on scrutinizing the manageability of Commission proposals in this field. Regional government (possibly with legislative competences in the environmental area) is more concerned with the exercise as such of these EU competences.

In short, the respondents from the legislative regions and the local authorities alike acknowledged that their interests may differ, but they often do not conflict. One respondent also stressed in this respect that the possible alternative of institutionally separating the two levels of sub-national government (an idea launched in the early days of the CoR, see supra) would not be a viable alternative. Hereby the example of the Congress of Local and Regional Authorities of the Council of Europe was invoked. This body has been sub-divided into two separate chambers, one for the regions (all
Still the Committee of ‘Legislative Regions’?

levels above that of the cities or communes)\textsuperscript{84} and one for the local authorities (cities and communes), yet, according to the interviewee in practice this resulted in ‘different people ending up doing the same work’.

When asked if the networks of CALRE and REGLEG would lead to a lesser interest of the legislated regions (both their executives and their legislatures) in the CoR, the respondents of the legislative regions replied that an increase of activities of the legislative regions in the context of the REGLEG and CALRE networks could indeed be expected. Yet, they also stressed that this form of horizontal cooperation between the (self-proclaimed) legislative regions should not be regarded as the evidence that the CoR is becoming increasingly \textit{passé} for them. These same respondents stressed the fact that the CoR has concluded strategic partnership agreements with both REGLEG and CALRE so as to maximise the complementarity between these two networks. The Committee was said to maintain its ‘main hub’ function for both these selective networks. In this regard attention was also drawn to the fact that both CALRE and REGLEG are networks that lack the resources such as those available to the CoR and that the yearly rotating presidency of these two networks sometimes hampers their effectiveness (depending on the presidency). The institutional embedding in the CoR of CALRE and REGLEG is thus welcomed by the legislative regions.

In this context, attention was also drawn to the fact that many key positions in the CoR are still held by politicians from the legislative regions despite the change in the Committee’s composition after the enlargements. The expertise and international stature of these politicians as well as the resources available to them by their respective administrations account for their continued prominence in the CoR. There are two ways of looking at these developments \textit{post} enlargement. On the one hand (and that is what most interviewees stressed) there is a form of symbiosis that emerged since the legislative regions did not withdraw into their exclusive networks or into an exclusive focus on their respective central governments. Rather, they kept an open passage to the CoR by means of the strategic partnerships with CALRE and

\textsuperscript{84} Which means that for Portugal (which has no real intermediate level on the continent) of the allotted 6 Portuguese seats on the Chamber of Regions there are 4 reserved for the Azores and Madeira.
REGLEG and by continuing to occupy key positions on the Committee. A more negative perspective however is that such an important role for the legislative regions in the CoR even with the ‘minority position’ that they hold since the 2004 and 2007 enlargements does again raise questions in terms of the (descriptive) representative function of the CoR. As stated above, the descriptive representation of the national delegation to the CoR seems troublesome vis-à-vis that state when legislative regions are the only sub-national units delegated to the CoR. Possibly the same could be said about the descriptive representation of Committee as a whole vis-à-vis the EU in its entirety if a ‘minority’ of sub-national actors plays a larger part than what could be expected on numerical grounds.

Another conclusion that could be drawn from the responses was that over the years the regional-local division within the CoR was gradually overshadowed by the political divisions in political groups. That this has not always been the case is still evident from the text of the current Rules of Procedure of the Committee. They (still) prescribe that national delegations ‘shall’ be formed whereas political groups ‘may’ be established.\(^{85}\) Furthermore, in the plenary session of the Committee a member who is unable to attend can only be represented by another member or alternate member from his own national delegation, not (necessarily) from a member of the same political group.\(^{86}\) Most of the respondents stressed that the practice is changing in this respect, leading to a more ‘political’ Committee. This growing importance of the political groups within the CoR in the last few years is reflected by the new Committee’s seating order in the plenary sessions as this is now by party affiliation instead of country of origin. At this point, the parallel with the European Parliament is of course interesting. There too the adoption of the seating order based on political affiliation was deemed highly significant for its the functioning (and the emancipation). Moreover, it was argued by some respondents that a politicization of the CoR may indeed strengthen the ties with the European Parliament. Yet, it was also stated by one respondent that too much political alignment between the CoR

\(^{85}\) See Art. 8 (1) Rules of Procedure of the Committee of the Regions.

\(^{86}\) See Art. 5 (1) Rules of Procedure. The latter is however allowed for attendance of commission meetings, see Art. 5(2).
and the EP is not without risks either as it may result in the perception of the CoR as being ‘a mere auxiliary body of the EP’.87

In short, the interviewees stated that the differences in nationality as well as in local or regional domestic responsibilities have become less important. In fact it seems tempting to link these responses of interviewees to the old neo-functionalist concept of ‘elite socialization’.88 Elite socialization is a dynamic that may arise in the context of institutionalized international interaction and which leads to increased supranational loyalties at the expense of purely national (or regional!) interest representation. It is suggested here that such dynamic may not just help to transcend the national divide, but equally the national divide in combination with the local – regional divide.

Yet, the conclusion that the most recent rounds of enlargement had no bearings at all on the Committee’s functioning is premature. Based on the outcome of the interviews, one effect from the expansion of the EU towards the east and south in 2004 and 2007 did transpire. Several respondents voiced concerns about the large number of regional and local authorities from the new Member States that are, in terms of administrative capacity, relatively weakly developed in comparison to their ‘Western’ counterparts. Thus, for the functioning of the Committee the 2004 and 2007 accessions were deemed to have a large impact although not, as was the hypothesis of this contribution, in relation to the local – regional divide. Rather, one might speak of the ‘East – West’ divide in this respect. This comes especially to the fore when the Committee is to advice on the issues of implementation/application of EU law. Since the vast majority of EU legislation is to be implemented on the regional and/or the local level, there is an interest in this issue across all levels of sub-national government. Yet, whereas the more highly developed entities (and these may range from federated states to municipalities) quite often prefer that the responsibility for implementation / application is diverted to them, the sub-national entities of the new Member States often prefer EU legislation to call for central implementation by the

87 See for a similar view, Christiansen and Litner, 2005, 9.
Member State’ authorities as they often lack the expertise and / or the means to implement new EU policies.

The proposed Soil Protection Directive provides a good example. Its proposed text stated that local authorities ‘shall’ execute the required environmental measurements whereas that is unacceptable for those (eastern) local authorities that lack means and expertise to do so.\(^89\) According to one interviewee this was one of the most hotly debated political dossiers in the Committee in recent days.

Yet, a complicating factor such as this has not resulted in a noticeable withdrawal from the Committee by the legislative regions. One may not regard them as ‘outnumbered’ in this respect as they share these concerns with many other members of the CoR, including the (‘Western’) cities and municipalities.\(^90\) Moreover, on the issue of subsidiarity review the interviewees all stated that they still prefer to influence the EU institutions (in particular of course the Commission) on a collective, pan-European, basis.

The dissuasion of the Commission to accord subsidies to regions only if their respective Member State is in compliance with pre-established financial criteria has been regarded as a success by several interviewed members (emanating from both legislative regions and from local authorities) in this respect.

Finally, on the possible new subsidiarity complaint before the ECJ most respondents, including all respondents from the legislative regions have stated that they prefer to challenge EU legislation through action by the CoR (as an *ultimum remedium*) as this would indicate ‘a much stronger signal’ than if such action was taken by their respective national governments. The respondents from the legislative regions stated

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\(^90\) An interesting notion suggested by one interviewed member was that the Committee should try to bridge these different interests by focusing less on *subsidiarity* and *proportionality* in EU legislation but more for *flexibility* in EU legislative texts. EU measures should be phrased in such a way that they allow for flexible solutions on the local – regional or indeed even the national level.
that they would contemplate the second option (if that would prove possible on the national level) if the CoR would not undertake such legal action.

VIII. Conclusions

Based on the outcome of the interviews with the Belgian and Spanish members of the CoR representing legislative regions and with local authorities of the CoR (from The Netherlands), it would seem that some of the negative ideas that were brought in circulation in older literature about the Committee do not seem (anymore) to correspond to its present day reality. The local-regional divide, is described as a fact of life in the Committee’s functioning with which a *modus vivendi* has been achieved. In particular the participatory role of the legislative regions has not diminished even though as a matter of fact, their numerical position in the Committee has decreased dramatically after the 2004 and 2007 enlargements.

The fact that the 2004 and 2007 enlargements have tipped the balance in favour of the local authorities was not considered very problematic by the interviewed members representing the legislative regions (nor, for that matter, by the members representing local authorities). Several reasons account for the continued interest of the regions in the Committee. For one, a stronger emphasis on the political affiliations in the CoR have contributed to that dynamic. With the decrease of the national divide, the local-regional divide also seems to have become less important. On the whole, there seems to have emerged a *modus vivendi* between the different levels of sub-national government. Part and parcel of this *modus vivendi* is that the CoR benefits from the continued interest of the legislative regions as they bring to the Committee politicians with larger administrations behind them as well as much (international) stature and expertise. Yet, the prominent role of the legislative regions who form after the 2004 and 2007 enlargements of the EU a ‘numerical minority’ in the CoR also leads one to question the Committee’s representative function.

One effect of the enlargements that did at times distort the *modus vivendi* in the Committee was the new ‘East-West’ (and to some extent ‘North-South divide) divide. The fact that in the new Member States the local and regional level of government is still at a different stage of development in terms of administrative capacity may at
times give rise to tensions in the Committee. Yet, this latter concern has not induced the legislative regions to shift their attention away from the CoR to other channels that allow for influence in EU policy making.

On balance, the continued interest of the legislative regions in the CoR seems to not have dwindled after the 2004 and 2007 enlargements. Their continued interest in the CoR (and indeed prominent place therein in terms of holding key positions) seems convincing proof thereof. That in itself is a powerful argument to presume the institutional survival of the Committee despite the occasional call for its abolition by those criticizing the EU budget.
Annex I
Questionnaire

Research Project: The EU Legislative Regions in the Post-Lisbon Era
Research Centre: Amsterdam Centre for European Law and Governance

Preliminary Note: all information that is obtained from the interview will be treated anonymously, unless the interviewee explicitly indicated not to have any objection to publication.

A. General Questions regarding the Committee of the Regions

1. An exceptional aspect of the CoR is the ‘double mandate’ for its (alternate) members. The (alternate) members of the CoR are appointed by the Council of Ministers of the EU. However, they lose their (alternate) membership of the CoR if they lose the national mandate.91

On the one hand, this rule seems to strengthen the legitimacy of the CoR as a EU body. Yet, on the other hand, it also seems to cause (practical) problems. Do you regard the ‘double mandate’ as a weakening or a strengthening element of the CoR?

2. Members of the CoR may not be bound by any national mandatory instructions.92 At the same time, the (alternate) members of the CoR are politically accountable for their actions in their home state (as member of a regional executive or as member of a regional parliament). Do you regard this as a contradiction (that possible creates practical difficulties)?

3. After the entry into force of the Treaty of Lisbon, the CoR has gained more powers. In several additional EU policy areas, consultation of the CoR is now required. How important is this consulting function of the CoR in your view?

91 See art. 300 (3) and 305 TFEU
92 See art. 300 (4) TFEU
Could you give any concrete examples of cases where the CoR influenced the EU legislative procedure in a decisive manner?

4. The Treaty of Lisbon also introduced the possibility of the CoR to directly launch a subsidiarity complaint before the European Court of Justice. Does this new legal instrument have any implications for the way the CoR reviews EU legislative proposals on subsidiarity?

5. After the entry into force of the Lisbon Treaty, the national parliaments have obtained the right to issue an opinion on the compliance with subsidiarity of EU proposals (under Protocol Nr. 2 to the Lisbon Treaty; the so-called ‘yellow’ and ‘orange’ card procedure).

What is your opinion on the possibilities for your regional Assembly in terms of the formulation of a subsidiarity opinion? Is that position mostly secured by legal / constitutional means or by political means?

B. The Legislative Regions within the CoR and the EU

6. The ‘heterogeneous composition’ of the CoR is, since its establishment, by many considered as a weakness. The fact that legislative regions have formally the same position as provinces or municipalities could be said to make the CoR, due to the diversity of interests, a less interesting forum for the legislative regions.

What is your opinion in this matter?

7. The legislative regions seem to have more influence than the local authorities within the CoR. One gets the impression that the key positions within the CoR (like the Presidency of the CoR) are usually occupied by the more powerful sub-national entities. Could you confirm this impression and, if yes, give reasons for this phenomenon?

8. 73 regions in the EU have founded two political networks: CALRE and REGLEG. Membership of these networks is restricted to ‘regions that have legislative power’
(on a parliamentary level (CALRE) or on an executive level (REGLEG). How do you perceive the relationship between these two exclusive networks on the one hand and the CoR on the other hand?

9. The ‘regions with legislative power’ seem to differ also among each other considering the scope of their domestic legislative competences and their (constitutional) relation with the central level of their state (for example: the German Länder are represented on the federal level through the Bundesrat, whereas the Belgian Regions and Communities or the Spanish Comunidades Autónomas are not directly represented on the central level.

Do these differences create any problems for the future design of networks like CALRE and REGLE?

10. None of the new EU Member States that joined the EU in 2004 and 2007 has a federal state structure or at least ‘regions with legislative power’ such as those that could join networks like REGLEG and CALRE.

What are, in your opinion the consequences of this ‘shift’ within the CoR for the position of the legislative regions in the EU? Do legislative regions suffer from a ‘minority position’?

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