WELL CONNECTED?

ON RELATIONS BETWEEN REGIONS AND THE EUROPEAN UNION No. 100, January 2016



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Foreword

On 23 April 2015 the Advisory Council on International Affairs (AIV) received a request from the government for advice on the subject of 'glocalisation'. In its request, the government identified various trends in the area of globalisation and at the same time outlined a process of decentralisation of national policy. The government seems to be well aware of the significant impact of European policy on subnational authorities and has commissioned a number of reviews, for example of the substantive alignment between the European, regional and subnational agendas,¹ the effects of EU policy on subnational authorities² and potential areas for improvement. It is also conducting a review of subnational authorities' role in EU policy development,³ which builds on the existing review of the EU's relevance to municipalities and provinces.⁴ The government wishes to have a broader analysis which could serve as a strategic framework for all reviews and generate innovative recommendations. It raises the following questions in this connection.

Preliminary question

Taking account of previous studies, to what extent is there a trend towards 'Europeanisation' of policy areas in which subnational authorities have a role to play? Is there, conversely, a trend towards decentralisation of issues that have a European dimension? Does the societal trend towards regionalisation impact on the EU and/or vice versa?

Principal questions:

1. What impact should the trend towards regionalisation have on EU policy development, in terms of both its substance and procedures?

Taking the relevant studies and current initiatives into account, are there grounds for the regions to become more closely involved in developing Dutch policy on the EU? Should the government or the EU institutions change the way they operate to accommodate the trend towards regionalisation? If so, what would this entail?

- 1 Leiden University, De wisselwerking tussen Europa en Nederland: Een verkenning van de Europese politieke prioriteiten en hun invloed op Nederland en haar openbaar bestuur (Interaction between Europe and the Netherlands: a Review of European Political Priorities and their Influence on the Netherlands and its Public Administration), 15 April 2015.
- 2 University of Twente, *EU Better Regulation en het Nederlandse openbaar bestuur: naar een effectieve borging van het proportionaliteitsbeginsel* (EU Better Regulation and the Netherlands' Public Administration: towards an Effective Protection of the Principle of Proportionality), May 2015.
- 3 Evaluation of Europe and Subnational Authorities Action Plan and outcomes of the consultations between the Ministry of the Interior and Kingdom Relations, the Ministry of Foreign Affairs, the Association of Netherlands Municipalities, the Association of Provincial Authorities and the Association of Regional Water Authorities, Parliamentary Paper 33 750 VII, no. 64, 24 June 2014.
- 4 Council for Public Administration, *Met Europa Verbonden, een Verkenning van de Betekenis van Europa voor Gemeenten en Provincies* (Connected to Europe, a Review of Europe's Impact on Municipalities and Provinces), November 2013.

What role do local and regional authorities play in the EU? More specifically, how does the AIV assess the functioning of the Committee of the Regions? Does it adequately represent subnational authorities in the preparatory phase of the decision-making process? Should this be done better or differently? If so, what role should Dutch members of the Committee play?

2. How should these trends affect the EU's institutional architecture?

Does this have implications for the EU's interinstitutional relations? Does the Committee of the Regions currently occupy an adequate position within the EU's institutional structure?

The request for advice is attached as Annexe I.

Chapter I describes how the position of the regions is legally regulated in the European Union. Chapter II examines how subnational authorities establish working relationships in both The Hague and Brussels. It also deals with the question of what channels lead to Brussels and how effective they are. Chapter III identifies possible improvements. Chapter IV takes a look into the future and examines various scenarios. Finally, chapter V contains conclusions and recommendations. It also offers answers to the questions raised by the government in the request for advice.

To avoid repetition, the AIV will refer wherever possible to existing studies and reports⁵ and look mainly at the direct relations between the regions and the EU, particularly the direct involvement of the regions in developing policy 'on' and 'in' the EU.

The AIV established a combined committee chaired by Dr P.C. Plooij-van Gorsel to prepare this advisory report. The other members were Professor C.W.A.M. van Paridon, Ms M.C.B. Visser and N.P. van Zutphen (all members of the European Integration Committee). Professor M.G.W. den Boer and Ms H.M.C. Dwarshuis-van de Beek took part as expert members. The executive secretary was Ms P.H. Sastrowijoto, assisted by Ms T.J.E van Rens (trainee). Ms M.J.M Smulders and Ms D.M.E. Luitse of the Ministry of Foreign Affairs were involved in the preparation of this advisory report as civil service liaison officers.

The committee also consulted a number of experts, who are listed in Annexe II. The AIV is grateful to them for their contribution to the report.

The AIV adopted this advisory report at its meeting of 29 January 2016.

⁵ The most recent advisory report was drawn up by the Council for the Environment and Infrastructure (RLI) and is entitled *Ruimte voor de regio in* Europees *Beleid* (Room for the regions in European policy), September 2015.

Introduction

What happens in Paris is home news in the Netherlands within minutes. If the United Kingdom wishes to reform the European Union, this has direct consequences for the Union. That Union is for us what the central government in The Hague used to be. Each municipality in the Netherlands is experiencing the consequences of obtaining oil from and supplying arms to the Middle East. We all live in the same world. Europe is our neighbourhood. But this is something the powers that be in The Hague do not wish to hear. Mark Rutte and some of his ministers and followers continue to maintain that we Dutch are sovereign and that the broad outline of our lives is decided in the Dutch parliament. But often this is simply not the case. The Hague is being squeezed ever flatter between Europe and local government. And the crazy thing is that central government is itself helping this process along, as is clear from all the tasks it is currently devolving on the municipalities.

Marc Chavannes in De Correspondent, 8 December 2015⁶

The globalisation of work, income and mobility is having an impact which is being felt by the lowest tier of government. The closure of a local factory, the export of employment abroad and the arrival of migrants from the Middle East – these are just a few examples of international developments that are seriously testing the ingenuity of local government, which is the first port of call for those seeking solutions to challenges in today's world. This trend was also identified by the government in its request for advice, which refers to the Europeanisation of important policy areas and, at the same time, to a trend towards regionalisation⁷ and decentralisation and, in some cases, even secession. The government's search – as mentioned in the request – for additional ways of connecting the local and regional to the EU-wide is linked to the concept of 'glocalisation'.

Glocalisation: developments

Globalisation + localisation = glocalisation. It seems a simple combination of two terms, but what does it actually mean in relation to administrative processes? It involves the simultaneous occurrence of two separate processes, namely globalisation and localisation. Globalisation involves numerous processes, in which relevant markets and policy interventions exceed the scale of nation states. Global market competition, technological advances, climate change and environmental degradation and the cross-border mobility of goods, capital, persons and knowledge are all factors that can no longer be controlled by many countries individually. It is precisely at moments of economic crisis, when jobs, income and prospects are in jeopardy, that national governments must find solutions through international cooperation.

Internationalisation/globalisation has led to the sharing of a growing number of competences with the European Union – a process which has been under way since the 1950s. At the same time, however, another process has been moving in the opposite direction: the decentralisation of competences from the national to the subnational

⁶ See: <https://decorrespondent.nl/3730/Vanaf-nu-houd-ik-een-politiek-dagboek-bij-op-zoek-naar-nieuwe-democratische-rituelen/284084662840-026133bf>.

⁷ Regionalisation: the division of a large area into smaller areas which differ from one other by virtue of certain characteristics.

level. This is now mainly apparent in relation to the welfare state, as responsibility for employment, health care and young people is being devolved to municipal authorities.⁸ Tasks in the fields of spatial planning, nature conservation, the environment and regional economic policy have been devolved in their entirety to the provinces.⁹ As central government transfers more and more tasks, the provincial and municipal (subnational) authorities are bearing ever greater responsibility for implementing EU legislation. In administrative terms, this process is known as glocalisation: the meshing of global and local forms of administration. Municipal administrations are directly experiencing the consequences of European legislation in such fields as air quality and of the targets that must be achieved at national level. Through their spatial planning policy, rural regions have direct experience of the EU dossier Natura 2000 and environmental legislation relating to soil, water and air. Other examples are internal market dossiers such as public transport and the public procurement directives. In addition, the provinces are partly responsible for the implementation of EU subsidy programmes relating to the regional economy, rural development and cross-border and interregional cooperation. European legislation therefore has a major impact on the governance of regions, cities and municipalities.10

Regionalisation

A process of regionalisation is under way in many EU member states, involving the transfer of competences from national to regional level. This is a common process in federal systems. Belgium, Germany and Austria are examples of countries in which the regions/states have autonomous legislative competences. In Germany, the implementation of EU law has to some extent been a task of the *Länder* since the outset, but in some cases regions have an even greater ambition, for example greater autonomy (Northern Italy) of even secession from the nation state (Scotland and Catalonia). In the last chapter of this advisory report the AIV takes a look into the future in order to gauge the general trends with which the Netherlands will have to contend in the long term.

New forms of governance

The centralisation and decentralisation of government are not the only trends currently visible. Another involves shifts in governance:¹¹ the emergence of relatively new hybrid forms of governance separate from the traditional system of central, regional and

- 8 Professor J. de Vries, *De gemeente, daar gebeurt het echt* (Municipalities: that's where it's all happening), *Trouw*, 28 February 2014.
- 9 Radboud University Nijmegen, *Provinciaal positiespel in Brussel en Den Haag* (Provincial positional play in Brussels and The Hague), 2013, p. 10.
- 10 See also the explicit object of the Tilburg Centre for Regional Law and Governance (TiREG) of Tilburg University, set up on 1 July 2015, namely to establish a connection between the region and the EU. This involves such central issues as how complex societal issues can be tackled effectively and legitimately in a world which is becoming ever more Europeanised and globalised and in which cities and especially regions play an ever greater role. See: https://www.tilburguniversity.edu/nl/onderzoek/instituten-enresearchgroepen/tireg/>.
- 11 C. van Kersbergen and F. van Waarden, 'Governance as a bridge between disciplines: Cross-disciplinary inspiration regarding shifts in governance and problems of governability, accountability and legitimacy', *European Journal of Political Research*, Volume 43, Issue 2, pp. 143-171, 2004.

local tiers of government, as provided for in the 1848 constitution. In these new forms of governance, policy is developed at subnational level. Interest groups and other stakeholders, networks and specialists that take part in government at subnational level influence the formulation of policy alternatives outside the formal, national, bureaucratic channels.¹² An example is the Rotterdam-The Hague (MRDH) metropolitan region, which acquired official status in January 2015 and in which 23 municipalities cooperate together on themes connected with accessibility and strengthening the business climate. Besides the MRDH region, the Netherlands has two other metropolitan regions, namely Eindhoven and Amsterdam. This informal form of governance, in which municipalities can participate voluntarily, raises questions about transparency, legitimacy and accountability. Likewise, the cross-border regions often operate beyond the control of national authorities. The question is whether this organisational form is future-proof and how such forums can operate effectively in Brussels.¹³

These developments show that the administrative centre of gravity – which previously lay with central government – is starting to tilt away as a consequence of glocalisation. The subnational authorities are acquiring more responsibilities and are demanding in exchange increased budgets, for example for disbursement in the city regions.¹⁴ For the purposes of the ongoing upkeep of the system of government introduced in 1848, it is important to know how these developments interact.

For the clear understanding of the reader, the AIV defines a region as a geographic entity comprising municipalities, towns and cities, provinces and all possible intermediate forms that cannot be classified as forms of national governance. This group is also described as 'subnational or local authorities', to distinguish them from central government.

- 12 Netherlands Organisation for Scientific Research, Shifts in Governance: Problems of Legitimacy and Accountability, Yannis Papadopoulos, March 2011.
- 13 The decisions of metropolitan regions achieve democratic legitimacy when they are adopted in the councils of the provinces and municipalities involved in the region. Metropolitan regions should not be confused with city regions. The latter have been assigned a number of statutory tasks by central government, including responsibility for commissioning public transport, subsidising infrastructure and implementing urbanisation policy. City regions have a regional council which consists of representatives of the municipalities concerned and can take decisions that affect the residents of other municipalities. For example, Amsterdam City Region is itself a member of the informal alliance known as the Amsterdam Metropolitan Region, in which provinces also take part.
- 14 Ahmed Aboutaleb, *De roep van de Stad* (The Call of the City), H.J. Schoo lecture, De Rode Hoed, 1 September 2015.

I The position of regions

As noted in the introduction, regionalisation is an unmistakable trend. So to what extent is this trend reflected in the treaties of the European Union and in European politics? Clearly, the regions are increasingly having to deal with the European Union and not just with central government. Are regional interests recognised in Brussels? Are regions able to act independently in Brussels or can they only express themselves through the member states? Can subnational authorities influence the legislative process if their interests are affected? These and other questions are examined in this chapter. An outline of the formal position of regions and subnational authorities in Brussels serves as a framework for this advisory report. The subsequent chapters examine how this formal position is implemented in practice and consider its effectiveness.

I.1 Treaties and development

The Single European Act

The regions do not feature very clearly in the European treaties; the only actors in European cooperation to be explicitly mentioned are the member states and the European institutions. However, the role of the regions, like that of national parliaments, has grown in importance in recent years, particularly since the entry into force of the Lisbon Treaty. The interests of regions were officially acknowledged for the first time in the Single European Act, which was signed in 1987 by the twelve member states of what was then the European Community. Under the Single Act, the Treaty of Rome was expanded to include Title V (now article 174 of the Treaty on the Functioning of the European Union (TFEU)), which made reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions a European priority. This article forms the basis of the EU's current regional policy. Its aim is to strengthen the regions, promote regional development and eliminate economic differences in order to foster the economic and social cohesion of the Union¹⁵ – it follows that the policy applies to the differences not only between regions but also between member states. To this end, the structural funds and their tasks were explicitly defined in a 1989 regulation,¹⁶ although some of the funds had by then already been in existence for some time (the first was founded in 1957). These were the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund. The aims of regional policy are represented and the relevant funds managed by the Directorate-General for Regional Policy of the European Commission and the Committee on Regional Development of the European Parliament. The Council of the European Union meets in various configurations to discuss regional policy.¹⁷ Around a

¹⁵ C. Bovis, 'The Role and Function of Structural and Cohesion Funds and the Interaction of the EU Regional Policy with the Internal Market Policies', in C. Panara and A. de Becker, *The Role of the Regions in EU Governance*, Springer, 2011, p. 89.

¹⁶ Regulation (EEC) No. 2052/88.

¹⁷ See: <http://www.europa-nu.nl/id/vg9pk3qd26zl/regionaal_beleid>.

third of the total EU budget is spent through the structural funds on the development of regions and member states. 18

Maastricht Treaty

Regional development has therefore been part of EU policy for some time, although the focus has been on the regions as part of the EU and the principal goal has been to promote cohesion among them. The question is whether the regions are also recognised within the EU as individual actors with widely varying interests and wishes rather than just as parts of a whole. Recognition of the diversity between regions as opposed to the need for cohesion between them came in 1992 with the Maastricht Treaty, which laid down that the Community would contribute to the flowering of cultures while respecting regional diversity The realisation that regions have their own interests in European policy and that it was thus desirable for them to have a say in this policy led to the establishment of the Committee of the Regions (CoR) in the Maastricht Treaty (subsequently recorded in article 198 TEU). This consultative body, comprising representatives of local and regional bodies from all member states, represents the interests of the regions in the EU.¹⁹ The Council or the Commission is obliged to consult the Committee on decisions in such policy fields as education, public health, Trans-European Networks and cohesion policy.²⁰ The Committee is also competent to issue an opinion on its own initiative. These provisions formally established that the interests of the regions would be represented through direct consultation. Another important function of the Committee is to encourage the participation of citizens in the Union through the subnational authorities, which are closer to them.²¹ The Committee was therefore incorporated into the fabric of the Union as an extra guarantee of the democratic legitimacy of its actions. Finally, the Maastricht Treaty makes more detailed provision for the regional policy of the structural funds[As a result of the representation of the regions and hence the more direct representation of citizens, member states were also given the power to be represented by a minister of a local or regional authority in the Council of Ministers.²² These powers were intended to reduce the distance between the regions and EU decision-making and increase their influence. However, only a very small number of regions that have considerable power and autonomy in the member state concerned can take advantage of this possibility. Examples are the Belgian regions (gewesten) and the German and Austrian states (Länder).²³

- 18 C. Bovis, 'The Role and Function of Structural and Cohesion Funds and the Interaction of the EU Regional Policy with the Internal Market Policies', in C. Panara and A. de Becker, *The Role of the Regions in EU Governance*, Springer, 2011, p. 89.
- 19 Chapter 4, Maastricht Treaty.
- 20 Articles 126, 129, 129d and 130b respectively of the Maastricht Treaty.
- 21 S. Ricci, 'The Committee of the Regions and the Challenge of European Governance', in C. Panara and A. de Becker, *The Role of the Regions in EU Governance*, Springer, 2011, p. 110.
- 22 Liesbeth Hooghe and Gary Marks, 'Europe with the regions: Channels of representation in the European Union', *Journal of Federalism*, no. 26.1, 1996.
- 23 For a detailed comparison between the position of regions in different member states, see Radboud University Nijmegen, *Provinciaal positiespel in Brussel en Den Haag* (Provincial positional play in Brussels and The Hague), 2013, p. 37.

Lisbon Treaty

The role of the regions was greatly enlarged in the Lisbon Treaty, in keeping with the trend towards regionalisation in the previous decade. First of all, the regional interests in regional and cohesion policy were spelled out explicitly. Title XVIII (TFEU) was modified and now explicitly covers not only social and economic but also territorial cohesion. There is now a precise definition of which regions are automatically entitled to support under regional policy. However, the Treaty does not define territorial cohesion. The European Commission's Directorate-General for Regional and Urban Policy endeavours to ensure that territorial cohesion features in all EU policies. In its view, there is an important task here both for the European Parliament's Committee on Regional Development and for itself. Priority should be given to translating the concept into concrete, targeted initiatives, elaborating the definition and conveying the relevance of the concept to the member states.²⁴

The autonomy of subnational authorities and their status as independent actors were also acknowledged for the first time in the Lisbon Treaty. The Union must respect the equality of member states before the treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government (article 4, paragraph 2 TEU). The application of the subsidiarity principle is also extended in article 5, paragraph 3 TEU to the regional and local level, which will be discussed in chapter I.2. This in turn results in an expansion of the competences of the Committee of the Regions. The CoR is now entitled to bring proceedings before the European Court of Justice if 1) its own institutional prerogatives are not observed and it is not consulted when it should have been, and 2) it considers that the EU is infringing the subsidiarity principle by a proposal for a legislative act. The Committee's mandate is also extended in such a way as to bring it into line with that of other European institutions and to include additional policy areas, namely social policy, the environment and energy. Finally, the position of the Committee and the obligation to consult it are more firmly embedded in the institutional structure of the Union by the addition of the chapter entitled 'The Union's Advisory Bodies' (article 256a).

The participation of the regions in the European legislative process through the CoR was therefore increased and put on a formal footing in the Lisbon Treaty. The autonomy of subnational authorities was expressly recognised. The Lisbon Treaty also guaranteed recognition of regional interests in relation to their comparative economic position and increased the scope for aid. By making this important change the Lisbon Treaty acknowledged the possible impact of European policy on subnational authorities and established mechanisms for coordination in this field. In practice, this has led to the introduction of impact assessments.

Impact assessments

An impact assessment is a set of steps to be followed by the European Commission when preparing a proposal for a legislative act. The following questions are among those that must be answered: What are the views of the stakeholders? What objectives should be set to address the problem? What are the main policy options for achieving these objectives? What are the likely economic, social and environmental impacts of those options? The answers to these and other questions are incorporated in the

²⁴ European Parliament, Directorate-General for Internal Policies: Regional Policy Note, The Impact of the Lisbon Treaty on Regional Policy, 2010, p. 7.

impact assessment report which the College of Commissioners takes into account when reaching its decision.²⁵ The working document for the staff of the European Commission provides more detailed guidance on how to assess regional and local impacts, i.e. carrying out an impact assessment with a territorial focus. This includes assessing the administrative or political impact at national, regional or local level. The obligation to carry out a territorial impact assessment applies in the case of both problems that differ from region to region and problems that are not evenly distributed among the regions.²⁶ This process includes stakeholder consultation, which gives regions the possibility of advising on the impact on their specific region. An assessment therefore takes place at local and regional level only if the impact is potentially asymmetric and not therefore in the case of every Commission proposal. It is apparent from the Protocol on Cooperation between the European Commission and the CoR that the Commission may ask for support from the CoR in preparing an impact assessment. A study by Radboud University shows that officials of the Dutch provinces make little use of this possibility of exerting influence through impact assessments. This is because they tend to be unfamiliar with the procedure and the option of making their views known as stakeholders. The European Commission's operational guidance on assessing territorial impacts does not define which subnational stakeholders must be consulted. The CoR is mentioned only once, and there is also no mention of subnational authorities as potential regional stakeholders.

In so far as the regions have been recognised as independent actors and the treaties provide for their participation in the European legislative process, their involvement is mainly through the CoR. Regions or subnational authorities have the same standing before the European Court of Justice as citizens and are therefore not recognised as independent actors.²⁷ However, proceedings may be instituted before the Court of Justice through the CoR (on the grounds of subsidiarity, harm to the CoR's prerogatives).

I.2 Subsidiarity

The principle of subsidiarity was formally introduced in the Maastricht Treaty. Following adjustments in the Lisbon Treaty, the principle now provides that in areas in which the Union does not have exclusive competence it may act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states either at central level or at regional and local level, but can be better achieved at Union level (article 5, paragraph 3 TEU). The principle basically provides that decisions should be taken as closely as possible to the citizens of the European Union. In all areas in which the Union does not have exclusive competence, its capacity to act is subject to the principle of subsidiarity: a principle that is fundamental to the functioning of the Union.²⁸ The question is whether the principle of subsidiarity offers subnational authorities, besides a formal role, the possibility of deciding for themselves on their capacities and competences in relation to the Union.

- 25 European Commission, Impact Assessment Guidelines, January 2009, p. 4.
- 26 European Commission Staff Working Document, Assessing territorial impacts: Operational guidance on how to assess regional and local impacts within the Commission Impact Assessment System, January 2013.
- 27 A. Thies, 'The Locus Standi of the Regions Before EU Courts', in C. Panara and A. de Becker, *The Role of the Regions in EU Governance*, Springer, 2011, p. 45.

28 See: <http://eur-lex.europa.eu/legal-content/NL/TXT/?uri=URISERV:ai0017>.

To answer this question, we must first examine more closely how the principle of subsidiarity works in practice. Who is responsible for monitoring and what resources are available? First, the European Commission is itself responsible for observing this principle in the legislative process. It must prepare Green Papers, in which citizens and actors at all levels of governance are consulted about compliance. It must also accompany every draft legislative act with a statement demonstrating compliance with the principle. This subsidiarity and proportionality statement should contain some assessment of the proposal's 'financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation.'²⁹

Since the Lisbon Treaty national parliaments too have monitored compliance with the principle of subsidiarity. They can do this in two ways: first, by means of the 'yellow card' (or 'early warning') procedure when a draft legislative act is introduced or, second, by application to the European Court of Justice retrospectively. Since the Lisbon Treaty, the CoR has formally been the 'guardian of the subsidiarity principle',³⁰ and regions can, in so far as they are represented by the CoR, arrange for legislative acts to be reviewed for compliance with the principle of subsidiarity before the European Court of Justice. This has not yet happened. The most effective way of amending or stopping legislative proposals on the grounds that they infringe the subsidiarity principle is through the yellow card procedure and not by application to the European Court of Justice.³¹ Regions regularly provide expertise in the course of yellow card procedures.³² The CoR is also strengthening its role as 'guardian' through the recently founded Subsidiarity Compliance Network, which publishes reports on the extent to which Commission proposals comply with the subsidiarity principle. The network includes subnational parliaments or assemblies, governments or executives representing regions with legislative powers and associations of subnational authorities.³³ Subnational authorities are thus given the possibility of input through the Committee's reports and where the member state concerned involves these authorities in assessing new Commission proposals.

I.3 In the Netherlands

Regions can also adopt a position at the national level in order to have their interests within the European Union represented through central government. Member states are, after all, the only actors, other than the European institutions, which have substantial formal competence. As the role played by regions in the Dutch policymaking process and the influence they can thus exert in Brussels has been studied by many advisory bodies and universities in recent years, the AIV will confine itself here to providing a brief overview.

- 29 TEU, Article 5 of Protocol 2: on the application of the principles of subsidiarity and proportionality.
- 30 P. van Nuffel, 'The Protection of Member States' Regions Through the Subsidiarity Principle', in C. Panara and A. de Becker, *The Role of the Regions in EU Governance*' Springer, 2011, p. 55.
- 31 Ibid., p. 77.

32 Ibid., p. 72.

³³ See: <https://portal.cor.europa.eu/subsidiarity/thesmn/Pages/The-SMN-Partners.aspx>.

EU member states can influence Commission proposals in the Council. Dutch subnational authorities are represented by various umbrella organisations, including the Association of Provincial Authorities (IPO), the Association of Netherlands Municipalities (VNG) and the Dutch Water Authorities (UvW). Since 2001 the VNG and the IPO have been represented in the interministerial Working Group for the Assessment of New Commission Proposals (BNC). Moreover, the VNG, IPO and UvW take part in regular consultations with the Ministries of the Interior and Kingdom Relations and of Foreign Affairs,) and with teams that coordinate different Dutch public authorities' input on EU dossiers (IBDTs). Following the adoption of the Local and Central Government Relations Code in 2013, the position of the local and regional authorities in relation to Commission proposals has now been formalised. It is apparent from this brief description of the position of local and regional authorities in the Netherlands that they are mainly represented through umbrella organisations. How these channels are used in practice will be considered in chapter II. Clearly, a variety of forms of cooperation and formal and informal consultation networks have evolved between different state actors (national and subnational authorities) and nonstate actors (businesses, interest groups and civil society organisations). This relationship of interdependence between Europe, the member states, subnational authorities, and civil society and private sector actors is a form of what is termed multilevel governance (MLG) in public administration theory.³⁴

Another question is how the way in which the regions are embedded in the institutional architecture of the European Union is reflected in the position of the Dutch regions and subnational authorities. Below, the AIV summarises how the position of the Dutch regions relates to that of regions in other member states. This throws up various questions. For example, does the municipality of Delft have the same formal legal position in Brussels as the federal state of Bavaria in Germany? According to Radboud University, the answer is no. Subnational authorities in the Netherlands do not have entirely independent legislative competence in a constitutional sense, although they can make bye-laws. By contrast, the Länder in Germany and Austria do have these lawmaking powers from the outset. This means, for example, that - as laid down in the German and Austrian constitutions – positions taken by these subnational authorities on policy issues within their field of legislative competence are binding on the national authorities when they determine their stance in the EU. And in Belgium the role of the regions in the European decision-making process is actually entirely independent. In the Netherlands, however, positions taken by local and regional authorities are not binding on central government.³⁵ It also follows that the principle of subsidiarity applies differently to Dutch subnational authorities: they have no place in the subsidiarity compliance network. Consequently, they have relatively little say in whether a particular policy area is addressed at European, national or regional level. Dutch local and regional authorities also lag behind the federal states in terms of degree of autonomy. However, they appear to lead the field when it comes to their power to have a say in government at national level, but this is mainly due to the indirect elections of the Senate through the Provincial Councils. And this is not designed to increase the say of the regions.

³⁴ Council for Public Administration, *Met Europa verbonden*, een verkenning van de betekenis van Europa voor gemeenten en provincies (Connected to Europe, a Review of Europe's Impact on Municipalities and Provinces) (summary), November 2013, p. 21.

³⁵ Radboud University Nijmegen, *Provinciaal positiespel in Brussel en Den Haag* (Provincial positional play in Brussels and The Hague), 2013, p. 44.

In conclusion, the AIV endorses the Radboud University report that Dutch regions and subnational authorities are in a weaker position than federal regions in other member states and hence, indirectly, also in a weaker position in Brussels. On the other hand, implementation of EU decisions is increasingly a matter for subnational authorities. The CoR estimates that some 70% of European legislation is implemented by subnational authorities.³⁶ This chapter shows that the formal position of the regions and their scope for participation in the European Union is not consistent with the burden they shoulder when it comes to implementing EU decisions. The position of subnational authorities is mainly based on representation within the CoR and various forms of consultation with central government. However, this formal position in no way provides a complete picture of the situation in practice, which will be dealt with in the following chapters.

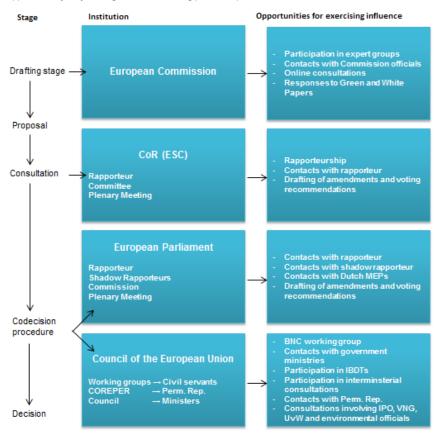
³⁶ Council for Public Administration, *Met Europa Verbonden*, een Verkenning van de Betekenis van Europa voor Gemeenten en Provincies (Connected to Europe, a Review of Europe's Impact on Municipalities and Provinces), November 2013, p. 1.

II Many roads to Brussels: regional/subnational influence on policy in practice

II.1 Introduction

This section addresses the question of what the subnational authorities are doing to get more control over the processes of internationalisation and Europeanisation. They are mainly active in finding partners abroad (town twinning arrangements and ties with European regions) and forging cross-border partnerships and alliances, not only in the border regions. The Dutch local and regional authorities' delegation plays an active part in the Committee of the Regions in Brussels. Regions and cities are represented in the EU through umbrella organisations. From The Hague, for example, municipalities and provinces are involved through the VNG and the IPO respectively in formulating EU policy.

As noted previously, subnational authorities have considerable responsibility for the making, implementation and enforcement of EU policy and legislation. They therefore invest in building relationships with EU institutions in connection with the preliminary stages of legislation. However, far-reaching involvement of subnational authorities in the determination of national positions on EU dossiers would also be appropriate. The AIV uses the figure below in discussing the opportunities for exercising influence. This does not include, however, the post-legislative procedure.



Opportunities for influencing EU decision-making (codecision)

Source: S. Goedings (et al.), *Europese milieuwetgeving en decentrale overheden* (European Environmental Legislation and Local and Regional Authorities), SDU, The Hague, 2010.

The flow diagram above shows the stages that make up the decision-making procedure and what actors are involved in each stage. Unfortunately, implementation is missing from the diagram. It is precisely in the implementation stage that subnational authorities acquire expertise from which the EU could greatly benefit through feedback. Subnational authorities are found to attach great importance to identifying legislation relevant to them and assessing its priority at the earliest possible opportunity. For this purpose they can use Green and White Papers, Commission communications, Commission work programmes and so forth. This enables them to defend all their interests in these priority dossiers in Brussels while the legislation is still in the drafting stage. Each year the subnational authorities draw up – both through their own umbrella organisation and jointly – a list of priorities for discussion in the BNC working group. The umbrella organisations consider that a convenient way of indicating their priorities would be to mark the topics with an asterisk in the list forwarded to the Dutch parliament (in response to the Commission's work programme). Timing is therefore of the essence: the earlier this occurs in the legislative procedure the better.

The following dossiers currently have priority:

- development of climate and energy policy;
- EU biodiversity strategy 2020 (including fitness check of the Birds and Habitats Directives) – may possibly become the first pilot case involving devolved powers;
 urban agonda;
- urban agenda;
- regional economy and innovation, including post-2020 cohesion policy;
- circular economy;
- European Fund for Strategic Investments (EFSI);
- air quality, review of clean air policy package;
- better regulatory provisions (including REFIT the Regulatory Fitness and Performance Programme);
- Water Framework Directive.

The consultation (preliminary) stage of the legislative procedure is regarded by local and regional authorities as an ideal time to exercise influence. This is why they take part in stakeholder conferences, expert groups and so forth. However, there is no centralised information about who does what in this stage. For example, the VNG does not know which municipal officials participate in the expert groups as many of these contacts are arranged directly. Nor is it clear what the European Commission ultimately does with all this information. To form an opinion on this, it is necessary to identify the various channels through which subnational authorities engage with the European Union.

II.2 Indirect channels (through central government and the House of Representatives)

The AIV will confine itself to a brief overview. For a more detailed picture of the cooperative links between subnational authorities and central government, reference should be made to the documents mentioned in the footnote.³⁷

³⁷ Radboud University Nijmegen, Provinciaal positiespel in Brussel en Den Haag (Provincial positional play in Brussels and The Hague), 2013, pp. 28-32; Council for the Environment and Infrastructure, Ruimte voor de regio in Europees Beleid (Room for the regions in European policy), September 2015, pp. 24-25; Council for Public Administration, Met Europa Verbonden, een Verkenning van de Betekenis van Europa voor Gemeenten en Provincies (Connected to Europe, a Review of Europe's Impact on Municipalities and Provinces), November 2013, pp. 37-40 and 49; Parliamentary Papers 34300-VII, no. 6, Samen sterk in Europa (Strength through cooperation in Europe), July 2015, pp. 5-7.

Central government

The simplest way of engaging with the European Union would seem to be through central government, since the link between the internal tiers of government in the Netherlands already exists. The European Commission is among those that argue that responsibility for defending regional interests and taking into account the costs of implementation for subnational authorities rests mainly with central government. However, the subnational authorities argue that central government is insufficiently geared to implementation. To assess whether this is the case, this chapter first examines how matters are coordinated between central government and the regions and whether this coordination can be regarded as effective.

As noted previously, the division of roles between the different tiers of government in the negotiation stage is laid down in the Local and Central Government Relations Code. The subnational authorities are involved through the VNG and the IPO in the Interministerial Working Group for the Assessment of New Commission Proposals, which is coordinated by the Ministry of Foreign Affairs. This working group identifies and discusses the implications of new legislative proposals for subnational authorities in the assessment forms (known as BNC files or fiches) which are sent to parliament. The AIV is aware that the subnational authorities often have a capacity problem and wishes to stress how important it is for all government authorities to be involved at an early stage, when information about responsibility for and the costs of implementation should also be available. During the preliminary process (the negotiation and implementation stages) subnational authorities are closely involved in the IBDTs in cases where they have designated a policy domain as having priority. They have now gained much experience of fields such as the environment, climate, air quality, soil quality, equal opportunities and internal market rules (public procurement legislation and rules on state aid). In such cases the involvement is greater than in the Interministerial Working Group. This is mainly due to the fact that the dossier teams are staffed by technical experts, whereas the Working Group consists of coordinators who have no specialist knowledge. The IBDTs are of a flexible nature and are formed and implemented in constant consultation with the VNG and the IPO. The teams are formed during the preliminary process and thus provide input to the Commission from an early stage. They also provide the input for the European Commission's impact assessments discussed in chapter I.1 and can submit position papers on their own initiative.³⁸ The Commission itself regards the IBDTs as a highly effective tool in implementing the Better Regulation Agenda, and would like to see them introduced in other member states as well. All this necessitates an active role on the part of the Ministry of the Interior and Kingdom Relations which has the task - in its capacity as 'parent ministry' responsible for local and regional authorities - of protecting the interests of the regions and involving them effectively and in good time in EU policymaking.

It remains to be seen whether raising the status of subnational authorities to that of a quasi-ministry would help to generate more effective output. This notion is still in its infancy and has yet to be elaborated and added to the Local and Central Government

³⁸ Radboud University Nijmegen, Provinciaal positiespel in Brussel en Den Haag (Provincial positional play in Brussels and The Hague), 2013 p. 29.

Relations Code.³⁹ The aim of conferring the status of quasi-ministry would be to ensure that subnational authorities are included in strategic joint planning and are included and have their interests represented in negotiations throughout the legislative procedure. The AIV considers that subnational authorities should be able to claim this status as of right and should not be dependent for participation on the goodwill of line ministries. The AIV welcomes the inclusion of subnational authorities in Dutch negotiating delegations to the Council. This adds expertise from which the entire Dutch public sector can benefit. Intensive cooperation on these dossiers has in any event meant that the subnational authorities have been able to participate in the national decision-making process and have had a substantial input in the negotiating strategy adopted by central government in the Council stage of the legislative procedure.

Although the involvement of subnational authorities was properly agreed and recorded in the Local and Central Government Relations Code at an earlier stage, cooperation of this kind should be regularly reviewed. The last major review resulted in a report entitled *Samen sterk in Europa* (Strength through Cooperation in Europe), which was submitted to parliament in September 2015.⁴⁰ This document notes that continuous identification of strategically important dossiers and the organisation of the cooperation formed the essence of the review. As happens so frequently, this document too focuses on the position taken after the publication of a legislative proposal by the European Commission. The AIV considers it right that an arrangement be sought, but notes that the review pays inordinate attention to the negotiation stage of the legislative procedure. The AIV wonders how the involvement of subnational authorities is arranged in the consultation stage and how the central government's involvement is regulated in the implementation and evaluation stage, in which the subnational authorities play a major role.

Subnational authorities and the House of Representatives

Subnational authorities are also able to raise matters through the House of Representatives. Although parliament does not consult regularly with subnational authorities about EU dossiers, contacts and informal discussions do take place regularly on their initiative. The House of Representatives views subnational authorities as stakeholders, all of whom must be treated equally. The House scrutinises the work of the government and does not have a formal relationship with subnational authorities other than through its link with central government. However, subnational authorities can be asked to attend hearings and technical briefings and the information obtained in this way can be included by members of parliament in the parliamentary committee meetings with members of government prior to EU Council meetings. Here the MPs can advocate that a position be modified. A recent example of such an approach was the hearing on the European Commission's Better Regulation Agenda (4 November 2015), at which both the VNG and the IPO were heard. The main points made by these umbrella organisations about the cost of EU proposals (i.e. the consideration given in impact assessments to territorial consequences, and implementation costs and audit pressure

³⁹ Officially subnational authorities do not have quasi-ministry status. However, the question of whether they should be given a role as quasi-ministries is discussed in the Review; see also: https://www.rijksoverheid.nl/documenten/rapporten/2015/08/06/bijlage-3-voorbeeld-model-decentrale-overhedenals-mededepartement.

⁴⁰ Parliamentary Paper 34300-VII, no. 6, Samen sterk in Europa (Strength through cooperation in Europe), July 2015.

affecting subnational authorities) have not yet been reflected to any great extent in the motions lodged by MPs on 18 November 2015. These motions related, above all, to SMEs, the lobby register, a yellow card procedure for delegated acts, and the sunset clause. Nonetheless, it is important for MPs to be aware of the responsibilities of subnational authorities for implementation of EU legislation and to continue paying attention to this in all EU dossiers.

It follows that there are no routine consultations between the House of Representatives and the subnational authorities, even in the context of the yellow card procedure. As subnational authorities are treated as stakeholders, they cannot easily be involved individually by MPs. If they are to have influence in the House of Representatives, they must therefore provide input on their own initiative. Whether this would be worthwhile is doubted by subnational authorities themselves. By the time the House of Representatives deals with proposals, it is too late in the legislative procedure for the subnational authorities, which regard the preliminary stage of the procedure as the best time to exercise influence.

II.3 Direct channels (umbrella organisations, Committee of the Regions, European institutions and expert working groups)

Umbrella organisations

While the regions are represented in Brussels by the Dutch government, they also lobby in both The Hague and Brussels. National and regional interests may conflict and, in the opinion of many regional representatives, the central government attaches insufficient importance to implementation. This is why subnational authorities also arrange for their interests to be represented in Brussels, in particular through associations and umbrella organisations and by participation in all kinds of consultations. The four big cities also have a representative in Brussels (G4), as do the larger municipalities (G32+5). Through their presence in Brussels, the regions can exercise influence in the preliminary stage. During this stage, the House of the Dutch Provinces (HNP), for example, works closely with the Permanent Representation of the Netherlands at the EU.

The idea behind the House of the Dutch Provinces, which was founded in 2000 and is based in Brussels, is that the twelve provinces have more common than conflicting interests. Its work plan is adopted on the basis of the IPO's multi-year agenda, the agendas of the twelve provinces and the agenda and focus of the European institutions at that time. Dossiers compiled from the work plan are worked on by both representatives from Brussels and experts at the offices of the provinces. The HNP advocates each dossier on behalf of all twelve provinces and there is close cooperation with other umbrella organisations. Naturally, provinces do not always have the same interests and not all the dossiers are equally relevant to all twelve provinces. In such cases changing coalitions of provinces work together, for example provinces in a particular part of the Netherlands or coastal provinces.

First Vice-President of the European Commission Frans Timmermans recently⁴¹ complimented the provinces at length on their report entitled 'Dutch Provinces for Better EU Regulation', which puts forward practical suggestions for solving problems currently

⁴¹ During the plenary debate of the Committee of the Regions with First Vice-President Frans Timmermans on 3 December 2015 on the work programme of the European Commission for 2016.

besetting EU regulation.⁴² Mr Timmermans sees this as an example of how cooperation with subnational authorities should function. One of the points made in the report is that auditing has become an end in itself, thereby making it difficult for the provinces to implement legislation.

The IPO and the VNG try to exert influence in Brussels through other channels in addition to the Committee of the Regions and the Dutch umbrella organisations. For example, they are both members of the Council of European Municipalities and Regions (CEMR), through which their interests are represented before the EU. The CEMR is the umbrella organisation of national associations of municipalities and regions from 41 countries. Although the CEMR is not well known, insiders say that its impact is considerable. It was in fact the CEMR which suggested setting up the Committee of the Regions.⁴³ Its lobbying work in Brussels involves writing position papers, putting forward amendments to Commission proposals and making voting recommendations for the European Parliament. The positions taken by the organisation are based on input from all the members and are formulated for use at the start of the European policymaking process. The VNG and the IPO are also represented on the CEMR's Policy Committee, and there is a Benelux seat on the CEMR Executive Bureau, which is held in turn by the three Benelux countries. Besides engaging in lobbying, the CEMR serves as an important forum in which members can keep in touch with one another and coordinate their interests with other subnational authorities.44

By no means all Dutch umbrella organisations that represent particular regional interests have been dealt with fully in this section. Owing to the sheer number of these organisations and the non-institutional manner in which they exercise influence in Brussels, their activities and effectiveness are not always transparent. There are plenty of examples of effective lobbying by umbrella organisations. Where, as intended by the HNP, they work together on the many common dossiers, their impact is generally very effective. The AIV would also endorse the following observation of the Council for Public Administration (ROB) concerning the function and ideal functioning of the umbrella organisations: 'As lobbying is time-consuming and labour-intensive, it is advisable for authorities to be selective when deciding on their European ambitions. By comparing their own policy agenda with the European agenda, they can identify overlapping – and hence promising - themes. A second step is for authorities to seek cooperation with municipalities, regions or networks with which they have a common interest, as this lends added weight to the message. A good example is the cooperation between the provinces of South Holland, North Holland, Utrecht and Flevoland, which have worked together in Brussels as Regio Randstad since 1993.'45

- 42 Problems for Dutch provinces: sectoral regulations, proportionality, state aid, audit pressure and high execution costs under the ERDF. The main cross-border problem involves policy on labour mobility.
- 43 See: <http://www.vngmagazine.nl/archief/156/cemr-nuttig-en-nodig>.
- 44 See: <https://vng.nl/files/vng/vng/Documenten/actueel/beleidsvelden/europa/2011/20110511_ Belangenbehartiging_op_int_en_Eur_niveau.pdf>.
- 45 Council for Public Administration, *Met Europa verbonden*, een verkenning van de betekenis van Europa voor gemeenten en provincies (Connected with Europe: an assessment of the significance of Europe for municipalities and provinces), November 2013, p. 3.

Forming coalitions

In the Netherlands this is reflected in changing coalitions of regions, depending on the subject. Examples of groupings that work together in Europe are the provinces of the northern Netherlands, the coastal provinces and the Randstad conurbation. This is also leading to increasing cross-border cooperation, extending beyond the border provinces (for example between Flanders and the Netherlands, which includes Rijnmond and the six municipalities around Dordrecht known as the *Drechtsteden*). Similar cooperation is also taking place elsewhere in Europe. To an increasing extent, comparable regions are forging coalitions through networks and bilateral cooperation. The importance and political clout of networks such as the European Vanguard Initiative are recognised by the European Commission.

Committee of the Regions

Provinces and municipalities are also involved in developments in Brussels through the Committee of the Regions.

COMPOSITION AND PROCEDURE OF THE COMMITTEE OF THE REGIONS

The Committee of the Regions (CoR) has consisted of 353 members (and the same number of alternate members) since 2013 (when Croatia joined the EU). All of them are representatives of local and regional authorities of one of the 28 EU member states. The Dutch delegation is entitled to 12 of the 353 seats. Six members (and six alternate members) are nominated by the VNG and the other six (and six alternates) by the IPO. The members are appointed for a term of five years by the European Council on the recommendation of the member states. The members of the 28 national delegations are divided among five mainstream European political groups. The CoR holds up to six plenary sessions a year. Its function is to draft opinions (about 150 a year). The work of drafting opinions is divided among six commissions, each consisting of about 100 members of the CoR and reflecting the CoR's political and national composition. Besides a chair and two vice chairs, each commission has five 'political coordinators' for five parliamentary groups. A rapporteur is designated for each opinion procedure and is responsible for preparing the initial draft of the opinion. The opinion has to be drafted in keeping with the CoR's general assessment framework: the CoR sets itself up as the guardian of the principles of subsidiarity, proximity and partnership. Amendments may be submitted during the plenary session. Opinions of the CoR need to be adopted by a simple majority. After adoption, the opinions are sent to the European Commission, the Council and the European Parliament and published in the Official Journal of the European Union.

Source: Council for Public Administration, *Met Europa verbonden, een verkenning van de betekenis van Europa voor gemeenten en provincies* (Connected with Europe: an assessment of the meaning of Europe for municipalities and provinces), November 2013, p. 51.

Reports on legislative and non-legislative dossiers are published through this organisation, which has already been considered at length in chapter 1. It also assists the Commission in preparing assessments of the impact of legislation on subnational authorities. Formerly, the CoR discharged its obligations by simply producing a report. Nowadays, however, it also devotes much time to publicising its reports and lobbying in the various institutions. This means that, besides using its official instruments, the

CoR does much lobbying work in both the European Commission and the European Parliament.

The CoR has the following instruments at its disposal:

- Opinions on Commission proposals, as part of the CoR's obligation under the Treaties. Since 2010 the CoR has had the same reporting procedure as the European Parliament. Consequently, amendments to a Commission proposal are always clearly recorded and specific amendments are always proposed. It generally takes the CoR about 2-3 months to prepare an opinion, which is usually ready by the time that the Council and the European Parliament embark on the legislative procedure. This therefore gives the CoR an opportunity to contribute to negotiations between the European Parliament and the Council.
- Outlook opinions initiated by the CoR itself in the preliminary stage. An example is
 the outlook opinion produced by Cor Lamers⁴⁶ on the Clean Air Policy Package for
 Europe.⁴⁷ Own-initiative opinions that discuss regional views on European issues. An
 example is the opinion by Hans Janssen⁴⁸ on Protection of Refugees in their Region
 of Origin.
- Resolutions.
- Institution of proceedings before the Court of Justice if the CoR's prerogatives are not observed or the principle of subsidiarity is infringed. This tool has not yet been used.
- Territorial impact assessments (TIAs) assess actual impact at regional level. Increasing use is being made of this tool and there is close cooperation with the European Commission. In preparing these TIAs, the CoR consults the regions about the problems of implementing the legislation. However, the CoR cannot carry out these impact assessments entirely on its own, nor should it want to since it is a task of the Commission. The focus is now on providing a broad overview in the form of flow charts identifying possible problems faced by subnational authorities with implementation.
- Informal, bilateral discussions with members of the Commission, the Council and the European Parliament and lobbying in these institutions. This is done with a view to coordinating agendas, identifying where the CoR can make a contribution and highlighting interests and reports.
- Formation of networks and groupings of regions that have corresponding interests, in order to represent them jointly through lobbying.

Like the European Parliament, the CoR now uses rapporteurs to draw up an opinion. This has put its operations on a more professional footing. As a result of the new procedures, the reports can have even greater effect because the CoR's views can be communicated to the institutions in 'bite-sized pieces' suitable, in the most favourable circumstances, for adoption.

- 46 Chair of the Dutch delegation to the Committee of the Regions, Mayor of Schiedam.
- 47 For a detailed analysis of cooperation with the region on this dossier, see Radboud University Nijmegen:
 Provinciaal positiespel in Brussel en Den Haag (Provincial positional play in Brussels and The Hague),
 2013, p. 19.
- 48 Member of the Committee of the Regions, Mayor of Oisterwijk.

Means of exerting influence

The CoR has many direct lines of communication of a formal and informal nature with the institutions in Brussels, at both a political and an administrative level. Its relations with the Commission and the European Parliament are laid down in interinstitutional agreements dated 2012 and 2014 respectively.⁴⁹ These agreements regulate the cooperation, consultations in the preliminary stage and the legislative procedure during the negotiations, as well as the shared expenditure on staff and translations.

EXAMPLES OF EFFECTIVE ACTION BY THE COR

All these resources contribute to the influence which the CoR can exercise in Brussels. Some examples of successful lobbying by the CoR are:

1) Before starting to draft a new directive on air pollution, the Commission requested the CoR to produce a report on the implementation of the previous directive in the regions. In this way, the CoR was able to exercise influence in the pre-legislative stage.

2) The joint aim of the Pact of Amsterdam concluded in October 2015 is a political agreement between the Regional Development Committee of the European Parliament (REGI) and the CoR's Commission for Territorial Cohesion Policy (COTER) enshrining the joint aim of the EU Urban Agenda.

3) The CoR has written an opinion on the allocation of the budget for regional policy. There is now a statutory obligation to consult the regions before disbursing these funds.

These examples clearly show the CoR's ability to act effectively. However, this raises the question of how much real influence the CoR has in practice in the opinion of the various institutions and whether it adequately performs its allotted role of representative of the regions.

Assessment of effectiveness

The CoR itself indicates that much of its work consists not in exerting influence by formal, legislative means, but in striving to have a political impact. Since 2000 the CoR has been organised on the basis of political groups. The question is whether this political structure is an advantage or a disadvantage. One disadvantage is that it increasingly resembles the European Parliament, as a form of shadow parliament, and that debates are duplicated. On the other hand, it is an advantage that members with similar political views can act together and thus exercise greater influence. A risk for an organisation structured in this way is that party political motives may become more important than championing regional interests. In addition, the CoR's representative function is undermined.

The CoR's effectiveness is largely determined by its informal contacts and, according to various people interviewed by the AIV both inside and outside the organisation, its real value is as a networking platform. The CoR offers both a platform where regions can agree on lobbying efforts outside the CoR and a useful arena for forming coalitions.

⁴⁹ See: http://cor.europa.eu/en/about/interinstitutional/Documents/ep-cor_a245.pdf>.

According to its current president, Markku Markkula, the CoR has added value because regions can learn from one another and it is then easier for good initiatives in one country to be replicated elsewhere. The Committee can also help to identify problems in the operation of the structural/cohesion funds and suggest improvements. Moreover, although regions may have divergent interests, this is actually an advantage according to the people interviewed by the AIV. Some maintain that the connection between the regions and all the different channels that these coalitions can find to influence decisions is the CoR's most important attribute. This cuts two ways: it is a strength because the CoR can exert more influence than through purely formal channels. But it is also a weakness because it is overly dependent on individuals and their knowledge, and on their willingness to share it. Knowledge retention is a problem for the Committee because the information is stored in many heads. And knowledge may be outdated because in many countries the members of the CoR are 'old hands' who are familiar, perhaps too familiar, with the Brussels bubble.

It should also be noted that the general public are largely unaware of the CoR's existence (Eurobarometer 2010: in the Netherlands only 9% of the population had heard of the CoR). The organisation is remote from the citizens, although the treaty in which the Committee was established intended the CoR to strengthen ties with the citizens. This is only reasonable, because the decisions that most directly affect citizens are those implemented in their immediate vicinity, in other words in towns and provinces. As this development is set to continue, the question is whether the CoR should not adopt a more proactive stance. According to its members, the CoR certainly has the potential to increase support for Europe among citizens. However, the AIV takes the view that the CoR should not lose its bearings in searching for support and publicity, but should instead focus on representing regional interests.

European Parliament⁵⁰

Lobbying in the European Parliament is mainly the preserve of the umbrella organisations, but individual regions also defend their interests in contacts with individual MEPs. According to the researchers of Radboud University, this is a relatively accessible channel and MEPs are regularly approached directly.⁵¹ Moreover, the European Parliament can be influenced indirectly through the tools employed by the CoR discussed above (amendments) or by the CEMR. The most effective way of exercising influence is considered to be the submission of amendments to Commission proposals by the CoR in its reports.

In addition, the regions can exercise influence in the stage in which rapporteurs and shadow rapporteurs of the European Parliament decide their stance on particular Commission proposals. For this purpose the European Parliament holds consultative meetings to which regions (or their indirect representatives) are sometimes invited.

The VNG and the IPO believe that the European Parliament takes too little account of implementation when assessing Commission proposals. This means that, although the regions are often burdened with implementation, their interests are to some extent

⁵⁰ See: AlV, advisory report no. 81, 'The Netherlands and the European Parliament: investing in a new relationship', The Hague, November 2012.

⁵¹ Radboud University Nijmegen, *Provinciaal positiespel in Brussel en Den Haag* (Provincial positional play in Brussels and The Hague), 2013, p. 27.

overlooked. Another subject that still receives too little attention in the European Parliament is the evaluation of legislation, although the evaluation stage is the best opportunity for tackling implementation problems encountered by the regions and for giving them a say. A more implementation- oriented attitude on the part of the European Parliament would also be appropriate in the context of the Commission's Better Regulation Agenda. Although there are clearly opportunities for consultation, the regions nonetheless seem unable to exercise sufficient influence.

MEPs too confirm that communication between the European Parliament and the regions is not fully and completely effective. However, they suggest that insufficient use is made of the many occasions on which the regions are consulted. The regions have more than sufficient opportunities to defend their interests, but are unable to exploit them to the maximum because they are unaware of the possibilities, are unfamiliar with the agendas of the Commission and the Parliament, and have insufficient knowledge of the European policymaking process. According to the MEPs, the regions could make more effective use of the available channels by joining forces, but still do so insufficiently.

Even where such cooperation has been institutionalised, the organisations concerned still lack expertise and knowledge of the policy agenda. The CoR's focus tends to be more political than substantive in nature and therefore often adds little to the discussion. As the CoR is divided into political groups along the same lines as the European Parliament, the debate in the European Parliament is often repeated – albeit not as fully – in the CoR, where the emphasis is not on the regional dimension of the issues. This problem is confirmed by some members of the CoR itself. Moreover, the reach of the message is greatly reduced since the political groups in the CoR only approach MEPs of their own persuasion, thus rendering doubtful the CoR's independence and legitimacy as a defender of regional interests. The CoR's reports therefore elicit little response in the European Parliament.

According to the European Parliament, the regions are only occasionally successful in representing their own interests in the European Parliament. The formal channels do not function as they should and the success of the informal channels is dependent on cooperation with others or on the expertise of individuals.

European Commission

Owing to the sheer number and diversity of regions in Europe, it would be impossible for the European Commission to consult them individually as a matter of course. For the time being, the national authorities will remain the main points of contact for the European Commission. These national authorities are responsible for involving the regions internally. The Commission assumes that all tiers of government are able to engage with the Council through their national authorities and considers this to be the most effective way of influencing decisions. Although the Commission is more focused on the implementation of legislation than the European Parliament, it appears that it has still not sufficiently adapted to the shift of competences to the regions.

Nonetheless, regionalisation is a trend that does appear to be increasingly recognised by the Commission, since it is holding more and more consultation procedures and paying greater attention than in the past to whether legislation is capable of being implemented by subnational authorities. The Commission can make further improvements in the area of impact assessments. These still do not take full account of the costs for subnational authorities of implementing EU policy. The Commission has thoroughly reviewed the method of carrying out impact assessments, and now also takes into account territorial

impacts (in other words not necessarily the costs for subnational authorities). However, it remains to be seen to what extent subnational authorities will be consulted and whether allowance will really be made for implementation as such. These important points are not yet clearly mentioned in the Commission's operational guidelines.

The Commission expects each country's delegation to study the impact on its regions and communicate the result to the national delegation within the Council. The people interviewed by the AIV within the European Commission describe the CoR's authority as very relative. The substantive impact of its advisory reports on policy is limited. The Commission regards the CoR more as a lobbying organisation than as a genuine institution with an important position. As noted previously, the practical value of the Committee is mainly its networking function.

Organisations that represent a large number of European regions with a common interest are valued by the Commission and can contribute to decisions in a meaningful way.

The Commission considers that it is right for the regions to be involved in the Better Regulation Agenda. The Better Regulation Package that will be implemented under the direction of the Commission includes two important measures relating to the CoR: 1. The territorial impact assessment: here the CoR – like the other institutions and organisations – must fight for its interests and ensure that they are taken into account by the Commission.

2. The REFIT Platform initiated in 2015: where necessary, parts of the existing stock of EU legislation are to be reformed. The platform consists of two groups: (a) a government group consisting of 28 government officials, one from each member state, and (b) a stakeholder group. Both the CoR and the Economic and Social Committee are assigned to the latter group, together with the lobbying organisations. This is despite the fact that the CoR is an official European institution and therefore has a status that differs from that of the average stakeholder. As less and less new legislation is being produced, the REFIT Platform will be of great importance. As it did not start work until January 2016, evaluation of its work will not be possible for some time.

The Council

The Council focuses mainly on the other EU institutions and does not allow itself to be much influenced by representatives of the regions such as the CoR. From the perspective of the Council, both the CoR and the Economic and Social Committee are *quantités négligeables*. Their position is comparable to that of the European Parliament before it obtained the right of codecision.

Regional positions tend to be mainly communicated to the Council through the national delegations. The delegations of federal countries include members of regional parliaments (Belgium) and federal states (Germany). But there are certainly also informal contacts between the Permanent Representations and regional organisations. Relations between the Dutch regions and the Dutch Permanent Representation have been strengthened still further, for example by the establishment of the House of the Dutch Provinces in Brussels.

Transposition, implementation and evaluation of EU legislation by subnational authorities

What the diagram in chapter II.1 does not describe is the post-legislative stage. Examples are the transposition of EU framework legislation into national legislation, the review of legislation in the context of delegated acts and the evaluation of legislation. Under the comitology system, experts meet to draft secondary legislation. The secondary legislation adopted in committees has the same legal effect as primary legislation. This is therefore of considerable relevance to subnational authorities. No information is available on how many experts from the regions/subnational authorities take part in the comitology committees, or on whether these experts are in contact with central government regarding the stance to be taken on implementing legislation. The transposition of EU legislation into national legislation is often a protracted process. Or, at least, this was the case in the past. The Netherlands has made great progress in shortening the introduction period. The only issue is how the subnational authorities are involved in this process.

The question that arises in relation to implementation is whether the member states have been left sufficient discretionary power. If not, it is difficult for them to ensure that the legislation is implemented in a way that takes account of specific regions, their capacities and interests. Moreover, the Dutch central government often goes beyond Brussels' minimum requirements when implementing legislation. As a result of this gold-plating, subnational authorities tend to have little discretion when it comes to implementation. But where discretion does exist, they can create best practices and thereby indirectly influence policy and be less likely to encounter implementation problems.

The evaluation of EU legislation is an important stage for subnational authorities. In the preliminary stage of the legislative procedure, it is often still difficult, for the regions themselves as well, to estimate the costs and problems of implementation. Once legislation has come into effect, however, subnational authorities can indicate very precisely where possible implementation problems occur and can exchange best practices. This stage is the ideal time to consult subnational authorities, particularly with a view to improving legislation (a priority of the present Commission). This already happens occasionally. For example, the provinces have written two position papers, one on the Birds and Habitats Directives and the other on diversity. Such consultation should be automatic. For example, IBDTs could be used in the evaluation stage (this does not yet happen). Complaints about legislation in the implementation stage could also serve as input for evaluations.

EXAMPLES OF EFFECTIVE PROVISION FOR THE REGION IN EVALUATION

The regions can play an important role in the evaluation of legislation by suggesting points for improvement that they identify in the course of implementing it. The following are points for improvement that they identify in the course of implementing it. The following are examples of cases in which this has occurred and has had a positive effect:

- Natura 2000/Birds and Habitats Directives: for a detailed account, see Council for the Environment and Infrastructure (RLI): Room for the Regions in European policy, p. 71 ff.
- Water Framework Directive, ibid., p. 95 ff.

III What can be done better within the existing channels?

The position of subnational authorities and their relationship with the EU is becoming ever more important. Central government and subnational authorities are active in Brussels, both together and separately, in all stages of the legislative procedure. Although they have a joint strategy in some fields (an IBDT is possible in the negotiation stage as there is often little disagreement between them in policy areas covered by the Ministry of Infrastructure and the Environment), this does not apply to all EU topics handled in Brussels. This is because their positions can differ. For example, central government and the regions have differing views on matters relating to the multiannual budget and the reform of agricultural policy. Here the interests served by central government do not run in tandem with those of the regions. As municipalities and provinces can also take differing positions and do not cooperate to any great extent, it is not possible to agree on a common Dutch message or strategy. Sometimes the regions concentrate short-sightedly on lobbying the EU funds for their own purposes and fail to make sufficient tactical use of their capacity to pursue a joint agenda in Brussels. Better regulation and good governance are policy areas in which the parties could agree on a common course. As regional authorities are responsible for implementation, they are best placed to identify limitations in that area. Effective involvement of subnational authorities in formulating policy is important.

Adopting positions in the Netherlands in the preliminary and negotiation stages

It is apparent from the previous chapter that the involvement of subnational authorities in the process by which central government adopts policy positions is arranged reasonably well in the Netherlands, both formally and informally. This applies both to the assessment of new Commission proposals (both legislative proposals and Commission communications) and to the negotiation stage with the Council.

IBDTs

The IBDTs have proved to be a good tool, which could be used more systematically. After all, central government has less and less knowledge of policy implementation, yet it is the party at the negotiating table in Brussels. As civil servants in The Hague know little of the decisions taken and are not responsible for them, they should be thoroughly briefed by officials of the subnational authorities. IBDTs are not yet used in the evaluation stage. If there were a fixed time for evaluation, the subnational authorities would be able to raise their implementation issues at national level through the IBDTs.

It is important for priorities to be established more quickly. It would therefore be advisable to use the IBDT structure at an early stage for important dossiers. A way of ensuring that, where necessary, subnational authorities are always involved would be to include a section in the BNC files to indicate how this involvement will be arranged in the future (e.g. through IBDTs). And where implementation can be expected to have major consequences for subnational authorities, they should not hesitate to invoke their quasiministry status.

In the IBDTs a lawyer often takes part in the negotiations only at a late stage when it is necessary to assess the legal implications. The AIV believes it would be worthwhile involving an implementation lawyer from the very outset so that any problems encountered by subnational authorities in implementing legislation can be identified at an early stage.

Other resources

Quite apart from IBDT cooperation, which sometimes starts in the preliminary stage, the European Commission consults local experts early in the legislative procedure. Neither the umbrella organisations nor central government are really aware of who takes part on behalf of municipalities or provinces or on what mandate these experts base their contribution.

The link between subnational authorities and the national parliament could be strengthened, particularly in relation to the yellow card procedure. This would be useful for the subsidiarity check by the national parliament, but, even more importantly, the House of Representatives should have a clear idea of the costs of implementing each EU dossier involving subnational interests. The subnational authorities themselves should also be more aware of the European dossiers being dealt with by central government and how these dossiers are likely to affect them. This would enable them to provide input, based on their own expertise, of their own volition either to the House of Representatives or to the government. To have their voice heard, subnational authorities should be more proactive in their dealings with the House of Representatives. The same applies to the stance they adopt in Brussels. This is because they are regarded by the House of Representatives as stakeholders and do not qualify for an automatic invitation because of the principle that stakeholders should be treated equally.

As the overall financial consequences are taken into account in the BNC files, the question is whether the costs of implementation by subnational authorities can receive sufficient attention since the files have to be delivered to parliament within six weeks of publication of the Commission proposal. In many cases this period is too short for the subnational authorities to make a considered assessment because the Commission itself has often not calculated (or properly calculated) the costs at local and regional level and included them in the proposal. However, the Commission takes the position that this may be largely impossible where the proposal relates to framework legislation which has to be transposed into national law. The AIV believes that the Commission could make a greater effort to include the cost of implementation in the impact assessment. These costs could then be assessed by the subnational authorities in the BNC stage. And this is something that could be done within the specified six-week period.

Feedback/evaluation

As implementation costs and problems are often hard to estimate in the legislative process, the evaluation stage is important for subnational authorities. Feedback on implementation problems is provided to EU legislators by experts. Once again, this is something about which subnational authorities and their umbrella organisations are left largely in the dark. No information about implementation problems is gathered centrally in The Hague. As part of the Better Regulation Agenda, legislation will in future be more likely to include a sunset clause⁵² or an evaluation clause. As part of the drive towards a better and simpler EU, the AIV welcomes the inclusion of both a sunset clause and an evaluation clause, and recommends that these mechanisms should always be applied where legislation is to be implemented by subnational authorities. The implementing authorities should be routinely involved in reviews and evaluations, because that is when subnational authorities can exchange information about not only complaints but also best practices. This could be done in the Netherlands, for example by establishing an

52 A sunset clause is a provision in draft legislation that gives an expiry date once it has become law.

IBDT for the evaluation or by using the complaints registered with the *Europa Decentraal* centre of expertise about the implementation of legislation. The government could request the Council of State for information on the criteria to be fulfilled by a sound national evaluation system. Such a system would show who is authorised to act in Brussels and what mandate they have, and would also provide information that enables the national legislator to modify national legislation.

Cooperation in Brussels

The subnational authorities are aware of the importance of the preliminary stage and make every effort to present their positions clearly to the institutions in Brussels. Gauging how effective their lobbying is, in quantitative and qualitative terms, is always hard. Cooperation between subnational authorities - on an ad hoc basis - is on the increase. Nonetheless, subnational authorities mainly focus on representing the interests of their own region. This is because the approach adopted by the umbrella organisations is often too general and abstract, owing to their need to find a common denominator between different regional interests. The main function of these umbrella organisations is to stress the general importance of involving the regions with a view to policy that is capable of implementation. A current trend is for comparable regions in Europe to join forces and successfully lobby for their specific interests. In any event the umbrella organisations function effectively as a channel for providing information to their members. Another positive point is that they form coalitions with other umbrella organisations and the Permanent Representation. Nonetheless, these organisations and other fixed groupings are also criticised for still doing too little to represent the interests of all regions. Another criticism is that they do not work together often enough on an ad hoc basis even where they have shared interests. These two factors undermine the effectiveness of lobbying by the regions, which may even work at cross purposes. The subnational authorities would be well advised to work more closely together and, out of solidarity, adopt common positions in Brussels rather than competing with one another.

Cooperation is materially relevant not only to the pooling of resources but also to the provision of shared services. Efficiency gains can still be made in relations between central government and the regions, for example in respect of information sharing (the *Europa Decentraal* centre of expertise is a current example). Gains could also be made if regional authorities, businesses and centres of expertise were to share their knowledge and adopt common positions.

Forming coalitions with other countries is also an area where there is room for improvement. And central government and the regions could still do more to coordinate their activities at member state and regional level, for example by combining their efforts on dossiers of common interest. Use could be made of the closer relations, particularly of the provinces, with European regions which play a leading role in their own countries.

The institutions in Brussels could also take more account of regional interests in their decisions. The European Parliament still pays insufficient attention to implementation when assessing Commission proposals. Although regional experts are consulted, their influence is not yet clear. More consistent involvement of the regions by the European Parliament is desirable.

The CoR as a regional centre of expertise

All this tends to suggest that the CoR does not have much influence over the European Commission, the Council or the European Parliament. It will therefore have to put much greater focus on its role as representative of the regions and refrain from making

widely varying political pronouncements about the state of the world. Some of those interviewed by the AIV pointed out that the CoR's statements exceed its formal remit, thereby harming its image. The CoR's added value depends on the knowledge and expertise of its local representatives in respect of implementing legislation; only they can express a sound judgment on the practicability of legislation. This should be the focus of all the CoR's activities. By adopting a political stance, the CoR not only fails to get its message across but also does not properly perform its role as the mouthpiece of the regions. The time has therefore come for it to make some difficult choices, guided by the principle that 'less is more'. The CoR must focus on its role as regional representative and not on its institutional role and powers. In the AIV's opinion, these should not be expanded.

This has the following implications for the CoR's tools:

- Ordinary opinions: such opinions should have a clear regional profile and avoid being unduly European; they should thus not resemble the work of the European Parliament too closely.
- Own initiative opinions: if such opinions are employed carefully and more strategically and deal with major policy initiatives, they can serve to help set the agenda. For example, the CoR could express a clear view on the Commission's work programme for the forthcoming term. Own initiative reports should avoid dealing with issues specific to a given region (e.g. the wine-growing area in a given member state).
- Greater focus on impact assessments, not only in the early assessment of Commission proposals but also in the context of the Commission's REFIT Programme. The CoR should not take over this responsibility from the Commission, but could outline the specific subnational impact of the legislative proposals at an early stage.

The CoR could have a major impact on the other EU institutions if it were to confine itself to what it is good at, namely providing technical know-how about the implementation of legislation and representing regional interests. If the CoR wishes to continue playing a meaningful role in Brussels, it will have to do more than serve as a good platform/ network.

General conclusion

The general conclusion is that much is already happening, but that the synergy between subnational authorities and central government could be improved. Their cooperation could be organised on a more structured and strategic basis, and more could be done to seek dialogue in Brussels. Where subnational authorities wish to pursue their own agenda, it should be clear that when doing so they must observe the 'do no harm' principle.⁵³ This means that in matters relating to the major dossiers they must abide by the policy line agreed nationally. The AIV believes that it would be worthwhile replacing the present 'agree to disagree' arrangement in the Local and Central Government Relations Code by the 'do no harm' principle.

53 'Do no harm' is a concept normally used in the context of donor policy in relation to countries in conflict. It means that donor interventions should not unintentionally undermine local and central government. Donors can cause harm if projects or the reforms they advocate exacerbate armed conflict or weaken statebuilding or governance. See also: http://www.oecd.org/dac/governance-peace/conflictandfragility/ docs/do%20no%20harm.pdf>.

IV Looking to the future

A spirit has descended on Europe, a belief that the solution to political and economic problems should be sought in secession and break-ups (Scots, Catalans and Belgians). While this is at odds with the idea of European integration, it is at the same time its fruit.. After all, integration is making the nation state seem less and less important.

Source: Cleveringa Lecture by J.P.H. Donner (University of Leiden, 26 November 2015)

The previous chapters examined the relationship between regions and the EU from the perspective of the existing institutional frameworks at national and European level and also gauged the impact of the agreements recorded in the Treaties of Maastricht, Amsterdam and Lisbon. They also looked at whether the various ways of involving subnational authorities in policy preparation, implementation and evaluation are actually utilised and, if so, whether they are effective and, if not, how this could be better organised. Attention was paid in this connection to both the direct and indirect lines of communication with Brussels.

Gradually, however, other questions are coming to the fore. For example, is the Netherlands adequately prepared for possible new trends in regionalisation and the challenges they present? The AIV wishes to briefly consider these trends, which in its view require a long-term vision.

Greater autonomy for regions/secession

The AIV notes that, in recent years, regions in more and more countries have been striving for greater autonomy. The possibility that the regions mentioned in the Introduction may break away can no longer be excluded. However, there is also a chance that they may remain within the original country, albeit with much greater autonomy and more direct links with the EU. If this were to happen, the question arises of how this would affect decision-making. In such a scenario national authorities would no longer be the primary players in European decision-making, and would find themselves increasingly flanked by subnational authorities.

Loss of powers in the socioeconomic field

This could be strengthened by a second trend. In recent decades, the nation state has lost much influence over policymaking in the socioeconomic field. Owing to the ongoing internationalisation of economic relations and to countries' accession to EMU and introduction of the euro, the scope for the member states involved to pursue appropriate national socioeconomic policy has been greatly reduced. This has been reinforced by the major economic imbalance between the different regions, leading to dissatisfaction with financing arrangements, notably the fact that strong regions pay for weaker regions. This can culminate in political tensions at national level. Gradually, other entities such as the metropolitan region, city region and euroregion are emerging as viable alternative forms of governance. Many people have come to realise that for development and innovation the future lies with the regions, particularly with urban areas. National authorities should therefore make allowance for this and consider how they can support regions and cities in the future, rather than trying to halt this trend.

Triple helix and hybridisation

At present, economic growth is being generated mainly in the regions. It is here and not at national level that the crucial decisions are made. This has much to do with the increased importance of information and knowledge, and the need for flexibility and adaptability. This explains the ever more prominent role played by knowledge institutions. Not only do they provide training and further training for labour market entrants, but they also carry out research and development, produce innovation and use knowledge to create value. Regions derive maximum benefit once this knowledge and expertise are converted into productivity by start-ups or established businesses. According to this vision, a region should be regarded not in the traditional manner as an administrative unit but as the sum of all its stakeholders (the triple helix involving close cooperation between political, business and academic interests). The quadruple helix takes this a step further by adding civil society to the mix. This requires a certain scale, with a sufficient population to ensure a good labour supply, plus buoyant demand, a wide range of suppliers as well as cultural institutions, plenty of different types of housing and excellent physical and knowledge infrastructure. A region needs an economic policy if it is to be able to respond flexibly, adequately and coherently. This must enable it to take efficient decisions on subjects such as infrastructure, knowledge institutions, housing, the labour market and social security. This also enhances the legitimacy of governance in the region. A new actor mentioned above is the city, where the triple helix also often truly comes into its own. A good example is Brainport, the high-tech centre around Eindhoven, a city with a well-functioning triple helix which is developing very quickly. It has therefore established a strong position for itself in Brussels, circumventing the usual channels of both central government and the bodies and umbrella organisations referred to above.

This advisory report has focused on the three tiers of government: subnational authorities (provinces and municipalities), central government and the EU. Power is shifting not only between these different tiers but also outside them. The recently established metropolitan region of Rotterdam The Hague is an example. Its plans for influencing decision-making in Brussels are being formulated by the Zuidvleugel Economic Programme Board. A similar task is being performed by the Economic Board of Amsterdam Metropolitan Region.⁵⁴ There are also more and more cross-border regions such as the one encompassing Aachen, Maastricht and Liège. Well-functioning cross-border cooperation helps to boost economic growth and employment and thus improve the functioning of the EU's internal market. The coalition agreement of the present Dutch government also includes a number of initiatives and proposals for mandatory mergers of provinces or the creation of hybrid arrangements between municipalities for the organisation of the police, fire services, healthcare, education and public transport. This hybridisation is creating an ever more varied cast of actors, over which the three tiers of government have often ceased to have much influence. All these developments are tending to undermine democratic legitimacy in the case of both central government and the European institutions. The emergence of these hybrid forms of governance means that the lines of communication with Brussels are now more likely to be direct rather than via central government. Although this process can generate synergy, it can also cause tensions in terms of strategic positioning and the joint representation of interests.

54 See: <www.amsterdameconomicboard.com/thema/europa> and <www.epzuidvleugel/actielijn. asp?actielijn=innovatie&id=9>.

Conclusion

Decentralisation is a trend that is visible in numerous countries, including the Netherlands. Policy areas such as pay and conditions, infrastructure, housing, education and knowledge, and taxation could be decentralised in the future. If this were to happen, it would raise the question of what could still be achieved in policy terms at national level in dealings with the EU. The sharing of competences with the EU has continued to evolve: other competences have been or could still be decentralised and new, non-state entities are gaining influence. This is posing an even greater threat to democratic legitimacy and raises the question of who should represent the Netherlands in Europe. Should it be the central government or should the regions have greater powers? If regions are better informed about and also responsible for policy, it would seem only natural for them to have a greater say. This would be favourable from the perspective of democratic legitimacy and public support for policy, since subnational authorities are closer to the citizen.

There are more and more indications that competitiveness within the EU is no longer solely attributable to national policy but is increasingly a consequence of measures taken by regional entities. So, if this is taken a step further, the question is really no longer how the regions can be best involved in designing and implementing European policy, but rather how European policy can be structured to give the regions maximum scope for economic, social and sustainable development, where necessary with support at national and European level. In such a system, the regions would therefore lead rather than follow. This may still appear utopian, but recent developments suggest that things are moving swiftly in this direction and that this possibility should therefore be taken seriously.

The AIV recommends that both central government and the subnational authorities give due consideration in the short term to the consequences of these trends and to whether structural changes should be made in preparation for the future outlined above. This could provide a real stimulus for the debate on the Dutch constitutional system and hence provide tangible evidence of what European integration really means for citizens. The regions and the EU could then be more appropriately connected.

V Conclusions and recommendations

V.1 Conclusions

It has been known for some time that the responsibility for implementing EU legislation largely rests on subnational authorities. The Europeanisation of policy is perceptible at all levels and has been under way for a long time. Regions are no longer secondary players. This trend has been exhaustively described in all the reports listed in the request for advice and, most recently, in the very detailed advisory report of the Council for the Environment and Infrastructure.⁵⁵ It was also acknowledged by the government and the subnational authorities in the 2008 Local and Central Government Relations Code, which expressly includes an article on the European Union.

Decentralisation

The decentralisation of the welfare state in the Netherlands involves issues that are not of a purely national nature but also have an EU angle. Although these are policy fields in which the EU has a shared competence, it is quite conceivable that the decentralisation being carried out by the present Dutch government may bear an even greater EU imprint in the future as European integration proceeds. All tiers of government must be aware of and prepared for this. Not only various opinion formers but also the Vice President of the Council of State have commented on the declining importance of central government as a tier of governance. As the direct relationship between the EU legislator and the implementing authorities (i.e. subnational authorities) is not formally defined in the European treaties, the AIV believes that this may become a problem in due course as the regions take on an increasingly important role in the implementation of legislation.

Regionalisation

Regions are gaining in importance, even independently of the transfer of competences. In many countries the search for greater regional autonomy is a clear trend. There is also a growing realisation that socioeconomic growth is mainly attributable to the regions, and cities and new forms of governance are evolving more and more independently of the three existing tiers of government. In short, a shift in governance is occurring, in which the centre of gravity is moving from the centre to the subnational and regional levels, with greater involvement of private and non-governmental actors.

European institutions

Nonetheless, the burden imposed on the regions by the EU is not reflected in their formal position or in their ability to influence decisions in the EU. In formal terms, they are represented in the CoR and on various bodies that consult with central government. In developing policy, the European institutions pay insufficient attention to the interests of the regions, and this must change. In terms of treaty law the European Commission focuses on the member states when it comes to implementation at subnational level. A new balance must therefore be sought. The Commission could seek this by assigning the regions a greater role in policy development and in the review and evaluation of legislation. It must find pragmatic ways of expanding the substance of its relations with the regions. It could do this by consulting them on a permanent basis and making

⁵⁵ Council for the Environment and Infrastructure, *Ruimte voor de regio in Europees Beleid* (Room for the region in European policy), September 2015, p. 15 ff.

explicit provision in its proposals for implementation by the regions. The same applies to the other EU institutions such as the Council and the European Parliament. The latter in particular must pay greater heed to implementation when assessing proposals. Although institutional changes are not required, a change in the attitude and focus of the European Parliament and the Commission is necessary. Much greater attention should be paid to the implementation and practicability of European policy both generally and in the context of Better Regulation. It is therefore not primarily about the nature of the rule, but about how it should be implemented. In the AIV's opinion, the authorities responsible for implementing legislation must have greater discretionary powers. However, it would also note that this should not be seen as a licence for gold-plating EU directives.

Committee of the Regions

Although the Committee of the Regions (CoR) is useful as a network organisation, it will have to focus more on its core business (i.e. representing the interests of the regions) rather than, as at present, adopting political positions and operating through political groups. This has detracted from its ability to represent regional interests and means that it currently has little influence in the legislative procedure. Its institutional role need not be strengthened, nor does it need new powers. However, its internal structure does require modification. The added value of the CoR lies in its technical and specialist knowledge of legislative implementation and its ability to provide a regional perspective on European issues, rather than in the adoption of political positions. In concrete terms, the CoR can achieve this by strengthening its role in the implementation and evaluation stage of the legislative procedure. The Dutch delegation could advocate this within the CoR.

Comparable regions are increasingly forming coalitions with one another through networks and bilateral cooperation. Cooperation between individual subnational authorities and the umbrella organisations would promote their effectiveness in Brussels.

Central government

In recent years much progress has been made in involving the regions more closely in EU policy developments and decision-making. Although more can still be done, the possibilities for closer involvement have certainly been increased, both in agreements and in practice. Nonetheless, central government still takes too little account of the interests of subnational authorities. The present arrangements, as recorded in the Local and Central Government Relations Code, are basically non-binding, mainly concern work procedures and, in the AIV's opinion, put too little emphasis on the importance of developing a joint strategy to be jointly promoted in Brussels. This applies to all stages of the legislative procedure. Subnational authorities have a detailed knowledge of implementation which could be important to the Dutch position in the preliminary, negotiation, implementation and evaluation stages. It is these authorities which are increasingly responsible for and knowledgeable about European legislation. Nonetheless, subnational authorities are not involved by central government in certain fields. This calls for the development of common positions, a process that will undoubtedly prove difficult because the regions may disagree among themselves as well as with central government. Solidarity should be the principle underlying each position in Brussels, as too many interests may otherwise be lost. This will require an active role on the part of the Ministry of the Interior and Kingdom Relations which, in its capacity of ministry responsible for subnational authorities, has the task of protecting the interests of the regions and involving them properly and in good time in the formation of policy on Europe.

V.2 Recommendations

Recommendations 1-4 are mainly concerned with the European institutions. The AIV calls on the government to implement these recommendations actively in its policy and in its contacts with the EU institutions.

1. The AIV welcomes the Commission's increased focus on impact assessments, but considers that they should make more explicit mention of the costs of implementation for subnational authorities. The Committee of the Regions could be involved as an expert on implementation by subnational authorities, but should guard against assuming the Commission's responsibility for assessing the costs of implementation. However, the CoR could support the Commission by providing an outline assessment of the possible impact for subnational authorities. Implementation problems affecting subnational authorities are also relevant to the Commission's new REFIT Programme: the aim should be close cooperation with the CoR. The AIV recommends that the government take steps to achieve this. At national level, in the Interministerial Working Groups for the Assessment of New Commission Proposals (BNCs), the central government and the subnational authorities could review these impact assessments in their totality, as well as the implementation by Dutch subnational authorities.

2. Although institutional changes are not required, a change in the attitude and focus of the European Parliament and the Commission is necessary in relation to regional interests. According to the AIV, greater importance should be attached to the practicability and costs of implementing European policy both generally and in the context of the Better Regulation Agenda. When assessing proposals, the European Parliament should give much greater consideration to implementation, particularly implementation by subnational authorities.

3. The AIV recommends that the CoR should focus on its core business of assessing and analysing the implementation of EU policy at regional level and adequately representing regional interests. The CoR was not originally established as a political body and should therefore not act as such. It should also avoid duplicating the work of the European Parliament. The AIV is against undue focus on political angles and opinions, since there is then a risk that the CoR will simply repeat debates that have already taken place in the European Parliament and that its opinions will have little if any added value. The CoR should therefore consider carrying out an internal evaluation of the effectiveness of working in political groups.

4. The AIV recommends that when writing opinions the CoR should confine itself to using its technical expertise and knowledge of implementation in the regions or providing a regional perspective on current European dossiers (e.g. the refugee crisis). It could also make more strategic use of these opinions to influence the agenda of the European Commission and the European Parliament.

As regards central government and the subnational authorities:

5. As subnational authorities try to influence decisions on EU legislation both through central government and through direct channels and as regional interests by no means always coincide with the interests of central government, there is a risk that subnational authorities and central government may end up opposing each other in Brussels. The AIV recommends that subnational authorities adopt an attitude of solidarity rather than competition in Brussels. It is essential for them to act earlier and more frequently to

coordinate their interests and seek ways of working together. Too often subnational authorities, even when acting within umbrella organisations, keep representing their own regional interests and not the common interest, thereby dooming their activities in Brussels to be largely ineffective. The AIV recommends that when acting within these collaborative organisations the subnational authorities should regard themselves as acting as representative of all their partners and of the national interest.

The AIV considers that where central government and the subnational authorities are unable to resolve their differences, the position they adopt in Brussels should be based on the 'do no harm' principle rather than the 'agree to disagree' principle and that the Local and Central Government Relations Code should be amended accordingly.

6. To reduce the regulatory burden in the EU, the AIV favours the inclusion of both a sunset clause and an evaluation clause in legislation, particularly where it is to be implemented by subnational authorities. The latter should therefore be involved in reviews and evaluations as a matter of course, preferably through a team to coordinate different Dutch authorities' input (an IBDT). The government could request the Council of State to advise on the criteria to be fulfilled by a sound national evaluation system.

7. The central government and all government ministries should expressly take account of the fact that responsibility for implementing legislation increasingly rests with subnational authorities. Although central government has less and less knowledge of policy implementation, it is the party at the negotiating table in Brussels. Too often this fact is still denied or overlooked by central government and civil servants. They will have to be thoroughly briefed by officials of the subnational authorities. At each stage of the legislative procedure, central government should coordinate with subnational authorities wherever the latter are involved in implementation. The central government and the subnational authorities will undoubtedly regulate this properly in the Local and Central Government Relations Code, but, as is so often the case, the proof of the pudding is in the eating.

8. The AIV considers that it is still not sufficiently clear how many experts from the regions/ subnational authorities participate in comitology and other expert committees, and whether there are contacts between experts of the subnational authorities and central government regarding their contribution to implementing legislation. To improve strategic positioning, the AIV advocates greater transparency about the contribution made and positions taken by these experts.

9. The AIV considers that subnational authorities should be able to claim the status of a quasi-ministry as of right in respect of dossiers which they consider to have priority and should not be dependent on the goodwill of various line ministries. The AIV favours the sharing of information during the entire legislative procedure, including implementation and evaluation, as well as the inclusion of local and regional authorities in Dutch negotiating delegations to the Council. It also recommends that the status of quasi-ministry should be included as a matter of priority in the Local and Central Government Relations Code. The AIV also considers that the Ministry of the Interior and Kingdom Relations, in its capacity of ministry responsible for subnational authorities, should ensure that they have full access in good time to the relevant interministerial processes and information and other systems. This would ensure that the regions and municipalities are increasingly involved in European policy- and decision-making.

10. The AIV regards the introduction of IBDTs as a big step in the right direction, and urges that they be established more routinely in all government ministries and for every priority dossier. In the case of dossiers that have priority for subnational authorities, IBDTs should be set up at the earliest possible opportunity. How subnational authorities should be involved in the entire process should be recorded in a separate section of each relevant BNC file. The AIV believes it would be worthwhile involving an implementation lawyer in the IBDT from the very outset so that any problems that subnational authorities may encounter in implementing legislation can be identified at an early stage.

11. The AIV endorses the idea that the government should consider the future position of the regions in the Netherlands and any structural changes that may be necessary. Increasingly, the regions are likely to lead rather than follow as the system of government evolves. Central government will gradually lose administrative authority. In view of this trend, the government would be well advised to consider whether the system of government established in the 1848 constitution is still adequate as a model for the structure of governance in the Netherlands.

Annexe I

Request for advice

Professor Jaap de Hoop Scheffer Chairman of the Advisory Council on International Affairs (AIV) P.O. Box 20061 2500 EB The Hague

Date 15 April 2015 Re Request for advice on 'Glocalisation'

Dear Professor De Hoop Scheffer,

Although key policy fields are increasingly shifting into the realm of the EU, some observers contend that there is a parallel tendency towards regionalisation and decentralisation. Though 'Europe has become home turf for subnational authorities, and Brussels has become an extension of The Hague',¹ regions in various countries are asking for more autonomy and the Netherlands is decentralising key parts of the welfare state and social security system. This explains why some observers have identified a trend towards 'glocalisation' – a mixture of globalisation and localisation.

The Treaty of Lisbon strengthened the position of regional and local authorities. With its introduction, regional and local self-government was officially recognised in the EU treaties for the first time. The definition of the principle of subsidiarity was also broadened to include local and regional levels of government. In addition, regional and local authorities are now consulted more frequently on the legislation they must implement, while the Committee of the Regions can appeal to the European Court of Justice regarding breaches of the principle of subsidiarity.

Nevertheless, central government remains the primary point of departure for EU policy. Member states are represented on a national level in the European Parliament and European Council. The member states' representation in both the European Parliament and the European Council is organised at national level, and it is the national parliaments that have a formal position in the EU, while local and/or regional authorities are represented only in the Committee of the Regions. It is worth asking, however, whether the above trend should also have implications for EU governance. Should other, additional ways be found of connecting the local and regional to the EU-wide?

1 Response of the Association of Netherlands Municipalities, the Association of Provincial Authorities and the Association of Regional Water Authorities to the Council of State's third periodic report on intergovernmental relations ('It Can Be Done Better'), The Hague, 25 April 2013, p. 6; Advisory Council on Public Administration (ROB) report *Met Europa Verbonden* (Connected to Europe). To explore this question, the government has commissioned research on the substantive alignment between the European, regional and decentralisation agendas,² the effects of EU policy on local and/or regional authorities³ and potential areas for improvement. It is also conducting a review of subnational authorities' role in EU policy development,⁴ which builds on the existing review of the EU's significance for municipalities and provinces.⁵

A broader analysis of long-term social, economic and governance trends could contribute to these efforts by providing a strategic framework and generating innovative recommendations. The House of Representatives has also expressed interest in discussing the functioning of the Committee of the Regions.

The government would appreciate receiving an advisory report on this issue from the Advisory Council on International Affairs (AIV) by November 2015. It should address the following questions:

Preliminary questions:

Taking account of previous studies, to what extent is there a trend towards 'Europeanisation' of policy areas in which subnational authorities play an appropriate role? Is there, conversely, a trend towards decentralisation of issues that have a European dimension? Does the societal trend towards regionalisation impact on the EU and/or vice versa?

Principal questions:

1. What impact should the trend towards regionalisation have on EU policy development, in terms of both its substance and procedures?

Taking the relevant studies and current initiatives into account, are there grounds for the regions to become more closely involved in developing Dutch policy on the EU? Should the government or the EU institutions change the way they operate to accommodate the trend towards regionalisation? If so, what would this entail?

- 2 Leiden University, De Wisselwerking tussen Europa en Nederland: Een Verkenning van de Europese Politieke Prioriteiten en hun Invloed op Nederland en haar Openbaar Bestuur (Interaction between Europe and The Netherlands: A Review of European Political Priorities and their Influence on The Netherlands and its Public Administration), expected April 2015.
- 3 University of Twente, EU Better Regulation en het Nederlandse Openbaar Bestuur: naar een Effectieve Borging van het Proportionaliteitsbeginsel (EU Better Regulation and The Netherlands' Public Administration: towards an Effective Protection of the Principle of Proportionality), expected April 2015.
- 4 Evaluation of action plan Europe and Subnational Authorities and outcomes of the consultations between the Ministry of the Interior and Kingdom Relations, the Ministry of Foreign Affairs, the Association of Netherlands Municipalities, the Association of Provincial Authorities and the Association of Regional Water Authorities, Parliamentary Paper 33 750 VII, no. 64, 24 June 2014.
- 5 Advisory Council on Public Administration, Met Europa Verbonden, een Verkenning van de Betekenis van Europa voor Gemeenten en Provincies (Connected to Europe, a Review of Europe's Impact on Municipalities and Provinces), November 2013.

What role do local and regional authorities play in the EU? More specifically, how does the AIV assess the functioning of the Committee of the Regions? Does it adequately represent subnational authorities in the preparatory phase of the decision-making process? Could this be done better or differently? If so, what role should Dutch members of the Committee play?

2. How should these trends affect the EU's institutional architecture? Does this have implications for the EU's interinstitutional relations? Does the Committee of the Regions currently occupy an adequate position within the EU's institutional structure?

I look forward to receiving your report.

Yours sincerely,

Bert Koenders Minister of Foreign Affairs

Annexe II

List of persons consulted

Theo Bovens	King's Commissioner in the Province of Limburg, member of the Committee of the Regions
Tom de Bruijn	Member of the municipal executive responsible for Finance, Traffic, Transport and the Environment, Municipality of The Hague
Eduard Dame	Senior policy coordinator for European Affairs, Ministry of Infrastructure and the Environment
Rob van Eijkeren	Coordinator, House of the Dutch Provinces, and official with responsibility for European affairs at the Association of Provincial Authorities
Simone Goedings	Senior coordinator on European affairs and coordinator of the Dutch delegation to the Committee of the Regions, Association of Netherlands Municipalities
Auke van der Goot	Home Affairs Section, Permanent Representation of the Netherlands to the European Union
Hans Janssen	Mayor of Oisterwijk, member of the Committee of the Regions
Mendeltje van Keulen	Clerk of the European Affairs Committee, House of Representatives of the Dutch Parliament
Cor Lamers	Mayor of Schiedam, chair of the Dutch delegation to the Committee of the Regions
Tom Leeuwestein	Europe and Local Governance Division, Governance, Democracy and Finance Department, Directorate-General for Governance and Kingdom Relations, Ministry of the Interior and Kingdom Relations
Markku Markkula	President of the Committee of the Regions
Piet van Nuffel	Member of the Legal Service of the European Commission
Peter Rem	Senior Adviser (including coordination of BNC files), Ministry of the Interior and Kingdom Relations
Annie Schreijer-Pierik	Member of the European Parliament, European People's Party Group
Ben Smulders	Head of Cabinet of Frans Timmermans, First Vice-President of the European Commission
Aurel Trandafir	Head of Cabinet of the President of the Committee of the Regions

Gonnie Verbruggen	Senior adviser on Europe/coordinator of the Dutch delegation to the Committee of the Regions, Association of Provincial Authorities
Bas Verkerk	Mayor of Delft, member of the Committee of the Regions, president of the Alliance of Liberals and Democrats for Europe Group (ALDE) in the CoR

Annexe III

List of abbreviations

AIV	Advisory Council on International Affairs
BNC	Interministerial Working Group for the Assessment of New Commission
	Proposals
CEMR	Council of European Municipalities and Regions
ERDF	European Regional Development Fund
EU	European Union
HNP	House of the Dutch Provinces
IBDTs	teams that coordinate different Dutch public authorities' input on
	EU dossiers
IPO	Association of Provincial Authorities
MEP	Member of the European Parliament
REFIT	Regulatory Fitness and Performance Programme
RLI	Council for the Environment and Infrastructure
ROB	Council for Public Administration
UvW	Dutch Water Authorities
VNG	Association of Netherlands Municipalities

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