

Better Regulation for EU Regions:

A Reflection on the Impacts of EU Regulations on the Regions



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The regional dimension is not given the attention it merits in the current discussions and debates about Better Regulation in the EU. This is particularly striking given the important role that regional and local levels of government can often play in the implementation of EU legislation. Despite recent efforts to better integrate the regions into EU decision-making processes, there is still much to be done in terms of considering the consequences of implementing EU policies. A new research study, led by the European Centre for the Regions antenna of EIPA, will help to identify the types of institutional impacts at the regional/local levels that the European Commission's impact assessment approach ought to be examining.

Regional authorities are real political and legislative actors in the context of European multilevel governance. This statement is particularly appropriate regarding European regions with legislative powers, although it is relevant, as well, in those cases where European regions "only" hold implementation or executive powers. Over the past years, some actions aiming at incorporating regions in the EU policy making process have been undertaken. However, there is still a long way to go in order to, on the one hand, fully acknowledge the scope of their role in EU policy making and to develop the right instruments to facilitate it, and on the other hand, to develop the appropriate institutional and governance framework as well as skills to ensure their effective role in the application of EU legislation.

In 2002, the European Commission launched its "Better Regulation Action Plan", aiming at simplifying and improving the regulatory environment. Achieving this goal means taking action at different stages of the policy making cycle, as well as looking at the impacts generated by the implementation of EU rules and policies. Therefore, the analysis of Better Regulation and the regions in Europe should look at this double dimension: the policy making dimension and the implementation dimension.

Regarding policy making, the appropriate framework for the regions to contribute their opinion to the policy or regulation in discussion is being developed, however, very slowly and by small actions. Developing this framework involves taking actions at the European level, and at the national and regional levels, as well. Regarding implementation of EU rules and policies at the regional level, the appropriate framework has to be developed at

national and regional levels, and awareness of this kind of impact has to be raised at the European level.

Regional participation in EU policy making: from "idealism" to "pragmatism"

The late 1980s and early 1990s were the years of growing regionalist movements in Europe. In 1986 at the time Spain joined the European Communities, only Germany had sub-national units (länder) holding legislative competences. The leading Spanish Autonomous communities took Europe as the opportunity to achieve higher levels of self-government as well as the autonomy to talk directly with European institutions on those issues falling within their scope of political and legislative competences. Strong regional leaders pushed the agenda of *regionalism* in Europe.

Over two decades since then, several European states undertook decentralisation processes of varying degree and depth. In France, regions became a territorial entity in 1982, and regional councils are elected by universal suffrage, however they lack strong legislative powers. In 1993 Belgium ended its extraordinary decentralisation process which led to its transformation into a federal state. Portugal granted the status of autonomous communities to Azores and Madeira; however the process towards decentralisation throughout the territory ended in 1998 with the negative result at the referendum on decentralisation. Italy, succeeded in implementing a constitutional reform in 2001 which grants regions with legislative powers of a varying degree and on different policy fields.¹

In parallel, and reinforcing each other, another European wide process began towards the end of the 80s, the reform of the European treaties which resulted in the signature of the Maastricht Treaty in 1992. Initially, the reforms the Treaty brought about regarding the role of the regions within the European arena, raised expectations. The idea that a “Europe of the Regions” was possible was in the mind of many regional political leaders. However, soon problems arose within the Committee of the Regions, and regarding the interpretation and application of the principle of subsidiarity, the two main “regionalist” achievements of the Treaty.

The Committee of the Regions had been designed to be the “political interpreter of the regional phenomenon” in Europe, and it was made up of “representatives of regional and local entities”. However, soon internal differences in terms of different political realities and therefore different interests arose. Regions with legislative competences, led by German länder and by Spanish autonomous regions began to realise the Committee was not the political platform they had liked it to be in order to foster their interests within the decision making process in Europe. These regions holding legislative powers have the legitimacy to participate in legislative decision making processes in Europe, and the responsibility to implement legislative acts, regarding decisions taken within their fields of competence. The issue still remained though, how to organise this participation.

Regions holding legislative powers in Europe realised they had to look for other ways to defend their interests, and foremost, they had to seek their own path to participate in the European policy making process. Two fronts had to be covered, the policy making front within the member states and the policy making front within the European system. In the first case, each decentralised member state developed its own system of internal rules regarding participation, coordination, along with other specific tools. In the second case, awareness within the EU institutions of the impact of European policy and legislative acts on the regional level have to be integrated within the processes of policy making, evaluation and better regulation. The goal being to achieve a better and successful implementation of EU rules and policies at all levels of government in Europe.

The European context: shaping the way towards including regions in the process

The White Paper on Governance in 2001 could be seen as the beginning of a turn regarding multilevel governance in Europe, and by definition regarding the recognition of the role of regions in EU governance.² A few key issues were raised by the White Paper on Governance. First, there is a need to reflect on improving preparation and implementation of EU legislation and policies in the EU. Second, a stronger interaction between the European Commission and regional governments through a systematic dialogue should be established. Third, member states should establish

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the appropriate mechanisms to guarantee a wide consultation when EU decisions are discussed and when EU policies with a territorial dimension are implemented. The goal being to find a balanced approach between ensuring a uniform approach to legislation and allowing for greater flexibility in the way rules are implemented on the ground.

Furthermore, that same year the Mandelkern Report stated the need to develop “effective structures” to coordinate the different levels of government in order to ensure a better

regulatory structure without burdening it with further bureaucracy. The report links multilevel governance in the policy making cycle and better regulation: “Better regulation needs high-level and cross-governmental political support and appropriate resources to be successful. It must address the whole life cycle of policy (inception, design, legislation, implementation and review) across all fields of public policy”.³ A good regulatory environment is

necessary in order to achieve the goals of growth and competitiveness set up by the Lisbon Strategy at the Lisbon European Council in March 2000.

Following the developments of the White Paper on Governance, the Commission issued in 2002 the Communication “Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission”, in line as well with the “Action Plan for Better Regulation” and the new approach to impact assessment. The goal was to propose the basic principles and procedures through which relevant parties would be properly consulted. Regional and local authorities requested from the Commission a clearer identification of the framework, scope and modalities of the systematic dialogue it intended to establish with them.

In 2007, the Commission Communication, “A Europe of Results – Applying Community Law” (Brussels, 5.9.2007, COM (2007) 502 final) stated that the success in achieving the goals of the European Union lies in the successful application of Community law in the Member States. Application means transposition of measures into national and regional legislation, across 27 national administrations and over 70 autonomous regions. “That is why, in pursuing the objective of Better Regulation it is necessary to attach high priority to the application of law, to identify why difficulties in implementation and enforcement may have arisen and to assess whether the present approach to handling issues of application and enforcement can be improved.”⁴

Recently, the Lisbon Constitutional Treaty builds on a stronger focus on the role of the regional and local authorities in the new institutional and decision making framework and on the multilevel governance principles. It recognises the need to reinforce the role of regional governments in the development of new legislation that later will have to be implemented by this level of government, both by means of more effective consultation of regional government and their associations, as well as with the duty

to minimise the financial and administrative burdens of new EU law.

Regional role in the implementation of EU law and policies: institutional impacts

EU policies and regulations have a real impact on government and therefore on local and regional government as well. Their role within the EU decision making process needs to be structured within the EU institutional framework and within the national decision-making process leading to EU decision making. Although the EU has no direct competence in the organisation of local and regional government, the impact of EU rules and policies shapes more and more the organisation and the outcome of local and regional governance. Given this context of multilevel governance it is necessary to find new governance tools to improve the effectiveness of the whole organisation of decision making. The European Commission is developing ways to overcome these challenges by means of the ex ante impact assessment.

However, to support the further progress of this instrument it is relevant to have proper facts and figures about the implementation impact of EU rules and policies.

This new approach to governance demands new ideas on the process and outcomes and calls for the development of a new sense of responsibility for policy making and policy implementation processes within the European territory. There are two kinds of impacts of EU regulations to look at: policy impacts (economic, social and environmental) and implementation impacts (legislative, organisational, competences). Economic, social and environmental impacts are high and are being measured with increasing sophistication by means of the impact assessment exercises carried out ever more systematically by the European Commission. However, the situation is a bit different regarding implementation impacts. There is a perception that implementation impacts of EU rules and policies at regional and local levels are high but they are not yet fully tackled as part of the Impact Assessment process. According to the Second strategic review of Better Regulation in the European Union this year, "Commission departments will pay more attention to the analysis of certain areas such as.... impacts... on regions and local authorities... There is also a need to anticipate better transposition and implementation issues."⁵

Implementation impacts of EU rules and policies have been identified and could be defined as impacts on internal legislative frameworks, intergovernmental coordination, allocation of resources, development of appropriate skills, and accountability for the implementation and respect for internal allocation of competences at national, regional and local levels. More specifically, the number of laws to be modified, the internal organisation restructuring, the development of human resources and skills as well as financing these changes.⁶ However, specific tools to measure

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and analyse them at all levels of government (European, national, regional or local) are not yet fully structured within the EU decision making process. For instance, the Impact Assessment Guidelines (SEC(2005) 791), sets the framework and procedures to analyse the economic, social and environmental impacts but not similar tools to measure implementation impacts.⁷ Furthermore, the proposed review of the Impact Assessment Guidelines currently under consultation still falls short of developing the adequate tools to measure and weigh these impacts.⁸

Additionally, common rules are very difficult to implement and in some cases can interfere in the internal arrangements regarding decentralisation in different member states. The impact is experienced at different levels – executive, legislative or political – depending on the particular system of decentralisation of each member state. Taking into account the institutional impacts EU rules and policies have at regional level, it would be very useful if impact assessment exercises would take on board implementation impact analysis together with the policy impact at the economic, social and environmental levels. If EU

regulations are there to be applied, and regional authorities are to have a role in this application, their specific institutional frameworks and legislative competences should be taken into account.

It is precisely within this context, that the European Institute of Public Administration, by its Antenna in Barcelona, the European Centre for the Regions, has been commissioned to carry out a study on the institutional impact of EU legislation on regional and local authorities in Europe. The study will focus on assessing the impact of two EU Directives at the local and regional level in different European countries, through a comparative approach.⁹ It intends to take into account the policy rationales of all levels of government involved (European, national, regional and local) in this process on how to improve these issues and to provide support to identify specific tools to measure and analyse them at all levels of government (European, national, regional and local).

Two directives have been selected as case studies for this project, Directive 18/2004/EC of the European Parliament and the Council on the coordination of procedures for the public works contracts, public supplies contracts and public services contracts, and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste. In order to enhance the relevance of the research different decentralisation structures are addressed. This study will be carried out with a comparative approach in six European countries: The Netherlands, The United Kingdom, Sweden, Norway, France and Iceland. The key actors involved in this study are the European Commission, the national governments of the country studies, their regional governments and local authorities. Specific examples in each country will illustrate the findings of the study.

The general question this study would like to address is to picture the implementation impacts of the two Directives

and by this means to provide evidence and analysis to support improvements at all levels of government involved. The specific questions to be addressed by the study in each case and in every member state are related with legislative impacts at all levels of government, institutional and organisational impacts, coordination impacts, and impacts on the distribution of competences across different levels of government, impacts on decision making on skills development and financing the changes.

This is going to be a formative study. The purpose is to learn with the study of these experiences and to contribute to improve the different policy making tools and decision making processes in the context of the better regulation process. The goal is that all levels of administration will identify their strengths and weaknesses regarding this process and develop the appropriate processes and resources to improve it to serve the goal of better tailored EU regulations and therefore better implementation of EU rules. The study has just been launched and it will be completed by June 2009.

A particular aspect which helps to measure the importance of taking into account the institutional impacts of EU policies and regulations, and particularly of EU Directives is the difficulties surrounding their transposition particularly when it comes to areas of regional and local competence and furthermore in decentralised countries with regional authorities holding legislative competences. The EU level, the national level, as well as the regional level need to develop further the appropriate structures, instruments and processes in order to achieve a full involvement of the regional level in the transposition of EU directives. However, although there is still room for improvement in this particular process at EU level and at national level, regional authorities face also internal difficulties to implement and develop a framework which will enable them to have an efficient and timely transposition of EU Directives.¹⁰

Different systems of decentralisation in Member States have led to different structures at national and regional level to organise this process.¹¹ Among others, the issues affecting an efficient transposition of EU Directives at the regional level are a complex or poorly defined allocation of competences between central and regional governments,¹² financial constraints on the side of the regional authorities in order to implement the necessary changes to accomplish transposition, such as administrative changes, developing specific skills within the regional administration, and lack of awareness by policy makers of the importance of the EU level of government and its policy outcomes as an integral part of regional policy and government.¹³

Conclusions

According to these reflections on Better Regulation for EU regions and its context, the following remarks could be worth some further thinking and study:

- Regarding policy making, guidelines, tools, working groups, etc. within the European Commission, and appropriate coordination structures within the national framework, and within the regional framework are to be structured.

- Regarding implementation, awareness of the complexities surrounding allocation of competences within European countries, specific expertise development and raising awareness, are necessary in order to ensure a better implementation of EU legislation at regional level.
- Regarding participation, the appropriate intrastate structures to facilitate timely and substantive regional and local participation in EU decision making should be strengthened or developed accordingly.
- Regarding information availability, evidence and appropriate frameworks and measurement tools are necessary in order to facilitate information for the impact assessment exercises regarding EU rules and policies.
- Regarding skills and competences at regional and local level, those needed by policy makers and policy analysts to follow timely and precisely EU rules and policy developments affecting regional and local authorities should be developed.
- Regarding deficiencies in transposition, awareness of the fact that some of it can be traced back to the beginning of the policy making cycle, and therefore including implementation analysis in impact assessment and ex ante evaluations could be very useful.

Obviously, this is not a comprehensive overview and thorough analysis on the situation regarding Better Regulation and the regions. It is a field yet to be developed, analysed and explored further, and the aim of this article was to contribute with some ideas to continue working in the direction of developing a better regulatory environment in Europe.

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NOTES

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- ⁵ Communication from the Commission, Second strategic review of Better Regulation in the European Union, Brussels, 30.1.2008, COM (2008) 32 final, p. 6.
- ⁶ Mandelkern Group on Better Regulation, Final Report, 13 November 2001, p. 57.
- ⁷ Impact Assessment Guidelines (SEC(2005) 791).
- ⁸ Impact Assessment Guidelines 2008 (Draft version 27/05/2008).
- ⁹ "Much of European law takes the form of directives which set out general rules and objectives but leave Member States the choice as to how to attain them. Primary responsibility for applying EU law lies with the national administrations in the Member States. From the Better Regulation point of view, the transposition of directives is of special interest. The transposition into national law is done by national governments and parliaments sometimes involving regional and local authorities." (http://ec.europa.eu/governance/better_regulation/transp_eu_law_en.htm).
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