

Contribution of Minister-President Patrick Dewael
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European Convention

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Agenda point 5: debate on the subsidiarity report

As Minister-President of Flanders and an observer in this Convention on behalf of the Committee of the Regions, I would once again like to make a call to pay attention in this plenary session to the concerns of the regions, particularly those with legislative powers. They are an undeniable reality in the present-day European Union, as I already expounded on 25 June.

Please allow me to explain the situation of the Belgian regions with legislative powers in particular. A rather unique feature of the Belgian federal system is the parallelism between the internal and the external division of competences: when a Belgian federated state, such as Flanders, is internally competent for a policy domain, it is automatically also granted competence for the external relations concerning this area of responsibility. This is also valid regarding the EU. Another feature is the absence of shared powers. For any given policy domain either the federal State or the federated states are competent, never both. A third feature is the fact that the policy levels of the federal State and the federated states act in full independence from one another. This means that the laws of the federated states cannot be overruled by federal legislation. Thus the governments of the federated states and the federal government are on an equal footing.

These features result in the fact that Flanders is directly involved in EU-matters as far as regional competences are concerned. For instance, within their competences the Flemish Government and Parliament are bound to transpose EU-rules into internal law.

As a consequence, I believe that regions with legislative powers, such as Flanders, need to be as closely involved in the European policy-making process as any member state when their own competences are at stake. Therefore I reiterate the request which I submitted together with my colleagues Karel De Gucht and Andrew Duff to set up a separate working group tasked with paying particular attention to the challenge represented by sub-national entities and regions with legislative powers.

Most of the European competences will also in the future be shared with the member states and where their national constitutions so provide, the regions. Therefore the subsidiarity principle should be taken more seriously. This becomes even more relevant in an enlarged Union, which must safeguard its democratic legitimacy.

I welcome the proposals that were made by the working group on subsidiarity, which is chaired by Mr. Mendes de Vigo, regarding the role of the Committee of the Regions. However, I regret that in the current debates on subsidiarity and the role of the national parliaments one almost always represents the views of the national parliaments, without explicitly mentioning whether this includes the regional parliaments as well. There is a growing consensus among the members of the working group that the *ex ante* political monitoring of compliance with the principle of subsidiarity “should primarily involve national parliaments”.

However, the role of the regions with legislative powers, which are active on the European scene on a daily basis, is unjustly left out of consideration. The

working group has taken things too easily by referring in this context to the internal rules that prevail within each member state. In fact, if a member state – such as Belgium – provides its regions with legislative powers exclusive and autonomous responsibility in certain matters, the European Union should leave these regions the necessary discretion to monitor compliance with the principle of subsidiarity themselves. Otherwise the Union infringes on the constitutional status of these regions which was given to them by the member state concerned.

In several member states the regional parliaments perform the same task as the national parliaments with regard to a range of policy matters managed by the European Union (such as education, culture, public health, agriculture, environment, and so on). That is why regional parliaments should be placed on an equal footing with the national parliament in the legislative field and with regard to their own responsibilities. This is particularly true if in the near future national parliaments will be given the opportunity to give their opinion on compliance with the principle of subsidiarity. In a member state such as Belgium “national parliament” can only mean “regional parliament” when the concerned matter falls within the responsibility of the Belgian Communities or Regions. The European Union should respect this typical nature of the Belgian constitutional order, otherwise it violates the very basis of the principle of subsidiarity. This is also perfectly workable in practice. Since the report by Mr Mendez de Vigo states that - if necessary - both chambers of the national parliament can adopt resolutions on compliance with the principle of subsidiarity, there is nothing to be said against various regional parliaments within one and the same member state adopting such a resolution.

Finally, I wish to stress once again that regions with legislative powers should have direct access to the European Court of Justice. The European Union promulgates many rules that are related to their areas of competence. Because

they are subject to European law, regions with legislative powers are not only bound by these rules, but are often confronted with the demand to transpose European legislation into internal law as well. This means that if the Belgian federated states would refrain from doing so as far as their responsibilities are concerned, there would simply be no transposition at all.

In spite of this, regions with legislative powers do not yet have the corollary of outlined legal obligations, as they cannot yet appeal *directly* to the European Court of Justice, not even when their own responsibilities threaten to be infringed. Nor can they defend themselves directly before the Court. I feel that this anomaly ought to be remedied in a European Union which pursues a high level of democratic legitimacy.

Thank you for your attention.