

**THE EUROPEAN CONVENTION**

THE SECRETARIAT

**Brussels, 10 April 2002 (11.04)**  
**(OR. es)**

**CONV 26/02**

**CONTRIB 9**

**COVER NOTE**

---

from :	Secretariat
to :	Convention
Subject :	<b>Contribution from Mr Zaplana Hernández-Soro, observer at the Convention</b>

---

The Secretary-General of the Convention has received the attached contribution from Mr Zaplana Hernández-Soro, observer at the Convention.

---

**OPINION**  
of the Committee of the Regions  
of 13 March 2002  
on  
**the Draft Report of the European Parliament on the division of powers between the  
European Union and the Member States**

---

**The Committee of the Regions,**

**HAVING REGARD TO** the Presidency conclusions of the Laeken European Council of 14 and 15 December 2001, in particular the Laeken Declaration on the future of the European Union;

**HAVING REGARD TO** the draft report of the European Parliament's Committee on Constitutional Affairs on the division of powers between the European Union and the Member States (PE 304.276);

**HAVING REGARD TO** the European Parliament's resolution on the Commission reports to the European Council on Better Lawmaking 1998 and Better Lawmaking 1999 (C5-0266/2000 and C5-0279/1999);

**HAVING REGARD TO** the opinion of 10 October 2001 of the European Parliament's Committee on Regional Policy, Transport and Tourism for the Committee on Constitutional Affairs on the division of powers between the European Union and the Member States (PE 301.816);

**HAVING REGARD TO** the draft opinion of 23 August 2001 of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for the Committee on Constitutional Affairs on the delimitation of powers between the European Union and the Member States (PE 302.070);

**HAVING REGARD TO** the Commission communication of 5 December 2001 on the future of the European Union ((COM 2001) 727 final);

**HAVING REGARD TO** its resolution of 14 November 2001 on the preparations for the Laeken European Council and the further development of the European Union in the context of the next intergovernmental conference in 2004 (CdR 104/2001 fin);

**HAVING REGARD TO** its report of 20 September 2001 on proximity (CdR 436/2000 fin);

**HAVING REGARD TO** its resolution of 4 April 2001 on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin) <sup>1</sup>;

**HAVING REGARD TO** its opinions of 15 September 1999 and 13 April 2000 on the Commission reports to the European Council on Better Lawmaking 1998 and Better Lawmaking 1999 (CdR 50/99 fin and CdR 18/2000 fin) <sup>2</sup>;

**HAVING REGARD TO** its opinion of 11 March 1999 on the principle of subsidiarity: Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions (CdR 302/98 fin) <sup>3</sup>;

**HAVING REGARD TO** the request for consultation by the European Parliament's Committee on Constitutional Affairs pursuant to Article 265(4) of the Treaty establishing the European Community;

**HAVING REGARD TO** the decision of its President, pursuant to Rule 40(2) of its Rules of Procedure, to use the urgency procedure and to appoint two rapporteurs-general, **Mr Chabert** (B-EPP), vice-president and Minister for Public Works, Transport and Health Policy in the Brussels-Capital Government and **Mr Dammeyer** (D-PES), Member of the North Rhine-Westphalia Landtag;

**WHEREAS** the Committee of the Regions has been given active observer status on the European Convention established by the Laeken European Council; whereas it has been agreed that the issue of a more satisfactory distribution and definition of powers within the European Union should be at the forefront of moves to give a fresh impetus to the Union;

**WHEREAS** in the Laeken Declaration the Heads of State or Government referred on several occasions to the regional dimension as one area meriting further

---

<sup>1</sup> OJ C 253, 12.9.2001, p. 25.

<sup>2</sup> OJ C 374, 23.12.1999, p. 11, OJ C 226 of 8.8.2000 p. 60.

<sup>3</sup> OJ C 198, 14.7.1999, p. 73.

consideration with a view to a better distribution and definition of powers in the European Union, raising the following questions:

- how can we ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions?
- should not the day-to-day administration and implementation of the Union's policy be left more emphatically to the Member States and, where their constitutions so provide, to the regions? Should they not be provided with guarantees that their spheres of competence will not be affected?

**WHEREAS**

since its creation, the Committee of the Regions has pressed for a debate on the delimitation of powers and effective implementation of the principles of subsidiarity, proportionality and proximity, and has expressed its views on the matter on numerous occasions over the course of its first two four-year terms of office;

adopted the following opinion unanimously at its 43rd plenary session on 13/14 March 2002 (meeting of 13 March 2002).

\*

\*       \*

## 1. General comments on the division of powers in the European Union

### The Committee of the Regions,

1.1. **welcomes** the opportunity provided by the European Parliament's request for consultation to set out its position of principle on this issue which, quite rightly, is to be the central theme of the mandate of the Convention responsible for preparing for the next intergovernmental conference.

1.2. **welcomes** the fact that the deliberations of the European Parliament's Committee on Constitutional Affairs on this question have led the latter to consider the position, role and institutional representation of the regions and local authorities in the European Union.

1.3. **highlights** the fact that increasing integration has a considerable impact on the independence of regions and municipalities, since the European Union has, over time, interpreted and applied its powers ever more widely in many fields. In the debate on a better allocation of competencies, it is not only a matter of improving legal instruments, but also of examining the political division of responsibilities between the Union and the Member States in key policy areas. Many of these policy areas, however, affect the remit of regional and local authorities, e.g. culture and education policy, research and technology, environment policy and regional and agricultural structural policy <sup>4</sup>.

1.4. **recalls** that one objective is a more democratic, transparent and effective EU; that this is to be achieved through clarification, simplification and adaptation of the Treaties, as well as improved information to the citizen.

1.5. **welcomes** the Convention as the first step in the direction of a more democratic method of Treaty revision, and calls for the widest possible dissemination of the final conclusions and recommendations of the Convention.

---

<sup>4</sup> cf. CoR memorandum on the involvement of the Committee of the Regions in the structured debate on the future of the Union (CdR 325/2001 fin).

1.6. **considers**, consequently, that any discussions on a better division of powers must be based not only on the principle of subsidiarity, but also on those of proportionality, proximity and respect for national and regional identities, and must seek to promote a political responsibility for proximity.

1.7. **believes** that the principle of subsidiarity is a political principle which is constitutional in nature, and that its incorporation in the Treaties requires Member States and the relevant institutions to choose the most effective and proportionate level for decision-making. The principle of subsidiarity must therefore guarantee both regional rights and local autonomy <sup>5</sup>. The fact is that the Community takes action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

1.8. **notes** that despite the political and legal progress achieved since the subsidiarity principle was enshrined in the Maastricht Treaty, it has not been fully implemented and has failed to have the expected impact on the functioning of the Union; considers that a better delimitation of powers in the Union would make it significantly easier to define, implement and monitor this principle.

1.9. **submits** this opinion, a synthesis of the views expressed by the Committee in the course of its last four-year term of office, at this early stage of this comprehensive debate in order to provide the European Parliament with relevant information on the issues of principle involved, and will make its views known as the Convention's work progresses.

1.10. **means** to conduct an ongoing dialogue with the European Parliament on this matter, for the duration of the work of the Convention on the future of the Union.

---

<sup>5</sup> cf. CoR final declaration on new forms of governance in Europe: more democracy and grass-roots representation (CdR 379/2000 fin).

## 2. A better division and definition of powers within the European Union is essential for continued European integration

### The Committee of the Regions,

2.1. **shares** the views of the European Parliament on the shortcomings of the Treaties in their current form and in the operation of the Community as a whole with regard to the division of powers, a result of the lack of consistency and transparency caused by the proliferation of instruments and procedures; considers that the existing division of powers is also unclear, since the EC Treaty sets out only very general objectives and does not fix the precise scope of the relevant measures <sup>6</sup>.

2.2. **considers** that the process proposed by the Heads of State or Government in the Laeken Declaration on the future of the Union, aimed at achieving a better division and definition of competence in the European Union, should be seen in the wider context of a new definition of the European project, and warns against confining the delimitation of powers to a purely technical revision of the Treaty <sup>7</sup>.

2.3. **considers** that the support and involvement of European citizens in achieving a genuine political Union can only be secured if European integration proceeds transparently with respect to powers and responsibilities, and is convinced that European democracy will only work properly if the Treaties and decision-making procedures become more transparent for citizens and easier to implement <sup>8</sup>.

2.4. **favours** a constitutional approach and thus approves the European Parliament proposal to incorporate all treaties into a single text composed of two parts:

---

<sup>6</sup> cf. CoR opinion: Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions (CdR 302/1998 fin).

<sup>7</sup> cf. CoR resolution on the preparations for the Laeken European Council and the further development of the European Union in the context of the next intergovernmental conference in 2004 (CdR 104/2001 fin).

<sup>8</sup> cf. CoR report on proximity (CdR 436/2000 fin).



- (a) a "constitutional" or basic section containing the preamble, the objectives of the Union, fundamental rights and the provisions concerning the institutions and individual conferred powers, which could only be amended by an IGC;
- (b) a section dealing specifically with technical, procedural and institutional matters, in so far as these can be dealt with under secondary law, which could be amended under the lighter Community procedure not involving an IGC. In any case, the transfer of Member States' powers to the European Union would require the agreement of Member States' parliaments <sup>9</sup>.

2.5. **considers** that the objective of a better distribution of powers between the European Union, the Member States, the regions and the sub-regional levels is intrinsically linked to the Union's legal status and tasks. There is thus a need:

- in the light of the progress of the European project, to identify and clarify the policies to be implemented in order to ensure its success;
- to bring the European Union closer to the citizen <sup>\*</sup>. The subsidiarity principle must serve as the yardstick for the redefinition of European Union tasks. In this connection, the principles governing apportionment of responsibilities and powers between central, regional and local government in the individual Member States must be respected. Wherever Community action is not absolutely essential, Member States, regions and local authorities should, as decision-making levels that are in touch with citizens' concerns, be reinvested with more political responsibility;
- to allocate political responsibility clearly e.g. by redefining the European Union's powers under the Treaty. Neither the transfer of further powers - nor the transfer back of powers - should be taboo in this context <sup>10</sup>.

---

<sup>9</sup> cf. CoR opinion on the Commission report to the European Council: Better Lawmaking 1999 (CdR 18/2000 fin).

<sup>\*</sup> cf. also CoR report on proximity (CdR 436/2000 fin).

<sup>10</sup> cf. CoR resolution on the preparations for the Laeken European Council and the further development of the European Union in the context of the next intergovernmental conference in 2004 (CdR 104/2001 fin).

2.6. **is convinced** that enlargement of the European Union must go hand in hand with a concentration of the Union's tasks on genuinely European challenges, and calls for the concentrated and reformed tasks of the European Union to be set out clearly in the Treaties or the future constitutional Treaty; also believes, however, that the European Union should continue to be able to react flexibly to the growing challenges and be given the tools necessary to tackle them successfully <sup>11</sup>.

2.7. **considers**, however, that the political objectives the Union has set itself, as listed in Article 2 of the Treaty, must be retained.

2.8. **is in favour**, therefore, of maintaining the European Union's capacity for action and adopting a dynamic approach towards the subsidiarity principle.

2.9. **supports** the methodological approach proposed in this draft report concerning the classification of powers between the exclusive powers of the Union, the exclusive powers of the Member States, shared powers and secondary powers.

2.10. **reiterates** that, under the subsidiarity principle, the European level must, in all matters for which it has not been assigned exclusive competence, first allow the other levels – i.e. the Member States and thus their regions and local authorities - to take any action that may be necessary. This principle is enshrined in the Treaties and is binding on all the European institutions – the Council, Commission and Parliament <sup>12</sup>.

2.11. **considers** that the European Commission has interpreted exclusive Community competence in Article 5(2) of the EC Treaty very broadly in the past, which has curtailed the impact of the subsidiarity principle <sup>13</sup>.

---

<sup>11</sup> cf. CoR resolution on the preparations for the Laeken European Council and the further development of the European Union in the context of the next intergovernmental conference in 2004 (CdR 104/2001 fin).

<sup>12</sup> cf. CoR memorandum on the involvement of the Committee of the Regions in the structured debate on the future of the Union (CdR 325/2001 fin).

<sup>13</sup> cf. CoR opinion on the Commission report to the European Council: Better Lawmaking 1999 (CdR 18/2000 fin).

2.12. **emphasises** that many of the competences of the future European Union must remain shared competences - shared not only between the EU and national governments, but also, in line with the principle of subsidiarity, with regional and local government, while respecting the provisions of the constitutions of the Member States; further notes that the term "competence" is not limited to a power to legislate, but includes other legal powers of action within the responsibility of each sphere of government <sup>14</sup>.

2.13. **considers** that it is essential also to improve the legal machinery for the delimitation of competences, and proposes that the possibilities for a more systematic and better classification of EU competences be examined <sup>15</sup>.

2.14. **urges** that consideration be given to the question of the delineation of powers between the different levels of government with a view to ensuring the conditions necessary for good European governance.

2.15. **highlights** the importance of the principle of proportionality, which underpins the system of shared powers.

2.16. **favours** a hierarchy of legislation and believes that a distinction should be made between the Community's different legal instruments (regulations, directives and decisions) in the interests of efficiency and transparency; believes that European directives must continue to be general in nature and the practical arrangements for applying European Union law left to the discretion of regional and local authorities, thus making it possible to ensure that cultural differences within the European Union – which are part of its wealth – are respected <sup>16</sup>.

2.17. **calls** for the financial and administrative consequences of Community legislation for citizens and the local authorities responsible for its implementation to be taken into account <sup>17</sup>.

---

<sup>14</sup> cf. CoR resolution on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin).

<sup>15</sup> cf. CoR resolution on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin).

<sup>16</sup> cf. CoR Report on proximity (CdR 436/2000 fin).

<sup>17</sup> cf. CoR opinion on the implementation of EU law by the regions and local authorities (CdR 51/1999 fin).

2.18. **believes** that a better division of responsibilities would lead to increased use of majority voting and so improve the efficiency of the EU overall <sup>18</sup>.

2.19. **stresses** that the right to determine the European Union's tasks must remain a matter for the Member States, and opposes proposals for procedures enabling Treaty revisions to be made by the Community in its own right, and especially proposals to abolish the requirement for ratification by the national parliaments <sup>19</sup>.

**3. Any new division and definition of powers within the European Union must contain safeguards for the powers of the regions and local authorities**

**The Committee of the Regions,**

3.1. **does not** wish the debate on the division of powers to result in the European Union being asked to take control of the territorial organisation of the Member States, since this is a matter for them alone; rather, asks that account be taken of the very important role of the regions and local authorities in implementing Community legislation, and their respective powers be guaranteed.

3.2. **points out**, in this respect, that the principles applicable to the division of responsibility and power between central, regional and local government in the individual Member States must be respected <sup>20</sup>.

3.3. **recalls**, in this connection, the proposal contained in the European Parliament's resolution on Better Lawmaking 1998/1999, which urged that "in accordance with the subsidiarity

---

<sup>18</sup> cf. CoR opinion on the Commission report to the European Council: Better Lawmaking 1999 (CdR 18/2000 fin).

<sup>19</sup> cf. CoR resolution on the preparations for the Laeken European Council and the further development of the European Union in the context of the next intergovernmental conference in 2004 (CdR 104/2001 fin).

<sup>20</sup> cf. CoR resolution on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin).

principle and the political and national diversity of the European Union, the amendments made to the Treaties should specifically include recognition of, and respect for, the political and legislative powers of the Member States' internal political units (federated states, autonomous communities, regions) in their executive, legislative and judicial relations with the EU institutions." <sup>21</sup>.

3.4. **supports** the proposal to grant the regions a specific status in the Treaty, in the same way as that of national parliaments is recognised, and to detail the areas in which the regions are involved, their responsibilities, the practical arrangements and procedures governing their participation and the tools for follow-up and evaluation; the principle of subsidiarity must however be incorporated at subnational level, i.e. not only regional but also local level, owing to the fact that in many Member States local authorities share administrative responsibility for Community-related matters.

3.5. **regrets**, however, the excessively centralist approach proposed, on the basis of which national governments would have the sole right to draw up the list of regions classed as "partners of the Union", and proposes that this approach be reviewed by the European Parliament in consultation with the Committee of the Regions, so as to ensure that the procedures for granting this status do not put a stop to the process of change that is taking place by creating distortions both between the Member States and within them.

3.6. **believes** that recognising the status of regions and local authorities would represent a practical expression of the principles set out in the Charter of Fundamental Rights of the European Union, which the Committee of the Regions wishes to see incorporated into the Treaty and given binding force, according to which "the Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels." <sup>22</sup>.

---

<sup>21</sup> European Parliament resolution on the Commission reports to the European Council: Better Lawmaking 1998/1998 (A5-0269/2000).

<sup>22</sup> Charter of Fundamental Rights of the European Union (OJ C 364, 18.12.2000 pp. 1-22).

3.7. **reiterates** its call for the Union's shared principles to be extended to encompass the principles of local and regional autonomy, whilst respecting the internal constitutional provisions of the Member States.

3.8. **welcomes** the fact that the European Parliament has taken into consideration the specific situation of the regions with legislative powers in its examination of the division of powers.

3.9. **points out**, however, that in many Member States, local and other regional authorities also have a very large degree of autonomy and administrative power with regard to the implementation of Community law, and therefore asks the European Parliament also to take account of this fact.

3.10. **calls** for the principles of subsidiarity and proportionality, as referred to in the Treaties, to be supplemented by provisions designed to ensure that the powers of the regions and local authorities are respected.

3.11. **reiterates** its call for the Committee of the Regions and the regions with legislative powers to be granted the right to bring proceedings before the European Court of Justice in cases where the subsidiarity principle is not respected.

3.12. **draws attention** to the call by the European Parliament in its resolution on Better Lawmaking 1998/1999 for "the increasingly important role of the Committee of the Regions in the application of the subsidiarity principle (to) be recognised and extended", and calls for the European Parliament's delegation to the Convention to press home this demand <sup>23</sup>.

3.13. **believes** that enhancing the CoR's institutional role is the necessary corollary of the growing impact of European legislation on the sphere of responsibilities of regional and local authorities if a better division and coordination of powers within the European Union is to be effectively guaranteed.

---

<sup>23</sup> European Parliament resolution on the reports of the Commission to the European Council: Better Lawmaking 1998/1999 (A5-0269/2000).

3.14. **proposes**, thus, that in the future architecture for the European institutions, the role played by regional and local authorities in Europe be upgraded, in accordance with the subsidiarity principle, so as to reflect their importance for European unification and in bringing the Community's activities closer to the citizen <sup>24</sup>.

3.15. **considers**, therefore, that it will be necessary to give the Committee of the Regions full institutional status, to provide it with a structure enabling it to carry out efficiently the duties assigned to it, and to grant it powers which go beyond a purely consultative role, including the right to bring actions before the Court of Justice, thereby making it a participant in the European decision-making process in which all political levels in the Member States – from local authority to region with legislative powers – have their place and share responsibility <sup>25</sup>.

3.16. **calls** on the European Parliament, and particularly its delegation to the Convention on the future of the European Union, to ensure (a) that the work of the Convention takes account of the need to provide political and legal safeguards for the powers of the regions and local authorities and (b) that the Committee of the Regions is closely associated with any new definition and division of powers within the European Union.

Brussels, 13 March 2002

The President  
of the Committee of the Regions

The Secretary-General  
of the Committee of the Regions

Albert BORE

Vincenzo FALCONE

---

<sup>24</sup> cf. CoR resolution on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin).

<sup>25</sup> cf. CoR resolution on the outcome of the 2000 Intergovernmental Conference and the discussion on the future of the European Union (CdR 430/2000 fin).