

CONV 328/02

CONTRIB 114

COVER NOTE

| | |
|-----------|--|
| from | Secretariat |
| to | The Convention |
| Subject : | Contribution by Mr Francesco Enrico Speroni, alternate member of the Convention - “The Regions and the European Union: future prospects?” |

The Secretary-General of the Convention has received the Contribution annexed hereto from Mr Francesco Enrico Speroni, alternate member of the Convention.

Francesco Enrico Speroni

THE REGIONS AND THE EUROPEAN UNION: FUTURE PROSPECTS?

It might be useful to begin a discussion on the issue of the future prospects of Regions in the European Union by examining how they are considered in the Treaties in force.

The Regions, which are absolutely not mentioned in the Treaty on the European Union, have an indistinct position in the Treaty which institutes the Community: I am using the term 'indistinct' to signify that the term "region" (or similar expressions) is used without distinction throughout the thirty-four articles in which it appears to refer both to institutionally defined bodies and organs, and to indicate portions of territory where a given issue has similar characteristics, such as unemployment or environmental issues, without such territory constituting an institutional entity.

And so, in the Treaty references are made to agricultural regions, to disadvantaged regions, to remote regions to which special policies are to be applied in relation to transportation, employment, and use of funds, and where the regions are not referred to as bodies but only as territorial realities that as such cannot be the subject of my intervention.

Restricting my presentation, therefore, to the institutional relationship between the European Union and the Regions proper, namely the internal bodies within individual States, it is mainly the Committee of Regions the body that represents the regional institutions in the Treaty. By stating, by way of introduction, in Article 7 that the Council and the Commission are assisted by the Committee and that it has a consultative function, Articles 263, 264 and 265 delineate its composition, its internal organs and its relationships with the Council and with the Commission; the Committee can express its views, but they are not binding, and furthermore it is not compulsory to receive such opinions, since decisions can be taken even in their absence (when they are not presented within the set deadline).

It is also specified that the European Parliament may consult with the Committee.

The articles that envisage prior consultation with the Committee by the Council in

view of making its deliberations, are less than ten and have to do with policies in the area of transportation, development, employment, culture, education, professional training, youth and health, as well as the use of regional funds.

And finally, the Regions are listed, together with other bodies and institutions, in the articles that prohibit the Central Bank from issuing aid, that prohibit special financial conditions and that prevent the Community from being accountable for the commitments taken on by other bodies.

The role of the Regions, therefore, as it emerges from the Treaties is a marginal one from the institutional standpoint.

I do not mean to go into explanations as to the reasons for this situation: I shall merely mention some of the causes:

- the regions of the various States differ widely from one another in terms of population and size of territory, with some regional entities being larger in size than some States, as is the case with Baviera;
- the institutional status of the regions differs enormously, with some Regions being merely organs of state decentralisation while others are actually autonomous bodies, with all the shades between these two extremes.

These characteristics entail major difficulties in governing such widely differing realities in a homogeneous manner.

An additional reason may be that the Regions have never had the opportunity of directly participating in the shaping of the Treaties.

In view of the future configuration of the Union and of its relationship with the Regions, I think it is worthwhile underlining the different institutional structures that they have, which can be broken down mainly to two distinct categories: the Regions that have merely organisational and administrative tasks, hence being a mere subdivision or territorial articulation of the State, and those that instead share law-making powers with the State and that are the holders of autonomous powers.

I have intentionally made this distinction because I believe it is necessary to discuss the issue of the future relationships between the Regions and the European Union restricting such discussion to the legislative decision-making procedures.

From this standpoint, it is relatively simple to envisage the relationships between the Regions belonging to the first category and the Union from the institutional standpoint. For the Regions that do not have law-making autonomy, the State they belong to is the

sole interlocutor of the Union and hence the Regions may relate to the Union only through the State powers for matters regarding legislative decision-making procedures.

This does not mean that such Regions should be deprived of any other means – some political or domestic mechanism - for making the decision-making bodies aware of their requests; it only means that institutionally they cannot have direct access to the deliberating phase, subsequent to the fact-finding and consultation procedures.

The position of the Regions that have legislative powers is different. Only these Regions should take part in the shaping of the decisions taken at European level on the issues over which they are given competence by the domestic legal system of the State they belong to.

This is already happening to some extent: in some cases decided on jointly with Parliament, the Council, which is the decision-making body of the Union, invites the representatives of the Regions of Belgium and Germany to its sessions, in accordance with the rules envisaged by the domestic legal systems of such Countries, when the issues on the agenda include matters on which such Regions have competence; this however does not occur with the Spanish, British and Italian Regions that also have legislative powers.

As regards Italy, in particular, the recent constitutional reform of 2001, has recognised that the Regions, for the subject areas over which they have competence, are to participate in the decisions that contribute to shaping the Community regulations and that they must see to the implementation of the European Union regulations and directives, in accordance with the rules of procedure envisaged by the State. Therefore, this means that the Regions take part in both the ascending and descending phases of the making of Community Law. In spite of the Constitutional provision, for the time being the Regions do not enjoy forms of direct participation in the shaping of Community Law.

The differences among the various legal systems, from a certain standpoint, may apply also to the European Convention, which counts representatives of the German and Belgian Regions among its members; for Germany there would be no other alternative since the legislative assemblies of Germany are made up exclusively by representatives of the Regions, whereas for the delegates of Belgium, it was a deliberate decision to include one member from each regional parliamentary assembly.

Instead, it is only due to chance that the Convention be chaired by the president of a Region, because Giscard d'Estaing would have been assigned this position even if he were not president of Alvernia!

Well then, what are the future prospects for the role of the Regions having legislative powers in the Union?

This is a question which, given the premises, I will answer in an extremely concise and perhaps simplistic but undoubtedly clear-cut manner.

Even though personally, as said earlier, I deem that the Regions having legislative competence, should take part directly in the decision-making procedures of the Union when issues they are responsible for are on the agenda, I do consider it inappropriate that it should be the Union to provide an institutional definition of their role.

And I am saying this for two reasons.

The first concerns the difficulty in regulating in a detailed and balanced manner a body of subjects, like the Regions, that differ so greatly from one another in relation to the different institutional structures that characterise the Member Countries they belong to.

The second instead has to do with the desirability that such degree of interference, albeit indirect, by the Union be avoided as such system of relationships should only come under State sovereignty.

From another standpoint, it may be pointed out that the role of the Regions, as I have just described, embodies the principle of subsidiarity. It is up to the Member States and the Community to define the concrete boundaries of such relationships on a case by case basis, while it will be up to the individual national systems to decide how this principle should be implemented within their Country, breaking down as it deems best fit the regulatory and administrative competences between the different levels of government.

It will then be the task of the Regions that want an institutional space in the Union to conquer such space through the procedures envisaged by the individual systems and after having brought about the appropriate regulatory changes within the countries they belong to.

The Union will then accept the decisions taken by the States, thus recognising,

both in substance and from a procedural standpoint, the competences vis-à-vis the Union that the States have attributed to the Regions.

The Regions should be acknowledged the power of having direct recourse to the Court of Justice for issues of regional legislative competence where conflicts were to arise between Region and Union. And once again the principle of subsidiarity which is pervasive throughout the Community structure will be implemented also with regard to the Regions.

ATTACHMENT

Articles of the Treaty establishing the European Community that refer to the Regions

Preamble

7 – Committee of Regions

33 – Agricultural Regions

40 – Life-style and Employment

71,76,78 – Transportation

87 – State Aid

101 – ECB

102 – Access to financial institutions

103 –Commitments

128,129 - Employment

137,138,148 – Social Provisions

149,150 – Education

151 – Culture

152 – Health

154,156 – Trans-European Networks

158,159,160,161,162 –Economic and Social Cohesion

174,175 – Environment

263,264,265 – Committee of Regions

267 – EBI

299 – Territorial regulations

306 – Regional Unions