

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

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| from | Secretariat |
| to | The Convention |
| Subject : | “Contribution from the six Observers of the Committee of the Regions to the Convention - “The role of the regional and local authorities in European integration” |

The Secretary-General of the Convention has received the contribution annexed hereto from the six Observers of the Committee of the Regions to the Convention.

OPINION
of the
Committee of the Regions
of 21 November 2002
on
The role of the regional and local authorities in European integration

The Committee of the Regions,

HAVING REGARD TO the working document of the European Parliament's Committee on Constitutional Affairs on The role of the regional and local authorities in European integration (PE 313.402);

HAVING REGARD TO the decision of the European Parliament of 3 September 2002 to consult it on this matter, under the fourth paragraph of Article 265 of the Treaty establishing the European Community;

HAVING REGARD TO the decision of its Bureau of 2 July 2002 to instruct the Commission for Constitutional Affairs and European Governance to draw up an opinion on this subject;

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

HAVING REGARD TO the European Commission White Paper on European Governance ((COM)2001) 428 final);

HAVING REGARD TO the European Parliament's report on the division of competences between the European Union and the Member States (A5-0133/2002);

HAVING REGARD TO the draft conclusions of 29 July 2002 of the European Convention working group on the principle of subsidiarity (WD09-WG1);

HAVING REGARD TO its preliminary contribution to the Convention of 4 July 2002 (CdR 127/2002 fin);

HAVING REGARD TO its opinion of 13 March 2002 on the White Paper on European Governance (CdR 103/2001 fin¹);

HAVING REGARD TO its opinion of 13 March 2002 the Draft Report of the European Parliament on the division of powers between the European Union and the Member States (CdR 466/2001 fin²);

¹ OJ C 192, 12.8.2002, p. 24

² OJ C 192, 12.8.2002, p. 31

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 fin¹);

HAVING REGARD TO its opinion of 14 November 2001 on the participation of regional government representatives in the work of the Council of the Union (CdR 431/2000 fin²);

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 fin³);

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 fin⁴);

HAVING REGARD TO the position paper of June 2002 by the Council of European Municipalities & Regions (CEMR) on the Convention;

HAVING REGARD TO its draft opinion (CdR 237/2002 rev 1) adopted on 11 October 2002 by the Commission for Constitutional Affairs and European Governance (rapporteur: **Lord Tope** (UK-ELDR), Member of the Greater London Authority and Councillor of the London Borough of Sutton;

WHEREAS the President of the European Commission has recently stated that "it is **vital** for the regions and local authorities to play a more active role ... There needs to be better upstream participation in the EU decision-making process up to the conception stage. The Member States...must involve the regions and local authorities in working out national positions within the Council. The Commission wants more organised dialogue with regional, urban and local actors."¹

adopted unanimously the following opinion at its 47th plenary session of 20-21 November 2002 (meeting of 21 November)

¹ OJ C 107, 3.5.2002, p. 36

² OJ C 107, 3.5.2002, p. 5

³ OJ C 253, 12.9.2001, p. 25

⁴ OJ C 198, 14.7.1999, p. 73

1. The Committee of the Regions' views concerning the EP working document

General considerations

The Committee of the Regions

1.1 **welcomes** the European Parliament initiative in drawing up a report on the role of the regions and local authorities in European integration as a step forward in connection with the debate on the future architecture of Europe, which the CoR would like to develop further and strengthen.

1.2 **stresses** that the debate is about the role and rights of all spheres of sub Member State government, i.e. local and regional authorities, reflecting and breadth and diversity of arrangements across the Member States, as well as their representative bodies and associations.

1.3 by the same token, is surprised at the working document's lack of awareness of the regional dimension, in contrast to earlier Parliament documents, and the approach initiated by the European Commission's White Paper on governance, as reflected in the Laeken declaration, in which the heads of state and government referred to the need to devote particular attention to the regional dimension in order to achieve better distribution and definition of competence in the EU.

1.4 **shares** the EP rapporteur's view that the process of integration should be taken forward, not weakened, in an enlarged Europe and that the Community method needs to be reinforced, not put in danger; emphasises that a fuller involvement of all spheres of governance involved in delivering EU policies and legislation is therefore a positive and necessary contribution towards this objective and will bolster the democratic legitimacy of the Union. Moreover, early consultation of these legitimate interests will identify and possibly resolve potential problems at an early stage and thereby facilitate more effective decisions and implementation of EU policy and legislation.

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

1.6 **shares** the view of the EP rapporteur therefore, that the principle of subsidiarity should not govern solely relations between the Union and its Member State governments, but also other spheres of governance and refers to the declaration on subsidiarity by Germany, Austria and Belgium noted by the Amsterdam intergovernmental conference.

¹ **President Prodi** Speech 02/344, Bellagio 15 July 2002

1.7 **considers** therefore that strengthening the democratic legitimacy of the European Union inevitably means increasing the participation of local and regional authorities in the decision-making processes and increasing their participation in the preparation and implementation of European policies. Contrary to comments in the EP working paper, it does not believe that this will necessarily overburden or complicate the decision-making process. Any increased complexity would be largely compensated for by greater legitimacy and public acceptance and efficiency gains in the implementation (as any technical obstacles will have been identified and resolved).

1.8 **welcomes** therefore the proposals of the European Commission concerning greater involvement of local and regional authorities. However, the CoR underlines that this greater involvement must be two-fold: on the one hand, systematic consultation of local and regional authorities and their associations in the pre-legislative stage, and on the other hand, a strengthened role for the Committee of the Regions in the political decision-making process.

Subsidiarity

The Committee of the Regions

1.9 **reiterates** its view that the principle of subsidiarity is a political principle which is constitutional in nature, and that its incorporation in the Treaties obliges 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 self-governance, in keeping with the law of each Member State, given also that in many Member States local authorities share administrative responsibility for Community-related matters. The Community should take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States or their constituent spheres of governance and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

1.10 **considers** that framework legislation and directives should be used more frequently in preference to the more detailed regulations, which should be used only when strictly necessary for the achievement of the objective.

1.11 **considers** that legislation is not the only means of acting in the public domain, nor always the most important one, therefore in many of the subject-matters of the European Union local and regional bodies have an important role to play irrespective of their limited involvement in legislative decision-making.

1.12 **considers** that despite the political and legal progress achieved since the subsidiarity principle was enshrined in the Maastricht Treaty and fleshed out in the Protocol to the Amsterdam Treaty on the implementation of the principles of subsidiarity and proportionality, it has not been fully implemented and has failed to have the expected impact on the functioning of the Union and to underpin the prerogatives and responsibilities of the Member States, regions and local authorities.

1.13 **considers** that the main provisions of the existing Protocol on subsidiarity should be made explicit in any new Treaty, including reference to both the Member States and, according to the competences reserved for them, their local and regional entities.

1.14 **considers** that the conclusions of the Convention on the principle of subsidiarity should examine the role and responsibilities of local and regional spheres of governance.

1.15 **supports** the proposal for the Convention to establish a specific working group on the role of the Member State's subnational authorities.

1.16 **believes** it appropriate that the CoR, as the EU body which represents the levels of government closest to ordinary citizens, should have a specific role in monitoring compliance with this principle and has repeatedly called for the Treaties to assign to it specifically the task of

monitoring compliance with the subsidiarity principle.

1.17 **calls for** local and regional authorities to have the right to bring actions before the European Court of Justice, in the event of EU institutions infringing their prerogatives.

1.18 **therefore expresses** doubt about whether there needs to be a new surveillance body created for this purpose; if however such a body were to be created, would consider it important that local and regional government be represented.

1.19 **considers** that within each Member State, there should be a mechanism for reviewing the internal application of the subsidiarity principle.

Charter of Local Self-Government

The Committee of the Regions,

1.20 **considers** that the application of the principle of subsidiarity guarantees the democratic foundation of the Union's institutions and the concept of European citizenship. At the same time, the subsidiarity principle should ensure that political decisions are taken at a closer level to the citizen, by means of local and regional self-government. The CoR considers that this dimension of the subsidiarity principle is best reflected the term "proximity" and that the principle of proximity should therefore be added to the Union's "governance" principles.

1.21 **reiterates** its call for the new constitutional framework of the European Union to incorporate the European Charter of Local Self-Government as part of the *aquis communautaire*, with a view to building a Union based on the principles of democracy and transparency.

1.22 **restates** its view that the principle of regional self-government must form an underlying principle of the Union, with respect for democracy and with a view to greater integration.

Charter of Fundamental Rights

The Committee of the Regions

1.23 **regards** the Charter of Fundamental Rights as a key contribution to European integration which makes it clear that the European Union is a community of values; advocates the incorporation of the Charter of Fundamental Rights into the Treaty.

EU competences

The Committee of the Regions

1.24 **considers** it necessary to clarify which tasks must and can be carried out jointly by a considerably enlarged Union. It should be made clear which European Union interests can only be acted on jointly, and the enlarged Union's tasks should be concentrated on those areas. However in certain areas, a transfer back of powers to the Member States - or an extension of European Union powers - cannot be excluded.

1.25 **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 and the principle of proximity - 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.

1.26 **calls for** the tasks of the European Union to be set out clearly in the Treaty. However, the European Union should also continue to be able to react flexibly to the challenges that lie ahead ; a clear distinction should be made between the exclusive, shared and supplementary powers of the European Union. As far as the powers enjoyed by the EU are concerned, the Treaty should enumerate and define the as yet largely unstructured courses of action which the Treaties provide for (regulation, harmonisation, mutual recognition, augmentation, promotion, co-ordination, implementation.) In this regard there should be particular effort to promote cross-border co-operation as a task and objective of the European Union.

1.27 **reiterates** that it opposes drawing up rigid and detailed lists of powers . However, the Union should give consideration to (and respect) the internal rules and organisation of the Member States regarding the distribution of competences.

Consultation

The Committee of the Regions

a) Consultation at the level of the European Union

1.28 in calling for the role of the regional and local authorities in the application of Union policies to be recognised, **considers** that they and their representative bodies should be consulted in those areas relevant to the powers they exercise in accordance with the internal organisation of their state.

1.29 in this context, **welcomes** the European Commission's commitment in the White Paper on European Governance to institute a systematic dialogue between European and national associations of local and regional government as well as regional and local authorities themselves, notably in the phase prior to the drawing-up of new policies likely to have an impact on the regional and local authorities or to affect their powers.

1.30 **calls for** the financial and administrative consequences of proposed Community legislation for sub Member State authorities responsible for its implementation to be made clear at the consultative stage and taken into account in the final decision.

b) **Consultation of the Committee of the Regions**

1.31 concerning the consultative function of the CoR itself, **calls for:**

- a mechanism to ensure that the failure to consult the CoR where this is mandatory, or the adoption of legislation falling within the CoR's area of responsibility in the absence of the CoR's opinion within the period laid down for that purpose should have legal consequences. In particular, the CoR must have the right to bring legal actions in defence of its prerogatives which would enable it to bring before the Court of Justice actions for abrogation of Community measures adopted without the mandatory consultation of the Committee being carried out;
- strengthening of its consultative function by requiring the institutions adopting a measure to justify failure to take account of the Committee's opinion. This requirement should extend to all areas in which consultation is mandatory;
- the list of subjects on which consultation of the Committee is mandatory be extended to all areas relating to the competences of local and regional authorities;
- consultation on the Annual Policy Strategy, and on information and communication.

c) **Consultation within Member States**

1.32 **recalls** that the White Paper on European Governance observed that Member State governments are not involving local and regional stakeholders appropriately in the preparation of their positions on EU policies.

1.33 **considers** that Member States' positions on European issues should be reached by means of increased dialogue and collaboration between the national, regional and local authorities and their representative associations, which would improve the democratic legitimacy of EU decision-taking, and recommends that such rights to information and participation be given a high level of legal guarantee.

The future of the Committee of the Regions

1.34 **recalls** that, under the EU Treaty, the CoR was established as the sole EU body representing "regional and local bodies" of all the Member States in the EU decision-making process; the CoR should therefore reflect the diversity of local and regional governance in the individual Member States on an equitable basis.

1.35 **reiterates** that it cannot be a fully effective channel for the participation of the local and regional authorities in European integration as long as it remains relegated to its current status of an auxiliary, consultative body.

1.36 specifically, **calls for:**

- recognition of the CoR's status as an institution;
- power to bring actions before the Court of Justice in defence of its prerogatives and the subsidiarity principle;
- the right to address written and oral questions to the European Commission;
- a strengthening of the functions of the Committee going beyond its current purely consultative functions. The CoR should thus be granted the right to a "suspensive veto" in some cases of mandatory consultation and where EU legislation has a financial impact on local and regional authorities;
- to be able to attend the dialogue between the Council, the European Parliament and the Commission in the framework of the co-decision procedure in cases of mandatory consultation provided for by the Treaty.

European and national associations of local and regional government

1.37 **notes** that with enlargement the Union will comprise about 250 regions and 100,000 local authorities. It is evident therefore that the EU cannot consult each and every stakeholder directly and that there is an ever increasing role for representative bodies and associations.

1.38 the CoR is a political body that represents the general interests of all decentralised authorities in the Union. This places it in a different position, from both civil society, the forum for the spontaneous organisation of specific interests; and secondly, from the European associations of regional and local authorities which, although made up of political bodies, are private in nature and represent the interests of their members; and thirdly, from individual local and regional authorities which are political in nature but represent their own individual and specific interests. Furthermore, its specific status as a formal EU advisory body distinguishes it from the European associations of

regional and local authorities.

1.39 this in no way lessens the legitimacy of the other bodies which represent regional or local interests in the dialogue with the Community institutions, and which the institutions need to consult on a systematic basis depending on the particular information required. In the light of the issue to be addressed, it seems perfectly natural that the Commission should organise early consultation forums that include the European or national associations concerned by a particular matter, or indeed individual regions where the issue is especially specific to a given territory or territorial grouping.

Regions with legislative powers

1.40 **calls on** Member States to institute suitable national mechanisms, in keeping with their internal arrangements, to enable local and regional authorities (or combinations thereof) to engage in the preparation of matters falling within their own competence in “national” positions with a view to discussion in the EU Council of Ministers.

1.41 **reiterates** its view that participation in all the preparatory phases of Council decision-making is necessary to ensure that all issues that are the specific responsibility of the regional and local authorities (according to the constitutional provisions of each Member State) or are of direct relevance to them, are dealt with in a comprehensive and effective manner.

1.42 **also believes** that, in addition to the national parliaments, and in accordance with the constitutional provisions of each Member State, the Committee of the Regions as the representative of local and regional authorities should also be involved in the ex-ante supervision of compliance with the subsidiarity principle and the allocation of powers.

1.43 **rejects** any notion that the development of regional lobbying “can hardly be interpreted as a sign of solidarity towards other regions.” As the representative of the various regional and local authorities considers it very understandable for individual regions, local authorities and their representative bodies to pursue their own interests within the European Union, whilst at the same time actively seeking common ground within the Committee of the Regions..

1.44 **supports** the efforts of regional parliaments with legislative powers to further expand institutional contacts with the European Parliament.

1.45 **also rejects** the rapporteur's association (change from original proposal) of the regions with strong constitutions with rich EU regions and his conclusion that there is a risk of discrepancy between the integration of rich and poor regions. This theory does not stand up to a scrutiny of the statistics for regional GDPs in the EU compiled by Eurostat, whose most recent data underpin the *First progress report on economic and social cohesion* presented by the Commission

on 4 February 2002 (COM(2002) 46 final). These regions may defend their common interests by virtue of the specific powers vested in them but nonetheless show solidarity with the other EU regions and local authorities and, in particular, lay store by a fair economic and social cohesion policy.

Concluding remark

1.46 therefore **calls on** all regions with legislative powers and all other sub-national authorities to pool their know-how and experience in order to work together to strengthen the application of the principles of subsidiarity and proximity in the European Union.

2. The Committee of the Regions' recommendations for changes for incorporation into a new Treaty

Founding principles

2.1 at Article 6 TEU, should make a statement of the Union's Governance Principles, largely as set out in the White Paper on European Governance, i.e. comprising **“openness, participation, accountability, effectiveness, coherence, subsidiarity [proximity], proportionality.** “We would add **“consultation; partnership.”**

2.2 at Article 6 TEU, where it refers to the founding principles of the Union, should make specific reference to regional self-government and to the European Charter of Local Self-Government, and should reflect that commitment in the following terms: **“The Union shall respect the principle of regional self-government and the rights related to local self-government, as guaranteed in the Charter of Local Self-Government of the Council of Europe of 1985.”**

2.3 additionally, at Article 6 TEU (paragraph 3) should make **reference to the Charter of Fundamental Rights**, and that the provisions of the Charter should be incorporated into the Treaty at the appropriate points(s); in this connection, Article 6 TEU, where it refers to respecting the identities of its Member States, should read **“the Member States, including (in accordance with their internal organisation) their regions and local authorities.”**

Subsidiarity

2.4 at Article 5 TEC, insert "the Community shall give consideration to (and respect) the internal rules and organisation of the Member States regarding the distribution of competences".

2.5 at Article 5 TEC the definition of subsidiarity should make explicit reference to “the Member States or their local and regional authorities, according to the competences reserved for them by each Member State”,

2.6 at Article 5 TEC, should consider a mechanism (not necessarily a new institution) for reviewing the application of the principle of subsidiarity, and impose upon the Member States “a duty to establish a mechanism for reviewing the application of the principle as it applies in that state”.

2.7 at Article 10 TEC (first paragraph):

"Member States, and their regional and local authorities, in the context of their respective competences, shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community";

"In connection with this, all legislative proposals shall include an estimate of the resource implications (financial and administrative) for the implementing bodies";

The following wording should be added to Article 230 of the TEC: **"The Court of Justice shall be responsible for hearing complaints lodged by a Member State, a region or local authority of a Member State, or the Committee of the Regions, concerning contravention of the subsidiarity principle".**

Consultation

2.8 at Article 211 TEC, at the end add an obligation on the **“Commission to pursue its activity in a spirit of partnership with the Member States and with elected regional and local authorities or their representative bodies, observing its principles of good governance, notably that of consultation.”**

Concerning the Committee of the Regions as an institution

2.9 at Article 7 TEC (paragraph 1) insert **“Committee of the Regions”** into the list of full institutions (and therefore delete existing reference in paragraph 2).

2.10 in Part Five, Title 1, Chapter 1 (“The institutions”) insert a new **section 5 “The Committee of the Regions”** to give effect to its request to be a full institution. Articles and

provisions currently under Chapter 4 would transfer to this new section.

The right of the Committee of the Regions to bring actions before the Court of Justice in defence of its prerogatives should be enshrined in the third paragraph of Article 230 TEC as follows: **"The Court of Justice shall have jurisdiction, under the same conditions in actions brought by the European Parliament, by the Court of Auditors, by the ECB and by the Committee of the Regions for the purpose of protecting their prerogatives".**

2.11 at Article 263 TEC to be amended thus: **"The Committee of the Regions, consisting of representatives of regional and local government bodies, shall exercise the functions conferred upon it by this Treaty."**

2.12 at Article 265 TEC (paragraph 1), add at the end: **"failure to consult the Committee where that is deemed mandatory by this Treaty shall give rise to a suspension of the procedure in the other institutions (or invalidate a decision already taken) pending transmission of the Committee's opinion within the time limits set down in this Treaty."** This shall, in effect, provide the Committee with a right of suspensive veto in such cases.

2.13 at Article 265 TEC (paragraph 2), **the time limit should be extended to three months**, to reflect the fact that the Committee only has resources to hold five plenary sessions annually.

2.14 at Article 265 TEC (paragraph 3), add at the end: **"The Committee shall have the right to address written and oral questions to the Commission."**

2.15 at Article 265 TEC (paragraph 7 (new)): **"The Council and the Commission shall provide on a regular basis a reasoned report on action taken in response to the Committee's opinions."**

Co-decision procedure

2.16 at Article 251 TEC (paragraph 4) concerning the composition of the Conciliation Committee, add **"The Committee of the Regions may participate as observer on all matters subject to mandatory referral under this Treaty, with a view to advising the other institutions of the implications for the spheres of governance that it represents."**

2.17 Instructs its President to forward this opinion to the President of the European Parliament, the Council, the European Commission and the Chairman of the European Convention.

Brussels, 21 November 2002

The President
of the
Committee of the Regions

The Secretary-General
of the
Committee of the Regions

Albert Bore

Vincenzo Falcone

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