

THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 4 February 2003

CONV 534/03

CONTRIB 227

COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr Hannes Farnleitner, member of the Convention and Mr Gerhard Tusek, alternate member of the Convention: "Regions and Municipalities – A Fundament in European Architecture"

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Hannes Farnleitner, member of the Convention and Mr Gerhard Tusek, alternate member of the Convention.

REGIONS AND MUNICIPALITIES – A FUNDAMENT IN EUROPEAN ARCHITECTURE

by Hannes Farnleitner and Gerhard Tusek

Regional diversity as element of the very nature and the objectives of the EU

National, regional, cultural and linguistic diversity is one of the major assets of the European Union and a main feature of its peoples' identities. Without taking regard to the **respect and development of this diversity as an objective of the European Union** in Title I the Constitutional Treaty would fall short of citizens' expectations.

This objective is in line with Member States' right to uphold measures promoting the diversity of cultures and languages in specific regions. However, when incorporating Art.151 TEC on culture into the second part of the Constitutional Treaty (A.5, IV) the text of the article could be clarified in this sense (see Annex).

As a matter of fact the role of local and regional authorities in the territorial organisation and constitutional structure of Member States differs widely. Nevertheless, over the last decades Europe has seen a general trend towards regionalisation and decentralisation of administration. Regional and local authorities have taken on an increasing role in transposing and implementing EU legislation and programmes. In addition, some Member States' constitutions grant regional and local authorities considerable legislative powers.

In the light of these developments, bringing Europe closer to the citizens - one of the main objectives of the Convention - cannot succeed without explicitly acknowledging the role of local and regional authorities in the Constitutional treaty.

Respecting national responsibility for regional and local self-government

There exists a broad consensus in the Convention that the European Union is to be defined as a Union of states and peoples. We share the opinion that in this concept of Europe it is up to each Member State to determine its institutional and territorial organisation. The principle of non-interference by the Union in the constitutional arrangements and legal provisions concerning the division of competences between central state and regional and local entities of the Member States should be laid down explicitly.

It is not for the Constitutional Treaty to define the relations between local, regional and central authorities in Member States. **The Constitutional Treaty is to ensure that local and regional authorities are effectively able to exercise and defend those competences which are conferred upon them by Member States.**

Following a recommendation of WG V on Complementary Competences we propose to include **in Title III of the Constitutional Treaty** among the principles on the exercise of Union competence in Title III (Art.8) **an amended version of Article 6 (3) TEU clarifying that the political and constitutional structure of Member States, including regional and local self-government, is an essential element of national identity which the Union respects.**

Stressing the regional and local dimension of subsidiarity

The principles of subsidiarity and proportionality are of utmost importance for regional and local authorities to defend their prerogatives granted by national constitutions and laws. A **clearer delimitation of competences** between the EU and Member States – preserving the necessary flexibility – will certainly foster the application of these principles. In this context we also refer to Hannes Farnleitner's and Reinhard Bösch's contribution on "Making the subsidiarity principle operational" (CONV 241/02).

Furthermore **regional and local authorities should be explicitly mentioned in the relevant treaty provision on the principles of subsidiarity and proportionality.**

When incorporating Art. 5 TEC on subsidiarity and proportionality into the Constitutional Treaty (Title III, Art.7) the second paragraph of Article 5 TEC should be amended as follows: *"In areas which do not fall within the exclusive competence, the **Union** shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, **or by the regional and local authorities on the basis of the competences conferred upon them by laws of Member States**, and can therefore, by reasons of the scale or effects of the proposed action, be better achieved by the Community."*

In addition, at the end of the Article an additional paragraph should be added which reads: *"The conditions and requirements for the application of the principles of subsidiarity and proportionality are laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitutional Treaty."*

WG I stressed (CONV 286/02) that in the drafting phase of a legislative act the Commission should also consult local and regional authorities – who may be affected directly or indirectly by a legislative act – and that any legislative act should contain a "subsidiarity sheet" containing "some assessment of its financial impact and, in case of a Directive, of its implications for the rules to be put in place by Member States (at national or other level)". As a consequence WG I concluded: "To give tangible form to these proposals, the Protocol on subsidiarity currently annexed to the treaty would have to be amended".

Following this conclusion we propose the amendments below to the Protocol which aim at **improving and defining more precisely the subsidiarity criteria** by taking better into account the perspectives of regional and local authorities:

- Without prejudice to the delimitation of competences, the Union institutions shall examine whether, and to give detailed explanations if a specific Union policy or measure has impacts on the cultural and social **specificities of the Member States and their sub-entities** as well

as on their educational systems, their administrative and judicial structures, their systems of local self-government, their activities concerning services of general economic interest or their systems of social security.

- The Union institutions shall, when applying the subsidiarity principle, assess whether a specific legal act, applied in a generalized way throughout the EU, would have a particular impact on certain territorial entities. In this case they shall duly take account of regional particularities and ensure that exemptions be foreseen where necessary.
- The Commission shall, when proposing a Union measure, take into due account the need for any burden upon the Union, national governments, local and regional authorities, economic operators and citizens to be minimised and for the necessary resources to be provided for (cf. the current article 9 third indent of the Protocol).

Subsidiarity control – a matter for both chambers of national parliaments

We welcome the recommendation of Working Group I on subsidiarity (CONV 286/02) to create an **early warning mechanism**, in order to reinforce the monitoring of compliance with the principle of subsidiarity by national parliaments. In this regard, we wish to point out that several Member States have a two chamber parliament (one chamber consisting of representatives of regional and/or local authorities). As the structure and organisation of its parliament is and shall remain a prerogative of each Member State, we consider it **essential that each chamber of a national parliament shall have the right to invoke the early warning mechanism** (in accordance with the recommendations of WG I and WG IV).

In addition, the judicial review carried out by the Court of Justice concerning compliance with the principle of subsidiarity should be reinforced. As was also proposed by WG I **national parliaments should be allowed to refer a matter to the European Court of Justice for violation of the principle of subsidiarity. Again, both chambers of a parliament should be able to make use of this right.** Moreover, this right of appeal should not be restricted to those parliaments that have issued a reasoned opinion in the framework of the early warning mechanism.

Granting regions with legislative competences a right of appeal to the European Court of Justice

Regions with legislative competences should be expressly mentioned in Art.230 TEC.

The Constitutional Treaty should **confer on regional and local authorities which have legislative powers and which are duly authorized by national constitutions or laws the right to bring proceedings before the European Court of Justice for violation of the principle of subsidiarity and in order to protect their rights.** By leaving it to the Member States to determine the competences of local and regional authorities for initiating proceedings this proposal would not risk affecting the equilibrium established between the Member States in the EU.

Strengthening the Committee of the Regions (CoR)

The CoR was created by the Maastricht Treaty of 1991 in order to give local and regional authorities a voice at the European level. The Treaties oblige Commission and Council in certain areas which have repercussions at regional or local level to consult the CoR whenever they submit new proposals.

The reflection paper of the Praesidium on „The regional and local dimension of Europe“ (CONV 518/03) gives the impression that the composition of the CoR (number of CoR-members per Member State) should be reconsidered because it „does not reflect the demographic realities of the Member States“. We do not share this assessment. In the same way as for the European Parliament **the principle of degressive proportionality has to apply to the CoR**. As for the composition of its national delegation (on the basis of the total number of CoR-members assigned to it) it is up to each Member State to ensure an appropriate balance of regional and local representation .

At present the CoR is not named in Art.7 TEC as one of the Community's institutions. In order to highlight and enhance the regional dimension of Europe the CoR should be explicitly mentioned as an institution of the Union in a separate article in Title IV (after Art.22).

Even more important is in our view that the CoR adapts its internal procedures in order to render its working methods more efficient. The internal structure of the CoR should enable the different groups of regional and local authorities to better identify, coordinate and express their specific interests within this Union institution. Otherwise these groups will pursue their interests outside the institutional framework of the Union in fora as e.g. EUROCITIES or REG LEG.

The obligation to consult the CoR should be included in an amended version of **Art.308 TEC**, respectively in a **flexibility clause** in Title III of the Constitutional Treaty. This Article should read then: *“(...) the Council shall, acting unanimously **in accordance with the procedure referred to in Article 251 of the Treaty**, on a proposal from the Commission and after **consulting the Committee of the Regions and the Economic and Social Committee**, take the appropriate measures.”*

In addition, the **CoR** should have a **stake in subsidiarity control**. For this purpose **we propose to amend the third paragraph of Art. 230 TEC** by granting the CoR a right of appeal to the European Court of Justice in order to defend its prerogatives or on the grounds of infringement of the principle of subsidiarity (see Annex). However, we wish to stress that the CoR's right of appeal should not be considered as an alternative to the right of appeal for regions with legislative competences – which seems even more important to us - as proposed above.

**SUMMARY OF PROPOSALS FOR PROVISIONS IN THE
CONSTITUTIONAL TREATY**
according to the Draft Constitutional Treaty (CONV 369/02)

PART ONE

Title I:

Respect and development of national, regional, cultural and linguistic diversity as an objective of the European Union;

Title III:

Art.7:

An amended version of Article 5 TEC:

2nd paragraph: *“In areas which do not fall within the exclusive competence, the **Union** shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, **or by the regional and local authorities on the basis of the competences conferred upon them by laws of Member States**, and can therefore, by reasons of the scale or effects of the proposed action, be better achieved by the Community.”*

At the end of the Article an additional paragraph should be added which reads: *“The conditions and requirements for the application of the principles of subsidiarity and proportionality are laid down in the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Constitutional Treaty.”*

Art.8:

An amended version of Article 6 (3) TEU clarifying that the political and constitutional structure of member states, including regional and local self-government, is an essential element of national identity which the Union respects.

Amended version of Art.308 TEC:

*“(...) the Council shall, acting unanimously **in accordance with the procedure referred to in Article 251 of the Treaty**, on a proposal from the Commission and after **consulting the Committee of the Regions and the Economic and Social Committee**, take the appropriate measures.”*

Title IV:

Art.20 (Court of Justice):

Amendment to third paragraph of Art.230:

“The Court of Justice shall have jurisdiction under the same conditions in actions brought by Member States’ regional or local authorities with legislative powers thereto authorized by national law or the Committee of the Regions for the purposes of protecting its prerogatives or on the grounds of infringement of the principle of subsidiarity. The Court of Justice shall also have jurisdiction in actions brought by a national parliament or a chamber of a national parliament on the grounds of infringement of the principle of subsidiarity.”

PART TWO

A.5, IV (Culture) :

Insert after first paragraph of Art.151 TEC:

“Union law does not prevent Member States from taking specific measures to promote the diversity of cultures and languages in specific regions.”

Protocol on subsidiarity:

Early warning mechanism involving (both chambers of) national parliaments.

Criteria:

- Without prejudice to the delimitation of competences, the institutions shall examine whether, and to give detailed explanations if a specific Union policy or measure has impacts on the cultural and social **specificities of the Member States and their sub-entities** as well as on their educational systems, their administrative and judicial structures, their systems of local self-government, their activities concerning services of general economic interest or their systems of social security.
- The Union institutions shall, when applying the subsidiarity principle, assess whether a specific legal act, applied in a generalized way throughout the EU, would have a particular impact on certain territorial entities. In this case they shall duly take account of regional particularities and ensure that exemptions be foreseen where necessary.
- The Commission shall, when proposing a Union measure, take into due account the need for any burden upon the Union, national governments, local and regional authorities, economic operators and citizens to be minimised and for the necessary resources to be provided for (cf. the current article 9 third indent of the Protocol).