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Regions with legislative powers: towards multi-level governance

Working Group "Regions with legislative powers"

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Summary

The Council of Europe lays great store by the strengthening of local and regional democracy in particular as it is at local and regional levels, in application of the principles of subsidiarity and proximity, where democracy is closest to citizens. Regions with legislative powers have an important role to play in policy shaping and decision-making, in particular they reflect more accurately regional and cultural differences. Regional democracy is a strong element of constitutional checks and balances, especially in federated states, and a guarantee for democratic and effective multi-level governance. This multi-level governance must be guided by mutual co-operation and interaction between all levels of power - European, national, regional and local – in the search for solutions to today's challenges.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Members not belonging to a Political Group of the Congress



A. DRAFT RESOLUTION²

1. The Council of Europe lays great store by the strengthening of local and regional democracy in particular as it is at local and regional levels, in application of the principles of subsidiarity and proximity, where democracy is closest to citizens. Regional democracy is a strong element of constitutional checks and balances, especially in federated states, and a guarantee for democratic and effective multi-level governance. Citizens identify most strongly with their region through cultural and linguistic ties but also for historical, geographical and social reasons.

2. The Congress of Local and Regional Authorities of the Council of Europe believes that good regional governance brings an added value which can be seen in the fact that regionalisation has spread across many of the member states over the past years. New regional institutions have been introduced or existing ones endowed with additional responsibilities. This has led to a rich diversity of regions based on a number of different models.

3. The advance of regionalisation in countries depends to some extent on their historical background and on the experiences of other countries. The process of European integration, namely the creation of the Congress of Local and Regional Authorities of the Council of Europe and the Committee of the Regions of the European Union – both established in 1994 – also contributed to this development. The process is slow, however, and does not follow a systematic pattern. The Congress, aware of this, is convinced that in the present European and international context, the process is inescapable.

4. Multi-level governance must be guided by mutual co-operation and interaction between European, national, regional and local authorities with due regard to the respective roles, functions, competences and activities of each level. Former hierarchical subordination schemes are about to be abandoned in favour of a solutions-oriented approach to co-operation. A clear delineation of power for cross-cutting issues is a prerequisite for sound and successful multi-level governance. In this light, the Congress welcomes the Committee of the Regions' White Paper on Multi-level Governance adopted on 17 June 2009 (Doc n° CdR 89/2009 fin).

5. Firm in this belief and convinced of the merits of good regional governance, the Congress adopted Recommendation 240 (2008) on a Draft European Charter of Regional Democracy and is now co-operating on the drafting of a reference framework on regional democracy which will guide member states' regional reform.

6. Regionalisation is a means of giving regions with legislative powers ownership of, and other regions a say in policy shaping and political decision-making. Directly elected regional assemblies are a means of reducing the regional parliamentary deficit. This proximity to Europe's citizens strengthens democracy thanks to a more direct citizen participation, and brings processes closer to citizens' daily lives with the result they reflect more accurately regional and cultural differences. Executive bodies - regional governments - are accountable to these parliaments.

² Reporting committee: Working Group "Regions with legislative powers"

Preliminary draft resolution and recommendation approved unanimously by the Working Group on 6 May 2009.

Members of the Working Group :

B. Petrisch, A. Ibrahimov (alternate: H. Hashimli), *J-C. Van Cauwenberge* (Chair), *A. Ryyänen*, (alternate: *P. Zambakhidze*), *G. Pieper, M. Spinosa, A-J. Jardim* (alternate: R. Oliveira), *A. Uss, P. Bosch i Codola* (alternate: *A. Clemente Olivert*), *U. Wüthrich-Pelloli, A. Grytsenko* (alternate: *L. Tuysuzova*), (alternate: *J. Watson*)

N.B. : The names of members who took part in the vote are in italics

Secretariat of the Working Group : J. Hunting

7. In federal countries, the constituent units generally confer responsibilities to the commonly established federal level while in most unitary and regionalised countries certain competences are devolved to sub-national levels. Over the past decades, in several countries, regions have been conferred legislative powers. However, their role, function and responsibilities are generally determined at national level by constitutions or federal agreements. These arrangements specify the extent of legislative competencies which are granted to regions. Regional authorities must have the power to establish legislation with regard to the organisation and management of their competences on their territory. In addition, their economic, administrative and structural requirements need to be met in order for them to be able to operate effectively and efficiently. Once this is the case, regions with legislative powers are able to regulate and manage a share of public affairs in the interests of their population. This type of region can be considered, to some extent, as a vanguard for other regions that do not have comparable powers.

8. Regions should also be given a say in policy shaping and political decision-making at national and international levels when their legislative powers are concerned. The colloquy on “bicameral systems and representation of regions and local authorities: the role of second chambers”, organised by the Congress in co-operation with the French Senate in 2008, concluded that “... the Senate represents the people on a geographical basis and the territory as a sovereign entity.”. Second chambers should “give the territorial units of a country political representation ... The powers and responsibilities of this second chamber must allow regional and other territorial authorities to scrutinise and endorse decisions which affect them. ... the principle of territoriality would seem to be the only viable basis from which an upper house can draw its identity.”³

9. Regional democracy, by virtue of its proximity to citizens, is a means of dealing with minorities' issues. Giving legislative powers to regional authorities in conflict areas can help towards establishing peace and democratic stability. “... giving regions/peoples/nationalities or nations an important role as sub-state institutions, [is] the only way to satisfy nationalist claims which would otherwise, in the absence of an alternative, call for the creation of a new state”.⁴

10. With regard to the current economic and financial crisis, regions are struggling to support their regional economy. Following the April 2009 G20 Summit, international regulation and monitoring has been entrusted to international financial institutions. However, regions with legislative powers, in view of their specific legislative competences in the economic and financial fields, can make an important contribution to overcoming the crisis, not only because they can devise regional and local economic recovery packages that have a direct impact on growth and jobs, but also because, again thanks to their proximity, they can set up and implement measures much quicker than national or European authorities.

11. Financial autonomy is a key factor for adequately tackling the present economic crisis. The budgetary and fiscal decisions taken via regional legislative measures can ensure that taxation imposed on the population is fair, reasonable and, above all, adequate to the regional economic and social context. In addition, the public budget spent within a given area, namely the regional context, is better controlled and visible by the population of the area concerned.

³ Bicameral systems and representation of regions and local authorities: the role of second chambers, 21 February 2008, Senate, Paris (France), conclusions drawn by Jean-Claude VAN CAUWENBERGHE, Chair of the Working Group “Regions with legislative powers”.

⁴ Regionalisation in Europe, Parliamentary Assembly of the Council of Europe (PACE), Rapporteur: Lluís Maria de PUIG (doc 11373 of 14 September 2007).

12. The Working Group "Regions with legislative powers" instigated the first Conference of Presidents of Regions with Legislative Powers (REGLEG) in 2000 and has since maintained close relations with the Conference. It has also maintained close contact with the Conference of European Regional Legislative Assemblies (CALRE). The Congress considers it of utmost importance to examine ways to intensify co-operation with these organisations which represent regional governments and regional parliaments.

13. The Congress welcomes the Parliamentary Assembly of the Council of Europe's continued support for regional legislative assemblies which has been given tangible form thanks to the signature of an agreement with the Conference of European Regional Legislative Assemblies (CALRE). The Congress emphasises the importance of this co-operation and wishes itself to expand co-operation with this organisation.

14. In the light of this, the Congress:

a. welcomes the strengthening of its relations with the Conference of Presidents of Regions with Legislative Powers (REGLEG) and the Conference of European Regional Legislative Assemblies (CALRE);

b. commits itself to examining and furthering the representation of regions in second chambers of national parliaments;

c. undertakes to continue the reflection, launched during its 2008 Autumn session in the Chamber of Regions, on special autonomy status of regions in Europe.

15. Recommends the Working Group "Regions with legislative powers":

a. follow up on the conclusions of the colloquy on "Bicameral systems and representation of regions and local authorities: the role of second chambers", held on 21 February 2008, in particular by examining the role of regions in second chambers by means of a report and a follow up conference. In this context, the Congress thanks the President of the Piedmont Region, Italy, and 2009 President of REGLEG, Ms Mercedes Bresso, for her invitation to host such a conference in her region in 2009/2010;

b. pursue its work on special self-governing status and conflict resolution, in particular in the light of recent events in the South Caucasus, and to organise a conference on this subject in 2010. In this context, the Congress thanks the President of the Autonomous Region of Madeira, Portugal, Mr Alberto Joao Jardim, for his invitation to host such a conference in his region in 2010;

c. examine the effects of globalisation on regions with legislative powers which can act as a counterbalance to it;

d. examine the political and economic efforts of regions with legislative powers in contributing to economic recovery plans as concrete examples of the added value of regions with legislative powers for citizens, enterprises and municipalities (assessment of regional recovery plans);

e. in accordance with Congress Resolution 265 (2008), address key issues related to regional public finances, in particular the ways in which regions may contribute to resolving the current economic and financial crisis and benefit from the advantages of fiscal federalism;

f. strengthen co-operation with the Inter-regional Group "Regions with Legislative Powers" in the Committee of the Regions of the European Union;

g. continue co-operation with the Council of Europe Venice Commission on its work on regions with legislative powers and federalism.

16. Draws the attention of regions in Europe to:

a. the key role regions with legislative powers play in developing regional democracy and delivering services to citizens;

b. the need to involve themselves as active partners in the search for solutions to cross-cutting challenges in a system of multi-level governance based on co-operation and mutual respect of the different levels involved;

c. the good governance which can be achieved thanks to the status, powers, finances, joint decision-making, participation and administrative structures of regions with legislative powers;

d. the added value of granting a special status to autonomous regions as they have a better potential for keeping peace and ensuring security while maintaining state unity;

17. Considering the Working Group has served as a political spur in the regionalist drive to achieve broader and better organised self-government, the Congress asks its Bureau to renew the terms of reference of the Working Group "Regions with legislative powers" for the period 2010-2012.

B. DRAFT RECOMMENDATION⁵

1. The Council of Europe lays great store by the strengthening of local and regional democracy in particular as it is at local and regional levels, in application of the principles of subsidiarity and proximity, where democracy is closest to citizens. Regional democracy is a strong element of constitutional checks and balances, especially in federated states, and a guarantee for democratic and effective multi-level governance. Citizens identify most strongly with their region through cultural and linguistic ties but also for historical, geographical and social reasons.

2. The Congress of Local and Regional Authorities of the Council of Europe believes that good regional governance brings an added value which can be seen in the fact that regionalisation has spread across many of the member states over the past years. New regional institutions have been introduced or existing ones endowed with additional responsibilities. This has led to a rich diversity of regions based on a number of different models.

3. Following the Congress' adoption of its Recommendation 240 (2008) on a Draft European Charter of Regional Democracy and in view of the Committee of Ministers' reluctance to pursue work on a binding instrument on regional democracy, the Congress, still convinced of the merits of good regional governance, is co-operating with the European Committee on Local and Regional Democracy (CDLR) on the drafting of a reference framework on regional democracy. This framework will guide member states' regional reforms and will embody the main principles of regional democracy the Congress feels must be respected. These principles are: a democratic functioning and composition based on citizen participation; respect for regions' autonomy in the law/constitution; the principle of subsidiarity; the responsibilities of integrity and sovereignty of regions with regard to states; and the principle of loyalty and mutual respect between the different levels of governance (state, regions, local authorities).

⁵ See footnote 2

4. Multi-level governance must be guided by mutual co-operation and interaction between European, national, regional and local authorities with due regard to the respective roles, functions, competences and activities of each level. Former schemes are about to be abandoned in favour of a solutions-oriented approach of co-operation. A clear delineation of power for subordination issues is a prerequisite for sound and successful multi-level governance. In this light, the Congress welcomes the Committee of the Regions' White Paper on multi-level governance adopted on 17 June 2009 (Doc n° CdR 89/2009 fin).

5. Regionalisation is a means of giving regions with legislative powers ownership of, and other regions a say in policy shaping and political decision-making. However, in an increasingly inter-dependent world and in a system of multi-level governance, the domestic responsibilities of regions must be reflected better at international level, after all, they must organise the implementation of the Council of Europe's binding agreements and main policy objectives as well as EU legislation through their policies and actions. Domestic consultation and co-ordination schemes can guarantee the involvement of the regions as part of countries/member states' coherent action. It goes without saying, therefore, that regions must also be able to participate in the work - in Council of Europe and EU committees, working groups and other bodies - to frame and prepare these objectives, agreements and this legislation in order that specific regional needs may be expressed. An exchange of experiences between the Congress and the CDLR could identify good practices in this field and define the modalities of this co-operation and consultation.

6. Regions with legislative powers are obliged to conduct a very wide-ranging policy, including legal and technical matters, management of legislative and political consultation and co-ordination procedures and as such the necessary human and financial resources as well as administrative structures must be ensured, for example through the application of the principles of fiscal federalism in the sharing of revenue between the federal state and regional levels.

7. In the light of this, the Congress calls on the Council of Europe Committee of Ministers to:

a. recommend that the Ministers responsible for Local and Regional Government, meeting in Utrecht (Netherlands) on 16 and 17 November 2009, confirm the important role of regions, and in particular regions with legislative powers; adopt as a political reference the reference framework on regional democracy, drafted by the European Committee on Local and Regional Democracy (CDLR) in co-operation with the Congress; and assist the continuation of the regionalisation process in Europe;

b. invite the European Committee on Local and Regional Democracy (CDLR) to exchange experience on the participation of regions with legislative powers in shaping member states' positions in the Council of Europe and other international fora, for example by including regional representatives, and thus their expertise, in member states' delegations to Council of Europe committees, working groups and other bodies similar to practices in the EU Comitology system. This exchange of experience could be via ad hoc workshops on the basis of voluntary participation;

c. invite the European Committee on Local and Regional Democracy (CDLR) to examine how the participation of regions with legislative powers in member states' delegations to the Council of Europe could be increased;

8. The Congress calls on governments of member states to:

a. continue strengthening the regional level of governance where this already exists. Where no sub-state level between local and national authorities exists, to reflect on the usefulness of establishing such a level with a view to improving democratic governance, social cohesion and economic development;

b. to encourage member states, in those countries where this is appropriate, to define relations between the central state and regional authorities so as to include regional representatives in their delegations to Council of Europe committees and working groups;

c. to apply, in countries with federal systems, the principles of fiscal federalism in the sharing of revenue between the federal state and regional levels.

9. The Congress welcomes the Council of Europe Parliamentary Assembly's continued support for regional legislative assemblies which has been given tangible form thanks to the signature of an agreement with the Conference of European Regional Legislative Assemblies (CALRE).

C. EXPLANATORY MEMORANDUM⁶

I. Introduction

1. At its meeting on 9 March 2007, the Congress Working Group "Regions with legislative powers" (hereinafter Working Group) decided to revise the 2001 analytical study on the "structures and responsibilities of European regions with legislative powers" (see revised version in appendix 1). The new version should, inter alia, provide a better insight into the key legal, political and administrative factors which determine the position of regions with legislative powers, and the challenges currently facing them.

II. Definition of regions with legislative powers

2. There is as yet no common European legal definition of regional authorities,⁷ let alone of regions with legislative powers. In its declaration adopted in Salzburg in 2003, the "Conference of Presidents of Regions with Legislative Powers" (hereinafter REGLEG) stated that regions with legislative powers *"... have directly elected parliaments and governments ... apply European law, implement EU policies ... are key actors, both from a constitutional and a democratic standpoint."*

3. In its 2006 Cardiff Declaration, REGLEG expanded on this by saying *"By virtue of proximity and the capacity to deliver effective policy, the governments of regions with legislative powers are often closer to the citizens of their territories ... than national governments and the EU institutions. Thus the regions with legislative power have a particular legitimacy ... Regional governments with legislative powers have expertise, political and technical, ... and ... work ... to produce and implement ... effective policy devised in the interests of the citizen."*

4. In its 2002 Florence Declaration, REGLEG cited a European Parliament resolution which states that *"it is for the Member States to promote, within the framework of their constitutional system, suitable participation for the regions in decision-making processes and representation in the field of European affairs in each country, without forgetting the necessary role to be played by municipalities in this connection"*.⁸

5. The 2007 Barcelona Declaration brought a clarification concerning the term "region" which is a convenient generic term to denote territories, below the level of State, endowed with a democratically elected assembly and a government responsible to it. These "regions" are defined variously as regions, nations, Länder, communities, autonomous communities, etc.

⁶ Prepared with the contribution of Mr Bernd SEMMELROGGEN, Expert (see study in the appendix to this report (CPR(17)2APP)).

⁷ Article 3 of the European Charter of Regional Self-Government.

⁸ Lamassoure report (A5-0133/2002) – Division of competences between the European Union and the Member States [2001/2024(INI)].

6. When studying the characteristics of regions with legislative powers, the Congress has focused on the general political and legal principles of the Council of Europe rather than on clear, precise elements that could be used to provide a legal definition of such regions.⁹ The 1985 European Charter of Local Self-Government likewise contains no legal provisions that would specifically protect regions with legislative powers. The signatory states can, in theory, widen the scope of the Charter to include territories other than local authorities,¹⁰ but if they refer to the regional level of government, the Charter will apply to all regional entities.

7. Conversely, in the Helsinki Declaration on Regional Self-Government,¹¹ the Conference of European Ministers responsible for Local and Regional Government identified at least two models for regions with legislative powers with clearly defined legal characteristics (cf models 1 and 2). Two other models relate to regions with the powers to enact legislation (cf models 3 and 4).

8. The Parliamentary Assembly (PACE) stated that it also wished "*to develop its links with regions that exercise legislative powers and with the organisations that represent them, such as REGLEG, on the level of regional governments, or CALRE, with regards to regional assemblies.*"¹² without, however, defining such regions or their distinguishing features. Be that as it may, the PACE rapporteur emphasises "*We must also not forget that regions are more often than not the entities which have to apply decisions adopted by the EU or the Council of Europe, taking account of the binding need to respect each state's internal distribution of powers. ... Where there are regions with significant political and legislative powers, it is they who implement such policies. It is therefore not surprising that they also want to be present and involved in the decision-making process.*"

9. Lastly, the Conference of European Regional Legislative Assemblies (hereinafter CALRE) stated in its 2002 Brussels Declaration "*...that it is necessary to have an instrument of official ratification in the activities of the Convention concerning the guarantees for the preservation and the protection of the special conditions for regional autonomy recognised at this moment by some member states in view of the preservation of the historical ways of autonomy of national minorities and geographical and cultural individualities, that constitute the basis of the patrimony of liberty and of the tradition of self-rule which is a source of inspiration for the European Union.*"

10. The key elements of regions with legislative powers are the notion of a territorial unit, the existence of an elected parliament and legislative powers. If the intention is to cover a significant number of regions with legislative powers, having these powers enshrined in the Constitution or a federal agreement will be a less important factor in the definition.

11. Geographically, such regions are typically concentrated in member states which have a federal structure or which are highly decentralised. Regions with legislative or regulatory powers can also be found, however, in Finland (the Aland Islands) and in the United Kingdom (Northern Ireland, Scotland and Wales). Generally, the regional phenomenon has made huge advances over the past thirty years (cf para 57 of the de Puig report mentioned above).

⁹ Regions with legislative powers – Assessment and prospects of the Conference of Presidents of regions with legislative powers held in Barcelona (2000) and in Liege (2001) [CPR (9) 5 Part II].

¹⁰ Article 16 of the European Charter of Local Self-Government.

¹¹ Conference of European ministers responsible for local and regional government, 13th Session, Helsinki, 27 – 28 June 2002.

¹² Regionalisation in Europe, PACE, Rapporteur: Luis Maria de PUIG (doc 11373 of 14 September 2007).

III. Recent developments in the role, function and prospects of regions with legislative powers in the European integration process

12. The political starting point for enhancing the status of regions with legislative powers and giving them more influence was articulated in the PACE's de Puig report: *"Only when they obtain a degree of self-government, of sovereignty allowing them to govern jointly with the state, will the largest regions feel comfortable within their states and as players in the European project. This third way, which consists in giving regions/peoples/nationalities or nations an important role as sub-state institutions, is the only way to satisfy nationalist claims which would otherwise, in the absence of an alternative, call for the creation of a new state."*

13. The role, function and responsibilities of regions with legislative powers are generally determined at national level by constitutions or federal agreements. Such regions are particularly affected by two trends therefore. On the one hand, the ongoing changes to the constitutional fabric of the state as regards the distribution of powers and resources between the different levels of government – national, regional and local. On the other, the constant pressure, created by European integration, put on all levels of government to be more receptive, politically speaking, to the need for greater globalisation, involving legal adjustments in terms of institutions and/or the division of powers at national level.

14. For regions in the EU member states, the shift in the division of powers between European and national levels in the fundamental treaties of the EU and the European Commission is evident. The discretionary political powers and financial resources are divided up between European and national institutions without regard to who exercises these powers at national level. Regions with legislative powers are also subject to the requirement to transpose and implement Community laws, which means that they must provide sufficient human, financial and administrative resources to ensure that EU legislation is fully applied.

15. Regions with legislative powers are in something of a bind, therefore. On the one hand, they are obliged to demand a wide range of powers at national level in order to preserve their traditional constitutional role and constantly adapt their regional policies to modern-day socio-economic needs so as to meet their inhabitants' aspirations. Yet at the same time, they are less and less capable of preventing or even slowing the pace of European or international integration. For regions in the EU member states, it is practically impossible to halt or even channel the transfer of powers from national to European level, because the major European integration projects require the "communitisation" of certain hitherto national powers, including in the interest of the regions themselves.

16. The international finance and real market crisis affects regions with legislative powers both economically and legally. States are currently putting pressure on regions to implement regional aid schemes in favour of banks and businesses and to co-finance central state aid schemes. These measures may have a significant influence on the balancing of regional budgets, their net deficit position with regard to the Maastricht criteria for EU member states and the future necessity to reset excessive deficit spending.

Council of Europe level

17. Since 1999, with regard to regions with legislative powers, the Congress Working Group has focused on identifying their particular requirements in the Council of Europe's activities; monitoring legislative and political developments at EU level of particular relevance to them; and supporting REGLEG, set up at the instigation of the Congress in 2000.

18. The Group has followed closely the progress of the Congress' work to draft a binding instrument on regional democracy. Following the adoption in May 2008, by the Congress, of Recommendation 240 (2008) on a Draft European Charter of Regional Democracy and in view of the Committee of Ministers' reluctance to pursue work on a binding instrument on regional democracy, the Congress is co-operating with the European Committee on Local and Regional Democracy (CDLR) on the drafting of a reference framework on regional democracy which will guide member states' regional reforms and which should be adopted by the Conference of Ministers responsible for Local and Regional Government to be held on 16 and 17 November 2009 in Utrecht (Netherlands).

European Union level

19. The Lisbon Treaty¹³ contains a number of important points for regions with legislative powers for example: subsidiarity monitoring by national parliaments and the right to bring actions before the European Court of Justice;¹⁴ consultation of regional parliaments by national parliaments; reference by the Committee of the Regions (hereinafter CoR) of matters to the European Court of Justice if the principle of subsidiarity is infringed. It also contains some novel features not found in the draft European constitution, in particular the reference to the CoR as an advisory body, and Protocol No. 9 "on services of general interest"¹⁵ which guarantees regional authorities, inter alia, an essential role and wide discretion in providing, commissioning and organising services of general economic interest. Mention should also be made of declaration No. 18 on the delimitation of competences¹⁶ which provides for the possibility of reducing the competences of the EU.

National level

20. In Council of Europe member states, the developments in terms of the status, powers, finances, joint decision-making, participation and administrative structure of regions have been particularly felt in regions with legislative powers (see appendix I (para 3.3); Report on the current situation regarding regionalisation and the prospects for developing regional self-government in Council of Europe member states;¹⁷ and the de Puig report (paras 13 to 43)).¹⁸

21. Given the myriad changes observed in many Council of Europe states, the Working Group might like to consider whether developments at national level are indicative of an increase in regional autonomy in general or whether certain factors in particular serve to enhance the role, status or political influence of regions with legislative powers.

IV. The priorities of regions with legislative powers in the EU

22. Since its launch in 2000, REGLEG has been working to determine its role in European integration (see appendix 1 (para 4)). Some of the requirements have been achieved, sometimes indirectly, with the signing of the Treaty of Lisbon (see appendix 1).

V. The challenges facing regions with legislative powers, between joint decision-making at national level and participation at European level

23. Developments at European and national level have served to highlight the multi-strategy approach adopted by regions with legislative powers which must simultaneously:

- safeguard the national constitutional guarantees which govern their particular arrangements;
- improve vertical co-operation procedures with national or federal bodies;
- strengthen horizontal co-operation procedures with other regions (with or without legislative powers) in the member state;

¹³ Official Journal of the European Union No C 306/1 of 17 December 2007.

¹⁴ Article 8 of the Protocol on the application of the principles of subsidiarity and proportionality.

¹⁵ Article 1 of Protocol No. 9.

¹⁶ Official Journal of the European Union No C 306/256, chapter 18.

¹⁷ CPR/INST(13)4 of 23 February 2007.

¹⁸ Regionalisation in Europe, PACE, Rapporteur: Lluís Maria de PUIG (doc 11373 of 14 September 2007).

- ensure they are involved in the state's European/international affairs if regional issues are at stake;
- exercise their influence in political and legislative co-decision or consultation procedures at EU level (particularly important in matters such as the EU Commission Green Paper on Territorial Cohesion);¹⁹
- organise the implementation of the binding agreements of the Council of Europe and the main policy objectives as well as EU legislation with due regard for specific regional needs.

24. Regions with legislative powers are thus obliged to conduct a very wide-ranging policy, geographically and thematically speaking. Participation covers the following areas:

- legal and technical matters within the competence of regional government;
- communication with national and EU institutions involved in the decision-making processes;
- creation and operation of a co-operation network with other regional entities of a similar nature;
- management of legislative, political consultation and co-ordination procedures;
- optimum use of national or European funds intended for regional purposes;
- preservation of the right to bring proceedings before national or European courts when regional democracy safeguards are threatened;
- protection of regional interests in certain procedures (state aid, competition).

25. All this naturally calls for meticulous planning by the governments and administrative authorities of regions with legislative powers. The Working Group might like, therefore, to examine this issue from a comparative perspective, in order to determine the kind of human and financial resources and administrative structures required to meet these policy needs.

VI. Conclusions

26. Regions with legislative powers are protected not by a specific European legal statute but rather by the political commitment to promoting their interests and to practical co-operation through networks.

27. Neither the intermediate position occupied by regions with legislative powers nor the need for a multi-strategy approach at several levels of government have ever been comprehensively articulated. It has to be noted, however, that the "intermediate position" of regions with legislative powers reflects several realities according to the national constitutional set. Whereas in some federations like Germany "federal law breaks regional law", others have no hierarchy between different tiers of government. In Belgium, for instance, there is no hierarchy between the federal and the regional level since the federated entities are co-ordinated with and not subordinated to the federal level. The decrees of the communities and regions have equal legal validity to federal laws. The Belgian federal parliament can never recall a decree of a community or region. A decree or a federal law can only be annulled by the Court of Arbitration.

28. Such regions are very often perceived as an elite, and implicitly blamed for creating a rift within the regional community at large. There is little appreciation of the fragile nature of the status and role of regions with legislative powers in the European integration process, and of the fact that while they want preferential treatment when it comes to implementing EU laws and policies, in return, they must be willing to subject their regional administrations to EU structures, goals and scrutiny.

¹⁹ COM(2008) 616 final.

29. In order to safeguard their particular interests, regions with legislative powers tend to look to the EU rather than to Council of Europe instruments. Until now, the emphasis has been more on the institutional, structural, procedural and organisational aspects, and less on the practical effects of EU policies and laws on the different regional policy areas. There has been virtually no coherent analysis of the impact which the EU has had on regional self-government.

30. Thanks to the long-standing efforts by European regions in general and by regions with legislative powers in particular to influence the European integration process, for the first time, an EU treaty, ie the Treaty of Lisbon, anchors systematically regional and local authorities. It:

- recognises regional and local self-government and cultural and linguistic diversity;
- acknowledges grassroots democracy close to the citizen;
- gives a new definition of the principle of subsidiarity;
- establishes instruments for the monitoring of the principles of subsidiarity and proportionality;
- maintains the possibility for regions to represent the member state in the Council of Ministers;
- obliges the Commission to: pre-legislative consultation; take into account the regional and local dimension of action envisaged; impact assessment; set out financial effects on regional legislation.

31. These improvements will benefit regions in general, however it is obvious regions with legislative powers, due to their responsibilities, may be especially advantaged by these developments in the EU treaty system.

32. Once the Lisbon Treaty has entered into force, regions with legislative powers will be able to adopt a fresh perspective. In future, the arguments will need to focus more on the practical aspects:

- Regions with legislative powers must apply the new rules and seek to steer EU legislation and the implementation of EU policies towards a more regionalised approach.
- Regions with legislative powers should focus both on strengthening their sub-national position, in particular regional visibility, and on the goal of regional identity which the EU is required to respect.
- Increased co-operation between the regional and European levels in the field of governance might lead to greater harmonisation rather than contributing to greater regional differentiation.
- Regions with legislative powers could focus upon an increased integration into some important areas of political co-ordination and consultation (the Euro Group; macro-economic co-ordination), which are of special relevance for the economic and fiscal policy at regional level too.

33. In addition, some fresh discussion on the key elements of regional identity as part of a national identity would seem to be in order. The Congress' report on "the need for regional cultural identity"²⁰ states how strong regional identities can provide answers to some of the problems people encounter and can counterbalance the fragmentation of multicultural societies. Strong regional structures and regional identity can be effective in creating democratic political stability. There is a clear need for national instruments and policies which will ensure the development of healthy and dynamic regional identities, compatible with each other and with the states of which they are part. Regional identity gives people a sense of place and belonging to a community and can counterpoise nationalist separatist claims. Thus, far from being a threat to national autonomy, regional identity is a crucial building block for states and should be made a priority of national policy.

²⁰ The need for regional cultural identity, Karl-Heinz LAMBERTZ, Belgium (R, SOC), CPR(15)4REP, 6 May 2008.

34. The changes that have occurred in the domestic laws of many Council of Europe member states call for close scrutiny to see whether they represent a step forward for regions with legislative powers at national level.

35. There is a need for closer co-operation between regions with legislative powers at EU level and within the Congress. The CoR/Congress Contact Group could consider allowing CoR members to participate in the work of the Congress Working Group and Congress members to participate in the work of the CoR's Intergroup.

36. As regards the practical aspects, the Working Group could discuss the following:

- Should regions with legislative powers in the Council of Europe focus on issues raised within the EU framework or seek individual, independent solutions?
- Is there a need for a more in-depth examination of the conditions for the regionalisation of European policies (at EU or Council of Europe level) especially in the context of the Commission's Green Paper on Territorial Cohesion?