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Regions with legislative powers in Europe: role and evolution¹

Working Group "Regions with legislative powers"

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² 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



1. TERMS OF REFERENCE

1. At its meeting on 9 March 2007, the Working Group "Regions with legislative powers" of the Congress of Local and Regional Authorities decided to produce an updated version of the analytical study on the "structures and responsibilities of European regions with legislative powers" carried out in 2001.

2. 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 facing them in the current context of European integration.

3. These terms of reference are a follow-up to the creation of the Congress Working Group Regions with Legislative Powers in 1999. The group's original terms of reference³ are still relevant today for guiding the Council of Europe's work in this area. Of particular interest is the twin-track approach referred to in these terms of reference for regions with legislative powers typically operate on two fronts: developing their internal position within a given member state and expanding their legal role and political influence in the context of the European institutions, in particular the EU institutions.

2. DEFINITION OF REGIONS WITH LEGISLATIVE POWERS

2.1. Community (EU) context

4. There is as yet no common European legal definition of regional authorities,⁴ let alone of regions with legislative powers. Various organisations and co-operation networks have therefore sought to identify the characteristics that distinguish such regions. In its declaration adopted in Salzburg (11-12 November 2003), the network "Conference of Presidents of Regions with Legislative Powers" described the constituent elements of a region with legislative powers as follows:

"Seventy-three regions with legislative powers within the European Union have directly elected parliaments and governments. They apply European law, implement EU policies and are – in many cases – the only and therefore the highest lawmaking level of the Member State for the transposition of EU law into the Member State's legal system. Some are included in the work of the Council – and can conduct negotiations – and are involved in the national delegations in the Intergovernmental Conference and some bear a part of the financial contributions to the EU due by their Member State. Hence, the regions with legislative powers are key actors, both from a constitutional and a democratic standpoint."

5. In its Cardiff Declaration (16-17 November 2006), the Conference expanded on this description as follows:

"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, the people who are affected by European policies, than national governments and the EU institutions. Thus the regions with legislative power have a particular legitimacy when voicing opinion about EU policies. Equally, the regions with legislative powers can help connect the EU more closely with its citizens by engaging actively in the European debate. Regional governments with legislative powers have expertise, political and technical, which is available for partnership working to strengthen EU policy. We pro-actively accept our responsibilities and are prepared to work with Member States and EU institutions to produce and implement, where appropriate, effective policy devised in the interests of the citizen."

³ Regions with legislative powers – Assessment and prospects of the Conferences of Presidents of regions with legislative powers held in Barcelona (2000) and Liege (2001), [CPR (9) 5 Part II], Rapporteur: Llibert Cuatrecasas (Spain).

⁴ Article 3 of the European Charter of Regional Self-Government.

6. In its Florence Declaration (14-15 November 2002), the Conference cited a **European Parliament** resolution (Resolution on the division of competences between the European Union and the Member States of 16 May 2002)⁵ which states that:

"territorial units with legislative competences now exist in almost half the Member States, where the transposition of Community legislation into domestic law is in some cases a matter for decentralised authorities; whereas the management of Community programmes is, at all events, just as much a matter for the regions and municipalities as for central government, and consequently the basic Union texts can no longer disregard the role of these particular partners, which must help both to make Community policies more effective and bring citizens closer to the process of European integration".

"at all events, 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".

7. The Barcelona Declaration of 16 November 2007 brought a clarification concerning the term "region". It states indeed that the word "region" is used throughout Europe as a convenient generic term to denote territories, below the level of Member State, endowed with a democratically elected assembly and a government responsible to it. In the domestic context, these "regions" are defined variously as regions, nations, Länder, communities, autonomous communities, etc.

2.2. Council of Europe context

8. In the context of the Congress' work in the field of regional democracy, when studying the characteristics of regions with legislative powers, the focus has been much more on the general political and legal principles of the Council of Europe than on clear, precise elements that could be used to provide a legal definition of such regions.⁶ The European Charter of Local Self-Government of 1985 likewise contains no legal provisions that would specifically protect regions with legislative powers. The signatory states can, in theory, widen the scope of the Charter⁷ to include territories other than local authorities, but if they refer to the regional level of government, the Charter will apply to all regional entities.

9. Conversely, in the Helsinki declaration on regional self-government⁸ and in particular in the "Outlines, syntheses and overviews of 6 models of regional self-government", 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:

Outline of model 1

Regions with the power to enact primary legislation, the existence of which is guaranteed by the Constitution / by a federal Agreement and cannot be questioned against their will.

Outline of model 2

Regions with the power to enact primary legislation, the existence of which is not guaranteed by the Constitution / by a federal Agreement.

10. Two other models relate to regions with the powers to enact legislation:

Outline of model 3

Regions with the power to enact legislation, according to the framework (principles, general provisions) established by national legislation, the existence of which is guaranteed by the Constitution.

⁵ Lamassoure report (A5-0133/2002) – Division of competences between the European Union and the Member States [2001/2024(INI)].

⁶ 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].

⁷ Article 16 of the European Charter of Local Self-Government.

⁸ Conference of European ministers responsible for local and regional government, 13th Session, Helsinki, 27 – 28 June 2002.

Outline of model 4

Regions with the power to adopt laws or other regional legislative acts, according to the framework (principles, general provisions) established by national legislation, the existence of which is not guaranteed by the Constitution.

11. The Parliamentary Assembly of the Council of Europe, in its de Puig report of 14 September 2007 on Regionalisation in Europe,⁹ stated that it also wished:

"26. (...) 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 regard to regional assemblies."

without, however, defining such regions or indicating what their distinguishing features are. Be that as it may, the rapporteur also emphasises that such regions have responsibility for transposing EU legislation:

"56. 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. In this connection, it has rightly been said that many regions are directly responsible for the development and implementation of European law. 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."

12. Lastly, the Conference of European Regional Legislative Assemblies (CALRE) stated in its Brussels Declaration (28-29 October 2002):

"...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 recognized 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."

13. It appears from these documents that such regions can be said to have, at a minimum, the following features. A region with legislative powers:

- is a regional territorial unit with legal personality;
- has a directly elected parliament and a regional government;
- has legislative and not merely decision-making powers;
- has legislative powers recognised in a constitutional text or agreement, or in domestic law;
- is very often characterised by a tradition of self-government;
- is possibly characterised by the existence within its territory of a national minority;
- is characterised by the existence of specific geographical and cultural features;
- and – in the case of regions in EU member states – fulfils certain legislative or financial obligations arising from the state's membership of the EU.

14. The key elements, then, 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 legislative powers enshrined in the Constitution or a federal agreement will be a less important factor in the definition.

15. 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

⁹ Doc. 11373 of 14 September 2007.

and Wales). The Parliamentary Assembly's de Puig report describes the development of self-government as follows:

"57. In the early days of the European Communities the situation was different. There was only one truly decentralised country, namely Germany. However, things have changed enormously. The regional phenomenon has made huge advances over the past thirty years. Spain is not the only example. There have been changes in Belgium, British devolution, special forms of regional power in France, not to mention a degree of decentralisation in most countries. Mention must also be made of the states of eastern Europe with their deep-rooted federal tradition of sub-state tiers of government, not forgetting that Russia is a federation. To a certain extent, Europe has gradually accepted regional reality. The progress achieved since the 1980s must be acknowledged."

3. RECENT DEVELOPMENTS CONCERNING THE ROLE, FUNCTION AND PROSPECTS OF REGIONS WITH LEGISLATIVE POWERS IN THE EUROPEAN INTEGRATION PROCESS

16. The political starting point for enhancing the status of regions with legislative powers and giving them more influence was articulated in the Parliamentary Assembly's de Puig report:

"100. 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."

17. 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, there are 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, European integration is putting constant pressure 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.

18. 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.

19. 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 successful completion of the major European integration projects – the single market – and the new tasks facing the Union – including notably the creation of a single area of

freedom, security and justice and foreign policy - requires the "communitisation" of certain hitherto national powers, including in the interest of the regions themselves.

20. The international finance and real market crisis affects regions with legislative powers both economically and legally. Member states are currently putting pressure on regions to implement regional aid schemes in favour of banks and business 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. As these developments occurred recently, the Congress may wish to analyse the possible consequences on the autonomy of regions with legislative powers.

3.1. European level (EU)

21. The Lisbon Treaty¹⁰ contained a number of important points for regions with legislative powers, which were expanded on, to some extent, in the Barcelona declaration of the Conference of Presidents of Regions with Legislative Powers (15-16 November 2007) (see appendix I):

- Strengthening of national parliaments through an early warning system enabling them to monitor subsidiarity, and the right to bring actions before the European Court of Justice.¹¹ This is an important instrument, at least for parliamentary chambers in which regions with legislative powers are represented (such as Germany's Bundesrat).
- But national parliaments are not the only beneficiaries in the framework of subsidiarity, since the new definition of the principle of subsidiarity recognizes - for the first time - the regional and local dimension. Article 2 of the Protocol states that the Commission should take into account the local and regional dimension. When addressing the memorandum, the same Protocol expressly states the need to assess impact on regional legislation (article 5). Last but not least article 6 refers explicitly to parliaments with legislative powers, where it relates to the obligation for the national parliaments "to consult, where appropriate, regional parliaments with legislative powers". In practical terms, co-operation agreements between the different actors eg in Belgium or in Germany¹² have been concluded. In the Belgium agreement, a regulation has been developed concerning the role of the different Belgian parliamentary assemblies in the framework of the subsidiarity check and how the federated assemblies can make use of the votes allocated to each national parliament for the purpose of the early warning system concerning subsidiarity.
- A more robust Committee of the Regions, which can now refer a matter to the European Court of Justice if the principle of subsidiarity is infringed.
- Improvement in the division of powers between the EU and Member States thanks in particular to the clear stipulation that the objectives of the Treaty do not constitute a basis for competences, the introduction of (only) three types of competences¹³ and reinforcement of the principle of conferral,¹⁴ emphasising that all powers not transferred to the EU remain with the Member States.¹⁵
- Respect for national identity¹⁶ including local and regional self-government.
- Other aspects of the treaties, which give the EU greater room for manoeuvre, democratic principles, transparency and the focusing of Community policies on citizens' needs, are likewise in the interest of regions with legislative powers because such principles give greater legitimacy to Community action, including legislative acts adopted with the participation of the regions.

¹⁰ Official Journal of the European Union No C 306/1 of 17 December 2007.

¹¹ Article 8 of the Protocol on the application of the principles of subsidiarity and proportionality.

¹² Law concerning the extension and the improvement of the rights of the Federal Parliament and the Federal Council in matters of the European Union (Bundestagsdrucksache 16/8489) as well as Chapter X par. 4 of the Co-operation agreement between the Federation and the Länder from 12 June 2008: "The existing internal procedures within the Länder to rule the participation of regional parliaments remain unchanged by this agreement".

¹³ See "Title I – Categories and areas of Union competence" of the Treaty on the European Union.

¹⁴ Article 3b, paragraphs 1+2 of the Treaty on European Union.

¹⁵ Article 3a, paragraph 1 of the Treaty on European Union.

¹⁶ Article 3a, paragraph 2 of the Treaty on European Union.

22. The Lisbon Treaty contains some novel features not found in the draft European constitution, in particular the reference to the Committee of the Regions as an advisory body in Article 9, paragraph 4, and Protocol No. 9 "on services of general interest"¹⁷ which guarantees regional authorities, inter alia, an essential role and wide discretion in respect of services. Mention should also be made of declaration No. 18 on the delimitation of competences¹⁸ which provides for the possibility of reducing the competences of the EU.

3.2. European level (Council of Europe – Congress of Local and Regional Authorities)

23. Since 1999, work on the specific features of regions with legislative powers has been carried out mainly by a Congress working group.¹⁹ This group has focused on three areas:

- identifying the particular requirements of such regions in the context of the Council of Europe's activities;
- monitoring legislative and political developments at EU level which are of particular relevance for regions with legislative powers;
- supporting the work of the Conference of Presidents of Regions with Legislative Powers, which was set up at the instigation and with the backing of the Congress in 2000.

24. A close look at the Group's work shows that the "major issues" for regions with legislative powers at EU level have tended to dominate the agenda. This is only natural given that the process of reforming the basic EU treaties through "conventions" (fundamental rights 1999, Constitution 2000) organised at EU level has attracted the attention of regional players in its member states. Meanwhile, developments in favour of regions with legislative powers in other Council of Europe member states and an examination of the common features of these developments in Greater Europe have taken a back seat. With the completion of the work at EU level, the group can turn its attention to the study of similar developments and to exploring synergies between the Council of Europe and the European Union.

25. For all this focusing of attention on developments within the EU, there has also been some remarkable progress within the Council of Europe. For example, the Valencia Conference of Ministers responsible for Local and Regional Government (15-16 October 2007) produced a number of positive results for regions with legislative powers, in particular:

- the declaration on regional self-government;²⁰
- the Kiviniemi report;²¹
- the messages to the Congress.²²

26. At all events, the declaration, messages and in particular the "Kiviniemi" procedure which resulted in a report on ways and means by which the work of the Council of Europe in the field of local and regional democracy can be enhanced, allow regions with legislative powers in Council of Europe member states to present and promote their particular interests in an inter-agency context.

27. During its plenary session in May 2008, the Congress adopted Recommendation (240) on the Draft European Charter of Regional Democracy. In this text, regions with legislative powers are neither mentioned directly nor are any special stipulations addressed specifically to this type of region. This is due to the decision of the Congress to enlarge basic requirements of regional democracy to all regional levels within the Council of Europe member states without respect to their special legal characteristics or status. Regional democracy in the wording of the draft charter is therefore not linked institutionally with one particular form of regional autonomy but may be found in different types of

¹⁷ Article 1 of Protocol No. 9.

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

¹⁹ See terms of reference (footnote no. 2 above).

²⁰ Chapter II on "regional self-government" of the Final Declaration of the Conference of European Ministers responsible for Local and Regional Government, 15th Session.

²¹ Chapter VI on "the outlook for the future".

²² Chapter VII on "Messages".

regional institutions according to the basic organisational decisions in the member states' constitutions. The fact that regions with legislative powers are not mentioned specifically in the new draft charter does not mean they are excluded from the stipulations, on the contrary.

28. If we analyse the draft charter closely, regions with legislative powers may find different indications on how to benefit from it. The draft offers at least five particular functions for regions with legislative powers:

- the benchmark function;
- the effects of the subsidiarity and cohesion principles;
- the development function;
- the national importance function;
- and the differentiation function in Part II.

3.2.1. Regions with legislative powers as benchmarks for regional autonomy

29. Paragraph 9 of the preamble refers to the respect of

the diverse ways in which Europe's regions are organised and each state's competence for determining the scope of regional democracy and the conditions governing its exercise.

30. Nevertheless there are different indications within the draft charter that regions with legislative powers are particularly disposed to implement member states' overall goals to organise public powers in particular forms of regionalised government. This idea is addressed in Article 9: Principle of loyalty and respect for territorial integrity.

3.2.2. The principle of subsidiarity and regions with legislative powers in Articles 5 and 2

31. This principle has made a very steep career within the institutional provisions of the European Union as well as within the Council of Europe. Whereas in the EU, this principle is an instrument to mark out the scope of national powers from the scope of community powers, the Council of Europe approach is slightly different. It is not only worth while denominating the level of powers which are

best exercised at regional level on account of their scale, their nature and the requirements of efficiency and economy.

but in strengthening this principle it is obvious that lower tiers of government must have the instruments and the functions to implement the powers assigned to them. The principle thus asks for stronger regions eg in the form of regions with legislative powers.

32. A similar approach is possible with Article 6 of the draft charter.

3.2.3. The principle of cohesion in Articles 10, 29.5 and 37

33. This principle supports regions with legislative powers in a similar way as Article 5. First of all it defines core targets of central governments' economic and social cohesion policy in the form of

comparable living conditions and balanced development throughout the national territory.

34. These targets will affect regional entities equally and without respect to their internal legal order.

35. In line with the second element "*a spirit of solidarity between regional authorities*", there is a special accent on regions with legislative powers. These entities need a critical size in terms of powers and finances, including for example tax raising powers, to fulfil this "solidarity mission". It is quite obvious that regions with legislative powers have more and better possibilities to operate solidarity in practical terms.

3.2.4. The development function

36. Paragraph 10 of the preamble underpins the idea of a

gradually developing regional democracy.

37. Devolving regional democracy is seen as a progressive process from simpler to more complex institutional forms to organise regional democracy.

3.2.5. The national importance function

38. The obligation of regional entities in paragraph 11 of the preamble

to respect in all their actions the principles of sovereignty, national integrity and the safeguarding of key national interests in the European integration process

asks for relatively strong regional entities due to the complexity of these national targets.

The transfer of these objectives to the regional level presupposes a sufficient level of power and democratic accountability of regional institutions elected members. These conditions are often found in regions with legislative powers. The same consideration is relevant for the obligations in paragraph 12 of the preamble.

39. Article 12 paragraph 2 of the draft charter entitles regional authorities to have

full and exclusive

own competences. This demand tends to encourage regions with legislative powers to play a special role within each member state with a view to completing, assisting and implementing important national policies at regional level. This tendency is backed by the financial provisions in Articles 16 and 31.1. Although these provisions do not make any difference to the type of region, regions with legislative powers are particularly concerned by the combination of Articles 16.2 and 16.3 as well as Articles 34.1 and 35.1. Article 16.2 asks for

foreseeable and sufficient (financial resources) for the effective exercise of their competences and responsibilities.

40. Article 16.3 guarantees stable, dynamic resources with sufficient diversification. This includes a growing part of regional resources emanating from the taxes raised not only at central state level but also at regional level. This benefits regions with legislative powers which are able to pass tax laws at regional level.

41. Another detail supports this approach. Articles 18 and 43 relate to the international activity of regions, including their ability to become members of international organisations at regional level, including the EU institutions like the Committee of the Regions. The exercise of these shareholder rights, not only in the interest of regions but also of the central state, needs strong regions particularly regions with legislative powers.

3.2.6. The differentiation function in Part II

42. According to Article 22.1 of the draft

regional democracy promoted by this Charter may find expression in different organisational form.

43. Regions with legislative powers are thus particularly concerned by all provisions of Articles 23 to 28 para. a). This paragraph describes the most advanced forms of regional democracy within Council of Europe member states.

3.3. National level

44. 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. I will give only a few specific examples, as full details can be found in the report on the current situation regarding regionalisation and the prospects for developing regional self-government in Council of Europe member states.²³ For more information about regional development in a few typical member states, see also the de Puig report (paragraphs 13 to 43).²⁴

3.3.1. Austria

45. A draft reform prepared by the constitutional convention in 2003 foundered at the end of 2004. A parliamentary committee set up by the National Council in March 2005 completed its work on 4 July 2006 but there has been no follow-up in terms of legislation. The results of this work have been summarised as follows:

"The special committee of the National Council tasked with preparing the debate with a view to constitutional reform has completed its work. In the course of ten sittings, members of parliament, assisted by experts, focused on the following matters: revision of the Constitution, protection of fundamental rights, administrative structures, principles of security policy, division of powers, Federal Council and democratic scrutiny. An agreement in principle was reached on the introduction of regional administrative courts, preservation of the Neutrality Act and arrangements for revising the Constitution. Other matters have yet to be resolved, such as the division of powers between the Federation and the Länder, the possibility of taking legal action to protect fundamental rights and enhanced scrutiny rights. The chair of the National Council, Andreas Khol, is confident that at least some reform can be accomplished during the next parliament."²⁵

46. According to the "Government Programme of the Austrian Government 2008 – 2013"²⁶ the further development of the federal constitution is envisaged.

47. Core elements of the programme are the:

- a. introduction of administrative courts at Länder level;
- b. protection of services of general interest as a power of local and regional jurisdictions;
- c. possibility to establish trans-regional associations of local authorities;
- d. cancellation of the veto right of the federal government (Art. 98 par. 1-3 Federal Constitution Law) against laws at regional level (with the exception of tax laws);
- e. enlargement of the competences of the *Landeshauptmann/Landeshauptfrau* (president of the region) in the sector of civil protection and other similar crises despite existing competences of other authorities.

48. Furthermore, the federal government intends to provide a better definition and demarcation of the powers of the different tiers of government as a forerunner to far reaching reforms in the distribution of powers.

49. Where large projects, plans or public development with important implications to the landscape are concerned, a common co-operation structure between federal, regional and local levels shall be set up. Finally, the dissipated constitutional law will be compiled in one constitutional document.

²³ CPR/INST(13)4 of 23 February 2007.

²⁴ Doc 11373 of 14 September 2007 of the Parliamentary Assembly of the Council of Europe.

²⁵ *Verfassungsreform: Besonderer Ausschuss des Nationalrates beendet Arbeit (Bericht des Österreich-Konvents einhellig zur Kenntnis genommen) Parlamentskorrespondenz/02/04.07.2006/ Nr. 646.*

²⁶ <http://www.austria.gv.at/DocView.axd?CobId=32966>.

50. With respect to the European Union, information and co-operation powers of the Länder and local authorities should be developed with respect to the stipulations of the Treaty of Lisbon. A better integration of the Länder and local authorities within internal preparatory co-decision structures has been suggested.

3.3.2. *Belgium*

51. The development of regionalism in Belgium has been marked by an ongoing adjustment of structures, powers, finances and procedures for consultation and co-operation between the federal government, the three regions and the three communities, and the six federated authorities. There have been no further major reforms concerning the transfer of powers since the institutional laws of 13 July 2001 concerning a *defederalisation* of taxation, agriculture, sea fisheries, development co-operation, foreign trade and supervision of local authorities; the special law of 12 August 2003 concerning arms trade monitoring by the regions; and the Walloon Region parliamentary decree of 27 May 2004 assigning the German-speaking Community supervision of the local authorities situated within its territory. Concerning the legal organisation of the federation, the special law of 9 March 2003 should also be mentioned. This special law transformed the Arbitration Court into a fully fledged Constitutional Court: its competences to suspend and annul federal and federated laws are extended to all fundamental rights and to the constitutional and legal division of powers.

52. Parliamentary and governmental practice – including at federal level – shows, however, that plans and proposals are constantly being put forward to shift powers, financial resources and administrative structures between the various state entities.²⁷ The debate on federal development continued after the 2007 federal elections, in particular as regards the role of the Senate, the organisation of federal and regional elections and the adjustment to the distribution of powers.

53. After former Prime Minister Verhofstadt presented a report to King Albert II on institutional reform as part of his information and training mission (January 2008), the new federal Government, composed of six political parties and lead by former Prime Minister Leterme, started to draft a new major institutional reform in two laps. Until now, no new legislation has passed the Parliament and the Government. One draft of a new special law, considered as the first reform lap, was accepted in one chamber of the federal Parliament, the Senate.²⁸ This draft concerns a shift of powers in the fields of economy, energy, agriculture and traffic. It was sent to the State Council for legal opinion. The Council gave a very critical opinion (10 April 2008) which relaunched the political debate. Conflicts between the coalition parties about other issues as well jeopardise any outcome of a new reform. The political problems concern mainly the financing of the federal and federated authorities, the organisation of parliamentary elections at the federal level and the distribution of a number of policy fields eg labour, welfare, health and justice. Very recently, 12 representatives of the two important linguistic groups started negotiations to develop elements for a profound reform of the federation.²⁹ The first meeting started on 8 October 2008. Results should be presented by the van Rompuy government after the regional elections on 7 June 2009.

3.3.3. *Germany*

54. In Germany, a wide-ranging constitutional reform bill was passed on 30 June 2006 by the Federal Parliament and on 7 July 2006 by the Federal Council.³⁰ It has a number of major objectives:

- to make the German federal system more effective;
- to simplify the division of powers;
- to redress the balance in financial relations;

²⁷ See for example: DOC 51 2547/001, Chamber of Representatives of Belgium, 4th session of the 51st parliament 2005-2006, Proposal for a resolution of 14 June 2006 on the defederalisation of federal scientific and cultural institutions (tabled by Mr Ortwin Depoortere).

²⁸ Parl. Doc. Senate, 2007-2008, no. 4-602/1.

²⁹ La libre Belgique, Réforme de l'état, Les Douze veulent nouer le dialogue en toute discrétion, BELGA, Mis en ligne le 08/10/2008.

³⁰ Act amending the Basic Law, *Bundesrats-Drucksache* 462/06 of 7 July 2006, *Bundesrat* resolution of 7 July 2006, Act accompanying the federalism reform, *Bundesrats-Drucksache* 463/06 of 7 July 2006.

- to remove impediments between the Federation and the Länder;
- to identify and allocate political powers and responsibilities between the different tiers of governments.

55. This act amends the Constitution (Basic Law). The practical details of the reform are dealt with in an ancillary act. Much of the reform came into force in September 2006. A second phase in the reform process, focusing specifically on financial relations between national and regional level and on ways of improving the effectiveness and efficiency of federal and sub-federal administrations, began at the end of 2006. The work was due to be completed politically by spring 2009 and legally by the summer 2009. The two parties which sustain the federal government reached an agreement on 5 March 2009 upon the core elements of a second phase of reform of the German federal system. These core elements are the introduction of a new regulatory system within the constitution to limit the debts at federal and Länder level. New deficits in the federal and state budgets will no longer be allowed by 2020 at the latest.

3.3.4. Italy

56. In Italy, relations between the different tiers of government have undergone a radical overhaul since 2001. In addition, a constitutional reform bill covering the whole of Part II of the Constitution, and which was tabled by the previous government (led by Silvio Berlusconi), was rejected in the referendum on 25-26 June 2006 (with 62% opposing the reform and 38% voting for it, and a turnout of roughly 54%). The purpose of this reform bill was twofold: to assign exclusive new legislative powers to the regions in the fields of health, education and regional administrative authorities and, secondly, to change the composition of the Senate, which would in future be known as the "Federal Senate of the Republic" and whose members would be elected in each region in a poll held at the same time as the Regional Council elections (*Consiglio regionale*).

57. A reform project to change the fiscal network of the country with a view to strengthening fiscal federalism elements on a constitutional basis and to implementing them in the relations between the state and the regions was decided in October 2008.³¹

3.3.5. Portugal³²

58. Under Article 6, paragraph 1, of the Portuguese Constitution, "The State is a unitary State that is structured and functions under the (...) principles of subsidiarity, the autonomy of local authorities and the democratic decentralisation of the public service". Under the Constitution, there are two types of sub-national territorial units: autonomous regions with legislative powers and local authorities. The former, which include the archipelagos of the Azores and Madeira, were established directly by the Constitution. The latter are divided into three tiers: parishes (*freguesias*), municipalities and administrative regions. The latter are provided for in the 1976 Constitution but have not been created yet.

59. The following reforms are either in progress or under consideration:³³

- drafting of a new local and regional finance act;
- new system of technical and financial co-operation between central government and local authorities;
- new model for conferring and determining the powers of metropolitan areas and urban communities;
- drawing up of regulations on the transfer of powers from central to local government.

³¹ *Corriere de la sera* 3 October 2008: *Il governo vara il federalismo fiscale Il consiglio dei ministri ha approvato il disegno di legge che riforma i trasferimenti agli enti locali*

³² See the report by Kathryn Smith and Miljenko Doric, "Local and regional democracy in Portugal", CG (10) 5 rev Part II of 25 May 2003, Chapter VII Compliance with the principles of the European Charter of Local Self-Government: regions (observations on administrative regions in § 101).

³³ According to document CDLR (2006) 8 of 24 April 2006, page 190.

3.3.6. Spain³⁴

60. Spain has put forward a draft amendment to its Constitution (*Propuesta de reforma de estatuto de autonomía (Catalunya)*)³⁵ involving the following:

- change in the relationship between central government and the autonomous communities;
- change in the status of the regions and their powers;
- a more robust Senate.

61. The reform has triggered a lively debate about the political expediency and the legal feasibility of recognising a nation (Catalonia) within the Spanish state and will no doubt have ramifications for other entities which have regional self-government.

3.3.7. Switzerland

62. Switzerland embarked on a reform of the system of financial equalisation and the division of powers between the Confederation and the cantons with a view to achieving a clearer division of responsibilities and reducing cantonal disparities from 2004. When put to a referendum on 28 November 2004, the new constitutional provisions were accepted by a majority of 64.4% of votes and twenty and a half cantons. Work on the enabling provisions will duly continue, in particular the partial revision of 33 federal laws. The reform was due to come into force in 2008.

3.3.8. United Kingdom

63. In the UK, the regional government provisions introduced under the Labour government's "devolution" programme since 1997 are continuing to undergo various adjustments. The main proposed change concerns Wales, where the current Government of Wales Bill (see below) has substantially amended the provisions of the 1998 act on the same subject. The Welsh parliament is now entitled to ask for the transfer of additional powers to be devolved from the UK Parliament on a case by case basis. In Northern Ireland, the extensive possibilities afforded by the devolved legislature established by the 1998 Northern Ireland Act have still not been implemented owing to the political deadlock.

64. The Scottish Parliament and Executive, set up in 1999 under the 1998 Scotland Act, have achieved a degree of constitutional stability. For the time being, the British government has no plans to review these arrangements. A few minor changes have been made to relations between the UK and Scottish governments and parliaments, such as the introduction of new procedures governing legislative consent (the Scottish Parliament's consent is required for legislation passed on devolved matters). Also worth mentioning is the publication in March 2006, by the Scottish Liberal Democrats, of the Steel Commission report which calls for the Scottish Parliament to be given significantly greater powers and a large measure of budgetary autonomy. In August 2007, the Scottish Executive presented a white paper entitled "Choosing Scotland's future: A national conversation: Independence and responsibility in the modern world" to focus the future debate in Scotland about the perspectives or limits of independence. One element of the discussion is the Scottish Executive's proposal to hold a referendum on Scottish independence to be held in 2010. At the end of 2007, the possibility of greater financial independence through tax-raising powers was debated.³⁶ Unionists prefer to maintain Scotland within the United Kingdom. The Commission on Scottish Devolution, an independent commission jointly established by the Scottish Parliament and the UK Government, began work at the end of April 2008 and presented a first interim report in December 2008.³⁷ The final report and recommendations are expected in 2009.

³⁴ Congress: Recommendation 121 (2002) on local and regional democracy in Spain: Discussion and adoption by the Standing Committee of the Congress on 14 November 2002 (see document CG (9) 22, draft recommendation presented by Mr J. Olbrycht and Mr A. Lloyd, rapporteurs).

³⁵ See *Boletín oficial de las Cortes generales, Congreso de los diputados, Serie B, 21.10.2005, Núm 210-1*. Adopted text: *Diari Oficial de la Generalitat de Catalunya, Any 30 / 2a època Dijous, 20 de juliol de 2006 DOGC número 4680, DECRET 306/2006, de 20 de juliol, pel qual es dona publicitat a la Llei orgànica 6/2006, de 19 de juliol, de reforma de l'Estatut d'autonomia de Catalunya*.

³⁶ *Tax and mend* (1 November 2007, article from *The Economist* print edition).

³⁷ *The Future of Scottish Devolution within the Union: A First Report December 2008, A Summary* www.commissiononscottishdevolution.org.uk.

65. In England, the process of establishing regional elected governments has been at a standstill ever since the proposal was rejected in the referendum held in the North East of England in November 2004. The provisions of the Greater London Act of 1999 remain valid. For further information about the various viewpoints on regionalisation in England, reference may be made to the reports and accounts compiled by the House of Commons under the heading "*Communities and Local Government Committee: Is there a future for Regional Government?*"³⁸ which looks at the implications of the referendum for the future of regionalisation in England.

3.3.9. *Russia*

66. As regards Russia, in its Recommendation 143 (2004) of 26 May 2004,³⁹ the Congress raised a few sensitive questions about the exercise of powers, the procedures governing agreements and treaties between the Federation and the Subjects [constituent entities], the gap between devolved tasks and financial appropriations, economic disparities between Subjects and monitoring procedures. Of particular interest is the process of regional mergers, especially in Siberia. In the referendum held on the merger of the Krasnoyarsk, Evenk and Taymur regions, the proposal was approved by the requisite majorities.

67. Given these myriad changes observed in many Council of Europe states, the Working Group might like to consider, at some point in the near future, whether these 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.

4. THE PRIORITIES OF REGIONS WITH LEGISLATIVE POWERS FROM 2000 TO THE PRESENT DAY ACCORDING TO THE FINAL DECLARATIONS OF THE CONFERENCES OF PRESIDENTS OF REGIONS WITH LEGISLATIVE POWERS

4.1. Determine the role of regions with legislative powers in the context of European integration

68. One of the main concerns of regions with legislative powers is to secure legal recognition as part of the European integration process, either through safeguards for regions of this kind in Europe's fundamental texts, or through guaranteed rights to participate in and scrutinise Community acts.

69. So far, however, this aim has not been achieved. As yet, neither the draft European constitution nor the Treaty of Lisbon contains any specific European recognition and therefore no specific European legal statute for regions with legislative powers or their specific rights. The European Union recognises indeed only member states. The protection enjoyed by regions with legislative power is, however, not merely based on political commitment.

70. In the first place they are situated within national structures, which are based on constitutional or legal settings. As a corollary, they often take part, via intrastate mechanisms, in the national delegation of the member state (eg in the EU Council and EU comitology committees) and thus in the legislative process. Secondly, recognition within the European Union comes primarily with the political commitment in the Committee of the Regions through the Interregional group. Thirdly, indirect recognition of regions and regions with legislative powers is addressed in several articles of the Lisbon Treaty as mentioned above.

³⁸ http://www.parliament.uk/parliamentary_committees/odpm/reggovtinq.cfm.

³⁹ Congress: Recommendation 143 (2004) on local and regional democracy in the Russian Federation: Discussion by the Congress and adoption on 26 May 2004, 2nd sitting (see doc. CG (11) 5, draft recommendation presented by G. Rhodio (Italy, L, EPP/CD) and H. U. Stöckling (Switzerland, R, GILD), rapporteurs); see also Rhodio, Stöckling, explanatory memorandum of 4 April 2004, CG (11) 5 Part II Chapter I: Regional democracy; Parliamentary Assembly of the Council of Europe, Doc. 10568 of 3 June 2005, "Honouring of obligations and commitments by the Russian Federation", Local and regional democracy, §§ 105-108.

71. As an example, according to Article 4 of the Lisbon Treaty, the European Union shall respect the national identity, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. This may be interpreted as a recognition of regional autonomy, but refers to national standards of regional protection and does not include a European interpretation of regional self government.

4.2. Safeguard the particular interests of regions with legislative powers in terms of Community (EU) or European policy

72. In this context, the final declaration of the presidents of regions with legislative powers of 2006 refers *inter alia* to participation in the revival of the Lisbon project⁴⁰ as well as to the "period of reflection", as part of dimension 4 (decentralisation) of the Commission's Plan-D (2006).⁴¹ These subjects are good examples of policy issues and procedures which have the potential to support the development of the role of regions with legislative powers at European level.

4.3. Secure preferential rights for regions with legislative powers

73. The following are particularly important:

- the principle of subsidiarity;
- participation in law-making;
- the right to institute legal proceedings;
- curbs on powers and responsibilities at European level;
- a more prominent role for regions with legislative powers in the Committee of the Regions;
- a specific procedure for consultation by the European Commission.

74. It will be observed that some of these demands were met with the signing of the Lisbon Treaty. Article 3b of the EU Treaty reinforces the principle of subsidiarity (in conjunction with Protocol No. 2 on the application of the principles of subsidiary and proportionality).⁴² Title I of the Treaty on the functioning of the EU (Categories and areas of union competence) clarifies the division of powers between the European level and member states, but does not refer directly to either regions or regions with legislative powers. Under Article 8 of the Protocol on the application of the principles of subsidiarity, the Committee of the Regions has the right to bring proceedings before the Court of Justice on the grounds of infringement of this principle.⁴³ The creation of an intergroup within the Committee of the Regions on 26 April 2006 has helped to give greater prominence to the activities of regions with legislative powers within the framework of this EU body.⁴⁴

75. The participation of regions with legislative powers in the law-making process at EU or CoE level shows significant developments. Belgian, German, Spanish, Welsh and Scottish representatives of regional governments are entitled to represent the governments of their respective EU member states within the EU Council, normally in fields of powers designated between the central and regional levels, in internal – often legally binding - arrangements. The right to be represented within the Council is one important element of the representation of regions in the entire EU law-making process. More elements of this process and regional implementation may be found in a report of the "European and External Relations Committee"⁴⁵ of the Scottish Parliament, which presented a report on 2 May 2008 concentrating on the necessary early involvement of regions with legislative powers in the EU legislative process.

76. The situation within the Council of Europe is different. To date, there have been no regional members within the Committee of Ministers, the member states are generally represented by central state ministers.

⁴⁰ Special meeting of the European Council held on 23-24 March 2000 on a new strategic goal for the Union.

⁴¹ The Commission's contribution to the period of reflection and beyond: Plan-D for Democracy, Dialogue and Debate [COM(2005) 494, paragraphs 3.2 and 4.1.4].

⁴² Official Journal of the European Union No C 306/150 of 17.12.2007.

⁴³ Article 8 of the Protocol on the application of the principles of subsidiarity.

⁴⁴ Official Journal of the European Union L 23/1 of 31.1.2007.

⁴⁵ <http://www.scottish.parliament.uk/s3/committees/europe/index.htm>.

77. Another important element covers the obligation for the regional legislative bodies to comply with European legislation. Regions with legislative powers are normally not only involved in the EU law-making process, but they have to transpose European directives, if they have the power of legislation in the specific sector within the member state. Furthermore they have the duty to comply with European legislation within their administrations and courts. If regions with legislative powers implement national legislation through their own regional administrations, this obligation covers the implementation of EU regulations and directives, transposed at national level too. In these functions they implement directives and are therefore under scrutiny from the European Commission, without having proper privileged access to the Court of Justice.

4.4. Enhanced rights of administrative and technical participation

78. Regions with legislative powers want to be more involved in the process of consultation and co-ordination of EU policies. This is particularly important when it comes to implementing structural fund policies. Until now, the European Commission has been willing to involve regional authorities in the partnership policy⁴⁶ without, however, granting preferential treatment to regions with legislative powers.

79. In general terms, there is a greater similarity between the EU and the Council of Europe regarding the participation of regional representatives in working structures. At EU level, representatives of regions with legislative powers are often represented in committees of the Council and the Commission which prepare legal EU texts or implement them.

80. This aspect is also particularly important for the involvement of regional representatives in the law-making process at Council of Europe level. The working structure of the Committee of Ministers is characterised by rapporteur groups, working parties and thematic co-ordinators.⁴⁷ These groups and the Committee of Ministers are assisted in their work by a number of steering committees or working groups.

81. CM resolution (2005) 47 on committees and subordinate bodies, their terms of references and working methods, lays down the general rules concerning the working of the Council of Europe's system of committees.⁴⁸

82. Part II defines the different categories of committees, Part III contains the stipulations concerning their composition. According to Part III, § 3.1 i:

Governments of member states are entitled to designate a representative of the highest possible rank in the relevant field.

83. Footnote 2 allows the designation by a member state of more than one representative. Part III § 3.1b covers the field of subordinate bodies:

Governments of member states are entitled to designate a member in the relevant field.

84. According to these stipulations member states are bound to designate a representative at the highest possible rank in the relevant field (Part III para. 3.1 i). Member states are free to designate more than one representative. This provision allows a certain leeway to designate not only central state representatives but also regional representatives.

85. Despite this fact, CM resolution (2005) 47 is clear in assigning the right to designate: only the member states' governments have the right to appoint their representatives. Internal regulations between the central state government and regional governments therefore need to define the details

⁴⁶ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999. Official Journal of the European Union No L 210 of 31/07/2006 p. 0025 – 0078, article 11.

⁴⁷ see details of the structure in http://www.coe.int/t/cm/subsidiaryGroups_en.asp.

⁴⁸ <https://wcd.coe.int/ViewDoc.jsp?id=949103&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>

concerning the number, the personal qualification and the procedure to designate regional representatives within the Council of Europe committees and working groups.

86. Some Committee of Ministers committees with special relevance to local and regional affairs have representatives from regional governments. This is the case of the European Committee on Local and Regional Democracy (CDLR). Austria, Belgium, Germany and Switzerland have representatives from Länder, regions or cantons. Other federations – like Russia – are only represented in this Committee by representatives at central state level. The Spanish autonomous and Italian regions are not represented.

87. Despite these rules, which may favour the participation of central state representatives in Council of Europe working structures, regional civil servants are nevertheless represented in many of the Council's working groups, which prepare binding legislation or non-binding instruments. Austria, for example, delegates 22 members of the Länder administration to Council of Europe working groups.

88. No detailed survey exists on the rules and procedures within Council of Europe member states to designate representatives to Council of Europe working bodies. The German procedure relies on a "gentleman's agreement" between the Federal Ministry of the Interior and the Standing Conference of Regional Ministers of Internal Affairs of 1993. Thus, two German regional representatives with special knowledge in local and regional affairs have access to the CDLR as part of the German delegation.

89. Another possible rule which could apply to the question of regional representatives in European institutions' working bodies may be found in § 6 of the German law on co-operation between the federal state and the German Länder in European affairs.⁴⁹

90. In the Swiss Federation, representation of the cantons on the CDLR was not based on a written arrangement but organised on an *ad hoc* basis between the Federal Office of Justice and the Foreign Department. It depended on whether topics were relevant to the cantons. However, there are no longer representatives of the cantons present in CDLR meetings.

⁴⁹ § 6 EUZBLG

- (1) In the case of European projects, the federal government, if possible, has to call in on demand representatives of the Länder to the working groups of the European Commission and the Council, if the Federal Council has the right to co-operate in these affairs on national level, or if the Länder have the power to regulate the project or if elementary interests of the Länder are touched. The head of delegation is vested in the federal government, representatives of the Länder may, with the consent of the head of delegation, make announcements.
- (2) If the main focus of the project concerns own powers of the Länder within the field of education, culture or media, the federal government assigns the head of delegation in the working groups of the European Commission and the Council and within the meetings of the Council to a minister representing a Land. For these Council meetings, the Federal Council may only assign a member of a Länder government with minister status. The exercise of the rights through the representative of the Länder is linked to the presence and the co-ordination with the representative of the federal government. The co-ordination of the negotiation positions with respect to a changing negotiation playing field with the representative of the federal government follows the ordinary rules and criteria for internal position finding. The Federal Council may assign Länder ministers to Council meetings, dealing with topics, which do not cover exclusive own powers of the Länder in the field of education, culture or media but other exclusive own powers of the Länder, who are entitled to give declarations in accordance with the representative of the Federal Government. If the project concerns exclusive own powers of the Länder, but not in the centre education, culture or media, the Federal Government exercises the head of delegation function in the working groups of the European Commission and the Council and within the meetings of the Council in concertation with the representative of the Länder
- (3) Paragraph 2 is not relevant for the rights, the Federal Republic of Germany may exercise as head of the Council. In the exercise of these rights the Federal Government contacts the representative of the Länder, if projects in the meaning of paragraph 2 phrase 1 are concerned.
- (4) Par. 2 is not relevant to topics on the agenda consented without discussion in the Council, if this procedure is co-ordinated with the representative of the Länder.

91. The legal basis for this representation is Article 55 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 1 January 2008)⁵⁰ which requires the participation of the cantons in external affairs if their powers or essential interests are affected. Article 55 of the Constitution is specified in the Federal Law on Co-operation of the Cantons, particularly Article 5.⁵¹

92. At canton level, co-ordination in foreign affairs is exercised through the Conference of the Canton Governments (KDK) which is consulted by the federal offices. This body has no legal foundation in federal law but is a technical organisation of the cantons with its own secretariat. Up to now, a member of this secretariat has participated in the CDLR meetings. A member of the administration of the St. Gallen Canton attends the meetings of one of the CDLR's sub-committees, the Committee of Experts on Local and Regional Government Institutions and Co-operation (LR-IC). Co-operation between the KDK and the Federation is laid down in a framework order which was presented to the Federation by the cantons.⁵²

4.5. Tailor EU laws to regional needs (2005)

93. The Conference of Presidents of Regions with Legislative Powers asked in 2005 that the regional dimension be systematically recognised in all EU proceedings of a legislative nature. It is too early to assess the impact of Article 3a of the EU Treaty⁵³ and the requirement to respect regional or local identity as an integral part of national identity.

94. Recent developments in the European Court of Justice show specific involvement in the decentralised implementation of EU Legislation. On 3 February 2009, Advocate General Mrs Trstenjak delivered her opinion on Case C-428/07 Mark Horvath v Secretary of State for Environment, Food and Rural Affairs. This case dealt with the issue of whether Community law precludes devolved implementation at national or at regional level or not. The Advocate General proposed to the Court to adopt a general ruling:

Item 89. I believe that it should be pointed out that Community law does not preclude devolved implementation at national or at regional level. This can be explained by the demands of the CAP for devolved and differentiated implementation, but also by the constitutional autonomy enjoyed by the Member States, recognised in the case-law of the Court, in the allocation of their domestic competences.

The Congress should monitor as closely as possible whether the Court adopts the advocate general's opinion, adoption could constitute an important step forward towards the regionalised implementation of EU laws – not only in the field of the CAP - in parts of member states where these units have legal autonomy to transpose EU legislation.

4.6. Specific demands

95. The calls for the creation of regional electoral districts are designed to ensure greater involvement by members of the European Parliament vis-à-vis regional government. No concrete steps have yet been taken in this direction. The same is true of the calls for regions with legislative powers to be given a special role in the public services sector. As far as closer inter-regional co-operation is

⁵⁰ Article 55 Participation of the Cantons in foreign policy decisions

¹ The Cantons shall be consulted on foreign policy decisions that affect their powers or their essential interests.

² The Confederation shall inform the Cantons fully and in good time and shall consult with them.

³ The views of the Cantons are of particular importance if their powers are affected. In such cases, the Cantons shall participate in international negotiations in an appropriate manner.

⁵¹ <http://www.admin.ch/ch/d/sr/c101.html> and http://www.admin.ch/ch/d/sr/c138_1.html.

⁵² <http://kdk.ch/int/kdk/de/netzwerk/konf.ParagraphContainerList.ParagraphContainer0.ParagraphList.0004.File.pdf/Rahmenordnungsung%2020060623.pdf>.

⁵³ European Union Treaty, Article 3a, 2.

concerned, under Article 3 of the EGTC regulation⁵⁴ regional authorities can be members of an EGTC. The regulation makes no distinction, however, between regions with legislative powers and other types of regions.

4.7. Prospects for regions with legislative powers (2007)

96. In the declaration adopted in Barcelona in 2007 (see appendix 1), the presidents of regions with legislative powers outlined a future policy for these regions, including, to give just a few examples:

- introduction of an early warning procedure to enable the European Commission departments to inform regions with legislative powers if EU legislative proposals are submitted;
- introduction of a procedure for co-operation between the government and the regional parliament in the context of subsidiarity procedures;
- increased co-operation between regions with legislative powers and the Committee of the Regions.

97. These initiatives can obviously be aimed at either national or European level, making it difficult to convince, say, the European Commission to launch an information procedure for regions with legislative powers alongside the new participation procedures introduced by the Lisbon Treaty. Regions with legislative powers therefore require more robust sub-national procedures, if direct access to legislative procedures at European level is not practicable.

5. THE CHALLENGES FACING REGIONS WITH LEGISLATIVE POWERS, BETWEEN JOINT DECISION-MAKING AT NATIONAL LEVEL AND PARTICIPATION AT EUROPEAN LEVEL

98. 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 legislative powers in the member state in question or, where appropriate, with other regions in the member state which do not have the same legal powers (in the case of asymmetrical regional self-government);
- ensure that they are involved in the member state's European or international affairs, if regional issues are stake, whether the state is a member of the EU or of the Council of Europe;
- exercise their influence in political and legislative co-decision or consultation procedures at EU level; this is particularly important in horizontal matters with strong political and technical impact upon regions with legislative powers like the EU Commission green paper on "Territorial Cohesion" COM(2008) 616 final; Council doc. 14059/08. In the preliminary report of the Presidency in December 2008, a greater responsibility for regional tiers of government was proposed. This might also favour regions with legislative powers. The recent European Parliament resolution of 24 March 2009 on the Green Paper on Territorial Cohesion and the state of the debate on the future reform of cohesion policy (2008/2174(INI)) stressed the importance of the subsidiarity principle as well as the importance of a balanced multi-level governance system.⁵⁵ This might also be in favor of regions with legislative powers;

⁵⁴ REGULATION (EC) No 1082/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 July 2006 on a European grouping of territorial co-operation (EGTC); Official Journal of the European Union No. L 210/19 of 31.7.2006.

⁵⁵ par. 43 of the resolution. "Emphasises that EU policies, and more particularly the EU cohesion policy, have transformed governance from an often centralised system into an increasingly integrated, multi-level system; calls on stakeholders, public authorities and citizens to establish a formal system of territorial governance, based on a multi-sectoral, territorial and bottom-up integrated approach, in order to respond in a coherent and effective way to a single need of its citizens or users, in an area corresponding to this need; recalls, in this respect, the successful experiences of EU initiatives, such as Urban I and Urban II for urban areas and Leader in rural areas;"

- organise the implementation of EU legislation, the binding agreements of the Council of Europe and the main policy objectives, with due regard for specific regional needs.

99. 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: regions with legislative powers which have extensive sub-national responsibilities have to deal with the same issues at European level;
- communication with virtually all the national and EU bodies and 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).

100. All this naturally calls for meticulous planning in terms of 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.

6. CONCLUSIONS

101. 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. Until now, these regions have voiced their concerns over the European integration process through two political networks: the “Conference of Presidents of Regions with Legislative Powers” and the Congress Working Group on “regions with legislative powers”. More recently, the Conference of European Regional Legislative Assemblies (CALRE) and the Intergroup in the Committee of the Regions have contributed to the debate as well.

102. The Conference of Presidents of Regions with Legislative Powers concentrates upon some specific reasons when defending the special place of regions with legislative powers in the European integration process:

- specific sub-national position defined by the Constitution;
- proximity to citizens;
- linguistic and cultural situation;
- size of the population represented (almost half).

103. REGLEG considers the invoked elements as necessary elements to determine the particular status of regions with legislative powers.

104. Neither the intermediate position occupied by regions with legislative powers nor the need for a multi-strategy approach at several levels of government has 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.

105. 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.

106. The Conference of Presidents of Regions with Legislative Powers has given virtually no indication as to how EU intervention in the field of regional powers is either harmful or beneficial. What is needed, therefore, is some analysis of the advantages and disadvantages of European integration with regard to the role of regions with legislative powers, and also some discussion as to whether alignment on EU structures, methods and content is preferable when it comes to developing regional individuality.

107. 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.

108. Despite the myriad, long-standing efforts by regions with legislative powers to influence the European integration process, the Lisbon Treaty, although it makes a few concessions to local and regional authorities, does little to accommodate the specific needs of regions with legislative powers:

- there is no institutional recognition of regions with legislative powers;
- the beneficiaries of the advances in terms of subsidiarity are not regions with legislative powers, but rather national parliaments and the Committee of the Regions;
- regions with legislative powers are virtually excluded from some important areas of political co-ordination and consultation:
 - the Euro Group;
 - macro-economic co-ordination;
 - open co-ordination method.

109. Now that the new Lisbon texts have been adopted, regions with legislative powers are having to adopt a fresh perspective. In future, therefore, the arguments will need to focus more on the practical aspects:

- Instead of trying to influence the fundamental treaties, regions with legislative powers must accept the new rules and seek to steer EU legislation and the implementation of EU policies towards a more regionalised approach. The key question is: how can the *acquis communautaire* be regionalised?
- It is thus important to note that the Flemish presidency work programme of the REGLEG Network followed a twin-track approach during its presidency in 2008. On the one hand, REGLEG, building further on the initiatives taken by the Catalan presidency, followed the institutional path of the new realities for regions with legislative power under the Lisbon Treaty. It analysed how the increased recognition of the role of the regions (with legislative powers)

and the Committee of the Regions, the newly achieved opportunities and challenges, could be put into practice. On the other, REGLEG continued to fulfil its role as a political lobbying platform for the regions with legislative power. The new momentum of the Lisbon Treaty provided for an opportunity in 2008 to debate on non institutional EU themes.

- In order to implement this work programme REGLEG has created or continued several working groups, such as the Working Group on comitology and the Working Group on the EU agenda. Especially the latter was created to detect the policy fields of common interest and in which REGLEG could give added value as a common platform, when increasing the impact of regions with legislative power on the European legislative process.
- Regions with legislative powers should focus both on strengthening their sub-national position, in particular regional visibility, and on the goal of regional identity. The EU is required to respect regional identity under the new Article 4 of the Treaty on the European Union, so this might be an additional means of protection. Some effort could also be made here to ascertain the legal significance of the term "identity" within the meaning of Article 4 and what it implies for EU legislation.
- Increased co-operation between the regional and European levels in the field of governance is probably self-defeating, because it is liable to lead to greater harmonisation rather than contributing to greater regional differentiation.
- Further reform of the rules on subsidiarity will probably achieve little as in the past, the Court of Justice has almost always defended EU competences.

110. The Congress Working Group on "regions with legislative powers" might like to consider what these regions' EU policy means for the work of the Council of Europe. In particular, attention should be given to the opportunities for, and benefits of, developing a legal instrument in the field of regional democracy. In addition, some fresh discussion on the key elements of regional identity as part of a national identity would seem to be in order. Attention could also be given to the role of co-operation and consultation structures and procedures at both national and European level.

111. 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.

112. There is a need for closer co-operation between regions with legislative powers at EU level and within the Congress. The Committee of the Regions/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.

113. 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 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?
- Which elements favouring regions with legislative powers should be extracted from the Advocate General's opinion in Case C – 428/07 of the ECJ?

APPENDIX 1

BARCELONA DECLARATION ADOPTED BY THE 8th CONFERENCE OF PRESIDENTS OF REGIONS WITH LEGISLATIVE POWERS

15 - 16 NOVEMBER 2007

At the invitation of the President of the Government of Catalonia (Generalitat de Catalunya), the Presidents and their representatives of Açores, Åland, Andalucía, Aragón, Principado de Asturias, Baden-Württemberg, Illes Balears, Bayern, Région de Bruxelles Capital – Brussels Hoofdstedelijk Gewest, Burgenland, Calabria, Islas Canarias, Euskadi, Extremadura, Friuli-Venezia-Giulia, Galicia, Lombardia, Madeira, Niederösterreich, Nordrhein-Westfalen, Piemonte, Sachsen, Sachsen-Anhalt, Salzburg, Sicilia, Toscana, Provincia Autonoma di Trento, Valle d'Aosta, Vlaanderen, Wales, Wallonie and Wien, regions with legislative powers in the European Union, met in Barcelona on 15th and 16th November 2007 for their 8th Annual Conference.

Seventy-three regions⁵⁶ within the European Union (EU) have directly elected parliaments with law-making powers, as well as their own governments. Together, these regions with legislative powers represent roughly half the population of the EU. They share with their Member States the responsibility for transposing and implementing EU legislation and policies and, in some cases, they participate in the work of the Council of Ministers and the European Commission through their Member State delegations. Some legislative regions have to ratify or give their assent to new EU treaties. Some contribute direct financial resources that form part of their Member States' contributions to the EU budget. For these reasons, and due to their proximity to citizens, the regions with legislative powers have special legitimacy and responsibility in respect of EU affairs.

The Presidents

- Although they were warmly in favour of the Treaty establishing a Constitution for Europe, express their satisfaction with the Reform Treaty agreed on 18th and 19th October 2007 by the Heads of State and Government. They welcome in particular the new Treaty's increased recognition of the role of regions in the EU decision-making process. Nevertheless, they regret that other aspirations of the regions with legislative powers have not been introduced and they will, accordingly, continue to make the case for fuller participation.
- Are determined that the regions with legislative powers should take full advantage of the opportunities the new Treaty offers to enhance their role in European affairs.
- Consequently, they call on the Heads of State and Government to sign the Reform Treaty in Lisbon on 13th December, and they urge timely ratification by Member States.
- Consider that REGLEG should lead dialogue with the Commission on issues affecting regions with legislative powers; they further believe that REGLEG should support its members' participation in the mechanism for the application and control of the principle of subsidiarity.
- Remind Member States of the need to communicate the European project to their citizens, and commit themselves to this task. It is important to explain the significance and ambitions of European integration and to involve citizens in this common project.

The Reform Treaty

The Presidents welcome the Reform Treaty agreed on 18th/19th October and especially its preservation of the regional substance contained in the Treaty establishing a Constitution for Europe signed in 2004. The new Treaty will allow the Union to move forward, on a renewed common basis, towards a future that will be more efficient, more democratic, closer to its citizens and more visible in the world.

⁵⁶ The word "regions" is used throughout as a convenient generic term to denote territories, below the level of the Member State, endowed with a democratically elected assembly and a government responsible to it. In the domestic context, these "regions" are defined variously as regions, nations, Länder, communities, autonomous communities, etc.

The Presidents welcome the new Treaty's reinforcement of the regional dimension in the EU; the Treaty will allow greater participation by regions in policy formation and decision making. In particular, they welcome the following aspects:

- The respect of the national identity of the Member States, including local and regional autonomy;
- The recognition of cultural and linguistic diversity as one of the objectives of the Union;
- The recognition of the territorial dimension of the cohesion policy and its extended field of application, as outlined in article 158 of the Treaty on the functioning of the European Union, which underlines the special attention devoted to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions; as well as the fact that it reasserts the special status for ultra-peripheral regions as stated in the article 299.
- The provisions on participative and representative democracy that may favour an improved dialogue between the institutions of the Union and regional associations;
- The new definition of the principle of subsidiarity which recognizes, for the first time, the regional and local dimension;
- The involvement of regions in the drafting of the legislative proposals as foreseen in the Protocol on the application of the principles of subsidiarity and proportionality;
- The reinforcement of the early warning mechanism which will allow national parliaments and regional parliaments – who should be adequately involved in the mechanism - to have an ex ante political control of the compliance of legislative proposals with the principle of subsidiarity;
- The ability of national Parliaments (through their Member State) and the Committee of the Regions to take legal action in the event of infringement of the principle of subsidiarity;
- The inclusion of a protocol concerning the services of general interest which recognizes the essential role of the state, regional and local authorities in the management of these services;

Despite this progress in recognition of the institutional role of regional authorities, the Presidents regret that the current process of the revision of the Treaties has not accommodated other long-standing demands of the regions with legislative powers, in particular:

- The right of direct access of the regions with legislative powers to the EU Court of Justice in defence of their rights and prerogatives;
- The establishment of the Committee of the Regions as a fully-fledged institution of the Union;
- A provision for Member States to designate regions as "Partners of the Union", enjoying specific rights at the European level, because these regions have exclusive competences and shared competences with Member States;
- Guarantees regarding a larger use in the European institutions of languages with co-official status in legislative regions according to their domestic regulations (and with no impact on the EU budget).

Nevertheless, the Presidents believe that the Reform Treaty is a clear step forward. They call on the Heads of State and Government to sign the Treaty in Lisbon on 13th December, and they call on the Member States to ratify it in due time so that it can come into force by 1st January 2009 at the latest.

The regions with legislative powers and the opportunities of the Reform Treaty

The Presidents consider that the regions with legislative powers should take full advantage of the opportunities that the new Treaty offers to participate in the decision-making process of the EU. More specifically, the Presidents wish a high level of participation by the regions with legislative powers, and of their parliaments, in the different phases through which the principle of subsidiarity will be applied and monitored.

Phase of drafting the legislative proposals

The Presidents demand that Article 2 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality is interpreted and implemented in such a way that the regions with legislative powers are consulted directly by the Commission during the process of drafting the legislative initiatives which affect them in order to defend their specific interest. It is essential to proceed to a correct assessment of the respect of the principle of subsidiarity in EU legal initiatives, taking into account the local and regional situations.

In the current situation, REGLEG offers its co-operation to the Commission and to the Committee of Regions to enhance the current structured dialogue with the regional associations in order to make it more effective and to ensure the full participation of the regions with legislative powers in the consultation process.

Phase of the ex ante political control of the principle of subsidiarity

The Presidents welcome the present initiative by the Commission to transmit its legislative proposals to national parliaments to allow them to give their opinion.

The Presidents consider that, on the basis of the new mechanism of ex ante control of the principle of subsidiarity and in accordance with the constitutional order of the respective member state, regional parliaments should be consulted when their legislative powers are affected. The Presidents express their satisfaction that the new Treaty has extended the deadline for national parliaments to send their opinions on subsidiarity from six to eight weeks - this will facilitate more effective participation of regional parliaments in this mechanism. The Presidents encourage the establishment, where necessary, of adequate mechanisms to guarantee this participation. In this sense, they emphasise that in some Member States regional parliaments act as components of national parliaments in respect of European Union competences, and thus act on an equal level. In other Member States regional parliaments have a vital role in transposing EU legislation and, thus, should form part of any consultation appropriate to their powers.

Phase of the ex post jurisdictional control of the principle of subsidiarity:

The Presidents consider that, since regional parliaments should be consulted as foreseen in the Protocol setting out the mechanism of control of the principle of subsidiarity, it is logical that they can also propose the challenging of a legislative act that they consider to breach the principle of subsidiarity. In this sense, the Presidents encourage the establishment, where necessary, of adequate mechanisms to implement this possibility in Member States with regions with legislative powers.

Given that the Committee of the Regions will have direct access to the EU Court of Justice, the Presidents consider that it will be important to develop a closer co-operation with the Committee of the Regions to allow regions with legislative powers, and their parliaments, to propose the introduction of an appeal for the infringement of the subsidiarity principle; and that the Committee of the Regions could consult the regions with legislative powers and its parliaments before introducing such an appeal.

The Presidents note the role of the regions with legislative powers in the creation by the Committee of the Regions of a network on subsidiarity. This network facilitates the exchange of information and experiences among local and regional authorities on legislative proposals that, once adopted, will have an impact at the local and regional level. The Presidents endeavour to collaborate closely with the Committee of the Regions on this project.

APPENDIX 2

The future of REGLEG

After a long period of debate about the reform of the European institutions, on which the work of the REGLEG has focused in recent years, the network is ready to tackle a new agenda.

The Presidents declare their intention to develop REGLEG to make it a network which consolidates existing achievements and takes full advantage of new opportunities for participating in the EU decision making and implementation process, and to better defend their specific interests.

To this end, an ad hoc working group on subsidiarity, for example, could allow members to exchange experiences among themselves on the procedures that will be adopted in each member state to include the regional parliaments in the early warning mechanism, and thus contribute to shape the domestic mechanisms of the control of subsidiarity.

Other working groups, such as on direct access for regions to the EU Court of Justice, may help us make new progress on this long-standing demand of the regions with legislative powers.

Co-operation between REGLEG regions should explore new fields, such as the exchange of information on the way the regions with legislative powers are involved in the formation of the common positions of their Member States in respect of European policies (co-ordination and co-operation within the State, participation in the Council, participation in the Council's working groups, etc.). Results and findings can be collected and disseminated. Developing and continuing the work already started in the ad hoc working group on regional participation in the Council and Comitology decision-making will help progress this agenda.

In this framework, REGLEG should enhance the evaluation and follow-up of the results of REGLEG working groups.

REGLEG might also serve as a forum to establish common positions in response to open consultations of the Commission on matters of common interest.

As far as relations with other organisations are concerned, the Committee of the Regions (CoR) is the only EU body on which regions with legislative powers are represented as of right. REGLEG will work with the CoR to maximize and defend the regional interest at EU level. REGLEG will contribute to the consultative work of the CoR in particular in the field of subsidiarity monitoring; sharing information of mutual interest to both organizations. REGLEG and its partner regions, along with the CoR, can help to communicate Europe and bring it closer to its citizens, a stated priority in the Commission Legislative and Work Programme 2008.

Furthermore, REGLEG, together with the Conference of European Regional Legislative Assemblies (CALRE), co-operates with the Committee of the Regions in all areas of common interest, notably through the Interregional Group regions with legislative powers.

The Presidents welcome the process of regional and local autonomy in other countries and welcome the initiative by the Congress of Local and Regional Authorities at the Council of Europe to create a reference framework for regional democracy in Europe. They encourage the Council of Ministers of the Council of Europe to adopt principles on regional democracy as soon as possible.

The Presidents reaffirm that REGLEG, as the network representing the interests of the regions with legislative powers, will continue its work to defend a deeper involvement of these regions in the EU decision-making process, taking into account that regional entities are often better placed to deliver proximity and effective communication of European projects to citizens.