

Opinion 136/95 of the Committee of the Regions on the revision of the Treaty on European Union (21 April 1995)

Caption: In this own-initiative opinion, with a view to the 1996 Intergovernmental Conference, the Committee of the Regions states its views on the role that it plays, and would like to play, in the institutional structure of the Community. Its proposals are based on a new formulation of the principle of subsidiarity, which has become the Committee's main concern.

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Forward

With an eye on the lengthy process which lies ahead for reforming the Treaty on European Union, the Committee of the Regions has thought fit to submit its own contribution.

The present interim paper, setting out our current thinking, will be forwarded to the European Parliament, the Council of the Union, the European Commission and the Reflection Group. It should allow the Committee of the Regions very soon to launch, with these institutions, the talks necessary for its political activity in the context of the 1996 Intergovernmental Conference.

The COR's Assembly will be able to take account of the results of these interinstitutional talks throughout its work on the reform of the institutions.

In July, a paper will be drawn up on the developments needed to create a positive momentum with the European Parliament and the other institutions. The present paper is thus not definitive, but merely represents a point of departure.

The Committee of the Regions calls on the European Parliament and the other EU institutions to inform it of any proposals affecting the Committee of the Regions' powers that might win the COR's support.

A. Explanatory memorandum

The revision of the Maastricht Treaty

The Maastricht Treaty is a further milestone on the road towards European integration. It opens up new areas of Union activities whilst at the same time strengthening a number of existing areas and paving the way for a reform of the institutional machinery in order to increase efficiency and democratic legitimacy.

The Maastricht Treaty is the first occasion on which a European constitutional text has included mechanisms for regional and even local participation in the drawing up of Union policies. Moreover, by declaring subsidiarity to be a fundamental principle, the Maastricht Treaty limits Union activities to fields where efficiency requires supranational action; indeed it defines the Union, under the second paragraph of Article A, as one 'in which decisions are taken as closely as possible to the citizen'.

Article N of the Maastricht Treaty stipulates that an Intergovernmental Conference shall be convened in 1996 to examine the revision of certain Treaty provisions. This reflects an awareness that a short-term review of the Treaty is desirable, partly because of the innovative nature of some of its provisions and partly because of the profound changes facing the Union, particularly those stemming from its continuous expansion through the accession of new Member States.

At the Corfu Summit held in June 1994 the European Council decided to set up a Reflection Group to prepare for the Intergovernmental Conference, inviting not only the Commission and Parliament, but more generally all the other institutions and bodies forming part of the Community's institutional machinery, to draw up reports and forward their comments to the Reflection Group.

As part of this process the Committee of the Regions, in its capacity as the body representing European regional and local authorities, considers that it would be appropriate to make a contribution to the revision of the Treaty in those areas falling within its remit. These areas will be analyzed later on in this Opinion.

Scope of the Committee proposals

The composition and functions of the Committee of the Regions are such that its remit is limited to regional and local issues. Its experience, and particularly that of the regional and local authorities represented on it, can therefore be brought to bear solely on Union policies affecting the powers and essential interests of 'sub-state' levels of government and is naturally confined to the institutional channels which enable these levels of government under the Maastricht Treaty to participate in the European decision-making process.

The Committee of the Regions has also only recently become part of the institutional make-up of the European Union and thus lacks the extensive experience of the Parliament, Commission and Council. Nor is there any Treaty provision which requires the Committee's participation in the institutional reform process.

Controversy surrounds the extent of the reform. Some institutions are intent on using the Intergovernmental Conference to revise the Treaty in depth with the aim of consolidating a future Union of more than twenty members, whilst the Member States themselves would seem to be more inclined to concentrate on those aspects whose revision is explicitly provided for in the Treaty, seeking to bring about a number of additional changes designed to improve the functioning of Union institutions on the basis of the experiences of the last few years.

The Committee of the Regions, which is a central pillar of democratic legitimacy in the Union, must not only support amendments designed to improve the functioning of the system, but must also lend support to any changes aimed at adapting it to an enlarged Union. The political function and composition of the Committee of the Regions give it the authority to express its views on the revision of the Treaty as a whole, enabling it to participate on a permanent basis in the consultations of the Reflection Group and at a later date in those of the Intergovernmental Conference itself. This Opinion along with the appended resolution - drawn up on the basis of the fourth paragraph of Article 198c of the EC Treaty conferring on the Committee the right to draw up Opinions on its own initiative - constitute the Committee's specific contribution to the Treaty review process. This contribution should focus on aspects that are of direct concern to the Committee of the Regions.

The Maastricht Treaty also provides an extremely solid platform from which to call for improvements in regional and local participation in the Union. When Article N of the Treaty speaks of revision, it points out that this will be carried out in accordance with Articles A and B. The second paragraph of Article A in turn specifies that one of the objectives is to 'create an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen'. It therefore goes without saying that the formulation of the subsidiarity principle, and the deepening and improving of mechanisms for regional and local participation, are an integral part of the philosophy underlying the revision of the Treaty.

For all of these various reasons the Committee of the Regions has confined its proposals on reform to the following aspects of the Treaty:

- the principle of subsidiarity,
- the system for instituting proceedings in the Court of Justice against acts by the institutions,
- the Committee of the Regions.

It is also proposed that regional and local involvement in the policies of the Union be stepped up and that consideration be given to further developing the concept of European citizenship and cooperation in the fields of justice and home affairs.

The principle of subsidiarity

The principle of subsidiarity implies that the public authorities do not take action when this can be done adequately and effectively by citizens. The principle also introduces the concept of gradation, i.e. higher levels of government act only when lower levels cannot do so satisfactorily. Subsidiarity in general, and subsidiarity within the process of European integration in particular, strengthens:

- democratic legitimacy, inasmuch as it avoids the creation of an excessively centralized European power disconnected from the problems of ordinary citizens, the closeness of the Union to its citizens being one of the basic components of this legitimacy;
- transparency, since it encourages a clear-cut allocation of functions between various levels of government, making it easier for the citizen to identify areas of action appropriate to each level;
- efficiency, since it presupposes that powers are exercised at the most appropriate level of government.

The Committee of the Regions, reiterating the position of its own members and that of the Assembly of European Regions and the Council of European Municipalities and Regions, thus warmly welcomes the inclusion of the principle of subsidiarity in the Maastricht Treaty. It nevertheless regrets that the concrete formulation of the principle of subsidiarity in Article 3b of the EC Treaty does no more than lay down a criterion for the exercise of shared powers between the Union and the Member States.

The Committee of the Regions believes that the principle of subsidiarity needs to be looked at both in terms of its formulation in the Treaty and in terms of its applications, viz: the prior examination of new legislation; the examination of existing legislation; the analysis of the case for undertaking new policies or activities; subsequent monitoring by the Court of Justice. We believe in particular that the Committee of the Regions must be more deeply involved in monitoring application of the principle of subsidiarity and must be brought into the heart of the work done by the Commission in this area.

Despite this, the scope of this Opinion and the appended Resolution is restricted to the revision of the Treaty so that we shall be looking only at those aspects requiring constitutional changes at the same time. The Committee of the Regions, acting within the framework of its Special Commission for Institutional Affairs and taking into particular consideration a) the Resolution at the Plenary Session of 15 November 1994 and b) the Opinion of the Commission for Regional Development, Economic Development and Local and Regional Finances on the 'Application of the principle of subsidiarity in the European Union', will nevertheless also be taking appropriate action to ensure that progress is made on those aspects of subsidiarity which are not to be found in the Treaty and so are not covered by the appended Resolution.

On the constitutional front, the Committee proposes a new formulation of Article 3b that defines the principle of subsidiarity not only as a criterion for exercising shared powers between the Union and the Member States, but also as a criterion for sharing powers and responsibilities among all levels of government participating in the European Union; the Committee also calls for appropriate mechanisms that enable it to institute proceedings in the Court of Justice in the event of infringements of subsidiarity affecting the powers of regional and local authorities.

Listing the powers of the Union and of Member States will make it easier to apply the principle of subsidiarity. The Committee of the Regions therefore urges the institutions of the Union, on the occasion of the revision of the Treaty, to initiate negotiations to establish a clear demarcation between the powers of the Union and those of the Member States. The Committee in turn calls upon the Member States to apply the principle of subsidiarity on their own territory, i.e. with regard to their own regions and local authorities.

The system for instituting proceedings in the Court of Justice

In the case of annulment proceedings, Community procedures confer on the Commission, Council and Member States the general right to bring actions, whereas the Parliament and European Central Bank may only bring actions to protect their prerogatives. Other natural or legal persons have to demonstrate that a legal act affects them directly and individually - which in practical terms means that decisions (e.g. sanctions) are applicable to specific parties since in other cases it is very difficult to provide proof. With some modification the same procedure applies to proceedings in the event of failure to act, i.e. when Union institutions have infringed the Treaties by neglecting to take action.

The Committee of the Regions and its constituent members are in an extremely weak position in respect of this system. The nature of the subsidiarity principle coupled with the lack of direct effect make it impossible to appeal against an act or a failure to act of a Union institution in breach of the above principle, insofar as the plaintiff has to provide proof that he has been directly and individually affected. Consequently, the Committee and its constituent members find themselves in practice in a situation where they are unable to defend themselves - something which is contrary to the spirit of Community law.

The Committee of the Regions thus considers it necessary to propose that, in the case of annulment proceedings, as provided for under Article 173 of the EC Treaty, the Committee should be accorded the same special right to bring actions as the European Parliament and the European Central Bank. In the case of the Committee of the Regions, action could also be taken in order to defend the principle of subsidiarity. This would enable the Committee to fight legal provisions which, by infringing the principle of subsidiarity or demonstrating other violations, are prejudicial to the functions and powers of the Committee of the Regions and its constituent members.

Moreover, the legislative activities of the Union are of particular concern to regions endowed with legislative powers. The Committee therefore proposes that such regions also be granted the right to institute proceedings for the purpose of defending their powers.

In the case of proceedings for failure to act, as provided for under Article 175 of the EC Treaty, the Committee considers it equally necessary to be accorded the same right to bring actions as the institutions. Being accorded the status of an institution (a proposal made elsewhere in this report) would in fact resolve the problem and obviate the need to amend the above-mentioned Article 175.

The Committee of the Regions

The Maastricht Treaty makes it possible for the first time for regional and local authorities to participate, in an advisory capacity, in the European Union's decision-making process. Such participation is channelled through the Committee of the Regions which, by virtue of its composition and functions, helps to bring the Union closer to the citizen, thereby reinforcing the Union's democratic legitimacy - both of which are basic objectives of the Treaty.

Through Opinions addressed to the Council and Commission, members of the Committee of the Regions make a contribution to refining Community legislation, representing as they do the points of view of the authorities responsible for actually implementing the legislation in a wide variety of fields. In this way they undeniably help to make European policies more effective. At the same time, the constant flow of detailed information stemming from the Committee of the Regions' commitments enables local and regional bodies in the Member States to influence the European policies of their respective central governments.

Despite this, the place occupied by the Committee of the Regions within the institutional machinery and its role in the decision-making process do not allow it to properly reflect the contribution it makes, through its composition, to strengthening democratic legitimacy and bringing the Union closer to the citizen.

The Committee considers that its position and powers need to be strengthened in the following areas:

- Institutional position

Article 4 of the EC Treaty defines the Committee of the Regions as a body which assists the Council and the Commission in an advisory capacity. The nature and political legitimacy of regional and local authorities, their decisive, overall contribution to the process of European integration, and the role assigned to them in accordance with the principle of subsidiarity (which sees them as two of the political power-sharing levels in the Union), require that the Committee which brings them together and represents them in the Union should be recognized as an institution in its own right.

The Committee furthermore believes that it should be free to draw up its own Rules of Procedure without having to submit them for approval to the Council of Ministers.

- Composition

According to Article 198a of the EC Treaty the Committee consists of representatives of regional and local authorities. The democratic legitimacy of which the Committee is guarantor, however, demands a more explicit reference to the political mandate and political legitimacy of its members and to the fact that they are appointed on the recommendation of the authorities they represent.

- Structure

The Committee of the Regions should be able to establish its structure and organize its work in keeping with its own specific character and objectives.

- Organizational and budgetary autonomy

The Committee needs its own independent administration and its own separate budget. The protocol appended to the Treaty, which refers to a common organizational structure with the Economic and Social Committee, should therefore be deleted and the appropriate budget decisions taken. The Committee should be guaranteed sufficient means to be able to fulfil its function, which is destined to grow in importance in the future.

- Powers

The Maastricht Treaty states that the function of the Committee is to respond to requests for Opinions from the Council and Commission, with mandatory consultations limited to the five areas laid down in the Treaty. The Committee may nevertheless expand its scope for action by making use of the right of initiative granted to it under the Treaty.

The Committee considers that its consultative function needs to be strengthened, firstly by providing for consultations by the European Parliament as well as by the Council and Commission, and secondly by extending mandatory referrals to Community policies administered by regional or local authorities in all, or in a significant number of Member States. It is surprising, for example, that there is no consultation of the Committee of the Regions in policy areas such as agriculture, transport, social policy, research and technological development, development cooperation, vocational training, protection of the environment, industry, energy, or consumer protection. Thirdly, without seeking to make Committee Opinions binding, their influence on the decision-making process should be stronger, which means requiring the institutions to justify before the Committee any decision not to follow the recommendations contained in the COR's Opinions.

The Committee also wishes to be more closely associated with initiatives of the Commission, cooperating with this institution at the various stages of producing concrete legislation, legislative programmes or White and Green Papers. The Committee's cooperation would, by definition, be confined to practical areas falling under the jurisdiction of local and regional authorities.

- The policies of the Union

The Treaty of Maastricht extends the Union's sphere of competence to new areas of activity which at national level are frequently handled by the regions and in some cases also by the local authorities. This

same phenomenon is likewise apparent with some of the Community's traditional policies.

The Committee considers that in these areas it is necessary not only to make consultation of the COR mandatory, but also to offer recognition, in keeping with the principle of partnership, of the contribution regional or even local authorities can make to the policies in question. Cooperation with regional and local authorities in these areas of Union activity should therefore be envisaged.

Such cooperation would mean in practice that European Union measures and provisions with clear-cut implications for the economies of regions and local areas are properly evaluated before being applied.

The Committee believes that the need to promote cross-border and interregional cooperation between regional and local authorities should be the principle of spatial planning and spelt out in the Treaty in the interests of strengthening economic and social cohesion.

The Committee furthermore believes that it is important to recognize and take practical account of the need for greater coordination of Community policies with a major impact on urban areas, whilst strictly adhering to the principle of local autonomy as enshrined in the Council of Europe's Charter on local autonomy.

As a key component of the Union's democratic legitimacy and a body of crucial importance in bringing the Union closer to the citizen, the Committee of the Regions also considers, in the light of the experiences gained by its members, that the revision of the Treaty should be seen as an opportunity for deepening Community cooperation in the fields of justice and home affairs (the third pillar and in particular the right of asylum and immigration) as well as for developing the concept of European citizenship, by incorporating a list of fundamental citizens' rights in the Treaty.

B. Resolution

Having regard to the Treaty on European Union signed in Maastricht, and more particularly TEU Article N in relation to Articles A and B;

Having regard to the conclusions of the European Council held in Corfu in June 1994, and more particularly the references to the preparatory work of the Intergovernmental Conference to be held in 1996;

Having regard to the Resolution on subsidiarity adopted at the Plenary Session of this Committee on 15 November 1994, and the Resolutions of the Assembly of European Regions on 6 September 1990 and 22 January 1993, and of the Council of European Municipalities and Regions on 3 December 1992;

Having regard to the Resolutions and reports on the principle of subsidiarity and on the Committee of the Regions, adopted by the various institutions of the European Union;

Having regard to the Council of Europe's Charter on local autonomy;

Having regard to the preparatory work undertaken by the Commission and European Parliament with a view to drawing up reports for the Reflection Group, and in particular the draft Opinions of the Committee on Institutional Affairs of the European Parliament;

Whereas the setting-up of the Committee of the Regions and the introduction of the principle of subsidiarity help to reinforce the democratic legitimacy of the European Union, bring the Union closer to the citizen and highlight the role of the regions and local authorities in the construction of Europe;

Whereas the concrete regulation of these mechanisms in the Treaty nevertheless needs to be improved if regional and local authorities are to play a more adequate, more effective role in the European Union;

Whereas it is desirable to reinforce the regional character of certain policies and introduce elements that will also guarantee compliance with the principle of municipal autonomy;

Whereas regional and local authorities have a fundamental interest in issues connected with immigration and asylum, and whereas they are of the fundamental conviction that the concept of European citizenship, as formulated by the Treaty, needs to be clarified and strengthened;

Whereas the Maastricht Treaty, in keeping with Article N, is to be revised at an Intergovernmental Conference in 1996, and whereas a decision has been taken to set up a Reflection Group to start work on preparations for this Conference in June 1995;

Whereas the Committee of the Regions can and must make a contribution to this revision, and whereas it should, by virtue of its composition and function, limit this contribution to improving the mechanisms in the Treaty for local and regional participation,

THE COMMITTEE OF THE REGIONS:

1. Requests that the formulation of the principle of subsidiarity in Article 3b of the EC Treaty contain an explicit reference to regions and local authorities and proposes, to this effect, that the second paragraph of Article 3b be worded as follows:

'The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, or by the regional and local authorities endowed with powers under the domestic legislation of the Member State in question.'

Requests that, in order to facilitate application of the principle of subsidiarity, the respective powers of the Union and of the Member States be clearly defined so that the European Union acts within the limits of the powers expressly conferred on it by the Treaty and in compliance with the principle of subsidiarity.

2. Requests that the Committee of the Regions and regions endowed with legislative powers be given the right to initiate annulment proceedings, and proposes that the third paragraph of Article 173 of the EC Treaty be amended to read as follows:

'The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament, the European Central Bank and the Committee of the Regions for the purpose of protecting their prerogatives. It shall also have jurisdiction in actions brought by the Committee of the Regions against violations of the principle of subsidiarity, and in actions brought by the regions whose legislative powers may be affected by a regulation, directive or decision.'

3. Requests that the Committee of the Regions likewise be granted the right to initiate proceedings for failure to act, and realizes that this can be achieved without having to amend Article 175 of the EC Treaty if the Committee of the Regions is granted the status of an institution. The COR proposes that, in the event of not being accorded the status of an institution, the first paragraph of Article 175 should be amended to read as follows:

'Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States, the other institutions of the Community and the Committee of the Regions may bring an action before the Court of Justice to have the infringement established.'

4. Requests that the Committee of the Regions be made an institution and accordingly proposes that Article 4 of the EC Treaty be worded as follows:

'1. The tasks entrusted to the Community shall be carried out by the following institutions:

- a EUROPEAN PARLIAMENT,
- a COUNCIL,
- a COMMISSION,
- a COURT OF JUSTICE,
- a COURT OF AUDITORS,
- a COMMITTEE OF THE REGIONS.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.'

5. Requests that the political mandate and political legitimacy of COR members be spelt out and to this effect proposes that the first paragraph of Article 198a of the EC Treaty be reworded to read as follows:

'A Committee, hereinafter referred to as the Committee of the Regions, consisting of representatives appointed on the recommendation of regional and local bodies, who have a mandate from the electorate or are politically accountable to an Assembly elected by direct universal suffrage, is hereby established with advisory status.'

6. Calls for a strengthening of the powers of the Committee to organize its own work and consequently requests that the second paragraph of Article 198b be worded as follows:

'It shall adopt its own Rules of Procedure.'

7. Calls for full organizational and budgetary autonomy vis-à-vis the Economic and Social Committee and consequently proposes a departure from Protocol No 16 on the Economic and Social Committee and the Committee of the Regions, appended to the Maastricht Treaty.

8. Requests that the consultative function of the Committee be strengthened and consequently proposes:

- that consultation of the Committee of the Regions be explicitly provided for not only in those areas already laid down under the present Treaty but also where consultation of the Economic and Social Committee is provided for, as well as under the first paragraph of Article 130w of the EC Treaty dealing with development cooperation policy, the second paragraph of Article 8e of the EC Treaty dealing with citizenship of the Union, and Article 94 of the EC Treaty dealing with state aid;

- that, as far as the consultative function is concerned, Article 198c of the EC Treaty, as amended by the Maastricht Treaty, should be worded as follows:

'The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where this Treaty so provides and in all other cases in which these institutions consider it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time-limit which may not be less than one month from the date on which the chairman receives notification to this effect.

Upon expiry of the time-limit, the absence of an opinion shall not prevent further action.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission. In the event of disagreement with the Committee's opinion, these institutions shall inform the COR of the reasons for their position.'

9. Urges that the Committee of the Regions be allowed to cooperate with the Commission when the latter takes initiatives and proposes that a new paragraph be added to Article 198c reading as follows:

'The Committee shall offer the Commission its cooperation and advice in drawing up legislative programmes and Green and White Papers, and in preparing other initiatives in respect of policies affecting the powers of regional and local authorities.'

10. Urges that when European Union policies have a bearing on regional or local powers, especially in respect of spatial planning, the right of Member States under the Treaty to cooperate and participate should be extended to regional and, where appropriate, local authorities.

11. Requests that, in the interests of strengthening economic and social cohesion, the Treaty should encourage cross-border and inter-territorial cooperation and proposes the following addition to the second paragraph of Article 130a of the EC Treaty:

'Through its activities it shall promote the cross-border and inter-territorial cooperation of regional and local authorities.'

12. Urges that a provision be incorporated in the Treaty underlining the desirability of improving the coordination of Community policies with a major impact on urban areas, and calls for the principle of local autonomy, as defined in the Council of Europe's Charter on local autonomy, to be enshrined in the Treaty.

13. Urges the Intergovernmental Conference to make progress on Community cooperation in the fields of justice and home affairs for the benefit of European citizens.

14. Urges that the revision of the Treaty be seen as an opportunity to clarify for ordinary citizens the responsibilities and powers exercised within the European Union and trusts that this will lead to the adoption of a basic text defining:

- the fundamental rights of European citizens,

- the objectives of the European Union,
- the bodies of the European Union, and
- the powers of these bodies.

15. Instructs its Chairman to forward this Resolution to the European Parliament, the Council, the Commission and the Reflection Group set up to prepare the Intergovernmental Conference.

Done at Brussels, 21 April 1995.

The Chairman
of the Committee of the Regions
Jacques BLANC