

## II

(Preparatory Acts)

## COMMITTEE OF THE REGIONS

60<sup>th</sup> PLENARY SESSION, HELD ON 6 AND 7 JULY 2005

**Opinion of the Committee of the Regions on Devolution in the European Union and the place of local and regional self-government in the draft Constitutional Treaty**

(2006/C 31/01)

THE COMMITTEE OF THE REGIONS,

**Having regard to** the decision of its Bureau of 15 June 2004, in accordance with Article 265(5) of the Treaty establishing the European Community, to instruct its Commission for Constitutional Affairs and European Governance to draw up this opinion, Devolution in the European Union and the place of local and regional self-government in the draft Constitutional Treaty;

**Having regard to** Articles 7(2) and 263 *et seq* of the Treaty establishing the European Community as amended by the Treaties of Amsterdam and Nice;

**Having regard to** the draft Treaty establishing a Constitution for Europe, in particular the Preamble to the Constitution, the Preamble to Title II, Fundamental Rights and Articles I-3, I-5, I-11(3), I-46(3), II-82, III-280(1), and Protocol No 2 on the application of the principles of subsidiarity and proportionality and Protocol No 29 on Economic, Social and Territorial Cohesion;

**Having regard to** its Opinion on the Recommendation of the Congress of Local and Regional Authorities of Europe on the European Charter of Regional Self-Government (CdR 39/2000 fin <sup>(1)</sup>);

**Having regard to** its contribution to the European Convention of 4 July 2002 (CdR 127/2002 fin);

**Having regard to** the declaration of the Commission for Constitutional Affairs and European Governance of the Committee of the Regions and the Institutional Committee of the Council of Europe's Congress of Local and Regional Authorities of Europe adopted at Prague on 21 September 2004 (CdR 202/2004 fin);

**Having regard to** the White Paper on European Governance drawn up by the European Commission (COM(2001) 428 final);

**Having regard to** the European Parliament Resolution of 14 January 2003 on the role of regional and local authorities in European integration (P5\_TA (2003) 0009 — 2002/2141 (INI));

**Having regard to** the Council of Europe's European Charter of Local Self-Government of 15 October 1985;

**Having regard to** the draft European Charter on Regional Self-Government of the Congress of Local and Regional Authorities of Europe of 5 June 1997;

**Having regard to** Resolution 154 of 22 May 2003 of the Congress of Local and Regional Authorities of Europe on accession to the European Charter of Local Self-Government;

**Having regard to** Resolution 186 of 27 May 2004 of the Congress of Local and Regional Authorities of Europe on the draft Convention on Regional Self-Government;

(<sup>1</sup>) OJ C 144, 16.5.2001, p. 5.

**Having regard to** the Declaration of the Assembly of European Regions of 4 December 1996 on Regionalism in Europe;

**Having regard to** its draft opinion (CdR 222/2004 rev. 3) adopted on 22 April 2005 by its Commission for Constitutional Affairs and European Governance (rapporteur: Mr José María Muñoa Ganuza, Commissioner for External Relations for the President of the Basque Government (ES-ALDE);

1. **WHEREAS** the development of the various arrangements for the vertical distribution of power within the various Member States must meet the requirements of the process of European integration.
2. **WHEREAS** regionalisation must also provide greater democratic transparency and greater efficiency in economic, social and cultural development.
3. **WHEREAS** there is a desire to build a Europe that is 'united in diversity' and to make European public life more democratic and more transparent.
4. **WHEREAS** strengthening regional and local democracy within the enlarged European Union is one of the main political priorities that the CoR has set itself for its third four-year mandate.
5. **WHEREAS** the CoR has expressed, in a number of opinions and resolutions, the need for the Union to respect the principle of regional self-government, as well as the rights linked to local self-government, enshrined in the European Charter of Local Self-Government adopted in 1985 by the Council of Europe.

**adopted the following opinion unanimously at its 60<sup>th</sup> plenary session, held on 6 and 7 July 2005 (meeting of 7 July).**

## 1. Views of the Committee of the Regions

aspects, such as socioeconomic, political, legal and cultural issues.

### PART I

Type and balance of power between States, Regions and Local Authorities

Developments in devolution and the transfer of powers, in particular the financial independence of regional and local authorities

### The Committee of the Regions

1.1 **notes** that that the Regions have different statuses, which vary according to their history, their culture and their constitutional principles and characterise the territorial organisation of each State;

1.6 **considers** that the two strands of the devolution process, regional and local, must be based on two fundamental criteria or two broad guiding principles: dynamism and flexibility;

1.2 **considers** that all of these authorities are first and foremost the guardians of democracy, shape cultural diversity in Europe and are major partners in the continent's socioeconomic development;

1.7 **takes the view** that this dynamism and flexibility are apparent in the constant changes that have been taking place at constitutional, legislative and administrative levels, in almost all EU Member States, and most particularly in those that have recently acceded;

1.3 **notes** that at local level, there are local authorities, metropolitan areas, capital cities, coordinating authorities, etc. and at regional level, there are economic regions, administrative regions, regions with legislative powers, etc., with differing origins and functions. This diversity has become even greater with the incorporation of the ten new States;

1.8 **considers** that the process of devolution that has taken place or which is currently underway in the new Member States can give a significant boost to strengthening local and regional democracy in the European Union;

1.4 **considers** that the balance of power between the central State and regional and local authorities contributes to the enormous complexity of today's society. This complexity is apparent both in the content of these relationships and in their dynamics;

1.9 **notes** that some progress is being made in the process of regional and local devolution, especially in the field of competition, on achieving financial independence and on developing institutional guarantees;

1.5 **considers**, therefore, that such relations should be based on the principles of fairness, cooperation, solidarity and complementarity and must take account of a wide range of

1.10 **acknowledges** that European integration has made a useful contribution to the process of regional and local devolution in its Member States;

1.11 **notes** that regions and local authorities are capable of assuming responsibility and of effectively undertaking and fulfilling these responsibilities;

1.12 **considers** that transferring powers to regional and local authorities must necessarily go hand in hand with transferring the necessary financial means to enable them fully to undertake these responsibilities. A lack of resources makes it impossible to exercise these powers properly and for these to be effective and implemented in a sustainable manner;

1.13 **notes** the clear increase in influence and in economic and social power of the European Union's large cities and city-regions, and **considers** that relations between regional, urban and local authorities should become closer in the new framework for governance that the EU is advocating.

Legal safeguards for regional and local authorities and the status of their representatives

1.14 **notes** that people of Europe increasingly identify with their region and local authority because they feel that these public authorities are close to them and better represent their interests;

1.15 **considers**, therefore, that the independence of regional and local authorities must be guaranteed at the highest legislative level and that changes to the status of their representatives must not be made without their involvement;

1.16 **considers** that where the independence of regional and local authorities is subject to any monitoring measures by the national authority that might hamper representatives in the free exercise of their duties, such monitoring should be enshrined in the constitution and governed by law;

1.17 **emphasises** that the TCE states that CoR members must be representatives of regional and local authorities who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly;

1.18 **considers** that political representatives of existing local and regional structures in the Member States should be directly elected by the citizens or be accountable to an elected assembly.

Governance and support for Europe's citizens

1.19 **is of the view** that regional and local self-government forms an essential factor for developing democracy and good governance in the European Union and for the participation of Europe's citizens in public affairs;

1.20 **considers** that the European Commission should further develop regular dialogue with regional and local authorities, in their capacity as the democratic authorities closest to the citizens, in order to improve its opportunities for interacting with the public. This will make it easier to apply the basic principles of good governance, such as openness, participation, coherence and effectiveness, as set out in the White Paper on Governance;

1.21 **takes the view** that regions and local authorities, as the authorities responsible for implementing Community policy in their respective fields, must be more actively and effectively involved at an early stage in drawing up and then in implementing both Community legislation and European Union policies;

1.22 **notes** that, despite being an essential element, the task performed by local and regional authorities in managing structural policies is not always accompanied by the independence necessary to developing this management and that greater responsibility for local and regional players will result in a greater sense of commitment and a better use of funds;

1.23 **considers**, furthermore, that in order to ensure the effective management of structural policies, regional and local authorities must be involved in drawing up and taking decisions on these policies.

PART II

Direct and indirect effects of the European Constitution's recognition of regional and local self-government

1.24 **considers** that the plan set out in the TCE is a first step towards a clearer definition of the allocation of powers between the Union and the Member States, and that this will allow for greater transparency, which will benefit the process of regional and local devolution;

1.25 **considers** that the TCE also expressly recognises regional and local self-government at the highest legislative level, thereby giving it constitutional status, which represents a significant step forward in the shared aspiration to ensure that the EU meets the legitimate interests and expectations of local and regional authorities;

1.26 **notes** that this recognition of local and regional self-government is generic, and does not define the specific role of local and regional authorities in European policies, and that a definition of this nature is thus reserved, in accordance with the principle of institutional independence, for the Member States;

1.27 **considers** that, in order to ensure that this definition of regional and local self-government is effective, the Member States should lay down the necessary legislation, at constitutional, legislative and administrative levels, to enable them to develop and define, at both national and European level, self-government for regional and local authorities;

1.28 **considers** that, despite the generic nature of this recognition, the TCE enables regional and local authorities to participate more actively at Community level and supports the legal protection of local and regional self-government;

1.29 **considers** that the TCE makes this more active participation possible both downstream and upstream of Community decision-making, given that downstream, the principles of subsidiarity and proportionality recognise and establish local and regional authorities' right to be involved in implementing Community legislation and policy, and that, upstream, it enables representatives of the regions and of local authorities to be directly involved in the decision-making bodies of the European institutions or in consultative bodies, in particular, itself (the Committee of the Regions);

1.30 **considers** that both the direct participation of some regional representatives in meetings of the Council and other related bodies such as Coreper, and the participation of local and regional authorities in all preparatory phases in the Council, all within the corresponding national delegation, will encourage quality, relevance and effectiveness in Community policies. Greater participation will create greater confidence in the final outcome and in the institutions that draw up these policies;

1.31 **considers** that, in view of the tasks conferred on it by the TCE, it should act as a qualified intermediary between the Community bodies and local and regional authorities and is pleased to note that its powers have been extended, which will help to strengthen regional and local self-government;

1.32 **considers**, furthermore, that in addition to recognising its direct legitimate right to bring actions before the Court of Justice as regards legislative acts for the adoption of which the Constitution provides that the CoR be consulted, the TCE presents an opportunity for some Regions to bring actions of this nature via their respective States through their national parliaments, if the latter deem this to be appropriate;

1.33 **considers** that recognising and implementing the principles of subsidiarity and proportionality at local and regional level, as rendered possible by the TCE, enhances guarantees for the exercise of powers, and that this will make it possible to bring Community decision-making closer to the people and consequently for the people to participate more directly in the European process;

1.34 **considers** that the European Charter of Local Self-Government is a crucial tool because it identifies and sets out the basic foundations of local self-government, provides legislative guarantees for local authority powers and the allocation of the necessary resources, provides criteria and benchmarks that are common but, at the same time flexible and versatile, for extending the scope of devolution and democratic participation and makes it possible for local authorities to maintain a presence by association at international level;

1.35 **welcomes**, furthermore, the adoption of an international convention that includes the draft European Charter of Regional Self-Government, drawn up by the Congress of European Local and Regional Authorities, because this recognises the substance of regional self-government in a way that is flexible and which can be adapted to differing situations. This

should make it possible to provide an appropriate definition of the principles that underpin regional self-government, such as democratic legitimacy, institutional independence, adequate financing and judicial safeguards and would encourage the pan-regional presence of the regions at national, European and international level.

## 2. Recommendations of the Committee of the Regions

### The Committee of the Regions

2.1 **recommends** that the Member States boost measures to extend regional and local self-government, making use of the processes of decentralisation and devolution currently underway in those Member States where reforms of this nature are being undertaken;

2.2 **calls on** the new Member States to draw on the experience of the other EU States, at the same time encouraging them to develop their own model of devolution that takes account of their specific national characteristics;

2.3 **proposes** that a dynamic strategy to promote regional and local self-government be set in motion, implementing initiatives to raise the awareness of the European Commission and the Member States about the advantages of uniting the aims of cohesion policy and the need for democratic devolution;

2.4 **urges** Member States to be dynamic in pursuing the process of regional devolution in order to ensure that this gradually encompasses the socioeconomic, administrative, historical, cultural and political aspects;

2.5 **calls on** Member States to develop and extend, on the basis of the Charter on Regional Self-government, a project for regionalisation that is flexible and which can be adapted to the variety of situations that exist in each Member State;

2.6 **calls on** Member States to grant local authorities the right and the real power to organise and manage a significant share of public affairs, and to establish that local authorities have an assembly elected by free, secret, equal, direct and universal suffrage and have an executive body accountable to the assembly;

2.7 **calls on** those Member States that have not yet done so to recognise regional and local self-government in their respective legal systems at the highest legal level possible and to ensure that this concept is protected under the law by legislative, institutional and judicial mechanisms and that the regional authorities have the financial resources necessary to perform the duties entrusted to them;

2.8 **recommends** that political representatives of existing local and regional structures in the Member States should be directly elected by the citizens or be accountable to an elected assembly;

2.9 **urges** Member States to put in place the necessary legal means and to adopt the appropriate measures to ensure that the diversity of languages and cultures that exist within their borders is preserved, respected and encouraged;

2.10 **recommends** that the European institutions support territorial devolution as a key factor for promoting cultural diversity;

2.11 **calls on** Member States to establish the necessary procedures to ensure that, within their territories, the principles of subsidiarity and proportionality are applied in relations between the Union, the Member States and regional and local authorities;

2.12 **calls on** Member States, through the intermediary of their national parliaments and, where they exist, regional parliaments, to defend regional and local self-government when the European Commission refers its legislative proposals to them under the 'early warning' mechanism, with the aim of delivering a reasoned opinion on respecting the principle of subsidiarity;

2.13 **calls on** the European Commission to guarantee the necessary means to facilitate real involvement by the representatives of regional and local authorities in drafting policies from the earliest stage and in implementing Community legislation;

2.14 **recommends** that the European Commission establish the necessary procedures to ensure the participation of the Regions in drawing up, adopting, managing and evaluating the structural measures that affect them;

2.15 **recommends** that the EU and the Member States take account of the variety of existing situations, such as local authorities, coordinating bodies of local authorities, metropolitan areas, capitals etc when defining and implementing local self-government;

2.16 **urges** the Member States that have regional authorities with legislative powers to push forward the process of political devolution by establishing the necessary mechanisms to allow these regional authorities to participate effectively in Community decision-making processes;

2.17 **recommends** cooperation between major cities and the political and administrative structures above them, espe-

cially in the case of city-regions, because their spheres of governance over economic, social and political interests are contiguous and complement one another;

2.18 **calls on** the regions to establish an ongoing dialogue with major cities to work jointly on issues of common interest in order to take fuller advantage of the opportunities for participation offered by the constitutional Treaty;

2.19 **asks** the EU, as regards governance, to adapt the participation of local and regional authorities in keeping with the various roles that these bodies play;

2.20 **proposes** to take account in its operational organisation of the diversity of situations that exist at regional and local level, in order to respond as efficiently as possible to the new responsibilities conferred on it by the constitutional Treaty.

2.21 **calls on** those Member States that have not yet done so to ratify the European Charter on Local Self-government;

2.22 **urges** the European Union to adopt the necessary decisions to ensure that the European Charter on Local Self-government is included in the Community *acquis*;

2.23 **urges** the Council of Europe and the Member States to adopt and ratify the draft Charter of Regional Self-Government as an international convention. This will give the convention its own legal value and protection under international law;

2.24 **recommends** that the CoR set up a continuous system for monitoring the application of the European Charter on Local Self-Government and the process of developing the draft Charter on Regional Self-Government in order to ensure that the Member States are able fully to implement local and regional self-government within their borders;

2.25 **recommends** that the Community institutions establish a relationship of closer cooperation with the Council of Europe, and more specifically with the Congress of Local and Regional Authorities of Europe, in areas linked to the local and regional issue;

2.26 **proposes** to further develop its relationship of cooperation with the Congress of Local and Regional Authorities of Europe and other supranational organisations involved with local and regional self-government.

Brussels, 7 July 2005

The President  
of the Committee of the Regions  
Peter STRAUB