

Brussels 22 November 2004

EN

OPINION

of the Committee of the Regions

of 17 November 2004

on the

Treaty establishing a Constitution for Europe

THE COMMITTEE OF THE REGIONS,

Having regard to the draft report of the European Parliament's Committee on Constitutional Affairs on the Treaty establishing a Constitution for Europe (PE 347.119),

Having regard to the decision of the European Parliament of 14 September 2004 to consult it on this matter, under the fourth paragraph of Article 265 of the Treaty establishing the European Community,

Having regard to the Treaty establishing a Constitution for Europe signed by heads of State or government on 29 October 2004 (CIG 87/2/04 rev 2, CIG 87/04 Add. 1 rev 1 and Add. 2 rev 2),

Having regard to the Presidency Conclusions of the Laeken European Council of 14 and 15 December 2001, and in particular the Laeken Declaration on the Future of the European Union,

Having regard to the Presidency Conclusions of the Brussels European Council of 17 and 18 June 2004,

Having regard to its opinion on the CoR proposals for the Intergovernmental Conference (CdR 169/2003 fin¹), its resolution on the Recommendations of the European Convention (CdR 198/2003 fin²), its resolution on the Outcome of the IGC (CdR 22/2004 fin³), and its declaration on the Constitutional process of the Union (CdR 77/2004),

Having regard to its opinion on The participation of regional government representatives in the work of the Council of the European Union, and of the CoR in informal Council meetings (CdR 431/2000 fin⁴),

Having regard to its draft opinion (CdR 354/2003 rev. 1) adopted on 21 September 2004 by the Commission for Constitutional Affairs and European Governance (rapporteurs: Mr Franz Schausberger, Representative of Land Salzburg in the Committee of the Regions (AT-EPP) and Cllr Lord Tope, Greater London Authority (UK/ELDR).

1) **Whereas** the spirit of the Laeken Declaration and the commitments made by heads of state or government was to give the Union a constitutional basis, guaranteeing greater democracy, legitimacy, transparency and efficiency in order to face up to the democratic challenge of an enlarged Europe,

2) **Whereas** the European Commission's White Paper on European Governance acknowledges that the EU has moved into a system of multi-level governance and that consequently there must be an enhanced role for and greater respect towards the powers of the local and regional spheres of government,

3) **Whereas** the Constitutional Treaty provides a constitutional basis for applying and guaranteeing the subsidiarity principle, while protecting the prerogatives of Member States, regions and local authorities and taking account of the administrative and financial impact of Union legislation on regional and local authorities,

4) **Whereas** the creation of a new *ex ante* policy monitoring mechanism, which for the first time in the history of European integration associates national parliaments - and where appropriate, regional parliaments with legislative powers - with the European legislative process, and the involvement of the Committee of the Regions in the process of ex-post monitoring, are the key innovation of the Protocol on the Application of the Principles of Subsidiarity and Proportionality,

5) **Whereas** it is important to strike a balance between compliance with the principles of subsidiarity and proportionality and the need for efficient action by the Union,

6) **Whereas** referral from the European Parliament recognises the contribution made by the CoR to the constitutional process, in particular in its capacity as representative of local and regional authorities in the European Convention.

adopted the following opinion at its 57th plenary session of 17 and 18 November 2004 (meeting of 17 November:

1. The Committee of the Regions' views

The Committee of the Regions

(a) Constitutional process

1. **congratulates** the Irish Presidency for its achievement in successfully chairing and concluding the Intergovernmental Conference (IGC) within its term of office;
2. **recalls** its contributions to the constitutional process as presented by the delegation of CoR observers to the European Convention and the joint actions and initiatives with European associations of regions and local authorities focussing primarily on the subsidiarity mechanism and the regional and local dimension in the Constitution; **welcomes** that the Intergovernmental Conference adopted the respective proposals presented by the European Convention;
3. **reiterates** its support for the constitutional process, particularly of its Convention phase which was open, participatory and inclusive; **considers** that the Convention recognised but underestimated the role and place of local and regional authorities in the process of European integration as shown in particular through the organisation of a half-day session on this subject; **regrets** that the Convention was not given more time to discuss in depth the provisions for the policies of part III of the Constitution leading to the fact that part III does not always follow the system of competences laid out in part I;

1.4. **welcomes** the support from the European Parliament, in the preparation of the Constitutional Treaty, for a fuller recognition of the institutional and political role of local and regional authorities in the Community decision-making process (cf. report Mr Napolitano on "The role of the regional and local authorities in building Europe" and the report of Mr Lamassoure on "Division of competences between the EU and the Member States");

(b) The Treaty

1.5 **considers** that the Treaty represents a positive step forward for the European Union and puts in place many necessary arrangements for the effective governance of the Union;

1.6. **considers** that both the establishment of an explicit link between the coordination of economic and employment policies [*Article I-14 and I-15*] as well as the introduction of a horizontal social clause, according to which the Union must take into account, when defining and implementing its policies, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health [*Article III-117*], will provide an appropriate legal basis for pursuing the European social model and sustainability as laid down in the preamble of the Charter of Fundamental Rights of the Union and the objectives of the European Union [*Article I-3(3)*];

1.7. **welcomes** the inclusion of the text of the Charter of Fundamental Rights into the Treaty, which will give citizens greater clarity and certainty as to their rights arising from citizenship of the Union, and will provide for a more just and social Europe;

1.8 **regrets** the entrenchment of the national veto in a number of areas, and considers that this will act as an unnecessary impediment to efficient decision-taking;

1.9 however **welcomes** the provision for unanimous action by the Council in concluding international agreements on trade in culture, audiovisual, social, education and health services [*Article III-315*];

1.10 **welcomes** the provisions for applying the normal legislative procedures for part III of the Constitution [*Article IV-445*];

1.11 **considers** that the Treaty provides a clearer definition and distribution of powers within the Union, a simplification of its instruments and a strengthening of the democratic legitimacy, transparency of the decision-making process and efficiency of its institutions, and provides the Union with the necessary flexibility to develop in new directions.

(c) **Subsidiarity and the role of sub-Member State government**

1.12 **welcomes** the new definition of the principle of subsidiarity and the involvement of the Committee of the Regions in the process of *ex-post* monitoring of the application of the principle of subsidiarity; [*Subsid-Article 8*]; **welcomes** also that it will receive the report of the Commission on the application of Article I-11 of the Constitution (subsidiarity and proportionality) alongside the other institutions and the national Parliaments of the Member States [*Subsid-Article 9*]; **regrets** however that the provisions governing the principle of proportionality are less comprehensive than the ones concerning subsidiarity;

1.13 **welcomes** the reference to local and regional self-government [*Article I-5 & Part II-preamble*], the acknowledgement of the importance of grassroots democracy in the Union [*Article I-46.(3)*], and the role of representative associations in the democratic life of the Union [*Article I-47 (2)*]; **regrets** however that the CoR was not referred to in Title VI (“democratic life of the union”) [*Article I-46*] concerning the principle of representative democracy, given that its members represent the democratic principle of proximity at the heart of the Union;

1.14 **considers** that the fuller recognition of the local and regional dimension within the new architecture of the Union will both improve its effectiveness and its linkages with citizens: European integration should entail political decision-making where account is taken of the views of local and regional authorities, as it is these spheres of governance that are responsible for the transposition and implementation of a large proportion of EU legislation and policy, and are closest to the citizen so can therefore contribute substantially to the quality of Union legislation; [*Article I-5*] however **states** that consultation cannot substitute responsibility and accountability of regions and local authorities within their respective spheres of competence which have to be respected; they must be given the chance to prove that they can, according to the internal provisions of the respective Member State, sufficiently achieve the objectives of the intended action;

1.15 **welcomes** the provision that the Union shall respect Member States’ national identities and their fundamental structures, including the right to regional and local self-government,

and their essential State functions [*Article I-5*] especially those designed to guarantee territorial integrity, maintain public order and safeguard national security, as this can be the key for maintaining responsibility and accountability of democratically legitimised local and regional authorities;

1.16 **welcomes** that the Treaty safeguards the right of regional ministers to take part in Council meetings on behalf of their Member State, as it confirms the text of Article 203 of the EC Treaty in Article I-23 (2); **calls on** Member States to provide internally structures and mechanisms to involve regions and local authorities in shaping Member States' European policies and to safeguard regional participation also in the new regime of Council formations, on issues that fall within their competence;

1.17 **welcomes** the requirement of fuller consultation in the pre-legislative phase - for local and regional authorities to participate fully in the European decision-making process for which they have responsibility for transposition and/or implementation, they need to be well informed of current developments and adequate prior consultation is essential; this is a two-way process in which consultation may enable the Commission itself to be better informed about the local and regional dimension and thereby lead to more better lawmaking. [*Subsid-Article 2*];

1.18 **calls** for a real dialogue to be established and extended into key thematic areas early in the new Commission's term of office;

1.19 **urges** improved direct consultation at national level between national parliaments and local and regional authorities responsible for transposition and/or implementation of Union legislation;

1.20 **welcomes** the Treaty requirement for prior account to be taken by the European Commission of the financial and administrative consequences of its legislative proposals, and **considers** that this must include an evaluation of the impact on local and regional authorities, given that they are often the sphere of governance ultimately responsible for delivery and implementation of new EU initiatives; **invites** the European Parliament to give similar consideration to the impact of its legislative amendments [*Subsid-Article 4*];

1.21 **acknowledges** the broad and valuable debate held at the CoR Berlin conference on Subsidiarity on 27 May 2004; **understands** that a fuller consideration of the application and assessment of the principles of subsidiarity and proportionality will be undertaken in a forthcoming CoR opinion.

(d) **Policies**

1.22 **welcomes** the inclusion of territorial cohesion among the objectives of the Union and the inclusion of regions facing various types of difficulty amongst those to receive particular attention; **regrets** however that the Treaty does not make reference to cross-border, transnational and inter-regional cooperation, nor does it provide a clear legal instrument nor a framework for financial support to town-twinning or other such cooperation [*Article III-220-224*] - there is a long tradition of trans-border, transnational and inter-regional cooperation in Europe which is one of the socio-cultural foundations of European integration and gains even greater significance in the context of the new neighbourhood policy. A legal base is therefore indispensable in order to give the Union the means to enable such cooperation;

1.23 **welcomes** that the Treaty provides for Member States – and their constituent spheres of governance – to provide, to commission and to fund services of general economic interest;

1.24 **welcomes** the recognition given to cultural and linguistic diversity, as this will help preserve and promote local and regional heritage and identity, and combat the homogenisation of European culture; [*Articles I-3 and III-280*];

1.25 **takes note** of the inclusion of supporting, coordinating or complementary action at Union level in the areas of sport [*Article III-282*], tourism [*Article III-281*] and civil protection [*Article III-284*], where local and regional authorities have important roles and **calls** on the Commission to generally make use of European framework laws;

1.26 **considers** the conferral of competences to the European Union in the trade in culture, education, health and social services needs close monitoring of compliance with the principles of subsidiarity and proportionality and **recommends** that the Commission generally makes use of European framework laws leaving national, regional and local authorities the choice of form and methods in achieving the desired results.

(e) **Committee of the Regions**

1.27 **regrets** that the IGC did not strengthen the institutional status of the Committee of the Regions in order to firmly establish its areas of mandatory consultation within the constitutional architecture and strengthen its consultative role, for example: in areas of shared competence, for measures to coordinate economic and employment policies, and in areas of supporting, coordinating or complementary action;

1.28 **welcomes** the granting to the Committee of the Regions of the right to institute proceedings before the Court of Justice to defend its prerogatives and for infringement of the subsidiarity principle; [*Article III-365*]; **regrets**, however, that the IGC did not give the regions with legislative powers the option to institute proceedings before the Court of Justice in order to defend their legislative powers;

1.29 **welcomes** confirmation that the term of office will be extended to five years, which in due course may be co-terminus with that of the Parliament and Commission [*Article III-386*].

2. **Recommendations of the Committee of the Regions**

The Committee of the Regions

(a) **Ratification of the Treaty**

1. **calls upon** the European Parliament to give its assent to the Constitutional Treaty and welcomes the initiative of the EP committee on constitutional affairs to consult the CoR on its opinion on the draft constitutional Treaty;

2.2. **shares** the European Parliament's assessment of the undeniable democratic advances made by the Constitutional Treaty;

2.3. **calls upon** Member States' national and regional parliaments, as appropriate, to ratify the Constitutional Treaty;

2.4. **supports** the European Parliament's political efforts to consolidate the constitutional process by stressing the merits of this Constitution and in particular the suggestions of the Committee on Regional Development;

2.5. **requests** that an interinstitutional agreement be concluded in order to draw up a common communication strategy to publicise and explain the Treaty establishing a Constitution for Europe to the general public, especially given the Treaty's imminent ratification;

2.6. **undertakes** to participate in this strategy and to promote understanding and acceptance of the Treaty by the ordinary citizen and to urge the same of its members and their authorities and representative bodies;

2.7. **welcomes** the initiative "1000 discussions for Europe" and confirms its willingness to take actively part in the campaign of sensibilisation of the European citizens through its network of local and regional authorities and **calls on** the members of the European Parliament and local and regional elected representatives to join forces in promoting the future European Constitution and to contribute jointly to the political and democratic debate which will accompany the ratification process;

(b) **Implementation of the Treaty**

2.8. **expects** real added value in the Union's democratic life and work to result from the enactment of the Constitutional Treaty;

2.9. **undertakes** to evaluate the new rights and obligations falling upon the Committee itself and to make the necessary preparations and internal re-organisation to respond to its enhanced responsibilities effectively and efficiently;

2.10 **draws the attention** of the European Parliament to several effects of the Constitutional Treaty, and calls on the Parliament to support the CoR in particular vis-à-vis:

- the qualitative involvement of the CoR in the political life of the Union and the Community decision-making process;
- the effective and successful application of the provisions of the Protocol on the principles of subsidiarity and proportionality in terms of both the *ex-ante* political consultation process and *ex-post* legal monitoring;
- respect for the competences of local and regional authorities in accordance with the new definition of the principle of subsidiarity and the new distribution of competences within the European Union;

- recognition of territorial cohesion as a new objective of the Union and respect for the commitments given in the new protocol on economic, social and territorial cohesion;
- promotion of cross-border and inter-regional cooperation as an integrating factor in the European Union despite the lack of a legal basis, particularly with regard to the Union's ambitions vis-à-vis the neighbourhood policy;
- respect for cultural and linguistic diversity enshrined as a new Community objective.

2.11 **encourages** the European Parliament to take further advantage of the possibility of consulting the CoR as enshrined in the Constitutional Treaty [*Article III-388*] in order to heighten understanding of the local and regional dimension;

2.12 **requests** that in cases where the Committee must be consulted under the Constitutional Treaty, the institution that has consulted the Committee should give its reasons in the event that it does not implement the Committee's recommendations;

2.13 **requests** to be involved in the defence of the principle of subsidiarity alongside national parliaments in the six-week early warning period and to have the right to produce a reasoned opinion if the proposal does not comply with the principle of subsidiarity and for this to be taken into account [*Subsid-Article 6*];

2.14 **calls on** national parliaments to establish a regular and effective dialogue with representatives of the local and regional level, who are familiar with the diversity of the issues at hand and responsible for the consequences as far as monitoring application of the subsidiarity principle is concerned;

2.15 **calls on** national governments and parliaments to carry through the spirit and philosophy of the EU "systematic dialogue" into their domestic governance arrangements, where they do not already exist, by involving regional and local government representatives in the scrutiny of legislative proposals;

2.16 **calls on** the European Commission to report to the Committee of the Regions on the application of Article I-10 (Citizenship), particularly as this governs the right to stand and vote in municipal elections [*Article III-129*];

2.17 considering that the proposal to strengthen the current consultative role of the CoR by means of a horizontal clause stipulating that the CoR shall be consulted in areas of shared competence, for measures to coordinate economic and employment policies, and in areas of supporting, coordinating or complementary action was not accepted, the CoR **calls on** the European Commission to consult in all initiatives in areas of manifest local or regional dimension or competence where no mandatory consultation is provided for in the Treaty. These areas include inter alia legislation on the definition of the principles and conditions, in particular economic and financial, which enable services of general economic interest to fulfil their missions [*Article III-122*], the liberalisation of services [*Article III-147*]; Harmonisation

of legislation on indirect taxation [*Article III-171*]); Approximation of legislation in the area of the internal market [*Articles III-172, III-173*]; State aids [*Articles III-167, III-168, III-169*]; Agriculture, rural development and fisheries policies [*Article III-231*]; Research and technological development [*Articles III-251, III-252 and III-253*], tourism [*Article III-281*] and civil protection [*Article III-284*];

2.18 **calls** on the European Commission to consult the Committee of the Regions on any future changes to its composition when preparing a proposal for a Council decision [*Article I-32 and Article III-386*].

(c) Review of the Treaty and its provisions

2.19 **believes** that it is necessary for the further development of the EU to maintain a process of review to decide which tasks can be performed jointly by a considerably enlarged Union;

2.20 **confirms** its will to participate actively and fully in future revisions of the Constitution and proposes that Member States include representatives of regions and local authorities in their delegations to intergovernmental conferences [*CdR 198/2003; 3.7.*] dealing with treaty-revisions having impact on the sub-Member State levels and to future as well as in delegations for any future Convention;

(d) Concluding remark

2.21 **instructs** its President to forward this Opinion to the Council of the European Union, the European Parliament, and the European Commission.

Brussels, 17 November 2004.

The President
of the
Committee of the Regions

Secretary-General
of the
Committee of the Regions

Peter Straub

Gerhard Stahl

¹ OJ C 23 of 27.1.2004, p. 1

² OJ C 256 of 24.10.2003, p. 62

³ OJ C 109 of 30.4.2004, p. 52

⁴ OJ C 107 of 3.5.2002, p. 5

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CdR 354/2003 fin EN/o

CdR 354/2003 fin EN/o