

Position of the Co-ordination Committee of Regions

with Legislative Power

"The regions with legislative power in the framework of the next institutional reform of the EU"

The Regions with legislative power (RLP) in the European Union: background

Within the European Union, 8 out of 15 member States have regions with legislative power: Austria, Belgium, Germany, Italy, Spain, Portugal, United Kingdom and Finland. The 72 regions with legislative power amount to some 56% of the total EU population.

Regions with legislative power have their own Governments and Parliaments. They act as the highest political authorities for legislation and transposition of EU law in certain fields, according to the constitutions/internal provisions of the respective Member States. They often have similar responsibilities to the member state within their areas of competence in the three domains of State authority: the legislative, the executive and the judicial

The European Union policies are often directed to or connected with competences exercised by regions with legislative power. In this sense, regions with legislative power have obligations towards the European Union: they are responsible for converting EU directives into national legislation, and for implementing EU policy in all areas falling within their legislative remit, in accordance with article 249 of the EC Treaty. The conversion of EU legislation for that matter is not an easy task, as EU legislation (Directives) is often either too detailed -which leaves little room for discretion- or insufficiently adapted to the regional characteristics and needs.

A second aspect is the participation in the elaboration of the community decisions. Considering that the transfer of competences to European authorities does not imply any changes in the internal distribution of competences, an optimised internal co-ordination of the national EU-policy, by fully involving the regions of legislative power, is absolutely necessary. Regions with legislative power influence to a greater or lesser extent the negotiation stance of the respective member State in the Council. Some of them are even represented on the Council delegations of their respective member State, and, in accordance with article 203 of the EC Treaty, their representatives may even, corresponding to their mandate, conduct the negotiations, chair meetings and vote on behalf of the member state in the Council.

Finally, they exert an in part considerable influence on the ratification of the amendments to the Treaty.

A last but not least dimension is the execution of European decisions, rules and policies. For some decades now the regions have been an essential level of governance in the European Union. The regions were called on to implement the cohesion and structural policy, and the Union promoted their involvement in the concrete implementation of various programmes. This created situations in which there are direct relations, without any state intermediation, between regions and the European Union. Regions are also increasingly facing up to the impact of a growing number of EU regulations, often without being involved in the decision-making process. As regions are closer to the citizens and are more directly connected with regional and local interests and needs, they can constitute an added value which deserves full attention. The regions with legislative power can make a significant contribution to the task of redressing the perceived democratic deficit.

Nevertheless, the EU treaties do not as yet give any consideration to the regions with legislative power. The fully fledged role of regions with legislative power in some Member States' internal structure is not translated in the European Union. These regions are not fully involved in all stages -the negotiating, the approval and the execution- of the European decision-making process within their sphere of competence.

This conclusion induces us even more to reflect on this situation in the light of enlargement: some regions with legislative power are in no way inferior in terms of demographic, economic and administrative importance to some member States or candidate member States which have or will have a formal vote in the decision-making process.

From a democratic and administrative point of view, the Union can no longer ignore this reality in its daily functioning. Regions should be involved, by participating in respective forums, in all stages of decision-making, in accordance to their competences. Their knowledge and expertise may contribute to a better policy in terms of quality, without losing track of the feasibility of its implementation.

The institutions of the European Union have started being aware that this reality has necessarily to be recognized. The European Parliament is warning for a long time about the necessity of recognizing in the constitutive treaties the specificity of these regions. The European Commission, on its side, has recognized in the White Paper on Governance that an enhanced inclusion of the sub-national authorities can contribute to the quality of European decision-making. This could help to bridge the gap between the EU institutions and the citizen.

Basic principles for the debate

The final aim is a European Union in which all European policy levels jointly flesh out European policy and foster European integration. The key principles of transparency, efficiency, effectiveness, flexibility, proximity, accountability and democratic legitimacy serve as the leitmotiv of this.

The key question in this case is the following: how can regions with legislative power on a European

level be fleshed out constitutionally and institutionally in the various fields of State authority: the legislative, the executive and the judicial?

This is, of course, connected with the desired relations between the European Union, the member States, and the sub-Member State authorities, and with a better delimitation of power. Any reflection on this matter should be based on the principles of subsidiarity, proportionality and proximity, as well as on respect for national and regional identities. The principles of subsidiarity and proportionality should be mentioned in the EU's future constitutional treaty as a binding obligation, and not only as political guidelines.

In order to enhance the implementation of subsidiarity, the regions recommend the establishment of a political mechanism that would safeguard the principle of subsidiarity at an early stage of the legislative process. This mechanism should compel the Commission to reconsider any redraft legislation that breaches the subsidiarity principle and it should allow to pay attention to the specific position of the regions with legislative power.

Up till now the principle of subsidiarity has not had the desired effect, namely that decisions are taken at the most appropriate level. This principle can only be usefully implemented if the Treaties explicitly mention all politically elected actors that may contribute to a reinforcement of the EU's democratic legitimacy, i.e. the Member States, the regions with legislative power, the administrative regions and the local authorities. In this respect, it is necessary to demand a new formulation of article 5 (EC-Treaty) to include an explicit reference to sub-Member State entities.

The regions with legislative power pronounce themselves again in favour of a more precise delimitation of powers, on the basis of the principles of the EU's restricted prerogatives, subsidiarity, proportionality and the obligation to respect the national identity of the Member States.

These principles must constitute the guiding principles to establish and monitor a more precise delimitation of powers within the Union in order to ensure the legal security and stability which are essential to the good functioning of a system based on the complementarity and the collaboration of the power levels concerned. Indeed, the regional dimension has to be taken into account in the debate on the delimitation of powers. However, the delimitation of powers should be done without inappropriately harming the *acquis communautaire* or disturbing the dynamism and balance within the EU.

A specific status for the regions with legislative power

The regions with legislative power ask for a recognition of the regional dimension in the Principles of the new Treaty. In this context, they would like to remind, the proposal of introducing a "partner regions of the Union's status", made in the Lamassoure draft report concerning the delimitation of competences. They regret that this proposal was not carried by the majority of the EP.

The regions with legislative power urge the Convention to revisit this idea, and stress the need to

translate a recognition of the regional dimension into all relevant parts of the Treaties by means of treaty amendments. In this sense, they welcome the announcement of the European Parliament to draft a specific report on the role of regions in the European Union.

These regions believe that giving them certain rights linked to their involvement in Community policies - the right to be consulted by the Commission, representation in the Committee of the Regions, possibility of bringing actions directly in the Court of Justice on any competence disputes with the Union - could have made a significant contribution towards reducing the democratic deficit in the EU.

Respect for constitutional situation in each member state should be a major concern. Nevertheless, the Union must allow these policy actors, the power of which has been granted to them by the member states, to be fully involved in its European activities. In this sense, Member states should be called on in the Principles of the new Treaty to recognise the regional dimension and give it a place in the European Union. However, a declaration of the Member State in which it notifies which policy actors can act upon their authority and have final political responsibility seems useful.

In this context, the regions with legislative power are claiming a greater involvement in the decision-making process and in the EU's institutional architecture. This implies the acknowledgement of legitimed rights and demands, which are specific to the regions with legislative power, in the legislative, executive, and judicial fields. The most important are the following:

Legislative area

- 1. Generalized application of article 203 of the EC Treaty, which should ensure that the regions with legislative power are allowed to participate in the Council of Ministers.**

An upgrading of the role of regions with legislative power in the EU goes hand in hand with representation in the Council. The European Union has to ensure the respect of the legal order of each Member State and therefore, that decisions in the Council of Ministers are taken by the entities that are responsible of the competences in the matter concerned. We consider that this constitutes no interference in the internal organisation of the State. It would be a way of guaranteeing democratic legitimacy (bottom up).

The reduction of Council configurations approved in Seville, and further proposals to reform the Council, make the regions with legislative powers' call for increased involvement in the development of EU policy even more imperative. Once more this implies that certain specialist councils can be working on matters that belong to the sphere of competence of regions with legislative power.

If the regions with legislative power want to be able to take full political responsibility for their competences, not even current Article 203 will suffice. Up to now, regional representation in the Council on the basis of Article 203 is only possible provided an internal agreement has been made within the member state. In the event of debating matters that belongs to the sphere of the competence of

the regions with legislative power, they should be allowed to be involved and fully participate in meetings of the Council of Ministers. In case of matters for which regions with legislative power within the respective member State have exclusive or shared powers, or matters which have an exclusive or partial effect on those regions, the regional representatives should -by internal provisions of the member states- have to be fully involved and even be appointed as (co)- responsible for the national delegation.

2.Rights of fuller participation in all processes having effects on regions with legislative power

In addition to member States, the regions with legislative power must be formally involved in all processes which the Commission starts in the performance of its supervisory power having effects on them.

3.Legislation

To respect the democratically legitimized legislative competence of regions, more framework regulations are required which are limited to basic aspects and the further interpretation of which is left to the Member States and the sub-Member State authorities. This will ensure that national, regional and local circumstances are best taken into account.

Furthermore, it is recommended to indicate in the EU decision-making process of the possible impact of new legislation for the sub-Member State authorities at the administrative, financial and territorial levels, both by means of consultation at an early stage and a preceding analysis.

4.Guaranteed representation to the Committee of the Regions (CoR)

There should be a guarantee that all regions with legislative power are represented in the Committee of the Regions by one member and one alternate member, nominated on basis on their proposals.

Consideration of the role of the regions with legislative power should also involve an evaluation of the effectiveness of the Committee of the Regions. The regions with legislative power are not satisfied with the current results of the CoR as the body representing the interests of the local and regional authorities in the European Union. They claim for a better representation of the regions with legislative power within the CoR. Moreover, they ask for a strengthening of the Committee of the Regions through its recognition as a fully-fledged EU institution. The regions with legislative power believe that the CoR can play an important role as a forum for reflection and discussion and, in the long run, it could have a mobilising effect in favour of a stronger regional involvement in Europe.

5.Constituencies organisation for EP elections, according to the RLP's territorial distribution.

The regions with legislative power think that the division of constituencies into the European Parliament should take into account the territorial distribution in regions with legislative power. They welcome the Council Decision amending the Act concerning the election of the representatives of the

European Parliament by direct universal suffrage, which states that "in accordance with its specific national situation, each Member State may establish constituencies for elections to the European Parliament or subdivide its electoral area in a different manner (...)".

6. Greater participation of regional Parliaments

Participation by the Parliaments forms the basis for a legitimised democratic system, since it is the Parliaments' duty to control their governments. As politics become more europeanised, Parliaments should have a more decisive function in the European integration. Therefore regional Parliaments must be duly involved for an in-depth analysis in a real debate culture, with, amongst others, the European Parliament. Regional Parliaments must be given a clearer role and status in the European construction, inter alia through the acknowledgement of a right to participate in the co-operation existing between the national parliaments and the European Parliament in the framework of the COSAC.

Moreover, permanent contacts between regional Parliaments, the European Parliament and the CoR should be established.

A parliamentarisation of the European Union's decision-making process should imply more and better information to parliaments, for instance by means of a greater transparency of the Council's activities.

Executive area

7. Special right to be consulted by the European Commission

The Governments and Parliaments of regions with legislative power are compelled to convert and apply EU legislation. In a growing number of policy sectors the regional Governments and Parliaments can merely issue implementing measures following Community decisions (for instance conversion of Directives) or they are put into a straitjacket, due to the various European open co-ordination processes, which leaves them hardly any room for discretion.

Improved and enhanced involvement should allow regions to fully perform their duty. Whenever in some member States, not the central State but rather the regions are competent for a specific technical matter, a special consultation process should be developed together with these regions when the Commission works out proposals.

Respecting the subsidiarity principle it is very important that regions likely to be affected by a given

decision are at least fully consulted. In this context, it is also a prerequisite that regions with legislative power are no longer officially "ignored" by the European Commission. As to the implementing powers of the Commission, often requiring the adoption of derived regulation. They should also be fully integrated into the bodies of the "comitology", in accordance with their responsibilities and political powers.

Judicial area

8.Right of appealing to the ECJ when RLP's competences or legitimate interests are affected

If regions with legislative power participate in the development and implementation of European legislation, they should have similar rights to the Member States for those matters they are responsible for and be able to defend their prerogatives. One way of achieving this would be for the regions to be able to directly appeal to the Court, and for it to be possible for them to be directly brought before the Court, if the Member State provides so. However it should be stressed that internal conflicts within the Member States regarding competences are by no means subject to ECJ rulings.