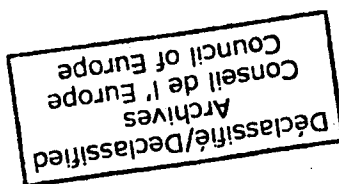




Strasbourg, 12 May 1993  
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CDL (93) 1  
Addendum

## EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

### **Decentralisation of a State within the framework of the European integration process**



COE244759

#### **Draft complementary opinion to the opinion CDL (93)1**

The Commission believes it would be useful to develop certain aspects of the participation of regions in international relations and in the Community decision making process in Europe.

#### **1. The Council of Europe**

As for classical international relations, the activities carried out within the framework of the Council of Europe should be pointed out. A European outline Convention on transfrontier co-operation between territorial communities or authorities was adopted in 1980. This text aims at facilitating the "the co-operation between territorial communities or authorities at frontiers in such fields as regional, urban and rural development, environmental protection, the improvement of public facilities and services and mutual assistance in emergencies".<sup>1</sup>

The text of the convention provides as follows : "each Contracting Party undertakes to facilitate and foster transfrontier co-operation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other Contracting Parties. It shall endeavour to promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each Party";<sup>2</sup> "...transfrontier co-operation shall mean any

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<sup>1</sup> See Preamble of the outline Convention.

<sup>2</sup> Article 1 of the outline Convention.

concerted action designed to reinforce and foster neighbourly relations between territorial communities or authorities within the jurisdiction of two or more Contracting Parties and the conclusion of any agreement and arrangement necessary for this purpose".<sup>3</sup>

Attention should be drawn to the fact that transfrontier co-operation does not concern regions which are not neighbouring. Moreover, the Convention does not grant any new competence to territorial communities or authorities; this issue is left to each Contracting Party's domestic law.<sup>4</sup>

The Council provided for, in the Appendix to the Convention, "model and outline agreements, statutes and contracts on transfrontier co-operation between territorial communities or authorities".<sup>5</sup> These texts, even if bearing no conventional value, do facilitate the international activity of the above-mentioned communities.

Furthermore, the Council of Europe is working on a draft Additional Protocol to the above-mentioned outline Convention. This Additional Protocol aims at guaranteeing the right of territorial communities or authorities to enter into transfrontier co-operation agreements with communities or authorities of other Countries.

The Council of Europe is also elaborating the text of a convention on interterritorial co-operation, to be understood as being any concerted action aimed at establishing relations among communities or authorities belonging to two or several Parties, other than transfrontier co-operation relations.

Still within the framework of the Council of Europe, the existence of the Standing Conference of Local and Regional Authorities of Europe (CLRAE), which has advisory status, should also be mentioned. According to its Charter, the primary aim of this body shall be "to inform the Committee of Ministers and the Consultative Assembly of its views on measures which are likely to have repercussions on local and regional authorities or to involve the responsibility of local and regional authorities towards the population and towards the governments".<sup>6</sup> This informative task is also addressed to regional and local powers (authorities) : this body fosters their co-operation in the fields within the Council of Europe's competence with a view to the implementation of the Organisation's objectives.<sup>7</sup> As for the guarantee of representation of a particular region, the Charter provides as follows : "the membership of each member State's delegation should be such as to insure a balanced geographical distribution of delegates from the member State's territory".<sup>8</sup> In other respects, the designation procedure of delegates is up

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<sup>3</sup> Article 2, paragraph 1.

<sup>4</sup> Article 2, paragraph 1 and 3, paragraph 4.

<sup>5</sup> Cf. Article 3, paragraph 1 of the outline Convention.

<sup>6</sup> Article 1.a, alinea 3 of the Charter

<sup>7</sup> Article 1.a, alinea 4 of the Charter.

<sup>8</sup> Article 2.b.i of the Charter.

to each member State. A State may thus provide for special rules guaranteeing, for example, a minimal representation of each region or the participation of regional authorities in the designation of the delegates.

Among the acts elaborated within the framework of the Council of Europe and concerning regions, the European Charter for Regional or Minorities Languages, which was signed by several States and whose scope is that of protecting these languages must be pointed out. This instrument, nevertheless, does not stipulate that regions shall participate in the decision-making process, even if this seems to be more than advisable for languages bearing a typical regional character. It is recalled that the definition of "regional or minority" languages is those "languages that are :

- i. traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and
- ii. different from the official language(s) of that State".<sup>9</sup>

A specific provision of the Charter deals with transfrontier exchanges. It especially provides for the conclusion, whether necessary, of agreements among States in which the same language is used, in such a way to foster contacts between the users of the same language in the States concerned, and, more broadly, the promotion of "co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form".<sup>10</sup>

## 2. The European Community

We now pass to the rules elaborated within the Community framework. One of the main innovations of the treaty on the European Union signed at Maastricht on December 1991 is, in the field of the role of regional public bodies, the setting up of a Committee of the Regions.<sup>11</sup> It is a "Committee with advisory status composed of representatives of regional and local bodies".<sup>12</sup> The role of these bodies is moreover limited by a provision stating that: "The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community".<sup>13</sup> They shall be appointed, on proposals from the respective Member States, by the Council acting unanimously.<sup>14</sup>

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<sup>9</sup> Article 1.a of the Charter.

<sup>10</sup> Article 14 of the Charter.

<sup>11</sup> Article 198A-198C of the Treaty of Rome as amended by the Treaty of European Union (hereinafter : EC).

<sup>12</sup> Article 198A, alinea 1 EC.

<sup>13</sup> Article 198A alinea 4 EC.

<sup>14</sup> Article 198A alinea 3 EC.

The cases in which the advice of the Committee of the Regions is obligatory are limited. It is thus provided for in fields such as culture,<sup>15</sup> public health,<sup>16</sup> trans-European networks,<sup>17</sup> structural funds<sup>18</sup> and the European Regional Development Fund.<sup>19</sup> The Committee of the Regions may nevertheless "take the initiative of issuing an opinion in the cases in which it considers such action appropriate",<sup>20</sup> so that it may in practice intervene in all fields of competence of the Community.

The Economic and Social Committee and the Committee of the Regions shall have a common organisational structure.<sup>21</sup> According to Jean Raux, "the Committee of the Regions... prefigures a Europe of the regions, consistent with the subsidiarity spirit... as well as a Europe of the towns within the spirit of the trans-European networks".<sup>22</sup>

In this manner it will be possible to implement the two aspects of the principle of subsidiarity as defined in the Maastricht treaty : the general principle according to which "decisions are taken as closely as possible to the citizen",<sup>23</sup> and especially the specific provision dealing with the relations between the Community and the Member States.<sup>24</sup> That is to say, the Committee of the Regions may restrain an excessive development of the Community's competences, and, to a minor extent, contribute to the development of regional competences.

Only the implementation of the treaty of Maastricht shall however allow the role of this body, to be exactly defined.

Obviously it could be envisaged a sort of representation of regions in the European bodies by means of a cutting up of districts in which members of the European Parliament are elected. Up till now, the issue still falls within national jurisdiction. Nevertheless, some projects should soon be drawn up with a view to the adoption of a uniform procedure.<sup>25</sup> The

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<sup>15</sup> Article 128 paragraph 5 EC.

<sup>16</sup> Article 129, paragraph 4 EC.

<sup>17</sup> Article 129D alinea 1 EC.

<sup>18</sup> Article 130D alinea 1 EC.

<sup>19</sup> Article 130E alinea 1 EC.

<sup>20</sup> Article 198C alinea 3 EC. See also alinea 2.

<sup>21</sup> Protocol on the Economic and Social Committee and Committee of the Regions.

<sup>22</sup> *Regards sur l'actualité, special issue 180/1992, Maastricht Special page 39.*

<sup>23</sup> Article A, alinea 1 of the Treaty on European Union.

<sup>24</sup> Article 3B EC. On the principle of subsidiarity according to the Treaty of Maastricht, see opinion CDL (93) 1.

<sup>25</sup> Article 138 paragraph 3 of the Treaty of Rome (EEC).

issue of the delimitation of districts, and of the competent body to do so, should be dealt within this framework.

### 3. Domestic law as a guarantee for the international role of regions

The participation of regional bodies in international relations or in the community process is essentially a matter of domestic law.

In Italy for example, the law of March 9th 1989, n.86, which provides for the competences of Regions and autonomous Provinces in the field of implementation of community directives, must be pointed out.<sup>26</sup>

Particular provisions may also concern entities which benefit from a specific autonomous status, such as the Italian regions bearing a special Statute.<sup>27</sup> Attention may be drawn to the special Statute of the Aosta Valley providing for certain rules on French language and its use in schools.<sup>28</sup> It does not, on the other hand, attribute to this region any specific competence as for the field of international relations. The special Statute of the Friuli Venezia Giulia Region also mentions neither international relations nor linguistic issues. In the above-mentioned examples, domestic law seems thus to put an obstacle to a wide development of international relations of regions.

According both to community law and classical international law, the central State comes first, and federate States and regions play and will continue to play only a secondary role. Nevertheless, the supranational or international legal system does not prevent the central State from being the spokesman of inferior public communities, neither does in principle domestic law, and in particular Italian Law. However, seldom does domestic law impose this : the taking into account of regional interests would undoubtedly be facilitated by domestic law rules providing for the central State to take such interests into consideration.

To sum up, it may be thus asserted that the Council of Europe and the European Community are more and more favourable to the participation of public communities inferior to the State in international relations and community decision-making process. Nevertheless, the intensity of this participation essentially depends on domestic law. An evolution of the latter towards a greater decentralization of international issues or a better taking into account of regional interests would facilitate the implementation of international treaties, even of communities rules on the matter.

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<sup>26</sup> See in particular Article 9 of Law N°. 86/89. In the text, see N°. 1/1990 of the *Rivista di diritto europeo*, and in particular the article by Paolo Mengozzi, *Un nuovo ruolo per le regioni nel processo d'integrazione europea in vista del 1993*, RDE 1/1990 pp. 33-38.

<sup>27</sup> Article 116 of the Constitution.

<sup>28</sup> Articles 38-40 of the Statute.