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Reform Spotlight

Regions and the Future of Europe

EU – Member State – Region: Finding the Right Architecture

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Regions have been trying to modify Europe's political architecture since the mid-1980s. They first managed in the 1991 Maastricht Treaty to lever open a modest place in the European construction by breaking open the traditional duopoly of member states and European institutions. From then on the EU has become more open to regional input. The Convention has given the regional dimension additional and perhaps unexpected impetus. Regional issues were a low priority on the Convention agenda. Few regional representatives could take part in its discussions. But the draft Constitution has, potentially at least, carved out a bigger role for regions to play in the future Europe. As we move towards the Intergovernmental Conference (IGC) it is worth pausing to reflect on that potential role and on how – and whether – regions will be able to realise it in practice.

Key Points

- Regions have pressed for over 20 years for a fuller role in EU policy-making because of their roles in implementing EU policy and as linkage points between EU and citizens.
- The Convention's draft constitution has shown sensitivity to regional concerns on the demarcation of competences and by strengthening the regional dimension of subsidiarity especially through the Committee of the Regions (CoR) but also by opening up the new 'early warning system' for national parliaments to regional input.
- But there are important differences on regional priorities between the CoR, as a corporate body representing all regional and local governments, and the influential new grouping of 'Regions with Legislative Power' (RegLeg), which sought – and failed to get – for itself a special higher status in EU decision-making.
- These differences could weaken the regional cause at the IGC. Legislative regions are sceptical about the capacity of the CoR to pursue their interests adequately. But the Convention's decision to strengthen the CoR, and not to give special status to legislative regions is unlikely to be overturned.
- Two courses of action should follow: First, the legislative regions need to work quickly to put procedures in place with their central governments to make use of the early warning system.
- Second, the CoR needs to change its working style and decision-making procedures in order to provide an effective platform for all its members: It needs more strategic policy focus, organisational recognition of groupings like RegLeg, and imaginative new procedures to make use of its enhanced powers on subsidiarity work.

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Why Regions Matter

Regions matter in the EU for good functional and democratic reasons. These have nothing to do with fanciful visions of a 'Europe of the regions' somehow sidelining member states as the building blocks of European union. They have everything to do with the roles that regions play in European decision-making as essential component parts of member states:

- Regional and, indeed, local governments across all member states are important and often the main players in implementing EU law.
- Some regions make laws in the member states in fields as important as education, health, environment, economic development and policing. In some of those fields competence has been transferred in part to the EU. In all of them regional legislators have to be aware of the constraints caused by EU legislation.

Because of their *functions* as implementers and law-makers regions have strong claims for fuller involvement in EU decision-making: to apply their 'on the ground' experience in implementation to raise the quality of EU laws; and to compensate for any limitation of their own legislative autonomy as the scope of EU law widens.

The latter point links directly to the *democratic* issue. Regional (and local) governments are elected by citizens to carry out public tasks. They have a direct relationship with voters, and the services they provide have a real impact on citizens' daily lives. If their work is modified or constrained because of the EU, the basis of their relationship with their citizens is changed. Their work can become disconnected from citizens' concerns and less transparent to ordinary people. This is one of the reasons why the Laeken Declaration, which launched the Convention process in December 2001, stressed the need for the EU to 'be brought closer to its citizens' and repeatedly drew attention to Europe's regional dimension. That rare sensitivity to the place of regions in the EU architecture gave a clear lead to the Convention.

What the Convention did

And the Convention did much to follow that lead. Though it did not give much space to discussing regional issues, there was widespread support for anchoring regions more explicitly in the new Constitution. This support had something to do with the activities of the six observers sent to the Convention by the Committee of the Regions (CoR). It probably had rather more to do with the impact of a new regional pressure group – the 'Regions with Legislative Power', or 'RegLeg' – on national and European debates. RegLeg brings together the EU's strongest regions, those responsible for policy and laws across wide fields of domestic politics in Germany, Belgium, Austria, Spain, Italy and the UK. It also brings together regions from most of the bigger member states. Where they were able to persuade national representatives at the Convention to put forward their views, the RegLeg regions could also wield the

political clout of the big states. These multiple pressures in the member states and at the Convention helped to embed the following in the draft Constitution:

- The clarification of the different types of Union competence (Art. I-11) and of the principle of conferral (i.e. that the Union can only act where there is specific authorisation in the Constitution - Art. I-9). These are of course issues which define the relationship between Union and member state. However their place on the Convention agenda owed much to the pressure of the German Länder on the German national government at Nice. Limiting the reach of EU competence vis-à-vis the member state implicitly limits the reach of the EU vis-à-vis the competence of regions – especially those with legislative powers – within the member states. Competences and conferral are as much a regional as a national issue.
- The recognition of regional and local governments as some of the 'fundamental structures' expressing national identity, which the Union must respect (Art. I-5).
- Recognition of the value of cultural and linguistic diversity (which build the main-stays of regional identities in a number of member states) (Art. I-3).
- Recognition of the principle of territorial cohesion as an object of the solidarity expressed by membership of the Union (Art. I-3).
- And, from the regional perspective, a much more satisfactory understanding and policing of the principles of subsidiarity and proportionality (Art. I-9 and the new Protocol on the Application of the Principles of Subsidiarity and Proportionality).

Subsidiarity

The new provisions on subsidiarity and proportionality are the key successes for regions at the Convention. They promise to give regions more teeth in monitoring the activities of the Commission and – by implication – ensuring the Commission takes on board their concerns more systematically than before. The main points are:

- The principle of subsidiarity refers explicitly to the regional and local levels for the first time in the main constitutional text.
- The Commission must 'take into account the regional and local dimension' under its obligation to 'consult widely' before proposing legislation. What this will mean in practice emerges from developments following the Commission's Governance White Paper: the CoR will have the job of organising regular forums through which the Commission will consult associations of regional or local governments.
- The CoR also wins the right for the first time to bring actions before the European Court of Justice (ECJ) if it feels the principle of subsidiarity has been infringed in any of the fields on which it has to be consulted; the CoR can also go to the ECJ if it feels it has not been duly consulted by Commission, Council or Parliament.

- Some regions can also claim a role in policing the subsidiarity principle through the new 'early warning system' on subsidiarity devised for national parliaments.

Regions and the early warning system

This additional access route of the early warning system (EWS) is especially interesting. The EWS gives national parliaments early sight of Commission legislative proposals and allows them to give reasoned opinions if they feel the proposal does not comply with the principle of subsidiarity. If a third of national parliaments raise concerns, the Commission has to think again, and if the parliaments are not satisfied with the Commission's re-thinking, they can ultimately take the issue to the ECJ.

In two ways this process is open to regions. First, the second chambers of some national parliaments are chambers of regions (Austria, Germany) and the EWS applies equally to first and second chambers. Second, following a surprise initiative introduced to the Convention by the UK government, national parliaments may also decide to include regional parliaments in the early warning process. The UK government is certainly committed to doing this, and equivalent arrangements can be expected in Belgium and, perhaps, Italy. In other words, most of the RegLeg regions in one way or other will have access to the EWS.

The EWS route is interesting because it opens up a choice for the RegLeg regions: will they pursue subsidiarity concerns through the CoR or through the member state route of national parliaments? We return to this strategic choice below.

What the Convention did not do

The Convention did not recognise all the demands made by regional actors. Though the CoR was given more powers, it was not, as it had demanded, listed among the EU's full institutions (and hence upgraded from its current status, like the Economic and Social Committee, as an advisory body). Nor was the policy scope of the CoR's advisory role significantly widened in Part III of the Constitution. There was also little support for entrenching mandatory regional access to the Council of Ministers in the Constitution; this will remain a possibility regulated by domestic law and not generalised across the Union. Consequently, even more ambitious proposals like those of the Belgian regions (to split votes in the Council between national and regional governments) or of the Scottish Parliament (to establish a 'Regional Affairs Council' consisting solely of regional ministers) have no chance of further consideration.

These Belgian and Scottish proposals were radical versions of a more general demand by the RegLeg regions which was not met: to recognise a special constitutional status for legislative regions. The RegLeg regions wanted recognition of the law-making role that distinguishes them from other regions and local authorities and gives them a qualitatively different relationship to their citizens. Their aim was to use special status

a) to argue for a fuller role in shaping EU laws alongside the member states and EU institutions and b) to establish clearer barriers against the transfer of their own powers to the European level, e.g. through direct access for each legislative region to the ECJ.

The reason that the RegLeg grouping argued so strongly for special status has to do with the CoR. Its view is that the CoR, which provides collective representation for all regional and local governments in the EU however extensive or narrow their domestic roles, is incapable of meeting their concerns. The failure to get special status and these concerns about the CoR create a problem for the RegLeg regions given the outcome of the Convention: the major gains on subsidiarity – pre-legislative consultation and the right of direct access to the ECJ – have been awarded corporately to the CoR, not to individual regions or specific groups of regions.

From Convention to IGC – and beyond

This scarcely seems satisfactory for RegLeg. It leaves RegLeg regions with three (in part complementary) options as the constitutional debate moves forward to the IGC: Press national governments at the IGC to revisit the question of special status; prioritise national channels of access to EU decision-making like the early warning system; or bring about change in the CoR so it can better represent the distinctive concerns of different groups of its members.

1. Re-write the Constitution? The CoR's position is not to challenge the basic elements of the Convention draft – in particular Part I – now that it has been handed over to the European Council. Its concern is that if one element is unpicked, others may unravel to the CoR's disadvantage. The only area where the CoR will seek further changes is in the more technical policy clauses in Part III, where it hopes to open up more fields to its own advisory powers. This is a sensible position. The Convention's draft has the authority of being approved by 'broad consensus' with few dissenting voices. The RegLeg regions would be advised to stick within that consensus. Some, in particular the German Länder, will want to make detailed proposals on Part III in order better to set the limits of EU competence. This is entirely reasonable, especially given that Part III had nowhere near the same level of debate by Convention members as Parts I and II and certainly can be improved. However, Part I should be off-limits. There should be no revival of the call for special status. The Convention considered special status on a number of occasions, but never found sufficient opinion in favour. This is unlikely to change at the IGC, where even member states with RegLeg regions (the UK and Spain) would oppose revisiting the issue. So what should the legislative regions do? The answer is clearly some combination of options 2) and 3) below.

2. Work through the member states. There has been a clear pattern since the Single European Act of regions using European-level debates to lever out concessions in member state decision-making processes on Europe. The extensive rights that the

German, Belgian and Austrian regions have to shape member state positions on issues they are responsible for domestically have all been trade-offs for regional support 'in Europe'. The UK government's surprise initiative to open up the early warning system to the UK's regional parliaments followed the same pattern. Clearly, that initiative now has to be followed through and anchored in viable domestic procedures. Likewise the procedures for involving regional second chambers in Germany and Austria and whatever equivalents make most sense in Belgium and elsewhere. There may also be mileage in looking for ways to use member state channels to get fuller consultation at the pre-legislative stage of EU policy-making, perhaps by systematising regional-level input – as part of member state delegations – in the working groups of Council and Commission that help develop policy.

3. Work through the Committee of the Regions. Beefing up the national dimension should not, though, lead the RegLeg regions to turn their backs on the CoR. The likelihood that Reinhold Bocklet, Bavaria's European Minister and currently first Vice-President of CoR, will emerge as the next President of the CoR suggests this is not (yet) likely to happen. Though the CoR's diverse membership can work against the crisp decisions RegLeg regions might want to see, the CoR can still be a valuable additional channel for influence. And the rest of the CoR has an interest in riding on the authority of its most influential members. But clearly the CoR has to change. The RegLeg regions have a point. The CoR has punched below the weight of the expectations that accompanied its launch. It has failed to develop a clear agenda and a high profile not least because it has tried too much to please all its members. The outcome is often at too low a common denominator to have much impact. That must change now that the CoR has the challenging new roles of organising pre-legislative consultation of regional and local authorities and of taking subsidiarity complaints to the ECJ. But how can the CoR break out of 'lowest common denominator' politics and achieve the coherence of purpose and level of impact to keep the RegLeg regions on board while not alienating its other members? There are a number of possibilities:

- *Present fewer, but better-considered policy opinions.* This is not a new suggestion. It was made by Jacques Delors at the launch of the CoR in 1994. But it has never really been heeded. High quality policy contributions bring credibility and clout. But to do this tighter management of the CoR's policy agenda will be necessary.
- *Rethink the structures of opinion-formation in the CoR.* Views are organised in the CoR by national delegation and political party. It would make sense to organise also (instead?) by type of regional/local government. Proposals in this direction were made by local government groupings at the CoR's launch and periodically since by legislative regions. Those proposals have too often got side-tracked into debates about splitting the CoR into two 'chambers'. That would clearly be an over-elaboration. But why not a secretariat for RegLeg, why not a secretariat, say, for Eurocities? Or for administrative regions? Such groupings could better capture cross-national differences of function of regional and local governments in EU

decision-making: local authorities involved in detailed implementation issues; administrative regions with a more strategic oversight of implementation; and RegLeg regions with a claim to fuller input into making those EU laws which impact on their domestic legislative competences. Functional groupings of regions might be the way to get beyond lowest common denominators and have the CoR genuinely serve the interests of all its members.

- *Streamline CoR procedures for its new tasks in pre-legislative consultation and subsidiarity complaints to the ECJ.* On the former the CoR must be able to act quickly and efficiently in gathering and concerting views. On the latter it must put mechanisms in place which allow only well-grounded and carefully argued cases to be sent to the ECJ. Neither will be well served by the plenary formation of the Committee; yet both will benefit from the authority of the plenary. So why not, with appropriate checks and balances, delegate the authority of the plenary to smaller formations? The CoR has the power to establish its own standing orders and procedures. It should use that power to bring in procedures better adapted to its new, more challenging tasks.

New thinking for a new architecture

Regions – within and beyond RegLeg – need in other words start thinking 'outside the box'. Re-presenting failed demands to the IGC will be no more than empty posturing and could end up unravelling some of the advances that have been made. RegLeg will not get special status now, so they should leave the idea for a more opportune moment. What they should do for now is find ways of making the best of new openings through their member states and in the CoR. The CoR may be an unwieldy body, but it has become the main beneficiary of the broadening consensus that regions have to be more fully involved in EU decision-making. It has to be in the interests of all regions and local authorities to make that fuller involvement work.