

Opinion 302/98 of the Committee of the Regions on the principle of subsidiarity (11 March 1999)

Caption: Real custodian of the subsidiarity principle, the Committee of the Regions underlines in this opinion of 11 March 1999, the importance of the existence and the respect for this principle in an expanding European Union.

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Opinion of the Committee of the Regions on the ‘Principle of subsidiarity “Developing a genuine culture of subsidiarity. An appeal by the Committee of the Regions”’ (11 March 1999)

THE COMMITTEE OF THE REGIONS,

having regard to the conclusions of the Vienna European Council of 11 and 12 December 1998 whereby future ‘Better law-making’ reports of the Commission should be presented in good time to allow for thorough discussion in the various institutions, including the Committee of the Regions;

having regard to the European Parliament's resolution of 22 October 1998 for the meeting of Heads of State and of Government in October 1998, whereby the European Parliament undertakes to engage in political dialogue and close cooperation with the relevant regional bodies (depending on the specific constitutional position of each Member State) to discuss implementation of the principle of subsidiarity;

having regard to the decision taken by the COR's Bureau of 15 July 1998 to draw up an opinion on this subject, in accordance with the fourth paragraph of Article 198c of the Treaty establishing the European Community, and to ask the Commission for Institutional Affairs to carry out the preparatory work;

having regard to its previous comments on the subsidiarity principle, particularly the COR resolution of 20 November 1997 (CdR 305/97 fin) (1);

having regard to the draft opinion adopted by the Commission for Institutional Affairs on 1 February 1999 (CdR 302/98 rev. 2) (Rapporteurs: Mr Delebarre and Mr Stoiber);

whereas the comprehensive application of the principle of subsidiarity in an expanding European Union will have an even more important role than that assigned to it under the Amsterdam Treaty,

has adopted at its 28th plenary session on 10 and 11 March 1999 (meeting of 11 March) the following opinion.

1. Introduction

1.1. Subsidiarity and closeness to the citizen: the key to the Europe of the future

1.1.1. Europe has achieved major intellectual, cultural and economic successes, building on the experiences of past centuries. Diversity is the essence of what is European. It manifests itself in towns and local districts, regions, nations and states. While working closely together, the European Union must recognize and build upon the diversity of cultures and traditions so that innovative solutions to the rapidly changing world can be developed. This can be achieved by a clear definition of the subsidiarity principle which involves regional and local government. This will develop a dynamism in Europe that will help equip it for the challenges of the next century and meet the rigours of global competition.

This diversity has led to a dynamism which has enriched Europe not only culturally but also economically. Such dynamism must be kept alive and productive in the interests of Europe and must not be dampened down any more than is necessary. Europe will only survive in the global competition between cultures if its regions preserve their individual characteristics and cultural identity. Distinct cultures have to be preserved and understanding between them has to be promoted to ensure that all cultures can express themselves freely.

1.1.2. There is a growing recognition that effective government is created not by levels of government competing with each other. These levels of government must work closely together to ensure that effective decisions are taken at each level to ensure a coordinated approach to solving today's problems. Subsidiarity needs to be closely linked to concepts such as multi-layer democracy. Fruitful competition derives from diversity.

1.1.3. There is no doubt that European integration has been the outstanding achievement of the nations and peoples of Europe in the latter part of the 20th century. On the eve of the 21st century the EU is still faced with a number of major tasks of historic importance: enlargement of the Union; the establishment of political, social, economic and monetary union; consolidation of the EU's position as a global player; and furtherance of European economic growth, which constitutes the basis for job creation.

The structures put in place forty years ago to govern the Union are no longer adequate for the size and tasks of the present Union. A review of the Union's functioning as well as institutional reforms are therefore necessary. Democratic authorities at different levels - local, regional, national and European - must respond to this fast-changing world. Technological change, the information and communications revolution, globalization and the integration of markets, and the introduction of a European single currency, are all elements of an increasingly interdependent world. This means that there is a growing range of issues and matters which cannot be dealt with solely within the boundaries of individual nation states. Nor can many of these issues just be left to the market. There are a wide range of issues that have a European dimension, e.g. employment, innovation, environment, public health etc. as well as others where the European Union must act more effectively on the international stage. The principle of subsidiarity (in the sense of proximity, with decisions taken as close to grassroots level as possible, thereby ensuring that tasks can be performed to optimum effect) serves as a political guideline in this reform process.

1.1.4. Ever since its foundation in 1994, the youngest of the Community institutions, the Committee of the Regions, has unfailingly committed itself to a Europe supported by ordinary citizens, local districts, regions and Member States. The Committee of the Regions welcomes the initiative of the European Council taken at the Cardiff Summit in June 1998 'to bring the Union closer to people.' As custodian of the subsidiarity principle the COR strongly supports efforts to create strong but lean and efficient European institutions that focus on the tasks that cannot be carried out by other tiers of government directly accountable to the public. The principle of subsidiarity, as defined in Article 5 (consolidated version - ex Article 3b) of the EC Treaty, applies exclusively to relations between the Community and the Member States, and not to relations between sub-national bodies and the Member States. The latter relations are regulated by the constitutional systems of the Member States. Article B of the EU Treaty refers to this limited application in stating that the objectives of the Union shall be achieved while respecting the principle of subsidiarity as defined in Article 5 of the EC Treaty.

The EU Treaty however also stresses, in Article A, the need to take decisions as close as possible to the citizen. The principle of proximity is thus enshrined. This principle is intended to be applied to EU, national and sub-national relations. It is thus a basic principle and one that is affirmed even before the principle of subsidiarity, the latter being a component of the former.

Thus, the principle of subsidiarity, as specifically envisaged by the Treaties, cannot conceal the need for Member States to guarantee local and regional authorities the right to act to ensure that decisions are taken as closely as possible to the citizen, in accordance with the principle of proximity.

The subsidiarity principle represents a general legal principle enshrined in national laws, whereby decisions are taken at the institutional and operational level closest to the citizen. It commits the Union, the Member States and all institutional levels to pursuing actively the aims assigned to them in the respective laws, thereby ensuring the recognition, enhancement and involvement of private individuals and their social groupings. Subsidiarity should therefore be a key political guideline in the building of the European Union.

1.1.5. Subsidiarity is a dynamic principle which in one area may lead to 'more Europe' and in another to 'less Europe'. It was introduced in 1992 under the Maastricht Treaty, whereby decisions were to be taken as close as possible to the citizen, in other words at the level of government closest and directly accountable to the citizen, and at a higher level only when necessary. The choice of the level of government best equipped to carry out tasks in individual cases should be dictated solely by the general interest, the requirements of citizens, and the need to avoid jeopardizing economic and social cohesion. In effect this means that the Community can only act if the proposed action cannot be sufficiently achieved by the Member States and

can be better achieved by the Community. The application of this principle must be reviewed regularly and improved where necessary. This also means that Member States must allow lower levels of government to take decisions if they are in a better position to do so.

1.1.6. The Committee of the Regions is firmly convinced that strict adherence to the principle of subsidiarity is now of importance whilst, at the same time, a broader sense of European citizenship must be established and nurtured:

- The rich tapestry of cultures that constitute Europe's diverse heritage includes many regional and national identities. A number of factors in today's world threaten to erode these identities. At the same time these cultures and identities are being made and remade by patterns of migration and settlement. All democratic authorities have the responsibility to ensure that the values of humanism and toleration remain the hallmark of Europe's relations between its own citizens and diverse communities and nationalities.

- On the other hand, the sheer scale of the challenges facing the European Union in the future makes it necessary for Europe to set clear priorities whilst limiting its action to what is essentially supra-national.

1.1.7. Within this overall process, European solidarity is central to Europe's social model and complementary to the principle of subsidiarity. Solidarity with and support for the weakest and most disadvantaged citizens in Europe is a *sine qua non* for a Europe based on the principle of subsidiarity. Subsidiarity should therefore not be allowed to work to the disadvantage of the weakest elements of society but should lead to everyone being involved in European integration on equal terms.

1.1.8. The European Union should therefore concentrate on problems which can only be solved in common and which citizens accordingly expect it to solve. The greater the number of Member States there are in the EU, the more important the subsidiarity principle becomes. Clear priorities should therefore be set in order to advance integration in a large number of fields. This is why the Committee of the Regions is in favour of a 'strategic Europe'.

1.1.9. To carry out this strategy inevitably means that the EU must be able to act effectively on the international stage.

1.2. Improvements resulting from the subsidiarity principle

References to the principle of subsidiarity have resulted in considerable improvements in the functioning of the European institutions.

1.2.1. Since the entry into force of the Maastricht Treaty on 1 November 1993, the principle of subsidiarity has gained ground to become a powerful element in the political reality of the European Union; it has also been accepted as a basic formal principle for effectively guiding Union activities.

1.2.2. European institutions have made considerable efforts to adhere to this principle, particularly in the exercise of their legislative and regulatory powers: as a result the European Commission has not only withdrawn a large number of legislative proposals, it has also considerably reduced the number of new proposals. In addition to this the Commission is now tending to propose more and more framework legislation.

1.2.3. It is also worth noting that, before proposing legislative or regulatory acts, the Commission now prepares the ground and opens up debates with Green Papers, Action Plans and Communications, thereby ensuring that subsidiarity aspects are discussed in detail before decisions are taken.

1.2.4. Article 5 of the EC Treaty may now already have legal consequences of its own. The important issue here is to make a distinction between the substantive and the procedural implications of applying the subsidiarity principle. As a procedural criterion and as a concrete yardstick for gauging measures, the subsidiarity principle implies the need to consider whether EU-level action is deemed necessary and if so to

state the reasons why. As a substantive criterion, the subsidiarity principle implies the wish that decisions be taken as close to the European citizen as possible.

1.2.5. The protocol appended to the Treaty of Amsterdam defines this principle of subsidiarity more precisely, particularly with regard to the two pre-requisites for EU action, i.e. action taken at levels closest to the citizen must not have produced satisfactory results and the European Union must be better placed to find solutions.

1.2.6. According to the protocol on the application of the principles of subsidiarity, the following conditions must be fulfilled before the Community can act:

- the issue under consideration must have transnational aspects which cannot be satisfactorily regulated by Member State action;
- action by Member States alone, or lack of Community action, would conflict with the requirements of the Treaty or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects, compared with action at Member State level.

It was also stated in the protocol on the application of the principle of subsidiarity that scope for the adoption of decisions at national and regional level should remain as wide as possible when drawing up legal provisions.

1.3. Contribution of the Committee of the Regions to the application of the subsidiarity principle

1.3.1. Since it first came into existence, the COR has made defense of the application of the subsidiarity principle one of its primary objectives. Hence this is not its first contribution to the debate on the application of the subsidiarity principle in the EU, as it had already expressed its views during the preparation and adoption of the new Treaty of Amsterdam. The COR would therefore reiterate its earlier statements and especially its additional opinion of April 1995 (2) and its resolution of 20 November 1997 (3). In these statements the COR calls for the framing of procedures enabling it to bring proceedings against infringements of the subsidiarity principle which affect regional and local authority powers before the Court of Justice. It also advocates inclusion of a direct reference to regional and local authorities in Article 5 of the EC Treaty.

1.3.2. The COR welcomes the protocol appended to the Amsterdam Treaty on the application of the principles of subsidiarity and proportionality. It underlines the importance of the Declaration of the Belgian, German and Austrian governments whereby 'action by the European Community in accordance with the principle of subsidiarity not only concerns the Member States but also their entities to the extent that they have their own law-making powers conferred on them under national constitutional law'. The Committee also feels that, taking due account of the internal government workings of the Member States, the general thrust of this declaration must apply *mutatis mutandis* to regional and local authorities in non-federal Member States. The COR likewise urges all Member States, starting with those which have regional entities possessing their own constitutionally recognized law-making powers, to subscribe to this declaration.

2. Developing a greater culture of subsidiarity and a clearer delimitation of areas of responsibility

2.1. Subsidiarity, diversity and solidarity

2.1.1. The campaign in favour of the principle of subsidiarity and closeness to the citizen serves to strengthen the cause of European integration. Europe has much to gain from diversity and competition, whilst preserving its economic and social cohesion. What is now needed is a rational assessment of the work done by Europe, and to improve it where necessary, so that we can emerge in a stronger position to meet the challenges of the future.

2.1.2. No level of government should seek to regulate the life of European citizens in all areas, and this likewise applies to the Community level. Although many areas of responsibility today have cross-border implications, this does not mean that we should inevitably draw the conclusion that radical harmonization of each individual sectoral policy is essential. It is therefore necessary to achieve a reasonable harmonization of individual sectoral policies, whilst protecting economic and social cohesion throughout Europe. However, harmonization is not always the only solution. In addition, many problems can be solved without government interference, for instance by agreements between the interested parties, and by the organizations of civil society (like the social partners, for instance) at European level. This approach has proven its worth many times.

The Committee of the Regions acknowledges that legislation enacted in Member States on the basis of Community directives has been of great benefit to the citizens of Europe. Prior to Community action, great disparities existed between Member States, and this distorted competition. Although legislation aiming at a high level of protection for citizens sometimes imposes a cost on the economy, the benefits in terms of quality of life far outweigh the costs.

Some of the important challenges facing citizens can only be successfully met by the Community. Taking the interests of citizens into consideration was the overriding aim of the Amsterdam Treaty negotiations. The result was a 'people'-based Treaty enabling the EU to make a contribution to such topics as employment, non-discrimination, citizens' rights, consumer protection and measures to tackle transnational crime and drug trafficking.

2.1.3. The Council, Commission, Parliament and Member States are called upon to take a resolute stand in reshaping European policy, promoting a Europe of subsidiarity and closeness to the citizen and developing a genuine culture of subsidiarity.

If the European Union is to be effective, it must concentrate exclusively on questions that are of real concern to Europe.

Existing legislation on questions which would obviously be tackled more effectively by a level of authority closer to the citizen should be amended.

2.1.4. This does not mean renationalization, i.e. an abandonment of the European idea, but a genuine reform which would inevitably require some redistribution of powers between the European Union, Member States and regions. The goal of closeness to the people will therefore be achieved by allocating responsibility for action to the level of government where it can most effectively be carried out. Change is a natural process whereby institutions are able to evolve and prepare for future challenges. The EU needs to be democratic, open and transparent.

2.1.5. Two passages from the correspondence between Chancellor Kohl and President Chirac on 5 June 1998 have recently shed light on the goals we might seek to achieve under such a policy:

- 'All our efforts must be geared to creating a strong European Union capable of action, whilst preserving the diversity of political, cultural and regional traditions.'

- 'It is therefore very important to keep in mind local, regional or national particularities when taking decisions.'

2.2. Further implications of the principle of subsidiarity

2.2.1. Subsidiarity as a regulating principle

2.2.1.1. The principle of subsidiarity must play its role as a regulator of relations between the European

Union, the Member States and the regional and local authorities, whilst respecting the way Member States' powers are organized internally.

The subsidiarity principle has to be applied by means of a co-decision process which, on a case-by-case basis, establishes the level to which powers should be assigned (European Union, Member States, regions or local authorities). The principle should not be used as an alibi for failure to take action at different levels of government, nor should it be allowed to eventually cripple the European Union's capacity for action.

2.2.1.2. What is needed now is a rational assessment of the work done by the EU so that we can emerge in a stronger position to meet the challenges of the future:

A. It is a fact that, in its efforts to apply subsidiarity, the Union has cut down on its legislative activities, particularly in social and environmental protection policy areas. In these areas the Commission has launched fewer and fewer new initiatives despite the urgency of some of the problems and their cross-border or transnational characteristics.

B. In seeking to verify whether texts adhere to the principle of subsidiarity, European Commission proposals are now subject to a complex internal evaluation, as well as to political scrutiny by the other institutions. All authorities (including the various specialist councils and the General Affairs Council) must monitor compliance with the subsidiarity principle in Council decisions. In the first instance this is of course a task for the Committee of the Regions.

2.2.1.3. We nevertheless need to keep in mind the principal political objective of the subsidiarity principle: to take decisions at the levels which are most effective and closest to citizens so that the latter can play an active part in the European venture and have access to all the information they need in order to do so. The European venture will only gain support from the population if the results are good and visible. At regional and local level, and within local and regional authorities, arrangements - coordinated and spearheaded by the Committee of the Regions working in partnership with the European Parliament - should be made for grassroots consultation on the goals of the European Union.

2.2.1.4. Through their own experiences on the ground, regions and towns are fully aware of the crucial importance played by the transposition of European law into national law - and by the application of national law - for the image citizens have of Europe. In many Member States, regions and towns have a role to play in applying transposed European law to ordinary citizens.

2.2.2. Subsidiarity as an innovative principle

2.2.2.1. The subsidiarity principle also has a role to play in breathing fresh life into relations between the Member States and regions or local authorities when European policies are being implemented.

Whilst the main objectives of the future development of the European Union are to strengthen the Community's capacity to act, to ensure that the peoples of Europe are more aware of what the Community is doing, and to give citizens a greater sense of responsibility, it is in the interests of the European Union itself to concentrate its efforts more on areas where action by levels of authority closest to the citizen, and directly accountable to the citizen, is insufficient.

2.2.2.2. Implementation of European policy requires the European Union to give levels of authority close to citizens as much room for manoeuvre and as much scope for flexibility as possible. At the same time the European Union must be put in a position where it can act effectively in areas for which it has prime responsibility and which are important to everyone. Member States on the other hand must be honourable in their dealings with the Community and must apply and implement Community law correctly and transparently whilst observing the subsidiarity principle.

2.2.2.3. Institutional reforms are not an end in themselves but must be a means to achieving, in the most

effective way possible, political objectives that have been democratically approved and are recognized as being of importance. From the point of view of public opinion and the principle of closeness to the citizen, political objectives and institutional legislation are closely interwoven even though political objectives necessarily come first.

2.3. Subsidiarity and closeness to the citizen in reality

The Committee of the Regions recognizes the progress made since the subsidiarity principle was first incorporated into the EC Treaty under Maastricht and would refer here to the Communication from the European Commission entitled 'Legislate less to act better: the facts' of 27 May 1998 (4) The Commission states in its Communication that it has now withdrawn a large number of initiatives and cut down on its legislative proposals. The subsidiarity principle is also a general principle affecting general EU policy so that it should be adhered to generally by all parties. It is applicable not only to the Commission and the other Community institutions but also to the Member States, which regularly call upon the Commission to come up with new proposals.

3. Conclusions

3.1. What would a new culture of subsidiarity look like?

3.1.1. The Committee of the Regions calls upon all Community institutions to rigorously apply the principle of subsidiarity in accordance with the new Article 5 of the EC Treaty and the protocol on the application of the principles of subsidiarity and proportionality appended to the Amsterdam Treaty. All EU initiatives must be preceded by a critical, uncompromising and coordinated scrutiny by the various tiers of institution of whether action needs to be taken at European level. Subsidiarity must not be an academic point to be ticked off as a matter of pure routine.

3.1.2. European integration requires both harmonization and also the preservation of traditional diversity, diversity being a characteristic feature of European identity. Properly applied, subsidiarity protects this diversity.

The added value of a European policy must give equal weight to the principles of harmonization and economic and social cohesion, as well as to competition and diversity.

In adopting such an approach, attention should be concentrated not only on economic matters but social and cultural aspects should be given equal weight.

3.1.3. European decisions must be drawn up in such a way as to leave as much scope as possible for national, regional and local decision-taking. This, however, does not mean that there should not be scrupulous monitoring to ensure the full and accurate implementation of acts in order to prevent distortions. The volume of legislation should be kept to a bare minimum and the administrative costs involved in implementing provisions should be kept as low as possible. The Community should aim, when enacting legislation, to give priority wherever possible to directives in order to facilitate the implementation process in Member States. However, the Committee of the Regions recognizes the need to use regulations in those cases where it is essential for legislation to be adopted in full in order to avoid misinterpretations. It would therefore be helpful to specify those areas where there is a need for regulations, e.g. health and safety.

3.1.4. Responsibility for putting EU legislation into effect should continue to remain in the hands of Member States and regional and local authorities. The principle of closeness to citizens can only be observed if European laws are implemented in a decentralized way.

3.1.5. The EU currently supports hundreds of different schemes. These require an overhaul since, taken together, they substantially restrict the political freedom of regions and local authorities applying for such funds. EU support must therefore help strengthen the political freedom of regions and local authorities which have applied for such funds. It is necessary to concentrate EU aid schemes on really essential

objectives, to simplify administrative procedures and to drop excessively detailed requirements.

EU structural policy should continue to remain a central pillar of European solidarity in the future and should increasingly take the form of one-off payments to achieve EU objectives.

The Committee of the Regions has already expressed its view in a large number of opinions that European structural policy should continue to operate within the limits laid down by the Treaty. Whilst adhering to the programmes planned in this field, as well as to the principle of subsidiarity, the Committee of the Regions has put forward a large number of proposals on ways of streamlining and simplifying procedures, which continue to remain valid. There is little sense in trying to show effective solidarity by turning out a never-ending stream of new and separate programmes that have to be run from the centre. The actual implementation of structural policy programmes should essentially remain the preserve of Member States as well as regions endowed with democratic legitimacy and should be monitored effectively to ensure that targets are achieved.

3.2. The principle of subsidiarity as a ‘regulating principle’

3.2.1. Whenever Community action extends to areas covered by shared responsibilities between the European Union and the Member States, the subsidiarity principle must be triggered both to safeguard national, regional and local powers and, implicitly, to demonstrate whether or not Community action is justified.

3.2.2. For the purpose of applying the principle of subsidiarity, it is useful to distinguish between the two aspects set out in Article 5 of the EC Treaty:

- the need for action (second paragraph)
- the extent to which action is taken (third paragraph).

In this Article the areas where the Community has exclusive powers are not subject to the subsidiarity test. The exclusive powers of the EU must therefore be defined in a limited, precise fashion, taking into account the principle of subsidiarity, and this principle must become a flexible point of reference for shared competences.

3.2.3. European-level action should only be taken when there is a clear added value in such action and where Member States acting independently could not achieve the same results, as defined in the Treaty, the protocol on subsidiarity and the principle set out in this opinion. The Member States themselves, meeting in the Council, have to agree that the action in question is needed to achieve one of the Community objectives.

3.2.4. Assessing the need for action on the basis of exclusive, authorized or shared competence on the part of the Community and/or the Member States was what largely fuelled debates between 1992 and 1997 and showed how difficult it was to distinguish clearly between the powers of all parties.

3.2.5. As a regulator of the extent to which it is used, the principle of subsidiarity is reinforced by the principle of proportionality, which is now also incorporated in the Protocol appended to the Treaty of Amsterdam.

3.2.6. Regular monitoring of the application of the principle of subsidiarity is essential in order to a) refine the successive interpretations of the Court of Justice that have further developed the position taken by the European Council in Edinburgh in 1992, and b) to increase the transparency of, and democratic control over, legislative acts.

3.3. The clear delimitation of powers

3.3.1. Despite all the progress made and all the continuing efforts to give concrete expression to the principle

of subsidiarity, it is becoming more and more clear that, in terms of the exercise of powers, the principle of subsidiarity cannot by itself guarantee that European legislation is restricted to essentials and cannot prevent powers from being exceeded. What is therefore needed is a lively debate and active monitoring - not least by the COR - to check compliance with the subsidiarity principle. Such checks should be carried out on a regular basis, perhaps in the form of an annual report on subsidiarity.

3.3.2. As regards the actual distribution of powers, the substantive Treaty Articles should list criteria in order to permit an assessment of the need for EU-level action, thereby clarifying non-legal terms such as 'better' and 'not sufficiently' as used in the definition of the general subsidiarity principle in new EC Treaty Article 5. The current distribution of powers is also vague since the EC Treaty sets out only very general objectives and does not fix the precise scope of the relevant measures.

3.3.3. It is necessary, in particular, to keep internal market questions (Article 100a of the EC Treaty) separate from other policy areas such as culture and broadcasting, land-use planning and health, etc. Individual economic issues do not stand independent of all other policy areas and as such a holistic approach should be taken. The body of competition policy case law to date illustrates that culture, for example, can be a justifiable reason to restrict the free movement of goods. Similarly, protection of local minorities calls for specific measures which cannot be dictated by internal market criteria, and under no circumstances by strictly economic principles. One key criterion might conceivably be whether economic aspects or else other policy considerations are central to the particular area in question.

3.3.4. In view of the level of integration now reached by Europe, and after a new and comprehensive demarcation of powers has been agreed, it should be possible to turn attention to ways of simplifying the procedure for amending the Treaties. The COR must therefore launch a debate on the demarcation of powers between the EU, the Member States and their regional and local entities and come up with a new system for apportioning powers.

3.3.5. The objectives and tasks listed in Article 3 of the EC Treaty must be spelt out in more detail and brought into line with existing powers.

3.4. Guaranteeing regional prerogatives and local autonomy

3.4.1. It is becoming apparent that the internal structures of Member States are also changing rapidly. There is a strong tendency towards decentralization and in some Member States the regions have acquired a large degree of autonomy.

The Union is no longer just a Union of fifteen capitals but is also a network of regions and towns. Institutional reforms can no longer be escaped in view of the enlargement of the Union.

As a voice for local and regional authorities in Europe, the Committee of the Regions would like to be involved in 'designing' the structure of the European Union in the 21st century.

The Committee of the Regions stresses the need for the close involvement of the candidate countries in this process, as they too will one day be partners in the Union.

3.4.2. European regulations sometimes limit the political freedom of regions, towns and local districts. Whilst new Article 6 of the EC Treaty specifies that the Union must respect the national identity of its Member States, there are no corresponding provisions applicable either to regions or local authorities.

The Committee of the Regions has already requested on several occasions that such guarantees be enshrined in the Treaty (cf. Appendix).

3.4.3. Protecting regional prerogatives and local autonomy involves both giving guarantees to local and regional authorities, and making it possible to verify the proper application of these guarantees, as well as the use of sanctions in the case of failure to respect them.

The Committee of the Regions has already requested on several occasions that such guarantees be included in the Treaty, particularly under Article 3b (Article 5 in consolidated version) of the EC Treaty (see Appendix, chapter 2).

In addition, the guarantee of local self-government should be included in Article F of the Treaty on European Union, according to which ‘the Union shall respect the national identities of its Member States, whose systems of government are founded on the principles of democracy’.

Paragraph 2 of this Article, which addresses fundamental rights, should include a reference to the Council of Europe's Charter on Local Self-Government.

3.4.4. Pending adoption of the institutional reforms which failed to see the light of day in Amsterdam, the Committee calls upon the Heads of State and of Government to draw up a political declaration confirming that they are prepared to provide the regions and local authorities with guarantees concerning full implementation of the principle of subsidiarity. Such guarantees should encapsulate the essence of the arrangements to be worked out between Member States, regions and local authorities.

The Committee of the Regions, whilst reiterating the demands which were not met in the Amsterdam Treaty, takes the view that the necessary institutional discussions should focus, among other things, on ways and means of ensuring compliance with the subsidiarity principle.

Thus, the Heads of State and of Government might commit themselves to ensuring that local and regional authorities are automatically consulted on any Community policy or regulation which would have a significant impact on them, be it of a financial, economic or environmental nature, or involving social cohesion or human rights, both during the process of drawing up a political strategy and when implementing it.

3.5. Inter-regional and inter-district cross-border cooperation

3.5.1. If the principle of subsidiarity is to develop its full dynamic potential, it is essential for regional and local authorities to be able to effectively solve-on-the-spot problems within the powers conferred on them, if need be in cooperation with neighbouring regions and local districts.

3.5.2. Inter-regional cross-border cooperation to date has invariably come up against legal and administrative obstacles arising out of Member States' foreign policy prerogatives. In most of the Member States such cooperation can only be organized by the central authority. Diplomatic agreements are generally required if legally binding commitments are to be entered into, even if such commitments do not transcend that particular region or district.

3.5.3. As a consequence, we must inevitably accept that a large number of daily problems faced by citizens of frontier regions - e.g. in terms of the labour market, transport and accommodation - cannot be solved promptly and satisfactorily.

3.5.4. The Committee of the Regions therefore considers it absolutely essential to remove obstacles to effective inter-regional cooperation. It takes the view that such a request clearly flows from the scrupulous application of the principle of subsidiarity, as enshrined in the Treaty. The Committee of the Regions calls upon the Member States to do what is necessary to ensure that inter-regional cooperation is recognized as an area of common interest endowed with a European legal framework.

3.6. Result

3.6.1. From the point of view of policing the subsidiarity principle before the European Union takes any action, it is important for the Committee of the Regions to be able to say, when examining preparatory acts and proposals for Community action, whether the Commission has adhered to the principle. The Committee

calls upon the European Commission to present its annual report on subsidiarity to the Committee of the Regions. The latter is prepared to deliver an annual opinion on this report. The Committee of the Regions also reiterates its plea that there be a genuine ‘preventive’ scrutiny of texts before legislative decisions are taken by European bodies to ensure that such texts are justified and meet subsidiarity criteria.

3.6.2. The Committee of the Regions unequivocally urges the European Council to promote a Europe rooted in the principle of subsidiarity, in which the particularities and identities of the peoples of Europe - which represent its greatest wealth - are strengthened, thereby fostering competition but without prejudice to solidarity and cohesion. The Committee of the Regions calls on the Member States to endeavour in their domestic legislation to use the principle of subsidiarity as a guideline for the allocation of powers, not only in defining their own areas of responsibility, but also as an incentive to involve the regional and local authorities in the definition of the conditions for the application of the powers of the latter bodies.

3.6.3. Application of the principle of subsidiarity concerns not only the Union's legislative and regulatory activities, and hence relations between the Union and its Member States. It is also relevant to the national decision-making process and to the transposition of European law in the Member States and the application of that law at national level. At the European level, insufficient attention has so far been paid to this particular aspect of the subsidiarity principle.

Brussels, 11 March 1999.

*The President
of the Committee of the Regions*
Manfred DAMMEYER

- (1) OJ C 64, of 27.2.1998, p. 98.
- (2) CdR 136/95 Appendix.
- (3) CdR 305/97 fin.
- (4) COM (1998) 345 final.

APPENDIX to the opinion on the Committee of the Regions

1. The principle of subsidiarity and European legal texts

1.1. The idea of subsidiarity was dealt with implicitly in Article 95 of the ECSC Treaty of Paris, signed on 18 April 1951, as well as in Article 235 of the Treaty of Rome, signed on 25 March 1957. It was also dealt with explicitly in the 1975 Spinelli report of the European Commission on European Union which stated that: ‘The European Union must not, any more than the present Communities, lead to the creation of a centralizing super-State. The Union will accordingly, and in accordance with the principle of subsidiarity, only carry out tasks which the Member States can no longer perform effectively themselves.’

1.2. The first European legal text to have expressly defined the principle of subsidiarity was the Council of Europe's European Charter of Local Self-Government signed in Strasbourg on 15 October 1985. Ratified by 30 Member States of the Council of Europe, including 12 of the 15 Member States of the European Union, it has now become a Convention of the Council of Europe and must be incorporated in the national legislation of the States which have ratified it.

1.3. Worth noting in particular are Articles 3 and 4, and especially Article 4(3), which illustrates neatly the principle of subsidiarity by stating that: ‘Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.’

1.4. The principle of subsidiarity was introduced reasonably clearly into the European Treaties via the Single European Act of 1987 where the chapter on the environment (fourth paragraph of Article 130r) states that: ‘The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States’.

1.5. Introduced in Article 5 of the EC Treaty by the Maastricht Treaty, this principle of subsidiarity has led to many comments since then, particularly during preparations for the Intergovernmental Conference of 1997, before being spelt out in more detail in a Protocol appended to the Treaty of Amsterdam of 2 October 1997.

1.6. The Declaration on subsidiarity by the governments of Germany, Austria and Belgium calls for recognition and application of the principle of subsidiarity within the Member States.

2. Developments between the Treaties of Maastricht and Amsterdam

2.1. During the period of preparation for the Intergovernmental Conference and the Treaty of Amsterdam, the Committee of the Regions expressed its views in a COR Opinion (1) on improvements to the drafting of several Articles in the Maastricht Treaty on mechanisms for ensuring the participation of regions and local authorities in the administration of Europe, and on ways of implementing the principle of subsidiarity. It also called for changes in its own status, organization, scope and fields of intervention.

2.2. It is worth noting in particular that the Committee of the Regions called for a rewording of Article 5 of the EC Treaty by explicitly mentioning the role of local and regional authorities endowed with decision-making powers under the domestic legislation of the Member State in question; it likewise called for a clear definition of the respective powers of the European Union and the Member States, and the right of regions to institute proceedings to have decisions declared null and void if they infringe the principle of subsidiarity.

2.3. The suggestions of the Committee of the Regions were similar to many others, and particularly those of the Assembly of European Regions and the Council of European Municipalities and Regions calling for amendments to provisions of the Treaties on topics such as local self-government, transparency, partnership, the representativeness of the Committee of the Regions, non-discrimination between the sexes, and equal opportunities.

3. Progress under the Amsterdam Treaty

3.1. Several amendments called for by the representatives of regions and local authorities were introduced into the Treaty of Amsterdam and a Protocol on subsidiarity was appended. Progress was made on the status and organizational capacity of the Committee of the Regions as well as on partnership, equal opportunities, and transparency. On the other hand a number of proposed amendments on local self-government were not included in the Treaty.

3.2. It is self-evident that regions and local authorities therefore still want to see their place defined more precisely and their role given more consideration in a large number of Treaty Articles. They also believe that there should be a fuller dialogue between all regional and local levels, thereby widening the dialogue which has for so long been confined to European and Member State levels.

4. The European Council meeting in Cardiff of 15 and 16 June 1998 decided that the problems of the practical implementation of subsidiarity would be examined.

(1) CdR 136/95 and Appendix.