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Council of European Municipalities and Regions  
Europæiske kommuners og regioners råd  
Σμβούλιο τῶν Ευρωπαϊκῶν Δήμων και Περιφερειῶν  
Consejo de municipios y regiones de Europa  
Consiglio dei comuni e delle regioni d'Europa  
Raad der Europese gemeenten en regio's  
Conselho dos municípios e regiões da Europa

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## **THE CONVENTION ON THE FUTURE OF EUROPE**

### **CEMR POSITION PAPER**

approved by the Executive Bureau in Barcelona  
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#### **Introduction**

1. The Council of European Municipalities and Regions (CEMR) represents 42 national associations of local and regional government in 30 countries of Europe. Our member associations represent some 100,000 local and regional authorities. CEMR has, for over 50 years, supported a Europe that is politically integrated, endowed with strong common institutions, and has always promoted the integral role of local and regional government within these processes. Local and regional governments represent the deep roots of European as well as national democracy. CEMR welcomes the decision to set up the Convention, and supports the perspective of establishing a constitutional framework for the European Union.
2. CEMR is honoured that our President, M.Valéry Giscard d'Estaing, has been chosen as the President of the Convention. In March this year in Valencia, we held a first debate, and reached initial policy positions, in relation to the work of the Convention. This position paper is the product of further reflection by our members, who are united in our vision of a strong, democratic, transparent and effective European Union. In short, we believe it is time for the Union to be built on a constitutional basis that can be understood by our citizens, which is close to them, and which is seen to address their interests.
3. We draw attention, at the outset, to the fact that the very first Article of the Treaty on European Union proclaims that we are

«creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and closely as possible to the citizen.»

We believe it is time that the commitment to bringing the Union close to the citizen is put on a far more solid foundation. This point is indeed made in the Laeken Declaration.

### **The context**

4. In today's complex and fast-moving world, new forms of government and governance are required to meet the challenges facing our citizens and societies. None of the major issues can be successfully tackled by any one level, or sphere, of government. Rather, what is required is a coherent and integrated system of governance, from European to local. If we take the problems of employment creation, social inclusion, urban policy, rural development, migration or the environment, it is clear that effective solutions to each of these requires an active partnership between all spheres of government. The European and national associations of local and regional government play a key role in this regard.
5. This point was made in the Commission's 2001 White Paper on European Governance, which points out that the EU's legitimacy

«today depends on involvement and participation. This means that the linear model of dispensing policies from above must be replaced by a virtuous circle, based on feedback, networks and involvement from policy creation to implementation at all levels.»

This reference to « all levels » includes, of course, the four levels - European, national, regional and local. All play an essential role in governance and government in Europe.

6. The European Union has tremendous successes to its credit. It has been a force for peace, within its borders and in its external policy, for democracy, increasing prosperity, and for social progress. But to preserve and extend these benefits, and to promote its basic values, the Union needs to develop to a new stage. The Treaty of Nice demonstrated the limitations of the previous method of changing the Treaties, leading to hugely complicated provisions that tend to reflect sectional interests. We are on the verge of a major process of enlargement, which offers the opportunity to embed our values within a wider continental domain. Europe requires a stronger vision, as well as a practical political structure, to ensure its future vibrancy and success.
7. Moreover, recent events have highlighted the need – already mentioned in the Laeken Declaration which set up the Convention, to reduce the gap between the Union and many citizens. One essential means of addressing this gap is to ensure that tomorrow's Union is built on the principle of subsidiarity and includes the vital role of local and regional government as essential elements in its construction.
8. In short, the Union needs to be endowed with an up to date constitutional framework which is intelligible and transparent, which is closer to the citizen, is based on basic principles (including democracy and subsidiarity), and which is committed to partnership working. Moreover, CEMR stresses the

importance of both male and female participation in Europe's political life on an equal basis.

### **Tomorrow's European Union – objectives and principles**

9. We propose that there is a relatively short founding text for the new European Union, which sets out its mission and objectives, its key principles, its competences, and its institutions. More detailed matters should be set out in a second part, which might be more simply amendable than the first part.
10. As a first step towards transparency and simplicity, we recommend that the current distinction between the European Union and the European Community (with separate treaties and objectives) be ended. We propose that there be a single European Union, with a single treaty/constitutional text, endowed with legal personality. This does not prevent there being separate pillars for specific types of subject and means of action, though we place on record our view that, as far as possible, the current Community method should be the dominant means of decision-making and action by the Union.
11. We consider that the EU Charter of Fundamental Rights should be included, at the outset, in the new constitutional Treaty for the Union. This will express the commitment of the Union and the member states to the rights set out in the Charter, and reinforce the concept and content of European citizenship. We consider, however, that the economic and social rights set out in the Charter should not give rise to new financial obligations upon local and regional governments unless, following consultation, these are fully provided for.
12. We believe that the objectives of the Union need to be set out in clear, short form. Most of the main objectives are to be found in Article 2 of the Treaty on European Union, and these overlap to a considerable extent with the «tasks» of the European Community, as set out in Article 2 of the Treaty establishing the EC. These objectives need, however, to be more simply set out. We emphasize that economic and social cohesion should remain one of the key objectives. Moreover, we believe that maintaining the role of key public services should be included among these objectives (developing the concept of services of general economic interest). The Union must not be simply an economic union, but needs to ensure – through application of the overarching concept of sustainable development - a proper integration of the economic, social and environmental dimensions. We also propose that one of the objectives be to promote twinnings and exchanges of experience between civil society and all spheres of government, as a key means of creating greater understanding and solidarity across the Union.
13. We recommend inclusion in the new text of two kinds of principles. The first relates to what we call the Founding Principles of the Union, drawing on those currently set out in Article 6 of the Treaty on European Union. These are currently: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, as «principles which are common to the member states.»

14. We propose that this list be defined further, in particular to develop more clearly the scope of democracy. Democracy needs to be enhanced within the workings of the European Union itself, and we must point out that local and (where developed) regional democracy are vital components of democracy, alongside national democracy.
15. We propose, in particular, that the principle of local democracy be enshrined within the Union's commitment to democracy. This could be done by a specific reference and commitment to the principles of the Council of Europe's Charter of Local Self-Government of 1985, which has been signed by all current Member States, and by all accession states, and ratified by almost all. It may thus be seen as a part of the *acquis communautaire*. An important reason for including a specific commitment to the principle of local democracy is to make clear that any attempt by a member state to abolish local democracy would involve a breach of the Founding Principles, and permit the Union to take appropriate action. At present, this is not evidently the case.
16. In this context, we also recommend that the current reference, in Article 6 TEU, to the Union respecting the identities of its Member States, should include reference to «the Member States, including (in accordance with their internal organisation) their regions and municipalities», or some similar formulation.
17. In addition to the Founding Principles of the Union, setting out key values, we also believe there needs to be a statement of what we call the Governance Principles, which are in effect operational principles. In our view, the Commission has gone a long way in setting these out in its White Paper on European Governance. The Commission's proposed list includes openness, participation, and accountability, as well as subsidiarity and proportionality. We suggest that there are three other key Governance Principles, which are
  - Proximity (i.e. closeness to the citizen)
  - Consultation
  - Partnership

*For us, consultation of our European and national associations at a formative stage is of particular importance, whenever new legislation is being developed which affects our main responsibilities.*

18. These Governance Principles are of particular importance in ensuring that, in future, the Union works as a multi-level, or multi-sphere, partnership. Such a partnership requires that the contributions of the local, regional, national and European governments are integrated, and seen as a comprehensive system whose goal is the development and delivery of better policy for citizens. For the most part, we see these Governance Principles as laying the basis for standard-setting and good practice, not as legalistic ones. The possible exceptions are subsidiarity and proportionality, which are of major importance to us, and to which we return at paragraph 26.

## **The competences of the Union**

19. Today, almost all of the «competences» of the European Union and Community are shared ones. We believe that this will and should remain the case for the future, for reasons set out below. First, we need to clarify that the EU and EC today do not have what are called competences – rather, for the most part they are described as «activities» in Article 3 of the European Community treaty. The list of activities in that Article uses very varied language and reflects the «geological» development of the Community through different treaties. Moreover, the current treaties are not transparent, as drafted, as to which carry legislative powers.
20. We consider that a Union founded on democracy and the rule of law requires a clear statement of its competences. If a governmental body is to pass laws, it is desirable that citizens know what subject this legislative power applies to. Different federal states have different answers to the problem of allocating competences, balancing in different ways the desirability of certainty, and the need for future flexibility. The German Basic Law is an example of a more detailed allocation of competences; the US constitution, on the other hand, is an example of a federal state with few competences clearly allocated.
21. We recommend that the Union has a clear list of competences, defined by subject-matter, and that these are expressed in general terms. This provides a fair balance between certainty and flexibility. For example, we envisage the Union having competences such as «environmental policy» or «economic and social cohesion». We do not think it possible at this stage to try to define the competences of the Member States – they would have the power to legislate and act in areas not covered by Union competences.
22. We believe there are three kinds of competence. First, the exclusive competences of the Union, which at present are few. These include customs and commercial policy, monetary policy for the euro-zone, and the legal basis of the internal market. Some of our members wish to see this set of exclusive competences enhanced, e.g. in the field of foreign affairs. Second, there are the primary shared competences, in which it is recognized that the Union takes the lead in relation to policy and legislation, but where the Member States (and their regional and local authorities as relevant) have a power to legislate and act, so far as this does not contradict the primary European policy or legislation. Third, there are the complementary shared competences, where the primary role remains with the Member States, but where it is recognized that the Union has a supporting role to play, e.g. through financing programmes or pilots, or through active co-ordination.
23. Under this three-fold division of types of competence, the constitutional text should set out which competences fall under each head, and what powers the Union has in relation to each competence. Does it have the power to legislate? Does it have power to spend and to co-ordinate? Where a competence carries the power to legislate, does this include the power to pass Regulations, with

directly applicable and possibly detailed provisions? Or does it carry the power to pass framework directives, which set out the objectives of the legislation, but leave it to the Member States (and their infra-national governments) to implement, taking into account more local circumstances and traditions? CEMR favours, wherever possible, the use of framework directives – see paragraph 29 below.

24. In all cases, European Union decisions or activities which have financial implications for regional and local authorities should only be taken where adequate financial resources are securely provided. The principle that new tasks and obligations must be clearly financed is for us a most important one, given that local and regional government implement much European legislation, and needs to be written into the Treaty itself.
25. Whilst we believe in the need for specific competences to be set out, we also recognize that over the decades, the Union needs to be able to evolve, to address new issues. We therefore propose that the Union should have the power, as at present (Article 308) to add new competences, but only where both parts of the legislature (Council and Parliament) so agree, possibly through a special majority. We propose that the European Court of Justice should have power to determine whether the Union's other institutions are acting beyond the scope of their competences, and if so to annul the action in question.
26. From the above, it will be evident that we see competences not only as a legislative issue, but as covering any legal power to act. In this sense, local and regional governments of all types have important competences. Some regions in Europe have legislative powers, some do not. Legislation is an important means of acting in the public domain, but not the only one, nor always the most important. Therefore, in many of the subject-matters of the Union, such as transport, employment, rural policy, environment, social affairs and so on, local and regional authorities all have an important role to play, within a coherent and integrated system of governance. This point is vital when we turn to consider the question of subsidiarity.

### **Subsidiarity and proportionality**

27. In the introduction to this paper, we referred to Article 1 of the Treaty on European Union, with its reference to decisions being taken as closely as possible to the citizen. Yet at present, the Treaties contain no articulated means of putting this into effect. This provision of Article 1 needs to be maintained in the new constitutional text.
28. The obvious and logical way of giving effect to Article 1 is via the principle of subsidiarity. The Treaties currently limit the application of the principle to the relationship between the Union and the Member States. But the principle of subsidiarity in truth is an organizing principle that applies to all spheres of government. In effect, subsidiarity means that decisions and actions should be taken by the sphere of government closest to the citizen that is effective for the

purpose. In very many cases, local or regional governments are the appropriate sphere of government.

29. Yet at present, local and regional self-government are often undermined by excessively detailed legislation emanating from the European Union (and also, we would add, from national legislatures). Therefore the principles of subsidiarity and proportionality should lead the EU to concentrate on framework directives, rather than detailed regulations. This would respect the roles and diversity of national and regional actors, and enable regional and local authorities to adapt the objectives of European legislation to their respective circumstances and needs. The use of detailed Regulations should be kept to a minimum, where there is an overarching need for uniform European rules, e.g. in relation to the single market.
30. In a system of many shared competences, it is still necessary to know who may do what. Take the environment as an example. There is a role for the Union to legislate where there is a clear pan-European interest. National governments may legislate or have their own policies, where not contradicting European law. Regional and local governments act within their own domains, e.g. via Local Agenda 21. It is the principle of subsidiarity, supplemented by that of proportionality, which determines the «who does what».
31. We recognize that a constitution for the Union must lay down principles which are common to the Union and all Member States. Subsidiarity is such a principle. But the basic text should not seek to force the Member States to organize their internal regional and local government framework in particular ways.
32. Accordingly, we believe it essential that the new constitutional text defines subsidiarity in an inclusive way, covering regional and local governments, as well as European and national governments. This is necessary to reaffirm the principles of local and regional self-government, drawing on the universally accepted principles of the European Charter of Local Self-Government. We are willing to offer drafting comments to achieve this result; examples of such possible amendments are appended to this paper. In particular, we propose that existing Article 5 be amended to include a specific reference to regional and local authorities. There needs to be a mechanism (legal or political) for reviewing the application of the principle, as between the Union and Member States – see next paragraph. We propose that within each Member State, there is a duty to have a mechanism for reviewing the application of the principle of subsidiarity, as it applies within that state. The Union would need to affirm that such a mechanism exists in practice, but would not interfere in how this operates.
33. We do not have a united position on whether the principle of subsidiarity, as it affects the EU, should be enforced through legal means (recourse to the European Court of Justice) or through a political mechanism. While the «legal» course has attractions, it risks giving too much power to lawyers and judges at the expense of democratic decision-makers. If the political course is chosen, we suggest a Subsidiarity Committee, which must include nominees

from regional and local government, as well as from the Union's institutions and national Parliaments. We believe the tests set out in the Protocol on Subsidiarity and Proportionality remain valid, and could be adapted to infra-national application.

### **The institutions of the Union**

34. CEMR remains committed to the application of the Community method to the maximum extent possible. We believe it is vital not to bypass the Parliament in important issues, and consider that the subjects for the open method of co-ordination need to be based in the constitutional text, and be subject to Parliamentary scrutiny insofar as firm decisions are involved. We are also firmly of the view that local and regional government must be fully involved in open co-ordination processes that touch upon our main competences.
35. So far as legislation is concerned, we propose that co-decision between Parliament and Council become the norm. This is both simpler to understand, and more democratic in principle. We believe that the current make-up of the institutions provides for two legislative «houses», Parliament and Council, and do not accept the need for another «house». On the other hand, we believe it essential, in the interests of openness and democracy, for the Council, when legislating, to act openly and publicly, bringing its procedures more into line with those of national or federal legislatures.
36. We accept the need for the Union, especially in the international arena, to have a stronger identity and presence, which in part is a matter of competences, and in part a matter of how the European Council works. But we consider it dangerous to give major new executive powers to the European Council which are not subject to democratic control through the Union's institutions. Otherwise, we believe that the disconnection between the «ruling elite» of the Union, and the people, will grow ever wider.
37. We reaffirm our belief in the importance of the Committee of the Regions within the Union's framework, representing local and regional government within the formal decision-making process. We propose that the Committee should be defined as an institution of the Union, to reflect the important role of our spheres of government in the governance of Europe. We note that the Committee's full title includes local as well as regional bodies, and believe this to be essential for the future. At present, the delegations of some countries include little, if any, representation from local government. We propose that there be a duty to ensure an equitable balance of representation between local and regional government in each state's delegation.

### **The policies of the Union**

38. We have, in previous sections of this paper, looked at competences from a formal perspective – what are they, what powers do they carry etc. So far, we



have not considered them from the point of view of substance. We do not intend to go into detail at this stage, but wish to make a few points.

39. We believe, as indicated under objectives, that economic, social and territorial cohesion, and regional policy in general, remain important issues for the Union. These are key areas in which the Union demonstrates its solidarity and commitment to address structural inequalities. We therefore oppose any attempt to «renationalize» such competences.
40. We also believe that the reference in Article 158 to rural areas needs to be balanced by a reference to urban areas. Most of the Union's population lives, and will live, in urban areas, and the Union needs to be able to intervene in a strategic way to address both urban and rural structural inequalities.
41. Moreover, in relation to agricultural and rural policy, we strongly favour a policy approach which promotes rural development rather than unlimited subventions to agricultural production. We hope that this change of focus will be adopted.
42. Consistent with our proposal that twinnings and exchange of experience be included as objectives of the Union in their own right, there needs to be an express competence (though not a legislative one) for the Union to promote and fund such activities. This power should not be limited to exchanges within the Union, but should also include twinnings and exchanges with counterparts in other countries, where this is in the interest of the Union.

### **The relationship of local and regional government to civil society**

43. The Convention has at this stage seen local and regional government as falling under the 'umbrella' of civil society. We wish to emphasize that our spheres of government are, by definition *governmental*, and not *non-governmental*. For the future, therefore, we urge the Convention to treat local and regional government as conceptually separate from civil society. All spheres of government need to engage closely with civil society – this is one of the key ways of bringing the Union closer to its citizens. Local and regional government have much experience in working with local communities and their organisations, an experience which can be valuable to the Union for the future.

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