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WESTERN BALKANS IN THE PROCESS OF EUROPEAN INTEGRATION AND THE CONTRIBUTION OF REGIONAL AND LOCAL AUTHORITIES

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Abstract
The Thessaloniki Agenda for the Western Balkans, determined that European Union supports Western Balkan countries to prepare their future in European structures and ultimate membership in the European Union, while the principles of "own merits" and "catch" will be applied in parallel with regional approach, which remains an essential element of EU policy for the region. When discussing Western Balkan countries likely candidates to be potential members of the European Union, the responsibility of the local self-government units, it is important to know what Community obligations are incumbent upon these authorities. In this context, there is often a tendency to think, in the first place, of obligations of local and regional authorities to implement European directives on the basis of national implementing legislation, for instance the issue of environmental licences or the application of European public procurement rules. The implementation of directives is, however, only one of the Community obligations which local and regional authorities have.

I. The role of regional and local authorities in European governance

The ECT as it stands provides for an institutionalised dialogue between the Union Institutions and regional and local authorities. The central provisions in this respect are articles 263 ff. ECT, concerning the CoR10. The establishment of the CoR was a significant victory for regional and local authorities in their struggle for representation on the European level.

This notwithstanding, the aforementioned provisions are far removed from a logic of political representation. Their rationale is rather of a functional nature. Before testing the accuracy of such statement, it is perhaps useful to specify more exactly what is meant here by functional rationale.

In a significant and growing proportion regional and local authorities are responsible for the implementation EU law11. Without prejudice to the fact that it is first and foremost the responsibility of the Member States to consult regional and local entities on European affairs, this circumstance encourages in and of itself the establishment of a direct dialogue between sub-national entities and European Institutions. Such dialogue, apart from clearly serving the interests of regional and local authorities[1], can also contribute to pursue of the objectives set out in the Treaties. Firstly, it is a valuable source of information, local knowledge and expertise to the benefit of the Institutions. Secondly, assuming that with better involvement comes greater responsibility, involving regional and local authorities in the shaping of the EU measures is likely to favour their proper implementation by those same authorities.

In this functional perspective, the consultation of regional and local authorities is first and foremost motivated by their role in implementing EU law on the field, which is common to all of them: German, French, Italian and *Comuni* and so forth. The aim of such consultation, as anticipated, is essentially that of providing the European Institutions with better information on the complex reality (factual conditions, economic and social interests) on which they are called upon to take decisions. In other words, under a functional rationale, the involvement of regional and local authorities is intended more to favour better lawmaking at the EU level (as well as better implemen- tation" at regional and local level) rather than to give a full-blown political representation to the interests that regional and local administrations institutionally represent[2].

The Treaty provisions on the CoR, and especially those on its composition and mandate, reflect clearly this "functional" rationale. The heterogeneous composition of the CoR and the appointment procedure of its members, who are not elected nor chosen by their own constituencies, but are appointed by an Institution of the Union, have often been the subject of stark criticism[3]. In some sense, such criticism reveals a certain discontent as to the fact that the CoR deviates from the paradigm of a fully-fledged "territorial chamber" such as the German *Bundesrat* or the Council of the Union, through which all the territorial units composing a larger polity obtain political representation in its decisional procedures.

But the point is precisely that the CoR is not and is not intended to be such a territorial chamber. Its role is not that of giving regional and local authorities a proper political representation in the Union's institutional system. Rather, it is that of "enriching the debates of the Union with the expression of the ideas and political sensitivity of its members" and therefore of contributing to the good execution of the Treaty by the Institutions. Such role is unambiguously set out in the Treaty. Art. 7 § 2 ECT confers upon the CoR the task of "assisting" the Commission and the Council in carrying out their missions. According to art. 263 ECT, the members of the Committee "shall be completely independent in the performance of their duties, *in the general interest of the Community*" (emphasis added). Moreover, the heterogeneous composition of the Committee, so ill-suited for a territorial chamber, appears to be coherent to the "functional" rationale that motivates the involvement of re- gional and local authorities in EU decision making procedures. That all regional and local authorities may have their "representative" in the CoR, irrespective of their status under national law, is coherent with the fact that, as we said, all regional and local authorities may be called upon to implement EU law

1 See N.MACCORMICK, Subsidiarity, common sense and local knowledge, contribution to the Convention, doc.CONV. 275/02

2 See COMMISSION, Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation, doc. COM (2002) 704 final, p. 4 and 5.

3 For an overview see A. D.ATENA, Il doppio intreccio federale, op. cit.

depending on the internal organisation of the Member States.The Commission's white paper on governance, as well as the consultation documents that the Commission has subsequently adopted, would seem to confirm the foregoing observations. The overarching aim of the Commission's initiative on European governance is to "open up policy-making to make it more inclusive and accountable"[4]. To this effect, the Commission is progressively developing and diversifying its channels for dialogue with (*inter alia*) regional and local government. In this context, the central concern of the Commission is that of establishing a more fruitful and intense partnership with the CoR, whose role "of indispensable intermediary between the EU institutions and the regional and local authorities" is recognised and emphasized. In addition, the Commission has also committed itself "to establish a more systematic dialogue with European and national associations of regional and local government at an early stage of policy shaping". To this effect, the Commission has undertaken to develop and rationalise its current institutional practice of consulting with regional and local authorities[5].What is of specific interest to us is that in this context, i.e. in the context of a significant effort to exploit more fully the possibilities for dialogue and consultation existing under the Treaties is that the Commission has taken care to stress the purpose and limits of such cooperation and dialogue.First and foremost, in its consultation documents the Commission iteratively states that an improved participation of regional and local actors at EU level is permissible only insofar as it does not entail a shift in the formal allocation of decisional power. The following maxim by the Commission illustrates well the point: "Better consultation complements, and does not replace, decision-making by the Institutions"[6].Secondly, for all the "closer-to-citizens" rhetoric that imbues the Commission's documents, it is transparent that in its view enhanced consultation has primarily the purpose of improving the manner in which the Union's Institutions discharge their duties, and only indirectly that of securing enhanced access to the Union's decision-making procedures to regional and local entities. This clarifies an important limit of the new procedures of "enhanced consultation", in addition to the (obvious) ones of compliance with EU law and respect for the Member States' relevant law. "Enhanced consultation", whatever its forms, must not be taken to a degree where it would hinder the functionality of the Institutions.It is revealing in this respect that the Commission has chosen not to confer to regional and local authorities additional participatory *rights*, preferring an infinitely more flexible, non-binding approach.

To be sure, that the Treaties provide for the participation of regional and local authorities in EU decision-making procedures in a "functional" perspective does not detract from the political salience of such participation, nor to the potential contribution these authorities make to the legitimacy of EU measures. It does however entail precise institutional implications. The "functional" rationale we have described justifies the involvement of regional and local authorities, but not a re-allocation of decisional power in the European Union. In other words, it is compatible only with a rigorously consultative role for such authorities[7].

The legal framework we have described so far might of course be confirmed, consolidated or revolutionised with the prospective adoption of a new Constitutional Treaty.

In this regard, it should be first noted that the ongoing debate on the future of the Union marks a resolute orientation in favour of both a more explicit recognition of "the regional and local dimension of Europe" and a greater involvement of sub-national entities in the European political process. Many proposals to this effect seem to have gathered considerable support. In the first place, it is widely accepted that the opening articles of the Constitutional Treaty, setting out the fundamental principles and values of the Union, should make reference to regional and local authorities[8]. In particular, the principle set out in art. 6(3) TEU, according to which the Union must respect the national identity of its Member States, would be developed accordingly and the Union would be required to take duly into consideration "the organisation of public administration at national, regional and local level" when exercising its competences. It has also been suggested that the subsidiarity principle might be reformulated so as to encompass a reference to action on the regional and local level of government. Such proposal has apparently not obtained support on behalf of the Convention. However, as regards *monitoring* compliance with the subsidiarity principle, the idea of involving more closely regional and local authorities seems to have been widely accepted.

It has been suggested that the parliaments of the constitutional regions should be enabled alongside with national parliaments to set in motion the "early warning" procedure proposed by the Convention's Working Group on subsidiarity. But while proposals of this kind are still met by significant opposition, there would seem to be consensus on the conferral upon the CoR of *locus standi* before the European Court of Justice. In the most generous of the various proposals that have been circulated to this effect, the CoR would be entitled to bring annulment actions before the ECJ on grounds of a violation of its own prerogatives and on grounds of violation of the subsidiarity principle[9].

With more specific reference to the participation of regional and local bodies in EU decision making procedures, mainly two aspects have been discussed in the Convention.

In the first place, important proposals have been made concerning the CoR. As for its powers, the Convention seems favourable to a consolidation of its advisory status. As said, the CoR could be entitled to defend its prerogatives before the ECJ. Moreover, the political Institutions could be placed under a duty to regularly "adopt a reasoned report on the measures taken in response to opinions delivered by

4 COMMISSION, European governance- a white paper, op. cit., p. 5.
5 see COMMISSION, Report on European governance, op. cit., p. 9
6 see COMMISSION, European governance, a white paper, op. cit., p. 10.

7 The existing Treaties reflect this correspondence: see in particular art. 263 ECT.
8 See in particular PRÆSIDIUM OF THE EUROPEAN CONVENTION, Summary report on the plenary Session- Brussels, 6 and 7 February 2003, op. cit., pages 9 and 12.
9 PRÆSIDIUM Summary report on the plenary session -Brussels, 6 and 7 February 2003, op. cit., p. 10

the CoR" and/or to give reasons when they decide not to comply with the Committee's opinions[10].

The discussion within the Convention is more open and controversial as regards a possible modification of the Committee's composition. It seems probable, however, that the principle of the mixed composition of the CoR (regional and local authorities) will remain unchanged. A full "regionalisation" of the CoR, would in fact be inconsistent with the fact that in several Member States the local level of government plays a more important role in implementing EU law than the regional level. The CoR itself has recalled that it "should reflect the diversity of regional and local governance in the individual Member States on an equitable basis"[11]. This creates a serious obstacle to any profound reform of the composition of the CoR. In fact, if mixed representation in the CoR is preserved, then the other distinctive feature of representation in the CoR, i.e. its nature of "sample representation ", follows by necessity.

The debates of the Convention also concern the forms of direct consultation between the Commission and regional and local entities or their associations. In this regard, it should be kept in mind that "with enlargement the Union will comprise about 250 regions and 100,000 local authorities"[12]. This will make it impossible, or at any rate extremely difficult and burdensome for the Commission to consult every single sub-national entity interested to or affected by draft legislation. Therefore, the proposals made to this effect are generally broadly worded, so as to leave the Commission a wide margin of discretion on the more appropriate manner to proceed to consultations.

The proposals we have briefly examined above prefigure a positive evolution for the position of regional and local authorities in the context of the European Union. The new Constitutional Treaty may be expected to better defend their sphere of autonomy *vis-à-vis* the Union, and to improve their access to the shaping of EU measures. It should be stressed, however, that the proposals we have examined prefigure a harmonious evolution of the current institutional system, not a dramatic paradigm shift[13]. Many of them aim at restating the law as it stands in a more explicit and clearer manner, even though in some cases the texts that have been proposed seem inadequate or even counterproductive.

Other proposals are intended to constitutionalize existing institutional practice. Others are more innovative, especially those concerning the advisory status of the CoR, as well as its *locus standi* before the ECJ. Still, they tend to develop the institutional architecture existing under the Treaties, rather than to substitute it with a new one.

As regards in particular the participation of regional and local authorities in EU decision- making procedures, its two essential features would remain unaffected by those reforms: it would remain rigorously consultative in nature, and it would still be inspired by an essentially "functional" rationale based on the conceptual sequences "better lawmaking / consultation" and "effective implementation / consultation.

II. Obligations under primary Community law

A very important category for local and regional authorities are the obligations under primary

Community law, in particular the EC Treaty. These are, for instance, the Treaty provisions on the common market, such as the four freedoms, and competition, including state aid. Such obligations apply *directly* for these authorities, in the sense that no national implementing legislation is necessary. Furthermore, most of these Treaty provisions have direct effect, so they can be enforced in a national court.[14]

1.1. The four freedoms

Local and regional authorities must abide by prohibitions on discrimination flowing from the free movement of goods, persons, services and capital. These are far-reaching obligations that have an effect on all manner of local and regional policy areas. In the case of the free movement of goods, an example might be a prohibited clause in a tender for public works contracts to use only national sewer-pipes. The free movement of persons is relevant for local and regional authorities in their capacity as employers, but also extends to their actions in various areas of policy such as civil registration matters, issuing of driving licences, social housing, town planning, etc.Local and regional authorities may, for instance, be confronted with the prohibition of discrimination in relation to the freedom to provide services in the area of rates for admission to museums, rules about engaging unemployed persons from the local area who are difficult to place,or action against football hooligans coming from other Member States. The free movement of capital can also come up in the matter of authorization requirements or other requirements that are capable of hindering free movement, with regard to the acquisition, use or disposal of immovable property.[15]

1.2. Competition law for undertakings and public authorities

European competition law for undertakings, as laid down in Articles 81, 82 and 86 EC, also leads to certain obligations for local and regional authorities. They can be confronted with this when 'going commercial' themselves and thus acting as an undertaking, but European competition law also involves rules for local and regional authorities when, acting as public authorities, they promote or force certain anti-competitive conduct of undertakings or grant them exclusive rights.[16]

10 COR, Contribution to the Convention, doc. CdR. 127/2002 fin., para. 4.
11 CoR, The role of the regional and local authorities in European integration, op. cit., para. 1.34.
12 CoR, The role of the regional and local authorities in European integration, op. cit., para. 1.37.
13 This prudent approach is underscored in EP, Resolution on the role of regional and local authorities in European integration, op. cit., para. K.

14 The prohibitions on discrimination flowing from the four freedoms have direct effect. Since the decentralization of European competition policy, as of May 2004, Art. 81 EC has direct effect in its entirety. Arts. 82 and 86 EC also have direct effect, but of the rules for state aid only the 'standstill' provision of Art. 88(3) EC has direct effect.
15 Case C-302/97, Konle, [1999] ECR I-3099; joined Cases C-515/99, C-519/99, C-524/99 and C-526/99, Reisch e.a., [2002] ECR I-2157; Case 452/01, Ospelt, [2003] ECR 2003 I-9743.
16 See for instance Paul Craig and Gráinne de Búrca, EU Law, Text, Cases and Materials, Oxford 2002 Chapter 27, pp. 1123-1138. See also Anna Gerbrandy and Bart Hessel, Mededingingsrecht voor decentrale overheden, in the series Europees recht voor decentrale overheden, part 4, Kluwer, 2004.

1.3. Community supervision of state aid

By now it is sufficiently known that, in granting aid, local and regional authorities are confronted with the Community supervision of state aid laid down in Articles 87-89 EC. The provisions lay down certain important obligations for these authorities, such as reporting plans to grant aid and the prohibition to grant state aid before the Commission has come to a – positive – decision on the matter.[17]

III. Obligations arising from regulations

Regional and local authorities are also confronted with numerous obligations arising from EC
regulations. Examples are Regulation 1612/68 on the free movement of workers37 (although this
Regulation ought to be familiar in local government circles, in fact it is largely unknown – in the Netherlands at least), the procedural Regulation 659/1999 in the area of state aid,[18] and, of course, the regulations concerning the Structural Funds. These obligations also apply to local and regional authorities without any involvement of the national implementing legislator. The obligations contained in EC regulations do not need to be reproduced in national legislation – in fact, this is not even allowed. Furthermore, it follows from the nature of regulations that they are directly effective.

3.3. Obligations arising from directives

There are many European directives that entail obligations for local and regional authorities in specific policy areas. Examples could be the well-known public procurement directives, the many environmental directives such as Directive 91/271 concerning urban waste-water treatment, Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, Directive 75/440 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, Directive 89/106 concerning rules on construction products and Directive 75/117 on the principle of equal pay for men and women.[19]

Where a directive is not implemented correctly, municipalities can, for instance, be confronted with the obligation to interpret national law in accordance with the directive or may be obliged to disapply the incorrect implementing legislation on the basis of the principle of loyal cooperation, and even to apply a directly effective provision of a directive.

3.4. General obligations arising from case law

Besides the obligations arising from the various European rules there are also obligations for local and regional authorities that have been developed in case law. Suffice it here to mention the principles that have been developed by the Court of Justice in the area of enforcement, and which may make an official policy of tolerance challengeable when European standards are concerned: the principle of effectiveness; the proportionality principle; the principle of equivalence (or assimilation) and the principle of deterrence.[20]

IV. Concluding remarks

EU regional policy is based on the democracy development and subsidiarity principle.

There is understanding that regional management should be closer to the citizens in order to evaluate community demands and to guarantee possibility to present their position about problematic issues. EU does not push up to satisfy the unanimous European regional model, which basically is non-existent- each country can formulate regional management according the states demands and may freely to choose what instruments to use for achievement of the best democratic regional management results.

Regional level in between of local and central levels- is especially suitable for integration of citizen participation ideas. On purpose to influence regional policy from "bottom-up", the regions need real powers, based on democratic structures. Citizen participation in regional management processesis important, because it creates situation to apply experience of different community groups and to convince the society that citizen opinion is treated seriously and public institutions seeks to meet citizen expectations. Stimulating the citizen participation the regional government responsibility to society would increase, also the effi ciency of implemented regional policy.

Decentralization of government in Western Balkan countries allows approaching regional development management to community towards the creation of possibilities for citizens to participate in consideration of regional projects and implementation also to guarantee
effective control using EU support. Discussing the question of regional self-government in Western Balkan countries, it is necessary to take into consideration regionalisation level and regional self-suffi ciency formulating and implementing regional development. Also the practice of other states could be useful in decision-making which regional management model is most suitable for Western Balkan countries. It should be expected that such model would stimulate civic initiative "bottom-up" taking into account the principle of subsidiarity and it would be opportunity to introduce the new management instruments on purpose to increase accountability and inter-sectoral cooperation.

There is no doubt that the regional development in Balkan Region is moving in a positive direction. The objectives of any regional development Balkan Region should encompass the following: contributing to the process of European integration, helping stabilization, reforms and development in Balkan countries, complement (on the regional level) the EU integration process and contribute to the build up of the regional development. of Balkan.

[17] *See for instance Craig and De Búrca, supra note 35, Chapter 27, pp. 1153-1169.*

[18] *OJ 1991 L 135/40.*

[19] *OJ 1975 L 45/19.*

[20] *See Hessel, supra note 16, p. 21. Also, certain general principles can be derived from the case law with regard to supplying information and cooperation and regarding the implementation of directives (Hessel, supra note 16, p. 20)*

We can say that the European prospective, it needs some regional obligations of local and regional authorities, more articulated and aggressive build up of regional development schemes, in order to overcome EU integration process obstacles that it has been facing.

Biblography

- Petrakos. G. (2000) "Fragmentation or Integration in the Balkans? Strategies of Development in the 21st century", in *The Development of the Balkan Region*, Petrakos & Totev (eds), London: Ashgate, pp. 221-237.
- Dobrinsky, R. (2000) Multi-speed Transition and Multi-speed Integration in Europe:
Recent Economic Developments in the Balkans, in *The Development of the Balkan Region*,
- Gligorov, V., Kaldor, M. & Tsoukalis, L. (1999) *Balkan Reconstruction and European Integration*. London: The Hellenic Observatory, The Centre for the Study of Global Governance & the Vienna Institute of International Economics.
- World Bank, (2000) *The Road to Stability and Prosperity in SEE: A Regional Strategy Paper.*
- The Stability Pact for Southeast Europe, 10 June 1999, http:// www. stabilitypact.org
- The Declaration of Zagreb Samit, 24 November, 2000, http://ec.europa.eu/enlargement
- The Final Deklaration of Thessaloniki Summit to countries of Western Balkan ,21 June 2003, hppt://ec.europa.eu/ enlargemt
- Regional cooperation in Western Balkan. A priority for the European Union, European Commission, 2005 http://ec.europa.eu/enlargement/pdf/nf5703249enc_web_en
- Developement Strategy and Principe Challenges 2009-2010, COM(2009)553, Brussels, 14.10.2009, Council 2006/682/EC, Official Journal, L285 Vol 49 http://eur-lex.europa.eu
- Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part; Brussels 22 May 2006; singed on June 2006 hppt://ec.europa.eu