

Speech by Giuliano Amato, member of the Praesidium of the European Convention

It is particularly pleasing to be invited to your plenary session, for two reasons. Firstly, a personal one: for more than 30 years, I have sought vigorously to strengthen the role of regional and local authorities in my country, in the belief that reinforcing regional and local responsibilities is a key factor for a functioning democracy in our societies at this time. The second reason is that the Convention is also working on this topic, and it is important for you to continually press the Convention to ensure that the new institutional framework – which the Convention is charged with preparing for the Union – brings the necessary significant innovations to bear in this area too. We often say that the Union must embrace cultural and social cohesion while also safeguarding diversity. Sometimes – I hope you will allow me to speak frankly – it almost seems it is considered "anti-European" to seek to boost regional and local responsibilities. This is a serious mistake. At this stage in history, there is a need to strengthen the Union and pool certain functions at European level, but there is an equal need to strengthen regional and local responsibilities. This is not a minor detail. Europe is criss-crossed by what the French call "passions identitaires": upsurges of fervent identity-based feeling, often narrowly local in focus, which cannot be countered with centralism. It is wrong to imagine that the negative aspects of narrow-minded local movements can be countered without real responsibilities being vested in regional and local authorities. This is true within individual countries, and is no less true for the Union as a whole.

What has struck me in the debate so far is that concern for the subsidiarity principle has not, in my view, been sufficiently reflected in a call for direct guarantees of regional and local powers, but rather in a call for these tiers of authority, via the CoR, to take part in the Community's legislative and implementing procedures. This is an important point. I believe that the proposals and demands made to strengthen the role of the CoR at European level are quite right, and I certainly do not mean to criticise them. I support them and believe them to be fair. But we must be aware that they only address part of the problem we face, and that our primary task is to ensure that regional and local responsibilities and the powers through which these responsibilities can be discharged are also enshrined in the European institutional architecture.

I am not a supporter of the old, dual form of federalism whereby each tier of government has its own, clearly delineated competences which remain totally separate from each other. Such a system is not credible. The competences of different tiers of government are bound to meet. I am therefore convinced that many of these competences will inevitably exist in parallel and will be shared. There must, however, be a definition of which competences are to be shared. If I, as a region or municipality, am told that the sphere in which I bear responsibilities is shared with others, then I am not sufficiently protected. I must know exactly where I stand in this system. In order to be shared, a competence must first exist: if it does not exist, it cannot be shared. I trust that my colleagues in the Convention will understand this; perhaps they are aware of this need, but they continue to argue that it is met by subsidiarity.

Subsidiarity is a fine principle, but it is only a principle of method. It is a principle under which if I can rationally demonstrate that everything must be done from the centre outwards, then everything will have to be done in just that way. That is not my view; it is the view of the greatest theoretician of

federalism, **Daniel Elazar**, who recently passed away. He expressed it on a number of occasions, most recently in an excellent book which deserves to be read, *Federal Vision*, a joint Oxford and Harvard publication. He was a man of strong views, and I must stress that these are not my opinions but his. He argued that Europeans who believe these problems could be settled through subsidiarity were in thrall to the top-down, hierarchical culture of the Catholic church. According to him, subsidiarity was an expedient devised by the Catholic church to soften the centralism of its organisation. He even wrote that to think subsidiarity was the answer was an insult to federalism. That is certainly not my opinion. But the fact that such an eminent writer should say such a thing should help us to grasp that subsidiarity cannot suffice, because it merely provides justifications for choices which are in essence discretionary and are not based on any certainty.

The Convention is currently discussing whether scrutiny of subsidiarity should be purely political or could also be judicial, but it is clear that if subsidiarity remains as it is today – based on Article 5 – scrutiny can only be political. And there is no point in introducing judicial scrutiny, which in any case already exists. There is already a body of case-law on subsidiarity which shows that if a decision is manifestly irrational, it may be deemed by a court to be unlawful. And courts could hardly consider otherwise with the current concept of subsidiarity. There is however another interpretation, as suggested in the European Parliament's Lamassoure report, and I would like the Convention – and indeed yourselves – to accord it greater attention. Under this interpretation, where competences are shared, the activity of the European Union should be strictly limited to the adoption of general principles: in other words, framework legislation. Framework legislation not as a discretionary choice, but as an inherent limit of a multi-tier system in which the highest tier can lay down common principles and guidelines but must leave the nation states, regions with legislative powers and local authorities with executive powers sufficient leeway, within these principles, to give expression to national, regional and local diversity.

Let us look for a moment at the paradox facing Europe today. On the one hand, there are calls to strengthen the European social model – in every speech they make, politicians press this claim. On the other hand, it is quite rightly argued that social policies have a powerful national, or even regional, dimension and cannot be laid down uniformly across Europe. This problem can be overcome by arranging for certain common standards or principles to be established at European level, while leaving Member States and regional or local authorities to adopt national or regional policies on the basis of these principles. The same should apply in other areas, including agriculture. Reconciling highly divergent points of view between large countries such as France and Germany, difficult though it is, can probably be achieved in precisely this way, by agreeing common principles and then allowing each to legislate in his own way. Introducing this principle lends substance to judicial scrutiny, since such scrutiny has the means to distinguish between general principles and detailed rules but not to monitor subsidiarity. This is the way in which the system of shared competences can best operate and we can move away from the present situation whereby one-size-fits-all rules are dispensed from above and are then supposed to be applied uniformly in widely differing circumstances across Europe.

I wanted to draw your attention to this point because it was raised by very few colleagues at the Convention's plenary debate two weeks ago, even though they represent regions with legislative

powers or local authorities. Attention instead seemed to focus on the powers of the CoR. I am sure that the CoR presidency is in fact more interested in powers for the regions and local authorities than for the CoR itself, as it knows that its legitimacy lies in representing others, not in holding its own powers. Once a stronger form of subsidiarity of the kind I have been discussing is in place, this does not mean that it would not also be easier for CoR opinions to conduct advance political vetting of compliance with these principles on the part of the Union's legislative organs. And if these opinions are not heeded, it is quite right to demand that reasons be given. This too is part of the vision in which regions with legislative powers and local authorities with executive powers are prominent players. They must be able to speak out, because a democratic Europe is one in which all these centres of democratic life are linked together to form a network. The Union is brought closer to the citizen not only through one or more committees, but by binding the exercise of responsibilities at the highest level with those at the lower levels, which must convey the views of the communities for which they speak and legislate.

The same applies to the question of coordination and implementation. I would like just to point out two things before concluding. Firstly, I believe that it is in the interests of Europe and its regional and local authorities that responsibility for coordination and implementation activities within the new institutional architecture should hinge upon the Commission. In other words, I believe we should be aiming to reduce sectoral Councils of Ministers to a minimum, or at least to focus legislative work on a single Legislative Affairs Council. Moreover, the Commission should be responsible for chairing the remaining sectoral Councils, which would play only a coordinating and implementing role. This would be beneficial in terms of clarifying tasks and the separation of powers at EU level, but would also be beneficial to local and regional authorities. For as long as sectoral Councils of Ministers remain responsible for coordination and implementation at EU level, these ministers will inevitably intervene even in spheres where national, regional or other constitutional arrangements stipulate that such responsibilities lie with other tiers of government, since it is these ministers who sit on the Council. And at that stage it would be particularly difficult to determine whether these ministers then call upon other authorities. So, let us imagine that full responsibility for implementation and coordination is handed over to the Commission. The Commission would then be responsible for calling on the relevant authorities in each case, working on the basis of our national constitutions. There could thus be meetings of advisers or ministers, exactly like those presently known as Councils of Ministers, or meetings of advisers or regional ministers, where the national constitutions give these responsibility for coordination and implementation. We might stop at this point and – somewhat hypocritically – object that the Union does not directly recognise regional entities, but this is not so: the Union is fully aware of its Member States' constitutions and knows in which sectors power rests at national level and in which at other levels. But only one EU body can choose between one or the other tier in compliance with the constitutions; and that body is the Commission, as it would be hard for Councils of Ministers not to choose themselves.

There is a second point which the Convention must clarify regarding the need to define respective responsibilities, as this is currently the subject of serious confusion. As we all know, consideration is being given to accepting regional projects using the ERDF or Cohesion Fund – Objectives 1 and 2 etc. – but in the present legal situation, the Court of Auditors in Luxembourg tends to hold the Commission responsible for each instance of expenditure on the part of a regional or local authority.

This just goes to show the present degree of confusion, and that the existence of shared competences must not mean that all parties share responsibility for everything. Such a situation can cause serious distortion: as Community office-holders may be held personally liable for acts of regional or local expenditure, they are more concerned with the lawfulness of each item of expenditure than with the overall design, framework or guidelines, and therefore impinge upon responsibilities which should rightfully be regional or local. We must thus make it crystal clear that in this area too, responsibilities are quite distinct. Each local community answers for the way in which it spends the European taxpayer's money, while the Commission answers for compliance with the general design and standards. The point of this example is to show that having an elastic arrangement, as is the subsidiarity principle, is not enough; specific responsibilities must be assigned to each party. Without this clarity, democracy does not and cannot exist. For democracy is made up of two things: firstly, elected bodies which I, as a citizen, choose and which, if they fail to deliver, I will not reelect; secondly, I must know who does what and who is precisely responsible for what. If I as a citizen find myself unable to ascertain whether my local authority, my region, my country or the Union is responsible for Objective 2 funds, then I will inevitably lose trust in the institutional arrangements. Because if I do not know who to criticise or blame, I will feel that the system is undemocratic as it denies me the opportunity to deploy the only arms available to me as a citizen, namely my right to criticise and not vote for those I have criticised. This is an important point which we must never lose sight of.

In conclusion, let me note that although shared competences should not be handled too rigidly, democracy is not a choir in which everyone sings from the same hymn-sheet. Each must do his or her part, and the task of the Europe of the future will be to make this possible.

Thank you.
