

Working Group I

Working document 5

## **Working Group I on the Principle of Subsidiarity**

**Subject:**       **“The principle of subsidiarity”**  
                      **- paper by Mr Adrian Severin member of the Convention**

Members of Working Group I will find hereafter a paper by Mr Adrian Severin, member of the Convention.

## The principle of subsidiarity

As far as subsidiarity is concerned, the current Treaty clearly indicates that the intervention of the Community takes place only if the pursued objective can be better achieved at community level rather than at national level. It is **a rule of efficiency**, but it does not lead to a predictable and automatic allocation of the competencies between the European Union and the member states. **A pragmatic and predictable definition/interpretation** of the principle of subsidiarity is necessary, in order to determine, on every occasion, the best distribution of tasks between the European and the national level, between the regional and the local one. **The principle must therefore become operational.**

The most important problem raised by the concept of subsidiarity is **the efficiency of the decision-making process** within the framework of a multi-level governance: **local, regional, national, trans-national or community level.**

It must be also added that the principle of subsidiarity is applied solely in the cases of shared competencies. Consequently, a clearer separation of competencies, favorizing the exclusive ones, would facilitate the implementation of subsidiarity. However, the previous experience proves that, in their overwhelming majority, competencies are shared.

Identifying a pragmatic solution is an even more difficult exercise if we bear in mind the simultaneous need of guarantees for flexibility and predictability.

An ultimate solution could be achieved by establishing the hierarchy of the intervention's intensity at every level. For this purpose, it would be useful to adopt a **list of areas of activity and to define the degree of the intervention's intensity at each level of governance within the Union.** In this way **the main level of competence and the subsidiary level/levels** will be defined for each area. The present division into two levels of competence – the communitarian one and the state one - must be also extended to such a point as to cover the **regional and local levels** and eventually the **euro-regional level** as well, since there are areas - such as the preservation of cultural identity - which could ask for complex relations of subsidiarity. Also, besides vertical subsidiarity, it is useful to define the horizontal subsidiarity that implies the transfer of competences towards the **civil society.** **All these together will form the system of global subsidiarity.**

In order to assure **the operational character of the principles of subsidiarity and proportionality** one should define, as well, **the basic principles based on**

**which one could determine** who can act, in what circumstances, in what manner and within what limits.

In this context a **regulating procedure** is needed. This procedure will allow the monitoring and the valuation of the implementation of the above-mentioned principles as well as the **conciliation** and **arbitration** between those concerned.

A mechanism of a **political nature** will produce recommendations, on specific case basis, on who does what in accordance to the principles of subsidiarity and proportionality.

A "**Committee on subsidiarity**" formed in accordance with the proposals put forward by the states having a legitimate interest in the case, will play the role of a **conciliation** body.

Another mechanism of a combined **legal and political nature**, functioning at the level of the European Senate<sup>1</sup>, might be afterwards put in motion in order to assure the correct implementation of the pertinent principles and to solve possible disputes in relation with it (the **arbitration** body).

Finally, a legal mechanism consisting of a European Constitutional Court could be also set up or the Court of Justice could be empowered **to check the legality** of the implementation of the subsidiarity and proportionality principles.

**Revising the competencies** and the system of the intervention's intensity at a certain level of governance is a problem to be solved in two ways: **a fast one (fast track)** based on a **revised Art. 308** **which will add to the existing procedures the agreement of the Senate** and **a slow one (slow track)** **which will follow the procedure of the constitutional revision**.

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<sup>1</sup> Within a bi-cameral parliament that will exert most of the legislative activity at European level, the European Senate will make decisions on the issues that are vital and highly sensitive for the member states of the European entity to be created.

This "**Chamber of Nations**", which will imply the transformation of the current European Council into the future Senate, will have not only **the role of a law-making institution** but it will also act as **a body exercising oversight and direct authority on the European Commission**, which will be thus transformed into a politically legitimized executive body.

The Senate will also function as a "**Chamber of subsidiarity**".