

Working Group I

Working document 8

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

**Subject:**       **“The principle of subsidiarity”**  
                      **- paper by Mr Matti Vanhanen, member of the Convention**

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



The principle of subsidiarity is essential for the democratic legitimacy of the European union and therefore the implementation as well as the control of subsidiarity should be more effective.

The principle of subsidiarity is political by nature and therefore it should be controlled primarily politically. The political control should be ex ante control, i.a. it should take place before the final legislative decision. The judicial ex post control could be carried out by the Court of Justice according to the principles used today.

The new political control mechanism should not include a new permanent institution but rather an ad hoc body. The normal overall scrutiny of all EU legislation would stay unchanged, i.a. the responsibility of all the legislative EU institutions as well as the member states. The ad hoc body would act case by case and only when specially convened.

The main principle in Finland has been that the Parliament of Finland, Eduskunta, executes its competences through the Government, by scrutinizing the Government's actions within the Council. Direct participation of the National Parliaments in the European union has not been considered desirable. This division of tasks has turned out to be practical and effective and - first and foremost - it has secured the democratic legitimacy of the decision making in Finland. The scrutiny and control of the principle of subsidiarity, however, seems to require new solutions and mechanisms, including a new role for the National Parliaments in the union.

The new scrutiny and control of the principle of subsidiarity should be carried out by independent bodies who have not directly taken part in the legislative process in the union and who also have the legitimate competence to interpret the Treaties. The most suitable bodies for the task are the National Parliaments. They are the only directly elected bodies who represent the general competence (kompetenz-kompetenz) in the union. The union and its institutions have only the competence conferred upon them by the Treaties. The control would be more independent and effective if the controlling body consisted of persons from outside and not of the representatives of the union institutions who would then control themselves.

The National Parliaments could be authorized to institute proceedings regarding non-compliance with the principle of subsidiarity in the ad hoc body. The Committee of Regions could be equally authorized. The National Parliaments and the Committee of Regions should be able to trigger the case anytime during the legislative process before the final legislative decision. It is important not to limit the control to the beginning of the legislative process. The legislative proposals are very often changed during the legislative process and sometimes it is the changes that make the legislative proposals violate the principle of

subsidiarity even though the initial commission proposal had been in total compliance with it.

The new mechanism should increase the democratic legitimacy of the legislative process but at the same time it shouldn't delay the process unreasonably. The mechanism shouldn't be misused for other purposes than to control the principle of subsidiarity. These adverse effects could be avoided by deciding that more than one National Parliament would be necessary to start up the political control mechanism. The Committee of Regions could in this respect be treated as one of the National Parliaments.

When one National Parliament considers that a legislative project or proposal (or some part of it) doesn't comply with the principle of subsidiarity, other National Parliaments could then, during a certain limited period of time, inform that they agree with that opinion. This time period should be long enough (for instance one month) to make it possible for the National Parliaments to tackle the issue. The legislative process could continue normally during that period with the exception that no formal decisions or other formal steps were taken during it. The political ex ante control mechanism by the ad hoc body would begin if a required amount of National Parliaments (for example three) would find it necessary.

There are several possibilities to arrange the work of the ad hoc body after the question of a possible non-compliance with the principle of subsidiarity has been raised by a sufficient amount of National Parliaments. One possibility would be an interinstitutional body whose members were appointed by the union institutions. Another possibility would be a more independent ad hoc body whose members were appointed by the National Parliaments and/or some other organisations outside the union institutions. The ad hoc body could, of course, be a mixture of these two alternatives (as for instance Mr Teufel has proposed).

With reference to the reasons mentioned before I am of the opinion that the ad hoc body should consist of the representatives of the National Parliaments. The decisions of the ad hoc body shouldn't be legally binding but advisory opinions.