

Working Group I

Working document 22

Working Group I on the Principle of Subsidiarity

Subject: Copy of a draft letter from Mr. Hain to Mr. Mendez de Vigo

Members of Working Group I will find hereafter a draft letter from Mr Hain addressed to Mr. Mendez de Vigo,

... September 2002

Thank you for circulating your initial proposals for our working group's conclusions. I am particularly grateful for the chance to comment, as I will be unable to attend the next meeting of the group on 9 September. Please accept my apologies for my absence.

Overall, I think the document succeeds in the difficult task of summing up our wide-ranging deliberations and in capturing the essence of our sometimes disparate views. You and your staff have served us well by distilling those opinions into a range of interesting proposals, and I am particularly glad that the report begins by highlighting the consensus on the need to improve the application and monitoring of the subsidiarity principle, and then makes the clear case of ex ante political monitoring.

I note your view that part of the solution will lie with better delimitation of competences and classification of legislative acts. As these aspects are already being taken forward by Henning Christophersen's working group and by our debates in the plenary, I am concentrating my remarks on part III of the paper, containing the specific proposals to be examined by our group.

As I explained in my letter of 30 July, I strongly believe that the inherently political nature of the issue of subsidiarity demands monitoring by a political mechanism. To my mind, our group's most effective conclusion would be to propose setting up option (b): a light "early warning mechanism" involving national parliaments. As you know, I support the involvement of national parliaments in the process because I see the matter as principally one of confidence and reassurance. EU citizens are most likely to be reassured that subsidiarity is being respected if the implementation of the principle is in the hands of a group with no vested interest in action at an EU level. I would like to see this argument made explicit in your paper: this would also afford an opportunity to set out that the group believes the principle of subsidiarity is already respected in the main, and that the issue is one of perception and trust.

I note that you propose that the Commission refer draft legislation directly to national parliaments for their consideration. I believe that such a mechanism could act quickly and efficiently, without making the legislative procedure more cumbersome. We could set a period of time – perhaps one month – for national parliaments to give their views and examine the Commission's legislative proposals at a very early stage in the legislative procedure. It would also be useful to give some further thought on whether referral should be to the whole parliament, or to say, the scrutiny committees or other representatives.

This would meet the wish of many members of our group to avoid the creation of a new body. I do not share the concerns expressed on that score as I believe a group working mostly via e-mail would provide a good solution, but I would not wish to prevent a consensus from emerging on your alternative proposal. Indeed I can see advantages in your system as it would allow national parliaments to consult regional and local authorities in accordance with national arrangements. That said, I am concerned that there will be a need for someone to sift opinions received from national parliaments, judge whether contents tally and then contact relevant institutions. Such a technical secretariat would seem to provide a more efficient mechanism than relying on coordination between the separate secretariats of each institution.

However, I would not be able to support the proposal of a mechanism that was purely advisory. If the Convention is to make a real improvement in the implementation of the subsidiarity principle, it must devise a mechanism with teeth. One way of doing this would be for proposals to be sent back to the Commission for re-drafting if a certain threshold opposed any given draft legislation on subsidiarity grounds. And we might also need to consider giving parliaments the right to call back any legislation over which they had further concerns as legislation proceeded. But these issues are for later. The key will be to create a system in which the Commission (and indeed the other institutions) cannot choose to ignore concerns over subsidiarity. In this way, we will create a system where strict observance of the subsidiarity principle will become an integral part of the legislative process.

I am interested in your other, complementary ideas put forward in the paper such as the creation of a “Mr Subsidiarity” within the Commission. But I do not think that it would be adequate as a measure without the creation of the system described above, and I would therefore propose reversing the order of the proposals in your paper.

Likewise, on presentation of the Commission’s annual work programme, I agree that we might look at involving national parliaments in the process. However, this seems to be beyond the scope of our present paper, perhaps being a matter on which Gisela Stuart’s group might be best placed to reflect.

As regards the role of the ECJ, I agree with the majority of the group – and with Mr Francis Jacobs - that it would be inappropriate to involve the Court in an ex ante monitoring role. There could be merit in extending the right of referral on subsidiarity grounds to the Committee of the Regions and to national parliaments for an ex post judicial review, although, whilst I see its attractions, I would not like to take a final view at this stage as to whether this required the creation of a dedicated subsidiarity chamber of the Court.

I hope these comments are useful. As I will be absent, I propose to circulate this letter to my colleagues in the group for their consideration, and I look forward to seeing you at the plenary on September 12 where I hope we can discuss these ideas further.
