

Working Group IV

Working document 7

Working group IV – "Role of National Parliaments"

Subject: "Oversight of subsidiarity"
- non-paper by Mr Kimmo Kiljunen, member of the Convention

Members of Working Group IV will find hereafter a non-paper by Mr Kimmo Kiljunen, member of the Convention.

Oversight of subsidiarity

(Non-paper for the Convention Working Group on National parliaments)

The Convention should find ways to clarify the principles of subsidiarity and proportionality, and find ways to make their implementation more comprehensible and concrete. New mechanisms should concentrate on the *ex ante* period and on the political form of oversight. The Court of Justice should carry out judicial *ex post* oversight according to the principles in force today.

A central element of any subsidiarity oversight will remain the scrutiny national parliaments exercise, in accordance to the national scrutiny system, over their governments' actions within the Council. The Finnish parliamentary scrutiny system, established in 1995 when Finland joined the Union, involves the Parliament in assessing basically every proposal for EU legislation, also if need be with regard to subsidiarity and proportionality. Under the Finnish system the Government submits systematically proposals for EU acts to the Parliament for scrutiny, together with a detailed memorandum explaining the content and effects of the proposal but also the Government's position on the matter.

New mechanisms involving the national parliaments and supplementing the national oversight role of parliament could and should, however, be envisaged for the oversight of subsidiarity. It is at the end always the competence of the national parliaments to legislate that is at stake when the principles of subsidiarity and proportionality are being considered.

During the preparation of EU *acquis* the Commission should be obliged to provide national parliaments detailed information at earlier stages of preparation, as the Treaty Protocol on the Role of National Parliaments envisages. There should, however, be a specific possibility for national parliaments to react to the preparatory documents of the Commission (Communications as well as Green and White Papers) on grounds of subsidiarity and proportionality. If a question concerning subsidiarity and/or proportionality would be raised by a national parliament at this stage, the Commission should be obliged to give a specific response to the question in its proposal, if it makes a proposal covered by the subject matter of the question.

In addition, a national parliament should be able to question the respect of principles of subsidiarity and proportionality once the Commission has submitted a proposal. This intervention would have to be motivated by specific grounds concerning solely the respect of these principles. If a certain number other national parliaments [exact number to be agreed] would subsequently, within a specified short time, notify that they support the question made by one national parliament at the first place, the issue would then be considered in an *ad hoc* mechanism. This possibility for national parliaments to activate the *ad hoc* mechanism should exist in principle throughout the legislative process, and especially when the Commission proposal is substantially changed during it.

The procedure for and participation of different actors, including the national parliaments, in this *ad hoc* mechanism would need to be examined more closely. Its form and procedures could perhaps take some inspiration from the current conciliation committee. This subsidiarity mechanism would produce a detailed opinion addressing the points raised by the national parliaments concerning the respect of principles of subsidiarity and proportionality. Its opinion, once finalised, would then be transmitted to the institutions, which are to adopt the act in question.

This mechanism could result in withdrawing the proposal or amending its content to better respect the principles of subsidiarity or proportionality. In any case, when adopting a common position, proposals for amendments or subsequently the act itself, the European Parliament, the Council and the Commission would be obliged to address the opinion explicitly, e.g. in a separate declaration.
