

Working Group V

Working document 24

Working group V « Complementary Competencies »

Subject : Paper by M. Joachim WUERMELING, Member of the Convention on the question-paper distributed by Mr. Christophersen in WG V, September 6th 2002

Statement of Mr. Wuermeling concerning the question-paper distributed of Mr. Christophersen in WG V, September 6th 2002

Generally we continue to believe, that complementary competences cannot be discussed isolated from other categories of competences. The proposals of WG V should aim to have an impact on the whole future competence system. As we estimate, that the proposals in WD 20 are supported by the majority of the WG, we ask to continue our discussion on three points:

1. A reform of complementary competencies has to discuss the actual content, reach and possible amendments of these competences in the legal provisions of the treaty: This task still has to be carried out by the working group.
2. Complementary competences cannot be seen isolated from other types of competences. The working group should propose to the Praesidium to continue it's work on "divided competences " and "EU-competences".
3. In order to precise and to simplify the treaty and to better delimitate EU-competences, we discuss the proposal to enumerate and define the methods of EU-action (regulation, mutual recognition, promotion, coordination etc.).

We should like to reply to the questions of Mr. Christophersen's paper as follows:

Ad 1)

Complementary competences concern internal activities of the member states. For a better delimitation of competences, it should be clarified, that EU-action in this field concerns cross-border aspects of member states competences. Therefore complementary competences should exclude legislation and harmonisation. Cooperation in these fields should not be obligatory. Financial support in the field of complementary competences has to follow a legal base in the treaty.

The “method of open coordination” cannot be seen as part of the complementary competences: It has so far only applied to fields outside EU-competences. It is distinct from coordination within the EU-competences. We propose to define EU-coordination as exchange of information, experience and the evaluation of best practise (bench-marking) and avoid open coordination outside the framework of EU-competences.

ad 2)

The respective articles which contain complementary competences have to be amended. A mere reform of the general provisions of the treaty would be insufficient. Mr. Wuermeling already has presented proposals concerning the reform of the legal provision (WD 16). Example employment:

The EU should not be laying down aims centrally and thereby blurring the national governments', and the social partners', employment policy responsibilities, and thereby hampering competition as to which is the best policy. Harmonized EU action would block any competitive impetus engendered by the internal market. We therefore propose a leaner European guidelines process (Article 128 of the EC Treaty), that means:

- restrict the “European employment strategy” to the basic essentials;
- outlaw detailed guidelines, especially quantified targets;
- longer intervals between the guidelines and the national action plans (currently annual).

ad 3)

It would be appropriate, to describe complementary competences as “measures”, as to make clear that they concern competences of the member states.

ad 4)

So far functional competences are also employed in the field of complementary competences. In order to better draw the line between the two we should make the internal market clause (art. 94, 95 EC-Treaty) more precise by limiting the scope of application of Article 94 and 95 of the EC-Treaty to action which is concerned “primarily

and directly” (alternative to center of gravity) with the realization or completion of the internal market and which is essential thereto.

We also support a “competition clause” that makes clear, that in these areas competence does not give an entitlement to also regulate aspects of policies, which are primarily in the responsibility of the Member States or to regulate areas, to which EU legal provisions apply, i.e. provisions concerning specialised areas of activity. Sectorial legal provisions should take precedence over the internal market clause.

ad 5)

We would prefer a reform, that replaces or at least minimizes art. 308 EC-Treaty by specific legal provisions in the treaty (e.g. competence to create intellectual property rights, EU company statutes and agencies; competence to finance pre-adhesion aids). The idea to revise the constitutional treaty on the basis of art. 308 EC-Treaty when retransferring competences to the member states is supported.

ad 6) The clause on national identity should give the impression of a list of "important competences" of the member states, because this would be conceived a "negative catalogue". The latter idea has been broadly rejected by the convention.