

## Working Group V

## Working document 29

**NOTE**

from	Secretariat
to	Working Group V "Complementary Competencies"
Subject :	<b>Guideline paper for discussion of areas of assisting measures</b>

**Guideline paper for discussion of areas of assisting measures*****I. Point of departure***

The Secretariat has circulated WD 1 on a first outline of Treaty provisions concerning areas where assisting measures can be adopted. The areas listed are: Employment, customs co-operation, education, vocational training, culture, public health, consumer protection, Trans-European Networks, industry, research and development co-operation.

Several members of the group have circulated contributions with suggestions for amendments to various sector policies and areas to be added to or deleted from the list of assisting measures:

- Mr. Speroni has in WD 25 suggested adding international sports activities and deleting education.
- Mr Pieters has in WD 23 emphasised the importance of Community action in the field of research and development.
- Mr. Druesne has in WD 21 suggested adding public administration.
- Mrs. Giannakou has in WD 17 suggested adding the fight against drugs.

- Mr. Wuermeling has in WD 15 and WD 24 suggested amendments to Community action in the fields of employment policy, research, health, trans-European Networks and health and consumer protection.
- Mrs. Hjelm-Wallén has in WD 13 suggested giving the EU competence to adopt rules in the field of good administration, efficiency and openness. On the basis of Mrs. Hjelm-Wallén's contribution the group discussed whether future Community action in this field could have the form of assisting measures. In WD 18 Mrs. Giannakou addresses the proposals in WD 13 by Mrs. Hjelm-Wallén by suggesting the introduction of the principle of "sound governance" and enhancing the role of the European Ombudsman.

Based on the proposed definition of assisting measures in the first draft report from working group V (2.10.2002) certain areas contained in WD 1 cannot be considered assisting measures. Under point II the areas falling under assisting measures are considered, and under point III the other areas are considered. Under point IV proposals for new areas of assisting measures are listed.

## ***II. Areas falling within the proposed definition***

### **Employment (TEC articles 125 –130)**

#### **Treaty articles and practice**

Article 127 expressly states that the Community shall respect Member States' competence in this area. Moreover article 129 states that measures adopted on the basis of these provisions shall not include harmonisation of the laws and regulations of the Member States.

Since 1997 4 decisions, 3 recommendations and 1 resolution have been adopted on the basis of the Treaty provisions on employment. No acts in the field of employment on the basis of the functional competences in the Treaty have been adopted.

### Changes proposed by members of the working group

Mr. Wuermeling suggests in WD 15 to adapt and limit Community action in the field of employment to better exchange of experience and information and better macro-economic framework conditions. In WD 24 Mr. Wuermeling proposes to amend TEC article 128 in order to make the European guidelines process leaner.

### **Education and vocational training (TEC articles 149 and 150)**

#### Treaty articles and practice

Article 149 and 150 expressly forbids any harmonisation of the laws and regulations of the Member States. Since the entry into force of the Maastricht Treaty 6 decisions and a number of non-binding acts have been adopted on the basis of these provisions.

To remove obstacles to the free movement of workers a number of directives for mutual recognition of diplomas and harmonization of specific educations have been passed on the basis of TEC articles 40, 47 and 55.

### Changes proposed by members of the working group

Mr. Speroni suggests in WD 25 to delete education.

### **Culture (TEC article 151)**

#### Treaty articles and practice

Article 151 expressly excludes any harmonisation of the laws and regulations of the Member States. Since the entry into force of the Maastricht Treaty 5 decisions and a number of non-binding acts have been adopted on the basis of this provision.

A number of directives and regulations that have implications in the cultural sector, for instance mutual recognition of diplomas and the free movement of cultural goods, have been adopted on the

basis of article 95 and the legal bases connected to the four freedoms.

#### Changes proposed by members of the working group

No changes have been proposed.

### **Industry (TEC article 157)**

#### Treaty articles and practice

According to article 157, paragraph 3, the Community may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1.

Harmonisation of the laws and regulations of the Member States is not expressly forbidden. Since the entry into force of the Maastricht Treaty article 157 has been used to adopt 5 decisions. A number of regulations and directives in the field of industry have been passed on the basis of for instance article 95 (on the internal market), article 174 (on the environment) and article 83 (on competition).

#### Changes proposed by members of the working group

No changes have been proposed.

### **Research and development (TEC articles 163 – 173)**

#### Treaty articles and practice

Harmonisation of the laws and regulations of the Member States is not expressly forbidden, but according to articles 163 – 173 Community action in the field of research and development is limited to complementing the activities carried out in the Member States through encouragement, promotion, coordination and financial support.

Since the entry into force of the Amsterdam Treaty 10 decisions have been adopted on the basis of this provision.

## Changes proposed by members of the working group

Mr. Wuermeling suggests in WD 15 to adapt and limit Community action in the field of research and development to financial support for top-level research and better exchange of experience and information. Mr Pieters has in WD 23 emphasised the importance of Community action in the field of research and development.

### **Public health (TEC article 152)**

#### Treaty articles and practice

Community action in the field of public health relates principally to measures designed to protect and improve public health, excluding any harmonisation of the laws and regulations of the Member States according to TEC article 152, paragraph 4(c). Two limited exceptions allow the adoption of minimum directives (TEC article 152, paragraph 4(a)) or even regulations (TEC article 152, paragraph 4(b))<sup>1</sup>. Community action falling under these two exceptions should therefore be classified as shared competence.

Since the entry into force of the Amsterdam Treaty 9 decisions and a number of non-binding acts have been adopted on the basis of this provision. However, a number of regulations and directives in the field of public health have been adopted on the basis of in particular article 33 and 37 (on the Common Agricultural Policy), article 71 (on transport safety), articles 94 and 95 (on the internal market), article 153 on consumer protection and 174 (on environment).

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<sup>1</sup> The last sentence of article 152, paragraph 5, stating that “measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood”, casts some doubt on the classification of measures adopted on the basis of paragraph (a). However, it can be assumed that paragraph (a) can in fact be used as a legal base for adoption of minimum directives in the field of quality and safety of organs and substances of human origin, blood and blood derivatives. These minimum directives might in some cases be of a legislative character. The Commission has presented a proposal for a directive in the field of human blood and blood components on the basis of article 152, paragraph 4(a) (KOM (2000) 816) and a proposal for a directive in the field of donation, procurement, testing, processing, storage and distribution of human tissues and cells (KOM (2002) 319).

### Changes proposed by members of the working group

Mr. Wuermeling suggests in WD 15 to adapt and limit Community action in the field of public health primarily to better exchange of experience and information.

### **Trans-European networks (TEC articles 154 – 156)**

#### Treaty articles and practice

To achieve the objectives set out in article 154, the Community according to article 155:

- (a) Shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European Networks; these guidelines shall identify projects of common interest
- (b) Shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation.
- (c) May support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Community may also contribute, through the Cohesion Fund set up pursuant to article 161, to the financing of specific projects in Member States in the area of transport infrastructure.

Paragraph (a) and (c) provides that the only measures that can be adopted are guidelines and financial support, i.e. measures falling clearly within the proposed definition of assisting measures, may be adopted. In contrast to this paragraph (b) clearly allows for wider measures in the sub-category of interconnection and interoperability in trans-European Networks. And a considerable number of directives and regulations have in fact been adopted in this field. This sub-category therefore cannot be classified in accordance with the proposed definition of assisting measures, and should be classified as shared competence.

Since the entry into force of the Maastricht Treaty only 3 decisions and 1 regulation have been adopted on the basis of article 155. The regulation lays down general rules for the granting of

Community aid in the field of trans-European Networks<sup>1</sup>.

#### Changes proposed by members of the working group

Mr. Wuermeling emphasises in WD 15 the importance of Community action in the field of networking and interoperability of trans-European Networks.

### ***III. Areas falling outside the proposed definition***

#### **Customs cooperation (TEC article 135)**

##### Treaty articles and practice

No acts have been adopted on the basis of this provision. However, before the entry into force of the Treaty of Amsterdam a basic regulation on mutual assistance in the field of customs co-operation was adopted on the basis of TEC articles 37 and 308. The regulation includes rules on exchange of information among customs authorities in the Member States to prevent fraud. Article 135 was included in the Treaty of Amsterdam primarily through a proposal from the Commission to serve as a future legal base for similar action. Article 135 expressly states that measures adopted on the basis of this provision shall not concern the application of national criminal law and or the national administration of justice. This clearly suggests that the use of directives and regulations on the basis of article 135 is not excluded. The Commission has recently presented a proposal for a regulation on the basis of article 135. The Council Legal Service rejected article 135 as a legal base for the particular Community action, but it did not exclude in general the adoption of regulations and directives on the basis of article 135.

For these reasons it is clear that customs cooperation should be considered a shared competence.

#### Changes proposed by members of the working group

No changes have been proposed.

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<sup>1</sup> A decision could have been used as a legal instrument instead of a regulation.

## **A. Consumer protection (TEC article 153)**

### Treaty articles and practice

Article 153 expressly creates a legal base for minimum harmonisation of the laws and regulations of the Member States. The provision has been used as a legal base for the adoption of a regulation on consumer protection in the indication of the prices of products offered to consumers. Apart from that only 1 decision has been adopted on the basis of article 153. A number of regulations and directives in the field of consumer protection have been passed on the basis of article 95 (on the internal market) and article 174 (on the environment).

For these reasons it is clear that consumer protection should be considered a shared competence.

### Changes proposed by members of the working group

Mr. Wuermeling suggests in WD 15 to adapt and limit Community action in the field of health and consumer protection.

## **Development cooperation (TEC articles 177 – 181)**

### Treaty articles and practice

Article 177 states that Community policy in the sphere of development cooperation shall be “complementary” to the policies pursued by the Member States. Apart from the very general coordination and consultation provision in article 180, the aim is not coordination of Member States’ policies, but the creation of a separate Community policy in the field of development cooperation. This shows that it is presupposed that Member States shall continue to have their own development policies. The preferred legal instrument for Community action is regulations.

Community action in the field of development co-operation clearly goes beyond the proposed definition of assisting measures, and should be classified as shared competence. It should, however, be noted that in contrast to ordinary shared competence, Community action in the field of development co-operation does not lead to pre-emption of the Member States’ legislative



competence. In fact this sub-category of shared competence could be parallel competence.

#### Changes proposed by members of the working group

No changes have been proposed.

#### **IV. Proposed new areas of assisting measures**

##### **Public administration and good governance**

The Chairman has in WD 21 presented a proposal from Mr. Druesne for a new Treaty article on public administration and good governance. Mrs. Hjelm-Wallén has in WD 13 suggested giving the EU competence to adopt rules in the field of good administration, efficiency and openness.

##### **The fight against drugs**

Mrs. Giannakou has in WD 17 suggested adding the fight against drugs.

##### **International sports activities**

Mr. Speroni has in WD 25 suggested adding international sports activities.