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CONTRIB 275

ÜBERMITTLUNGSVERMERK

des Sekretariats
für den Konvent

Betr.: **Beitrag des Mitglied des Konvents: Frau Danuta Hübner**
"Titel III des Entwurfs des Verfassungsvertrags" (Artikel 8 bis 16)

Der Generalsekretär des Konvents hat den in der Anlage wiedergegebenen Beitrag des Mitglieds des Konvents, Frau Danuta Hübner, erhalten.

REPLIES BY PROFESSOR DANUTA HÜBNER, MEMBER OF THE CONVENTION

**TITLE III OF THE DRAFT CONSTITUTIONAL TREATY
(ARTICLES 8 TO 16)**

QUESTIONS FOR DEBATE

(1) Exclusive competences

(a) Should the "exclusive competences" category be renamed "Union competences"?

Would the definition remain the same? Changing the name of “exclusive competences” to “Union competences” would be confusing as it would suggest that the Union is only responsible and engaged in what remains in the sphere of its exclusive competence while other areas are only of residual character which is not the case.

(b) Should the category be extended (some Convention members have mentioned the internal market, economic and social cohesion or the financing of the Union)? The category should be extended only in the case of general approval by the Convention of extending “exclusive competencies” of the Union. The discussion on the latter should take place on a separate basis and all implications of the eventual decisions need to be made clear. Otherwise, should there be long lists of exceptions to the classification of one of the areas – for example the internal market – as an exclusive competence, it is better not to extend the category.

(c) Should some areas, such as the four freedoms, or some sensitive aspects of commercial policy be regarded as shared competences, as suggested by other Convention members?

Yes, they are in the sphere of shared competencies now and unless there is a separate debate along the lines presented above (in point b), they should remain in that category. It is my concern that once we begin analysing the respective competencies one-by-one, we will have to introduce so many exemptions that the initial objective of making things understandable to

the citizen will not have been fulfilled. Therefore the option of defining categories of competencies in the first part of the Constitutional Treaty, with the description of the Union's policies in its second part, seems to be the best one by far.

(d) **Could the subsidiarity principle apply to this category or to some of these competences?**

The principle of subsidiarity cannot be easily compromised with the catalogue of competencies presented in the draft articles. Classifying certain areas as belonging to the exclusive competencies of the Union prejudices where they belong on the subsidiarity scale. The principle of subsidiarity cannot call into question the powers conferred on the Union by the Treaty.

(2) **Shared competences**

- (a) **Since the "shared competences" category is a residual one, is there any need to list the principal areas covered?** There is not. However, the reason is not the character of the shared competencies which are not residual at all but the arbitrary character of any attribution of policy areas to this category as well as its low value as an explanatory instrument ("shared competencies" do not explain much about what the Union does and what is reserved for the member states).
- (b) **If this list is to remain non-exhaustive, should some areas be added nonetheless (some Convention members have mentioned, for example, non-discrimination, gender equality, services of general interest, the fiscal dimension of the internal market, protection against disasters and animal protection etc.)?** I am supporting deletion of the list.

(3) Common foreign and security policy and coordination of economic policies

- (a) **Given their particular character, in particular the fact that they do not usually involve legislation, should the coordination of economic policies and common foreign and security policy be regarded as separate categories?** Common foreign and security policy should remain a separate category. I am less certain about the co-ordination of economic policies – granting it a separate status would be an investment into what we consider desirable in the future, not what we have at present. It is only on that basis that I would agree to giving it a separate status.
- (b) **Should common defence policy be given greater prominence?** Defence policy should continue to be considered part of the CFSP and as such it can be referred to specifically in the article devoted to the CFSP.
- (c) **Should the coordination of economic, social and employment policy be taken together, as suggested by some Convention members?** Yes, such an approach would ensure the necessary cohesion provided that the current wording is adapted to reflect the fact that it is the Member States that coordinate economic policy.
- (d) **Should it be specified that it is the Union, the Council or Member States which coordinate these policies?** Yes, it is the Member States that coordinate these policies and it should be reflected in the wording of the article.

(4) Areas for supporting action

- (a) **Should there be an exhaustive list of areas for supporting action, or not?** No, there should be a possibility to extend the list in case of development of certain areas of action in the future.
- (b) **How should this category relate to that of shared competences? (Some Convention members have suggested not ruling out all harmonisation in these areas, however minimal, from the outset, whilst others have suggested indicating that some shared competences could also give rise to supporting action).**

The whole spectrum of instruments should be open to actions within each category of competence, hence I suggest not to rule out harmonisation in these areas. Education and culture are areas of a particular interest to the public opinion in Poland. Promotion of cultural and linguistic diversity as well as crossborder “European education” is increasingly important for the future generations. It contributes to the EU’s weight and influence in the world and it helps to create a common European identity. It is also of immense significance for the practical “reunification” process between the two parts of the long divided Europe and for mutual understanding between citizens of the EU-25. In this context it seems to me to be worth considering for the Convention to incorporate a separate, horizontal Title on education, youth, culture and sport, as suggested by Commissioner Redding.

(5) Flexibility clause

(a) **Should a clause of this type work both ways?** No, the whole spirit of the flexibility clause is to enable action in areas where the Union has not been deliberately empowered to act by the Constitutional Treaty. It is not a revision mechanism. The latter has to be reserved to the Intergovernmental Conference.

(b) **What is the most suitable procedure (role of the European Parliament? qualified majority?)**

Qualified majority or enhanced qualified majority in the Council would facilitate the application of the flexibility clause.

(c) **Could the period of application of acts adopted on the basis of this procedure be limited in time (*sunset clause*)?**

In order to ensure additional flexibility under the flexibility clause, I would envisage a "call-back clause" by means of which the effects of empowering the Union to act could be examined.

(6) Subsidiarity principle

Could the principle of subsidiarity be defined more accurately, or formulated in more "positive" fashion? Yes. Application of the principle of subsidiarity should mean that action is

taken at the most appropriate level and this should be reflected in the protocol. The importance of the principle of proportionality needs to be stressed as well.

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