

NOTE

from Mr Henning Christophersen

to The Convention

Subject : **Mandate of the working group on Complementary Competencies**

Please find attached a note on the above subject, which is intended to facilitate the discussions of the working group on complementary competencies.

GROUP III : "Complementary Competencies"

Chairman : Henning Christophersen

How should "complementary" competence be treated in future? Should Member States be accorded full competence for matters in which the Union at present has complementary competence, or should the limits of the Union's complementary competence be spelled out?

The aim of the present note is to suggest to the members of the working group on complementary competencies an approach to the questions the group is asked to address, and to propose a work programme.

INTRODUCTORY ELEMENTS

Scope of the discussion

The working group will focus on the issue of complementary competence with the aim of contributing to a clearer delimitation of competence between the EU and the Member States.

Definition of complementary competencies

The first difficulty, and therefore our first objective, is to define the concept of complementary competencies. Though no clear overall definition currently exists, it is generally accepted that complementary competence covers areas in which intervention by the Community is limited to supplementing, supporting, or coordinating the action of the Member States. (In such areas negative delimitation of competence (e.g. the exclusion of harmonisation in certain areas) is common.) The power to adopt legislative rules in these areas remains in the hands of the Member States, and intervention by the Community cannot have the effect of excluding intervention by the Member States.

It should be noted that the main difference between complementary competencies and concurrent competencies is that in the latter case once the Union/Community has legislated in such areas, Member States may no longer legislate in the fields covered by this legislation, except to the extent necessary to implement it. Community competencies could therefore become exclusive through being exercised. This can never happen in areas covered by complementary competencies, where the Treaties establish strict limits to Community intervention, which must not interfere with the legislative competencies of Member States.

This group of competencies covers in most cases new policy fields added to the Treaty in Maastricht or later. As a matter of fact, they are examples of the tendency to replace the functional method of attribution of competencies (conferred on the basis of objectives to be attained) by the substantive allocation of competencies. The legal bases in question define precise actions to be taken by the Community, in some instances accompanied by specific exclusion of competence. The relationship between such negative delimitations of competence (e.g. the exclusion of harmonisation within the culture chapter) and the functional powers of the Union (e.g. under the internal market) raises important issues.

- *How can we make a more transparent distinction between areas of complementary competence; areas where the EU has no competence; and areas where there is concurrent competence (competence shared between the EU and the Member States)?*
- *How can complementary competencies be clarified and rationalised? Should a definition of complementary competencies be introduced into the Treaties? If so, with which consequences?*

Policy areas covered by complementary competencies

According to the proposed definition, we can already draw a provisional list of complementary competencies (which could be completed as a result of our work): employment; customs co-operation; education, vocational training and youth; culture; public health; trans-European network (except for interoperability and standard); industry; research and development (The issue of economic policy coordination will be dealt with by another working group.)

- *Should we further try to list in the Treaty all EU policy areas falling under the category of complementary competencies?*

Public concern

It is often criticised that the EU interferes in too many issues or regulates in a too detailed manner. The areas falling within complementary competence are often the subject of this type of criticism. The lack of clarity of the system fuels perceptions that national sovereignty is being eroded beyond what is needed to address issues of common concern.

Although these are areas in which Community activities are limited to complementing the actions of the Member States, particularly by means of support programmes financed through the Community budget, and in which the Treaties expressly forbid the Community from legislating, the erroneous notion exists that the Community is competent to legislate in these areas.

The open method of co-ordination, which sets objectives without taking account of the allocation of powers, contributes to the system's lack of clarity and gives the impression that Community powers are very broad where this is in fact not the case.

- *Should further definitions, or negative delimitations, of Community competence be considered, and if so, in what form?*
- *Should reference be made in the Treaty to the method of open coordination, while establishing its limits?*

Link to the broader discussion on competencies.

The issue of complementary competence is an important part of the broader discussion of EU competencies delimitation. The discussion could also include a possible review of article 308 of the EC Treaty. The Court has noted that article 308 may not be used to extend Community competencies beyond the framework established by the Treaty, or to harmonise Member States' legislation in fields in which the Community is prohibited from so doing (which is the case for most areas covered by complementary competencies).

- *What would be the consequences of introducing stricter conditions for the use of article 308?*
- *Would it be useful to introduce into the Treaty the principles governing use of article 308 established by the Court?*

WORK PROGRAMME

A work programme in four steps could be envisaged:

1. Definition of the concept of "complementary competence", with the aim of establishing a precise list of areas covered by these competencies, on the basis of a document to be presented to the working group at its first session;
2. Analysis of what the European Union "actually does" in the field of complementary competencies (and use of article 308 in relation to complementary competencies): a review of the type of legislative activity in these areas and of the character and extent of other actions/measures of the EU could be prepared by the Secretariat;
3. Analysis of points of potential conflict ("interference") between the competencies of the EU and those of the Member States; one or two hearings with national and Commission experts could be envisaged;
4. Conclusions and avenues to be explored, in particular with reference to the questions resulting from the mandate of the working group.
