

CONV 186/02

WG V 5

NOTE

from :	Secretariat
to :	Working Group V on Complementary Competences
Subject :	Note summarising the meeting on 9 July 2002

Discussion began with the presentation of the European Commission document entitled "Delimitation of powers: a matter of scale of intervention" (WD4-WGV) and the European Parliament Resolution of 16 May 2002 on division of competences between the European Union and the Member States, for which the rapporteur was Mr Alain Lamassoure. Documents WD1-WGV (prepared by the Secretariat) and WD3-WGV (by Mr Pieters) were also examined, as were contributions by Messrs Farnleitner (CONV 58/02) and Wuermeling (CONV 107/02).

During the discussion, which was being held under the work programme as altered at the previous meeting – "*Definition of the concept of "complementary competence", in a wider context (categorisation of competences)*" – a large number of points were raised, including *inter alia* those detailed below.

- It was generally agreed to hold a debate on the categorisation of competences before looking at the characteristics of complementary competences and identifying the policies covered by that category.

- Consensus was reached on the complementarity between the classifications proposed by the European Parliament and by the Commission. Some delegates nonetheless pointed to the somewhat rigid nature of the approach suggested by the Commission.
- Some speakers suggested replacing the current casuistic approach by a general one in which the characteristics of a category of competences would be the subject of one or more provisions of the Treaty, with a further provision listing the matters covered. It would then be for the Working Group to identify the characteristics of complementary competences, the scope and limits of Community action and the matters covered by that category.
- The Working Group wondered about the possible legal repercussions of replacing, as proposed by the European Parliament, the category of "exclusive competences" (of the Union) by "own competences", and the consequences for the current wording of Article 5 TEC (principles of subsidiarity and proportionality).
- The need to ensure some flexibility in the system of division of competences was underscored by many speakers, who made a link between that need and globalisation requirements. Retention of a flexibility mechanism on the lines of the one in Article 308 was defended in this connection.
- Reference was made to the abolition of functional legal bases, as proposed in the European Parliament Resolution, which it was claimed conflicted with the Resolution's stated aim of preserving some of the system's flexibility features.
- Many speakers also insisted on transparency (as a democratic requirement), saying that it had to be made clear as a matter of priority who was responsible for what within the Union.
- The question of task sharing between the Union and the Member States was also broached in relation with the exercise of competences; the problem here were cases where adoption of implementing rules was left to the Commission instead of the Member States and the role played in this connection by the comitology procedures, which some wanted simplified or even abolished.

- Some speakers pointed out that the Union frequently did not lack competence, but efficient decision-making procedures.
- Certain members pointed out that, ultimately, the Member States had competence in principle, whether at national or Community level, via their privileged involvement in decision-making. The Union was an exercise in sovereignty sharing.
- Some members also emphasised the importance of choosing the right term to define categories of competences, particularly complementary competences. Words like "residual" or "partial" were suggested here.

Operational conclusions

- Mr Altmaier would present a paper with a structured description of the day's discussions.
 - Mr Wuermeling would present a paper on incorporating limits and restrictions in the definition of "complementary" competences.
 - The Commission undertook to present a paper with case studies based on application of the categorisation criteria proposed by the Commission to actual sectors.
 - At an expert hearing, the Working Group might look at the issue of the Community *acquis*, considering questions such as "What does it include? Must everything be preserved at any cost? Should it be adapted?".
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