

**CONV 188/02**

**WGI 7**

**NOTE**

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from :	Secretariat
to :	Working Group I on the Principle of Subsidiarity
Subject :	Summary of the meeting on 10 July 2002

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At its meeting on 10 July 2002 Working Group I completed the hearings on the question of the subsidiarity principle.

Mr Hoffschulte, first Vice-President of the CEMR (Council of European Municipalities and Regions) spoke on the application of the subsidiarity principle in relations between decentralised entities and states, concentrating on municipalities and regions. He pointed out that in decentralised states where application of that principle was also being scrutinised, experience had shown that municipalities needed to be involved in such scrutiny. He also underlined the importance of the "principle of connexity" in this context, since genuine scrutiny was carried out via budgetary means. Consequently, if municipalities were to be attributed any tasks in this connection, this should be accompanied by the corresponding financial means.

In reply to statements by some of the Group's members that the allocation of tasks within states ought to remain the latter's responsibility and that any transfer of problems that should be resolved within each state ought to be avoided, Mr Hoffschulte said that he was not pleading for Europe to settle the problem of relations between decentralised entities and the state, but that this was rather a matter of avoiding any mistakes that might have been made nationally at national level being made again at European level.

Mr Arrighi de Casanova, Council of State Member, described the role of the French Council of State (*Conseil d'Etat*) and Constitutional Council (*Conseil Constitutionnel*) in scrutinising the constitutionality of legislation. The Council of State acted in an advisory capacity before the Government introduced a bill, issuing opinions on whether it complied with the Constitution. The Constitutional Council's role was to check compliance of approved legislation with the Constitution before it came into effect. This was done systematically for any acts affecting the functioning of institutions (institutional acts – *lois organiques*) on referral by the President of the Republic, the Prime Minister, the Speakers (*Présidents*) of the National Assembly (*Assemblée nationale*) and the the Senate (*Sénat*) and, since 1974, 60 MPs (*députés*) or 60 senators (*Sénateurs*) in the case of ordinary acts (*lois ordinaires*). An act had to be referred to the Constitutional Council before its promulgation, within 15 days of its adoption by Parliament. The Council then had one month within which to give a ruling, which could relate to all or part of the text placed before it. That ruling was binding. The act in question could then no longer be subjected to scrutiny as to its constitutionality, but the judge in question could retain the possibility of rejecting its application for other reasons, e.g. by giving European international law precedence over national law. The Constitutional Council had 9 members, a third of whom were renewable at one time. It was a semi-political and semi-judicial body, and in practice was made up of prominent persons having been active in politics and/or eminent jurists.

Professor Maurer said that the Group's members had been sent a comprehensive paper describing how national parliaments scrutinised the subsidiarity principle. He went on to explain how under certain systems national parliaments exercised control over their governments (e.g. in Germany a debate was held each year on the implementation of the subsidiarity principle). He pointed out that, despite the possibility afforded to it under the Protocol on national parliaments, COSAC had not yet addressed the European Union's legislative problems although it had begun to take more interest

in political issues after its Helsinki meeting. He gave a generally mixed verdict on COSAC's work to date and doubted whether it had any chance of acquiring more authority in order to improve scrutiny of the subsidiarity principle beyond its current possibilities.

Mr Maurer also urged that national parliaments and the European Parliament intensify their cooperation in scrutinising of the subsidiarity principle by monitoring the Commission's legislative programme.

He saw no case for creating a new body composed of national parliaments, but rather for bolstering the machinery whereby national parliaments monitored their governments, for instance by stipulating in the Protocol on national parliaments a six-week period between the submission of a proposal by the Commission and its adoption, so that national parliaments could check compliance with the subsidiarity principle.

Winding up, Mr Mendez de Vigo announced a joint meeting of the Group with the Working Group on National Parliaments would be held on the morning of 22 July 2002 (from 10.00 to 13.00). It would be followed in the afternoon (from 15.00 to 18.30) by a substantive discussion drawing upon the questions raised at the various hearings.

Following the meeting on 22 July, an initial draft report to the Convention concerning the subsidiarity principle would be submitted to the members of the Group for discussion at the meeting on 9 September. The meeting initially scheduled for 29 July was cancelled.

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