

NOTE

from :	Secretariat
to :	Working Group V: "Complementary competences"
Subject :	Summary of the meeting on 17 July 2002

The Chairman thanked members of the Group for the contributions they had sent to the Secretariat, and invited the authors of those documents (WD 006 to 011 WGV) to introduce them. The debate which followed presentation of all the contributions on the table – including a document drawn up by the Chairman (WD 005 WGV) – showed that some positions were broadly shared or could be reconciled, and that there were no strong contradictions between the various points of view.

The aim of the Group's deliberations is to rationalise and schematise the current system, making it much clearer and more intelligible for citizens, at the same time providing an indication of who might be considered as principally responsible for what.

One course of action emerging from proceedings was that it would be appropriate to draft a new chapter of the future Treaty devoted to competences, setting out the general principles and where appropriate laying down particular rules on their exercise by the Union.

A clear and systematic affirmation of the various principles (subsidiarity, proportionality, allocation of competences etc.) at the beginning of that new chapter would make it possible to avoid the need to refer to them in all the other articles of the Treaty concerning the exercise of competences.

The majority of members favoured the idea of making yet more explicit the principle of allocation of competences already contained in the Treaties, stressing that all competences not conferred on the Union remained amongst the powers of the Member States. On the other hand, the majority of participants at the meeting tended not to favour the idea of a list of competences for States. There was a risk that such a list might run contrary to the principle of the allocation of competences, not be exhaustive, or block the future development of the Union by introducing rigidity into the system.

Some members of the Group proposed that complementary competences should be defined as competences of the States, where the Union could be called upon to conduct a policy to support, supplement or coordinate. This solution would also make it possible, albeit in indirect form, to draft a sort of list of the competences of States. However, this question still needed to be looked at further.

Some other participants opposed the idea of lists of competences (of the Union) or even of categories of competences, which risked being outdated immediately after adoption.

Some members were also convinced that it would be possible to include a new chapter in the Treaty concerning the Union's instruments for action, which should follow the chapter on competences. A request was made that the open method of coordination should be included amongst those instruments.

Other participants also wanted to specify the intensity of the Union's action for each type of instrument, but also stressed the need to avoid establishing a restricted list of tools (instruments) for each category of competence. This was because the Union should retain room for manoeuvre to ensure that its action was effective.

Other members, including the Commission, nonetheless affirmed that it would in any case be possible and desirable to reduce the number of instruments (Council conclusions, resolutions, recommendations etc.) used by the Union in areas of complementary competence. In most cases these were non-binding instruments, but by their very abundance they gave the impression of an "invasion" of action by the Union in sectors which the Treaty in fact reserved to the Member States.

Many members also stressed the need to respond to public perceptions that the Union just kept on increasing its competences, and therefore advocated incorporating wording into the Treaties to reassure citizens. This could consist of a simpler explanation of the limits of the Union's action and a clearer affirmation of certain "rights" of States (see the various models proposed in WD 005 WGV).

A preference was expressed for the "political" model and one speaker held that it would be useful to draft a "charter of the rights and duties of the Member States" which could be added after the Charter of Fundamental Rights.

In a desire to provide "assurances" to public opinion, several members suggested that the term "competences" of the Union should be replaced, in areas covered by complementary competences, with the term "measures", which would be "lighter" and would therefore contribute to excluding the possibility of any legislative activity by the European institutions. Other members disputed this possibility, since in order to take "measures" the Union would still have to be granted specific competences.

The scope and objectives (elimination of obstacles for the four fundamental freedoms) of Community action on the internal market in areas covered by complementary competence were clarified, as were the safeguards already laid down in the Treaty so that the powers of the Member States were not eroded.

Most participants affirmed the need to seek a balance between the requirements of clarity and the flexibility of the system. Some proposed calling Article 308 a "flexibility clause" to make the purpose of that article more understandable to citizens. Others proposed transferring Article 308 from the final part of the Treaty to the future chapter relating to competences, so as better to explain that the purpose of that clause was to enable the Union to attain its objectives, not to create new competences. Others felt that moving this article to the "new" chapter on competences would risk reinforcing the impression that Article 308 could effectively be used to attribute additional powers to the Union. One speaker was in favour of deleting Articles 94, 95 and 308. Some members suggested rewriting the articles on complementary competences to reduce them

to a few lines specifying the objectives and scope of the Union's action. These new articles would appear in the future constitutional treaty, while the current provisions, which were much longer and more detailed, would appear in the annexed Treaty concerning the policies of the Union.

The question was raised of whether the *acquis communautaire* should continue to be considered as "untouchable" or whether there was a case for updating or amending it.

During discussions, the Chairman gave the floor to Ms Hjelm-Wallen who presented a document concerning transparency and good governance. The Praesidium has instructed the Working Group on complementary competences to consider this issue also. An interinstitutional agreement is currently being drawn up concerning the action of the European institutions. Several speakers supported Ms Hjelm-Wallen's contribution, stressing that the greatest problem lay with the Member States.

Following preliminary discussions on this subject, the Chairman asked Ms Hjelm-Wallen to present a more detailed contribution at the next meeting of the Working Group.

Operational conclusions

- The Chairman asked Mr Altmaier to prepare a second version of his contribution, with the help of the Secretariat and its assistants, to take account of the results of the Group's discussions on 17 July. He invited members of the Group to send any contributions regarding any amendments or additions which they would like to make to this document to the Secretariat by 5 August at the latest.
- The Chairman asked the Secretariat to draft a new summary document on complementary competences (definition by regrouping common characteristics, identification of areas for action, instruments). With this in mind he also invited members of the Group to send their contributions concerning any proposals for amendment to the current Treaty to the Secretariat by 5 August.
- The Chairman asked Ms Hjelm-Wallen to submit a summary document on good governance to the Secretariat by 5 August.

- These three documents would be distributed for the meeting on 6 September.
 - Recourse to functional competences could also be reduced by the creation, where appropriate, of new legal bases. Members could present contributions on this subject.
 - The Chairman indicated that it would be useful to invite the Chairmen of the Working Groups on subsidiarity, national parliaments and legal personality to the next meeting, to analyse possible links between discussions under way in the various bodies.
 - The Chairman proposed that Mr Peterle (the representative of the candidate countries invited to the Praesidium) should also be invited to the meeting on 6 September, to hear his views on the subjects of linguistic and cultural diversity, given that the Praesidium had asked this Working Group to look into those aspects also.
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