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THE SECRETARIAT

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NOTE

from :	Secretariat
to :	Working Group V on Complementary Competencies
Subject :	Summary of the meeting on 6 September 2002

Exchange of views with Ms Gisela Stuart, Chairman of the Working Group on the Role of National Parliaments

Ms Stuart summarised the discussions in her Working Group. These consisted of two strands:

- The scrutiny which each parliament exercised over its executive, which did not directly concern the Union, the role of which should be confined to making such scrutiny possible.
- Their role in monitoring subsidiarity at European level, where the key question would be that of an early-warning mechanism in which national parliaments would participate.

Ms Stuart specified that her Group had not addressed matters relating to the COSAC or regional authorities with legislative competence.

During the debate with Ms Stuart several matters were raised, in particular:

- Some questioned the effectiveness of a possible early-warning system based on the Commission proposal, bearing in mind that very often it was the implementation of the

legislative procedure (and therefore the intervention of the Council and Parliament) which resulted in excessive detail in Community rules. The example of the Austrian case was mentioned as an illustration of the limitations of this early-warning method: it referred to a system of general prior consultation of the Länder which was thought to have proven insufficient.

- Several speakers stressed the importance of strengthening the primary function of national parliaments: scrutiny of the European activity of their executives. Some said that the direct submission of legislative proposals by the Commission would facilitate the exercise of that scrutiny.
- The matter was also raised of the possible participation of regional authorities with legislative competence in monitoring subsidiarity.
- Some emphasised the mutually reinforcing nature of the matters addressed by the two Working Groups, since a clearer delimitation of competence should be accompanied by effective judicial control.

Exchange of views with Mr Piris, Director of the Council Legal Service, concerning the *acquis communautaire*

The question of whether the *acquis communautaire* should continue to be considered as "untouchable" or whether there was a case for updating or amending it had been raised at the Group's meeting on 17 July.

Mr Piris explained the appearance and historical development of the *acquis communautaire* concept, concluding that the possibility of amending or updating it remained open.

During the exchange with Mr Piris, some speakers raised the matter of the consequences of the disappearance of a legal basis on the legislation concerned, which would require incorporation of the relevant transitional provisions.

The possibility of establishing a hierarchy between two separate parts of the Treaties was also raised.

General debate

The debate followed the logic of the document presented by the Chairman, Mr Christophersen, which took the form of a questionnaire to facilitate the drafting of the conclusions of the Group, and of Mr Altmaier's document. It should be highlighted that the latter document was based on the idea, broadly supported within the Group, of drafting 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.

During the debate:

- A consensus was established on the idea of changing the denomination of "complementary" competence, which was incomprehensible for the public.
- The need to maintain a flexibility clause in the system, inspired by the current Article 308, was broadly accepted.
- There was a large majority in favour of incorporating into the Treaty (what is now referred to as) the "Christophersen clause", which some felt was a valid alternative to the proposals to include in the Treaty a list of States' competences or even to draft a charter of Member States' rights. However, the discussion remained open concerning the specific references to be included in such a clause. For the majority of Group members, the clause should be as brief and general as possible, along the lines of the current Article 6(3) of the TEU.
- Differences remained as to the practical possibilities or the arrangements for associating a type of intervention or a degree of intensity of Union action with a type of competence.
- A majority was in favour of maintaining functional competence in the Treaties, but also of incorporating into the Treaty a "competition" clause intended to control the use of that type of legal basis. The drafting of such a clause should include elements already enshrined by case law, and in particular the "centre of gravity" concept.
- The proposals to discuss in the Working Group the addition of new complementary competence were rejected by several speakers, who felt it would exceed the Group's mandate.

- It was pointed out that questions relating to instruments for action, and specifically the open method of coordination, were more a matter for the new Working Group on the Simplification of Legislative Procedures and Instruments.

Operational conclusions

- Mr Altmaier, in cooperation with Mr Ponzano, was asked to propose a draft "competition clause" at the Group's next meeting.
- With a view to the establishment of a draft report by the Chairman, members could send their contributions to the Secretariat during the week of 9 to 13 September.
- The Chairman's draft report would be sent to members in the last week of September. It would be examined by the Group at its next meeting on 7 October with a view to adoption at the meeting on 30 October.

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