

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Mr Jens-Peter Bonde, member of the Convention "True Subsidiarity"

The Secretary-General of the Convention has received the contribution annexed hereto from
Mr Jens-Peter Bonde, member of the Convention.

True Subsidiarity

Contribution to the Convention on Subsidiarity

From Jens-Peter Bonde

The 3 principles in art. 5 of the treaty now has to be taken seriously.

The principle of legality means that the EU can only take a decision if there is a proper legal base for the decision in the treaty.

The principle of subsidiarity means that decisions shall be taken as close to the people as possible.

The principle of proportionality means that no EU decision can be defended if it is possible to fulfil the purpose with a less restrictive measure.

It means that directives shall be preferred for regulations. Recommendations should be preferred before directives. Deliberate and voluntary standards shall be preferred before harmonisation. That minimum-harmonisation shall be preferred before total harmonisation.

The scope of the problems

- The existing acquis shall be tested towards the 3 strong principles. The European Commission shall be asked to deliver a report. Every GD shall be asked to define what part of their acquis they would prefer to get rid of if they should reduce their part of the acquis to the half.

The Regional committee should have the same parallel task.

The working group of subsidiarity could then put forward a proposal for slimming the existing acquis.

This exercise is paramount if we want to be in dialogue with the citizens. The majority of citizens in all European countries except Luxembourg and Ireland would ignore or even be happy if the EU was dissolved.

Rightly or wrong, Peoples across Europe feels that the EU decides too much.

Referendums can have No-majorities in any country in Europe unless all EU institutions adapt to the 3 fundamental limitations in art. 5.

The former Commission president Jacques Santer was aware of the fundamental problem of lack of popular support when he proposed that the EU should work "Less and better" in order to apply to the principle of subsidiarity. For a lot of reasons he could not deliver less and better. President Prodi has suggested the same cure, and even former president Jacques Delors has criticised too much centralisation in Brussels.

Since we now have an EU, with a degree of centralisation that no one wanted, we have to adopt new procedures to avoid unwanted centralisation in the future.

We are all Sinners

All Members of the European Parliament are sinners to the principles of legality, subsidiarity and proportionality. The distribution of competencies invites to sin. When a Member of Parliament has a good idea or is asked to help for a good cause, they automatically try to do it through the EU system, instead of considering whether it should really be an EU affair or a national task.

The European Parliament has no responsibility for taxing the citizens but a wide range of possibilities for inventing new expenditures leading to future taxation where the electorates do

not hold them responsible. They can decide expenditure but has no responsibility for where the money comes from.

The budget procedure is used in creative and even illegal manners to insert new expenditures for new purposes. Many projects start as pilot projects without proper legal base from a decision in the Council. The Commission is forced to use the non-obligatory money as decided by the Parliament. If the Commission refuses they can be punished through the discharge procedure.

- The European Parliament shall no longer have a right to insert new expenditures before there is a proper legal base decided by legislative authority.

- The European Commission shall have no right to finance any activity without a proper legal base.

- Any citizen and institution shall have the right to question the lack of legal base before the Court.

The right to initiate new legislation and activities is a monopoly of an institution in Brussels who would gain influence and power by using this monopoly to centralise activities.

You cannot expect the Commission to act against their own narrow interest. We need a system of checks and balances where the monopoly of proposing legislation is modified by a body composed of others interests.

- The national parliaments and regional parliaments with a legislative function shall control the Commission initiative right.

Shall it be in a new institution as proposed by Joschka Fischer and Tony Blair? Can we establish a second chamber of elected national MPs to control subsidiarity?

If we establish a new institution based in Brussels it will soon start thinking and working as the other centralising institutions in Brussels.

A vast majority of speakers in the Convention clearly rejected the idea of a second chamber.

Recipe for how National Parliaments to control Subsidiarity

We should avoid setting up a new institution and instead give the framing of the initiative right to the national parliaments.

- The national parliaments shall adopt the legal base for any piece of community legislation and activity. It can be unanimously or by qualified majority, but the decision on the legal base shall be moved from Brussels to the capitals of our parliamentary democracies.

The national parliaments should have the final say when decided on whether the Community can make binding regulations or recommendations according to the legal base are taken.

The decision on the legal base can be included in the annual legislative programme. The procedure could start with meetings between the specific committees of the Member States parliaments who could form specific Cosac-structures for the transport committees, environmental committee's etc.

They could discuss where they are not able to make efficient legislation in their own countries. They could also suggest where common legislation could give an additional European value, which can not be obtained by the parallel acting of 15 - 25 different parliaments.

If they propose a common regulation it must be because of added value, for they would lose the legislative power in their own parliament. They can only win from centralisation if they have nothing to loose. If their own democracy is powerless they can win a co-influence in an area where they otherwise would have no say.

Centralisation in that case would then add to democracy instead of increasing the democratic deficit. And that shall always be the condition for accepting a decision from a higher level than the national parliament.

To balance sectors interests the adoption of the annual legislative programme could be taken by for example 20 representatives of each national parliament meeting on an ad hoc basis for example one week twice a year.

With 20 members from each parliament it will be possible to include all political directions in the national delegations. They could decide the legislative programme With legal bases for every proposal for example with 75 % majority and representing 50 % of the population.

Then, the Commission can draft the proposals with the binding character decided downwards up instead of the existing procedure where it is always top down.

Today all member states need to be unanimous if they will alter a legal base proposed from the Commission. It gives over centralisation a strong position.

- The final decision on the annual legislative programme could be taken by the national parliaments in a yes/no vote. To be adopted the annual programme would need the support of 75 % of the Member State parliaments.

Further initiatives for simplification and democratisation

This downward-up system could be further underlined by giving the national parliaments the right to appoint their national commissioner.

The commissioner could then meet with a European Committee of a national parliament ones a week and listen and report.

The wish to decentralise could be further strengthened by giving every national parliament a right to veto a proposal for binding European law as proposed by Georges Berthoin, the former right hand of Jean Monnet.

- The veto should be limited to vital issues the condition being that the prime minister is prepared to defend the veto in the next European summit. One could also demand a public reading and decision in the national parliament for those seldom occasions.

With a veto right in vital questions it might be easier to make qualified majority vote the general rule for the necessary cross-frontier legislation.

It could also facilitate clearness in decision making if the existing more than 30 different decision making methods were reduced to the two fundamentally different methods of common laws or co-ordination.

Why continue with directives and regulations when there is no clear difference? Why not simply talk about a community LAW if it is binding according to the European Court.

Then the national parliaments would know clearly the consequences when they decide if they want a common law.

If a decision is not legally binding we do not need a lot of different words for that.

- Keep it simple and call all non-binding decisions for recommendations.

If the national parliaments don't call for a law they would then know that they themselves have the last word on what shall happen with the recommendation and they will be able to alter their decision at a later date after their own decision.

The proposals here will give the national parliaments a strong position in defining legality, subsidiarity and proportionality.

What about the citizens, companies and organisations? Could they have a legal access to question a proposal before it is decided? Why not open a possibility for questioning the proposed legal base in the annual programme?

- The Court could then annul a proposal for law deciding that there is only a possibility for coordination through non binding recommendations or that there is no legal base at all because the proposal is outside the competencies assigned to the institutions by the treaties.

- The distribution of competencies could be much clearer if all competencies were described in a more precise way in a so-called catalogue of competencies.

This catalogue of competencies could then be changed for new needs only through clear procedures involving a unanimous decision by the national parliaments and eventual ratification.

With these proposals the national parliaments will become the masters of European cooperation. Our elected representatives will have the last word over legality, subsidiarity and proportionality.

That is what democracy is about.
