

Working Group V

Working document 28

Working group V « Complementary Competencies »

Subject : Paper of the Chairman Mr. Henning Christophersen, on priority issues regarding complementary competence (circulated at the last meeting of WG V on 6 September 2002)

Priority issues regarding complementary competence

Common point of departure:

The new introductory note submitted by Mr. Altmaier (WD 20) sets out a general framework regarding the treatment of competence in a new Treaty. A number of points in the note, and the contributions from a number of other members of the working group, relate directly to questions of complementary competence, which has not yet been sufficiently discussed. They should therefore be considered with priority. The following points might be discussed first:

1. A precise definition of complementary competence:

Complementary competence can broadly be classified as areas where Member States have not transferred any of their own competences to the EU, but have endowed the EU with certain powers to complement, coordinate or assist internal activities of the Member States.

What should be the elements of the precise definition of complementary competence in draft art. 6, par. 3 of Mr. Altmaier's note (WD 20)?

- The lists in WD 1 of legislation passed in the different areas of complementary competence suggest that a vast number of acts have been adopted, but practically no regulations and directives. As there seems to be general agreement, that legislative competence remains with the Member States, should it be specified in the definition that the Union has no competence to legislate (i.e. adopt regulations and directives), but that decisions resolutions and recommendations are the proper legal instruments?
- Should it be an element of the definition of complementary competence that such co-operation shall be essentially voluntary?
- Should it be specified in the definition that money may be appropriated from the EU-budget in support of initiatives falling under complementary competence? And if so should any limitations as to support from the EU-budget apply?
- Should it be an element of complementary competence that European non-Member States associated with the Union may be allowed to participate in the co-operation?

- Should the open method of co-ordination be covered as a special sub-division of complementary competence? Should it be treated as a separate issue as proposed by Mrs. Thorning-Schmidt in WD 12, or should status quo be maintained?

2. Areas of complementary competence:

The Secretariat has circulated WD 1 on a first outline of Treaty provisions concerning areas covered by complementary competence. These areas are: Employment, customs co-operation, education, vocational training, culture, public health, consumer protection, Trans-European Networks, industry, research and development co-operation.

- Is there agreement that the subject matters in this document represent all complementary competences? Should further subject matters be added to the list? Should some be removed? Areas that may be discussed include:
 - Development co-operation.
 - Consumer protection.

3. Amendments to the current Treaty provisions on complementary competence

Besides possible adaptations as a consequence of the new definition of complementary competence only two comments have been received before the established deadline on other adaptations to the current Treaty provisions on complementary competence, namely from Mr. Wuermeling in WD 15 regarding several areas of complementary competence, and from Mrs. Giannakou in WD 17 to add the fight against drugs as a complementary competence.

- Do these proposals give rise to any comments?

4. A better name for complementary competence

There has been general agreement in the deliberations of the working group that another name for complementary competence should be found. It is too technical and therefore not understandable to the citizens. Mr. Altmaier has suggested using the term “complementary competences of the Union in areas of Member States’ competence”. Members of the working group have also suggested other terms.

- What should be the new name for complementary competence?

5. Relationship with the functional competences

In WD 20 Mr. Altmaier raises the important issue of the relationship between the Union's functional competences and its sectorial competences. Both Mr. Altmaier and Mr. Wuermeling in WD 6 have suggested limiting the use of TEC art. 94 and 95. Mr. Heathcoate-Amory has suggested the total deletion of art. 94 and 95 from the Treaty in WD 14.

- The implication of this proposal as far as competition between internal market competence and complementary competence is concerned would be that internal market competence can only be applied in areas of complementary competence if the action is “primarily and directly” concerned with the establishment, the completion or the functioning of the internal market. Mr. Altmaier also considers that a “distortion of the conditions of competition” shall be a precondition for further action on grounds of art. 94 and 95 of the Treaty.
- An alternative idea has been mentioned earlier in the working group, and is also reflected in Mr. Altmaier's note, namely “centre of gravity”. This idea is strongly favoured by the Commission in WD 16. Such an alternative clause would stipulate that action in areas of complementary competence based on internal market competence can only be taken if the “centre of gravity” of the proposed clearly falls within the scope of the internal market.
- A third alternative would be maintaining status quo.
- How can the relationship between the functional competences and complementary competences best be clarified?

6. Art. 308

Mr. Heathcoate-Amory has proposed the total deletion of art. 308 from the Treaty, but advocates a flexibility clause for use in dealing with unexpected developments with safeguards. Mr. Altmaier's comments on article 308 and the proposal for a rewording of the article raises the following points to be discussed:

- What would be the effect of limiting art. 308 to only internal market issues? Should independent legal bases in that case be created for other subject matters hitherto regulated under art. 308?

- Should art. 308 be subject to certain safeguards, for instance comparable to those to be applied regarding subsidiarity control.
- How far should art. 308 be allowed to be used to regulate matter in the areas of complementary competence?
- Should “retransfer of competence” be covered in art. 308? Would a Council decision to repeal certain acts adopted on the basis of art. 308 not imply according to community law, that Member States would (again) possess full competence to regulate such matters. Could a provision of retransfer of competence under art. 308 not support the erroneous concept, that art. 308 was indeed a competence- to-competence clause?

7. The Clause on respect for the national identity (“Christophersen Clause”).

Mr. Altmeiers draft (WD 20) art. 16 contains an expanded version of TEU art. 6 par. 3, which states that “The Union shall respect the national identity of its Member States”.

Mr. Altmaier has suggested including a reference to the Member States’ “constitutional and political structures including regional and local self-government and the legal status of churches and religious bodies.”

Several other features are in play when determining the national identity of Member States. Such issues as language, national citizenship, military service, the educational systems, the welfare-systems including the public health systems, the system for personal taxation, the right of abortion and possibly other might be considered in this context.