

EUROPEAN & EXTERNAL AFFAIRS COMMITTEE

Date: 1 July 2004

Time: 09:00 am

Venue: Committee Rooms 3 and 4, National Assembly for Wales

Title: **First Conference on Subsidiarity – organised by the Committee of the Regions under the auspices of the Bundesrat**

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Held at the Bundesrat, Berlin 27 May 2004

Background

This conference was held at the initiative of the CoR's Commission for Constitutional Affairs and European Governance. It was held as a joint session with the Bundesrat in Berlin – a particularly apt setting for considering the implications of subsidiarity. I was one of two UK representatives to the conference. D. Clifford also attended as an official observer.

The starting point for the conference was the draft European Constitutional Treaty and in particular its specific provisions on subsidiarity. Many parts of the Draft Constitution are relevant but especially:

Article 9;

Article III – 292/94;

Protocol on the Application of the Principle of Subsidiarity and Proportionality;

Protocol on the role National Parliaments.

The prime purpose was to consider the role of the Committee of the Regions in relation to subsidiarity mechanisms. A comprehensive background paper formed the basis of discussion (available to Members on request). The conference was divided into three sections:

1. application of principles of subsidiarity and proportionality in the pre-legislative phase, examining the expectations and proposals of the CoR;
2. policy monitoring mechanisms for subsidiarity in the ex ante phase; how the CoR can exploit the early warning system at the heart of the legislative process;
3. judicial review of subsidiarity in the ex post phase; potential and limitations of legal status and right of appeal to ECJ.

Contributions

An official transcript will be produced in due course but below I have aimed to capture some of the key thoughts arising from discussion:

- the CoR should consider establishing a permanent Commission (sub-committee) to work on pre-legislative subsidiarity issues; it would be a mistake to attempt this work through plenary;
- subsidiarity must not be confused with proportionality – the former deals with whether the Commission has valid competence or not, the latter deals with the appropriateness of particular Commission instruments once competence has been established; it would be wrong to object on subsidiarity grounds when the real problem was of proportionality;
- the EU aim is for multi-level governance where everyone works within their sphere towards common goals;
- CoR has a key role in acting collectively; large regions may be tooled up to check proposals for subsidiarity infringements but smaller authorities and districts won't be;
- Harder to influence proposals the later in the process you join in; regional authorities have to think European at the outset;
- Need to find ways of cohering views among regions across Member States using the ex ante mechanism to force the EC to think again, no point working in isolation (Jack McConnell);
- The ex ante mechanism for national parliaments needs to have views recorded and monitored independently of the Commission, trans-national comparison will be key to making it work;
- Many CoR members will have access to the national parliament mechanism and these should be exploited;
- Regions with legislative power shouldn't rely exclusively on national parliaments because it will be difficult for a distinctive regional voice to come through that route; the CoR itself has powerful regions among its members and these should be exploited;
- CoR must be focussed and selective; regions must avoid taking cases to ECJ as a means of furthering disputes with their own Member States;
- CoR appeals to ECJ will be meaningful if there are few of them; an avalanche will with bring the system into disrepute.

Although there are some variable factors, not least the prospects for the IGC and Treaty ratification, there is some appetite for this conference to become an annual review of progress towards meeting the subsidiarity principles.

Rosemary Butler – June 2004