

EUROPEAN PARLIAMENT



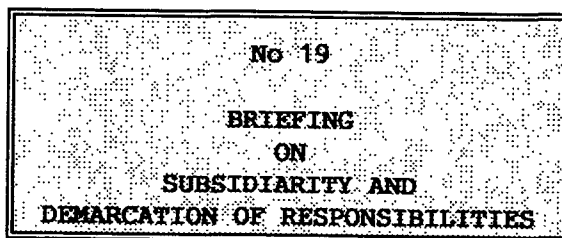
SECRETARIAT WORKING PARTY

TASK-FORCE
ON THE
" INTERGOVERNMENTAL CONFERENCE "

WORKING PARTY SECRETARIAT

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda.

Briefings will be updated as negotiations proceed.

Already out:

- 1 The Court of Justice
- 2 The Commission
- 3 The Court of Auditors, ESC and COR
- 4 Differentiated integration
- 5 The common foreign and security policy
- 6 The role of the national parliaments
- 7 The hierarchy of Community acts
- 8 Codecision procedure
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- 18 The IGC and transparency
- 19 Subsidiarity and demarcation of responsibilities

**BRIEFING
ON
SUBSIDIARITY AND DEMARCATION OF RESPONSIBILITIES**

I. AGENDA FOR THE INTERGOVERNMENTAL CONFERENCE

Under the actual terms of the TEU, subsidiarity and demarcation of responsibilities are among the matters to be covered by the revision to be undertaken at the 1996 IGC. The stipulation to this effect derives specifically from:

- * Article B, which calls for a general review of policies and forms of cooperation 'with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community';
- * the interinstitutional declaration on democracy, transparency and subsidiarity, adopted on 25 October 1993, the object of which is to implement the TEU in a democratic, open way. The declaration contains a clause whereby its substance may be revised if so requested by any of the signatory institutions.

II. SOURCES

- * The European Parliament delivered its opinion in the report by Mr Bourlanges and Mr Martin on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference (adopted on 17 May 1995). In their initial working document (PE 213.065), the two rapporteurs working on the follow-up to the Bourlanges and Martin report, Mrs Raymonde Dury and Mrs Johanna Maij-Weggen, rule out detailed examination of issues related to the subsidiarity principle and powers and responsibilities. However, they do intend to be guided by the questionnaire compiled by Mr Westendorp for the Reflection Group. In that document, subsidiarity, powers, and responsibilities are considered with reference to the 'challenges, principles and objectives of the European Union' and the 'instruments at the disposal of the Union'.
- * The Commission states its views in its report on the operation of the TEU, adopted on 10 May 1995.
- * The Council's thinking is set out in its report on the functioning of the TEU, adopted on 10 April 1995. Among the Member States, the governments of Germany, Greece, Spain, Italy, Luxembourg, the Netherlands, and Austria have taken a clear-cut official (or near-official) stand on subsidiarity, demarcation of responsibilities, and the hierarchy of Community acts.

As regards the attitudes of the national parliaments and their component bodies concerned more directly with Community affairs, the Bonn COSAC meeting on 24 and 25 October 1994 discussed the views of the national parliaments and the European Parliament on the manner of giving effect to the subsidiarity principle. A number of national parliaments, including chambers composed of regional representatives, have also spoken out on the 1996 IGC and matters pertaining to subsidiarity, demarcation of responsibilities, and the hierarchy of Community acts.

In addition, political parties represented in the national parliaments have issued statements, drawn up reports, and delivered opinions.

- * The Committee of the Regions sets out its position in its opinion on the revision of the TEU, adopted on 20 April 1995.
- * The Reflection Group, formed by Foreign Ministry representatives from the Member States, one representative of the Commission President, and two European Parliament representatives, broached the subject of subsidiarity, demarcation of responsibilities, and the hierarchy of Community acts in connection with Item 8 (Instruments of the Union) of the agenda proposed for its first meeting (on 2 and 3 June 1995).
The 'instruments' topic was or will be discussed by the Reflection Group on 24 and 25 July, 3 and 4 October, and 13 and 14 November 1995.

III. POLICY PRONOUNCEMENTS AND STATEMENTS OF VIEWS

A. European Parliament

1. Bourlanges and Martin report

As regards the vertical demarcation of responsibilities (between the EU and the Member States)

- (a) - 'Clarifying competencies
The principles of subsidiarity and proportionality, as currently laid down in Article 3b of the Treaty, should be maintained and correctly applied.
Establishment of a fixed list of EU and Member State competencies would be too rigid and too hard to achieve. Article 235 should be retained, but only used as a last resort and after assent of the EP.
'... the reform of the Treaties requires institutionalization of the principle of the "necessary means"'.

- (b) - Powers and responsibilities of the Union

'I. Objectives and policies of the Union

... The European Union will have to reinforce its existing framework of policies if it is to respond to economic and political change and to enhance its credibility in the eyes of its citizens. To do this it will have to develop new policies for the future and to strengthen its existing policies. Consolidation of this kind is conceivable only in the perspective of a merger of the three pillars and within a single institutional framework'.

The EP is not advocating a direct transfer of powers in the fields of justice and home affairs. On the other hand, it is calling for the Community domain gradually to encompass:

- asylum policy
- policy as regards crossing the Member States' external borders
- policy as regards checks on movements across the Member States' external borders
- immigration policy
- policy in relation to third-country nationals

- policy on the fight against drug addiction
 - policy to combat serious international crime.
- (c)
- As regards the horizontal demarcation of responsibilities (i.e. in terms of the Community institutions)
 - 'The Treaty should provide for a separation between the provisions covering the Institutions and those covering the content of policies'.

B. European Commission

* Experience acquired in implementing the subsidiarity principle

'In October 1992 it [the Commission] ... presented Parliament and the Council with its views on the effect to be given to the [subsidiarity] principle. It set out its view of the scope of the areas in which powers are shared, in accordance with the second paragraph of Article 3b, as distinct from the areas where the Union has exclusive powers. In December 1992 it went on to present the Edinburgh European Council with a list of items of legislation proposed or in force which it considered might be reviewed in the light of the subsidiarity principle. It was asked to report each year to Parliament and the European Council on the application of the principle.' (Commission report, p. 29)

* The Commission's 'theoretical' approach

(a) Subsidiarity implies a need to determine the decision-making tier on which each problem can be tackled most effectively, the possibilities ranging from local, regional, or national through to the European or world level.

(b) By virtue of subsidiarity, the EU's institutional system enables the Union, the Member States, and the regions to be brought into a balanced relationship.

(c) The subsidiarity principle has added a new slant to a regular debate on demarcation of responsibilities and the reasons for issuing legislative acts.

(d) The primary goal of the Intergovernmental Conference is not to increase the powers of the Union.

* Practical application of the theoretical approach

(c) Each new Commission proposal is examined in advance in order to make sure that it accords with the principles of **subsidiarity** and **proportionality**.

(d) In 1993 and 1994 the Commission reduced the number of its new proposals:

1990: 185

1991: 111

1992: 89

1993: 75

1994: 51

1995: 52 (according to the Commission's work programme for 1995).

(e) The Commission has reviewed a number of existing acts and launched a **programme to simplify current legislation**.

(f) The Commission has invoked the subsidiarity principle to withdraw several new proposals submitted to the Council and the European Parliament.

(g) In its 1995 work programme, the Commission announced that **the number of legislative proposals would be cut**.

* Shortcomings in the implementation of subsidiarity

(h) Although the Union institutions have equipped themselves with the means of jointly giving effect to the subsidiarity principle, practical experience shows that difficulties arise:

- in determining the place which subsidiarity should occupy in Community legislative procedures;

- because the legislative texts adopted continue to be unduly detailed on account of the desire to protect the specific interests of particular groups.

* Proposals to consolidate subsidiarity

(i) The Commission is not proposing to make any alterations to Article 3b.

(j) The Commission is not proposing to delete Article 235.

* Powers and responsibilities of the Union

(k) With regard to the Community sphere, the Commission is not proposing any new powers for the Union or that the vertical demarcation of responsibilities be reformed.

(l) The Commission is critical, however, of the demarcation as it affects the areas falling under Community responsibility on the one hand and those covered in Titles V and VI on the other¹.

¹ The Commission proposals described above are not couched in explicit terms, but rather can be inferred from the Commission's diagnosis of the imperfections currently affecting the operation of Titles V and VI.

C. Council

* Assessment of the implementation of the subsidiarity principle

(a) According to the Council report, the introduction of the subsidiarity principle is a useful means of enhancing the effectiveness of Community decision-making and bringing the Union closer to its citizens.

(b) There is further room for improvement in the manner of giving practical effect to the principle:

- Community legislation is in some cases still encumbered with an excess of detail;
- subsidiarity is at times interpreted too sweepingly, and wrongly equated with deregulation, posing the risk that the *acquis communautaire* may be called into question.

* Powers and responsibilities

(c) The Council is not proposing to make any alterations to Article 3b.

(d) The Council is not proposing to delete Article 235.

(e) The Council is not proposing any new powers for the Union or that the vertical demarcation of responsibilities be reformed.

D. Committee of the Regions

* Proposed new wording of Article 3b

(a) The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States or regional or local authorities exercising the powers conferred on them under the national law of the Member States.

* Implications of the new wording of Article 3b

(b) The Committee of the Regions is calling for a right of appeal to the Court of Justice, whether to bring applications for annulment or to institute proceedings for failure to act. It is accordingly proposing to amend the third paragraph of Article 173:

The Court shall have jurisdiction under the same conditions in actions brought by the European Parliament, the ECB, or the Committee of the Regions for the purpose of protecting their prerogatives. It shall likewise have jurisdiction to rule on actions brought by the Committee of the Regions on account of a failure to observe the principle of subsidiarity. It shall also be competent to rule on actions brought by regions in cases where their legislative powers are affected by a regulation, directive, or decision.

If, in the 'post-1996' situation, the Committee of the Regions does not become a genuine institution within the meaning of the Treaty, it is proposing that Article 175 be amended as follows:

Should the European Parliament, the Council or the Commission, in infringement of this Treaty, fail to act, the Member States, other institutions of the Community, or the Committee of the Regions may bring an action before the Court of Justice to have the infringement established.

(c) The Committee of the Regions wishes to work together with the Commission when the latter draws up the legislative programme or green and white papers and issues new legislation having a bearing on the powers of the regions and local authorities.

* Proposal to clarify powers and responsibilities

(c) The Committee of the Regions is proposing that the powers of the Union and the Member States be exactly clarified. It believes that their respective powers should be defined, but is not calling for them to be laid down in an itemized list.

(d) The Committee is proposing that its right to be consulted be extended to include the following:

- all matters on which the ESC is consulted
- Article 130w (development policy)
- Article 8e (policy with regard to citizenship of the Union)
- Article 94 (State aids).

E. Member States

Belgium

1. Subsidiarity

Bonn COSAC meeting (position of the delegation from the two Chambers of the Belgian Parliament):

European Union directives are too detailed and specific, whereas the only obligation they should entail is that of achieving a result.

According to Prime Minister Jean-Luc Dehaene, Belgium is willing to consider any proposal relating to implementation of the subsidiarity principle. However, he does not believe that changes or a reworking are genuinely called for at this point in time.

As regards powers and responsibilities, Mr Dehaene, addressing a PPE Group conference, maintained that the legislative activity of the Community institutions should serve only to lay down fundamental principles and rules required to attain objectives connected with the general interest or the smooth running of the single market.

Regarding the proposed lists of powers, he felt that any *ad hoc*, predetermined, and inflexible demarcation of responsibilities deriving from a list of powers should be rejected.

The Prime Minister does not believe that Article 235 should be repealed or potential competence abolished.

The own-initiative report of 30 March 1995, drawn up by Mr Eyskens on behalf of the Belgian Chamber of Representatives, recommends that the

concept of **subsidiarity** be used with caution, given that some Member States perceive it as a means of removing the components of the *acquis communautaire* from the scope of Community control. It makes the point that the **subsidiarity** principle applies only in areas not falling within the Union's exclusive competence.

The report expresses grave reservations about the idea of compiling lists of **powers conferred on an exclusive basis** and comes down against it because it would serve to undermine the Community framework and obstruct the continued development of the Union's responsibilities.

Denmark

Neither the Folketing nor the Government has yet agreed on a joint strategy.

The Danish 'European Council', comprising Members of the Folketing, the European Parliament, various associations, and representatives of the two sides of industry, held a meeting in late November 1994, and reform of the Treaties was one of the items on the agenda.

The Social Democrats are calling for a clear-cut definition of the **subsidiarity** principle and, as a means to that end, for a list of powers specifying the respective responsibilities of the Union, the Member States, and the regions. They maintain that social policy should not be the responsibility of the Union.

The Conservative People's Party believes that the **subsidiarity** principle must be made one of the central topics at the 1996 IGC. More specifically, the Conservatives are calling for the areas that it governs to be spelt out in more explicit detail. The **powers and responsibilities** of the Union and the Member States should be clarified. As far as that point is concerned, the Conservative view is that policies relating to health, education, the arts, and tourism should no longer be the subject of Community legislation.

The Centre Democrats consider that the **subsidiarity** principle needs to be defined with greater rigour. To bring this about, they are calling for a clear-cut, explicit demarcation of the responsibilities falling to the Member States, the regions, and the Union, laid down on the basis of a list of powers.

The SF (left-wing socialist party) feels that the definition of **subsidiarity** will have to be tightened up. The **powers of the Union** will need to be spelt out and made subject to the proviso that the action through which they are exercised must proceed on an international scale.

To consolidate the **subsidiarity** principle, the Liberals are proposing that a list of powers be drawn up with the aim of determining which responsibilities should be exercised by the Union, the Member States, or regional and local authorities.

Policies on **social affairs, tourism, and the arts** should cease to be covered in Community legislation.

Germany

Bonn COSAC meeting (position of the German Bundesrat delegation)

The Bundesrat notes that the **subsidiarity** principle removes the need for a good many Union acts, for instance in the fields of:

- consumer protection
- health
- agrarian law
- road transport.

It is calling for a **clear-cut demarcation of responsibilities between the Union and the Member States.**

It has compiled a list of Union provisions and proposals contrary to the **subsidiarity** principle.

It is calling for the **subsidiarity principle to be applied in areas falling within the Community's exclusive competence.**

- Position of the Federal Government

The Federal Government considers that the manner of giving effect to the **subsidiarity** principle will need to occupy a key place at the 1996 Intergovernmental Conference.

At the Conference, the Government will continue to urge compliance with, and call for additions to, the 'subsidiarity list', the system whereby Union legislation in force will be examined in order to check that it is consistent with Article 3b of the Treaty and, where necessary, repealed.

It will also endeavour to secure a **clear-cut demarcation of tasks between the Union and the Member States.** The coalition agreement cites **tourism and disaster prevention/civilian rescue services** as examples of areas in which a review is required in order to ascertain that existing Community powers are compatible with the subsidiarity principle.

Mr Seiters, deputy leader of the CDU-CSU Bundestag Group, believes that improvement and rationalization of the subsidiarity principle will need to be brought to bear on the objectives of the Union and decision-making procedures.

To clarify the meaning of Article 3b of the EC Treaty, the Government maintains that the **burden of proof should be reversed by deleting the final words of the second paragraph, namely '... and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community'.**

At the Reflection Group meeting held in Brussels on 24 and 25 July 1995, Mr Hoyer, a German member, proposed that a **'sunset clause'** be inserted in the Treaty whereby

- a Commission proposal would have to lapse if the Council failed to respond within the time-limits laid down and/or
- a Community act would be declared null and void after a given expiry date.

- Position of the German *Länder*

The conclusions issued by the Ministers for European Affairs at the end of their conferences on 16 February and 24 May 1995 call for the following:

- Article 3b, second paragraph (new wording)

The Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States or regional and local authorities on which powers have been conferred by the national law of the Member States.

- clear-cut, explicit demarcation of responsibilities between the EU and the Member States

In future, the Union should act only by virtue of expressly defined responsibilities. The list of the EU's objectives, at present couched in very vague terms, should be replaced by a list of specific powers, divided up according to fields of activity. Opting for a half-way house between a list of objectives and a list of powers, it might be possible to draw up a list of tasks referring to the specific rules laid down in the Treaty as regards the exercise of powers.

- The Länder are thus proposing that Article 3 be rephrased, the introductory clause reading as follows:

Without prejudice to Article 3b and in accordance with the powers conferred on it by this Treaty, the Community shall be entrusted with tasks in the following areas:

and that the first paragraph of Article 3b be amended to read:

The Community shall act solely within the limits of the powers expressly conferred on it by this Treaty.

- The Länder have compiled a proposed list of powers to be exercised by the Union on an exclusive, non-exclusive, or additional basis.
- Deletion of the words 'energy' and 'tourism' in Article 3(t).
- A new definition of the principle of fair cooperation (Article 5):
 1. deleting the final sentence,
 2. inserting the following second and third sentences:

In exercising its powers, the Community shall likewise take account of the interests and internal systems of the Member States. The Community and the Member States shall be required to engage in fair cooperation.
- The Committee of the Regions must be given an independent right of appeal (Berlin, Brandenburg, Saxony-Anhalt, and Schleswig-Holstein are opposed to this). Consultation must be made mandatory (especially with respect to the environment, vocational training, and the advent of the information society), and the Committee must acquire its own organizational machinery.
- Bavaria, Baden-Württemberg, and Hesse are calling for Article 235 of the EC Treaty to be deleted.

- Bavaria and Baden-Württemberg are proposing that a **Subsidiarity Chamber be set up within the Court of Justice**, consisting of the Court of Justice judges and one constitutional court judge from each Member State.

- Views of the political parties

SPD: Mrs Heidemarie Wiecek-Zeul, SPD Vice-President and spokesman on European affairs, is proposing that Article 235 be deleted.

Liberals: the Liberals are calling for:

- a clear-cut system for assigning powers to the Union on the one hand and to national and regional decision-making bodies on the other,
- a list of powers covering the key spheres of Union activity, including external trade, agricultural and fisheries policy, competition policy, completion of the internal market, monetary union, and international-scale environmental and transport policy.

Alliance '90/The Greens

- The Greens claim to be **opposed to a list of powers**. Moreover, they believe that Article 3b should remain unchanged.

Greece

The Greek Government maintains that the **subsidiarity principle** should be enforced in a more systematic way.

With regard to the **powers and responsibilities of the Union**, it is calling for:

- more effective policies to guarantee the safety of workers,
- a more effective equal opportunities policy,
- a more effective health policy, for example where drugs and Aids are concerned,
- a more effective policy to protect consumers' rights,
- a genuine industrial policy,
- energy and disaster prevention policies established on a formal footing.

Spain

A Spanish government document submitted to the country's Parliament sets out a specific, accurately defined view on reform of the subsidiarity principle.

The Spanish Government considers that inclusion of an Article 3b on the **subsidiarity principle** was contrary to the Spanish proposals.

Regarding the 1996 IGC, it is **not advocating a list of powers or deletion of Article 235**.

France

Bonn COSAC meeting (position of the French Senate delegation)

The delegation feels that, in general, there are too many rules and regulations. It is proposing that a body formed by representatives of the national parliaments be made responsible for monitoring compliance with **subsidiarity** (see the background report of 12 November 1992 on the subsidiarity principle, drawn up on behalf of the Senate Delegation for the European Communities by Mr Michel Poniatowski).

The Senate and the National Assembly are calling for **subsidiarity** to be applied in areas falling within the Community's exclusive competence.

The former Minister for European Affairs, Mr Alain Lamassoure, believes that the 1996 IGC will need to produce an **itemized list of powers, couched in consistent, specific terms and based on the subsidiarity principle.**

The President of the Republic, Mr Jacques Chirac, considers that the national parliaments should be entitled to **'demur on the grounds of subsidiarity'**, enabling them to have a say in the process of framing Union legislation.

The Social Democratic Centre Party is calling for a **hierarchy of acts** to be introduced, modelled on Articles 34 to 37 of the French Constitution. The party believes that such a step would put an end to the present disorder as regards legislation by distinguishing between **framework laws, laying down the fundamental principles and essential rules of Union policies, regulations, for which the Council would be solely responsible,** and implementing texts, which, in accordance with the subsidiarity principle, **would be the responsibility of the Member States.** Indeed, Member States should be entitled to appeal directly to the Court of Justice whenever the Treaties were infringed in that connection.

Ireland

Neither the Irish Government nor the Irish Parliament has spoken to date on the question of powers and responsibilities and the manner of giving effect to the subsidiarity principle.

Italy

Bonn COSAC meeting

The delegation from the Chamber of Deputies maintains that the **subsidiarity principle** reflects the desire to coordinate national law and Community rules more closely, **without seeking to weaken the European Union.** The principle applies to areas in which Community and national bodies have concurrent competence. However, it should be **understood in a broader sense, as a yardstick for allocating powers to the different standard-setting tiers.**

The memorandum of 12 October 1994 drawn up by the former Foreign Minister, Mr Martino, notes that the IGC will need to work out a clear

definition of standard-setting instruments and a hierarchy of legislative acts.

Luxembourg

Bonn COSAC meeting

The Chamber of Deputies delegation considers that there are too many Community rules and regulations relating, for example, to public contracts or finance or stemming from the propensity to alter the own resources system.

Implementation of the **subsidiarity** principle should be supervised by the national parliaments and the European Parliament.

Speaking on 16 February 1995, the Minister for Foreign Affairs, Mr Poos, observed that the **subsidiarity** principle needed to be translated into action to ensure that the Union could gain the support of the public at large.

He proposes that the **tasks of the Union** and the **means/measures to be employed to accomplish them** should be made a more prominent focus of attention.

The official view of the Luxembourg Government (Agence Europe, 6 July 1995) is that the **subsidiarity** principle **should be enforced systematically**. The Government sees no need to provide for new powers in the TEU.

Netherlands

Bonn COSAC meeting

The Eerste Kamer delegation believes that the **subsidiarity** principle could shackle the Commission's right of initiative and even give rise to abuses. That being the case, it is necessary to determine the criteria that would allow or require proposals for Regulations or Directives to be withdrawn or revised. The Eerste Kamer rejects the proposal (from the German Bundesrat delegation) to apply the **subsidiarity** principle in areas falling within the Community's exclusive competence, since to do so could jeopardize Community machinery and policies, needlessly bolster the tendency to pursue bilateral action, and undermine the Commission's right of initiative.

The Netherlands Government maintains that the IGC should concentrate on the smooth running of the internal market. It is accordingly calling for a **substantial degree of deregulation** and consolidation of the **subsidiarity** principle. Without spelling out practical proposals, it is urging that Community legislation be made clearer and more comprehensible.

Portugal

Bonn COSAC meeting

The delegation from the Assembleia da República considers that there is a plethora of legislation in fields having a strong impact on budgetary

policy. On the other hand, there are not enough Community rules in areas entailing relatively low Community expenditure.

The **subsidiarity** principle must not, under any circumstances, impede the work of the Community or be interpreted a priori.

With regard to the proposal (from the German Bundesrat delegation) for the **subsidiarity** principle to be applied in areas falling within the Community's exclusive competence, the Portuguese Parliament feels that the principle could enable adjustments to be made in the areas concerned and, in some cases, provide grounds for certain policies to be returned to national control.

Whereas the Portuguese Government has yet to state an official view on the 1996 IGC, the country's Parliament studied the implementation of the subsidiarity principle at length in February 1995, in its report on the parliamentary response to the revision of the Treaty on European Union at the 1996 Intergovernmental Conference. The document notes that the concept of **subsidiarity** does not just relate to the balance between the Community and the Member States, but on the contrary, it also has to do with the role of the citizen and society *vis-à-vis* the State, as referred to in Article A of the Treaty. To that extent, it could even constitute a first step towards clarification, in a Community for which it is difficult to find defining theoretical models.

The **subsidiarity** principle has been invoked on numerous occasions by way of an **apology** for devotion to national sovereignty or with the aim of accentuating regional idiosyncrasies. It has been invoked to obstruct the development of common policies.

However, the principle is linked to the idea of effectiveness and, as such, must never be used to call the nature of Community action into question, since to do so would be tantamount to distortion.

In addition, the document produced by the Portuguese Parliament discusses how implementation of the subsidiarity principle should be monitored.

Leaving aside the three-way advance checks by the Commission, the Council, and the European Parliament (under the interinstitutional agreement on procedures for implementing the principle of subsidiarity, which entered into force at the same time as the TEU), the Portuguese Parliament believes that the national parliaments would be qualified to exercise political scrutiny. However, it does not say which parliamentary assemblies would be in the most suitable position to do so.

Austria

The 'guidelines' on the 1996 IGC, published by the Austrian Government in April or May 1995 (the document is undated), state that the **subsidiarity** principle must be strictly enforced. The principle is regarded as a means of **apportioning tasks** more efficiently to each different level, be it European, national, or regional.

The Government considers a possible future **hierarchy of acts** to be a matter of some interest. However, the institutions of the Union will need to be brought into the appropriate balance.

Generally speaking, the Government believes that environmental policy and the fight against unemployment should constitute priorities for the Community. As regards creating new powers for the Union, it feels that:

- existing measures in the field of energy would benefit if the Community were given a degree of responsibility for energy policy,
- the TEU should lay down Community responsibilities for policy on disaster prevention and emergency action,
- it will not be necessary to confer powers on the Community with respect to tourism policy.

Finland

In its statement to Parliament on 14 February 1995, the Finnish Government maintained that the subsidiarity principle should be enforced rigorously and with care.

It is calling for existing secondary legislation to be reviewed, modernized, and simplified.

Sweden

The Swedish Government believes that the subsidiarity principle will be one of the main items on the agenda for the 1996 IGC. In this connection it is calling for a right of initiative to be granted to the European Parliament with respect to Union legislative acts.

At the end of a joint hearing organized by the Swedish Government and Parliament on 22 and 23 May 1995, the Government appointed an *ad hoc* committee, the Swedish Parliamentary Committee on the 1996 IGC, which will deal with implementation of the subsidiarity principle.

United Kingdom

Bonn COSAC meeting

The British parliamentary delegation maintained that not only the number of European regulations, but also European law as such, which was often perceived as a *diktat* or a form of interference, was giving rise to very widespread anxieties extending beyond individual sectors. Generally speaking, the subsidiarity principle had been welcomed in the United Kingdom, although there were still considerable doubts as to its effectiveness in practice.

The two parliamentary committees specializing in European affairs have expressed misgivings about various proposals for Directives drawn up by the Commission.

The House of Lords European Communities Committee believes that the subsidiarity principle should apply in areas falling within the Community's exclusive competence.

According to Mr Davis, the British junior Minister responsible for European affairs, the subsidiarity principle implies that action should be taken at Union level if, and only if, better results can be obtained jointly than by each country in isolation, and even when that is the case, inopportune authoritarianism has to be avoided (*Le Monde*, 14 June 1995).

In the same article, Mr Davis put forward some ideas as to how the **subsidiarity** principle might be reformed.

One option to which he referred was that of strengthening the provisions of the Treaty by **inserting an additional reference, the wording of which has already been agreed in Council.** Alternatively, the national parliaments could be given the right to **demur on the grounds of subsidiarity.**

Mr Davis said that the United Kingdom was willing to consider all possible means of achieving the above ends.

F. Conclusions

1. The subsidiarity principle and implementation of Article 3b

Amendment	Yes	No	Suggestions
EP		x	
Commission		x	Continue to simplify existing legislation and clarify the role of subsidiarity in legislative procedures
Council		x	Clarify the role of subsidiarity to prevent it posing a challenge to the <i>acquis communautaire</i>
COR	x		Reword Articles 3b, 173, third paragraph, and 175 TEC
Belgium		x	
Denmark	x ¹		
Germany	x		The Government is proposing to reword the final part of Article 3b, second paragraph. The <i>Länder</i> are proposing to reword Article 3b and to rephrase Article 5 accordingly.
Greece		x	Enforce the subsidiarity principle more systematically
Spain		x	

¹ With the exception of the Liberals, all Danish political parties are calling for the subsidiarity principle to be spelt out, clarified, and defined more accurately.

Amendment	Yes	No	Suggestions
France	x		In October 1994 the Senate called for the subsidiarity principle to be extended to cover areas falling within the Community's exclusive competence
Italy		x	
Luxembourg		x	
Netherlands		x	The Government is calling for the subsidiarity principle to be strengthened
Portugal		x	
Austria		x	Rigorous enforcement of the subsidiarity principle
Finland		x	Rigorous enforcement of the subsidiarity principle
Sweden		x	Right of initiative for the EP
United Kingdom		x	In October 1994 the House of Lords called for the subsidiarity principle to be extended to cover areas falling within the Community's exclusive competence

2. Vertical demarcation of powers conferred on the Union, the Member States, and the regions/Lists of powers

The following favour vertical demarcation of powers by means of:

EP:	hierarchy of acts incorporating an 'implementing acts' category
Commission:	harmonization of the areas encompassed within the Community domain with those covered in Titles V and VI
Council:	no
COR:	clear-cut demarcation of responsibilities between the Union and the Member States
Belgium:	no
Denmark:	list of the respective powers of the Union, the Member States, and the regions
Germany: Federal Government: Länder:	clear-cut demarcation of tasks between the Union and the Member States list of expressly defined powers
Greece:	no
Spain:	no
France:	itemized list of powers, hierarchy of acts, distinguishing between framework laws and implementing acts
Italy:	hierarchy of acts, distinguishing between laws and regulations
Luxembourg:	no
Netherlands:	no
Portugal:	no
Austria:	no
Finland:	no
Sweden:	no
United Kingdom:	no

3. Article 235 and potential competence

The following:			advocate	are opposed to repeal of Article 235
EP			x	
Commission			x	
Council	-		-	
COR	-		-	
Belgium			x	
Denmark	-		-	
Germany:				
Government	-		-	
Länder			x	(Bavaria, Baden-Württemberg, Hesse)
Greece	-		-	
Spain			x	
France	-		-	
Italy	-		-	
Luxembourg	-		-	
Netherlands	-		-	
Portugal	-		-	
Austria	-		-	
Finland	-		-	
Sweden	-		-	
United Kingdom	-		-	

4. Proposals to 'curtail' the Union's responsibilities

EP	-
Commission	-
Council	-
COR	-
Belgium	-
Denmark	Social policy, Health, Education, Arts, Tourism
Germany	
Government	-
<i>Länder</i>	Energy, Tourism
Greece	-
Spain	-
France	-
Italy	-
Luxembourg	-
Netherlands	-
Portugal	-
Austria	Tourism
Finland	-
Sweden	-
United Kingdom	Social policy

5. Proposals for new (or wider) responsibilities for the Union, excluding Titles V and VI (see Briefings on these subjects)

EP	Social policy, Equal opportunities, Energy, CAP, Fisheries, Environment, Consumers, Transport, Tourism, Public services, Education, Training, Youth, External economic relations
Commission	-
Council	-
COR	-
Belgium	-
Denmark	-
Germany	Social policy
Greece	Safety of workers, Equal opportunities, Health, Consumers, Industry, Energy, Disaster prevention
Spain	-
France	-
Italy	-
Luxembourg	-
Netherlands	-
Portugal	-
Austria	Energy, Disaster prevention
Finland	-
Sweden	-
United Kingdom	-

