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REPORT

on the division of competences between the European Union and the Member States
(2001/2024(INI))

Committee on Constitutional Affairs

Rapporteur: Alain Lamassoure

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PROCEDURAL PAGE

At the sitting of 15 March 2001 the President of Parliament announced that the Committee on Constitutional Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the division of competences between the European Union and the Member States.

At the sittings of 31 May 2001, 11 April 2002, 3 May 2001 and 14 June 2001 respectively, the President of Parliament announced that she had also referred the matter to the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Regional Policy, Transport and Tourism for their opinions.

The Committee on Constitutional Affairs had appointed Alain Lamassoure rapporteur at its meeting of 24 January 2001.

The committee considered a working document and the draft report at its meetings of 6 March 2001, 9 April 2001, 11 July 2001, 12 September 2001, 18 December 2001, 22 January 2002, 20 February 2002, 26 March 2002 and 17-18 April 2002.

At the last meeting it adopted the motion for a resolution by 21 votes to 2, with 6 abstentions.

When the motion for a resolution was put to a vote by roll-call:

- the following voted in favour: Giorgio Napolitano, chairman; Jo Leinen, vice-chairman; Ursula Schleicher, (vice-chairman); Alain Lamassoure, rapporteur; Teresa Almeida Garrett, Margrietus J. van den Berg (for Dimitris Tsatsos), Guido Bodrato (for Luigi Ciriaco De Mita), Elmar Brok (for The Lord Inglewood), Carlos Carnero González, Richard Corbett, Paolo Costa, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Olivier Duhamel, José María Gil-Robles Gil-Delgado, Gerhard Hager, Hanja Maij-Weggen, Luís Marinho, Iñigo Méndez de Vigo, Jacques F. Poos (for Enrique Barón Crespo)and Reinhard Rack (for Antonio Tajani);

- the following voted against : Georges Berthu and Daniel J. Hannan;

- the following abstained: Jean-Maurice Dehousse, Monica Frassoni, Sylvia-Yvonne Kaufmann, Neil MacCormick (for Johannes Voggenhuber), Gérard Onesta and José Ribeiro e Castro (for Mariotto Segni).

When the text as a whole was voted on, Georges Berthu stated that he intended to append to the Explanatory Statement a minority opinion pursuant to Rule 161(3) of the Rules of Procedure.

The opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Regional Policy, Transport and Tourism are attached.

The report was tabled on 24 April 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the division of competences between the European Union and the Member States (2001/2024(INI))

The European Parliament,

– having regard to the treaty signed in Nice on 26 February 2001, and in particular Declaration 23 on the future of the Union,

- having regard to the Laeken European Summit's declaration of 15 December 2001 on the future of the European Union[1],

- having regard to the territorial organisation of the Member States set out in their respective constitutions,

- having regard to its resolution of 12 July 1990 on the principle of subsidiarity[2]

- having regard to its resolution of 13 April 2000 containing its proposals for the Intergovernmental Conference[3],

- having regard to its resolution of 31 May 2001 on the Treaty of Nice and future of the European Union[4],

- having regard to its resolution of 29 November 2001 on the constitutional process and future of the Union[5],

- having regard to the opinion of the Committee of the Regions of 13 March 2002 on the draft European Parliament report on the division of competences between the European Union and the Member States[6],

– having regard to Rule 163 of its Rules of Procedure,

– having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market and the Committee on Regional Policy, Transport and Tourism (A5-0133/2002),

A. whereas the current system of division of competences in the Treaties is characterised by a complex interweaving ('Politikverflechtung') of objectives, substantive competences and functional competences, arising from the existence of four treaties and two different entities, the Union and the Community, from the proliferation of legislative instruments with differing and sometimes questionable legal scope, and from the absence of a real

[1] Conclusions of the Presidency - Annex I
[2] OJ C 231.17.9.1990, p. 163.
[3] OJ C 40.7.2.2001, p. 409.
[4] Texts adopted, point 4.
[5] Texts adopted, point 19.
[6] CR 466/2000 fin.

hierarchy of acts,

B. whereas this situation is the outcome of half a century of existence during which the institutions created for a small Community with essentially economic objectives have had to adapt to successive enlargements and to the increasingly political functions assigned to the Union,

C. whereas the principles of subsidiarity and proportionality introduced by the Treaty of Maastricht and specified by the Treaty of Amsterdam have not yet managed to clarify, in each specific case, the respective roles of the Union and the Member States;

D. whereas public opinion polls and the debates held since the Treaty of Nice both reveal a gulf between citizens' expectations of Europe and the issues actually dealt with by the latter,

E. whereas the Member States must have competence under the ordinary law, and whereas the Union must enjoy only the competences allocated to it, as defined by the Constitution pursuant to the principles of subsidiarity and proportionality, taking into account the wish for solidarity amongst the Member States and an analysis of costs in relation to the benefits enjoyed by the general public,

F. whereas in most Member States or federal bodies the range of competences exercised solely at either Community or Member State level is tending to diminish and to be replaced by a growing range of shared competences exercised in a manner consistent with the principles of subsidiarity and proportionality,

G. whereas Community intervention is legitimate only if it meets at least one of the three following criteria:

- the relevant scope of the proposed measure goes beyond the limits of a Member State and the measure might give rise to perverse effects (distortion or imbalances) for one or more Member State should it not be implemented at Community level (criterion of relevant scope),
- the measure planned at Community level would generate, by comparison with similar measures implemented separately by individual Member States, substantial synergies in terms of effectiveness and economies of scale (criterion of synergy),
- the proposed measure meets a requirement for solidarity or cohesion which, in the light of disparities in development, cannot be met satisfactorily by the Member States acting alone (criterion of solidarity),

H. whereas at the moment, the nature of the procedures, whether intergovernmental or Community, and the decision-making arrangements, whether requiring unanimity or a qualified majority, determine in de facto terms the division of competences between the Union and the Member States, and whereas the paralysis caused by intergovernmental procedures and unanimous decision-making has resulted in competences theoretically conferred on the Union by the Treaties being retained, for no good reason, by the Member States,

I. whereas the provisions laid down in the Treaties concerning role-sharing between the

Union and the States, which have been in force for 30 years, have hardly allowed the Union, in the foreign policy sphere, to act as an independent player on the international stage, as is demonstrated by the poignant example of the crisis in the Middle East.

J. whereas, in all cases of shared competences, the intensity of EU action is determined not only by the Treaty provisions but by the Member States themselves through their involvement, via the Council, in the Union’s decision-making procedures;

K. whereas it has only been possible to remedy the rigid framework for functional powers established by the existing treaties by using Article 308 of the EC Treaty, to such an extent that it has served as the legal basis for more than 700 Community legislative measures, even though they have considerably decreased in number in recent years,

L. whereas the institutional guarantees of compliance with the division of competences are inadequate,

M. whereas the system of competences must be capable of evolving and adapting to social, economic and political changes that might take place in the future,

N. whereas, in any event, the Union constitutes a unique, innovative institutional area, characterised by the existence of shared competences and responsibilities,

O. having regard to the way in which the internal organisation of the Member States differs in terms of territorial division and the conferral of competences,

P. whereas in recent decades a number of Member states have successfully carried out decentralising reforms to increase grassroots involvement in policy-making and enable the regions to engage in productive competition;

Q. whereas territorial units with legislative competences, now exist in almost half the Member States, where the transposition of European legislation into domestic law is in some cases a matter for decentralised authorities; whereas the management of Community programmes is, at all events, just as much a matter for the regions and municipalities as for central government, and consequently the basic Union texts can no longer disregard the role of these particular partners, which must help both to make Community policies more effective and bring citizens closer to the process of European integration,

R. whereas, at all events, it is for the Member States to promote, within the framework of their constitutional system, suitable participation for the regions in decision-making processes and representation in the field of European affairs in each country, without forgetting the necessary role to be played by municipalities in this connection,

S. whereas the Laeken Declaration has instructed the Convention to deal with the questions of competence and subsidiarity as a matter of major importance;

Competences of the Union in a constitutional framework

1. Considers the time has come to update the division of competences between the Union and its Member States on the basis of the principles of subsidiarity and proportionality, in order to take account of the lessons of the Community's history, the views of the applicant

countries and the expectations of citizens;

2. Hopes that a better division of competences will result in a clear assignment of political responsibility and thereby a strengthening of democracy in Europe;

3. Reiterates its call for a constitution for the Union addressed to all its citizens, which recasts the various treaties and merges them into a single text concerning a single entity, the Union, endowed with single, full legal personality;

4. Considers that this constitutional approach must be accompanied by a new presentation of the competences of the Union and that this presentation must be sufficiently clear to be understandable to all citizens;

5. Reiterates its call in this context for the second and third pillars to be brought within the Community sphere in order to consolidate democratic legitimacy and ensure parliamentary and judicial scrutiny;

6. Considers that the purpose of this exercise should be to achieve a balance between economic and political integration of the Union;

7. Considers that the Preamble to the Treaty must be supplemented by references to the European Social Model and to Europe’s role in a world of peace, stability and international justice;

8. Considers that a clear distinction must be made between the general objectives of the Union and its competences, defined by subject area; wishes to see a simple distribution of competences, in which each heading merely states the subject in question, the specific objectives pursued by means of Union action in the subject area concerned and the means employed by the Union to that end;

9. Considers that, among the provisions in the current Treaties relating to arrangements for the exercise of certain competences that were attributed to the Union, details which are not fundamental should be moved to a second section and should be amendable by a simplified procedure;

Exercise of competences

10. Considers it essential
    - pursuant to the principles of separation, equilibrium and cooperation between the powers, that the future European constitution should better define independent legislative, executive and judicial functions;
    - that compliance with the principle of subsidiarity should be laid down as a constitutional requirement;
    - that an effective hierarchy of acts should be implemented;

11. Considers that legislation - Community 'law' - must be adopted by the two branches of the legislative authority, the Council and Parliament, which are responsible for political choices; whereas implementing measures, the framework for which is established by the law, come under the executive power which, depending on the circumstances, may be the

responsibility of the Commission, a specialist European Agency, the Member States or, in line with the constitutional system of the various states, their local or regional authorities;

12. Considers that the terminology of the Treaty should be altered to make a clearer distinction between acts of the executive and those of the legislative authority;

13. Considers it essential to enshrine the list of legal acts and other forms of action open to the Union in a new version of Article 249 EC and in an exclusive list in a separate article of the Treaty;

14. Points out that the political model of the Union is currently based on two fundamental features: the Union has only small management departments, at least for internal policies, for which it relies on the Member States (subject to the Commission monitoring the obligation of Member States to apply the policies adopted); and the bulk of fiscal and tax power must also remain at national level;

General framework of competences

15. Proposes that a distinction should be drawn between three types of competence: the competences exercised as a matter of principle by the States, the competences allocated to the Union, and shared competences; is aware that certain actions may purely and simply be banned ('negative competences');

16. Considers, that, within its field of competence, the Union must have flexibility in the ways in which it acts, according to the degree of need for Community intervention; law, recommendation, financial aid, etc.;

Competences exercised as a matter of principle by the State

17. Does not consider it necessary to draw up a list of the exclusive competences of the Member States, but rather to apply the principle of presumption that the States have jurisdiction where the constitutional text does not stipulate otherwise;

The Union's own competences

18. Considers that, in the areas covered by the Union's own competences, the Member States may intervene only in accordance with the conditions and within the limits established by the Union;

19. Considers that the Union's own competences must continue to be few in number and relate, as is now the case, to customs policy, external economic relations, the legal basis of the internal market (including the 'four freedoms' and financial services), competition policy, structural or cohesion policies, association treaties and, where the euro area is concerned, monetary policy;

20. Wishes, however, to add to the above lists the drawing up and the running of the common foreign and defence policy, the legal basis of the common area of freedom and security and the funding of the Union budget;

Shared competences

21. Considers that shared competences over three types of area: those in which the Union lays down general rules, those in which it intervenes only in a complementary or a supplementary fashion, and those in which it coordinates national policies;

22. Considers that where competences are shared the Union must lay down general rules on subjects falling into two categories:

    - those which constitute policies complementing or flanking the single area: consumer protection, agriculture, fisheries, transport, trans-European networks, the environment, research and technological development, energy, social and employment policy, immigration policy and other policies linked to the free movement of persons, the promotion of equality between men and women, the association of overseas countries and territories, development cooperation and taxation relating to the single market;

    - those relating to the implementation of foreign policy and of internal and external defence and security policy, as regards the transnational dimension thereof;

23. Considers that, in this area of competences, Community legislation is justified only where European interests are at stake; in such cases, Community legislation must establish the guidelines, general principles and objectives, whilst the Member States must be responsible for the detailed transposition thereof into their domestic legal systems in accordance with the principles of subsidiarity and proportionality; considers that Community legislation should aim to create uniformity only where there is a clear threat to equal rights or competition;

24. Considers also that, in the above areas, the Member States must retain the capacity to legislate where the Union has not yet exercised its prerogatives;

25. Considers that, in other areas, it must be made clear that action by the Union may only complement that of the Member States, which retain the competence to enact ordinary law; this already applies to education, training, youth, civil defence, culture, sport, health, industry and tourism, to which civil and commercial contracts should be added;

26. Considers that the Union also has powers (and sometimes legal obligations) to coordinate policies which are essentially the responsibility of the Member States; these include the obligatory coordination of budget and fiscal policies in connection with economic and monetary union and of employment policies with a view to facilitating the achievement of the Union's objectives;

27. Recommends that, in order to make such coordination more effective, new procedures distinct from the Union's common-law procedures and involving all the Community institutions should be implemented;

28. Considers that the principles of subsidiarity and proportionality must be strengthened; and to that end proposes that a Commissioner be given responsibility for monitoring the

application of the subsidiarity principle in respect of all texts proposed by the Commission;

29. Points out that 'open coordination' of national policies leads to further blurring of political responsibilities; insists that such a procedure be accompanied by proper parliamentary supervision;

30. Takes the view that the exercise by the Union of its competences, whether exclusive, shared, additional or coordinating powers, must no longer be thwarted by paralysing (no power of initiative, unanimous decision-making, ratification by the Member States) or non-democratic (lack of genuine parliamentary participation or judicial review) procedures, although it acknowledges that certain categories of competences, in particular coordinating competences and competences in the sphere of own resources, must be exercised on the basis of specific procedures closely involving the national parliaments or their representatives;

Future development of the system

31. Considers it essential to include a review clause in order to avoid establishing a rigid system for the division of competences; in this connection, considers that it would be useful to maintain a mechanism similar to the current Article 308 of the EC Treaty which could be applied only in exceptional circumstances and which works in both directions by enabling powers to be returned to the Member States when the need for Community intervention had ceased; hopes that the European Parliament will be involved in decision-making;

32. Proposes assuring the people of the EU that transfers of competences will take place with total budget transparency under the watchful eye of the Court of Auditors, so as to ensure that, on such occasions, there is no duplication of bureaucratic effort at EU level and at Member State level;

33. Suggests that the framework of competences should be comprehensively reviewed ten years after its adoption;

The role of territorial entities

34. Considers internal territorial organisation and the division of competences within each Member State to be matters to be decided upon by the Member States alone; at the same time, notes the increasing role which the regions (and sometimes other territorial entities) are now playing in the implementation of Union policies, particularly where regions with legislative competences exist;

35. Hopes, therefore, that the Union will be open to proposals from the Member States which are designed to ensure that their respective territorial entities are more closely involved in drawing up and, where appropriate, transposing EU rules, provided that the individual Member States' constitutions are not infringed; calls on its Committee on Constitutional Affairs to draw up a special report on this matter, taking into account the opinion expressed by the Committee of the Regions;

36. Will include in its rules the necessary provisions to enable representatives of regional parliaments with legislative capacity to take part regularly in the work of the committee responsible for regional affairs, in line with the practice already tried out with good results;

Judicial guarantees

37. Considers that the Court of Justice is, in many respects, the Union’s Constitutional Court;

38. Proposes that a chamber should therefore be set up within the Court of Justice to hear cases concerning the Constitution and fundamental rights;

39. Proposes the creation of an additional referral procedure prior to the entry into force of a legislative measure and capable of suspending the application thereof; that referral procedure would work as follows:

- it could be initiated by the Commission or by a significant minority in the Council or Parliament;
- the procedure would have to be initiated within a period of one month from adoption of the legislative measure, the Court also having to give a decision within one month;
- the sole grounds admissible in this urgency procedure would be a conflict of competences relating to non-compliance with the principles of subsidiarity and proportionality;

40. Instructs its President to forward this resolution to the Council, the Commission and the Committee of the Regions, and the Convention on the Future of Europe.

EXPLANATORY STATEMENT

After consideration of an initial working document drafted by the rapporteur, discussions within the Committee on Constitutional Affairs, hearings arranged by the committee and the first conclusions of the major public debate in the Member States following the Nice European Council and, finally, the conclusions of the Laeken European Council, it is now possible to set out some initial guidelines, subject to the opinion officially requested by Parliament from the Committee of the Regions, which is not yet available. (I)

This report therefore calls on Parliament to adopt the main guidelines that will inform the work of the Convention in this sphere. (II)

I - GUIDELINES CONFIRMED OR CLARIFIED:

1. **The current wording of the Treaty articles on the division of powers is unsatisfactory**.

Drafted at different periods, the outcome of diplomatic compromise, the relevant Treaty articles do not confine themselves merely to the distribution of powers but often describe the content of the related policies in detail (cf. for example, environment policy which is the subject of Title XIX, TEC). These specific provisions, which are unusual in a basic text, sometimes go so far as to prohibit the Union from carrying out any harmonisation whatsoever of national policies in certain spheres (for example, education, vocational training and culture).

Moreover, the treaties combine a definition of competences based on *policy areas* (customs, agriculture, transport, etc.), and competences based on *objectives* (in particular the general provision of Article 94 on the internal market). To make the situation even more complicated, some of these objectives are not assigned directly to the Union, but to the Member States themselves (cf. Article 119 on equal pay for men and women). In other cases, action by the Community is conditional upon measures first having been taken by the Member States (Article 47(3) TEC on the health professions).

The overall picture is not only unnecessarily complicated, it also results in excessive inflexibility; the only way of remedying this has been to make a great deal of use of the general clause extending the scope of Community action: the current Article 308, which has served as the legal basis for almost 700 items of Community legislation!

The outcome is not satisfactory either for the decision-makers or, above all, for citizens and their national representatives. It is of course true that since the Treaty of Maastricht, and in response to a proposal made by the European Parliament (1990 Giscard d'Estaing report), the principles of subsidiarity and proportionality have been introduced into the action taken by all the institutions; in addition, the legislative work of the Union has undoubtedly declined: in 1995 the European Commission submitted 71 proposals for directives and 290 proposals for regulations, in 2000 the corresponding figures were 48 and 193. But is anyone aware of this? The national parliaments, elected representatives of the regions and even the general public are under the impression that 'Europe' is intervening to a growing and excessive extent in the details of their daily lives, whereas the Union seems to them to be ineffective on the international stage, where its action would appear to be more justified.

Consequently, it is necessary to **clarify the situation by redrafting the treaties, drawing inspiration from democratic constitutions, rather than diplomatic instruments**. This is all the more appropriate because the constitutional approach, strongly recommended by Parliament on the basis of the Duhamel report, now enjoys broad public support and is approved by a majority of the governments of the Fifteen.

2. **As well as mere *clarification*, the treaties need to be brought up-to-date**

The time has come to draw the lessons of 40 years of Community life, and above all to take account of the views of new players in the European game: the regions with legislative powers, which now exist in almost half the Member States; the applicant countries, whose expectations of the Union sometimes differ from our own, and last but not least public opinion since the public debate that has taken place during the last year has confirmed the findings of the Eurobarometer polls, which suggest that the Europe which is being shaped in Brussels, Strasbourg and Luxembourg is not always the Europe that the public wants to see.

This updating exercise must be based on the provisions now in place and the vast experience acquired: it is not a case of going back to the drawing board. Even those with the most liberal views do not envisage unravelling the legal framework of the single area, the principle of which owes as much to Margaret Thatcher as to Jacques Delors. Nonetheless, there can be no no-go-areas, the aim being to develop a Community *spirit* rather than to timidly defend the status quo, which goes under the rather quaint name of the 'acquis'.

3. Whatever clarification exercise is carried out, the 'grey area' of competences shared between the Union and the States will be significant, or even predominant. It will therefore be necessary to determine '**ground rules' for this grey area**, in accordance with the principles of subsidiarity and proportionality.

4. Once established, the division of powers needs an **arbiter, who is independent of the political authorities involved**, i.e. of a judicial nature. The original concept of the Court of Justice was that its main role was to ensure the uniformity and pre-eminence of Community law. In the future the Union will need an authority to guarantee that the respective prerogatives of the various parties are observed.

The Community experience, and that of Federal States, demonstrates that it is useful to **review** the distribution of powers at regular intervals. If this is not done, the federal level has a tendency to take over an ever greater number of decisions, despite the stated political will and the case law of the constitutional court.

II - FURTHER GUIDELINES PROPOSED

The first aim of this report is to secure confirmation of the initial approach set out above. However, Parliament also has to express a view on other political options that will be submitted to the Convention.

1. **The political model of the Union must retain its historic originality in two vital areas**.

1.1 The Union does not have any management services. The management of policies and Community appropriations is a matter for the administrations of the Member States, or specialist agencies.

1.2 Similarly, the main financial power (budget and taxation) must remain at the level of the Member States.

These two points are so consubstantial with the EEC that they tend to be overlooked in the political debate. However, they constitute a major difference compared with the philosophy underlying the main existing federal regimes, where the exercise of legal powers is generally accompanied by corresponding financial powers. For example, Article 104a of the German Basic Law says that '*the Federation and the Länder shall separately meet the expenditure resulting from the discharge of their respective tasks'*, and under the Spanish Constitution, *'the original power to establish taxes by means of law belongs exclusively to the State'* (Article 133-1) but '*the Autonomous Communities shall enjoy financial autonomy for the development and exercise of their competences'* (Article 156). The same principle is found in Belgium and in the American Constitution (since the XVIth amendment) and the Canadian Constitution.

For the most part, however, the European Union has to make do with only a legislative power, that of establishing rules, or law-making. Secondarily, it has the power to coordinate measures taken by the Member States. However, the Member States retain a monopoly on the actual management of public policy, financial redistribution to disadvantaged sections of the population and, finally, direct contact with citizens; as well as a virtual monopoly of countless policies involving financial, budgetary or tax incentives.

It is likely that over time this original feature will become less marked: will it be possible to go on operating in a political system where the main rules of the game are established at one level whereas financial redistribution is organised within a different framework? The existing system has the disadvantage, among other things, of encouraging the Union to legislate in all sorts of areas since this is the only means of action available to it. It is not surprising that the remote and anonymous European authority, which does nothing but impose a proliferation of bans or constraints, is an ideal scapegoat compared to the national or regional administrations which are close to the public and headed by friendly local elected representatives, who are extremely generous in handing out financial aid.

However, it is obviously impossible to do otherwise as long as there is no independent democratic power at European level.

2. The **treaties must clarify the concepts of *legislative* and *executive* powers at Community level**.

The confusion between the nature of the three political institutions of the Union is not an inevitable consequence of the nature of 'political animal' that is Europe, but the result of the governing bodies of the economic Europe of Six set up in Rome in 1957 being extrapolated to the political Union of Fifteen. Half a dozen treaties later, there is still no title or chapter of the basic texts which mentions a 'legislative function' although in the meantime hundreds of directives and thousands of regulations have been adopted; at the very most, the Council's legislative role is mentioned in passing in Article 207(3) of the EC Treaty.

The treaties are silent on this issue and case law and expert opinion do not shed much light on the matter. To give an illustration, there are judgments in which the Court of Justice of the European Communities has taken the view that the competition directives, provided for by

Article 86(3) and falling within the competence of the Commission, should be classified in the general category of directives covered by the present Article 249 TEC, in other words that the Commission itself also had an autonomous legislative power! (Judgment of 6 July 1982 *France v Commission* and judgment of 30 June 1998, *Greece v Commission*). Then there are the acts adopted by the supreme political authority, the European Council, which have names as varied and as vague as *'conclusions of the Presidency, summary of decisions, Council acts, reports, declarations, solemn declarations'*, but have no legal force whatsoever and whose scope, as one lawyer has nicely put it, amounts to the *'power to make high-flown statements'* (P-Y Monjal, October 2000).

The only people who benefit from this confusion are the initiated. In 2002 the basic principles of good governance and democratic scrutiny require clarification of the respective roles of each institution. Who is responsible for defining the common interest? Who establishes political principles? Who translates these principles into practical rules? Who is responsible for monitoring and who enforces the rules? The public has a right to know.

There are three ways of achieving this clarification:

- by recognising that, as in the case of the Community budget, there are **two branches of the legislative authority**: Parliament, representing the citizens, and the Council, representing the States. Recognition of this principle should logically lead to the two branches being given equivalent powers (codecision), as Parliament has repeatedly pointed out;

- through a return to the original philosophy behind the Community legal system, under which the **political authority establishes the legal principles (the law), with the practical arrangements being a matter for the executive**. In line with this approach, Parliament's resolution of 13 April 2000 proposed making a distinction between *legislative acts*, which would be adopted by the Council by qualified majority and subject to codecision with Parliament, and *administrative acts* which would be a matter for the Commission;

- by establishing the general rule that the **application of principles (executive power) is a matter for the Member States** or their regional or local bodies, but that it may, on a case-by-case basis, be delegated by the legislator to the Commission or a specialist agency.

3. The *fundamental objectives* of the Union should be set out in a constitutional preamble, or a preliminary article of the Treaty or Constitution, similar to the present Articles 2 of the EU Treaty and the EC Treaty, rather than in chapters dealing with the distribution of powers.

The common market Treaty, and subsequently the single European act established ambitious political objectives. These objectives have now been largely attained: there has been a common market for more than 30 years and monetary Union is the crowning achievement of the single area, even if it is still incomplete. Although some reference should be made to these original goals, it is no longer necessary or even desirable to mix-up *objectives* and *policy areas* in order to establish the distribution of powers. To take a recent example, although it is a good idea that the Union should intervene to tackle a number of very specific problems in the sphere of sport, such as the fight against doping, it is absurd that such measures should be based on the Union's responsibility for the internal market, which results, for example, in ill-advised case law such as the Bosman judgment. **It is therefore proposed that the common market and the single area should be mentioned among the major underlying objectives, which continue to inspire and inform action by the present Union, but that in**

establishing competences the focus should be on subject areas.

4. A detailed analysis of powers, sector by sector, requires a major effort involving the Commission, government representatives and members of the national parliaments: it will obviously be the Convention's main task. At this stage, we suggest that Parliament should state its position on a general framework, based on the current division of powers, amending them in those areas where change is obviously required when there is a shift from a diplomatic approach to a constitutional approach.

For these purposes, the powers devolved to the political authority (Council and Parliament in the case of the Union, national authorities and, possibly, regional and local authorities in the case of the Member States) could be classified in the following categories:

4.1 *The Union's own powers*

4.1.1 In the areas concerned, the Member States must not be able to intervene except at the express invitation of the Union, in line with the provisions of the German Basic Law (*Grundgesetz*) (Article 71) and the Spanish Constitution (Article 150).

4.1.2 The Union's own powers must remain limited:

- *monetary policy* (already the case),

- *customs policy* (already the case),

- *external economic relations*, where there seem to be no grounds whatsoever for restricting competence to trade in goods, as was done at Nice.

- the legal basis of the internal market and financial services;

- *competition policy*

- *structural and cohesion policies*

- *where the euro are is concerned, monetary policy*

The following areas should be added:

- ***financing of the Union budget***. There is no possible justification for expenditure determined by the Union itself being financed by national resources, or for the national parliaments to be required to approve the taxes necessary to fund expenditure decided in the last resort by the European Parliament.

All too often it is forgotten that the original principle established and applied for 20 years was that the Community budget was funded by real own resources, excluding national payments. The reverse approach, which now prevails, is totally anti-Community: it encourages each country to calculate whether it is getting a fair return on its investment and every year we see the countries that are always net contributors lining up against the countries that are always net beneficiaries. At any event, is difficult to see how this system, which encourages national self-interest, could withstand the severe financial shock of enlargement.

- the legal basis of the area of freedom and security, a logical complement to the internal market.

The Convention will have to ask itself whether ***foreign policy***, like monetary policy and trade policy, should not in future become an own competence of the Union. This idea will send shivers through the diplomatic services, but it was overwhelmingly endorsed by public opinion on the continent even before 11 September (cf. Eurobarometers). It is clear, in any case, that it would be illusory simply to suggest a stronger dose of Community medicine in the CFSP; this is what has been done periodically for more than 20 years, with the creation of political cooperation, then the provisions of the Treaty of Maastricht on the CFSP, and finally with the creation of the office of High-Representative, with a political outcome that we are all too well aware of. In this sphere, power-sharing amounts to relying on the goodwill of national leaders. However, after the terrible ordeals that the Union and its Member States have faced since the 1990s, in former Yugoslavia, Africa and the Middle East, recent events have confirmed only too clearly that in today's Europe the media coverage afforded to a national leader who appears individually on the international stage is irresistible compared with a team approach.

On the other hand, we are not suggesting that *agriculture and fisheries* should be included among the Union's own powers. Although agricultural policy and regional policy have played a key role in the success of the EEC and still account for a significant share of the Community budget, they are areas where, after 40 years and with a view to the accession of new members, an adjustment can be made between the respective roles of the Union and its members.

As far as the *use of languages* in the Union is concerned, this is a matter for the basic text itself (Treaty or Constitution).

4.2 ***Powers shared*** between the Union and the Member States

4.2.1. Where powers are shared the Union must lay down general rules on subjects falling into two categories:

- those which constitute policies complementing or flanking the single area: consumer protection, agriculture, fisheries, transport, trans-European networks, the environment, research and technological development, energy, social and employment policy, immigration policy and other policies linked to the free movement of persons, the promotion of equality between men and women, the association of overseas countries and territories, development cooperation and taxation relating to the single market;

- those relating to the implementation of foreign policy and of internal and external defence and security policy, as regards the transnational dimension thereof;

4.2.2 The 'ground rules' for shared powers could be based on the following principles.

4.2.2.1 **Community legislation would establish the guidelines, principles and objectives** - possibly putting figures to them - whereas the Member States would be responsible for

transposition and practical implementation in their domestic legal systems. It is here that the principles of subsidiarity and proportionality would come fully into play.

4.2.2.2 The national governments could enact legislation in the absence of European regulations, but where European legislation existed it would take precedence over national law.

4.2.2.3 If one wants to simplify the current wording of the basic text, for example on powers linked to the internal market, **each heading should be limited to one or two sentences**, describing the subject concerned and indicating what must be the spirit of the Union's role in accordance with the principle of subsidiarity. Finally, a general article would say that in the policy area concerned, the Community institutions would take account of measures taken by the Community and (or) the Union on the basis of the earlier treaties. **In this way, the corresponding provisions of the EC and EU Treaties, which are too detailed to be included in the new text, would retain their supra-legislative legal force but would no longer have 'constitutional' force**.

To illustrate how this would work, let us take the example of *State aid*. The EC Treaty currently devotes 18 paragraphs, or two full pages of the Treaty to this matter. A new version would say that '*in the case of State aids of all kinds, the Union shall draw up rules on their compatibility with the internal market and establish a system of penalties applicable to donors and beneficiaries'*. The detailed provisions now set out in Articles 87 to 89 of the EC Treaty would remain the reference framework for action by the Union, but could be changed by a legislative measure.

4.2.3. Where certain shared powers are concerned, the Union has only a complementary role to play, in cases where the main initiative must remain with Member State governments: *education, training, youth, civil protection, culture, sport, tourism*. Here too, the scope of Community action would have to be specified in each case, without going into the detail of the relevant existing articles.

This list corresponds to the law as it now stands but it would probably be appropriate to add *civil and commercial contracts,* as Parliament has pointed out on a number of occasions that the increase in individual travel within the Union means that it would be useful to adopt common approach to matters hitherto covered by bilateral national agreements (for example, mixed marriages or the recovery of commercial debts).

4.2.4. A special case of power-sharing concerns areas in which power remains essentially with the Member States, although the Union is required to coordinate the Member States' policies. This is the case with ***national budget policies***, pursuant to the provisions of economic and monetary union (Article 99 of the EC Treaty).

As Parliament pointed out when the Treaty of Maastricht was adopted, and as is now plain for all to see since introduction of the euro: monetary union will not produce its full benefits unless it is accompanied by close coordination of fiscal policies. A first step has been achieved with the 'Stability and Growth Pact' and the informal meetings of the euro group. To make further progress, it will probably be necessary to establish two principles:

- Apart from the funding of European policies, which are covered by the common budget (see above), budgetary policy (expenditure, revenue, funding of the balance) falls within the exclusive jurisdiction of the Member States. However, the members of monetary union are under an obligation to coordinate their national fiscal policies.

- In the case of national policies which, in all countries of the Union, lie at the heart of Parliamentary power, **coordination has to be based on new procedures**, that are distinct from the procedures applying to ordinary Union law, **involving representatives of the national parliaments**.

If the second of these principles is adopted, the Convention will have to clarify the arrangements for involving the national parliaments.

The same approach should be taken to *employment policy*.

At first sight, it could be included among the shared powers. However, from the first White Paper in 1992 up to the strategies defined by the Lisbon and Luxembourg European Councils, it has not been possible to avoid public disquiet because of a fundamental ambiguity; on the one hand employment is, quite rightly, a major concern of the members of the European Council, which has led them to make it priority in all their agendas; however, on the other, it is clear that the Union's own powers and resources can make only a marginal contribution in this area. Disquiet and ambiguity are indeed reflected in the current wording of the Treaty, which is particularly convoluted: the activities of the Community include *'the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment'* (Article 3(i) of the EC Treaty).

Consequently, rather than making employment policy a shared responsibility, it might be a good idea to **make employment an area where there is compulsory coordination**, in line with the arrangements for fiscal policy.

4.3 ***Competence in principle of the Member States***

4.3.1 It must be clearly stated that, **where the basic Treaty says nothing, competence for ordinary law remains with the sovereign Member States** (cf. Article 15 of the Austrian federal constitutional law of 1920, Article 70-1 of the German Basic Law and the more sophisticated provision of Article 149-3 of the Spanish Constitution).

4.3.2 Going beyond this general principle, it should also be spelled out that certain areas, by their very nature, fall within national jurisdiction.

- this is obviously the case for *fiscal policy* (see above), apart from the financing of common policies.

- it is also the case for the ***territorial organisation* of the country**. Clarification of this point will be particularly useful if the suggestion below that the Union should recognise the existence of 'regional partners' is taken up. It is important that there should be no ambiguity about the fact that each Member State is entirely and exclusively competent to define the level, geographical scope, powers and status of its regional and local authorities. Each national Constitution in fact devotes considerable space to this matter, for example, Title VIII

of the Spanish Constitution, which has devised a new form of differentiated territorial autonomy; Chapter IV, which is at the heart of the Belgian Constitution; Title V of the Italian Constitution, recently amended by referendum; Chapter VII of the Netherlands Constitution on 'the provinces, municipalities and water boards'; Sections VII (autonomous regions of the Azores and Madeira) and VIII ('local authorities') of Part III of the Portuguese Constitution; Titles XII and XIII of the French Constitution; Article 52(8) of the Finnish constitutional law of 1919 on the historic autonomy of the Åland islands, and Article 105 of the Greek Constitution on the peculiar status of Mount Athos. These provisions are at the very heart of national identity and sovereignty.

5. **The principles of subsidiarity and proportionality must be strengthened and enhanced**.

5.1 The principles of subsidiarity and proportionality must of course be written into the basic text, in their present wording, so that they will inform both the distribution of powers and the way which they are exercised. It is suggested below that arrangements should be made for prior judicial review. This will give the Member States and any regions with legislative powers a fundamental guarantee.

5.2 A review of the division of powers suggests that it would also be useful to establish the **principle of cost neutrality**, a fundamental guarantee for citizens and taxpayers: all things being equal, any transfer of powers must be effected at constant cost, with a constant tax burden and constant overheads for the community at large. Any increase in taxes or charges that might result from the transfer of powers to or from the Union, will have to be offset by an equivalent reduction elsewhere so that the operation is neutral for the taxpayer.

6. **The division of powers would have to be subject to regular review**.

Initial discussion has raised some fears that a rigid division of powers might be established on the basis of needs at a specific time, preventing the developments demanded by a rapidly changing world.

This fear is probably exaggerated. All the recent federal constitutions, even those with a very detailed list of powers, have proved capable of the necessary flexibility, to say nothing of the extraordinary capacity for adaptation showed by the American Constitution over two centuries. It is nonetheless useful to draw on these experiences, alongside experience of the EC and EU, to ensure that the system has breathing space.

6.1 In this context, it is useful to have a fairly general article, such as the present Article 308, provided that one radical change is made:

- a subparagraph could be added allowing powers to be returned to Member States, on a case-by-case basis, where there is no longer any need for Community intervention. Article 72-3 of the German Basic Law contains a provision of this kind.

Consequently, this provision would still be used only in exceptional circumstances and it could work both ways, in favour of the Union or in favour of the Member States.

6.2 Apart from these case-by-case adjustments, it might be worthwhile to carry out an **overall review after about ten years**. The Spanish Constitution introduced an experimental

period of this kind but it is probably a little short (five years).

7. The question of territorial entities can no longer be ignored by the basic texts

This is why the Committee on Constitutional Affairs has proposed that the Committee of the Regions should be formally asked for its opinion. Until that opinion is available, the rapporteur has draw inspiration from the hearings already organised by the committee and his working meetings in Barcelona with the President of the Generalitat of Catalonia, in Alden Biesem with the Presidents of Flanders and Wallonia, in Edinburgh, at the invitation of the European affairs committee of the Scottish Parliament, in Florence with the Conference of peripheral maritime regions, in Porto with the cities of the Atlantic arc, as well as meetings with the President of the Autonomous Community of the Balearic islands and with the European affairs ministers of the Länder of Bavaria and Hessen.

The image of the regions in Europe is still confused by the old controversy about a Europe of the regions. However, the problem can no longer be stated in these terms as it is now accepted that the European Union is and will remain constituted by States.

On the other hand, the emergence of regional, or even local, players is becoming a reality that the Union can no longer afford to ignore in its day-to-day operations. This is firstly because the European Commission considers that, on average, somewhere between 70 and 80 percent of Community programmes are managed by local or regional authorities in the Member States. On top of this, almost half the States of the Union now have regions with legislative powers, the United Kingdom and then Italy having recently set up entities of this kind, which already existed, notably in Germany, Austria and Spain; this means that in the countries concerned the issues of power-sharing between the Union and the Member States, and the problems of transposing Community legislation are of concern not only to central government but also to the regional authorities. However, as the European Commission is not officially aware of the latter's existence, the number of problems involving the conception, application or transposition of Community law has recently increased.

Finally, the forthcoming enlargement of the Union to include many small countries may raise political difficulties for large regions in the existing Member States. This is because it will create a situation in which entities with a few thousand inhabitants are entitled to be represented as such in the Union, each one having a minister and a right to vote in every formation of the Council, one Commissioner, a quota of Commission staff, and members of the European Parliament, as well as having its language recognised as an official language of Europe, whereas historic regions with several million inhabitants, which make a major contribution to the economic dynamism of the Union and to the funding of its budget would still be unrecognised by the European treaties.

Hence the Union should be receptive to proposals from the Member States which are designed to ensure that their respective territorial entities are more closely involved in the drafting (and, where appropriate, the transposition) of EU rules with due respect for the constitutions of those States. The Committee on Constitutional Affairs should draw up a special report on the subject, taking into account the opinion expressed by the Committee of the Regions.

8. Smooth operation of the system requires a real Constitutional Court

At the moment, the Court of Justice's role is to *'ensure that in the interpretation and application of this Treaty the law is observed',* a general provision that applies only to the European Community are not to the Union (Article 220 of the EC Treaty). The judicial review of Community acts is covered by Articles 230 onwards.

Recently the Court has demonstrated a concern to include the principle of subsidiarity in the criteria applied in its judgments (cf. judgments on tobacco advertising, *Germany v Parliament and Council and Imperial Tobacco Ltd* of 5 October 2000 and the conclusions of the Advocate-General in the *Netherlands v Parliament and Council* case). However, the wording of the treaties and the history of the single market have often led the Court to defend the most Community interpretation. The Court has thus played a key role in the creation of the single area. Now that has been achieved, the Union needs a real Constitutional Court.

This could be based on the existing Court of Justice, whose composition (1 judge per country) is not necessarily incompatible with taking account of the opinions of the Member States. However, two major changes could be made:

8.1 The role of the Court would be presented differently. It would be specifically responsible for ruling in competence disputes involving the Union or one of its institutions.

8.2. Furthermore, just like the procedures that exist in the French Constitutional Court, matters could be **referred to the Court a priori**.

It is not easy to find the right procedure. On the one hand, it is obvious that none of the European institutions is very keen to apply the principle of subsidiarity in practice: referring matters to a neutral arbiter is therefore the only means of keeping the situation under control from the outset. But what is the right time for the Court to give its ruling? As soon as a draft legislation has been published by the European Commission? The danger is that giving the green light at this stage would mean that subsequently, in the Council or Parliament, it would be much easier for abuses to occur because they would be bound to go unpunished. On the other hand, if judicial review came after the vote in Parliament, it could undo months of work at a stroke - but this is of course a risk inherent in any review of constitutionality. The existence of judicial review at the end of the legislative procedure could only encourage Council and Parliament to adopt a cautious approach. The second option is therefore to be preferred.

In 1990, on the basis of the Giscard d'Estaing report, Parliament proposed that within 20 days of final adoption of a legislative act, the Council, Commission, Parliament or a Member State could ask the Court of Justice to verify whether the legislation exceeded the limits of Community competence, bearing in mind the principles of subsidiarity and proportionality. This suggestion could be taken up. However, once the Union has 25 or 30 members, there would be a huge risk of every piece of Community legislation being challenged by someone or other. As the aim is to put in place a safeguard rather than a detailed check at this stage, provision could be made for:

- the possibility of bringing an action in the Constitutional Court, solely on the grounds of subsidiarity/proportionality, in the month following final adoption of a legislative act, the Court having to give a decision within one month.

- an action of this kind would be an option available to **a qualified minority** in the Council

or Parliament and the Commission.

- the sole grounds admissible would be a conflict of powers relating to non-compliance with the principles of subsidiarity and proportionality.

- this a priori referral procedure based solely on the grounds of non-compliance with the principle of subsidiarity, would not preclude the same legislation being subject to subsequent review under the ordinary law, on the basis of other provisions of the treaty or constitution.

In conclusion, one idea emerges clearly from this discussion. **Bringing the division of powers up to date inevitably means tackling the fundamental issues not only of the Union's role but also of its very nature** - and of its relations with its Member States. Are we ready to move from the detailed, subtle, esoteric code of conduct drawn up by diplomats for their own use to a real constitutional-style sharing of roles, which is understandable and acceptable to citizens and their representatives? If this is not the case, we should spare ourselves the trouble of drafting a sub-Treaty of Nice. But if the answer is yes, it will open up a very new chapter in the history of the Community. It will require a noticeably different legal and political architecture. This is the price to be paid for achieving the political Union of an enlarged Europe.

18 April 2002

MINORITY OPINION

Pursuant to Rule 161(3) of the Rules of Procedure
Jens-Peter Bonde, Daniel J. Hannan, Georges Berthu and José Ribeiro e Castro,

In considering the division of powers between the EU and Member States, the objective should be to return powers from the former to the latter. Referenda results and public debate show that increased power to the EU at the expense of Member States causes increased public alienation from the political process. Only by reversing the trend to return powers to national institutions with which the peoples of Europe identify, is a re-emergence of healthy public interests in the political process possible.

This can be achieved by slimming down the *acquis* to cover only issues of cross-border concern, with all other powers being returned to Member States.

Of fundamental importance in addressing the imbalance of powers is the matter of control over their distribution. This should be exercised by national democracies. Notably, national parliaments should have a veto right over questions of subsidiarity. Article 308 should be deleted. Member States should direct the Commission rather than vice-versa and they should also have the right of initiative.

An EU Constitution, taking powers away from national democracies, would cause increased alienation. The constitutional agenda shows that the EU institutions are unwilling to address the fact that the peoples of Europe want less not more EU control over their lives.

28 January 2002

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY

for the Committee on Constitutional Affairs

on the distribution of competences between the European Union and the Member States
(2001/2024(INI))

Draftsman: William Francis Newton Dunn

PROCEDURE

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed William Francis Newton Dunn draftsman at its meeting of 20 March 2001.

It considered the draft opinion at its meetings of 3 December 2001 and 23 January 2002.

At the latter it adopted the following conclusions by 46 votes to 6, with 1 abstention.

The following were present for the vote: Elmar Brok, chairman; Baroness Nicholson of Winterbourne, Geoffrey Van Orden and Christos Zacharakis, vice-chairmen; , Ole Andreasen, Alexandros Baltas, Bastiaan Belder, André Brie, Michael Cashman (for Rosa M. Díez González), Paul Coûteaux, John Walls Cushnahan, Véronique De Keyser, Pere Esteve, Giovanni Claudio Fava (for Glyn Ford), Per Gahrton, Jas Gawronski, Alfred Gomolka, Vasco Graça Moura (for Gunilla Carlsson), Marie Anne Isler Béguin (for Reinhold Messner), Joost Lagendijk, Catherine Lalumière, Alain Lamassoure, Armin Laschet, Jules Maaten (for Bob van den Bos), Hanja Maij-Weggen (for Michael Gahler), Cecilia Malmström, Emilio Menéndez del Valle, Philippe Morillon, Pasqualina Napoletano, Raimon Obiols i Germà, Arie M. Oostlander, Reino Paasilinna (for Klaus Hänsch), Doris Pack (for Gerardo Galeote Quecedo), Jacques F. Poos, Luís Queiró, Mechtild Rothe (for Magdalene Hoff), Jannis Sakellariou, José Ignacio Salafranca Sánchez-Neyra, Jacques Santer, Amalia Sartori, Ursula Schleicher (for Franco Marini, pursuant to Rule 153(2)), Jürgen Schröder, Elisabeth Schroedter, Ioannis Souladakis, Ursula Stenzel, David Sumberg, Ilkka Suominen, Charles Tannock, Johan Van Hecke, Demetrio Volcic, Karl von Wogau, Jan Marinus Wiersma and Matti Wuori.

SHORT JUSTIFICATION

1. Introduction

During the 1996 IGC, there was clear opposition among the Member States, with the exception of Germany, to the proposal to include in the Treaty a fixed list of competences of the Union and of Member States. The European Parliament was also against such a possibility. Instead, the consensus was to retain Article 235 within the EC Treaty, with only Sweden not having a clear position on this subject. Nevertheless, on the basis of the conclusions of the European Council at Birmingham on 16 October 1992 and the overall approach to the application of the principle of subsidiarity adopted by the European Council at Edinburgh on 11-12 December 1992, a protocol on the application of the principles of subsidiarity and proportionality was added to the EC Treaty in Amsterdam. In December 2000, the European Council at Nice accepted the political demands made by the German Länder and other regions with legislative powers. As a result, a Declaration on the Future of the Union called for a deeper and wider debate about the future of the European Union including, inter alia, the question of how to establish and monitor a more precise delimitation of powers between the European Union and its Member States, reflecting the principle of subsidiarity.

2. The current division of powers in the field of the CFSP

The existing treaties contain a division of powers for various aspects of the external actions of the Union - such as commercial policy, development policy, including the EDF, humanitarian aid, the CFSP, including human rights policy and the CESDP. To a certain extent, even if it is unsatisfactory, one can say that the treaties also contain some division of powers so far as the instruments of the CFSP are concerned: such as defining the principles of and general guidelines for the CFSP, common strategies, joint actions, and joint positions.

However, the main problems in the Second Pillar are that, on the one hand, the Union's powers are not enough to allow decisive European action and, on the other hand, these powers are of an overwhelmingly intergovernmental nature. The federal level is almost entirely lacking in the field of the CFSP. Power is concentrated in the hands of the Council, which does not have to act on a proposal from the Commission, although the Commission has the power to make proposals; no Member State can be forced to accept a decision against its will; and the jurisdiction of the Court is excluded almost entirely. With the intergovernmental nature of the CFSP, Member States have refused until now to agree a list of which matters would fall entirely within the common policy. Only questions of security policy are specified in the EU Treaty. At present, it is only the Member States who decide among themselves, within the framework of the European Council and the Council, whether a given matter is to be covered by the common policy.

3. A proposal for a wider and more proactive interpretation of the principle of subsidiarity in order to achieve more efficient and effective European action on CFSP issues

The draftsman would argue that the principle of subsidiarity acts as a kind of filter against the idea of Community competence and therefore against the possibility of exercising that competence. Therefore, one might plausibly maintain that the way in which the CFSP currently operates is a prototype of an inadequate interpretation of the principle of subsidiarity. Following its conventional interpretation, the subsidiarity principle means that, in areas which do not fall within the exclusive competence of the Union, it shall only take action if, and in so far as, the objectives of the proposed action cannot be sufficiently achieved by the Member States themselves, and therefore, by reason of the scale or effects of the proposed action, the objectives can be better achieved by the Union.

However, a more proactive interpretation of this principle is possible in the area of CFSP: which is that the objectives of the CFSP can normally be better achieved, given its scale or effects, by the Union as a whole rather than by simple co-operation among its Member States. Therefore, this draftsman believes that the principle of subsidiarity should be adapted and interpreted in this other sense so that it can better inspire the external actions of the EU.

4. The Communitarisation of the CFSP is the best way to attain common goals.

From a European perspective, the current situation of inter-governmentalism is totally unsatisfactory. It remains a problem which only the Communitarisation of the Second Pillar can resolve. If the CFSP pillar were to be communitarised, the Community's legal and institutional scheme would become applicable to the new CFSP and the different institutions would play their usual role in every aspect of the external actions of the Union - because, in the Union's current legal and institutional system, and following Article 5 of the EC Treaty, the principle of "conferred powers" must be respected in both the internal and international actions of the Community.

CONCLUSIONS

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following conclusions concerning CFSP in its Motion for a Resolution:

1. There is no need to set down in an unalterable list at an IGC what the powers of the Union should be in the field of CFSP;

2. Nevertheless, the respective spheres of competence of the EU and of its Member States in the field of the external actions of the Union in general and of the CFSP in particular, should be clarified in order that the public and the Union's international counterparts have a clear idea of 'who does what' in the EU, in order to achieve greater efficiency and effectiveness in the international action of the Union;

3. The full incorporation of the CFSP into the Community pillar, by combining in a single chapter all provisions relating to the various aspects of foreign policy, is the only way

to satisfactorily resolve the current imbalances and deficits in the division of powers in the area of the CFSP;

4. A wider and more proactive interpretation of the principle of subsidiarity is required in this area because the objectives of the CFSP can be better achieved by the Union as a whole rather than by simple co-operation among its Members States;

5. The establishment of QMV as the norm rather than the exception for CFSP is essential if there is to be a strong Union in the international sphere;

6. An additional goal for the further development of the CFSP is to agree a major reform of the EU Treaty covering the following elements:

   a) The European Union's unconditional *recognition of the principles of the United Nations Charter* should be written into the Treaty;
   b) There should be an *international legal personality for the Union* (for the three Communities and for the EU);
   c) *EU diplomatic representations* should be set up in non-member countries where fewer than four Member States have diplomatic missions, with a view to the gradual setting-up of full-scale EU-diplomacy;
   d) The current responsibilities of the High Representatives for the CFSP and those of the Commissioner for External Relations should be taken over by a single *Commission Vice-president responsible for Foreign Affairs*;
   e) An *EU diplomatic corps* should be created within the structure of the European Commission under the responsibility of the Commission vice-president.

16 April 2002

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on the delimitation of powers between the European Union and the Member States ((2001/2024(INI)))

Draftsman: Christa Randzio-Plath

The Committee on Economic and Monetary Affairs appointed Christa Randzio-Plath draftsman at its meeting of 15 April 2002.

It considered the draft opinion at its meetings of 15 April 2002 and 16 April 2002.

At the latter meeting it adopted the following conclusions by 27 votes to 1, with 2. abstentions.

The following were present for the vote: Christa Randzio-Plath, rapporteur; John Purvis, vice-chairman, Generoso Andria, Luis Berenguer Fuster (for Pervenche Berès), Hans Blokland, Hans Udo Bullmann, Harald Ettl (for Giorgos Katiforis), Jonathan Evans, Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Brice Hortefeux, Othmar Karas, Piia-Noora Kauppi, Astrid Lulling, Thomas Mann (for Ingo Friedrich), Ioannis Marinos, Helmuth Markov (for Philippe A.R. Herzog), Hans-Peter Mayer, Ioannis Patakis, Fernando Pérez Royo, Mikko Pesälä (for Christopher Huhne), Elly Plooij-van Gorsel (for Karin Riis-Jørgensen), Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Charles Tannock (for Theresa Villiers), Helena Torres Marques, Bruno Trentin, Ieke van den Burg (for Mary Honeyball).

SHORT JUSTIFICATION

The present opinion is intended as a preliminary contribution to the ongoing debate on revision of the Treaty by the Committee on Economic and Monetary Affairs; a more thorough examination of all the implications of Economic Union is currently being conducted as an initiative report by this committee.

From its origins in the European Economic Community, issues of economic policy always lay at the core of the Union. The internal market with its four freedoms remains its main pillar today, and needs to be developed further. As we review our institutional structure and distribution of competences, economic policy cannot be viewed any longer in a narrow, technical sense if we are to succeed in re-launching the European economy and preserving the European social model in the face of ongoing globalisation.

In this broader approach, the functioning of the internal market, greatly enhanced by the successful introduction of the single currency, now encompasses legislation on financial services, without which there can be no genuinely free movement of services and capital, as well as on indirect taxation, where the present divergence remains one of the major obstacles to realising the single market's full potential. The rules on competition and their implementation also have to be clear and unified in order to provide a level playing field. All these areas therefore should come under the exclusive competence of the Union.

The co-ordination of economic policies has recently shown both its key political importance and the insufficiencies of the current approach of the Stability and Growth pact. For a more efficient and forward-looking co-ordination of economic, but also of employment and social policies in the interest of its welfare and cohesion goals, the European Union must move from negative, sanctions-based co-ordination to co-operative integration based on positive objectives.

Such close co-ordination of policies, however, requires both clear, democratic legitimacy and unified implementation. The broad economic guidelines ought to be set jointly by the Council and the European Parliament, based on a formal proposal drafted by the European Commission. - In effect, this means applying the co-decision procedure to economic policy decisions, thus ensuring the citizens' participation in the decision-making process and strengthening the role of the Commission as the Union's executive branch. At the same time, and without blurring the respective spheres of responsibility, national parliaments should participate in this co-ordination process, thus complementing the Union's top-down working method with a bottom-up approach.

The authority, indeed the moral obligation, to contemplate such far-reaching reforms in the interest of economic welfare is provided by the Principles chapter of the EC Treaty, which lists among the Union's activities *"the adoption of a an economic policy which is based on ... the definition of common objectives"* (Article 4.1) in order to achieve, in particular, *"harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection"* as well as *"sustainable and non-inflationary growth"* (Article 2).

Moreover, in adopting such an approach emphasising the importance of economic policy decisions, the European Parliament would remain true to its landmark resolution on the

Spinelli report, whose a Draft Treaty establishing the European Union dedicates Title I of its Policy part to Economic Policy (Article 47 ss.). While this document dates back to the mid-1980s, the twin requirements of an efficient economic policy, encompassing all aspects of the economy, and of full participation by the European Parliament in its formulation, remain valid today if we are to achieve the Treaty objectives and deliver what the citizens may legitimately expect from us.

CONCLUSIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Whereas in view of Articles 2 and 4.1 of the Treaty establishing the European Union, an Economic Union should encompass both issues of macro-economic policy and the implementation and further development of the internal market,

2. Considers that the Union's exclusive powers must continue to encompass all aspects of the internal market and its 'four freedoms', including competition issues, and must also cover indirect taxation and financial services;

3. Calls for qualified majority voting to be extended to all areas of economic, competition and fiscal law; reiterates its call to reduce the democratic deficit by applying the codecision procedure in all areas, where decisions in the Council are taken by qualified majority; stresses the need to extend the codecision procedure to the competition policy, not only to the legislative acts, but notably to the reform of competition policy (Article 83) and to the reform of state aid rules (Article 89);

4. Considers that in order to achieve a better and more balanced policy mix, the broad economic guidelines pursuant to Article 99(2) of the Treaty establishing the European Communities ought to be based on a formal proposal by the European Commission;

5. Calls for the procedure concerning the coordination of economic policies (Article 99) to be changed so that the Broad Economic Policy Guidelines are adopted by Council on a proposal from the Commission, with the Council taking into account amendments made by the European Parliament;

6. Suggests that the coordination of economic policies, notwithstanding its key importance as a matter of common interest to the Union, should also include a mechanism for participation by the national parliaments of Member States to further buttress its democratic legitimacy;

2 April 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Constitutional Affairs

on the distribution of powers between the European Union and the Member States
(2001/2024(INI))

Draftsman: Diana Wallis

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Diana Wallis draftsman at its meeting of 21 March 2001.

The committee considered the draft opinion at its meetings of 27 November 2001,
26 February 2002 and 27 March 2002.

At the last meeting it adopted the following conclusions by 17 votes to 12, with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis and Bill Miller, vice-chairmen; Diana Wallis, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster, Maria Berger, Ward Beysen, Philip Charles Bradbourn, Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Gerhard Hager, Malcolm Harbour, Heidi Anneli Hautala, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Manuel Medina Ortega, Angelika Niebler, Marianne L.P. Thyssen, Rijk van Dam, Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

One of the key items at the Convention and the 2004 Intergovernmental Conference will be: "how to establish and monitor a more precise delimitation of powers between the EU and Member States, reflecting the principle of subsidiarity.'"

'Competence Catalogue'?

The idea of a strict catalogue of competencies might, at first sight, appear an attractive alternative to the current situation. But, while provide greater certainty, it would introduce rigidity in institutions that have moved forward due, in a large part, to their ability to be flexible at times of great change. Until now, European integration has emerged through shared goals like the establishment of the Internal Market, and even today this remains an on-going process rather than an endgame.

Indeed there may be an inherent contradiction in establishing *and* monitoring the delimitation of powers.

Establishing the delimitation of powers – clarify the *status quo*

Rather than establishing a strict delimitation of powers, the existing situation should be clarified.

Clarifying powers would help the citizens to perceive better the reality of the exercise of legislative power in the EU. The distinction between shared and exclusive powers should be made plain in the treaties. The reality that the EU exercises a minimal amount of power exclusively might help dispel the impression of creeping centralisation of powers in Brussels, and lessen the perception that the EU is a threat to national or regional identity.

Finally, such an approach, rather than establishing a set of competencies, would confirm that a dynamic and shifting allocation of powers is central to the nature of the European Union, and particularly to the objective of a complete European single market.

Monitoring the delimitation of powers – institutionalise subsidiarity

The principle of subsidiarity is that decision making should take place as close as possible to the citizen.

It is potentially a dynamic means through which to allocate competencies between the EU and Member States. However, for a number of reasons, subsidiarity has not proved so effective in achieving this.

Firstly, subsidiarity remains currently a rather unstructured political process. If it is to play such a crucial role in the monitoring of the division of powers, its implementation must be institutionalised and made more visible.

Secondly, the institutional guardian of the subsidiarity principle has tended to be the Council of Ministers, apart from the Court of Justice in its judicial role. Yet the reasons behind a Member State's position in the Council on any given issue will not necessarily be

representative of its citizens', or of its regions', interests.

Thirdly, the regions are an obvious but under-valued vehicle by which to make subsidiarity a more effective principle. The regions are well placed strategically to deal with the implementation of Community legislation, and thus have a special insight into subsidiarity issues. Furthermore, the regions might be better placed to justify and explain the principle of subsidiarity to their citizens.

To make an effective institutionalised political process from the principle of subsidiarity, all institutions will have to practice more openness and transparency.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Notes that the crucial criterion for the distribution of powers between an enlarged EU and its Member States must be the foreseeable nature of any Community intervention; Member States and citizens will recognise Community legislation in the long run only if they can clearly foresee the areas in which the EU will take action;

2. The EU is based on the explicit attribution of powers; in other words, its powers are never implicit. This principle of explicit attribution implies that the Union does not intervene in matters in relation to which it has not received an explicit mandate. The Union has a duty, on the other hand, to take all necessary measures to comply with its mandate, attain the objectives and fulfil the obligations incumbent on it.

3. Calls, therefore, for Article 5 of the Treaty to be worded more clearly so that the principle of the prerogatives of the EU is strengthened, the general legislative powers of the Member States are made clear and the exercise of shared powers is clarified;

4. Article 5 of the Treaty must be redrafted so as to better reflect the realities and to clarify which powers are exclusive and which (the majority) are exercised jointly by the Union and the Member States.

5. Notes that, on the issue of the division of powers between the Member States and the European Union, as a general principle the Member States are presumed to have jurisdiction (‘original powers’), while any power belonging to the European Union must be explicitly based on a clear and unambiguous mandate to take action (‘transferred powers’).

6. Considers that the powers of the European Union should be classified as exclusive, shared and supplementary powers and that, in each individual area of jurisdiction, the extent to which an EU power trespasses on the powers of Member States must be precisely specified.

7. The principle of subsidiarity has political importance as it is intended to ensure that decisions are taken in the citizens' interests. It is a dynamic concept that must be applied for the objectives specified, while taking into account changes in those objectives. But, at the same time, the principle of subsidiarity constitutes a binding legal rule of a constitutional nature with which Union institutions, and the Member States, must comply. It must not, however, constitute an obstacle to the legitimate exercise by the Union of the shared powers conferred on the latter, let alone prevent the taking of action in areas in relation to which the Union has exclusive powers.

8. It must be stressed that the principle of subsidiarity should also serve to encourage Union intervention in sectors which do not fall within its exclusive competence if, and to the extent that, the objectives of the planned action cannot be adequately achieved by the Member States and can therefore, in view of the scale or effects of the action in question, be achieved better at Community level.

9. Considers that it is important to make clear that the general Treaty objectives and the horizontal clauses which require Union objectives to be taken into account when implementing individual policies do not constitute a basis for any legislative powers.

10. Proposes to allow joint funding of activities by the EU and the Member States only if it arises in connection with powers explicitly conferred by the Treaty; the joint funding of pilot projects in areas where there is no explicit Treaty mandate eventually leads to the insidious communitarisation of the power in question; however, any transfer of powers can be effected only explicitly and as a result of a political decision.

11. The incorporation of the principle of subsidiarity in the future European Constitution should be aimed specifically at regulating the definition and implementation of Union initiatives on the basis of the powers conferred on it by the Member States, without however influencing in any way the division of powers within the latter.

12. Recognises the need for a contingency clause for unforeseeable Community intervention; calls, however, for Article 308 of the Treaty to be redrafted to the effect that any action taken by the EU pursuant to this legal basis should involve codecision by Parliament, to avert the possibility of areas that previously fell within the scope of the national parliaments' codecision powers being exempted from any requirement for parliamentary involvement on the basis of Article 308; calls, furthermore, for the period of validity of any measures adopted pursuant to that legal basis to extend only until the next Treaty review, when a decision should be taken either to incorporate a proper provision into the Treaty concerning the powers in question or that the powers should no longer be exercised at EU level; this is the only fitting solution in view of the exceptional nature of Article 308 of the Treaty.

13. Calls for all proposals for EU legislation to be subject to a meticulous examination of the issue of subsidiarity on the basis of criteria admitting of judicial review; in the European Parliament, this could be carried out along the lines of the procedure for the examination of the legal basis; it should be stressed that the examination of subsidiarity is not a question of political expediency and political choices, but an issue of constitutional importance; calls for retrospective review, either by a separate court

or by a subsidiarity chamber of the Court of Justice composed of constitutional law judges from the Member States.

14. Considers that the various forms of Community action, such as regulation, harmonisation, coordination and supplementary measures, and the various instruments of such action (directives, regulations, decisions, opinions, recommendations) should be precisely defined.

15. Calls for Parliament to be assured of a general right of reserve in relation to open coordination; the method of open coordination cannot lead to a transfer of legislative powers to the executive branch, and so the use of this method requires a prior parliamentary mandate.

16. Notes that if subsidiarity is to have real meaning the regions of the EU will need to play a more extensive role. This could properly be achieved by the more autonomous regions being given the 'Partner of the Union' status proposed by the rapporteur where the constitutional status of a region satisfies the stipulated criteria and where this is endorsed by their Member State. Certainly the role of the regions should be capable of extending well beyond the mere implementing agent role set out in the Commission's White Paper on Governance.

17. Notes that this discussion on the delimitation of powers is fundamental to the debate on the future of Europe especially in the context of reassuring and informing Europe's citizens as to the Union's powers and their limitations. Therefore insists that any settlement arising from the forthcoming Convention should be freely accessible on the Internet and brought to the attention of the citizens of Europe, and that Member States should be made responsible for effecting this communication. Furthermore the Governments of the accession countries should be responsible for communicating any settlement to their citizens.

18. Considers that the list of EU powers that is to be drawn up must be regularly revised, and regards a period of 8 years as suitable for that purpose.

18 October 2001

OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND TOURISM

for the Committee on Constitutional Affairs

on the division of powers between the European Union and the Member States
(2001/2024(INI))

Draftsman: Elisabeth Schroedter

PROCEDURE

The Committee on Regional Policy, Transport and Tourism appointed Elisabeth Schroedter draftsman at its meeting of 25 April 2001.

It considered the draft opinion at its meetings of 29 May 2001, 10 July 2001 and 10 October 2001.

At the last meeting it adopted the following conclusions by 36 votes to 0, with 3 abstentions.

The following were present for the vote: Konstantinos Hatzidakis, chairman; Emmanouil Mastorakis and Rijk van Dam, vice-chairmen; Elisabeth Schroedter, draftsman; and Emmanouil Bakopoulos, Rolf Berend, Hans Blokland (pursuant to Rule 153(2), for Alain Esclopé), Theodorus J.J. Bouwman, Carmen Cerdeira Morterero, Luigi Cocilovo (for Sir Robert Atkins), Gerard Collins, Danielle Darras, Garrelt Duin, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Mary Honeyball, Juan de Dios Izquierdo Collado, Georg Jarzembowski, Pierre Jonckheer (for Reinhold Messner), Dieter-Lebrecht Koch, Sérgio Marques, Erik Meijer, Josu Ortuondo Larrea, Karla M.H. Peijs, Samuli Pohjamo, Adriana Poli Bortone, Bartho Pronk (pursuant to Rule 153(2), for Margie Sudre), Alonso José Puerta, Reinhard Rack, Carlos Ripoll i Martínez Bedoya, Isidoro Sánchez García, Gilles Savary, Ingo Schmitt, Brian Simpson, Renate Sommer, Ulrich Stockmann, Ari Vatanen and Mark Francis Watts.

SHORT JUSTIFICATION

Background
At the Nice summit, the Council in its statement on 'the future of the Union' decided to consider the question of 'how to establish and monitor a more precise delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity'[1]. The aim is to improve the way the EU functions and its ability to act and to make EU policy-making processes more transparent for the citizens of the Member States, as a response to a political demand from the regions whose legislative powers are directly affected by EU decisions. The most affected regions are in Belgium, Germany, the United Kingdom, Austria and Spain.

The subsidiarity principle is enshrined in the Maastricht Treaty (Article 5 ECT). This states that decisions must be taken at the closest possible level to the citizens, and the Community is to come into play only if the scale or effects of the proposed action mean that it can be better achieved by the Community. But the Treaty is concerned only with the general attribution of powers at EU or Member State level. It does not directly take account of regional competences.

The Treaties refer to areas where the EU has exclusive jurisdiction (e.g. foreign trade, cross-border competition and currency) and where it can set a framework (e.g. structural policy and research). In most areas of Community policy the role of the European level is to coordinate between the Member States, which are responsible for implementation and for the way in which the regions are involved.

The processes of European integration must not lead to a centralisation of powers which could more sensibly be exercised at the lower level of local and regional authorities. An enlarged Union must preserve economic, social and cultural diversity and regional characteristics. Therefore the regions must be given a more important part to play at European level.

The special role of regions with legislative powers
In the course of the integration process, the Member States have transferred tasks to the EU which partly or even completely fall within the jurisdiction of regions with legislative powers. Their competence in the various policy areas is enshrined in the relevant national constitutions. The regions were not directly involved in this transfer of competence. Understandably, they are resisting the creeping erosion of their constitutional powers. They are demanding legal certainty, with a catalogue of competences. In addition, they are seeking to be involved in decisions that affect them on transferring competences to European level. Competences should only be transferred to the European level if the principles of subsidiarity, democratic influence and proportionality are preserved.

Local and regional authorities
Further EU integration and liberalisation of a number of public interest services constitute considerable interference in the autonomy of local and regional authorities. Examples are provided by the 'Lisbon strategy' on completing the single market and by the Stockholm conclusions. Tasks which until now have been in the area of public service provision and protected by Article 16 of the EC Treaty have been made subject to Community competition

[1] Declaration on the future of the Union, Treaty of Nice (OJ C 80, 10.3.2001, p.85)

rules. This has resulted in a lack of legal certainty for local and regional authorities concerning economic activities which until now have served the public interest.

In some cases where European action has a direct impact on the tasks of autonomous regions, European legislation calls on the Member States to involve local and regional authorities. This has not yet been done sufficiently, and the Commission does not monitor it. Understandably therefore there is a call to involve representatives of local and regional autonomous bodies at European level in preparing legislation that affects local autonomy.

Committee of the Regions
At the time of the Maastricht Treaty, regions with legislative powers demanded the right to participate. At that time the Committee of the Regions was set up and given the right to be consulted. There was, however, no common definition of which bodies were to be represented on the COR. Its composition is a matter for the Member States alone. In line with their various constitutions, they have sent representatives from regions with legislative power and from regions with local or regional autonomy and from these regions' executive and legislative bodies.

A European constitutional structure could strengthen the COR and clarify its membership, thus creating an instrument to allow regions with legislative powers or comparable competence to participate.

Division of powers must strengthen the European social model
The European social model, which aims to enable EU citizens to attain a comparable standard of living regardless of where they live or their social position, has a key role to play in the process of EU integration. Your draftsman therefore considers that it would be counterproductive to remove or reduce the EU's powers to enact framework legislation in the area of economic and social cohesion and support for rural areas (second pillar of the CAP).

Constitutional principles concerning the division of powers
In future the division of powers must keep pace with the dynamics of the integration process. A rigid catalogue of powers does not seem to be the most appropriate instrument. Your draftsman therefore takes the view that the division of powers should follow constitutional principles. These would make it possible to delimit powers regardless of the progress of integration. It is fundamental that these principles should be guided by democracy, transparency, subsidiarity, participation and closeness to the people.

CONCLUSIONS

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following points in its motion for a resolution:

1. Notes that, when competences are transferred to European level, this increasingly leads to interference in the powers of the regions and local authorities and therefore seeks to preserve the autonomy of local and regional authorities; considers that the EU

should concentrate on key tasks that can only be tackled at European level;

2. Calls for the EU's competences to be set out more systematically, by means of a catalogue with precise descriptions of the ways in which the EU can act and its instruments; it must also be made clear that Treaty objectives and horizontal clauses do not establish EU competence; competence clauses that are unclear or too widely drawn (e.g. general clauses) should be clarified;

3. Notes that the degree to which institutions are decentralised and local and regional powers are enshrined in the constitution varies widely between the 15 Member States;

4. Proposes a list of principles which should govern the division of powers:

– **democracy**: there is a need to enhance the legal status of federated States, autonomous communities and other territorial entities with legislative powers and exclusive competence, i.e. those which are known as constitutional regions, so that in defence of their rights and interests they can refer cases, appeals and requests for information to the European Court of Justice, which would be legally capable and competent to hear such matters or disputes and pronounce judgments on them;

– **subsidiarity**: in this connection, the EU should confine itself to exercising a clearly-defined competence to enact framework legislation, particularly in the area of European regional policy; settling matters of detail and decisions on the use of European funds for individual projects must be left to the regional policy authorities at the appropriate level in each Member State, which would in future be more consistent with subsidiarity; actually defining the key elements of regional policy from the bottom up would also be in the spirit of the 1999 Structural Funds reform;

– **transparency**: ensuring democratic control if powers are transferred to the European level, and ensuring that the regional and local level exerts democratic influence when its powers are directly or indirectly affected;

– **participation**: involving the regions in decisions that directly or indirectly affect them when powers are transferred to European level, including the transfer of coordination tasks;

– **solidarity**: recognition of European solidarity as an important and necessary element of the European integration process;

5. Considers that improvements in the implementation of the subsidiarity principle are needed; in this connection, calls on the Member States, in line with their constitutions, to involve regions with legislative powers, because they are directly affected in the process of drafting an EU constitution, calls for an increase in the powers of Parliament, as a directly-elected body representing the citizens, to enact and review legislation, and stresses its central role in implementing the catalogue of principles; also considers that the COR's institutional links with Parliament and the other EU Institutions in preparing legislation and in monitoring the subsidiarity principle should be reviewed;

6. Calls for a comprehensive strengthening of regional and local autonomy and for its institutional role to be enhanced; representatives of autonomous regions should be involved in the preparation of legislative initiatives when European decisions have a direct or indirect impact on their autonomy; the Member States should be obliged to consult the autonomous regions when transposing European law; stresses the significance of Article 16 of the EC Treaty and, in this connection, criticises a creeping erosion of legal certainty in the area of general interest services; calls for general interest services and economic and social cohesion to be reinforced as central, basic principles for the further development of the Treaty.