

Task e): " To consider the possibility of letting COSAC assess the Commission's annual legislative programme in order to ensure its compliance with the principle of subsidiarity"

Note on COSAC's work on the principle of subsidiarity and the principle of proportionality

There was agreement at the XXVII COSAC meeting in Copenhagen from 16 -18 October 2002 that the working group should investigate the possibility of allowing COSAC to evaluate the Commission's annual legislative programme in order to ensure that it complies with the principle of subsidiarity.

Such an evaluation can already be carried out in pursuance of the protocol on the role of the national parliaments, and would therefore not require any amendments to the Treaty.

Two proposals are given below for COSAC's work on the principle of subsidiarity. These are based on a brief description of the principle of subsidiarity, the Commission's working and legislative programme, and the recommendations of the Convention's working groups on the principle of subsidiarity and on the national parliaments respectively. As there is a close connection between subsidiarity and proportionality the principle of proportionality has also been included.

1. The principles of subsidiarity and proportionality

According to the principle of subsidiarity (article 5 of the TEC Treaty and the reference in article 2 of the TEU Treaty) the European Community may only act if, and to the extent that, the objectives of the intended action cannot be adequately fulfilled by the member countries, and therefore, due to the extent of the intended action or its effects, can better be carried out at Community level.

According to the principle of proportionality (article 5, last full stop of the TEC Treaty) the Community may only act to the extent that this is necessary in order to achieve the objectives of the Treaty.

Since the Amsterdam Treaty the principle of subsidiarity and principle of proportionality have had their own protocol which describes in detail how the Community's institutions should act in relation to the principles. In this connection the Commission must annually prepare a report on its initiatives, for exam-

ple, both in relation to the principle of subsidiarity and the principle of proportionality.

2. The Commission's working and legislative programme

In accordance with the new co-operation structure the Commission must adopt a strategy paper for the following year each spring. This document is discussed with the Council and the European Parliament, after which the Commission presents a more concrete working and legislative programme in the autumn (see KOM(2002)590 for the 2003 programme).

However, the Commission's legislative programme contains only the titles of the proposals that the Commission intends to introduce during the following year in the form of headlines. There is therefore no indication of the details of the proposals.

3. Recommendations of the Convention's working groups

Working group 1 on the principle of subsidiarity

This working group has found that there is a clear wish to strengthen the principle of subsidiarity and the monitoring of this. In addition the working group makes it clear that the principle of subsidiarity is predominantly of a political and subjective nature.

The majority of members of the working group feel that an "ex ante" evaluation of the principle should continue to be political and propose that this evaluation be carried out by the national parliaments under what is known as the "early-warning mechanism".

The majority of members also feel that an "ex post" evaluation of the principle of subsidiarity should be of a legal nature, i.e. be carried out by a court. The working group suggests a number of criteria for how the principle of subsidiarity can subsequently be brought before a court, including the fact that the national parliaments which raised the question of subsidiarity in accordance with the "early-warning mechanism" are entitled to bring the question before a court directly.

Working group 4 on the national parliaments

As a point of departure working group 4 agrees with the conclusions of working group 1 on the role of the national parliaments in connection with the principle of subsidiarity. Working group 4 also points out that there is a close connection between subsidiarity and proportionality.

However, working group 4 wishes for an extension so that the national parliaments can lodge objections throughout the legislative process, and so that all national parliaments can subsequently bring up questions on the principle of subsidiarity, irrespective of whether they have made use of the "early-warning mechanism".

4. Proposal for COSAC's work on the principles of subsidiarity and proportionality

The Commission's legislative programme contains only general guidelines for the work of the coming year and the titles of the intended legislative initiatives. An evaluation of the principles of subsidiarity and proportionality requires a more or less detailed knowledge of the concrete contents of the proposals. It therefore appears difficult to carry out a proper evaluation of the principles of subsidiarity and proportionality solely on the basis of the general guidelines and titles contained in the working and legislative programme.

However, it is possible on the basis of the working and legislative programme to select a number of intended, concrete initiatives that can be scrutinised and evaluated in greater detail when they are introduced on a concrete basis.

It would therefore make sense for COSAC to have a general discussion with the Commission on its working and legislative programme.

In relation to the "early-warning mechanism" proposed by the Convention's working group 1, it would be useful for the individual parliament to know how other parliaments have evaluated the principles of subsidiarity and proportionality in concrete legislative initiatives. In this connection COSAC's secretariat could support the processing of objections on the part of parliaments by collecting information from the parliaments on any objections, and by distributing information on these to the other parliaments.

On the basis of the above and the debate at COSAC's meeting from 16 -18 October 2002, and the proposals that have been brought forward in connection with the Convention, two parallel initiatives are proposed in connection with COSAC's work on the principles of subsidiarity and proportionality:

- 1) COSAC shall once a year, after the Commission has presented its legislative programme, have a general discussion with the Commission on the contents of its working and legislative programme. On the basis of this discussion COSAC can select concrete, intended legislative initiatives that COSAC wishes to follow in greater detail and discuss in connection with the principles of subsidiarity and proportionality.

- 2) In relation to the "early-warning mechanism" COSAC can support this by making itself available as a support structure in connection with processing parliaments' objections. At a more concrete level this can be brought about by the COSAC secretariat collecting information from the parliaments on any objections and by distributing information on these to the other parliaments.

5. Consequences for COSAC's rules of procedure

The proposals above do not require any changes to be made in COSAC's rules of procedure.