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

Briefings will be updated as negotiations proceed.

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- 1 The Court of Justice**
- 2 The Commission**
- 3 The Court of Auditors, ESC and COR**
- 4 Differentiated integration**
- 5 The common foreign and security policy**
- 6 The role of the national parliaments**
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**BRIEFING
ON
SUBSIDIARITY AND DEMARCATION OF RESPONSIBILITIES**

I. AGENDA FOR THE INTERGOVERNMENTAL CONFERENCE

The **SUBSIDIARITY** principle is mentioned in the preamble to the Treaty on European Union, in Article B, in Article K.3(2)(b) and Article 3b. In order to clarify the application of the principle, the Commission Communication on the **SUBSIDIARITY** principle (27 November 1992), the conclusions of the Edinburgh European Council (11-12 December 1992), the Interinstitutional Declaration by the EP, Council and Commission on democracy, transparency and procedures for applying the subsidiarity principle (25 October 1993) and the Interinstitutional Agreement (October 1993) on the application of this principle contain check-lists which apply to any consideration of a legislative proposal.

Subsidiarity and demarcation of responsibilities may be among the matters to be covered by the revision to be undertaken at the 1996/1997 IGC on the basis of the Treaty itself:

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

II. SOURCES

The **European Parliament** delivered its opinion in its resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference (adopted on 18 May 1995) - paragraphs 12(i-ii), and in that on the EP's opinion on the convening of the Intergovernmental Conference and the evaluation of the work of the Reflection Group (adopted on 13 March 1996) - recital F and paragraph 3.

The **Commission** states its views in its report on the operation of the TEU, adopted on 10 May 1995, and its opinion on strengthening political union and preparing for enlargement of 28 February 1996.

The **Committee of the Regions** sets out its position in its opinion on the revision of the TEU, adopted on 20 April 1995.

Council/European Council/Reflection Group/Group of Personal Representatives

The **Council's** thinking is set out in its report on the functioning of the TEU, adopted on 10 April 1995.

At the last two meetings of the European Council (in Turin on 28 and 29 March 1996 and in Florence on 21 and 22 June 1996) the Heads of State and Government of the Member States set out their position on the treatment of subsidiarity at the 1996/97 IGC.

The **Reflection Group** broached the subject of subsidiarity, demarcation of responsibilities, and the hierarchy of Community acts in connection with Item 8 (Instruments of the Union) of the agenda proposed for its first meeting (on 2 and 3 June 1995). The 'instruments' topic was discussed by the Reflection Group on 24 and 25 July, 3 and 4 October, and 13 and 14 November 1995. The views of the Reflection Group are set out in its report of 5 December 1995.

The **Group of Personal Government Representatives** discussed a paper setting out options for the revision of the subsidiarity principle issued by the Italian Presidency on 2 April 1996, a memorandum from the Netherlands' delegation submitted on 10 April 1996 and a declaration by the German delegation submitted to the meeting of 22 April 1996. The report on the IGC's progress submitted to the Florence European Council by the Italian Presidency summed up the discussions within the Group of Personal Representatives in Chapter IV.

All the Member States have taken a clear-cut official stand on subsidiarity, demarcation of responsibilities and the hierarchy of Community acts. The Government of Germany and the new Government of Spain have not yet taken an official stand. However, statements have been issued by government ministers, and reports and resolutions adopted by national parliaments. As regards the attitudes of the national parliaments and their component bodies concerned more directly with Community affairs, the Bonn COSAC meeting on 24 and 25 October 1994 discussed the views of the national parliaments and the European Parliament on the manner of giving effect to the subsidiarity principle. A number of national parliaments, including chambers composed of regional representatives, have also spoken out on the 1996 IGC and matters pertaining to subsidiarity, demarcation of responsibilities, and the hierarchy of Community acts. In addition, political parties represented in the national parliaments have issued statements, drawn up reports, and delivered opinions.

III. POLICY PRONOUNCEMENTS AND STATEMENTS OF VIEWS

A. European Parliament

1. Bourlanges and Martin report

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

(a) - 'Clarifying competencies

The principles of subsidiarity and proportionality, as currently laid down in Article 3b of the Treaty, should be maintained and correctly applied.

Establishment of a fixed list of EU and Member State competencies would be too rigid and too hard to achieve. Article 235 should be retained, but only used as a last resort and after assent of the EP.'

'... the reform of the Treaties requires institutionalization of the principle of the "necessary means"'.

(b) - Powers and responsibilities of the Union

'1. Objectives and policies of the Union

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

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

- asylum policy
- policy as regards crossing the Member States' external borders
- policy as regards checks on movements across the Member States' external borders
- immigration policy
- policy in relation to third-country nationals
- policy on the fight against drug addiction
- policy to combat serious international crime.

(c) - As regards the horizontal demarcation of responsibilities (i.e. in terms of the Community institutions)

- 'The Treaty should provide for a separation between the provisions covering the Institutions and those covering the content of policies'.

2. Dury and Maij-Weggen report

(a). - Recital F

whereas the strengthening of existing policies which is needed will not be possible except in the context of merging the three pillars in a single institutional and legal framework and with due respect for the principles of subsidiarity and solidarity.

(b). - Paragraph 3

The European Parliament 'considers that, by 1999, an adequate system of own resources should be established in accordance with the principles of solidarity

between the Member States, subsidiarity [...], so as to guarantee the autonomy of the Union and the effectiveness of its action; [...]'.

B. European Commission

*** Experience acquired in implementing the subsidiarity principle**

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

According to the Commission, the IGC's task is not to enhance the Union's powers.

*** Shortcomings in the implementation of subsidiarity**

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

- in determining the place which subsidiarity should occupy in Community legislative procedures;
- because the legislative texts adopted continue to be unduly detailed on account of the desire to protect the specific interests of particular groups.

*** Proposals to consolidate subsidiarity**

- (i) The Commission is not proposing to make any alterations to Article 3b.
- (j) The Commission is not proposing to delete Article 235.

*** Powers and responsibilities of the Union**

With regard to the Community sphere, the Commission is proposing new powers for the Union in its policies on employment, energy and public services. However, it is against reforming the vertical demarcation of responsibilities. The Commission is critical of the demarcation as it affects the areas falling under Community responsibility on the one hand and those covered in Titles V and VI on the other.

With regard to the Commission's opinion on the convening of the IGC, a single phrase, 'do less, but better' is devoted to the application of the subsidiarity principle.

C. Council

* Assessment of the implementation of the subsidiarity principle

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

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

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

* Powers and responsibilities

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

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

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

D. Committee of the Regions

* Proposed new wording of Article 3b

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

* Implications of the new wording of Article 3b

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

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

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

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

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

* Proposal to clarify powers and responsibilities

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

(e) To consolidate the Union's powers, the Committee is calling for:

- Article 75 of the EC Treaty (regional planning, transport across the territory of one or more Member States) to be reworded;
- a new version of Article 128 of the EC Treaty (cultural policy to bring about European citizenship; cooperation among Member States, regions, cities, and conurbations; preservation of the architectural heritage; greater understanding and wider dissemination of the culture and history of third countries with which Member States have ties; cooperation whereby regions and cities would join forces with the third countries, regions, and cities represented in the Council of Europe and with Unesco);
- a new version of Article 130a (cooperation among regions and local authorities on an interregional, cross-border basis);
- a new version of Article 130r (state of the environment in the various regions and urban and rural districts).

(f) As regards the introduction of new powers (for the Union), the Committee is calling for a:

- new article on policy for cities;
- new article on regional planning policy;
- new article on water management policy;
- new article on energy policy;

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

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

E. Report of the Reflection Group

'69. The Group stresses the importance of correct application of the principle of subsidiarity and proportionality enshrined in Article 3b of the Treaty and confirmed by an Interinstitutional Agreement on its implementation ... Most members of the Group do not feel it advisable to amend Article 3b of the Treaty but think it necessary to ensure that it is properly exercised in practice ...'

'... It is thought by some members that there is a need for more effective control over application of this principle by ... the Commission by "ex-ante" control and the Court of Justice by "ex-post" control ... Various representatives have insisted that on the basis of the Edinburgh Declaration a Protocol on subsidiarity should be incorporated to the Treaty ...'

'... A very large majority within the Group is opposed to the request made by the Committee of the Regions ... that it be authorized to bring proceedings before the Court of Justice for incorrect application of the principle of subsidiarity ...'

'125. The Group is not in favour of incorporating a catalogue of the Union's powers in the Treaty ... It is therefore in favour of maintaining Article 235 as the instrument for dealing with the changing nature of interpretation of the Union's objectives.'

F. Report by the Italian Presidency on the progress of the IGC

1. The rapporteur takes the view that the wording of the second paragraph of Article 3b should be left unchanged.

2. 'Should agreement be reached on the principle of incorporating provisions on the application of the subsidiarity principle in the Treaty, incorporation could be in the form of a Protocol or a Declaration in the Final Act. Such provisions could be based on the existing Interinstitutional Agreement, and, if appropriate, the Edinburgh and Birmingham Declarations (of the European Council).'

To this effect, the Italian Presidency has submitted a draft protocol/declaration on the application of the subsidiarity principle.

3. Judicial control of the subsidiarity principle: judicial control of the subsidiarity principle 'should continue to be carried out under the arrangements currently laid down for controlling the legality of Community acts'.

The Group of Government Representatives also discussed the possibility of granting national parliaments and/or the Committee of the Regions the right to bring matters

before the Court of Justice for the purposes of controlling respect for the subsidiarity principle.

4. Political control of the subsidiarity principle: the Group of Government Representatives discussed proposals from the French delegation involving the creation of a High Parliamentary Council/High Advisory Committee on Subsidiarity comprising delegates from the national parliaments, which could control the application of the principle.

G. Member States

Belgium

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

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

2. Official position

In its note to Parliament on government policy regarding the 1996 Intergovernmental Conference, which it endorsed at its meeting of 28 July 1995, the Cabinet took the view that the existing means of giving effect to subsidiarity were operating correctly. It therefore did not believe that the principle should be altered or reworked. Belgium considered subsidiarity to be a corner-stone of the relationship linking the European Union, the federal State, and the regions and communities. The Government did not feel that the powers of the Union should be set out in a detailed list, since this would scarcely be consistent with the changing, ongoing nature of European integration. It also believed that Article 235 of the Treaty should remain in place.

3. Other views

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

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

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

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

The own-initiative report of 30 March 1995, drawn up by Mr Eyskens on behalf of the Belgian Chamber of Representatives, recommends that the concept of **subsidiarity** be used with caution, given that some Member States perceive it as a **means of removing the components of the *acquis communautaire* from the scope of Community control**. It makes the point that the **subsidiarity** principle applies only in areas not falling within the Union's exclusive competence.

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

4. Views of the communities and regions (summary of the joint document drawn up by the communities and regions and the Special Committee on Institutional Affairs, Cdr di 38/95UKK/am)

The **Flemish Government** is calling for the **subsidiarity principle** to be spelt out in greater detail. As regards the **powers and responsibilities** of the Union and the Member States, it is calling for clarification of Articles 127 (vocational training), 128 (culture), and 130r (there should be a reference to sustainable development in connection with environmental policy, which must be more closely linked in future with transport and traffic policy).

The **Government of Brussels Capital Region** maintains that the **subsidiarity principle** should be worded in more clear-cut terms. With regard to the **powers and responsibilities of the Union and the Member States**, it is calling for the **areas falling within the Union's exclusive competence to be laid down in detail** (common farm price policy, Community rules on competition, Community policy on trade in goods, monetary union). It does not believe, however, that the EU's responsibilities should be extended to include energy and tourism.

The **Wallonian Regional Government** shares the views of the Flemish Government on the institutional status of the Committee of the Regions, the Committee's right to institute proceedings before the Court of Justice for failure to observe the **subsidiarity principle**, extension of the scope of mandatory consultation, and **clarification of the subsidiarity principle**. As far as **powers and responsibilities** are concerned, it is calling for the articles on education and vocational training, culture, and health to be broadened and a new article to be inserted to deal specifically with sport.

The **German-speaking community** is calling for the status of the Committee of the Regions to be elevated to that of an institution, the range of matters on which the Committee must be consulted to be widened, and for the Committee to be provided with its own administrative machinery.

Denmark

1. Official position

In its report entitled 'Agenda for Europe', the Foreign Ministry does not refer explicitly to the **subsidiarity principle**. It does, however, mention three options to explore when reform is discussed:

- list of powers,
- detailed definition of the responsibilities of Union institutions,
- new definition of the subsidiarity principle.

2. Other views

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

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

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

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

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

To consolidate the **subsidiarity** principle, the Liberals are proposing that a **list of powers** be drawn up with the aim of determining which responsibilities should be exercised by the Union, the Member States, or regional and local authorities. Policies on **social affairs, tourism, and the arts** should cease to be covered in Community legislation.

Germany

1. Bonn COSAC meeting (position of the German Bundesrat delegation)

The Bundesrat notes that the **subsidiarity** principle removes the need for a good many Union acts, for instance in the fields of consumer protection, health, agrarian law and road transport.

It is calling for a **clear-cut demarcation of responsibilities between the Union and the Member States**. It has compiled a list of Union provisions and proposals contrary to the **subsidiarity principle**.

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

2. Views of the Federal Government

The Federal Government (CDU-CSU-FDP coalition agreement) considers that the manner of giving effect to the **subsidiarity principle** will need to occupy a key place at the 1996 Intergovernmental Conference. At the Conference, the Government will continue to urge compliance with, and call for additions to, the 'subsidiarity list', the system whereby Union legislation in force will be examined in order to check that it is consistent with Article 3b of the Treaty and, where necessary, repealed.

It will also endeavour to secure a **clear-cut demarcation of tasks between the Union and the Member States**. The coalition agreement cites **tourism and disaster prevention/civilian rescue services** as examples of areas in which a review is required in order to ascertain that existing Community powers are compatible with the subsidiarity principle. To clarify the meaning of Article 3b of the EC Treaty, the Government maintains that the **burden of proof should be reversed by deleting the final words of the second paragraph, namely '... and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community'**.

3. Other statements issued by the Government and German Ministers

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

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

As far as the **official position** is concerned, the two government statements on European policy (issued on 22 June 1995 and 7 December 1995) and its reply to the oral question (*Große Anfrage*) by Mr Christian Störzinger, Member of the *Bundestag*, and the Alliance '90-Green Group (see Bundesminister des Auswärtigen; Antwort der Bundesregierung auf die Große Anfrage BT-Drs. 13/1471..., Bonn, Bundestags-Drucksache 13/3198, 1 December 1995) speak of strengthening the subsidiarity principle and enforcing it more effectively.

The document entitled '**Deutsche Ziele für die Regierungskonferenz**' (German aims at the IGC), drawn up by the Foreign Minister and published on 26 March 1996, takes the view that **the subsidiarity principle could be clarified through the introduction of a protocol on subsidiarity**. In his statement to the Commission representation in Bonn on 11 June 1996, Mr Hoyer confirmed this proposal and stated that, 'at least', **such a protocol should be drawn up on the basis of the conclusions of the Edinburgh Council and the Interinstitutional Declaration of November 1993**. Nevertheless, Mr

Hoyer pointed out that the subsidiarity principle should not be used as a means of renationalizing the Union.

The initial position (as set out in the coalition agreement between the CDU, CSU and FDP) no longer constitutes official government policy.

3. Position of the German *Länder*

The *Bundesrat* resolution adopted on 15 December 1995 sets out the official views of the *Länder*. Regarding subsidiarity and demarcation of responsibilities, the *Länder* are calling for several Treaty articles to be reworded:

- Article 3b, second paragraph (new wording)

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

- As far as the division of powers is concerned, the *Bundesrat* favours clear-cut, explicit demarcation of responsibilities between the EU and the Member States.
- In future, the Union should act only by virtue of expressly defined responsibilities. The list of the EU's objectives, at present couched in very vague terms, should be replaced by a list of specific powers, divided up according to fields of activity. Opting for a half-way house between a list of objectives and a list of powers, it might be possible to draw up a list of tasks referring to the specific rules laid down in the Treaty as regards the exercise of powers.
- The *Länder* are thus proposing that Article 3 be rephrased, the introductory clause reading as follows:

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

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

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

To give practical expression to the above proposals, the *Länder* have compiled a proposed list of powers to be exercised by the Union on an exclusive, non-exclusive, or additional basis (see *Bundesrat* resolution entitled 'Forderungen der Länder zur Regierungskonferenz 1996', Drucksache 667/95 (Beschluss), 15 December 1995, pp. 12-15 and 16-21).

The *Bundesrat* is proposing that the words 'energy' and 'tourism' be deleted in Article 3(t).

It is calling for the principle of fair cooperation (Article 5) to be redefined by:

1. deleting the final sentence,
2. inserting the following second and third sentences:

In exercising its powers, the Community shall likewise take account of the interests and internal systems of the Member States. The Community and the Member States shall be required to engage in fair cooperation.

Greece

1. Official position

The Greek Government memorandum 'For a democratic EU with political and social content' (March 1996) takes the view that the subsidiarity principle should be enforced in a more systematic way. 'The principle of subsidiarity [...] should be used as an instrument for strengthening the role of the citizen, the local authorities and the regions within the integration process; it should not be used as a means to alter the *acquis communautaire*, to renationalize Community policies, to retard the development of the Union, or as a means to expand unduly the Union's competences.'

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

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

Spain

1. Official position

A document submitted to the country's Parliament by the previous Spanish Government sets out a specific, accurately defined view on reform of the subsidiarity principle. The previous Spanish Government considered that inclusion of an Article 3b on the subsidiarity principle was contrary to the Spanish proposals.

Regarding the 1996 IGC, it did not advocate a list of powers or deletion of Article 235.

France

1. Bonn COSAC meeting (position of the French Senate delegation)

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

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

2. Views expressed by the President and the Government

The French guidelines for the 1996 IGC (government report of 13 November 1995) state that the **subsidiarity principle** will need to be enforced more effectively.

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

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

The French Government is proposing that national parliaments should be able to express their views at an early stage in the Council's decisions, particularly to enforce subsidiarity. Mr Barnier, French Government representative at the IGC, pointed out in his government statement on the IGC to the National Assembly on 13 March 1996 that France was proposing the establishment of a High Parliamentary Council comprising several representatives of each national parliament, which would be consulted on any questions of subsidiarity linked to any issues covered by the third pillar.

Several political parties and parliamentary groups represented in the Senate (RPR, Centrist Union, and PS) are proposing that a hierarchy of norms/acts be laid down. The Social Democratic Centre Party is calling for a **hierarchy of acts** to be introduced, modelled on Articles 34 to 37 of the French Constitution. The party believes that such a step would put an end to the present disorder as regards legislation by distinguishing between **framework laws, laying down the fundamental principles and essential rules of Union policies, regulations, for which the Council would be solely responsible,** and implementing texts, which, in accordance with the subsidiarity principle, **would be the responsibility of the Member States.** Indeed, Member States

should be entitled to appeal directly to the Court of Justice whenever the Treaties were infringed in that connection.²

Ireland

1. Official position

In its White Paper 'Challenges and opportunities abroad', the Irish Government sets out its view that the subsidiarity principle '[...] has proved a useful one. If any attempt is made at the IGC to define further the concept of subsidiarity it will be important broadly to maintain the present balance between Community and member state competence. Apart from the Treaty provisions on subsidiarity itself, the importance attached to subsidiarity will play a key role in relation to many of the other issues arising at the IGC'.

Italy

1. Bonn COSAC meeting

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

2. Official position

The government memorandum on revision of the Maastricht Treaty (presented in the Chamber of Deputies on 23 May 1995) notes that the IGC will need to work out a clear definition of **standard-setting instruments and a hierarchy of legislative acts**. As far as the **subsidiarity principle** is concerned, the Government does not believe that the Union should be called upon to shoulder an unduly heavy burden of responsibility. Instead, subsidiarity should be employed in a flexible way and defined more clearly in order to avert a plethora of rules and regulations not only at Union level, but also in the Member States. Moreover, the Government does not consider it advisable to **draw up a list of areas falling within the Union's exclusive competence**. The better course, according to the government memorandum, would be to lay down a **hierarchy of acts** consisting of the following three tiers:

- constitutional provisions
- legislative provisions, setting out the general framework for each sector of activity or matter to be dealt with; and

The future of European integration, Tenth Conference of the CDS, 10 and 11 December 1994.

- regulations and implementing provisions, which should be the responsibility of the Commission unless the Member States are required to take the necessary action themselves in accordance with the **subsidiarity principle**.

In its 'position of the Italian Government on the IGC' dated 18 March 1996 the Italian Government proposes including a protocol in the EU Treaty on the application of the **subsidiarity principle**. 'Adequate importance should be given to the principles of subsidiarity, proximity and proportionality [...]. For this reason, we could accept to annex to the Treaty a protocol containing some of the elements of the "code of conduct" agreed upon at the European Council of Edinburgh. However, the excessive and instrumental importance of subsidiarity might weaken the Commission's capacity for proposing, break up the Single Market and disperse the uniformity of Community law.'

As regards introducing new areas of policy in the EU Treaty, the Government takes the view that 'the inclusion of certain policies in the Treaty (energy, tourism, civil protection) [...] would help the citizens to see the Union more positively.'

Luxembourg

1. Bonn COSAC meeting

The Chamber of Deputies delegation considers that there are too many Community rules and regulations relating, for example, to public contracts or finance or stemming from the propensity to alter the own resources system. Implementation of the **subsidiarity principle** should be supervised by the national parliaments and the European Parliament.

2. Official position of the Government

The Luxembourg memorandum on the 1996 IGC (issued on 30 June 1995) maintains that the **subsidiarity principle should be enforced systematically**. The Government notes that there is nothing in the TEU implying a need to create new powers.

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

He proposes that the **tasks of the Union and the means/measures to be employed to accomplish them** should be made a more prominent focus of attention. In his statement on foreign policy of 8 February 1996, Mr Poos reiterated these Government priorities.

The Netherlands

1. Bonn COSAC meeting

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

2. Official position

In its report on institutional reform of the European Union, the Netherlands Government maintains that the IGC should concentrate on the smooth running of the internal market. Whenever it submits a proposal, the Commission should accordingly **say why Community rules are necessary**. This **obligation to state reasons could be laid down in the Treaty**. Statements of grounds should cover three main points:

- subsidiarity: why are Community rules required?
- proportionality: would it not be sufficient to adopt a less stringent and detailed form of regulation?
- costs and benefits, vulnerability to fraud, and compliance with legislation.

Furthermore, the Government suggests that the **admissibility of a proposal** be discussed in a general public debate in the Council on the basis of the statement of grounds and the responses thereto. It believes that **checks on compliance with the subsidiarity principle should be backed by the necessary guarantees, including the existing possibility of instituting proceedings before the Court of Justice**. (The Netherlands and Europe — the 1996 IGC, Ministry for Foreign Affairs, The Hague, 1995, p. 284).

In its report 'Between Madrid and Turin: Dutch priorities on the eve of the 1996 IGC' published in March 1996, the Netherlands Government set out its views on including the conclusions of the Edinburgh European Council (on the application of the subsidiarity principle): 'In order to make these rules effective, the IGC should consider making them **legally binding**'.

Portugal

1. Bonn COSAC meeting

The delegation from the *Assembleia da República* considers that there is a plethora of legislation in fields having a strong impact on budgetary policy. On the other hand, there are not enough Community rules in areas entailing relatively low Community expenditure.

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

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

2. Official position

In its memorandum 'Portugal and the IGC' published in March 1996, the Portuguese Government opposes the introduction of a list or catalogue of powers and responsibilities of the Union and the Member States. As regards the application of the subsidiarity principle, the Government takes the view that the conclusions of the European Council and the Interinstitutional Declaration of November 1993 are sufficient instruments.

3. Position of Parliament

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

The **subsidiarity** principle has been invoked on numerous occasions by way of an apology for devotion to national sovereignty or with the aim of accentuating regional idiosyncrasies. It has been invoked to obstruct the development of common policies. *However, the principle is linked to the idea of effectiveness and, as such, must never be used to call the nature of Community action into question, since to do so would be tantamount to distortion.* In addition, the document produced by the Portuguese Parliament discusses how implementation of the **subsidiarity** principle should be monitored.

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

Austria

1. Official position

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

In its 'Basic Positions' published on 26 March 1996, the Austrian Government declares itself in favour of the introduction of a protocol on the application of the **subsidiarity principle** based on the conclusions of the Edinburgh European Council. With regard to the problem of political control of the **subsidiarity principle**, the Government has declared itself open to the active involvement of the national parliaments. Finally, the Government notes that it has submitted to the Reflection Group the position of the Austrian provinces aimed at granting the Committee of the Regions and regions with legislative powers the right to institute proceedings before the Court of Justice.

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

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

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

2. Views of the provinces

On 4 May 1995 the Conference of Provincial Governors and the Conference of Provincial Assembly Presidents adopted a detailed resolution on the 1996 IGC. The provinces are taking a similar line to the Committee of the Regions as regards the **subsidiarity principle** and the right of the Committee of the Regions and regional authorities with legislative powers to institute proceedings before the Court of Justice. As far as redefinition of the **subsidiarity principle** is concerned, the new wording of Article 3b, second paragraph, proposed by the Governors' Conference is similar to the proposal put forward at their Conference by the Ministers of the German *Länder* responsible for European affairs. In addition, the provinces are calling for the Committee of the Regions to be involved in the Interinstitutional Agreement on subsidiarity or in a new 'Subsidiarity Chamber'.

Finland

1. Official position

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

The 'Memorandum concerning Finnish points of view with regard to the 1996 Intergovernmental Conference of the EU', issued on 18 September 1995, makes the point that **subsidiarity is a political rather than legal principle**. According to this document, subsidiarity should be the guiding principle where extension of the Union's powers is concerned.

The Finnish Government's communication to Parliament on Finland's ideas and objectives in anticipation of the 1996 IGC (issued on 27 February 1996) states that there is no need to amend Article 3b of the Treaty. To make for greater clarity, a **protocol on the subsidiarity principle, based on the Edinburgh Declaration, should be incorporated in the Treaty**.

Sweden

1. Official position

According to the Swedish Government, which stated its position on the IGC in an initial document drawn up for Parliament in July 1995 entitled 'Sweden's interests in the run-up to the 1996 IGC' and, in late November 1995 (after holding several rounds of consultations with a parliamentary group called upon to consider the earlier document) adopted 'Swedish government report 1995/96:30: the 1996 EU IGC', the **subsidiarity principle will be one of the main items on the agenda for the 1996 IGC**. The Government maintains that the principle should be enforced more effectively, but is not in favour of amending the relevant articles of the Treaty.

It is calling in this connection for a **right of initiative** to be granted to the **European Parliament** with respect to Union legislative acts.

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

United Kingdom

1. Bonn COSAC meeting

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

The two parliamentary committees specializing in European affairs have expressed misgivings about various proposals for Directives drawn up by the Commission. The House of Lords Select Committee on the European Communities believes that the **subsidiarity** principle should apply in areas falling within the Community's exclusive competence.

2. Views of the Government

According to Mr Davis, the British junior Minister responsible for European affairs, the **subsidiarity** principle implies that action should be taken at Union level if, and only if, better results can be obtained jointly than by each country in isolation, and even when that is the case, inopportune authoritarianism has to be avoided (*Le Monde*, 14 June 1995). In the same article, he put forward some ideas as to how the **subsidiarity** principle might be reformed. One option to which he referred was that of strengthening the provisions of the Treaty by **inserting an additional reference, the wording of which had already been agreed in Council**. Alternatively, **the national parliaments could be given the right to demur on the grounds of subsidiarity**. He said that the United Kingdom was willing to consider all possible means of achieving the above ends.

At meetings of the Reflection Group on the 1996 IGC, Mr Davis has proposed that the Treaty incorporate a 'sunset clause requiring the Commission to withdraw proposals which had not been agreed within a certain time' (Statement on the outcome of the 1996 IGC study group meetings of 10/11 July and 24/25 July 1995, Foreign and Commonwealth Office, 26 July 1995). Responding to '1996 IGC', a report drawn up by the House of Lords Select Committee on the European Communities, the Minister of State for Foreign and Commonwealth Affairs, Baroness Chalker of Wallasey, wrote:

'The Government takes the view that subsidiarity is a legal as well as political principle, and will therefore be taking steps at the IGC to strengthen the application, and improve the justiciability, of Article 3b'.

H. Conclusions

1. The subsidiarity principle and implementation of Article 3b

Amendment	Yes	No	Suggestions
EP		x	Retain the principle and enforce it correctly
Commission		x	Continue to simplify existing legislation and clarify the role of subsidiarity in legislative procedures
Council		x	Clarify the role of subsidiarity to prevent it posing a challenge to the <i>acquis communautaire</i>
COR	x		Reword Articles 3b, 173, third paragraph, and 175 TEC
Belgium		x	
Denmark	x ³		
Germany	x		The <i>Länder</i> are proposing to reword Article 3b and to rephrase Article 5 accordingly.
Greece		x	Enforce the subsidiarity principle more systematically
Spain		x	
France	x		Enforce subsidiarity more effectively. In October 1994 the Senate called for the subsidiarity principle to be extended to cover areas falling within the Community's exclusive competence
Ireland		x	

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

Amendment	Yes	No	Suggestions
Italy		x	
Luxembourg		x	Enforce the principle systematically
Netherlands	x(+/-)		The Commission should be required under the Treaty to justify its legislative proposals in terms of subsidiarity, proportionality, and the financial aspects
Portugal		x	
Austria		x	Rigorous enforcement of the subsidiarity principle
Finland		x	Rigorous enforcement of the subsidiarity principle Add a protocol on subsidiarity to the TEU
Sweden		x	Right of initiative for the EP
United Kingdom	x		Government: Article 3b should be subject to Court jurisdiction In October 1994 the House of Lords called for the subsidiarity principle to be extended to cover areas falling within the Community's exclusive competence

2. Incorporation in the EU Treaty of a declaration/protocol based on the Edinburgh conclusions

EP:	no
Commission:	--
Council:	--
COR:	--
Belgium:	--
Denmark:	no
Germany:	
Federal Government:	yes
Länder:	yes
Greece:	no
Spain:	yes
France:	no
Ireland:	--
Italy:	yes
Luxembourg:	no
Netherlands:	yes
Portugal:	yes
Austria:	yes
Finland:	yes
Sweden:	no
United Kingdom:	yes

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

The following favour vertical demarcation of powers by means of:

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

4. Article 235 and potential competence

The following: advocate are opposed to repeal of Article 235

EP		x
Commission		x
Council	-	-
COR	-	-
Belgium		x
Denmark	-	-
Germany:		
Government	-	-
Länder		x (Bavaria, Baden-Württemberg, Hesse)
Greece	-	-
Spain		x
France	-	-
Ireland	-	-
Italy	-	-
Luxembourg	-	-
Netherlands	-	-
Portugal	-	-
Austria	-	-
Finland	-	-
Sweden	-	-
United Kingdom	-	-

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

EP	-
Commission	-
Council	-
COR	-
Belgium	-
Denmark	Health, Education, Arts, Tourism
Germany	-
Government	Rescue services, Tourism, Employment
Länder	Energy, Tourism
Greece	-
Spain	-
France	-
Ireland	-
Italy	-
Luxembourg	-
Netherlands	-
Portugal	-
Austria	Tourism
Finland	-
Sweden	-
United Kingdom	Social policy, Tourism, Energy, Employment

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

EP	Social policy, Equal opportunities, Energy, CAP, Fisheries, Environment, Consumers, Transport, Tourism, Public services, Education, Training, Youth, External economic relations, Employment, Sport, Civil protection
Commission	Employment, Energy, Public services,
Council	-
COR	Policy for cities, Regional planning policy, Water management policy, Energy policy
Belgium	Sport, Public services
Denmark	Employment
Germany	Social policy, Civil protection
Greece	Safety of workers, Employment, Equal opportunities, Health, Consumers, Industry, Energy, Civil protection, Tourism
Spain	Employment, Public services
France	Public services
Ireland	Tourism, Civil protection
Italy	Employment, Energy, Tourism, Civil protection
Luxembourg	Employment, sport
Netherlands	Employment
Portugal	Energy, Tourism, Civil protection
Austria	Employment, Energy, Civil protection
Finland	Employment
Sweden	Employment
United Kingdom	-

7. Views of national political parties in the Member States, taken from the document: Andreas Maurer; 'Positionen, Stellungnahmen und Forderungen nationaler Parteien und Parlamentsfraktionen im Hinblick auf die Regierungskonferenz von 1996', Study drawn up for DG IV and the IGC 1996 Task-Force of the Sec.-Gen. of the EP, No IV/95/56, Bonn 23.3.1996 (updated version of 20.5.1996).

Member State	B	DK	D	GR	E	F	IR	IT	LUX	NL	A	SF	S	UK
Strengthen subsidiarity principle	VB	SD, CD, KF, RV	CDU, BUNDNIS 90/GRÜNE, FDP, REP, NPD, DKP	PASOK, ND	PP, PNV, CIU, EA, ERC, PA, UV, HB	RPR, UDF, CDS/FD, PS, MRG, VERTS	FG, LP, PD	PPI, PRC	PCS/CSV, LSAP, DP	SGP-RPF-GPV, VVD	ÖVP, GRÜNE, FPÖ	SSP, SKL	KDS	CON, LP, SNP, Plaid Cymru
Draw up a list of powers		SD, CD, KF, Venstre	CDU, SPD, FDP			UC, PS, RPR		PDS	DP	VVD, GROEN-LINKS	ÖVP		KDS	
Repeal Article 235		SF, RV								SGP-RPF-GPV, VVD			M	
Retain subsidiarity principle	CVP, PS				PSOE			PDS		PvdA	SPÖ		SD	LP

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