

Balance of Competences Review: Subsidiarity & Proportionality: Note of roundtable discussion: British Embassy, Copenhagen, 25 June 2014

Summary of key points:

- Some general opinions expressed that the principle of subsidiarity and proportionality set out in the Treaty did not do what they were intended to. They were sops.
- There were different views on whether subsidiarity was understood. It was agreed that it was understood at certain levels e.g. within parliaments and the political classes, but the term was not widely used or understood by the general public.
- However when the principle was explained in plain language most people agreed with the underlying intention.
- Attitudes towards subsidiarity depended on the issue. An example was given on proposals to control child labour and whether it was better to have national or EU legislation. The Danish parliament had been split on the issue. Some thought it a good thing to promote harmonised human rights legislation across the EU. Others had been concerned that the EU's proposals could have unintended consequences at a local level, for example for choirs and children doing paper deliveries. MPs had been split for similar reasons on the proposals for EU-wide rules on tobacco. Instead the EU should decide on a general reduction target and leave it to the member states to decide how to reach this target.
- Another example was on the rules on the proportion of women on boards. Some wanted this imposed at EU-level as it wasn't able to be passed at national level. The conclusion was that people's attitudes towards the principles of subsidiarity depended largely on their views of the action proposed.
- There was a discussion with subsidiarity's origins from the federal system of government. One participant pointed that the meaning of the word 'federalism' meant different things to the EU's member states. In Germany and elsewhere it meant a decentralised system of government. However it had become synonymous with a negative centralised system: a 'federal Europe'.
- Another problem was the scope of the Single Market – or the 'big best' as one called it - had never been clearly defined. The Commission automatically works for 'ever closer Union' for ideological reasons. It was the nature of politicians to initiate new laws and proposals. New Commissioners didn't come into office to do nothing! Like all politicians, they wanted to make their mark. Subsidiarity wouldn't be at the forefront of their minds. It was highlighted that "we" had deliberately left the definition of the EU to the lawyers and the European Court of Justice. The courts could only define law and expand the scope of the Single Market when the rules and definitions were unclear. A discussion about the balance of EU competences was very timely and Denmark should initiate a similar process.
- Another participant stressed that subsidiarity was not always an effective governance tool. An example of where the single market interfered in local decisions was given in relation to the energy market where Danish consumers paid a tariff that would go to support renewable energy in Denmark. This had

been deemed to give Danish energy suppliers an unfair advantage over non-Danish energy suppliers.

- Another example of unnecessary legislation was provided where a directive had been over prescriptive on the use of ground water. In Denmark it was common for people to use and drink ground water, but EU directives - aimed at protecting consumers - had made this difficult.
- One of the participants outlined plans to promote 23 proposals for promoting the role of national parliaments in EU decision making. They wanted a working group to be set up under the new Commission to review the proposals.
- These proposals drew on excellent work done by the Dutch Tweede Kamer and the House of Lords.
- It was highlighted that democratic legitimacy rested with national parliaments. It would be welcome if they could play a more active role in the EU's decision making process.
- There was some criticism of the Committee of the Regions. One participant thought it could be abolished.
- On the review mechanism, most agreed the current system didn't work. And this was down to the attitude of the European Commission. Until the Commission undertook to take yellow cards seriously, by publicly announcing that they would review proposals that were subject of a yellow card, the review mechanism and the principle of subsidiarity would remain worthless.
- Others raised whether there shouldn't be an ombudsman overseeing the review mechanism. Another said there might be a role for the Council.
- There was discussion on whether the review mechanism could be improved, for example by introducing 'red', 'green' or 'late' cards. However one participant said that adding more layers would only complicate matters. What was needed was a simpler system.
- There was little support for a 'red card', allowing parliaments to stop legislation if a certain threshold was met. The idea that 1/3 of the national parliaments could block a proposal was described as undemocratic by one of the participants. Some of the group wanted national parliaments to play a constructive role by, for example, be allowed to propose legislation, and not simply have a blocking role.
- Concerns were raised the Commission only took notice when big member states had objections to proposals.

Group composition

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