

## **Balance of Competences (BoC) Review: Subsidiarity & Proportionality: Note of discussion group led by Tim Hemmings: UKRep, Brussels, 29 April 2014**

Tim Hemmings introduced the BoC Review and set the context for the report on Subsidiarity and Proportionality. Participants were invited to contribute broad points as well as answering the questions set in the Call for Evidence.

### Summary of key points

#### **Subsidiarity and Proportionality**

A number of speakers agreed that the EU institutions, with their power to propose legalisation, required a range of checks and balances. The principle of subsidiarity was an important element amongst a number of safeguards.

**The term ‘subsidiarity’** was seen by a number of speakers as being a problem: it wasn’t easily understandable in many languages across Europe. At least two speakers said they looked to use alternative expressions when discussing subsidiarity. One argued that it was sometimes used as a convenient justification to oppose EU proposals by those who hadn’t formulated good arguments.

This led to a discussion of the **definition of subsidiarity**. One speaker felt one of the problems was that there was no clear definition. This resulted in individuals and institutions making their own interpretations. Another speaker, however, disagreed, noting that definitions for subsidiarity and proportionality were clearly set out in the Lisbon Treaty. It was in the nature of the beast for Member States (MS) to make different interpretations. The problem was whose view should take precedent.

There was broad agreement that although there was a definition, there were ambiguities around the interpretation.

Some speakers stressed the lack of interest by many MS about subsidiarity, and in particular from regional bodies. For example, subsidiarity issues were rarely raised by MS in the Committee of the Regions (COR).

There were comments throughout the discussion about the difficulties around categorising issues as subsidiarity or proportionality. Some said that as proportionality didn’t come under the yellow/orange card system there was a temptation to dress proportionality issues as subsidiarity. Most agreed a way should be found to allow proportionality to be handled in the same way as subsidiarity, but without amending the Treaty. One speaker suggested that the European Commission (EC) should take the initiative in treating the two in the same way. Including proportionality would force the EC to address the substance of the proposals. However some cautioned that bringing proportionality under the mechanism could lead to the EC being drowned in yellow cards.

One speaker introduced a number of examples of proposals that his organisation had challenged largely on the grounds of subsidiarity and proportionality. These included proposals on urban mobility, air quality, and passenger rights. While some of the elements in these proposals made sense at a European level, e.g. passenger rights in relation to trips crossing more than one MS, they didn't make sense if they would also apply to someone taking a local 10 minute bus journey to work.

This led to a discussion on **impact assessments**. Some argued that the EC's impact assessments were too narrowly focused and often failed to take account of views of national and local authorities in MS. Others argued that standards of impacts assessments varied between the EC's Directorate Generals.

One speaker thought the problem with impact assessments was down to capacity in the EC. Another disagreed: the EC had enough capacity but it was down to national governments to ensure they consulted at regional and local levels. The EC couldn't be expected to do this.

Another issue was that impact assessments were only published in English. This meant that many MS were either slow – because of the time it took to translate the documents – or simply didn't engage at all. There was broad agreement that the current format and content of impact assessments could be improved through the use of executive summaries and specific sections demonstrating that subsidiarity and proportionality issues had been considered.

This led to an exchange about the process for MS to review proposals. Many in local and national government found the process for giving feedback frustrating. There were capacity issues particular around complying with the **eight-week period time limit**. In this context, some commented on the role of the COR. Often in the past their reports had come out too late to be of any use. It ought to be given more powers or scaled back.

The example over the EC's proposals for a **European Public Prosecutor's Office** was raised. Regional bodies in the UK had contributed to the Westminster Parliament's Reasoned Opinion. However it had been a struggle to consult and then agree a position within the eight-week time limit. Having two to four weeks more would have allowed more time for consultation. The Westminster Parliament needed to engage earlier with regional bodies. One speaker mentioned the example of Spain where the time spent considering proposals was split evenly between regional and national levels with each getting 4 weeks.

Although there was broad agreement that the eight-week should be extended – most agreed on 12 weeks – one speaker said the process shouldn't be too protracted as uncertainty and delay could impact businesses in particular.

There were different views on how the EC reacted to **yellow cards**. Some felt that the EC needed to do more to demonstrate that it was taking account of concerns raised by national parliaments through Reasoned Opinions, even when they didn't constitute a 'yellow card'. However, some felt that it was only natural for the EC to defend its position. This in turn led some to question whether the EC was the right institution to respond to yellow cards. There were also references to the European

Court of Justice not striking down any proposed legislation for breaching the principle of subsidiarity.

There was a brief discussion on the **red card** proposal – which would allow MS to block proposals. Although some felt this was worth exploring, following on from work by the Dutch authorities, others felt this wasn't needed and pointed out that the threshold hadn't even been met to issue an orange card.

There were some brief comments on the **Conference of Parliamentary Committee for Union Affairs of Parliaments of the European Union (COSAC)** in relation to subsidiarity and proportionality. One commented that members were unable to engage on the substance of specific proposals because they were largely comprised of representatives from parliaments' European Committees and not the specialised committees.

### **The 'flexibility clause'**

One speaker said that since the adoption of the Lisbon Treaty the number of proposals coming under Article 352 TFEU had dropped significantly from over 600 to around seven. So this clause was no longer seen as being contentious.

### **Discussion Group attendees**

Tim Hemmings, Head of European Union Department – Internal, FCO  
Nicholas Collier, FCO  
Doris Spickenreuther, Committee of the Regions  
Petra Candellier, Committee of the Regions  
Claire Montgomery, Scottish Government  
Ian Catlow, London's European Office  
Leonie Hertel, Convention of Scottish Local Authorities  
Haris Kountouros, DG Presidency  
Serge Thines, DIAGEO