

‘Clear rules on the role of the Union and the Member States’ from the Frankfurter Allgemeine Zeitung

Caption: On 7 December 2005, the German daily newspaper Frankfurter Allgemeine Zeitung reviews the provisions of the Constitutional Treaty relating to the distribution of powers between the European Union and the Member States.

Source: Frankfurter Allgemeine Zeitung. 07.12.2004. Frankfurt. "Klare Regeln zur Rolle von Union und Mitgliedstaaten", auteur:Stabenow, Michael , p. 19.

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Clear rules on the role of the Union and the Member States

Constitution defines the principle of subsidiarity and decision-sharing rights / By Michael Stabenow

Brussels, 6 December. There was no room for superstition in the Chamber of the European Parliament in Brussels on Friday 13 June 2003. It was a sunny summer morning and the strains of the *Ode to Joy* from Beethoven's Ninth Symphony rang in the ears of the 200 or so members of the European Convention who had gathered there. They were celebrating the fact that the draft EU Constitutional Treaty had just been largely completed — and also giving themselves a modest pat on the back. The 15th speaker to take the floor was Erwin Teufel, Prime Minister of the German Federal State of Baden-Württemberg. The senior CDU politician was fulsome in his praise for the text that had been negotiated and was to be approved a year later by the Heads of State or Government, subject to minor amendments. 'All in all, we have produced good work here,' declared Teufel, who had regarded his task in the Convention as not merely to represent the German *Länder* but also to champion the interests of many European regions.

Second on a list of seven specific achievements in the draft document, Teufel referred to the allocation and precise inventory of competences in the EU. The issue of who should be responsible for what in Europe had aroused passions even before the Convention had begun to meet. Belgian Prime Minister Guy Verhofstadt, advocating the German concept of a *Kompetenzordnung* [hierarchy of competences], had been particularly keen to end the wrangling between regions, Member States and 'Brussels'.

After 16 months of work, the Convention had now produced a set of rules — ultimately expressed as Articles I-11 to I-18 of the draft Constitutional Treaty — that Teufel hailed as 'a real breakthrough'. 'Every democratic constitution in the world includes rules about who does what, and thus who bears responsibility for what, so that the public can see at which political level the responsibilities lie.' As the Convention began its work, there had been concern that Teufel wanted to curb the impetus towards European integration by imposing an inflexible inventory of competences. MEPs, in particular, also feared that the call for restrictive monitoring of the principle of subsidiarity (enshrined in EU law since 1993) would result in a cutting back of the Union's areas of responsibility.

It was not only the need for maximum consensus on the Convention's proposals that made Teufel's stance significant. As a representative of the Bundesrat, he also spoke on behalf of a body whose approval would be vital for ratification of the new Constitution. The CDU man had been quick to recognise, however, that in a Convention comprising representatives of 28 countries there would have to be flexibility on points that might appear self-evident from the German Federal perspective. In April 2002, Teufel had lobbied for a dual system of determining competences. On the one hand, he wanted an explicit list of areas in which the EU would not be allowed to intervene at all. These would include the internal development of the EU Member States, administrative activity, services of public interest, and education and schools policy. On the other hand, he proposed a complementary 'catalogue of tasks', determining the EU's areas of responsibility in accordance with the principle of 'limited authorisation'.

Six months on, the passions had calmed. There was no more talk of an inflexible inventory but rather of the EU requiring limited and specific authorisation from the Member States to carry out particular tasks. Moreover, Article I-11 of the Treaty stipulates that the use of Union competences shall be subject to the principles of subsidiarity and proportionality. All other competences are to remain with the Member States. The Constitution distinguishes areas of exclusive competence (covered by Article I-13), areas of shared competence (covered by Article I-14) and areas of supporting, coordinating or complementary action (covered by Article I-17). The last named include health protection, industry and cultural and educational policy, plus — for the first time — tourism and sport. The core areas of exclusive competence are primarily the customs union, the establishment of competition rules for the internal market, monetary policy for the Member States whose currency is the euro and the common commercial policy. The widest range of tasks is in the category of shared competence: it includes the internal market, social, agricultural, transport, environmental and consumer policies, interior affairs and legal policy, and economic and social cohesion.

Rooted in Christian social teaching, the principle of subsidiarity dictates that the EU may act only where

stated objectives outside its areas of exclusive competence can be better achieved at Union level. Teufel described the approach as based on ‘thinking from the bottom up, with the citizen as the starting point’. Because the draft Constitution’s definition of the principle in conjunction with the ‘flexibility clause’ in Article I-18 provides for possible extension of the Union’s competences (albeit subject to the unanimous agreement of the Member State governments and the consent of the European Parliament), there was fierce argument in the Convention over two protocols — one on subsidiarity and one on the role of national parliaments.

Under Article 5 of the protocol on subsidiarity, any EU legislative proposal must include a detailed appraisal — known in Euro-speak as a ‘subsidiarity sheet’ — enabling the decision-makers to judge whether the principles of subsidiarity and proportionality have been respected. The Commission is normally required to detail here why, in its view, a specific EU objective can be better achieved through joint action than by the individual Member States acting alone. It is required to furnish both qualitative and, as far as possible, quantitative reasons covering, not least, the potential impact in terms of cost and administrative effort.

One crucial innovation is an early warning system that will give national parliaments or individual parliamentary chambers the chance to lodge objections to EU legislative proposals, no later than six weeks after they are received, if the MPs fear that the principle of subsidiarity has been breached. If objections to a proposal are received from at least a third of the national parliaments, then (under Article 7) the proposal must be reviewed. For the first time, Member States — acting on behalf of their parliaments or of a single chamber (in Germany’s case the Bundestag or Bundesrat) — should be able to refer alleged breaches of the principle of subsidiarity to the European Court of Justice (see Article 8). The Committee of the Regions would also have a right of referral to the Court. All these arrangements had, in Teufel’s view, ensured that the principle of subsidiarity and the division of competences would not merely be referred to ‘in a lyrical preamble to the Treaty’ but would ‘actually be subject to monitoring’. Seventeen months later, celebrating the signing of the Constitutional Treaty at the Capitol in Rome, it was Irish Prime Minister Bertie Ahern who placed particular emphasis on the new division of competences. He declared that the Treaty ‘strikes the right balance in defining which matters we can best deal with together and which are the preserve of individual Member States’. His successor as President of the Council, Netherlands Prime Minister Jan Peter Balkenende, delivered his conclusion on the historic day somewhat more prosaically: ‘Our signatures are not a finishing touch; they are a new beginning.’

This contribution concludes our series.

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