

## Balance of Competences (BoC) Review: Subsidiarity & Proportionality: Note of discussion group 1: University of Bath, 13 May 2014

### Summary of key points:

#### Subsidiarity & Proportionality

1. Participants said the principles of subsidiarity were broadly well understood by member states' (MS) administrations. But some noted that larger MS, with established relationships within the EU, had greater capacity and experience in managing and influencing issues around the principles.
2. There were different views on the EU institutions' attitudes towards subsidiarity and proportionality. There were comments that some European Commission (EC) officials prioritised harmonisation over subsidiarity and proportionality. However others pointed out that there were safeguards, for example, sections in the Impact Assessments for subsidiarity and proportionality.
3. Another participant said that although in practice Impact Assessments should ensure that the principles of subsidiarity and proportionality were adhered to; in practice the analysis was often limited. There was also something missing in terms of checking the quality and consistency of Impact Assessments. It was questionable whether these were written by officials with sufficient knowledge of the subject/issue. Impact Assessments should also include the projected costings of initiatives wherever possible.
4. Some participants commented that it was unhelpful to handle proportionality and subsidiarity separately. They were frequently conflated in for example Impact Assessments etc. Some also thought the same scrutiny mechanisms should apply to both principles.
5. Another pointed out that subsidiarity in particular wasn't always easy for the EC to analyse mechanically. The judgements were more often than not political, and views and interpretation varied across the EU. Some MS wanted a clear definition of subsidiarity others preferred to room to interpret the principles themselves as it offered more flexibility.
6. It was agreed that MS and interest groups had the opportunity to scrutinise and challenge proposals. But the sheer volume of proposals meant it was inevitable that proposals that might cause problems for MS could slip through. There was broad agreement that this was largely an issue of lack of capacity, particularly in the relevant authorities in MS.

7. It was pointed out that even when the number of Reasoned Opinions didn't reach the threshold required for a yellow card, there was evidence the EC still took into account MS' views in amending proposals. Some participants commented that there was no effective policing of the principles and there was an argument for establishing a 'watchdog.' As things currently stood the Commission, it could be argued unfairly, were expected to be both judge and accused. The EU had introduced a mechanism for MS to have a voice on subsidiarity and proportionality (ROs, etc) but then there was not an adequate response.

One option to address accusations of democratic deficit could be to give non-departmental public bodies (NDPBs) a greater role in scrutinising subsidiarity and proportionality at the national level.

On the upside many agreed that the existence of the principles meant that both MS and the Commission were engaging with proposed legislation in a way they may not ordinarily. However, some said that MS were not always treated equally: the larger and more established MS tended to get their concerns acted on. The newer members often felt their concerns were overlooked.

8. There was a discussion on the way local government could influence EU institutions. One participant stressed that regional and local bodies did not necessarily rely on central government to represent their views. Many had active representatives in Brussels lobbying for their interests. Examples given were Wales and Manchester. Another said there was anecdotal evidence that many regional and local authorities, particularly Scottish, distrusted Westminster and were happy engaging directly with Brussels institutions.

Regional and local bodies could also exert influence through the Committee of the Regions.

9. There was broad agreement that the review mechanisms were relatively new and would need time to bed-down. However there should be regular reviews and adjustments made as necessary.

On the eight-week time limit given to national parliaments to raise Reasoned Opinions, most felt 'a bit more time' should be allowed.

10. One participant stressed the need for some form of independent arbitration to oversee whether the principles were followed by EU institutions. Another questioned whether subsidiarity was actually possible to review given its political nature. This led to a discussion on Parliament's role. A number commented that the way Parliamentary committees were structured did not allow sufficient focus on EU proposals. The committees needed more 'teeth'. In the Welsh Assembly, proposals were often scrutinised by committees with expertise on the specific areas rather than by a general 'EU' committee. Westminster could learn from this.

## Article 352 (flexibility clause)

11. This clause had been used a lot in the 1970s and 80s, but less in recent years, particularly since the adoption of the Lisbon Treaty.

A number pointed out that presentationally it looked odd to have a catch-all clause which could lead to suspicions that things could be introduced through the backdoor – although this was not necessarily the case. Some thought this could be reviewed in the future and have a better mechanism that would allow the EC to propose, for example, the creation of new EU bodies.

## Group composition

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