

SUBSIDIARITY

A Research Briefing Paper

for the Northern Ireland Review of Public Administration

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The views in this report are those of the author and are not to be attributed to the Review of Public Administration team or the Office of the First Minister/Deputy First Minister.

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1.0: Executive Summary

What does subsidiarity mean? Subsidiarity is a principle of EU governance which says that the lowest possible tier of government should act, and thus that centralised authority should be avoided as much as possible.

So that means the EU system is decentralised? In theory, yes. In practice, not really – because there is no agreement about what the ‘lowest possible tier of government’ is for any given issue. For European federalists, subsidiarity implies that power should be exercised at local/regional and EU levels; for defenders of national sovereignty, subsidiarity implies that power should be centralised at national level.

So how did subsidiarity reach the EU agenda? Subsidiarity has been a principle of EU governance since at least the 1970s, but it came to the fore as part of the Maastricht Treaty (1992). It was supposed to help reduce the democratic deficit by making clearer who does what in the EU, and why. However, although all the EU member states could agree that this was necessary, they did not agree on the substance – i.e. on which tier of government should do what, why, and how. Over the last decade, European integration has made many advances, but these difficult decisions remain to be made. In fact, subsidiarity has lost ground to a related, but different principle – proportionality (the idea that the EU should do as little as possible, in as minimal a way as possible).

So does subsidiarity mean anything in practice? Yes. Although proportionality has almost replaced it, there remain issues of principle to discuss: the issues which the EU should address, for example, and its manner of addressing them: what exactly is ‘as little as possible’ in this context?

Are these questions being addressed? Yes. The Convention on the Future of Europe is deliberating on these issues. It is due to report in June 2003, and this report should influence the next round of EU Treaty reform (due in 2004), which is supposed to be the last such reform round for a considerable while.

Why does this matter to Northern Ireland? Because subsidiarity is about deciding which tier of government does what, how and why. To date, member states have effectively limited such considerations to the balance between the national and EU levels.

Thus, regions with devolved or decentralised powers must ensure that reform of subsidiarity as both principle and practice is congruent with their interests.

What can Northern Ireland policy makers do? They should monitor the progress of the Convention on the Future of Europe, and ensure that they seek to influence its final report. They should also seek to ensure the next Treaty Reform round reflects their concerns on subsidiarity. This will require both lobbying of Westminster and the construction of alliances with similarly disposed regional governments – especially those with the power to veto Treaty reform, such as the German Länder. In addition, and as a pre-condition, NI actors must reflect upon how they wish NI to fit into the evolving EU structures, and how they can influence the latter to maximise the benefits it can produce. Subsidiarity is of relevance here in terms of transferring good practice in partnership governance, cross-border cooperation, and an active role for civil society.

2.0: Introduction

This research briefing investigates the issue of subsidiarity, a controversial principle which has been at the heart of the European integration process since the early 1990s. It has a simple structure which follows the Research Specification.¹ First (Section 3), the principle of subsidiarity is defined and compared with its counterpart, proportionality. Second (Section 4), a review of how it has been put into practice in EU governance is presented. Third (Section 5), the impact of how the process of European integration has impacted upon the meaning of subsidiarity is summarised. Fourth (Section 6), both current and potential future developments are examined. Fifth (Section 7), the issue of good practice is discussed. Sixth (Section 8), useful issues for consideration by Northern Ireland policy makers are highlighted. Finally (Section 9), conclusions are presented.

3.0: What is Subsidiarity?

3.1: The Maastricht Treaty: Subsidiarity as an Alternative to Federalism

Subsidiarity is one of the most controversial and ambiguous principles of EU governance. It came to prominence in the early 1990s when at the insistence of the UK government it was used in the Maastricht Treaty, or Treaty on European Union (TEU), as an alternative to the words ‘federal’ or ‘federation’. The TEU was perhaps the most significant single step forward in the European integration process, since it set in train, among other developments, moves towards the single currency, the common foreign and security policy, and a bicameral legislature at EU level. Given this step-change in the European integration process, it was considered necessary to elaborate the principles by which the EU could evolve from a primarily economic to a more broadly political union in an effort to ensure public support for this development. The crisis of the ‘democratic deficit’, which grew worse in the wake of the TEU, was nonetheless apparent before it was signed. It was also hoped that subsidiarity could assuage popular concerns that the EU would usurp the powers of its member states, or subsume national identities. The

¹ The Research Specification asks for examples of good practice. However, because subsidiarity is a controversial principle of EU governance rather than a policy or project, it is impossible to provide detailed examples of good practice. Instead, this briefing explains how and why subsidiarity is both controversial

subsidiarity principle has thus been lauded almost universally as both the essence of European democratic thought and the means by which the EU undertakes only those tasks which are appropriate for it. By the same token, the ambiguity and problems of subsidiarity are due in no small part to the fact that different actors have different understandings of what ‘the essence of European democracy’ and the appropriate tasks of the EU actually are - two complex issues which were avoided in the Maastricht negotiations.

3.2: Models of Subsidiarity: An Ambiguous Package Deal

Three models of subsidiarity were invoked by the various member states in the negotiations which produced the TEU. First, one which draws on *Christian Democratic*² *social philosophy*, and which argues that power should be exercised by organisations and groups at the lowest possible level of governance: thus, individuals and social groups, rather than the state, should be empowered. In this model, civil society is considered to be the best place to locate public power, with the smallest possible role given to other institutions of governance.

Second, there is what might be termed the *German federal model*. This can be summed up as the view that subsidiarity requires a clear separation of powers both horizontally (i.e., between the different EU institutions) and vertically (i.e., between local, regional, national and European institutions). This model thus emphasises a written constitution for the EU and a clear answer to the question of who does what in European governance, and how.

Finally, there is the *national sovereignty model*, which argues that subsidiarity is the means by which EU powers can be limited, and those of the member states (and particularly their central governments) preserved. In this model, subsidiarity is thus conceived as the means by which member states control the EU and render it incapable of

and problematic, and suggests questions to be asked by NI policy makers in order to maximise the benefits to be gained from it.

² ‘Christian Democracy’ is the label applied to centre-right parties in most of the EU’s member states.

replacing them; this model was famously championed at Maastricht by the UK government.³

These models have obvious differences, although they are united in opposition to the idea that the EU should centralise all legislative power. Thus, the Treaty is deliberately ambiguous about the meaning of ‘subsidiarity’; at Maastricht it was vital to find a form of words which would allow all the member states to sign up to the TEU and claim that the integration process was following the particular development trajectory which they supported. Thus the Treaty provisions on subsidiarity are a rather vague package deal which was made to ensure that the member states would not veto the Treaty itself, and the actual meaning of the principle was left to evolve over time.

3.3: Proportionality: An Alternative to Subsidiarity

If subsidiarity can be understood as the principle by which the EU’s scope of action is delineated, proportionality can be considered the principle that *EU action should be restricted to those areas where it is absolutely essential, and that the EU should act only to the minimum extent necessary to achieve the tasks it has been set*. The two principles have become intertwined over the last decade in the face of both increasing Euroscepticism at popular level, and the choice made by the member states to adopt a more cautious approach to the European integration process. This merging was triggered in 1992, when the TEU was rejected by the Danish in a referendum. The Treaty was subsequently accepted in Denmark only once it had been amended in several ways, with agreement on the implementation of subsidiarity being a key issue. The Edinburgh Declaration on subsidiarity, which was a crucial part of this process of meeting Danish concerns, made it clear that in practice subsidiarity would be used to ensure that the EU’s scope for action was severely circumscribed - as put forward in the national sovereignty model set out in section 3.2 above. Thus, in effect, the last decade has seen little use of subsidiarity as a means by which ‘big picture’ issues of European integration such as who should do what and why, could be addressed: instead, subsidiarity has become something more akin to the principle of proportionality, that is, the default position that the EU

³ It should be noted that the Labour administrations since 1997 have revised rather than rejected this view.

should act as little as possible, and do as little as possible to achieve those goals considered its proper preserve.

3.4: Treaty Provisions on Subsidiarity

There are two relevant provisions in the EU Treaties.

Article 2 of the TEU states:

‘The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community’.

Article 5 of the EC Treaty states:

‘The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

‘In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

‘Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty’.

Thus, the trend towards proportionality rather than subsidiarity is apparent, but equally clear is the ambiguity of the Treaty, given the lack of specificity about how ‘what is necessary to achieve the objectives of the Treaty’ can be measured, and who should measure it.

4.0: How does Subsidiarity Work In Practice?

4.1: *The Ambiguities of Competence and an Unclear Separation of Powers*

Subsidiarity has not worked well in practice except for its undoubted ability to generate consensus (on a disagreement) at Maastricht. This is largely because, as shown directly above, the Treaty refers to subsidiarity as both a *principle* and an *instrument* of governance, while omitting to make clear exactly when and how it should be applied. For example, there are no criteria to assess whether the EU is more likely to make successful policy on a given issue than its member states: this means that, in practice, the decision about which level of government should act is either taken on an ad hoc basis, or simply finessed. Such decision-avoidance often carries the approval of the member states, which are themselves not averse to adding idiosyncratic duties to the EU's competences.⁴ As a result, neither those who thought subsidiarity could be the means to bring the EU 'closer to the citizen' – an objective echoed in the Treaty preamble – nor those who wanted subsidiarity to be a purely administrative device can be entirely satisfied with how it has been operationalised.

In particular there remains the difficult issue of how powers should be separated in the EU – both between the EU institutions and between the EU, national and sub-national levels. At EU level, policy making depends on a complex process of coalition construction, both between the member states and between the institutions, because the tasks of government are shared, rather than clearly divided, between them.⁵ Moreover, these tasks are shared in different ways according to the policy area in question, and this

⁴ The Edinburgh Declaration on subsidiarity (December 1992) obliges the Commission, when proposing new legislation, to demonstrate that there is a clear legal basis for the proposal in the EU Treaties, that neither national nor sub-national governments can act effectively on the issue, and that the EU will act to the minimum extent necessary to secure its objectives. This has altered the way the EU makes policy, helping the shift to 'soft policy' (such as benchmarking) and away from traditional-style, 'hard' regulation. However, it has by no means prevented the EU from acquiring new competences or entering new areas of policy where national or regional competence might in fact suffice. Part of the problem here is that both national and sub-national governments in the fifteen member states have different powers and competences: it is very difficult to say definitively what is beyond the scope of regional government, for example, when some member states have no effective regional government (Greece) and others have a strong periphery and a weak centre (Belgium). However, another part of the problem is member states playing to the public gallery: witness for example UK insistence during the Amsterdam Treaty negotiations that the EU should have competence in matters of animal welfare, which bemused the other member states somewhat.

pattern shifts over time.⁶ For example, agricultural policy has been a strong EU competence since the 1950s, but remains an intergovernmental preserve; regional policy, on the other hand, is open to much greater influence by sub-national and EU institutions, and is also a strong EU competence. This pattern of shared competences is complex, but has been a source of strength because it ensures a wide variety of input and makes sure that no institution can monopolise power. It also allows the EU to evolve over time according to perceived need: this elasticity has proved vital in allowing the EU to continue its use to the member states as a means by which they can secure their objectives in a way which is unlikely to have been equalled by a rigid constitutional settlement made in the 1950s (the time of the EU's launch).

Separating powers between the EU, national and sub-national levels of government has been no easier. This is partly because for many years the member states have tended to deny that such a separation was necessary, since the EU was a primarily economic organisation (always a fallacious argument, but one which allowed difficult choices to be avoided). However, it is also because there are genuine and significant problems to be faced in making such a decision. Of these, two are the most significant. First, the fact that the member states have varying systems of government, and different views of what can or should be done at national, regional and local levels. This means that it is difficult to generate agreement on a common, EU-wide separation of powers. Second, the fact that in many issues it is difficult to be clear about where (sub)national and EU competences should begin and end – they tend to merge rather than operate in distinct arenas. This is partly because the EU has been grafted on to the various systems of its member states, altering and adapting - but not replacing - them. (Thus, the EU is an arena in which actors from all levels of governance can and do act to achieve their objectives rather than a separate, self-contained tier – see the briefing paper on multi-level governance.) It is also because the various policy areas and parts of the policy-making process give different

⁵ An exception is the European Court of Justice, whose powers to interpret EC law are sometimes contested by national courts but not (at least, not officially) by the national governments.

⁶ Two general trends are of interest here. First, new competences of the EU tend to be exercised intergovernmentally at first, and then more power is gradually given to the Commission and European Parliament (EP). An example is environment policy. Second, the EP has itself gained more power as a

functions to the various tiers of governance. Regional governments, for example, can help the Commission set the legislative agenda and then monitor, as well as carry out, policy implementation; but the actual policy content will be agreed by the national governments, often with the EP.

Legally, this is reflected in the difficulty of distinguishing between different types of EU competence on a spectrum which ranges from areas in which the EU supposedly has sole authority to those from which it is in theory excluded: exclusive competence, concurrent competence, complementary competence, and member state competence.

Exclusive competence refers to areas where the Treaty gives the EU sole powers as a legislator (i.e. the member states preclude themselves from making any policy in these areas other than via the EU). An example is monetary policy for those states which have adopted the euro.

Concurrent competence refers to areas in which member states are free to legislate until the EU makes policy, after which national competence is removed. Thus, concurrent competence provides for national governments to retain their powers until and unless they support giving greater powers to the EU. An example is the common foreign and security policy.

Complementary competence refers to areas in which EU activity is confined to measures which support, but do not replace, national activity. Thus, the EU can help exchange best practice or set benchmarks, but leaves legislative power in the hands of the individual member states. An example is employment policy.

legislator over time. In many policy areas it is now the equal of the Council (the institution which represents national governments).

Member state competence refers to issue areas which are either placed expressly outside the EU remit by the Treaty, or are not mentioned in the Treaty at all.⁷ An example is the ability legally to declare war. Thus, making a decision about what kind of powers the EU should have – which lies at the heart of any decision about the meaning of subsidiarity – is highly complex, and the various member states have different views about what should be done in any given policy area at any given time.⁸

4.2: *Popular Discontent*

A further problem to be faced in making subsidiarity work is the mismatch between the powers currently enjoyed by the EU and those the public appears to think it should wield. Repeated opinion polls indicate that citizens would give the EU a very different range of powers from those which it currently has either as a result of opportunistic action by its proponents or as concessions by national governments. For example, citizens tend to be bemused by the EU's inability to provide greater freedom of movement within its own borders (as anyone setting up residence in another member state could testify) despite its provisions on EU citizenship. Moreover, the powers which the public appears to wish to give the EU are often key components of national sovereignty, and thus unlikely to be transferred to EU level with any speed. There is evidence, for example, that citizens want the EU to have a strong common foreign and defence policy.⁹ Of course, citizens may not be aware of what issues it is necessary or feasible to address at European level. However, without a sustained process of explanation and dialogue it is unlikely that subsidiarity will be able to help bridge the gap between what the EU does, and what the public would like it to do. Thus, its potential to help address the democratic deficit, one of the key reasons for its place on the EU agenda, has been heavily circumscribed.

⁷ In practice, this is not as clear-cut a category as it appears. Member states often add competences to the EU not just by treaty reform but also through the process of agreeing secondary legislation - in some cases without appearing to recognise this.

⁸ For example, at the time of writing it appears that the UK is abandoning its long-held attachment to the national veto in immigration policy.

⁹ Indeed, one study concludes that on only two issues does strong EU competence tally with strong popular support for EU action: the environment, and development policy (J. Blondel, R. Sinnott and P. Svensson, *People and Parliament in the European Union*, Routledge 1998).

4.3: The Amsterdam Protocol (AP)

As a means by which some of the above problems could be addressed, the member states included a Protocol on subsidiarity in the Amsterdam Treaty (the successor to Maastricht, agreed in 1997). In fact, the AP does increase the clarity of subsidiarity somewhat, insofar as it is a 'letter of intent' which seeks explicitly to bring subsidiarity and proportionality closer together. However, the difficult issues about exactly how this should be done were again left unclear. The AP increases the importance of 'relative efficiency' as a means to decide whether the EU or the individual states should act. However, without a detailed methodology and set of criteria for such an assessment, it is unclear how efficiency is to be measured against anything but political expediency. Furthermore, the AP takes much of the 'principled' element out of subsidiarity, replacing issues of political choice (when and why should the EU act?) with issues of policy management (how can we make sure the EU does as little as possible?). Thus, even after Amsterdam the real-world application of subsidiarity leaves much to be desired.

5.0: The Impact of European Integration on Subsidiarity

As will already be clear, the impact of the EU on subsidiarity has been enormous. This is because it is only with European integration that the issues represented by subsidiarity have become the focus of political debate in the UK (sometimes as a counterpart to issues of community self-governance and devolution, which of course have a longer history). Perhaps the main point to note here is that the direction taken by the EU has produced two clear impacts on subsidiarity: first, its effective separation from issues of community and self-governance at the local level (as present in Christian Democratic and much classical political theory), and second, its mutation into a tool of public administration (the triumph of proportionality over subsidiarity).

6.0: Potential Future Developments

6.1: Landmark Events: The European Charter and Convention

The *European Charter of Fundamental Rights* aroused much attention when it was agreed at the Nice Summit of December 2000. It is 'attached to', but not part of, the Nice

Treaty. Originally, this distinction was made to ensure that the Charter had little or no legal force. In fact, it may be that it has more force than the Treaty (whose ratification may never happen if the second referendum in the Republic of Ireland produces another 'no' vote in October 2002). In any case, the direct impact of the Charter on subsidiarity is likely to be small. This is because the various rights contained in the Charter are in most cases simply taken from the existing body of legislation rather than additions to it. The Charter is symbolically important, but not substantively so – at least so far.

However, there are implications for both subsidiarity and the Charter in the workings of the *Convention on the Future of Europe*. This Convention was established at the Laeken Summit of December 2001 to help set the agenda for the next round of Treaty reform (scheduled for 2004). It is free to examine any issue, and may even produce a draft constitution for the EU. However, it has only four items on its compulsory agenda: the separation of powers between EU and national levels, the status of the Charter (i.e. should it be legally binding or not?), the role of national parliaments in EU decision-making, and the simplification of the Treaties. The Convention, which has dedicated one of its working groups to the issue of subsidiarity, is due to produce its final report in June 2003. Currently, the Convention is still in its initial stages, and has yet to produce clear signs of the approach to subsidiarity that it will take.¹⁰ Although it will be for the member states to decide what, if anything, should be done as a result, it is likely that at least some of the Convention's report will inform the next EU Treaty as a result of its high profile and the crisis of EU legitimacy – the member states are unlikely to be able entirely to ignore a body they have themselves created with the express purpose of making the EU function more successfully.

6.2: Political Issues

There are various issues on the EU agenda which are likely to have an impact on the development of subsidiarity. Unfortunately they do not all point in the same direction:

¹⁰ For information on the Convention, access its web site:
<http://european-convention.eu.int>

some indicate that subsidiarity is a redundant concept, and others indicate that it might retain value as part of a deeper reform process.

The way in which the EU makes policy is likely to be adapted in the coming years. Already there is a trend away from traditional forms of regulation towards ‘soft policy’ such as facilitating best practice exchange and benchmarking. This trend is likely to continue, meaning that even if the EU acquires new competences there is no guarantee that it will become a powerful regulator in these fields (for example, employment and education policies). From the point of view of subsidiarity, this implies that the EU may move away from concepts of ‘exclusive’ and ‘member state’ competence towards the grey area in the middle (‘concurrent’ and ‘complementary’ competence). Thus, *what counts in determining whether the EU should act may not be the issue in question but rather the manner in which it is addressed: proportionality, rather than subsidiarity.*

In addition, the EU is facing the challenge of increasing diversity. The member states appear to have less, rather than more, in common as the integration process deepens. Thus, the EU is becoming more ‘flexible’, as member states begin to opt out of policies they do not support instead of vetoing them (e.g. Sweden, Denmark and the UK are currently outside the single currency). The logic of this trend may be that subsidiarity becomes outmoded as an issue, in that opting out could remove the need for member states to contest the EU’s right to act in a given policy area. Thus, issue-specific, rather than catchall, decisions about subsidiarity may continue to be taken. The upcoming enlargement to the countries of Central and Eastern Europe is likely to reinforce this trend.¹¹

The role of the European Court of Justice (ECJ) in determining the use made of subsidiarity may also be important. To date, the Court has refused to rule explicitly on the issue, claiming that this would be a political rather than a legal decision for which it is not competent. However, ECJ rulings over time have certainly shaped the relations between

¹¹ There are twelve such states in the queue to join the EU, and the first of them are currently scheduled to join in 2004 .

national and EU institutions and legal systems. Thus, the ECJ may well produce, through its case law, a series of rulings which effectively shape subsidiarity, at least in specific policy areas.¹²

A further political issue which may impact on subsidiarity is the ongoing crisis of the ‘democratic deficit’. In part, subsidiarity was supposed to help address this issue by making clearer the separation of powers between EU and national levels, and by bringing the EU ‘closer to the citizen’. Although neither of these goals has yet been reached, it is clearly in the spirit of the current Convention that they are addressed more squarely than hitherto. Thus, it is quite possible that as the next round of Treaty reform takes shape, subsidiarity will again be used as one means to address issues of democracy and legitimacy.

6.3: *A Europe of the Regions?*

A further issue to consider is whether the idea of a ‘Europe of the Regions’ has any real-world significance. This idea, which has been put forward in various forms over time, would in essence see regions (and perhaps localities) take on a greater political salience in the context of a unified Europe, with national levels of government retreating from their current pre-eminence. Currently, it appears that the great interest in this idea at the time of the Maastricht Treaty has faded, and that its strongest erstwhile advocates (actors from powerful regional governments such as the German Länder) have actually been content to ensure that their powers are constitutionally entrenched in terms of *national* rather than EU systems. *The Treaty makes no mention of subnational governments in its sections on subsidiarity, concentrating solely on relations between national and EU levels.* However, it is clear that given the power of certain regional-level actors – for example, the Länder could actually veto any new EU Treaty under the terms of the

¹² The two classic examples are the ECJ’s rulings in the (1963) *Van Gend* and (1964) *Costa* cases. In the first case (*Van Gend*), the ECJ decided that EC law gives citizens rights which national courts must respect, even if national governments do not pass the necessary enabling legislation - the principle of ‘direct effect’. In the second case (*Costa*), the ECJ ruled that if national and EC laws conflict, then EC law must prevail – the principle of ‘supremacy’. (Foot note continues on next page)
(Foot note 12 continued). Such ambitious rulings are currently out of fashion, but the Court retains its ability to shape both what member states can do legally within the EU system and the principles on which that system is based.

German constitution – European integration will have to respect the powers of devolved or decentralised administrations in at least some of the member states. Indeed, the AP has an attached declaration of its own to this very effect, at the behest of the EU’s federal member states (Austria, Belgium and Germany). This declaration is of uncertain legal force, but its political weight is significant.

7.0: Examples of Good Practice

Because subsidiarity is an inherently controversial concept which owes its role in the EU system to at least three different models (see section 3.2 above), it is difficult to provide examples of good practice: such examples inevitably reflect a particular view of what subsidiarity is, or ought to be. Perhaps the AP is the most suitable instance to consider here: in seeking to clarify how subsidiarity should be operationalised in the EU, it in fact revealed rather than removed the complexities of the issue. It is to be hoped that the current Convention, which must draw on a wide range of inputs from different actors and all levels of government and thus produce a document based on stakeholder dialogue, will do rather better.

8.0: Considerations For NI Policy-Makers

There are several issues about subsidiarity which NI policy-makers could usefully consider. These refer to the ongoing NI reform process, the impact of EU Treaty reform on subnational governance, and the opportunities for NI actors which could be created as a result.

8.1: The NI Reform Process

The first issue to consider is how NI should seek to situate itself in the changing EU structure. This is partly a matter of increasing the capacity of NI to shape EU policy outputs by lobbying etc. It is also, and perhaps more importantly, a matter of making sure that the way NI restructures itself politically is capable of meshing with the changing EU order. Evidence shows that those subnational regions which achieve this are better able to exploit the opportunities available in the EU context than those which do not, no matter how legislatively powerful such regions are. Thus, NI should try to ensure that all

decisions made by the UK government about subsidiarity reflect NI's best interests in terms of its own political organisation and economic development (especially regarding the marketing of the region). There are two further related points. First, NI actors must monitor the impact of subsidiarity on the UK devolution process, to ensure that the former does not constrain the latter (much as the German Länder have done). Second, and more controversially, NI actors must consider how they will reflect the concept of subsidiarity within NI itself. This is because the principle has potential as a means to improve community relations (especially in its civil society model). It is also because concerns voiced by regional actors about a potential loss of power as a result of European integration are likely to be heard more sympathetically if such actors can show how they use subsidiarity internally to promote a healthy civil society (one of the EU's current major concerns – see below).

8.2: The Convention

NI policy makers must also consider the workings and products of the Convention on the Future of Europe. This is because subsidiarity is a key item on the agenda (separation of powers between national and EU levels; the role of national parliaments in EU decision-making). Here, the major concern must be to ensure that not only national, but sub-national/regional parliaments and assemblies are given their proper role. In particular, if, as is possible, a new body is established to make decisions about how subsidiarity is implemented, NI actors will have an interest in making sure that parliaments/assemblies from *all* tiers are represented on it. On a related issue, if the Convention does produce a recommendation that the EU should lose some of its existing powers, but gain others – as is entirely possible – NI actors will have an interest in seeing that this is done to the advantage of NI and other regional/local governments.

8.3: Opportunities for NI Actors

Subsidiarity may provide opportunities for NI actors to provide models of good practice which can be 'exported' to other parts of the EU, especially after its next round of enlargement. This will be especially likely if current attempts to reintegrate a social element to subsidiarity bear fruit as one strand of the process of making civil society

more active in EU governance (as advocated in the Commission's White Paper on European Governance of 2001 and much rhetoric since then). Here, NI's experience of governance by (social) partnership, and also of cross-border cooperation, is likely to provide opportunities to play a role in the remaking of European civil society. This is especially likely in the context of the Peace 2 programme, which provides an opportunity for NI to construct new and stronger European links which will help make good any future reduction in EU funding to the region.

9.0: Conclusions

Subsidiarity is an issue which NI actors must seek to shape. To date, subsidiarity's potential to help democratise and clarify EU governance has been truncated, in particular because it has effectively been made secondary to proportionality. NI actors must seek to ensure that both their own good practice in subsidiarity (for example, regarding social partnerships or equality legislation) and the interests of devolved administrations in general are reflected in any reforms made to both the principle and its application. Such positive action would undoubtedly help NI in its declared goal of becoming a more outward and forward-looking region.

In the context of the Convention on the Future of Europe, subsidiarity has again risen up the EU agenda, and is once more exciting debate about the separation of powers between the EU and its member states.

NI actors must engage with this debate because, notwithstanding the declaration attached to the Amsterdam Protocol, *the Treaty effectively refers only to relations between the EU and national levels when it considers subsidiarity; any changes to the Treaty, or institutions created to help 'police' subsidiarity, are thus unlikely to reflect the interests of subnational governments without a concerted input from them.*

The present process of reflection about subsidiarity is an opportune moment for NI to consider how it wishes to embed itself in the EU structures, and how the latter might best reflect its interests. This opportunity must not be missed, because the next

round of EU Treaty reform, scheduled for 2004, is supposed to be the last major reform round for the foreseeable future.