

AMENDMENT FORM

Suggestion for amendment of Article : Subsidiarity Protocol

By Mr Andrew Duff, Paul Helminger, Peeter Kreitzberg, Algirdas Gričius, Puiu Hasotti, Jelko Kacin, Zekeriya Akçam, Members of the Convention

Lone Dybkjaer, Willem Van Eekelen, Lord Robert MacLennan of Rogart, Nesrin Uzun, Marios Matsakis, Androula Vassiliou, Istvan Szent-Ivanyi, Peter Eckstein-Kovacs, Ibrahim Ozal, alternate Members of the Convention.

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

This Protocol establishes the conditions for the application *and monitoring* of the principles of subsidiarity and proportionality as enshrined in Article 8 of the Constitution.

1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality as laid down in Article 8 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.
3. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union *legislature*. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national parliaments of the Member States.
4. The Commission shall justify its proposals with regard to the principle of subsidiarity *and proportionality*. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with *these principles*. This statement should contain some assessment of a proposal's financial *and regulatory impact*. *The* reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any *financial or administrative duties* falling upon the Union, national governments, regional or local authorities, economic operators and citizens to be *reasonable* and commensurate with the objective to be achieved.

4 bis. Upon the adoption of a framework law, Member States will stipulate, in the form of an annex, how they intend to transpose the legislation into their national and, where appropriate, regional legislation. They shall declare which of their parliaments have the relevant legislative competence for the policy sector in question.

5. Any national parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative

powers. ***Neither the European Parliament nor the Council may initiate their legislative procedures until the six-week period has elapsed.***

6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.

Where at least one third of national parliaments issue ***similar*** reasoned opinions on ***the proposal's*** non-compliance with the principle of subsidiarity, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. ***Delete***

8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments ***or regional parliaments with legislative powers***, in accordance with their respective constitutional rules.

9. The Commission shall submit each year to the European Council, the European Parliament and the Council a report on the application of Article 7(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

Explanation:

In the form presented in CONV 579/03 this Protocol is not appropriate for a constitution. The 'High Contracting Parties' of international treaty law are subsumed within the constitutional settlement. We have modified and shortened the preamble, therefore.

3. *In paragraph 3 the proper reference is to the legislature and not the legislator.*

4. *In paragraph 4 a reference needs to be added to proportionality.*

The Praesidium's requirement on the Commission to assess the regulatory impact at and below national level is necessary but insufficient.

In a new 4 bis, therefore, we make it clear that it must also fall to member state governments to indicate how they intend to carry out their obligations under EU law to implement framework laws within their domestic jurisdictions, including at the regional level. Member states shall also designate which of their national or regional parliaments have legislative competence in the specific area.

The term 'burden' is infelicitous. Government means rules, and it is silly to imply otherwise. Likewise, the practical application of these principles does not imply minimised rules but reasonable ones.

5. *We have added the necessary restraint on the legislature not to begin its formal legislative procedures until national parliaments have had the time to respond.*

6. *There has to be the qualification here that the reasoned opinions of national parliaments have to be the same or going in the same political direction before the Commission is obligated to react. A situation could perfectly well arise where, for example, the Italian Parliament were to complain that a draft law did not go far enough towards harmonisation at the EU level and, at the same time, the UK Parliament, for example, objected that the same proposal went too far towards EU centralisation. It is not enough to say that both opinions should be reasoned. The two submissions might be not only reasonable but also flatly contradictory, in which case the Commission would be very well justified in sticking to its original formulation of the common interest.*

7. *The Praesidium's proposal is not faithful to the result of the Working Groups which rejected the formal possibility of national parliaments to interrupt the Union's legislative procedure once it was underway. National parliaments should stick to their primary role which is to influence and hold to account the performance of their ministers in Council. Surely it is up to ministers in the Council to represent the views of their national parliaments.*

If national parliaments remain dissatisfied at the end of the process they will be able to insist that their own government raises a complaint at the Court of Justice.

Moreover, the speed with which the conciliation procedure starts is such that, in most circumstances, it is completely impracticable to expect national parliaments to be able to deliver a reasoned opinion.

8. *As the European Parliament has proposed, regional parliaments with legislative powers should also be able to motivate a Member State appeal to the ECJ.*