

AMENDMENT FORM

Suggestion for protocol : Sub

By Mr Hain

Status : Member

[PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article 8 of the Constitution, and to establish a system for monitoring the application by the institutions of those principles.

HAVE AGREED UPON the following provisions, which shall be annexed to 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.

1 bis. For Union action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Union.

The following guidelines should be used in examining whether the above mentioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Union action would conflict with the requirements of the Constitution or would otherwise significantly damage Member States' interests;
- action at Union level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

1 ter. The form of Union action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Union shall legislate only to the extent necessary. Other things being equal, framework laws should be preferred to laws.

1 qua. Regarding the nature and the extent of Union action, Union measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Constitution. While respecting Union law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Union measures should provide Member States with alternative ways to achieve the objectives of the measures.

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~~ any 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 and to the Committee of the Regions at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions for adoption under the legislative procedure respectively, upon adoption, to the national parliaments of the Member States and the Committee of the Regions.

4. The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain recitals stating the reasons on which it is based and a detailed statement in order to make ~~ing~~ it possible to appraise the compliance of the legislative proposal with the principles of subsidiarity and proportionality. ~~The~~^{is} statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. 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 burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.
5. Any national parliament of a Member State and the Committee of the Regions 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 principles of subsidiarity and proportionality. ~~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} will be made in accordance with the particular constitutional arrangement and practice of each Member State.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments and the Committee of the Regions.

Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principles of subsidiarity and proportionality, 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.

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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 principles of subsidiarity and proportionality, where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules. Under the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.

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.
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Explanation (if any) :

Para 1bis-1qua

This language is updated from paras 5, 6, and 7 from the original Protocol. It offers useful guidance on what subsidiarity and proportionality mean in practice, before moving on detail the operational side of monitoring compliance with these principles. Such guidelines will be invaluable to national parliaments as they consider legislative proposals.

Para 2

WGI recommends more robust language than the draft text proposes.

Para 3

Later in the Protocol we give the CoR jurisdiction to bring actions to the ECJ “on legislative acts on which it was consulted”. The Protocol must therefore recognise the mechanism by which the CoR can receive the texts of legislative proposals and amended proposals, at the same time as national parliaments.

Para 4

Throughout the draft Protocol we have inserted references to proportionality alongside those references to subsidiarity. As drafted, the Protocol provides no indication of how the principle of proportionality is to be monitored. WGIV recommended that the link between the two principles be emphasised. Decisions on proportionality would be of a similar political content to those of subsidiarity. It therefore makes sense to have such rulings being made by a group with no vested interest in action at the European level (ie. national parliamentarians). The simplest and lightest way of doing so would be for national parliaments to consider all legislative proposals for compliance with the principle of proportionality within the mechanism already proposed for subsidiarity.

Para 5

The current draft could be deemed to interfere with national constitutional arrangements. Our proposed re-draft confirms that the method of consultation is for Member States’ domestic constitutional arrangements.

Para 6

The key to the new mechanism’s success will be credibility. One of the problems identified at Laeken was the public concern that Europe is inveigling itself “into the nooks and crannies of daily life”. Regardless of whether or not we believe this is the case, there is certainly a real fear that this is so. Our aim should be to assuage this fear by ensuring that this mechanism makes all those legislating think harder about the requirements contained within this Protocol.

Para 7

This paragraph over complicates the mechanism and, in practice, would add to an already lengthy decision-making process. Para 1 of the Protocol already places the responsibility on all institutions to “ensure constant respect for the principles of subsidiarity and proportionality”. Furthermore, if

national parliaments feel that a legislative amendment does not comply with these principles, they have the option to inform their national government through the traditional scrutiny process.