

## AMENDMENT FORM

### Suggestion for protocol on the application of the principles of subsidiarity and proportionality

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Status :Alternate

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## DRAFT

### [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.
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 legislator. 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 proposal with regard to the principle of subsidiarity. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity. This 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. **In particular, this means that the Union should only take legislative action when other action, such as alternative non-binding instruments and**

**the possibility of relying on self-regulation, would not achieve the objectives.** 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 may, within six weeks from the date of transmission of the Commission's legislative proposal, send to ~~the Presidents of the~~ 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.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments. Where at least **two thirds** of national parliaments issue reasoned opinions on the Commission 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. The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.
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 infringements of the principle of subsidiarity, 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 8(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) :**

Paragraph 4:

*The text should not give the impression that any, however modest, assessment of the proposal's financial impact etc. would be sufficient. The Protocol should also reflect the need to enforce the*

*principle of horizontal subsidiarity (i.a. functional subsidiarity).*

*Paragraph 5:*

*At the level of primary law, it is not the usual practice to identify, within the Union's institutions, the persons to whom official letters or other such documents are addressed.*

*Paragraph 6:*

*The threshold of one third is too low and should be raised to two thirds of national parliaments.*

*Paragraph 9:*

*The provision should refer to Article 8, paragraph 3, of the Constitution on subsidiarity.*