

AMENDMENT FORM

Suggestion for protocol on the Application of the Principles of Subsidiarity and Proportionality

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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,

RECOGNISING the important role national parliaments have in monitoring of the application of the principles of subsidiarity and proportionality, notably through the scrutiny, in accordance with national constitutional procedures, of their government's actions in the Council,

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 **properly justified** 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 principles of subsidiarity **and proportionality**. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with **these principles 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. 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 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 **the fullest** account of the reasoned opinions of the national parliaments.

Where at least one third 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. **In case of any significant amendment to the Commission's proposal**, 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~~ **within six weeks from the date of transmission of the amendment**, ~~issue send to the Commission~~ a reasoned opinion stating why they consider ~~either that the Council's common position the proposal, as amended, does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply.~~ **The Commission shall send the reasoned opinion, together with the Commission's own observations, to the European Parliament and to the Council. At the Conciliation Committee meeting, The Commission, 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 infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules. Under the same [current Article 230] of the Constitution, the Committee of the Regions may also bring such actions on grounds of infringement of the principle of subsidiarity 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 national parliaments**, to the Committee of the Regions and to the Economic and Social Committee.

Explanation :

Preamble: A new paragraph is proposed to the preamble of the protocol to highlight the importance of national parliaments in the control of the application of the principles of subsidiarity and proportionality. In addition to the new procedures established in this protocol, the national parliaments can control the application of both these principles with a continuous scrutiny of their government's actions within the Council. This should be recognised in the preamble.

Paragraph 2: Departure from the requirement of prior consultation on the grounds urgency or confidentiality should remain highly exceptional and always be properly justified. As regards confidentiality in particular, the scope of the exception should not in any event be broader than what follows from the relevant Union rules governing public access to documents, that is, at the moment, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Paragraph 4: The implementation of the principle of proportionality remains imprecise in the Praesidium drafts. Article 8 of the draft text gives a satisfactory definition of the principle. Article 9 states that the institutions of the Union shall apply the principle of proportionality in accordance with the provisions of this protocol. The only mention of the principle of proportionality in the operative parts of the protocol in paragraph 1 refers back to article 8 of the Constitution. With only such a circular reference to the principle, the protocol with its present wording does not give any guidance on how the principle of proportionality should be applied. Paragraph 4, especially when it includes details on how the Commission should assess the impact of its proposals, deals in fact with both principles. This should be recognised in the text of the paragraph with explicit references also to the principle of proportionality.

The text should not give the impression that any, however modest, assessment of the proposal's financial impact etc. would be sufficient. Thus word "some" should be deleted.

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 obligation incumbent upon the European Parliament, the Council and the Commission to take account of the reasoned opinions should be spelt out in a more forceful fashion, for example, along the lines with the proposed paragraph 7 below.

Paragraph 7: In the proposed paragraph 7, the participation by the national parliaments is linked to the stage where the proposal is deliberated in the Conciliation Committee. However, since only a small fraction of legislative proposals ends up in the Committee and since this may not automatically be the case with the most important ones, it is not appropriate to limit the participation by the national parliaments to this stage only. In line with the views expressed within the working group on national parliaments, it could therefore be proposed that the national parliaments be given the right to express their opinion on the compliance with the principle of subsidiarity at all stages of the legislative procedure when there is a significant amendment to the Commission's proposal. The reasoned opinions could be sent to the Commission which would then have the obligation to forward them (together with the Commission's own observations) to the European Parliament and the Council.

Paragraph 8: *It already follows from the existing Article 230 EC and from the case law of the European Court of Justice that Member States may bring actions on the grounds of infringement of the principle of subsidiarity. As such an action may, if appropriate under national constitutional rules, also be brought at the request of a national parliament the first sentence of the proposed paragraph 8 is superfluous.*

Paragraph 9: *The provision should refer to Article 8, paragraph 3, of the Constitution on subsidiarity. The report referred to in the paragraph should also be sent to the national parliaments.*