

AMENDMENT FORM

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

By : Ms Gisela Stuart, Mr Hubert Haenel, Mr Alberto Costa, Mr Henrik Dam Kristensen, Mr David Heathcoat-Amory, Ms Liene Liepina, Mr Jozef Oleksy, Mr Rihards Piks (Members) and Ms Liia Hänni, Mr Guntars Krasts, Mr Guilherme d'Oliveira Martins and Lord Tomlinson (Alternates)

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 **principles of subsidiarity and proportionality**. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the **principles of subsidiarity and proportionality**. 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. **If any chamber of a national parliament**, within six weeks from the date of transmission of the Commission's legislative proposal, **sends** 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 or proportionality, the European Parliament, the Council and the Commission shall take the utmost account of that reasoned opinion**. [text deleted]
6. [text deleted] Where at least one third of **the chambers of national parliaments (counting for this purpose a unicameral parliament as two chambers)** issue reasoned opinions on the Commission proposal's non-compliance with the **principles of subsidiarity or proportionality**, the Commission shall review its proposal, **taking the utmost account of the reasons given by national parliaments**. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give **detailed reasons for its decision, relating these to the reasoned opinions submitted by national parliaments**.
- 6 bis: **Where at least two-thirds of the chambers of national parliaments (counting for this purpose a unicameral parliament as two chambers) issue reasoned opinions on the Commission proposal's non-compliance with the principles of subsidiarity or proportionality, the proposal shall not be proceeded with. If the Commission subsequently introduces a new proposal on the same subject, it shall explain how it has taken into account the reasoned opinions of national parliaments on the previous proposal.**

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, **which period shall not be less than four weeks**, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principles of **subsidiarity or proportionality** 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 **utmost** account of the opinions expressed by the national parliaments of the Member States. **If a third of the chambers of national parliaments (counting for this purpose a unicameral parliament as two chambers) issue such reasoned opinions, the Council or the European Parliament, as the case may be, shall reconsider their common position or amendments, may decide to maintain, amend or withdraw them, and shall give reasons for their decision.**
8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by **national parliaments [text deleted]** on grounds of infringement of the **principles of subsidiarity or proportionality [text deleted]**. 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, **national parliaments** and the Council a report on the application of Article **8(3) and (4)** of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

Explanation:

The principles of subsidiarity and proportionality are closely connected, and, although WG I confined its recommendations to subsidiarity, WG IV's report indicated that the link between subsidiarity and proportionality could be 'further emphasised'. A number of amendments therefore include the principle of proportionality within the provisions of the Protocol.

Para 5 in the Praesidium draft seeks to tell national parliaments what they 'may' do. In fact national parliaments could do this already; the change made by the early warning mechanism is that some consequences should flow from national parliaments giving their views. The amendments above therefore alter para 5 and the first part of 6 to say that if reasoned opinions are sent, the

institutions will take account of them. The amendments above also provide for individual chambers to send reasoned opinions, as do other amendments following. It will be difficult in many parliaments to co-ordinate two chambers within the time available, especially as the two chambers will have to agree on the wording of any reasoned opinion, and it will be administratively cumbersome and in some cases constitutionally difficult for the two chambers to transmit joint reasoned opinions. Also, since a reasoned opinion from a single chamber in a bicameral parliament will not count, the one-third threshold will be higher than if chambers could send reasoned opinions separately. Counting the unicameral parliaments as two chambers would ensure that national parliaments, whether bicameral or unicameral, remain equal for this purpose.

The last two amendments to paragraph 6 would somewhat strengthen the duty of the Commission to give properly-thought-out reasons, making it harder for it proceed without engaging with the arguments of national parliaments.

New paragraph 6 bis would provide that, if as many as two-thirds of chambers objected on grounds of subsidiarity or proportionality, the proposal could not be proceeded with. The Commission would not be prevented from introducing a new proposal, and so would retain its right of initiative.

It is not clear that the period specified for national parliaments to submit reasoned opinions at the conciliation stage would give them time to do so. The first amendment to paragraph 7 therefore introduces a period of 4 weeks in which national parliaments would be able to submit reasoned opinions. The final amendment to this paragraph would require the Council or European Parliament to reconsider if at least one-third of national parliaments submitted reasoned opinions, rather than just their representatives in the Conciliation Committee taking account of the views of national parliaments.

It is not clear why national parliaments should have to commission governments to bring actions to the ECJ for them, especially when the Committee of the Regions would be entitled to bring cases directly. The amendments to paragraph 8 create a right for national parliaments to bring cases independently of their governments, as recommended by WG I. It is already possible for member state governments to bring such cases on behalf of national parliaments, and this will continue to be the case in those member states where this is constitutionally appropriate.

Annual Commission reports will be directly relevant to national parliaments, and nearly every other body will be receiving them, including the CoR and ECOSOC. The omission of national

parliaments looks like an oversight, rectified by the amendment to paragraph 9. The other amendment corrects the cross-reference to the relevant Article of the draft constitutional treaty and makes clear that the annual report should cover proportionality as well as subsidiarity.