

## AMENDMENT FORM

### Suggestion for 'Draft Protocol on the application of the principles of subsidiarity and proportionality'

By : TIMOTHY KIRKHOPE MEP

Status : Member

PRAESIDIUM	TIMOTHY KIRKHOPE MEP
<p>THE HIGH CONTRACTING PARTIES,</p> <p>WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.</p> <p>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.</p> <p>HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:</p>	<p>THE HIGH CONTRACTING PARTIES,</p> <p>WISHING to ensure that decisions are taken as closely as possible to the citizens of the <u>Community</u>.</p> <p>RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article 8 of the <u>simplifying Treaty</u>, and to establish a system for monitoring the application by the institutions of those principles.</p> <p>HAVE AGREED UPON the following provisions, which shall be annexed to the <u>simplifying Treaty</u>:</p>
<p>1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.</p>	<p>1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the <u>simplifying Treaty</u>.</p>
<p>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.</p>	<p>2. <u>The European Parliament shall have the right of initiative.</u></p> <p><b>Explanatory note: The simplifying Treaty should move power away from the unelected EU Institutions to the elected ones. As part of this process, the right of initiative should reside with the European Parliament rather than the European Commission. National parliaments, national governments, civil society and members of the public should have the right to propose legislative changes to Members of the European Parliament who can then debate whether to carry them forward. This would revitalise debate, quell voter apathy and reduce the democratic deficit.</b></p>
<p>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.</p>	<p>3. <u>The European Parliament shall send all legislative proposals agreed to by a majority vote to the European Council who will then decide, by qualified majority, which should be debated by national parliaments.</u></p> <p><b><u>To be inserted in the relevant section of the simplified Treaty: Legislative proposals under the exclusive competence of the Community (Article 11) require a qualified majority of the national parliaments to become a European Community law or opinion. Proposals under the shared competence of the Community (Article 12) or areas for supporting action (Article 15) shall require the unanimous</u></b></p>

	<b><u>support of the national parliaments for approval. Proposals rejected as European Community laws or opinions can be adopted by individual Member States on a bilateral basis.</u></b>
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. 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.	4. The <i>European Parliament</i> shall justify its proposal <i>to the European Council</i> 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 <i>an</i> assessment of the proposal's financial impact. The reasons for concluding that a <i>Community</i> objective can be better achieved at <i>Community</i> level must be substantiated by qualitative and, wherever possible, quantitative indicators. The <i>Parliament</i> shall take account of the need for any burden, whether financial or administrative, falling upon the <i>Community</i> , 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.	5. Any national parliament of a Member State may, within six weeks from the date of transmission of <i>a European Parliament proposal approved by the European Council</i> , send to <i>a Mediating Committee</i> 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.  <b>Explanation: The Mediating Committee shall be composed of representatives of the national Parliaments concerned, the European Parliament and the European Council. The details of the precise composition of the Mediating Committee, what the remit of the Committee should be and how legislation should be referred back to other national parliaments can, of course, be debated.</b>
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 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.	6. The <i>Mediating Committee</i> shall take account of the reasoned opinions of the national parliaments.  Where at least one third of national parliaments issue reasoned opinions on the proposal's non-compliance with the principle of subsidiarity, the <i>proposal shall be withdrawn and Member States may proceed on a bilateral basis.</i>
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.	<i>DELETE</i>

<p>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.</p>	
<p>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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.</p>	<p>8. Under Article [current Article 230] of the <i>simplifying Treaty</i>, there shall be a <i>European Arbitrator who can be consulted in cases when it is felt that the principle of subsidiarity has been misapplied, at the request of a single national government or a petition by forty percent of MPs in the national parliaments of at least a quarter of the Member States</i></p> <p><b>Explanation: MEPs and members of the European Scrutiny Committees in the national parliaments would elect an Arbitrator who had the backing of at least four national governments. The Arbitrator would then be appointed for a five-year term. The principle of having a European Arbitrator combines the very best of both suggestions for monitoring subsidiarity. The <i>judicial element</i> is contained in the fact that Member States would be encouraged to nominate candidates with a legal background and the <i>political element</i> is maintained through selection by national governments and election by MPs and MEPs. (For more information, see working document 10 from working group V).</b></p> <p><b>Please note that the European Arbitrator is for existing European Community laws and opinions. Just as citizens turn to the European Ombudsman to ensure the application of European law and the Court of Auditors to guarantee the financial regularity of European funding, they could consult a European Arbitrator in cases where they feel the principle of subsidiarity has been misapplied. Whereas the Mediating Committee considers legislative proposals before adoption.</b></p>
<p>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.</p>	<p>9. The Commission shall submit each year to the European Council, the European Parliament and <i>national parliaments</i> a report on the application of Article 7(3) of the <i>simplifying Treaty</i>.</p>

## AMENDMENT FORM

### Suggestion for amendment the Protocol on the application of the principles of subsidiarity and proportionality, Part I of the Constitution

By: Teija Tiilikainen, Antti Peltomäki, Kimmo Kiljunen, Jari Vilén, Hannu Takkula and Esko Helle

Status :   Tiilikainen, Kiljunen, Vilén- Members  
              Peltomäki, Takkula and Helle - Alternates

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### PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

#### Paragraph 7:

7.   The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States. ~~or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.~~
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#### Explanation (if any) :

Only Member States should be able to bring actions to the Court of Justice on the grounds of infringement of the principle of subsidiarity. As such an action may, if appropriate, also be brought at the request of a national parliament, the last sentence of the proposed paragraph 7 appears superfluous and should thus be deleted. Whether and how this might be done is a purely internal matter, and should therefore not be included in the Constitution.

## FICHE AMENDEMENT

Proposition d'amendement au protocole:

subsidiarité et proportionnalité

Déposée par Monsieur:

Erwin Teufel

Qualité:

Membre

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### *Texte du Praesidium*

3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Gesetzgebungsakt gleichzeitig den nationalen Parlamenten der Mitgliedstaaten und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an die nationalen Parlamente der Mitgliedstaaten weiter.
4. Die Kommission begründet ihren Vorschlag im Hinblick auf die Grundsätze der Subsidiarität und der Verhältnismäßigkeit. Jeder Gesetzgebungsvorschlag sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob die Grundsätze der Subsidiarität und der Verhältnismäßigkeit eingehalten wurden. Dieser Bogen sollte Angaben zu den voraussichtlichen finanziellen Auswirkungen sowie – im Fall eines Rahmengesetzes – zu den Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebener

### *Amendement proposé*

3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Gesetzgebungsakt gleichzeitig den nationalen Parlamenten der Mitgliedstaaten **beziehungsweise jeder Kammer eines nationalen Parlaments** und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an die nationalen Parlamente der Mitgliedstaaten weiter.
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nenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass ein Ziel der Union besser auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.

nenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass **das Ziel einer in Betracht gezogenen Maßnahme von den Mitgliedstaaten weder auf zentraler noch auf regionaler oder lokaler Ebene ausreichend erreicht werden kann, sondern vielmehr wegen ihres Umfangs oder ihrer Wirkungen wirksamer** auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. **Folgende Leitlinien sind bei der Prüfung der Frage, ob die genannten Voraussetzungen erfüllt sind, zu befolgen:**

- **Der betreffende Bereich weist transnationale Aspekte auf, die durch Maßnahmen der Mitgliedstaaten einschließlich ihrer regionalen und lokalen Gebietskörperschaften nicht ausreichend geregelt werden können,**
- **alleinige Maßnahmen der Mitgliedstaaten oder das Fehlen von Unionsmaßnahmen würden gegen die Anforderungen des Verfassungsvertrags (beispielsweise Erfordernis der Korrektur von Wettbewerbsverzerrungen, der Vermeidung verschleierter Handelsbeschränkungen oder der Stärkung des wirtschaftlichen und sozialen Zusammenhalts) verstoßen oder auf sonstige Weise die Interessen der Mitgliedstaaten erheblich beeinträchtigen,**
- **Maßnahmen auf Unionsebene würden wegen ihres Umfangs oder ihrer**

**Wirkung im Vergleich zu Maßnahmen auf der Ebene der Mitgliedstaaten einschließlich ihrer regionalen und lokalen Gebietskörperschaften deutliche Vorteile mit sich bringen.**

- Die Kommission berücksichtigt ~~dabei~~, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.

7. Der Gerichtshof ist für Klagen wegen Verstoßes eines Gesetzgebungsakts gegen das Subsidiaritätsprinzip zuständig, die nach den Modalitäten des Artikels [III-266 (ex-Artikel 230)] der Verfassung durch einen Mitgliedstaat erhoben oder gemäß der jeweiligen innerstaatlichen Rechtsordnung von einem Mitgliedstaat im Namen seines nationalen Parlaments oder einer Kammer dieses Parlaments übermittelt werden.

Gemäß dem genannten Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Gesetzgebungsakte, für deren Annahme die Anhörung des Ausschusses der Regionen nach der Verfassung vorgeschrieben ist, erhoben werden.

7. Der Gerichtshof ist für Klagen wegen Verstoßes eines **Rechtsakts** gegen das Subsidiaritätsprinzip zuständig, die nach den Modalitäten des Artikels [III-266 (ex-Artikel 230)] der Verfassung durch einen Mitgliedstaat erhoben oder gemäß der jeweiligen innerstaatlichen Rechtsordnung von einem Mitgliedstaat im Namen seines nationalen Parlaments oder einer Kammer dieses Parlaments übermittelt werden.

Gemäß dem genannten Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Gesetzgebungsakte, für deren Annahme die Anhörung des Ausschusses der Regionen nach der Verfassung vorgeschrieben ist, erhoben werden.

8. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament, dem Rat und den nationalen Parlamenten der Mitgliedstaaten jährlich einen Bericht über die Anwendung des Artikels I-9 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.

8. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament, dem Rat und den nationalen Parlamenten der Mitgliedstaaten **beziehungsweise jeder Kammer eines nationalen Parlaments** jährlich einen Bericht über die Anwendung des Artikels I-9 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.

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### **Begründung:**

Nr. 3, 8

Bei der begrüßenswerten Ausdehnung des Frühwarnsystems auf die **zweiten Kammern** von nationalen Parlamenten wurde die Berücksichtigung in Nr. 3 und Nr. 8 leider vergessen.

Nr. 4

Die **volle Definition** des Subsidiaritätsgrundsatzes des Art. I-9 Abs. 3 sollte auch im Subsidiaritätsprotokoll Prüfungsmaßstab sein, um eine kohärente Anwendung zu gewährleisten. Dies ist auch in der Nr. 5 des geltenden Protokolls der Fall. Weiter sollten die **bewährten Leitlinien** der Subsidiaritäts- und Verhältnismäßigkeitsprüfung des bisherigen Subsidiaritätsprotokolls auch in der neuen Fassung niedergelegt werden. Sie liefern die notwendige Konkretisierung der Vorgaben des Verfassungstextes.

Nr. 7

Das **Klagerecht** sollte hinsichtlich **aller Rechtsakte** (nicht nur hinsichtlich Gesetzgebungsakten) gelten. Gerade Verordnungen können zu detailliert sein und dadurch gegen den Subsidiaritätsgrundsatz verstoßen.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : Protocole Subsidiarité

Déposée par ~~Madame ou~~ Monsieur : Danny PIETERS

Qualité : ~~- Membre~~ - Suppléant

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- 1) Rayer les ajouts « ou chaque chambre d'un Parlement national » et « ou chaque chambre d'un parlement national » dans le § 5.
  - 2) Rayer « ou par une chambre d'un Parlement national » à l'alinéa 1 du § 6.
  - 3) Remplacer le deuxième alinéa du § 6 « Les Parlements nationaux ...un vote », par le texte suivant :  
« Chaque Etat Membre disposera de deux votes pour l'ensemble des chambres et assemblées parlementaires constituant des 'parlements nationaux' au sens du § 10 de ce Protocole. Chaque Etat Membre décidera souverainement d'après sa constitution de la manière dont la prise de décision concernant ces deux votes sera distribuée entre ses 'parlements nationaux' au sens du § 10 de ce Protocole. Il ne pourra être fait appel à des fraction de vote. »
  - 4) Rayer à l'alinéa 3 du § 6 : « et de leurs chambres »
  - 5) Rayer au §8 « ou dune chambre de celle-ci »
  - 6) Introduire un nouveau § à la fin du Protocole, à savoir :  
« 10. La notion de Parlement national dans ce Protocole couvre tant les Parlements unicaméraux que chacune des chambre des Parlements bicaméraux. Elle couvre également les Parlements des entités fédérées des Etats Membres auxquelles la constitution de ces Etats a reconnu des compétences législatives autonomes. Le cas échéant, les Etats Membres transmettent à l'Union européenne, une liste des assemblées et chambres auxquelles une compétence législative autonome a été constitutionnellement attribuée au sein des Etats membres, ainsi qu'un inventaire des matières pour lesquelles les assemblées sont compétentes. »
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### Explication éventuelle :

Nous ne pouvons que répéter qu'il n'appartient pas à la Convention ni à l'Union européenne de modifier la répartition constitutionnelle des compétences entre les chambres d'un parlement ou celle qui existe, au sein de certains Etats membres, entre le niveau fédéral et le niveau des entités fédérées. Par conséquent toutes les assemblées parlementaires possédant une compétence législative qui est reconnue par la Constitution d'un Etat membre, doivent être traitées sur un pied d'égalité par l'Union européenne. Tout le texte du protocole a été rédigé comme s'il n'existait qu'un seul (véritable) parlement par Etat membre et que ces « véritables » parlements, par voie de conséquence, « établissent eux-mêmes les procédures internes en ce qui concerne la consultation de chambres différentes dans le cas d'un système bicaméral et/ou, là où cela est d'application, d'un système comportant des parlements régionaux qui ont une compétence législative. » Cette proposition peut constituer une atteinte à l'ordre constitutionnel interne de certains états membres et ne tient également pas suffisamment compte des réalités politiques qui peuvent apparaître. Illustrons-en l'une et l'autre. Il existe certains pays tels que la Belgique où la compétence législative des entités fédérées est juxtaposée à celle de la Fédération et dans lequel l'Etat fédéral n'a pas de compétence, et ce, même en ce qui concerne la dimension internationale, dans les domaines où les entités fédérées sont compétentes (comme par exemple : l'enseignement, la culture, etc.) C'est de cette façon que la Constitution belge répartit les compétences. Il est tout à fait inadéquat d'écrire que les parlements nationaux eux-mêmes peuvent, si cela est approprié, consulter les assemblées régionales à pouvoir législatif. Ce commentaire semble faire preuve d'un manque de connaissance de la manière dont certains états membres se sont constitutionnellement organisés ou d'un refus d'en tenir compte. Nous osons espérer que ni l'un ni l'autre soit la réalité. Affirmer que le parlement national doit consulter les parlements régionaux en ces matières – en ce qui concerne le contrôle du principe de subsidiarité - porte atteinte à la répartition constitutionnelle des compétences en :

1. attribuant quelque compétence en la matière au parlement national/fédéral ;
2. réduisant le rôle du parlement régional à un simple rôle consultatif.

Qu'il s'agisse des deux chambres d'un parlement fédéral ou de l'existence juxtaposée d'assemblées à divers niveaux, l'on ne peut également pas passer sous silence le fait que plusieurs parlements puissent connaître des majorités différentes. Il n'appartient pas à l'Union européenne d'intervenir dans un tel champ de tension politique en considérant une assemblée parlementaire comme interlocuteur privilégié de l'Union européenne et les autres comme des assemblées qu'il ne convient que de consulter.

En ce qui concerne l'information des parlements nationaux, nous sommes partisans d'une approche large. En cette matière, nous plaidons en faveur de l'insertion du considérant suivant: Il faut donc accepter qu'en ce qui concerne ce protocole, doivent être considérés comme parlements nationaux non seulement les parlements monocaméraux mais également, le cas échéant, chacune des deux chambres dans les systèmes législatifs bicaméraux, et ce tant au niveau des états qu'à celui des entités fédérées auxquelles les constitutions nationales ont attribué une compétence législative autonome.

Une approche analogue, large et sans restrictions, ne peut pas valoir sans plus pour le contrôle de la subsidiarité – et ce, entre autres, là où l'on accorde du poids à un tiers ou un quart des parlements nationaux. Nous croyons cependant qu'il n'appartient pas à l'Union de décider de la répartition des pouvoirs législatifs entre les chambres d'un parlement bicaméral ni entre les assemblées fédérales et celle des entités fédérées (régionales) d'un Etat Membre. C'est pourquoi nous rejetons la solution arbitraire de donner à chaque chambre d'un parlement bicaméral un vote et ce même en des questions qui ne pourraient être constitutionnellement du ressort que d'une de ces chambres. De même donner le contrôle (et les votes) qu'aux chambres de l'entité fédérale alors que celle-ci pourrait constitutionnellement être tout à fait incompétente en la matière, constituerait une intrusion inacceptable de l'Union dans l'ordre constitutionnel des Etats Membres.

## FICHE AMENDEMENT

**Proposition d'amendement au Protocole subsidiarité : paragraphe 7, premier alinéa.**

**Déposée par Madame Palacio**

**Qualité : - Membre - Suppléant**

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La Cour de Justice a juridiction pour connaître des recours pour violation par un acte législatif du principe de subsidiarité, introduits conformément aux modalités prévues à l'article [III-266 (ex article 230)] de la Constitution par les États membres, ou transmis par ceux-ci conformément à leur ordre juridique ~~au nom~~ à la demande d'un Parlement national d'un État membre ou d'une chambre de ce Parlement

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### **Explication:**

Le principe de l'unicité de la représentation de l'Etat auprès des Institutions est l'un des éléments fondamentaux de l'ordre juridique de l'Union. Je ne vois pas d'intérêt à le mettre de côté, surtout lorsqu'il s'avère que la rupture de ce principe peut devenir l'instrument pour essayer de résoudre devant la Cour de Justice de l'Union de questions d'ordre politique interne.

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article : Protocole sur l'application du principe de subsidiarité**

**Déposée par Madame ou Monsieur : M. Louis Michel, M. Elio di Rupo, Mme Anne Van Lancker, membres de la Convention et M. Pierre Chevalier et Mme Marie Nagy, membres suppléants de la Convention**

**Qualité : - Membre - Suppléant**

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### **PROJET DE PROTOCOLE SUR L'APPLICATION DES PRINCIPES DE SUBSIDIARITÉ ET DE PROPORTIONNALITÉ**

LES HAUTES PARTIES CONTRACTANTES,

DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union;

DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncées à l'article I-9 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,

SONT CONVENUES des dispositions ci-après, qui sont annexées à la Constitution

1. Chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article I-9 de la Constitution.
2. Avant de proposer un acte législatif, la Commission procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées. En cas d'urgence exceptionnelle, la Commission ne procède pas à ces consultations. Elle motive sa décision dans sa proposition.
3. La Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des États membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des États

membres.

4. La Commission motive sa proposition au regard du principe de subsidiarité et de proportionnalité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité et de proportionnalité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les États membres, y inclus, le cas échéant, la législation régionale. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.
5. Tout Parlement national d'un État membre ou toute chambre d'un Parlement national peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme au principe de subsidiarité. Il appartient à chaque Parlement national ou à chaque chambre d'un Parlement national de consulter, le cas échéant, les Parlements régionaux avec pouvoirs législatifs.
6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés adressés par les Parlements nationaux des États membres ou par une chambre de ces Parlements.

Les Parlements nationaux des États membres relevant d'un système parlementaire monocaméraliste disposent de deux voix tandis que chacune des chambres relevant d'un système parlementaire bicaméraliste dispose d'une voix.

Dans le cas où les avis motivés sur le non-respect par une proposition de la Commission du principe de subsidiarité représenteraient au moins un tiers de l'ensemble des voix attribuées aux Parlements nationaux des États Membres et aux chambres des Parlements nationaux, la Commission est tenue de réexaminer sa proposition. ~~Ce seuil est d'au moins un quart lorsqu'il s'agit d'une proposition de la Commission ou d'une initiative émanant d'un groupe d'États membres dans le cadre des dispositions de l'article [III-160 (ex article 8)] de la Constitution~~ relatif à l'espace de liberté, de sécurité et de justice.

A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.

7. La Cour de Justice a juridiction pour connaître des recours pour violation par un acte législatif du principe de subsidiarité, ~~introduits conformément aux modalités prévues à l'article [III-266 (ex article 230)] de la Constitution par les États membres, ou transmis par ceux-ci conformément à leur ordre juridique au nom d'un Parlement national d'un État membre ou d'une chambre de ce Parlement~~ introduits par les États membres et **les régions à pouvoirs législatifs**, le cas échéant à la demande **des** Parlements nationaux et conformément à leur ordre constitutionnel respectif.

Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour l'adoption desquels la Constitution prévoit sa consultation.

8. La Commission présente chaque année au Conseil européen, au Parlement européen, au Conseil et aux Parlements nationaux des États membres un rapport sur l'application de l'article I-9 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.
9. **Les États membres peuvent, compte tenu de leur organisation constitutionnelle, indiquer dans une déclaration, quel est le Parlement disposant de compétences législatives qui, en fonction de chaque politique de l'Union, doit être considéré comme Parlement national au sens du présent Protocole.**

## FICHE AMENDEMENT

### Proposition d'amendement au « Projet de protocole sur l'application des principes de subsidiarité et de proportionnalité »

Déposée par Messieurs Ernâni Lopes et Manuel Lobo Antunes

Qualité : - Membre et Suppléant

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- Paragraphe 1 : « **Dans l'exercice de ses compétences**, chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution. »
- Insérer comme §1 bis: « **L'application des principes de subsidiarité et de proportionnalité respecte les dispositions générales et les objectifs de la Constitution, notamment en ce qui concerne le maintien intégral de l'acquis communautaire et de l'équilibre institutionnel, ainsi que les principes mis au point par la Cour de justice en ce qui concerne la relation entre le droit national et le droit de l'Union.** »
- **La subsidiarité est un concept dynamique qui devrait être appliqué à la lumière des objectifs énoncés dans la Constitution. Il permet d'étendre l'action de l'Union, dans les limites de ses compétences, lorsque les circonstances l'exigent et, inversement, de la limiter et d'y mettre fin lorsqu'elle ne se justifie plus ».**

Note explicative : Le critère de simplification qui a guidé la rédaction de ce protocole ne doit pas conduire à l'élimination des principes structurants de l'application de ce principe énoncés à Amsterdam.

- Paragraphe 2 : « Avant de proposer un acte législatif, la Commission, **sans préjudice de son droit d'initiative**, procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées. En cas d'urgence exceptionnelle, la Commission ne procède pas à ces consultations. Elle motive sa décision dans sa proposition »
- Paragraphe 4 : Eliminer « Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier, ainsi que de son application, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, y inclus, le cas échéant, la législation régionale ».
- Paragraphe 5 : « 5. Tout Parlement national d'un Etat membre ou toute chambre d'un Parlement national peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé **qui comportera une fiche** contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme au principe de subsidiarité. Il appartient à chaque Parlement national ou à chaque chambre d'un Parlement national de consulter, le cas échéant, de chacune des Chambres dans le cas des Parlements bicaméraux et/ou, les Parlements régionaux avec pouvoirs législatifs.

Note explicative : Le devoir de la Commission élaborer une fiche explicative et détaillée prévu au paragraphe 4, doit être aussi appliqué aux Parlements nationaux en ce qui concerne le non-respect du principe de subsidiarité.

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## AMENDMENT FORM

### Suggestion for amendment of Protocol of Subsidiarity

By Mr Sören Lekberg

Status : Member

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6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament. The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article [...] of Chapter X of Part Three of the Constitution on the area of freedom, security and justice.

After such review, the Commission<sup>1</sup> may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

~~7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.~~

~~In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.<sup>2</sup>~~

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<sup>1</sup> The handling of the reasoned opinions when the matter concerns an initiative emanating from a group of Member States on the area of freedom, security and justice should arguably be another then when it comes to a Commission proposal.

<sup>2</sup> The principle of subsidiarity is a principle of an essentially political nature, implementation of which involve a considerable margin of discretion for the institutions. Monitoring of compliance with that principle should be of an essentially political nature.

## AMENDMENT FORM

### Suggestion for amendment of Protocol of Subsidiarity

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives

Status : Member: Hjelm-Wallén

Alternate: Petersson

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6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament. The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

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~~In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.<sup>2</sup>~~

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<sup>1</sup> The handling of the reasoned opinions when the matter concerns an initiative emanating from a group of Member States on the area of freedom, security and justice should arguably be another then when it comes to a Commission proposal.

<sup>2</sup> The principle of subsidiarity is a principle of an essentially political nature, implementation of which involves a considerable margin of discretion for the institutions. Monitoring of compliance with that principle should therefore be of an essentially political nature.

**AMENDMENT FORM**

**Suggestion for amendment of Article : 7**

**Suggestion for protocol on subsidiarity**

**By Ms / Mr :           G.M. de Vries  
                              T.J.A.M. de Bruijn**

**Status :           Members                   Alternate**

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7.     The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article [230] by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

~~In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.~~

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**Explanation (if any):**     See the former Dutch amendment on this article.

## FICHE AMENDEMENT

### Proposition d'amendement au protocole sur l'application des principes de subsidiarité et de proportionnalité

Déposée par MM. O'Sullivan et Ponzano

Qualité : Suppléants

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#### **Protocole sur l'application des principes de subsidiarité et de proportionnalité : point 4**

4. La Commission motive sa proposition au regard du principe de subsidiarité et de proportionnalité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité et de proportionnalité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les États membres, ~~y inclus, le cas échéant, la législation régionale.~~ Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.

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#### **Explication:**

Certains conventionnels ont demandé la suppression de la référence à la législation régionale.

En effet, il appartient aux Etats membres de faire une appréciation de l'impact régional. D'ailleurs, il n'est pas réaliste de charger la Commission de cette analyse.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 8

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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8. The Commission shall submit to the European Council, the European parliament, the Council, the national Parliaments of the Member States **and the Committee of the regions** a report on the application of Article I-9 of the Constitution. This annual report shall also forwarded to the Economic and Social Committee.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 6

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions issued by Member States' Parliaments or by a chamber of a national Parliament **and the Committee of the Regions.**

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 5

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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5. Any national parliament of a Member State, **and the Committee of the Regions where it has been consulted** 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.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 3

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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3. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States **and 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 respectively, upon adoption, to the national parliaments of the Member States **and the Committee of the Regions**.

## AMENDMENT FORM

**Suggestion for protocol: draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 2

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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2. Before proposing legislative acts, the Commission shall consult widely. Such consultations **via in particular the Committee of the Regions** shall, where appropriate, take into account the regional and local dimension of the action envisaged.

## FICHA DE ALTERAÇÃO

### Proposta de Alteração ao Protocolo SUB

Apresentada pelos Deputados Alberto Costa e Guilherme d'Oliveira Martins

Na qualidade de Membro Efectivo e Membro Suplente

### Alterações propostas

#### ~~[PROTOCOLO] RELATIVO À APLICAÇÃO DOS PRINCÍPIO DA SUBSIDIARIEDADE E DA PROPORCIONALIDADE~~

AS ALTAS PARTES CONTRATANTES,

DESEJANDO assegurar que as decisões sejam tomadas tão próximo quanto possível dos cidadãos da União;

DETERMINADAS a fixar as condições de aplicação dos princípios da subsidiariedade e da proporcionalidade consagrados no artigo 8.º da Constituição, bem como a instituir um sistema de controlo da aplicação dos referidos princípios pelas Instituições:

ACORDARAM nas disposições seguintes, que constituem anexos à Constituição:

1. Cada Instituição assegura ~~continuamente~~ ao longo de todo o processo legislativo a observância dos princípios da subsidiariedade e da proporcionalidade definidos no artigo 8.º da Constituição.
2. Antes de propor um acto legislativo, a Comissão procede a amplas consultas, salvo em casos de especial urgência ou que exijam confidencialidade. Tais consultas deverão, se necessário, ter em conta a dimensão regional e local das acções previstas.

3. A Comissão envia todas as suas propostas legislativas e propostas alteradas aos Parlamentos nacionais dos Estados-Membros ao mesmo tempo que ao legislador da União. Logo que sejam aprovadas, as resoluções legislativas do Parlamento Europeu e as posições comuns do Conselho são enviadas por estas Instituições aos Parlamentos nacionais dos Estados-Membros.

Compete aos Governos dos Estados-Membros manter os Parlamentos nacionais totalmente informados sobre o processo legislativo, de modo a que estes assegurem a observância do princípio da subsidiariedade no âmbito das suas competências de fiscalização da acção dos respectivos Governos a nível europeu.

4. A Comissão fundamenta a sua proposta relativamente ao princípio da subsidiariedade. Todas as propostas legislativas deverão incluir uma ficha com elementos circunstanciados que permitam formular uma apreciação quanto à observância do princípio da subsidiariedade. A mesma ficha deverá conter elementos de apreciação do impacto da proposta a nível financeiro, bem como das respectivas implicações, no caso das leis-quadro, para a regulamentação a aplicar pelos Estados-Membros, ~~incluindo, nos casos em que tal se aplique, a legislação regional~~. As razões que permitam concluir que determinado objectivo da União pode ser alcançado mais adequadamente ao nível desta devem ser corroboradas por indicadores qualitativos e, sempre que possível, quantitativos.

A Comissão tem em conta a necessidade de assegurar que qualquer encargo, de natureza financeira ou administrativa, que incumba à União, aos governos nacionais, às autoridades regionais ou locais, aos agentes económicos e aos cidadãos, seja o menos elevado possível e proporcional ao objectivo a alcançar. Esta obrigação incumbe igualmente ao Parlamento Europeu e ao Conselho ao longo do processo legislativo.

5. O Parlamento nacional de qualquer dos Estados-Membros poderá, num prazo de seis semanas a contar da data de envio da proposta legislativa da Comissão, dirigir aos Presidentes do Parlamento Europeu, do Conselho e da Comissão um parecer fundamentado em que expõe as razões pelas quais considera que a proposta em questão não está em conformidade com o princípio da subsidiariedade. Cabe a cada um dos Parlamentos nacionais determinar as modalidades internas de consulta de cada uma das Câmaras, no caso dos Parlamentos bicamerais e/ ou, nos casos pertinentes, dos Parlamentos regionais com competências legislativas.

6. O Parlamento Europeu, o Conselho e a Comissão terão em conta os pareceres fundamentados dos Parlamentos nacionais.

No caso de pelo menos um terço dos Parlamentos nacionais emitir parecer fundamentado sobre o facto de a proposta da Comissão não respeitar o princípio da subsidiariedade, esta deve reexaminar a sua proposta. Reexaminada a proposta, a Comissão pode decidir mantê-la, alterá-la ou retirá-la, fundamentando a sua decisão.

7. Os Parlamentos nacionais dos Estados-Membros podem também, no prazo que medeia entre a convocação do Comité de Conciliação e a data em que este se reunir, emitir um parecer fundamentado em que exponham as razões pelas quais consideram que ou a posição comum do Conselho ou as alterações do Parlamento Europeu não respeitam o princípio da subsidiariedade. Na reunião do Comité de Conciliação, o Parlamento Europeu e o Conselho terão devidamente em conta os pareceres expressos pelos Parlamentos nacionais dos Estados-Membros.
8. Nos termos do artigo [actual artigo 230.º] da Constituição, o Tribunal de Justiça é competente para conhecer dos recursos com fundamento na violação do princípio da subsidiariedade interpostos pelos Estados-Membros, a pedido dos respectivos Parlamentos nacionais e em conformidade com as respectivas normas constitucionais. Nos termos do mesmo artigo da Constituição, o Comité das Regiões pode igualmente interpor recursos desta natureza relativamente aos actos legislativos sobre os quais tenha sido consultado.
9. A Comissão apresentará anualmente ao Conselho Europeu, ao Parlamento Europeu e ao Conselho um relatório sobre a aplicação do n.º 3 do artigo 8.º da Constituição. Este relatório anual será igualmente enviado ao Comité das Regiões e ao Comité Económico e Social.

## FICHE AMENDEMENT

### Proposition d'amendement au protocole: SUB

Déposée par Monsieur : Alberto Costa / Guilherme d'Oliveira Martins

Qualité : Membre: Effective / Suppléant

### **Amendements proposés**

#### **~~[PROTOCOLE] SUR L'APPLICATION DES PRINCIPES DE SUBSIDIARITÉ ET DE PROPORTIONNALITÉ~~**

LES HAUTES PARTIES CONTRACTANTES,

DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union;

DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à l'article 7 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,

SONT CONVENUES des dispositions ci-après, qui sont annexées à la Constitution

1. Chaque Institution veille de manière continue tout au long de la procédure législative au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution.
2. Avant de proposer un acte législatif, la Commission, sauf dans des cas d'urgence particulière ou de confidentialité, procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées.

3. La Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des Etats membres.

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Il incombe aux gouvernements des Etats membres de tenir les Parlements nationaux pleinement informés de la procédure législative pour permettre aux Parlements nationaux de veiller au respect du principe de subsidiarité dans le cadre de leur fonction de contrôle de l'action exercée par leur gouvernement au niveau européen.

4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, ~~y inclus, le cas échéant, la législation régionale~~. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs.

La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre. Cette obligation incombe également au Parlement européen et au Conseil tout au long de la procédure législative.

5. Tout Parlement national d'un Etat membre peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme au principe de subsidiarité. Il appartient à chaque Parlement national d'organiser les modalités internes de consultation de chacune des Chambres dans le cas des Parlements bicaméraux et/ou, le cas échéant, des Parlements régionaux avec pouvoirs législatifs.
6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux.

Dans le cas où au moins un tiers de Parlements nationaux émettraient des avis motivés sur le non-respect par la proposition de la Commission du principe de subsidiarité, la Commission est tenue de réexaminer sa proposition. A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.

7. Les Parlements nationaux des Etats membres peuvent aussi, dans le délai entre la convocation du Comité de conciliation et la tenue de celui-ci, émettre un avis motivé contenant les raisons pour lesquelles ils estiment que, soit la position commune du Conseil, soit les amendements du Parlement européen, ne respectent pas le principe de subsidiarité. Lors de la réunion du comité de conciliation, le Parlement européen et le Conseil tiennent le plus grand compte des avis exprimés par les Parlements nationaux des Etats membres.
8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats membres, le cas échéant à la demande de leurs Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.
9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.

## FICHE AMENDEMENT

### Proposition d'amendement au « Projet de protocole sur l'application des principes de subsidiarité et de proportionnalité »

Déposée par Messieurs Ernâni Lopes et Manuel Lobo Antunes

Qualité : - Membre et Suppléant

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- Paragraphe 1 : « **Dans l'exercice de ses compétences**, chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution. »
- Insérer comme §1 bis: « **L'application des principes de subsidiarité et de proportionnalité respecte les dispositions générales et les objectifs de la Constitution, notamment en ce qui concerne le maintien intégral de l'acquis communautaire et de l'équilibre institutionnel, ainsi que les principes mis au point par la Cour de justice en ce qui concerne la relation entre le droit national et le droit de l'Union.** »
- **La subsidiarité est un concept dynamique qui devrait être appliqué à la lumière des objectifs énoncés dans la Constitution. Il permet d'étendre l'action de l'Union, dans les limites de ses compétences, lorsque les circonstances l'exigent et, inversement, de la limiter et d'y mettre fin lorsqu'elle ne se justifie plus ».**

Note explicative : Le critère de simplification qui a guidé la rédaction de ce protocole ne doit pas conduire à l'élimination des principes structurants de l'application de ce principe énoncés à Amsterdam.

- Paragraphe 2 : « Avant de proposer un acte législatif, la Commission, **sans préjudice de son droit d'initiative**, , sauf dans des cas d'urgence particulière ou de confidentialité, procède à des larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées. »
- Paragraphe 4 : Eliminer « Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier, ainsi que de son application, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, y inclus, le cas échéant, la législation régionale ».
- Paragraphe 5 : « Tout Parlement national (...) un avis motivé **qui comportera une fiche** contenant les raisons pour lesquelles (...).

Note explicative : Le devoir de la Commission élaborer une fiche explicative et détaillée prévu au paragraphe 4, doit être aussi appliqué aux Parlements nationaux en ce qui concerne le non-respect du principe de subsidiarité.

- Paragraphe 6 : suppression de « Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux »

Note explicative : Cette première phrase possède une seule valeur déclarative et ne pourrait donc pas avoir un effet juridique contraignant.

- Paragraphe 9 : La Commission présente chaque année au Conseil européen, au Parlement européen, au Conseil **et aux Parlements nationaux des Etats membres** un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.
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## AMENDMENT FORM

Suggestion for amendment of the revised **PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY, Article 8**:

By **BROK; ALMEIDA GARRETT; ALONSO; ALTMAIER; AZEVEDO; BASILE; BREJC; CISNEROS; CUSHNAHAN; DEMETRIOU; DOLORES; FARNLEITNER; FOGLER; FRENDON; GIANNAKOU; KELAM; KELEMEN; KORHONEN; KRASTS; KROUPA; KUTZKOVA; LAMASSOURE; LENNMARKER; MAIJ-WEGGEN; MLADENOV; NAZARE-PEREIRA; PIKS; RACK; SANTER; STYLIANIDIS; SZAJER; TEUFEL; TUSEK; VAN DER LINDEN; VAN DIJK; WITTBRODT; WÜRMELING; ZILE**

on behalf of the EPP Convention Group

Status: Members and Alternates

<i>Text of the Praesidium</i>	<i>Proposed Amendments</i>
<p><b><u>Article 8</u></b></p> <p>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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.</p>	<p><b><u>Article 8:</u></b></p> <p>Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by <del>Member States</del> <b><i>every national parliament</i></b> on grounds of infringement of the principle of subsidiarity, <del>where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules</del> <b><i>as well as actions on such grounds by regions with own legislative competences brought under the authority of their respective Member State</i></b>. 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.</p>

### Explanation:

- *The national parliaments should have an own right to bring actions to the Court of Justice. It would not be compatible with the role of national parliaments in a democratic Union to place them under the “tu-*

*telle” of the Member States for such actions.*

- *Every national parliament should be allowed to bring an action. This should also allow actions by the first and second chamber of a national Parliament in countries where such chambers exist and where such actions are compatible with the national Constitution.*
- *Regions with own legislative competences (the German and the Austrian Länder and the Belgian regions) should also have an own right to plead an infringement of the principle of subsidiarity at the Court of Justice. However, to ensure that this does not disturb the internal order of a Member State, such actions may only be brought under the authority of the Member State in question.*

## AMENDMENT FORM

### Suggestion for amendment of the revised **PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY**, Article 6:

By **BROK; ALMEIDA GARRETT; ALONSO; ALTMAIER; AZEVEDO; BASILE; BREJC; CISNEROS; CUSHNAHAN; DOLORES; FOGLER; FRENDON; GIANNAKOU; KAUPPI; KELAM; KELEMEN; KORHONEN; KRASTS; KROUPA; KUTZKOVA; LAMASSOURE; LENNMARKER; LEQUILLER; MAIJ-WEGGEN; MLADENOV; NAZARE-PEREIRA; PIKS; RACK; SANTER; STYLIANIDIS; SZAJER; TAJANI; VAN DER LINDEN; VAN DIJK; WITTBRODT; ZILE**

on behalf of the EPP Convention Group

**Status: Members and Alternates**

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*Text of the Praesidium*

#### **Article 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 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.

*Proposed Amendments*

#### **Article 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~~ **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.

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#### **Explanation:**

- *In our opinion, the threshold of one third of national parliaments is not high enough and risks paralysing the legislative process.*

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : de toepassing van de subsidiariteits- en evenredigheidsbeginselen**

**By Ms / Mr : dhr. Danny PIETERS**

**Status : ~~Member~~ - Alternate**

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Toevoegen van een bijkomende overweging na “VASTBESLOTEN...” en voor “HEBBEN...”, houdend:

“ ERKENNEND dat voor dit protocol als nationale parlementen beschouwd dienen te worden niet slechts de monocamerale parlementen, maar in voorkomend geval ook elk van beide wetgevende kamers in bicamerale wetgevende ordeningen, en zulks zowel op het niveau van de staten als op dit van de deelstaten van lidstaten, waaraan de nationale grondwetten wetgevende bevoegdheid hebben toegekend.”

Vervangen van de laatste zin van 5. “De nationale parlementen... bevoegdheid” door: De Lidstaten maken aan de Europese Unie de lijst over van de parlementaire assemblees en kamers waaraan in de Lidstaat wetgevende bevoegdheid constitutioneel verleend werd, evenals een beschrijving van de materies waarvoor de assemblees bevoegd zijn”.

Toevoegen na de laatste zin van 6: “Voor de berekening van het derde van de nationale parlementen, telt een gemotiveerd advies van een inhoudelijk bevoegde parlementaire assemblee als één nationaal parlement, zonder dat per Lidstaat meer dan één nationaal parlement in rekening gebracht wordt.”

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### **Explanation (if any) :**

Het behoort niet aan de Conventie, noch aan de Europese Unie, om de constitutionele bevoegdheidsverdeling tussen de kamers van een parlement, noch deze tussen de federale en deelstaatsniveaus binnen de lidstaten te veranderen. Dientengevolge dienen alle parlementaire assemblees met wetgevende bevoegdheid die de grondwet van een lidstaat erkent, op dezelfde voet door de Europese Unie behandeld te worden.

De ganse tekst van het protocol is opgesteld als zou er slechts een (echt) parlement per lidstaat bestaan en deze ‘echte’ parlementen vervolgens « zelf de interne procedures [vaststellen] voor de raadpleging van de afzonderlijke Kamers in het geval van een tweekamerstelsel en/of, waar van toepassing, van de regionale parlementen met wetgevende bevoegdheid ». Dit voorstel kan een aanslag betekenen op de interne constitutionele ordening van sommige lidstaten en houdt tevens onvoldoende rekening met de politieke realiteiten die zich kunnen voordoen. Verduidelijken we een en ander. Zo zijn er landen zoals België waar de wetgevende bevoegdheid van de deelstaten nevensgeschikt is aan deze van de federatie en de federale staat geen bevoegdheid heeft, ook niet wat de internationale dimensie aangaat, waar de deelstaten bevoegd zijn (zoals bv. in onderwijs, cultuur, enz.). De Belgische grondwet verdeelt aldus de bevoegdheden. Stellen dat het nationale parlement

in deze aangelegenheden maar de regionale parlementen moet raadplegen waar het om de subsidiariteitscontrole gaat, tast de constitutionele bevoegdheidsverdeling aan, door :

1° ter zake het federale /nationale parlement enige bevoegdheid te geven ;

2° door de rol van het regionale parlement te herleiden tot het geconsulteerd worden.

Of het nu gaat om de twee kamers van een federaal parlement of om het naast mekaar bestaan van wetgevende vergaderingen op diverse niveaus, er kan ook niet voorbijgegaan worden aan het gegeven dat diverse parlementaire assemblees ook andere meerderheden kunnen kennen. Het behoort niet aan de Europese Unie om in zulk een politiek spanningsveld te interveniëren, door een parlementaire assemblee als gesprekspartner voor Europa te zien en de andere als de assemblees die moeten geconsulteerd worden.

Wat de informatie van de nationale parlementen betreft staan we een ruime benadering voor in het protocol over de nationale parlementen. We pleiten aldaar voor de opname van de overweging: « Erkennend dat voor dit protocol als nationale parlementen beschouwd dienen te worden niet slechts de monocamerale parlementen, maar in voorkomend geval ook elk van beide wetgevende kamers in bicamerale wetgevende ordeningen, en zulks zowel op het niveau van de staten als op dit van de deelstaten van lidstaten, waaraan de nationale grondwetten wetgevende bevoegdheid hebben toegekend. »

Gelijkaardige ruime benadering kan evenwel niet onverkort gelden voor de subsidiariteitscontrole, zo onder meer niet waar gewicht gehecht wordt aan 1/3 van de nationale parlementen, als het geval is in de bepaling sub 6. Voor de berekening van het derde van de nationale parlementen, telt een gemotiveerd advies van een inhoudelijk bevoegde parlementaire assemblee als één nationaal parlement, zonder dat per Lidstaat meer dan één nationaal parlement in rekening gebracht wordt. Concreet betekent zulks dat van zodra bv. de inhoudelijk bevoegde Waalse Gewestraad een gemotiveerd advies indient, zulks telt als één parlementaire assemblee voor de berekening van één derde van de nationale parlementen, maar dat wanneer ook het eveneens inhoudelijk bevoegde Brusselse Gewest en/of het Vlaamse Gewest een dergelijk advies indienen, deze twee of drie adviezen nog steeds zullen gelden als het advies van één nationaal parlement voor de berekening van het derde. Dat één wetgever meteen al een gevolg sorteert voor een hele lidstaat moet daarbij niet verwonderen; het gaat hier om het bewaken van het subsidiariteitsbeginsel ten opzichte van de Unie én om een per hypothese intern constitutioneelrechtelijk bevoegde wetgever.

## **FORMULAIRE D'AMENDEMENT**

**Proposition pour le protocole : l'application des principes de subsidiarité et de proportionnalité.**

**Par : M. Danny Pieters**

**Qualité : membre suppléant**

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Ajouter après la considération qui commence par « DETERMINEES » et avant celle qui commence par « SONT CONVENUES », la considération suivante :

« RECONNAISSANT qu'en ce qui concerne ce protocole, doivent être considérés comme parlements nationaux non seulement les parlements monocaméraux mais également, le cas échéant, chacune des deux chambres dans les systèmes législatifs bicaméraux, et ce tant au niveau des états fédéraux qu'à celui des entités fédérées auxquelles les constitutions nationales des états membres ont attribué une compétence législative ».

Remplacer la dernière phrase du point 5 par la phrase : « Les Etats membres transmettent à l'Union européenne, une liste des assemblées et chambres auxquelles une compétence législative a été constitutionnellement attribuée au sein des Etats membres, ainsi qu'un inventaire des matières pour lesquelles les assemblées sont compétentes ».

Ajouter à la fin de la dernière phrase du point 6, la phrase : « Pour le calcul du tiers des parlements nationaux, un avis motivé émanant d'une assemblée compétente sur le plan du contenu, compte pour « un » parlement national, sans que, par Etat membre, plus d'un parlement national ne soit pris en compte ».

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### **Commentaire :**

Il n'appartient pas à la Convention ni à l'Union européenne de modifier la répartition constitutionnelle des compétences entre les chambres d'un parlement ou celle qui existe, au sein de certains Etats membres, entre le niveau fédéral et le niveau des entités fédérées. Par conséquent toutes les assemblées parlementaires possédant une compétence législative qui est reconnue par la Constitution d'un Etat membre, doivent être traitées sur un pied d'égalité par l'Union européenne. Tout le texte du protocole a été rédigé comme s'il n'existait qu'un seul (véritable) parlement par Etat membre et que ces « véritables » parlements, par voie de conséquence, « établissent eux-mêmes les procédures internes en ce qui concerne la consultation de chambres différentes dans le cas d'un système bicaméral et/ou, là où cela est d'application, d'un système comportant des parlements régionaux qui ont une compétence législative. » Cette proposition peut constituer une atteinte à l'ordre constitutionnel interne de certains états membres et ne tient également pas suffisamment compte des réalités politiques qui peuvent apparaître. Illustrons-en l'une et l'autre. Il existe certains pays tels que la Belgique où la compétence législative des entités fédérées est juxtaposée à celle de la Fédération et dans lequel

l'Etat fédéral n'a pas de compétence, et ce, même en ce qui concerne la dimension internationale, dans les domaines où les entités fédérées sont compétentes (comme par exemple : l'enseignement, la culture, etc.) C'est de cette façon que la Constitution belge répartit les compétences. Affirmer que le parlement national doit consulter les parlements régionaux en ces matières – en ce qui concerne le contrôle du principe de subsidiarité – porte atteinte à la répartition constitutionnelle des compétences en :

1. attribuant quelque compétence en la matière au parlement national/fédéral ;
2. réduisant le rôle du parlement régional à un simple rôle consultatif.

Qu'il s'agisse des deux chambres d'un parlement fédéral ou de l'existence juxtaposée d'assemblées à divers niveaux, l'on ne peut également pas passer sous silence le fait que plusieurs parlements puissent connaître des majorités différentes. Il n'appartient pas à l'Union européenne d'intervenir dans un tel champ de tension politique en considérant une assemblée parlementaire comme interlocuteur privilégié de l'Union européenne et les autres comme des assemblées qu'il ne convient que de consulter.

En ce qui concerne l'information des parlements nationaux, nous sommes partisans d'une approche large. En cette matière, nous plaidons en faveur de l'insertion du considérant suivant: « Reconnaissant qu'en ce qui concerne ce protocole, doivent être considérés comme parlements nationaux non seulement les parlements monocaméraux mais également, le cas échéant, chacune des deux chambres dans les systèmes législatifs bicaméraux, et ce tant au niveau des états qu'à celui des entités fédérées auxquelles les constitutions nationales ont attribué une compétence législative ».

Une approche analogue, large et sans restrictions, ne peut pas valoir sans plus pour le contrôle de la subsidiarité – et ce, entre autres, là où l'on accorde du poids à un tiers des parlements nationaux, comme mentionné dans le paragraphe 6.

Pour le calcul du tiers des parlements nationaux, un avis motivé émanant d'une assemblée compétente *ratione materiae*, compte au même titre qu'« un parlement national, sans que, par Etat membre, plus d'un parlement national ne soit pris en compte ».

Cela signifie concrètement qu'à partir du moment où, par exemple, le Conseil de la Région wallonne, dépose un avis motivé, en étant compétent au niveau du contenu, celui-ci compte pour une assemblée parlementaire en ce qui concerne le calcul du tiers des parlements nationaux, mais que lorsque le Parlement de la Région de Bruxelles-Capitale et/ou de la Région flamande pareillement compétent(s), dépose(nt) un tel avis, ces deux ou trois avis compteront encore toujours en tant qu'avis d'un seul parlement national en ce qui concerne le compte d'un tiers des parlements nationaux. Qu'un seul législateur, même au niveau régional, entraîne des conséquences directes pour l'ensemble d'un Etat membre, ne doit pas étonner; il s'agit ici du contrôle du principe de subsidiarité à l'égard de l'Union européenne et d'un législateur qui, par hypothèse, est un législateur compétent en vertu du droit constitutionnel interne.

## FICHE AMENDEMENT

### Proposition d'amendement au protocole: **Subsidiarité**

**Déposée par:** M. Louis **Michel**, M. Karel **de Gucht**, M. Elio **di Rupo**, Mme Anne **Van Lancker**, membres de la Convention et M. Pierre **Chevalier** et Mme Marie **Nagy**, membres suppléants de la Convention, ainsi que par Monsieur Patrick **Dewael**, observateur

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## PROJET

### [PROTOCOLE] SUR L'APPLICATION DES PRINCIPES DE SUBSIDIARITÉ ET DE PROPORTIONNALITÉ

LES HAUTES PARTIES CONTRACTANTES,

DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union;

DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à l'article 7 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,

« **RAPPELANT que les principes de subsidiarité et de proportionnalité ne remettent pas en question les compétences attribuées par la Constitution telles qu'interprétées par la Cour de Justice.** »

SONT CONVENUES des dispositions ci-après, qui sont annexées à la Constitution

1. Chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution.
2. Avant de proposer un acte législatif, la Commission, sauf dans des cas d'urgence particulière ou de confidentialité, procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées.

**2 bis. Le concept de subsidiarité est un concept dynamique qui doit être appliqué à la lumière des objectifs énoncés dans la Constitution. Il permet d'étendre l'action de l'Union dans les limites de ses compétences, lorsque les circonstances l'exigent et, inversement, de la limiter et d'y mettre fin lorsqu'elle ne se justifie plus.**

3. La Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des Etats membres.
4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, y inclus, le cas échéant, la législation régionale. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.
5. Tout Parlement national d'un Etat membre peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme au principe de subsidiarité. ~~Il appartient à chaque Parlement national d'organiser les modalités internes de consultation de chacune des Chambres dans le cas des Parlements bicaméraux et/ou, le cas échéant, des Parlements régionaux avec pouvoirs législatifs.~~
6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux.

Dans le cas où au moins un tiers de Parlements nationaux émettraient des avis motivés sur le non-respect par la proposition de la Commission du principe de subsidiarité, la Commission est tenue de réexaminer sa proposition. A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.

- ~~7. — Les Parlements nationaux des Etats membres peuvent aussi, dans le délai entre la convocation du Comité de conciliation et la tenue de celui-ci, émettre un avis motivé contenant les raisons pour lesquelles ils estiment que, soit la position commune du Conseil, soit les amendements du Parlement européen, ne respectent pas le principe de subsidiarité. Lors de la réunion du comité de conciliation, le Parlement européen et le Conseil tiennent le plus grand compte des avis exprimés par les Parlements nationaux des Etats membres.~~
8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats membres et **les régions à pouvoirs législatifs**, le cas échéant à la demande **des** Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.
9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.
10. **Les Etats membres peuvent, compte tenu de leur organisation constitutionnelle, indiquer dans une déclaration, quel est le Parlement disposant de compétences législatives qui, en fonction de chaque politique de l'Union, doit être considéré comme Parlement national au sens du présent Protocole.**

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**Explication éventuelle :**

**AMENDMENT FORM**

**Suggestion for amendment of Article : Protocol on the Role of the National Parliaments and Protocol on the Application of the Principles of Subsidiarity and Proportionality**

**By Ms / Mr : J. Kohout**

**Status :**    ☒ - Member                      - Alternate

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**General:**    Merging of the two protocols could be considered since their substance is quite similar.

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**Explanation (if any) :**

## AMENDMENT FORM

### Suggestion for amendment of the Protocol on the application of the principles of subsidiarity and proportionality

By: Edmund Wittbrodt,

Marta Fogler

Status: Member,

Alternate Member

<i>Text of the Praesidium</i>	<i>Proposed amendments</i>
<p><b>DRAFT</b></p> <p><b>[PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY</b></p> <p>THE HIGH CONTRACTING PARTIES,</p> <p>WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.</p> <p>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.</p> <p>HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:</p> <p>1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.</p>	<p><b>DRAFT</b></p> <p><b>[PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY</b></p> <p>THE HIGH CONTRACTING PARTIES,</p> <p>WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.</p> <p>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.</p> <p>HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:</p> <p>1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.</p>

<p>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.</p> <p>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.</p> <p>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. 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</p>	<p>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.</p> <p>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.</p> <p>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. 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</p>
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<p>achieved.</p> <p>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.</p> <p>6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.</p> <p>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.</p> <p>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</p>	<p>achieved.</p> <p>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.</p> <p>6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.</p> <p>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.</p> <p>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</p>
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<p>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.</p> <p>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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.</p> <p>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.</p>	<p>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.</p> <p>8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by Member States <b>and every national parliament</b> on grounds of infringement of the principle of subsidiarity, <del>where appropriate at the request of their national parliaments</del>, 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.</p> <p>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.</p>
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Explanation: It gives more tools for the national parliaments and lets them act directly on the European level.	

## **FICHE AMENDEMENT**

**Propositions d'amendements au protocole **subsidiarité** (art. 5 et art .7)**

**Déposée par Monsieur :    Alain Lamassoure**

**Qualité :    Membre**

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### **PROJET**

#### **[PROTOCOLE] SUR L'APPLICATION DES PRINCIPES DE SUBSIDIARITÉ ET DE PROPORTIONNALITÉ**

LES HAUTES PARTIES CONTRACTANTES,

DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union;

DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à l'article 7 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,

SONT CONVENUES des dispositions ci-après, qui sont annexées à la Constitution

1. Chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution.
2. Avant de proposer un acte législatif, la Commission, sauf dans des cas d'urgence particulière ou de confidentialité, procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées.
3. La Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des Etats membres.

4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, y inclus, le cas échéant, la législation régionale. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.
5. Tout Parlement national d'un Etat membre peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme ***à la répartition des compétences prévue par la Constitution, et notamment*** au principe de subsidiarité. Il appartient à chaque Parlement national d'organiser les modalités internes de consultation de chacune des Chambres dans le cas des Parlements bicaméraux et/ou, le cas échéant, des Parlements régionaux avec pouvoirs législatifs.
6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux.

Dans le cas où au moins un tiers de Parlements nationaux émettraient des avis motivés sur le non-respect par la proposition de la Commission du principe de subsidiarité, la Commission est tenue de réexaminer sa proposition. A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.

7. ***Supprimer***
8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats

membres, le cas échéant à la demande de leurs Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.

9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.

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### **Explication :**

*- concernant l'article 5 : la mauvaise application du principe de subsidiarité est grave, mais la violation de la Constitution le serait encore plus. On peut imaginer que le législateur européen se mette à intervenir dans un domaine nouveau, hors des compétences attribuées à l'Union (même à titre d'actions d'appui), en voulant se passer de la clause de flexibilité de l'article 16 : il y aurait violation de la Constitution sur la répartition des compétences, sans qu'à proprement parler la subsidiarité soit en cause.*

*- concernant l'article 7 : le juste équilibre d'un système de contrôle de la subsidiarité est obtenu en combinant un droit d'avertissement au tout début donné aux Parlements nationaux (article 6), et la possibilité de saisir la Cour ex post (article 8). La procédure n'est pas ralentie, il n'y a pas de mélange des responsabilités, et la subsidiarité fait l'objet d'un contrôle original et nouveau, au cas par cas, de caractère politique et juridique à la fois.*

*La procédure supplémentaire envisagée à l'article 7 poserait de tout autres problèmes. L'organisation de la conciliation entre le Parlement et le Conseil est déjà très délicate, et elle le sera plus encore avec un Conseil représentant 25 gouvernements : l'étendre aux Parlements nationaux est franchement irréaliste. En outre, la combinaison du « carton jaune » de l'article 6, au début de la procédure législative, et de celui de l'article 7, à la fin de ladite procédure, aboutirait à inciter les Parlements nationaux à suivre tout le processus législatif communautaire, en parallèle avec les gouvernements, voire en concurrence avec eux.*

# AMENDMENT FORM

## Suggestion for protocol :

**On the application of the principles of subsidiarity and proportionality**

**By Mr : Josef Zieleniec**

**Status : - Member**

<i>Praesidium's version</i>	<i>Amended version</i>
<p>Art. 5</p> <p>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. <del>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.</del></p> <p>Art. 6</p> <p>The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.</p> <p>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.</p>	<p>Art. 5</p> <p>Any national parliament <b>(or any chamber in case of bicameral national parliaments)</b> 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.</p> <p>Art. 6</p> <p>The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.</p> <p>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.</p> <p><b>For the purpose of the determination of the threshold of one third of national parliaments, a reasoned opinion issued by one chamber of a bicameral national parliament counts for one, while a reasoned opinion issued by a unicameral national parliament counts for two.</b></p>

**Explanation (if any) :**

**AMENDMENT FORM**

**Suggestion for amendment of Article :**

**Suggestion for protocol : the application of the principles of subsidiarity and proportionality**

**By Mr : W. van Eekelen**

**Status : Alternate**

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Delete point 7 (involvement of national parliaments in the procedure with the Conciliation Committee) from the protocol.

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**Explanation (if any) : This additional provision unnecessary complicates the procedure.**

## AMENDMENT FORM

Suggestion for amendment of Article :

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

By Ms / Mr : R. van der Linden (member)

F. Timmermans (member)

J.J. van Dijk (alternate)

W. van Eekelen (alternate) for only the amendment on point 8

Status :        - Member                      - Alternate

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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. **Where at least one third of national parliaments issue reasoned opinions on the non-compliance with the principle of subsidiarity the Council or/and the European Parliament shall review their positions.**

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 **procedures regarding 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.

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Explanation (if any) :

**7: The principle of one third of the national parliaments should not be restricted to just one phase in the lawmaking process, it should be applied to the entire process.**

**8: If “the procedures regarding” will not be added, the Court will get involved in political jurisdiction.**

## AMENDMENT FORM

Amendments for protocol:

– on the application of the principles of subsidiarity and proportionality

By Mr Ingvar SVENSSON.

Status : - Alternate

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.~~<sup>1</sup> 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.~~<sup>2</sup>

~~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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.~~<sup>3</sup>

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<sup>1</sup> Regional legislation is not an EU competence.

<sup>2</sup> The Chamber systems in the Member States and national systems of regional parliaments are not EU competences.

<sup>3</sup> The principle of subsidiarity is not a judicial rule, it is a principle how to think when to distribute competences. The substance is appropriateness. Hence you can not use in court.

## AMENDMENT FORM

### Suggestion for amendment of Protocol on the application of the principles of subsidiarity and proportionality

By Mr Göran Lennmarker

Status : Member

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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:~~ **regional and local authorities.** <sup>1</sup>

~~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.~~ <sup>2</sup>

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#### Explanation:

1. All regional and local authorities may be consulted (not only regional parliaments).
2. Should be omitted - the Conciliation procedure runs the risk of being overloaded. At this late stage the influence of national parliaments should be conducted through efficient scrutiny of respective government's actions in the Council.

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol :**

**subsidiarity and proportionality, article 4.**

**subsidiarity and proportionality, article 6, 1<sup>st</sup> paragraph**

**subsidiarity and proportionality, article 6, 2<sup>nd</sup> paragraph**

**subsidiarity and proportionality, article 7**

**subsidiarity and proportionality, article 8**

**subsidiarity and proportionality, article 9**

**By Ms / Mr :     G.M. de Vries  
                         T.J.A.M. de Bruijn**

**Status :     Members**

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**subsidiarity and proportionality, article 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~~ a firm 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.

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**Explanation (if any) :**

**subsidiarity and proportionality, article 6, 1<sup>st</sup> paragraph**

The decisions of the European Parliament, the Council and the Commission shall state the reasons on which they are based referring to the reasoned opinions of the national parliaments.

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**Explanation (if any) : The institutions have to indicate why they do or do not agree with the opinions of the national parliaments.**

## **subsidiarity and proportionality, article 6, 2<sup>nd</sup> paragraph**

Where at least ~~one-third~~ one fourth 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.

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**Explanation (if any) : The Dutch government considers the number of one third too high.**

## subsidiarity and proportionality, article 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.~~

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**Explanation (if any) :** The involvement of national parliaments in the already complicated and lengthy codecision procedure would further slow down the decision-making process. Moreover, the democratic legitimacy of legislative decisions is guaranteed by the European Parliament.

## **subsidiarity and proportionality, article 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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.~~

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**Explanation (if any) : Consultation committees should not bring actions as referred to in article 230. This would further increase the workload of the Court.**

**subsidiarity and proportionality, article 9**

The Commission shall submit each year to the European Council, the European Parliament, the national parliaments 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) :**

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## FICHE AMENDEMENT

### Proposition d'amendement au Protocole sur l'application des principes de subsidiarité et de proportionnalité

Déposée par M. Pierre LEQUILLER, Membre titulaire

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PROJET DU PRESIDIU	AMENDEMENTS DE M. PIERRE LEQUILLER
<p>LES HAUTES PARTIES CONTRACTANTES,</p> <p>DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union;</p> <p>DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à l'article 7 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,</p>	<p>DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à <u>l'article 8</u> de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions dudit principe,</p>
	<p><i><b>Justification :</b></i> <i>Amendement de rectification</i></p>
<p>SONT CONVENUES des dispositions ci-après, qui sont annexées à la Constitution</p> <p>1. Chaque Institution veille de manière continue au respect des principes de subsidiarité et de proportionnalité définis à l'article 8 de la Constitution.</p> <p>2. Avant de proposer un acte législatif, la Commission, sauf dans des cas d'urgence particulière ou de confidentialité, procède à de larges consultations. Ces consultations doivent tenir compte, le cas échéant, de la dimension régionale et locale des actions envisagées.</p> <p>3. La Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des Etats membres.</p>	<p>3. La Commission <u>adresse directement</u> toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont <u>directement</u> envoyées par ceux-ci aux Parlement nationaux des Etats membres.</p>



<p>6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux. Dans le cas où au moins un tiers de Parlements nationaux émettraient des avis motivés sur le non-respect par la proposition de la Commission du principe de subsidiarité, la Commission est tenue de réexaminer sa proposition. A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.</p> <p>7. Les Parlements nationaux des Etats membres peuvent aussi, dans le délai entre la convocation du Comité de conciliation et la tenue de celui-ci, émettre un avis motivé contenant les raisons pour lesquelles ils estiment que, soit la position commune du Conseil, soit les amendements du Parlement européen, ne respectent pas le principe de subsidiarité. Lors de la réunion du comité de conciliation, le Parlement européen et le Conseil tiennent le plus grand compte des avis exprimés par les Parlements nationaux des Etats membres.</p> <p>8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats membres, le cas échéant à la demande de leurs</p>	<p><i>provoquerait une inégalité de traitement en défaveur des parlements bicaméraux si la possibilité de déposer un avis motivé n'était reconnue qu'au Parlement et non à une chambre individuellement. En outre, les délais de coordination entre les chambres d'un Parlement peuvent se révéler difficilement compatibles avec le délai de six semaines qui est prévu pour adresser un avis motivé.</i></p> <p>6. Le Parlement européen, le Conseil et la Commission tiennent compte des avis motivés des Parlements nationaux. Dans le cas où au moins un tiers <u>des chambres des Parlements nationaux</u> émettraient des avis motivés sur le non-respect par la proposition de la Commission <u>des principes de subsidiarité et de proportionnalité</u>, la Commission est tenue de réexaminer sa proposition. <u>Afin d'assurer une égalité de traitement entre Parlements monocaméraux et bicaméraux, les Parlements monocaméraux disposent de deux voix.</u> A l'issue de ce réexamen la Commission peut décider, soit de maintenir sa proposition, soit de la modifier, soit de la retirer. La Commission motive sa décision.</p> <p><b>Justification :</b>  <i>Cet amendement vise à assurer une égalité de traitement entre Parlements monocaméraux et bicaméraux.</i></p> <p>7. <u>Les chambres des Parlements nationaux</u> des Etats membres peuvent aussi, dans le délai entre la convocation du Comité de conciliation et la tenue de celui-ci, émettre un avis motivé contenant les raisons pour lesquelles ils estiment que, soit la position commune du Conseil, soit les amendements du Parlement européen, ne respectent pas <u>les principes de subsidiarité et de proportionnalité</u>. Lors de la réunion du comité de conciliation, le Parlement européen et le Conseil tiennent le plus grand compte des avis exprimés par les Parlements nationaux des Etats membres.</p> <p><b>Justification :</b>  <i>Amendement de coordination</i></p> <p>8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation <u>des principes de subsidiarité et de proportionnalité</u> introduits par les Etats membres, <u>en particulier</u></p>
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<p>Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.</p>	<p><u>directement par chaque chambre d'un Parlement national</u>. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.</p> <hr/> <p><b>Justification :</b>  <i>Conformément à ce qui est proposé dans le rapport final du groupe de travail I, les Parlements nationaux doivent pouvoir saisir la Cour de Justice indépendamment d'éventuels recours introduits par les gouvernements nationaux.</i></p> <hr/> <p>9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.</p>
<p>9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7 par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.</p>	<p>9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article <u>8</u> par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions <u>et</u> au Comité économique et social, <u>et aux Parlements nationaux</u>.</p> <hr/> <p><b>Justification :</b>  <i>Les Parlements nationaux étant directement impliqués dans le contrôle du principe de subsidiarité, il doivent être destinataires du rapport annuel de la Commission, au même titre que les institutions de l'Union.</i></p> <hr/>



## FICHE AMENDEMENT

### Proposition d'amendements au Protocole sur l'application des principes de subsidiarité et de proportionnalité

Déposée par M. Jacques FLOCH, suppléant

PROJET DU PRESIDIUM	AMENDEMENTS DE M. JACQUES FLOCH
8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats membres, le cas échéant à la demande de leurs Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.	<p>8. <u>Après leur entrée en vigueur, les actes juridiques de l'Union peuvent faire l'objet d'un recours devant la Chambre de la subsidiarité, constituée au sein de la Cour de justice de l'Union européenne, et composée de 9 membres nommés par le Président du Conseil (3 membres), le Président de la Commission (3 membres) et le Président du Parlement européen (3 membres). La Chambre de la subsidiarité peut être saisie par tout Etat membre, en particulier directement par tout Parlement national.</u> Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.</p> <p><i>Justification :</i></p> <p><i>La subsidiarité est un principe mi politique -mi juridique pour lequel une appréciation exclusivement juridique par la Cour de justice de l'Union européenne ne semble pas approprié. En revanche, la création, au sein de la Cour, d'une chambre spécialisée dont les membres seraient nommés à parité par les présidents des trois institutions du « triangle » répondrait à une exigence de légitimité démocratique et serait mieux à même d'assurer un contrôle ex-post prenant en compte la double dimension de ce principe.</i></p> <p><i>Des actes juridiques de l'Union non conformes au principe de subsidiarité pouvant empiéter sur les compétences du législateur national, il est justifié de permettre aux Parlements nationaux de pouvoir saisir directement cette Chambre de la subsidiarité.</i></p>
9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7	9. La Commission présente chaque année au Conseil européen, au Parlement européen et au Conseil un rapport sur l'application de l'article 7

<p>par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions et au Comité économique et social.</p>	<p>par. 3 de la Constitution. Ce rapport annuel est également transmis au Comité des régions <del>et</del> au Comité économique et social, <u>et aux Parlements nationaux</u>.</p> <hr/> <p><b><i>Justification :</i></b></p> <p><i>Les Parlements nationaux étant directement impliqués dans le contrôle du principe de subsidiarité, il est souhaitable que la Commission leur adresse son rapport annuel sur l'application du principe de subsidiarité.</i></p> <hr/>
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## AMENDMENT FORM

### Suggestion for protocol : Subsidiarity

By Mr : Fischer

Status : - Member

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5. Jede Kammer eines nationalen Parlament eines Mitgliedstaats kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Vorschlags der Kommission für einen Rechtsakt in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist. Dabei ist es Sache des jeweiligen nationalen RechtsordnungParlaments, die internen Modalitäten für die Anhörung ~~seiner beiden Kammern im Falle eines Zweikammersystems und/oder gegebenenfalls~~ der regionalen Parlamente mit Gesetzgebungsbefugnissen festzulegen.
  8. Gemäß Artikel [derzeitiger Artikel 230] der Verfassung ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat oder eine Kammer eines nationalen Parlaments eines Mitgliedstaats ~~gegebenenfalls auf Antrag seines nationalen Parlaments und gemäß seiner jeweiligen Verfassungsordnung~~ wegen Verstoßes gegen das Subsidiaritätsprinzip erhebt. Gemäß ebendiesem Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Rechtsakte, zu denen er konsultiert wurde, erhoben werden.
  9. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament und dem Rat jährlich einen Bericht über die Anwendung des Artikels 8 Absatz 3 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.
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### Explanations:

zu 5.): *Es sollte klargestellt werden, dass das Recht auf Stellungnahme von jeder Kammer eines nationalen Parlaments individuell wahrgenommen werden kann.*

zu 8.): *Ein unmittelbares Klagerecht jeder Kammer eines nationalen Parlaments spiegelt den Beratungsstand des Konvents wider.*

***Grundsätzlich: Der Entwurf ist hinsichtlich der materiellen Regelung im Vergleich zum Amsterdamer Subsidiaritätsprotokoll von 1997 sehr viel knapper gehalten. Die Ziffern 5, 6, 7 und 8 des Protokolls von 1997 sollten in der weiteren Ausarbeitung berücksichtigt werden, da sie von grundlegender Bedeutung für die Anwendung der Grundsätze der Subsidiarität und Verhältnismäßigkeit sind.***

## FICHE AMENDEMENT

### Proposition d'amendement au protocole : sur l'application des principes de subsidiarité et de proportionnalité

#### Article 8

Déposée par Madame ou Monsieur : **M. P.DEWAEL**

Qualité :     - ~~Membre~~                      - ~~Suppléant~~                      - Observateur

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8. En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les Etats membres, le cas échéant à la demande de leurs Parlements nationaux et conformément à leur ordre constitutionnel respectif. Conformément au même article de la Constitution, de tels recours peuvent aussi être introduits par le Comité des Régions pour des actes législatifs pour lesquels il a été consulté.

#### Ajout à la fin du paragraphe

Dans la mesure où elles étaient désignées en temps que telles par l'Etat membre concerné, les régions à pouvoir législatifs ont également un accès direct à la Cour européenne de Justice.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 8

**By: M.J.CHABERT  
M.M.DAMMEYER  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :- Member                      - Alternate —                      - Observer**

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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 principle of subsidiarity, where appropriate at the request of their national parliaments or regions with legislative powers, 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.

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#### **Explanation:**

In order to avoid a proliferation of actions before the Court and without undermining the position of the Member States vis-à-vis the Court of Justice, this amendment allows for regions with legislative powers to request bringing an action before the Court, where the internal constitutional arrangements of Member States so permit.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 7

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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7. The national parliaments of the Member States and / or the Committee of the Regions 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 and / or the Committee of the Regions.
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#### **Explanation:**

It follows that if the Committee of the Regions is involved in the ex-ante evaluation of European Commission proposals, then its opinions should be taken into account at the conciliation stage alongside those of the national parliaments.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 6

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —            - Observer**

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6.        The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments and/or the Committee of the Regions.
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### **Explanation:**

It follows that if the Committee of the Regions is involved in the ex-ante evaluation of European Commission proposals, then its opinions should be taken into account in the review stage alongside those of the national parliaments.

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 5

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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5. Any national parliament of a Member State, and /or the Committee of the Regions where it has been consulted 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.

#### **Explanation:**

The Committee of the Regions should be involved in the ex-ante evaluation of European Commission proposals in accordance with the conclusions of the working group 'subsidiarity' of the convention.

## FICHE AMENDEMENT

### Proposition d'amendement au protocole : sur l'application des principes de subsidiarité et de proportionnalité

#### Article 4

Déposée par Madame ou Monsieur : **M. J.CHABERT**  
**M. M.DAMMEYER**  
**M. P.DEWAEL**  
**Mme C.du GRANRUT**  
**M. C.MARTINI**  
**M. R. VALCARCEL SISO**

Qualité :    - Membre —                      - Suppléant —                      - Observateur

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4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative ~~devrait comporter~~ comporte une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche ~~devrait comporter~~ comporte des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, y inclus, le cas échéant, la législation régionale. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.
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#### Explication :

Meilleure terminologie juridique

## AMENDMENT FORM

**Suggestion for protocol: Draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 3

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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3.                The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States and 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 respectively, upon adoption, to the national parliaments of the Member States and the Committee of the Regions.

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#### **Explanation:**

The Committee of the Regions should be involved in the ex-ante evaluation of European Commission proposals in accordance with the conclusions of the working group 'subsidiarity' of the convention.

## AMENDMENT FORM

**Suggestion for protocol : draft protocol on the application of the principles of subsidiarity and proportionality**

### Article 2

**By: M.J.CHABERT  
M.M.DAMMEYER  
M.P.DEWAEL  
Ms. C.du GRANRUT  
M.C.MARTINI  
M.R.VALCARCEL SISO**

**Status :        - Member                      - Alternate —                      - Observer**

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2.                Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations via in particular the Committee of the Regions shall, where appropriate, take into account the regional and local dimension of the action envisaged.

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### **Explanation:**

Consultation via the Committee of the Regions, as currently in place under the Treaties, is the most effective way to evaluate the regional and local dimension.

## AMENDMENT FORM

### ~~Suggestion for amendment of Article :~~

Suggestion for protocol : **Protokoll über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit**

By Ms / ~~Mr~~ : Dr. Sylvia-Yvonne Kaufmann

Status : - Member ~~Alternate~~

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### **Ziffer 8.**

Gemäß Artikel [derzeitiger Artikel 230] der Verfassung ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat gegebenenfalls auf Antrag seines nationalen Parlaments und gemäß seiner jeweiligen Verfassungsordnung wegen Verstoßes gegen das Subsidiaritätsprinzip erhebt. ~~Gemäß ebendiesem Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Rechtsakte, zu denen er konsultiert wurde, erhoben werden.~~

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### **Explanation (if any) :**

#### **Satz 2:**

Das Klagerecht des AdR sollte darauf beschränkt bleiben, seine eigenen Rechte zu verteidigen. Das Subsidiaritätsprinzip dient dem Schutz der Zuständigkeiten der Mitgliedstaaten und damit selbstverständlich auch ihrer Regionen sowie ihrer Kommunen.

Die Wahrung dieses Prinzips dient nicht dem Schutz der Organe der Union, sondern verpflichtet diese. Auch der AdR als Unionsorgan gemäß Art. 263 ff. EGV ist in seiner gesamten Tätigkeit dem Subsidiaritätsprinzip verpflichtet.

#### **Satz 1:**

Meines Erachtens gibt Satz 1 die Ergebnisse der Arbeitsgruppe "Subsidiarität" nicht exakt wieder. Dem Schlussbericht zufolge kam die Gruppe "Subsidiarität"

*"überein, dass die gerichtliche ex-post-Kontrolle der Achtung des Subsidiaritätsprinzips, die vom Gerichtshof vorgenommen wird, verbessert werden könnte. Um dem überwiegend politischen Charakter dieser Kontrolle Rechnung zu tragen, sollte die Möglichkeit, beim Gerichtshof wegen Verstoßes gegen das Subsidiaritätsprinzip Klage zu erheben, davon abhängig gemacht werden, dass die einzelstaatlichen Parlamente das vorstehend vorgeschlagene Frühwarnsystem geltend gemacht haben."*

Der Gedanke, dass die Inanspruchnahme des Frühwarnsystems eine Zulässigkeitsvoraussetzung für die anschließende Klage wegen Verletzung des Subsidiaritätsprinzips ist, scheint mir in Satz 1 nicht enthalten zu sein.

## FICHE AMENDEMENT

**Proposition d'amendement au protocole: SUB**

**Déposée par Madame et Monsieur : Maria Eduarda Azevedo / António Nazaré Pereira**

**Qualité : Membre: Effective / Suppléant**

LES HAUTES PARTIES CONTRACTANTES,

DÉSIREUSES de faire en sorte que les décisions soient prises le plus près possible des citoyens de l'Union ;

DÉTERMINÉES à fixer les conditions d'application des principes de subsidiarité et de proportionnalité énoncés à l'article 7 de la Constitution, ainsi qu'à établir un système de contrôle de l'application par les Institutions et **par les Parlements nationaux** dudit principe,

1.

Chaque Institution et **les Parlements nationaux veillent (...)**

4.

La Commission motive sa proposition au regard **des principes** de subsidiarité et de **proportionnalité**. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect **des principes** de subsidiarité et de **proportionnalité**. (...)

5. Ligne 5

(...) aux principes de subsidiarité et **de proportionnalité**.

6.

Ligne 1

**Le Conseil, le Parlement européen et la Commission (...)**

Ligne 4

(...) aux principes de subsidiarité et **de proportionnalité**.

7.

Les Parlements nationaux des Etats membres (...) celui-ci, **dans un délai non inférieur à quatre semaines**, émettre un avis motivé (...) ne respectent pas **les principes** de subsidiarité **et de proportionnalité**. Lors de la réunion du comité de conciliation, le **Conseil et le Parlement européen** (...)

8.

En vertu de l'article...de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation **des principes** de subsidiarité et **de proportionnalité** [8 mots supprimés] à la demande **des** Parlements nationaux et conformément à leur ordre constitutionnel respectif. (...).

9.

La Commission présente chaque année au Conseil européen, **au Conseil, aux Parlements nationaux et** au Parlement européen [3 mots supprimés] un rapport sur (...)

## AMENDMENT FORM

### Suggestion for protocol:

– on the application of the principles of subsidiarity and proportionality

By Mrs Lena Hjelm-Wallén and Mr Sven-Olof Petersson, government representatives and Mr Sören Lekberg and Mr Kenneth Kvist, national parliament representatives.

Status : - Member: Hjelm-Wallén and Lekberg  
- Alternate: Petersson and Kvist

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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:<sup>1</sup>

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. 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.~~ **regional and local authorities.**<sup>2</sup>
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 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.

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<sup>1</sup> The solutions suggested in the Protocol should be considered in the light of the respective Constitutional rules in the Member States relating to the internal division of competences between the governments and legislative bodies.

<sup>2</sup> All regional and local authorities may be consulted (not only regional parliaments).

~~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.<sup>3</sup>~~

~~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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.<sup>4</sup>~~

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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<sup>3</sup> Should be omitted - the Conciliation procedure runs the risk of being overloaded. At this late stage the influence of national parliaments should be conducted through efficient scrutiny of respective government's actions in the Council.

<sup>4</sup> The principle of subsidiarity is a principle of an essentially political nature, implementation of which involve a considerable margin of discretion for the institutions. Monitoring of compliance with that principle should be of an essentially political nature.

**AMENDMENT FORM**

**Suggestion for protocol (8) on the application of the principles of subsidiarity and proportionality.**

**By The Earl of Stockton MEP**

**Status : Alternate**

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**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 Article of the Constitution, a standing committee composed of representatives of the European Parliament, the Commission and the Council will be established to review the working of the *acquis communautaire* and submit proposals to delete any irrelevant legislation.**

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**Explanation (if any) :**

**AMENDMENT FORM**

**Suggestion for protocol (6) on the application of the principles of subsidiarity and proportionality .**

**By The Earl of Stockton MEP**

**Status : Alternate**

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**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 reasoned opinions on the *European Parliament's* proposal's non-compliance with the principle of subsidiarity, the *Parliament* shall review its proposal. After such review, the *Parliament* may decide to maintain, amend or withdraw its proposal. The *Parliament* shall give reasons for its decision.**

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**Explanation (if any) :**

**AMENDMENT FORM**

**Suggestion for protocol (5) on the application of the principles of subsidiarity and proportionality.**

**By The Earl of Stockton MEP**

**Status : Alternate**

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**Any national parliament of a Member State may, within six weeks from the date of transmission of the *Parliament'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 principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliament and/or, where appropriate, regional parliaments with legislative powers.**

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**Explanation (if any) :**

## AMENDMENT FORM

Suggestion for protocol (4) on the application of the principles of subsidiarity and proportionality.

By The Earl of Stockton MEP

Status : Alternate

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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 a full assessment of the proposal's financial impact and, in the case of recommendations, 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.

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Explanation (if any) :

**AMENDMENT FORM**

**Suggestion for protocol (3) on the application of the principles of subsidiarity and proportionality.**

**By The Earl of Stockton MEP**

**Status : Alternate**

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**(NEW) The European Parliament shall send all legislative proposals agreed to by a majority vote to the European Council who will then decide, by qualified majority, which should be debated by national parliaments.**

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**Explanation (if any) :**

**AMENDMENT FORM**

**Suggestion for protocol (2) on the application of the principles of subsidiarity and proportionality.**

**By The Earl of Stockton MEP**

**Status : Alternate**

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**(NEW) The European Parliament shall have the right of initiative.**

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**Explanation (if any) : There is a need to shift power away from the unelected institutions of the European Union to those that are elected. Therefore, the right of initiative should fall within the remit of the European Parliament and the European Council and NOT the European Commission. Moreover, national parliaments, member state governments, civil society and European citizens should also have the right to propose legislative changes to the European Parliament which can then debate whether to carry these forward.**

## AMENDMENT FORM

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

By Mr Matti Vanhanen

Status : - Member

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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 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, **or a chamber of national parliament** 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. **[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 **principle of subsidiarity**, 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 principle of subsidiarity, 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. **In case of any significant amendment to the Commission's proposal, the national parliaments of the Member States or chambers of national parliaments 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. If a third of the 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 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.

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## 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. The*

*amendments above also provide for individual chambers to send reasoned opinions, as do other amendments following*

**Paragraph 6:** *The 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.*

**Paragraph 6 bis:** *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.*

**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 to the Council. If a significant number of national parliaments or their chambers send a reasoned opinion, the institutions would be required to reconsider their common positions or amendments and decide to maintain, amend or withdraw them, together with reasons for their decision.*

**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.*

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## **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)**

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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 **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.*

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article :**

**Proposition d'amendement au protocole: Subsidiarité (nouveau article 2)**

**Déposée par Madame ou Monsieur : M. Muñoz Alonso**

**Qualité : Membre - Suppléant**

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### **(nouveau article 2 du Protocole)**

L'application des principes de subsidiarité et de proportionnalité respecte les dispositions générales et les objectifs de la Constitution, notamment en ce qui concerne le maintien intégral de l'acquis de l'Union, l'équilibre institutionnel et la primauté du droit de l'Union sur le droit des Etats membres. Elle devrait tenir compte de l'article X de la Constitution, selon lequel « l'Union se dote des moyens nécessaires pour atteindre ses objectifs et mener à bien ses politiques ».

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### **Explication:**

Le Protocole vise à fixer les principes et la procédure qui doivent être tenus en compte pour bien appliquer les principes de subsidiarité et de proportionnalité et ainsi faciliter le contrôle de leur application.

Les principes que je suggère d'ajouter figurent déjà dans le Protocole actuel (paragraphe 2) et je ne vois pas aucune raison qui s'opposerait à sa reprise dans le nouveau Protocole.

## AMENDMENT FORM

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

By Mr : Kimmo Kiljunen  
Status : - Member

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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.

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## **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.*

## AMENDMENT FORM

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

By Ms Kauppi, Piia-Noora

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.*

## AMENDMENT FORM

### **Suggestion for amendment of the Protocol on the application of the principles of subsidiarity and proportionality**

**By:** Danuta Hübner

**Status:** Member

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### **Proposed Amendments**

#### **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.

**CONFIRMING the significance of the principles of subsidiarity and proportionality as dynamic concepts, which allow the Union action within the limits of its competences to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.**

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. 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. **The Commission shall in parallel present consequences of not taking action at the EU level as well as impact assessment of refraining from the given legislative proposal.**

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 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. 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 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 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:**

1. The notion of the dynamic character of subsidiarity should be reinserted.
2. It is up to the Member states to make internal arrangements to clarify domestic financial implications of an action envisaged by the Union. Moreover, the principle of equality between Member States could be affected by giving to states with regional legislation more say in the early warning system. Therefore the notion should be deleted.
3. Subsidiarity shall be also seen as a mechanism providing new incentives for community action, not only as restrictive instrument.

## 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~~<sup>is</sup> 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~~ <sup>The internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers</sup> 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.

- ~~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 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.*

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol :** Protocol on the application of the principles of subsidiarity and proportionality, Paragraph 2

**By Ms / Mr :** Jan Figel

**Status :** - Member

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Amend Paragraph 2 as highlighted in bold:

Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality **the reasons of which shall be stated in the legislative proposal**. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.

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**Explanation (if any) :**

Draft proposal of legislative act in cases of urgency or confidentiality should contain explanation of urgency or confidentiality in order to defend special narrower scope of consultations.

## AMENDMENT FORM

### Suggestion for amendment to Protocol: SUBSIDIARITY

By: Mr. FARNLEITNER

Status: - Member

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(...)

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 **and that the scope and form of the proposed legal act is consistent with satisfactory achievement of its objective and the need for effective enforcement** 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 **Member State** ~~national parliament to entitle make the internal arrangements for consulting each chamber of its national parliament~~ in the case of bicameral parliaments **to send such a reasoned opinion** and/or, where appropriate, **to make the internal arrangements providing for a consultation of regional parliaments with legislative powers**.

(...)

8. Under Article [~~current Article 230~~] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by **a national parliament, where appropriate by one of its chambers in the case of bicameral parliaments, as well as actions on such grounds by regional authorities with own legislative competences brought under the authority of their respective Member State**. ~~Member States on grounds of infringement of the principle of subsidiarity. , where appropriate at the request of a chamber of their national parliaments and/or regional parliaments with legislative powers, 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 87(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:**

*I highly welcome the references to the regional and local dimension of subsidiarity (and proportionality) in par. 2 and 4. **Such a reference should be also inserted in Art.8 (3) of the Constitution** (see my amendment to this Article).*

*As the Protocol deals – according to its title – with subsidiarity and proportionality and Art.9 (3) of the Constitution states that also the principle of proportionality shall be applied as laid down in the Protocol, **some wording on proportionality should be added to par.4**.*

***Par.5** should make clear that it is for each Member State to determine the role of each chamber of its national parliament and the mechanisms for consultation of regional parliaments with legislative powers in the early warning system. **If a Member State wishes so, each chamber should be entitled to send a reasoned opinion.***

*With regard to **par.6** I wish to stress that **only a non-blocking early warning mechanism** which allows national parliaments to issue ‘yellow cards’ (but not ‘red cards’) **is acceptable to me.***

***Par.8:** National parliaments – in the case of bicameral systems each chamber - should have an own right to bring actions to the Court of Justice.*

*Regional authorities with legislative competences should enjoy the same right under the authority of their respective Member State. (In any case, there is an obvious incoherence between the introduction to par.8 which explains that actions by the Member States could also be brought before the Court of Justice,” if necessary at the request of (...) regional parliaments with legislative powers” and the text of par.8 which does not mention regional parliaments.)*

*I welcome that also the Committee of Regions may bring such actions.*

## 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.

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## 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.

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## **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.*

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : Protocol on the application of the principles  
of subsidiarity and proportionality**

**By Ms / Mr : Member of the Convention Mr. Jens-Peter Bonde and alternate Esko Seppänen**

**Status :    X - Member    X- 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. 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 account of the reasoned opinions of the national parliaments.

Where at least one ~~third of~~ national parliaments issueS 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. **IF 25% OF THE NATIONAL PARLIAMENTS, THE EUROPEAN PARLIAMENT OR THE COMMITTEE OF THE REGIONS ISSUE REASONED OPINIONS ON NON-COMPLIANCE WITH THE**

**PRINCIP OF SUBSIDIARITY, THE COMMISSION SHALL WITHDRAW ITS PROPOSAL AND EVENTUALLY PUT FORWARD A NEW 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, 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 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 Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted. **EVERY NATIONAL AND REGIONAL PARLIAMENT, REGIONAL AND LOCAL AUTHORITY CAN APPEAL TO THE EUROPEAN COURT OF JUSTICE ON GROUND OF NON COMPLIANCE TO THE PRINCIPLES OF PROPORTIONALITY AND SUBSIDIARITY.**
9. The Commission shall submit each year to the European Council, the European Parliament, **THE NATIONAL PARLIAMENTS** 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) :**

## AMENDMENT FORM

**Suggestion for amendment of Protocol on the application of the principles of subsidiarity and proportionality, paragraph 9**

**By Ms Irena Belohorska, Mr Jan Figel and Mr Juraj Migas (Slovak Republic)**

**Status: Ms Belohorska and Mr Figel are members, Mr Migas is an alternate.**

- 
9. The Commission shall submit each year to the European Council, the European Parliament, ~~and~~ the Council and the national parliaments of the Member states 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.

*In the draft of Articles 1-16, Article 7 (3) is related to the Citizenship of the Union. We believe it is only a typing error to refer in this case to Article 7 (3). Another reference must be made: [a report on the application of Article ....](#)*

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**Explanation (if any):**

## FICHE AMENDEMENT

Proposition d'amendement au protocole:

subsidiarité et proportionnalité

Déposée par Monsieur:

Erwin Teufel

Qualité:

Membre

### *Texte du Praesidium*

1. Jedes Organ trägt kontinuierlich für die Einhaltung der in Artikel 8 der Verfassung niedergelegten Grundsätze der Subsidiarität und der Verhältnismäßigkeit Sorge.
2. Außer im Falle besonderer Dringlichkeit oder Vertraulichkeit führt die Kommission umfassende Konsultationen durch, bevor sie einen Rechtsakt vorschlägt. Dabei ist gegebenenfalls der regionalen und lokalen Dimension der in Betracht gezogenen Maßnahmen Rechnung zu tragen.
3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Rechtsakt gleichzeitig den nationalen Parlamenten der Mitgliedstaaten und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an die nationalen Parlamente der Mitgliedstaaten weiter.

### *Amendement proposé*

1. Jedes Organ **gewährleistet** die Einhaltung der in Artikel 8 der Verfassung niedergelegten Grundsätze der Subsidiarität und der Verhältnismäßigkeit.
3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Rechtsakt gleichzeitig **jeder Kammer der** nationalen Parlamente der Mitgliedstaaten und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an **jede Kammer der** nationalen Parlamente der Mitgliedstaaten weiter. **Es ist Sache der jeweiligen nationalen Rechtsordnung, die internen Modalitäten für die Unterrichtung der Regionen mit Gesetz-**

**gebungsbefugnissen einschließlich ihrer Parlamente festzulegen.**

4. Die Kommission begründet ihren Vorschlag im Hinblick auf das Subsidiaritätsprinzip. Jeder Vorschlag für einen Rechtsakt sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob das Subsidiaritätsprinzip eingehalten wurde. Dieser Bogen sollte Angaben zu den voraussichtlichen finanziellen Auswirkungen des Rechtsakts sowie – im Fall eines Rahmengesetzes – zu seinen Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebenenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass ein Ziel der Union besser auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen.

4. Die Kommission begründet ihren Vorschlag im Hinblick auf das Subsidiaritätsprinzip **und den Verhältnismäßigkeitsgrundsatz**. Die Feststellung, dass **das Ziel einer in Betracht gezogenen Maßnahme auf der Ebene der Mitgliedstaaten einschließlich ihrer regionalen und lokalen Gebietskörperschaften nicht ausreichend erreicht werden kann, wegen seines Umfangs oder seiner Wirkungen aber wirksamer auf Unionsebene erreicht werden kann**, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. **Folgende Leitlinien sind bei der Prüfung der Frage, ob die genannten Voraussetzungen erfüllt sind, zu befolgen:**
- **Der betreffende Bereich weist transnationale Aspekte auf, die durch Maßnahmen der Mitgliedstaaten einschließlich ihrer regionalen und lokalen Gebietskörperschaften nicht ausreichend geregelt werden können,**
  - **alleinige Maßnahmen der Mitgliedstaaten oder das Fehlen von Unionsmaßnahmen würden gegen die Anforderungen des Verfassungsvertrags (beispielsweise Erfordernis der Korrektur von Wettbewerbsverzerrungen, der Vermeidung verschleiierter Handelsbeschränkungen oder der Stärkung des wirtschaftlichen und**

Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.

**sozialen Zusammenhalts) verstoßen oder auf sonstige Weise die Interessen der Mitgliedstaaten erheblich beeinträchtigen,**

- **Maßnahmen auf Unionsebene würden wegen ihres Umfangs oder ihrer Wirkung im Vergleich zu Maßnahmen auf der Ebene der Mitgliedstaaten einschließlich ihrer regionalen und lokalen Gebietskörperschaften deutliche Vorteile mit sich bringen.**
- Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.

**4<sup>bis</sup>** Jeder Vorschlag für einen Rechtsakt sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob das Subsidiaritätsprinzip **und der Verhältnismäßigkeitsgrundsatz** eingehalten wurden. Dieser Bogen sollte Angaben zu **den in Nr. 4 genannten Anforderungen**, den voraussichtlichen finanziellen Auswirkungen des Rechtsakts sowie – im Fall eines Rahmengesetzes – zu seinen Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebenenfalls der regionalen Rechtsvorschriften.

5. Jedes nationale Parlament eines Mitgliedstaats kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Vorschlags der Kommission für einen Rechtsakt in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist. Dabei ist es Sache des jeweiligen nationalen Parlaments, die internen Modalitäten für die Anhörung seiner beiden Kammern im Falle eines Zweikammersystems und/oder gegebenenfalls der regionalen Parlamente mit Gesetzgebungsbefugnissen festzulegen.

6. Das Europäische Parlament, der Rat und die Kommission berücksichtigen die begründeten Stellungnahmen der nationalen Parlamente.

Gibt mindestens ein Drittel der nationalen Parlamente eine begründete Stellungnahme dahin gehend ab, dass der Kommissionsvorschlag nicht mit dem Subsidiaritätsprinzip in Einklang steht, so hat die Kommission den Vorschlag zu überprüfen. Nach Abschluss der Überprüfung kann die Kommission beschließen, an ihrem Vorschlag festzuhalten, ihn zu ändern oder ihn zurückzuziehen. Die Kommission begründet ihren Beschluss.

5. **Jede Kammer eines** nationalen Parlaments eines Mitgliedstaats kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Vorschlags der Kommission für einen Rechtsakt in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag **ihres** Erachtens nicht mit dem Subsidiaritätsprinzip **oder mit dem Verhältnismäßigkeitsgrundsatz** vereinbar ist. Dabei ist es Sache der jeweiligen nationalen **Rechtsordnung**, die internen Modalitäten für die Anhörung der **Regionen mit Gesetzgebungsbefugnissen einschließlich ihrer Parlamente** festzulegen.

6. Das Europäische Parlament, der Rat und die Kommission berücksichtigen die begründeten Stellungnahmen ~~der nationalen~~ **Parlamente**.

Gibt mindestens ein Drittel der nationalen Parlamente **(mindestens eine Kammer)** eine begründete Stellungnahme dahin gehend ab, dass der Kommissionsvorschlag nicht mit dem Subsidiaritätsprinzip **oder dem Verhältnismäßigkeitsgrundsatz** in Einklang steht, so hat die Kommission den Vorschlag zu überprüfen. Nach Abschluss der Überprüfung kann die Kommission beschließen, an ihrem Vorschlag festzuhalten, ihn zu ändern oder ihn zurückzuziehen. Die Kommission begründet ihren Be-

schluss.

7. Auch die nationalen Parlamente der Mitgliedstaaten können innerhalb der Frist zwischen der Einberufung und der Sitzung des Vermittlungsausschusses eine begründete Stellungnahme abgeben, in der sie darlegen, weshalb der gemeinsame Standpunkt des Rates oder die Abänderungen des Europäischen Parlaments ihrer Ansicht nach dem Subsidiaritätsprinzip zuwiderlaufen.

In der Sitzung des Vermittlungsausschusses berücksichtigen das Europäische Parlament und der Rat weitestgehend die Stellungnahmen der nationalen Parlamente der Mitgliedstaaten.

8. Gemäß Artikel [derzeitiger Artikel 230] der Verfassung ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat gegebenenfalls auf Antrag seines nationalen Parlaments und gemäß seiner jeweiligen Verfassungsordnung wegen Verstoßes gegen das Subsidiaritätsprinzip erhebt.

7. ~~Auch~~ **Jede Kammer eines** nationalen Parlaments **eines** Mitgliedstaates **kann** innerhalb der Frist zwischen der Einberufung und der Sitzung des Vermittlungsausschusses eine begründete Stellungnahme abgeben, in der sie darlegen, weshalb der gemeinsame Standpunkt des Rates oder die Abänderungen des Europäischen Parlaments ihrer Ansicht nach dem Subsidiaritätsprinzip **oder dem Verhältnismäßigkeitsgrundsatz** zuwiderlaufen. **Dabei ist es Sache der jeweiligen nationalen Rechtsordnung, die internen Modalitäten für die Anhörung der Regionen mit Gesetzgebungsbefugnissen einschließlich ihrer Parlamente festzulegen.** In der Sitzung des Vermittlungsausschusses berücksichtigen das Europäische Parlament und der Rat weitestgehend die Stellungnahmen ~~der nationalen Parlamente der Mitgliedstaaten.~~

8. ~~Gemäß Artikel [derzeitiger Artikel 230] der Verfassung ist~~ Der Gerichtshof **ist** für Klagen zuständig, die ein Mitgliedstaat, **eine Kammer eines nationalen Parlaments eines Mitgliedstaats oder eine Region im Rahmen ihrer Gesetzgebungsbefugnisse** gegebenenfalls auf Antrag seines ~~nationalen Parlaments und gemäß seiner jeweiligen Verfassungsordnung~~ wegen Verstoßes gegen das Subsidiaritätsprinzip **oder den Verhältnismäßigkeitsgrundsatz**

Gemäß ebendiesem Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Rechtsakte, zu denen er konsultiert wurde, erhoben werden.

~~satz~~ erhebt. ~~Gemäß ebendiesem Verfassungsartikel können~~ Entsprechende Klagen **können** auch vom Ausschuss der Regionen in Bezug auf Rechtsakte, zu denen er konsultiert wurde, erhoben werden.

9. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament und dem Rat jährlich einen Bericht über die Anwendung des Artikels 8 Absatz 3 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.

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## Begründung:

### *mehrfache Änderungen:*

#### Nr. 4-7

Das Protokoll betrifft auch die Anwendung des Grundsatzes der **Verhältnismäßigkeit**. Deshalb müssen Vorschläge der Kommission, gemeinsame Standpunkte des Rates und Abänderungen des Europäischen Parlaments nicht nur im Hinblick auf die Einhaltung des Subsidiaritätsprinzips, sondern auch des Verhältnismäßigkeitsgrundsatzes überprüft und begründet werden. Gleiches gilt für die Möglichkeit der Stellungnahme im Rahmen des Frühwarnsystems.

Das Frühwarnsystem kann seine Aufgabe nur erfüllen, wenn **beide Kammern** eines nationalen Parlaments jeweils unabhängig voneinander von Anfang an einbezogen werden. Es sollte hier nicht hinter den Konsens in den Arbeitsgruppen „Subsidiarität“ und „Einzelstaatliche Parlamente“ zurückgegangen werden.

#### Nr. 3, 5 und 7

Die in Nr. 5 enthaltene **Einbeziehung der Regionen** der Mitgliedstaaten in das Frühwarnsystem sollte auch bei der Unterrichtung nach Nr. 3 und der Möglichkeit der Stellungnahme nach Nr. 7 erfolgen.

*einzelne Änderungen:*

Nr. 1

Die **bewährte Formulierung** des bisherigen Subsidiaritätsprotokolls sollte auch in der neuen Fassung verwendet werden. (In der englischen Fassung des Entwurfs ist dies auch der Fall.)

Nr. 4

Die **volle Definition** des Subsidiaritätsgrundsatzes des Art. 8 Abs. 3 des Entwurfs sollte auch im Subsidiaritätsprotokoll Prüfungsmaßstab sein. Weiter sollten die **bewährten Leitlinien** der Subsidiaritäts- und Verhältnismäßigkeitsprüfung des bisherigen Subsidiaritätsprotokolls auch in der neuen Fassung niedergelegt werden.

Wie in Art. 8 Abs. 3 des Entwurfs muss auch im Subsidiaritätsprotokoll die **Leistungsfähigkeit der Regionen** und Kommunen berücksichtigt werden.

Nr. 4<sup>bis</sup>

Die **verfahrensmäßigen Bestimmungen zum Subsidiaritätsbogen** sollten aus Gründen der Übersichtlichkeit in einem eigenen Punkt enthalten sein, der auf die materiellen Erfordernisse der Nr. 4 Bezug nimmt.

Nr. 8

Eine wirksame gerichtliche Subsidiaritäts- und Verhältnismäßigkeitskontrolle setzt voraus, dass ein Klagerecht im Fall eines Zweikammersystems **beiden Kammern** sowie auch den **Regionen im Rahmen ihrer Gesetzgebungsbefugnisse** eingeräumt wird.

## AMENDMENT FORM

**Suggestion for amendment of Protocol:**

**subsidiarity and proportionality**

**By Mr:**

**Erwin Teufel**

**Status:**

**Member**

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### *Text of the Presidium*

### *Proposed Amendment*

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.
3. The Commission shall send all its legislative proposals and its amended proposals to **each chamber of** 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 **each chamber of** the national parliaments of the Member States. **It will be for each national legal system to make the internal arrangements for informing regions with legislative powers including their parliaments.**

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.

4. The Commission shall justify its proposal with regard to the principles of subsidiarity **and proportionality**. The reasons for concluding that **the objective of the intended action cannot be sufficiently achieved by the Member States including their regional and local bodies, but can rather, by reason of the scale or effects of the proposed action, be more effectively** achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. **The following guidelines are to be used in examining whether the abovementioned conditions are fulfilled:**

- **the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States including their regional and local bodies;**
- **actions by Member States alone or lack of Community action would conflict with the requirements of the Constitutional Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;**
- **action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States in-**

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.

**cluding their regional and local bodies.**

- 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.

**4<sup>bis</sup>** 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 **compliance with the conditions laid down in paragraph 4**, 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.

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

**Any chamber of a** 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 **or the principle of proportionality**. It will be for each national **legal system** to

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 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. 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.

make the internal arrangements for consulting **regions with legislative powers including their parliaments.**

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 **(at least one chamber)** issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity **or the principle of 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.

7. **Any chamber of a** national parliament 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 the principle of proportionality** or that the European Parliament's amendments do not so comply. **It will be for each national legal system to make the internal arrangements for consulting regions**

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 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 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.

**with legislative powers including their parliaments.** 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, **any chamber of a national parliament of a Member State or a region within its legislative powers** on grounds of infringement of the principle of subsidiarity **or the principle of 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.

## **Explanation:**

### *multiple amendments:*

#### Paragraph 4-7:

The protocol also concerns the application of the principle of **proportionality**. For this reason proposals by the Commission, common positions of the Council and amendments by the European Parliament have to be reviewed and justified not only with a view to compliance with the principle of subsidiarity but also with the principle of proportionality. This also applies to the possibility of giving an opinion within the early warning system. The early warning system will only be able to fulfil its task if **both chambers** of a national parliament are included independently from the beginning. The consensus within the Working Groups ‘Subsidiarity’ and ‘National Parliaments’ should be the minimal standard which ought not to be given up.

#### Paragraph 3, 5 and 7:

The **inclusion of** Member State **regions** into the early warning system in paragraph 5 should be extended to the information under No. 3 and the possibility to give an opinion under paragraph 7.

### *single amendments:*

#### Paragraph 4:

The **entire definition** of the principle of subsidiarity contained in art. 8 para. 3 of the draft should also be the benchmark within the protocol on subsidiarity. Furthermore the **proven original guidelines** for the appraisal of compliance with the principles of subsidiarity and proportionality should also be contained in the new document.

Again, like in art. 8 para. 3 of the draft the **potential of regional and local bodies** has to be taken into account.

#### Paragraph 4<sup>bis</sup>:

For reasons of clarity **the procedural rules on the statement regarding compliance with the principle of subsidiarity** should be contained in a separate paragraph which relates to the substantive requirements of paragraph 4.

#### Paragraph 8:

An effective judicial control of compliance with the principles of subsidiarity and proportionality requires the conferral of a capacity to bring forward an action to **both chambers** if and when bicameral systems are concerned as well as to **regions within its legislative powers**.



**AMENDMENT FORM**

**Suggestion for protocol : Subsidiarity**

**By Mr : Georges Jacobs - UNICE**

**Status : Observer**

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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, *As a part of the subsidiarity check, alternative non-binding instruments and the possibility of relying on self-regulation should be examined.* This statement should contain *an* 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.

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*In carrying out these tasks, the Commission is assisted by an independent body advising on the cost-benefit aspects of draft legislation. This advice is to be made public*

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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 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 *immediately* 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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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 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 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) :**

Article 4 :

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*The Convention, in UNICE's view, should recommend greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes). In this context, self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.'*

*There is a general tendency to increase EU regulation, and mechanisms should be put in place to better assess the impact of regulation. This task could be carried out by an independent institution. The goal of this institution would be to check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market. This body could also have a role in the deregulation process by regularly checking the effectiveness of existing regulation.*

Article 6 :

In order to ensure that the early warning mechanism shall not unduly delay the legislative process, UNICE suggests that where at least one third of national parliaments issued reason opinion on the Commission proposal, the Commission be given a limited timeframe in which it will have to review its proposal. This is why UNICE suggests to incorporate the word “immediately” in order to avoid slowing down the legislative process.

## AMENDMENT FORM

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

By: Teija Tiilikainen and Antti Peltomäki

Status :    Tiilikainen- Member                      Peltomäki- 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 **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 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. 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 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 Committee of the Regions and to the Economic and Social Committee.

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## Explanation (if any) :

### 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 text should not give the impression that any, however modest, assessment of the proposal's financial impact etc. would be sufficient.*

*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 view taken by the majority of the members the working group on the role of 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 "... throughout the legislative process in cases where the text had changed considerably compared to the original proposal" (para. 24 of the final report). 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, 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.*

## **FICHE AMENDEMENT**

**Proposition d'amendement à l'Article :**

**Proposition d'amendement au protocole: Subsidiariedad (nuevo artículo 2)**

**Déposée par Madame ou Monsieur : Mme Palacio**

**Qualité : - Membre - Suppléant**

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### **(nuevo artículo 2 del Protocolo)**

La aplicación de los principios de subsidiariedad y de proporcionalidad respetará las disposiciones generales y los objetivos de la Constitución, principalmente en lo relativo al mantenimiento íntegro del acervo de la Unión, el equilibrio institucional y la primacía del derecho de la Unión sobre el derecho de los Estados miembros. Debería tener en cuenta el artículo X de la Constitución, que establece que « La Unión dispondrá de los medios necesarios para alcanzar sus objetivos y realizar eficazmente sus políticas »

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### **Explication :**

El Protocolo tiene como misión el establecimiento de los principios y del procedimiento que deben tenerse en cuenta a la hora de aplicar de forma adecuada los principios de subsidiariedad y de proporcionalidad con el fin de facilitar de este modo el control de su aplicación.

Los principios que sugiero añadir figuran ya en el Protocolo actual (párrafo 2) y no veo ningún motivo que impidiera que volvieran a figurar en el nuevo Protocolo.

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Explication éventuelle :

## FICHE AMENDEMENT

Proposta di emendamento ai titoli dei Protocolli sull'Applicazione dei principi di sussidiarietà e proporzionalità e sul ruolo dei Parlamenti Nazionali nell'Unione europea.

Déposée par  
Mme Elena PACIOTTI

Qualité: - Supplente

IT Version

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Atto Integrativo sull'Applicazione dei principi di sussidiarietà e proporzionalità  
Atto Integrativo sul Ruolo dei Parlamenti Nazionali nell'Unione europea.

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### Explication éventuelle:

Il nome "Protocollo" si addice a un atto allegato a un Trattato e non a un atto che ha valore costituzionale.

## FICHE AMENDEMENT

**Proposition d'amendement au titres des projets de Protocoles sur l'Application des principes de subsidiarité et proportionnalité et sur le rôle des Parlements nationaux dans l'Union européenne**

**Déposée par**

**Mme Elena PACIOTTI**

**Qualité:** - Suppléante

**FR Version**

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**Acte Complementary sur l'Application des principes de subsidiarité et de proportionnalité**  
**Acte Complementary sur rôle des Parlements nationaux dans l'Union européenne:**

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### **Explication éventuelle:**

Le nom "Protocole" se réfère plutôt à un acte annexé à un Traité et non pas à un acte qui a une valeur constitutionnelle.

## AMENDMENT FORM -

Code: **SubKuneva.doc**

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

**By Ms Meglena Kuneva**

**Status: Member**

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1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution. *(no amendments)*
  - 1.1. *The principle of subsidiarity, referred to in the third paragraph of article 8 of the Constitution, shall relate to areas for which the Union does not have exclusive competence. The principle of subsidiarity allows Union action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.*
  - 1.2. *The principle of proportionality, referred to in the forth paragraph of article 8 of the Constitution, shall guide the form and scope of Union action. In accordance with the principle of proportionality the form of Union action shall be consistent with the satisfactory achievement of the objective of the measure and the need for effective enforcement. As to the scope of the Union action, according to the principle of proportionality, the Union shall legislate only to the extent necessary to achieve the objectives of the Constitution.*
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 **those** principles. 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 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.

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 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.

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 principles of subsidiarity **and 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 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 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.~~

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#### **Explanation:**

**On p. 1.1 and p. 1.2 :** The inclusion of the above-mentioned subparagraphs 1.1 and 1.2 to paragraph 1 of the Protocol on the application of the principles of subsidiarity and proportionality will help clarify the essence of those principles and the impact they have on the transfer of competences and the EU legislative process. Those texts complement the definitions of the Constitution itself and make them more detailed and comprehensible.

**On p. 8:** It is not necessary to explicitly specify that Member States national parliaments could request their governments to refer to the European Court of Justice, since this possibility is provided by the respective constitutional arrangements of the Member States.

The role of the Committee of Regions should be a political one – mainly in the process of the ex- ante consultation within the legislative procedure.

## AMENDMENT FORM

Suggestion for amendment of Article :

Suggestion for protocol : **PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄSSIGKEIT**

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

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8. Gemäß Artikel [derzeitiger Artikel 230] der Verfassung ist der Gerichtshof für Klagen zuständig, die ein Mitgliedstaat, **eine Kammer eines nationalen Parlaments eines Mitgliedstaates oder eine Region im Rahmen ihrer Gesetzgebungsbefugnisse** ~~gegebenenfalls auf Antrag seines nationalen Parlaments und gemäß seiner jeweiligen Verfassungsordnung~~ wegen Verstoßes gegen das Subsidiaritätsprinzip **oder den Verhältnismäßigkeitsgrundsatz** erhebt. Gemäß ebendiesem Verfassungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Rechtsakte, zu denen er konsultiert wurde, erhoben werden.

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**Explanation (if any) :**

Eine wirksame justizielle Subsidiaritätskontrolle setzt voraus, dass ein Klagerecht im Fall eines Zweikammersystems beiden Kammern sowie auch den Regionen im Rahmen ihrer Gesetzgebungszuständigkeiten eingeräumt wird.

## AMENDMENT FORM

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

**By Mr : Joachim Wuermeling**

**Status : - Alternate**

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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 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.~~

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### **Explanation (if any) :**

The purpose of this amendment is to enable the Committee of the Regions to bring actions before the Court on grounds of infringement of the principle of subsidiarity, without absolutely limiting it to cases where it has been previously consulted. There might be cases where it should have been consulted, which involve important issues of principle for regional and local government. The present text would exclude the Committee taking action in such cases.

## AMENDMENT FORM

Suggestion for amendment of Article :

Suggestion for protocol : **PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE  
DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄSSIGKEIT**

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

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7. ~~Auch~~ Jede Kammer eines nationalen Parlaments ~~der eines~~ Mitgliedstaats kann können innerhalb der Frist zwischen der Einberufung und der Sitzung des Vermittlungsausschusses eine begründete Stellungnahme abgeben, in der sie darlegen, weshalb der gemeinsame Standpunkt des Rates oder die Abänderungen des Europäischen Parlaments ihrer Ansicht nach dem Subsidiaritätsprinzip oder dem Verhältnismäßigkeitsprinzip zuwiderlaufen. Eine solche begründete Stellungnahme können zur Wahrung ihrer Rechte auch Regionen und ihre Parlamente abgeben.

In der Sitzung des Vermittlungsausschusses berücksichtigen das Europäische Parlament und der Rat weitestgehend die Stellungnahmen der nationalen Parlamente der Mitgliedstaaten.

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Explanation (if any) :

## AMENDMENT FORM

Suggestion for amendment of Article :

Suggestion for protocol : **PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE  
DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄSSIGKEIT**

By Mr : Joachim Wuermeling and Peter Altmaier

Status : - Alternates

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6. Das Europäische Parlament, der Rat und die Kommission berücksichtigen die begründeten Stellungnahmen ~~der nationalen Parlamente~~.

Gibt mindestens ein Drittel der nationalen Parlamente (mindestens eine Kammer oder eine Region oder deren Parlament) eine begründete Stellungnahme dahin gehend ab, dass der Kommissionsvorschlag nicht mit dem Subsidiaritätsprinzip oder dem Verhältnismäßigkeitsgrundsatz in Einklang steht, so hat die Kommission den Vorschlag anhand der in Nr. 4 Satz 2 genannten Leitlinien zu überprüfen. Nach Abschluss der Überprüfung kann die Kommission beschließen, an ihrem Vorschlag festzuhalten, ihn zu ändern oder ihn zurückzuziehen. Die Kommission begründet ihren Beschluss.

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Explanation (if any) :

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE  
DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄSSIGKEIT**

**By Mr : Joachim Wuermeling and Peter Altmaier**

**Status : - Alternates**

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5. Jede Kammer eines nationalen Parlaments eines Mitgliedstaats kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Vorschlags der Kommission für einen Rechtsakt in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines Erachtens nicht mit dem Subsidiaritätsprinzip oder Verhältnismäßigkeitsprinzip vereinbar ist. Eine solche begründete Stellungnahme können zur Wahrung ihrer Rechte auch Regionen und ihre Parlamente abgeben. Dabei ist es Sache des jeweiligen nationalen Parlaments, die internen Modalitäten für die Anhörung seiner beiden Kammern im Falle eines Zweikammersystems und/oder gegebenenfalls der regionalen Parlamente mit Gesetzgebungsbefugnissen festzu legen.

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**Explanation (if any) :**

Das Frühwarnsystem kann seine Aufgabe nur erfüllen, wenn Subsidiaritätsverstöße jeweils unabhängig voneinander von beiden Kammern des nationalen Parlaments und zur Wahrung ihrer Rechte auch von den Regionen und deren Parlamenten gerügt werden können. Schon aufgrund der Kürze der für die Stellungnahme eingeräumten Frist ist eine bloße interne Beteiligung der Regionen und ihrer Parlamente nicht ausreichend.

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄSSIGKEIT**

**By Mr : Joachim Wuermeling and Peter Altmaier**

**Status : - Alternates**

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4. Die Kommission begründet ihren Vorschlag im Hinblick auf das Subsidiaritätsprinzip und das Verhältnismäßigkeitsprinzip. Dabei ist zu prüfen, ob die Mitgliedstaaten, Regionen oder Kommunen nicht in der Lage sind, die Ziele zu erreichen, ob die Vorteile eines Handelns auf Gemeinschaftsebene die Nachteile uniformer Lösungen deutlich überwiegen und ob weniger einschneidende Maßnahmen nicht ebenso wirksam sind. Jeder Vorschlag für einen Rechtsakt sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob das Subsidiaritätsprinzip eingehalten wurde. Dieser Bogen sollte Angaben zu den voraussichtlichen finanziellen Auswirkungen des Rechtsakts sowie – im Fall eines Rahmengesetzes – zu seinen Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebenenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass ein Ziel der Union besser auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.

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**Explanation (if any) :**

Die Vorschläge der Kommission sollten nicht nur im Hinblick auf die Einhaltung des Subsidiaritätsprinzips, sondern auch des Verhältnismäßigkeitsprinzips überprüft und begründet werden.

Die Leitlinien der Subsidiaritäts- und Verhältnismäßigkeitsprüfung sollten auch im neuen Subsidiaritätsprotokoll deutlich werden.

## AMENDMENT FORM

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

**By Mr : Joachim Wuermeling**

**Status : - Alternate**

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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~~ an 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.

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#### **Explanation (if any) :**

The current text refers to the Commission making "some" assessment of the financial impact of legislative proposals. This is very vague, and could mean be dealt with in a totally minimalist way. By saying that "an" assessment should be made, this would mean that the assessment should be reasonably complete. After all, the financial impact of legislation is a vital consideration, and should not be dealt with as a minor matter.

## AMENDMENT FORM

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

**By Mr : Joachim Wuermeling**

**Status : - Alternate**

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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.~~ The regional and local dimension of the action envisaged shall also be taken into account, through consultation with the Committee of the Regions, and the relevant representative organisations.

## AMENDMENT FORM

### Suggestion for PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

By Mr Poul Schlüter

Status : Alternate

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X. Union action shall be justified only if the objectives of the proposed action cannot be sufficiently achieved by Member States' action and could be better achieved by action on the part of the Union, because the issue under consideration has transnational aspects, or because action at national level alone, or lack of Union action, would conflict with the requirements of the Treaty, or because action at Union level would have obvious advantages, by reason of its scale or effects, as compared with action at Member State level.

Y. The form of Union action must be as simple as possible and must not go beyond what is required, consistent with satisfactory achievement of the objective of the measure, and with the need for effective enforcement. The Union shall legislate only to the extent necessary, preferring framework laws to laws or detailed measures, and leaving the maximum scope for national decision.

3. The Commission shall send all its legislative proposals and its amended proposals directly to the national parliaments of the Member States at the same time as to the Union legislator. If a legislative proposal is based on Article 16 in the Constitutional Treaty the Commission shall bring this fact to the attention of the national parliaments. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, directly to the national parliaments of the Member States.

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 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. [The mechanism could be further strengthened. Drafting will follow later].

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**Explanation:**General comment:

The proposed mechanism for subsidiarity control involving the national parliaments issuing reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity is a step in the right direction. However, it is my belief that this mechanism could be strengthened further, including i.a. the possibility of the Commission being required to withdraw a proposal. I will therefore reserve my right to return with specific drafting on these particular issues.

With regard to my specific drafting proposals:

X + Y) Subsidiarity and proportionality are fundamental principles defining the Union. It is important that Union responsibility with regard to these principles is set out in clear terms. The amendment is intended to send an important message to the citizens that the EU-legislator must strive for simplicity and clarity. It builds on the wording of the existing protocol.

3) The use of the word "directly" corresponds to the wording of the similar provision (indent 2) in the draft protocol on national parliaments (CONV 579/03).

Article 16 should only be used in exceptional situations. Therefore, the national parliaments should be given the best possible conditions for assessing whether a legislative proposal based on Article 16 complies with the principle of subsidiarity. It already follows from Article 16, par. 2 in the Constitutional Treaty that the Commission is under obligation to make the national parliaments specifically aware of legislative proposals based on Article 16. It would be in line with the objective of clarity if this obligation was also stated in the protocol on subsidiarity.

## AMENDMENT FORM

**Suggestion for amendment of:** Paragraphs 5 and 8 of the Protocol on the application of the principles of subsidiarity and proportionality

**By:** Lamberto Dini and Filadelfio Basile

**Status :** - Member and Alternate: representatives of the Italian Senate

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5. Any national parliament, **or in bicameral systems each chamber of 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, **as appropriate**, for consulting ~~each chamber in the case of bicameral parliaments and/or, where appropriate,~~ regional parliaments with legislative powers.
8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by ~~Member States~~ **national parliaments, and in bicameral systems by either chamber of parliament**, 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. ...
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### **Explanation :**

The proposed amendment reflects fully the conclusions reached by the Working Groups on Subsidiarity and on the Role of National Parliaments, as regards both the submission of an opinion in the early-warning system and the possibility of demanding a judicial review by the European Court of Justice. In both cases, there must exist the possibility for national parliaments, or in bicameral systems by each of the chambers of parliament, to intervene directly.

## **AMENDMENT FORM**

### **Suggestion for amendments of the Protocol on the Application of the Principles of Subsidiarity and Proportionality**

**By Mr. Vytenis Andriukaitis, Mr. Algirdas Gricius, Mr. Gintautas Šivickas**

**Status : Member, Member, 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 **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 national parliament of a Member State**, 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**. 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. Where at least one third of **the national parliaments** 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 national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principles of subsidiarity or proportionality, the Commission shall amend the proposal or may decide to withdraw it. 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 national parliaments 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.

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**Explanation (if any) :**

*The above amendments, with the exception of para 5, para 6, para 6 bis and para 7, are the expression of support to the suggested amendments by Ms. Gisela Stuart.*

*In pour opinion, national parliaments of the Member States, regardless of whether they are unicameral or bicameral, should be regarded as one entity. The chambers of the national parliaments should decide internally on the common position on one or another EU issue. National*

*parliaments therefore should present to the EU institutions one opinion and speak in one voice. We would be in favour of the rule: one Member State - one national parliament - one voice.*

## AMENDMENT FORM

### Suggestion for amendment of Protocol on Subsidiarity, paragraph 8

By Mr : MacCormick, Neil, Johannes Voggenhuber, Eva Lichtenberger

Status : - Alternate

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8 Add at the end of the existing paragraph 8 the words: "*or ought to have been consulted*".

Add new paragraph:

#### **8. bis**

*Under the authority of a Member State concerned and according to its constitutional or national legislation, a region or other territorial entity within that Member State may defend its rights before the Court of Justice in the light of the principle of subsidiarity, if its prerogatives have been directly infringed by Union legislation.*

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#### **Explanation:**

*The present text provides for the Committee of the Regions' competence to raise an issue of subsidiarity before the Court only when the CoR has been consulted. It is necessary also to cover the case where the CoR ought to have been consulted but where this was overlooked or neglected by the Commission.*

#### **In relation to 8 bis:**

*This paragraph reproduces in substance the relevant paragraph of the European Parliament's report on the Role of the Regional and Local Authorities in Building Europe - the 'Napolitano Report'. The sentence has been re-cast only stylistically in order to conform with the style of the draft constitution text. There seems no good reason to deny a right of access by Regions or other territorial entities to the Court, where this has the authority of the relevant Member State and is in accordance with its constitutional or other relevant laws.*

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : the application of the principles of subsidiarity and proportionality**

**By Ms / Mr : Johannes Voggenhuber, Marie Nagy,**

**Status :    - Member            - Alternate**

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~~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.~~

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**Explanation (if any) :**

*The formal possibility to interrupt the Union's legislative procedure once it is underway should not be possible. National parliaments should stick to their primary role which is to influence and hold account the performance of their ministers in Council.*

## AMENDMENT FORM

**Suggestion for amendment of Article :**

**Suggestion for protocol : The application of the principles of subsidiarity and proportionality**

**By Ms / Mr : Johannes Voggenhuber, Marie Nagy**

**Status :    - Member            - Alternate**

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~~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 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.~~

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**Explanation (if any) :**

## FICHE AMENDEMENT

### Proposition d'amendement au Protocole sur l'application des principes de subsidiarité et de proportionnalité, par. 4

Déposée par Monsieur : M. MARINHO, Luís

Qualité : - Membre

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4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche devrait comporter des éléments d'appréciation **concernant le caractère exclusive ou partagée de la compétence exercée et de** son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en œuvre par les Etats membres, ~~y inclus, le cas échéant, la législation régionale (8 mots supprimés)~~. Les raisons permettant de conclure qu'un objectif de l'Union peut être mieux réalisé au niveau de celle-ci doivent s'appuyer sur des indicateurs qualitatifs et, chaque fois que c'est possible, quantitatifs. La Commission tient compte de la nécessité de faire en sorte que toute charge, financière ou administrative, incombant à l'Union, aux gouvernements nationaux, aux autorités régionales ou locales, aux opérateurs économiques et aux citoyens soit le moins élevée possible et à la mesure de l'objectif à atteindre.

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Explication éventuelle :

**Par définition, les compétences exclusives de l'Union ne peuvent pas être soumises à aucun contrôle du principe de subsidiarité**

## AMENDMENT FORM

### Suggestion for amendment of Protocol on Subsidiarity, paragraph 4

By Mr : MacCormick, Neil

Status : - Alternate

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Add new paragraph:

#### **4. bis**

*European Laws and Framework Laws should leave as much scope for locally well-informed decision-making by Member States (or, in appropriate cases their regional and local authorities) as is consistent with securing the legislative aim, and they should so far as possible respect well established national arrangements and the organisation and character of the legal systems of the Member States. The Commission, in justifying a legislative proposal shall also take account of these desiderata.*

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#### **Explanation:**

*This text is substantially drawn from paragraph 7 of the Amsterdam protocol. It draws attention to an important aspect of subsidiarity, and it would not be consistent with the Convention's work to dilute or diminish the previously established understanding of the requirements of subsidiarity.*

## **FICHE AMENDEMENT**

**Proposition d'amendement au Protocole sur l'application des principes de subsidiarité et de proportionnalité, par. 3**

**Déposée par Monsieur : M. MARINHO, Luís**

**Qualité : - Membre**

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3. **En-dehors du cadre de l'exercice des compétences exclusives de l'Union**, la Commission envoie toutes ses propositions législatives ainsi que ses propositions modifiées aux Parlements nationaux des Etats membres en même temps qu'au législateur de l'Union. Dès leur adoption, les résolutions législatives du Parlement européen et les positions communes du Conseil sont envoyées par ceux-ci aux Parlements nationaux des Etats membres.

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**Explication éventuelle :**

**Par définition, les compétences exclusives de l'Union ne peuvent pas être soumises à aucun contrôle du principe de subsidiarité**

## FICHE AMENDEMENT

### Proposition d'amendement au projet de Protocole sur l'application des principes de subsidiarité et de proportionnalité – paragraphe 4

**Déposée par** M. Caspar EINEM  
Mme Linda McAVAN  
M. Luis MARINHO

**Qualité:** - Membres

Mme Pervenche BERÈS  
Mme Elena PACIOTTI  
Mme Helle THORNING-SCHMIDT

**Qualité:** - Suppléants

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### **Protocole sur l'application des principes de subsidiarité et de proportionnalité**

4. La Commission motive sa proposition au regard du principe de subsidiarité. Toute proposition législative devrait comporter une fiche contenant des éléments circonstanciés permettant de formuler une appréciation quant au respect du principe de subsidiarité. Cette fiche devrait comporter des éléments d'appréciation de son impact sur le plan financier ainsi que de son implication, lorsqu'il s'agit d'une loi-cadre, sur la réglementation à mettre en oeuvre par les Etats membres, ~~et inclus, le cas échéant, la législation régionale~~ **(8 mots supprimés)**.

**Le reste inchangé.**

## **FICHE AMENDEMENT**

### **Proposition d'amendement au projet de Protocole sur l'application des principes de subsidiarité et de proportionnalité – paragraphe 6**

**Déposée par** M. Olivier DUHAMEL  
M. Caspar EINEM

**Qualité:** - Membres

Mme Pervenche BERÈS  
M. Carlos CARNERO  
Mme Elena PACIOTTI

**Qualité:** - Suppléants

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### **Protocole sur l'application des principes de subsidiarité et de proportionnalité**

**Paragraphe 6 : supprimer 2ème partie**

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#### **Explication éventuelle:**

Le premier alinéa prévoit que la Commission, ainsi que le Parlement européen et le Conseil, "tient compte des avis motivés des Parlements nationaux". évidemment, en tenir compte signifie maintenir ou modifier ou retirer la proposition. A ce fin il n'est pas nécessaire que ce soit un tiers de Parlements nationaux à émettre des avis motivés sur la même proposition de la Commission. Donc, le premier alinéa est suffisant ; on peut bien éviter la complication du 2ème alinéa.

## **FICHE AMENDEMENT**

### **Proposition d'amendement au projet de Protocole sur l'application des principes de subsidiarité et de proportionnalité – paragraphe 7**

**Déposée par** M. Olivier DUHAMEL  
M. Caspar EINEM  
Mme Linda McAVAN  
M. Luis MARINHO  
Mme Anne VAN LANCKER

**Qualité:** - Membres

Mme Pervenche BERÈS  
M. Carlos CARNERO  
Mme Elena PACIOTTI  
Mme Helle THORNING-SCHMIDT

**Qualité:** - Suppléants

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### **Protocole sur l'application des principes de subsidiarité et de proportionnalité**

**Paragraphe 7: supprimer**

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### **Explication éventuelle:**

Le mécanisme de l'art.7 n'est pas réaliste, il semble ignorer que le délai entre la convocation du comité de conciliation et la tenue de celui-ci peut être extrêmement court. Et surtout ce serait très délicat sur le plan institutionnel émettre en tant que Parlements nationaux des avis négatifs sur les amendements du Parlement européen.

## FICHE AMENDEMENT

### Proposition d'amendement au protocole sur l'application des principes de subsidiarité et de proportionnalité

Déposée par Monsieur Hubert HAENEL

Qualité : - Membre

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*Dans la dernière phase du paragraphe 8, après les mots :*

peuvent aussi être introduits

*ajouter les mots :*

par la Conférence des organes spécialisés dans les affaires communautaires et

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#### Explication éventuelle :

##### I. Exposé des motifs

Le projet de protocole attribue au Comité des régions le droit d'introduire des recours pour violation du principe de subsidiarité.

Dans le même esprit, cet amendement propose d'attribuer également ce droit à la Conférence des organes spécialisés dans les affaires communautaires.

Les régions ont des compétences législatives dans certains États membres seulement. Néanmoins, ces régions pourront saisir la Cour de justice par l'intermédiaire du Comité des régions. Le projet de protocole accorde ainsi, paradoxalement, plus de droits à ces législateurs régionaux qu'aux législateurs nationaux qui, quant à eux, ne pourront saisir la Cour de justice ni individuellement, ni par l'intermédiaire d'un organe collectif.

Le protocole introduit ainsi, en pratique, une inégalité entre les États, selon qu'ils ont ou non des régions à compétence législative.

La Conférence des organes spécialisés dans les affaires communautaires (COSAC) a été officialisée par le traité d'Amsterdam. Elle réunit des représentants des commissions compétentes, dans chaque Parlement, pour les questions européennes. Elle peut donc valablement jouer, pour les législateurs nationaux, le même rôle que le Comité des régions pour les législateurs régionaux.

Attribuer à la COSAC le droit de saisir la Cour de justice pour violation du principe de subsidiarité permettrait de réparer l'anomalie consistant à accorder, de fait, une meilleure protection aux législateurs régionaux qu'aux législateurs nationaux.

## **FICHE AMENDEMENT 8**

**Proposition d'amendement au protocole: Protocolo sobre la aplicación de los principios de subsidiariedad y de proporcionalidad**

**Déposée par Madame ou Monsieur : Borrell (miembro), Carnero y López Garrido (suplentes)**

**Qualité : - Membre            - Suppléant**

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### **Punto 8**

La última frase quedaría así:

**De conformidad con el mismo artículo de la Constitución, tales recursos pueden también ser presentados por el Comité de las Regiones para los actos legislativos sobre los que haya sido en cada caso consultado y por las regiones con poder legislativo de acuerdo con el ordenamiento constitucional de cada Estado**

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**Explication éventuelle :**

## AMENDMENT FORM

**Vorschlag für die Änderung von :** § 5 und § 8 des Protokolls über die Anwendung der Grundsätze der Subsidiarität und der Verhältnismäßigkeit

**von Herrn/Frau:** Prof. Dr. Jürgen Meyer, Delegierter des Deutschen Bundestages

**Status:** - Mitglied -

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### Ziel:

Berücksichtigung beider Parlamentskammern in den Zwei-Kammer-Systemen der EU-Mitgliedstaaten und Beitrittskandidaten durch Abänderung von § 5 (ex-ante Frühwarnsystem) und § 8 (ex-post Klagemöglichkeit) des Protokolls wie folgt:

5. Jedes nationale Parlament eines Mitgliedstaats **oder in Zwei-Kammer-Systemen jede Parlamentskammer** kann binnen von sechs Wochen nach dem Zeitpunkt der Übermittlung eines Vorschlags der Kommission für einen Rechtsakt in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist. Dabei ist es Sache des jeweiligen nationalen Parlaments, **gegebenenfalls** die internen Modalitäten für die Anhörung ~~seiner beiden Kammern im Falle eines Zwei-Kammer-Systems und/oder gegebenenfalls~~ der regionalen Parlamente mit Gesetzgebungsbefugnissen festzulegen.
8. Gemäß Art. (derzeitiger Art. 230) der Verfassung ist der Gerichtshof für Klagen zuständig, die ein ~~Mitgliedstaat~~ **nationales Parlament oder in Zwei-Kammer Systemen eine der beiden Parlamentskammern** ~~gegebenenfalls auf Antrag seines nationalen Parlaments und~~ gemäß seiner jeweiligen Verfassungsordnung wegen Verstoßes gegen das Subsidiaritätsprinzip erhebt. ...

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### Begründung:

Der Änderungsvorschlag entspricht den Beratungsergebnissen der AG I. Sowohl bei der Stellungnahme im Frühwarnsystem als auch bei der Klagemöglichkeit vor dem EuGH muss die direkte Interventionsmöglichkeit der nationalen Parlamente oder in bicameralen Systemen jeder Parlamentskammer gesichert sein.

## AMENDMENT FORM

**Suggestion for amendment of:** Paragraphs 5 and 8 of the Protocol on the application of the principles of subsidiarity and proportionality

**By:** Professor Jürgen Meyer, delegate of the German Bundestag

**Status :** - Member -

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### Aim:

To take into account both chambers of parliament in the bicameral systems of EU Member States and accession candidates, by amending Paragraph 5 (*ex ante* early-warning system) and Paragraph 8 (*ex post* judicial review) of the Protocol as follows:

5. Any national parliament **or, in bicameral systems, each chamber of 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, **where appropriate**, for consulting ~~each chamber in the case of bicameral parliaments and/or, where appropriate,~~ regional parliaments with legislative powers.
  8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by ~~Member States~~ **national parliaments or, in bicameral systems, either chamber of parliament** 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. ...
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### Explanation :

The proposed amendment reflects the conclusions reached by Working Group I in its deliberations. Both as regards the submission of an opinion in the early-warning system and the possibility of demanding a judicial review by the European Court of Justice, the possibility for national parliaments, or, in bicameral systems, each of the chambers of parliament, to intervene directly must be safeguarded.

## FICHE AMENDEMENT

### Proposition d'amendement à l'Article : 5 et l'Article 8 du Protocole d'application des principes de subsidiarité et de proportionnalité

Déposé par Monsieur le Prof. Jürgen Meyer, délégué du Bundestag allemand

Qualité : Membre

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#### Objectif :

Prise en considération des deux chambres du Parlement dans les systèmes bicaméraux des États membres de l'Union et des pays candidats par la modification des articles 5 (système d'alerte précoce ex-ante) et 8 (possibilité de recours ex-post) du protocole, comme suit :

**5.** Tout Parlement national d'un État membre **ou, dans les systèmes bicaméraux, toute chambre du Parlement** peut, dans un délai de six semaines à compter de la date de transmission de la proposition législative de la Commission, adresser aux Présidents du Parlement européen, du Conseil et de la Commission un avis motivé contenant les raisons pour lesquelles il estimerait que la proposition en cause n'est pas conforme au principe de subsidiarité. Il appartient à chaque Parlement national d'organiser les modalités internes de consultation ~~de chacune des Chambres dans le cas des Parlements bicaméraux et/ou~~, le cas échéant, des Parlements régionaux avec pouvoirs législatifs.

**8.** En vertu de l'article [actuel article 230] de la Constitution, la Cour de Justice a juridiction pour connaître des recours pour violation du principe de subsidiarité introduits par les ~~États membres, le cas échéant à la demande de leurs~~ Parlements nationaux **ou, dans les systèmes bicaméraux, par chaque chambre du Parlement**, et conformément à leur ordre constitutionnel respectif. ...

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#### Explication :

L'amendement correspond aux résultats des discussions du GT I. La possibilité d'intervention directe des Parlements nationaux ou, dans les systèmes bicaméraux, de chaque chambre du Parlement, doit être garantie, tant lors de la prise de position dans le cadre du système d'alerte précoce que pour la possibilité de recourir devant la Cour de Justice.

## FICHE AMENDEMENT

Proposition d'amendement à l'Article:

### PROTOKOLL ÜBER DIE ANWENDUNG DER GRUNDSÄTZE DER SUBSIDIARITÄT UND DER VERHÄLTNISSMÄßIGKEIT

Déposée par Monsieur:     **Joachim Wuermeling**

Qualité:   **Suppléant**

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<i>Texte du Praesidium</i>	<i>Amendement proposé</i>
1. Jedes Organ trägt kontinuierlich für die Einhaltung der in Artikel I-9 der Verfassung nieder-gelegten Grundsätze der Subsidiarität und der Verhältnismäßigkeit Sorge.	1. Jedes Organ trägt kontinuierlich für die Einhaltung der in Artikel I-9 der Verfassung nieder-gelegten Grundsätze der Subsidiarität und der Verhältnismäßigkeit Sorge.
2. Die Kommission führt umfangreiche Anhörungen durch, bevor sie einen Gesetzgebungsakt vorschlägt. Dabei ist gegebenenfalls der regionalen und lokalen Dimension der in Betracht gezogenen Maßnahmen Rechnung zu tragen. In außergewöhnlich dringenden Fällen führt die Kommission keine Konsultationen durch. Sie begründet ihre Entscheidung in ihrem Vorschlag.	2. Die Kommission führt umfangreiche Anhörungen durch, bevor sie einen Gesetzgebungsakt vorschlägt. Dabei ist gegebenenfalls der regionalen und lokalen Dimension der in Betracht gezogenen Maßnahmen Rechnung zu tragen. In außergewöhnlich dringenden Fällen führt die Kommission keine Konsultationen durch. Sie begründet ihre Entscheidung in ihrem Vorschlag.
3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Gesetzgebungsakt gleichzeitig den nationalen Parlamenten der Mitgliedstaaten und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und	3. Die Kommission übermittelt alle ihre Vorschläge und geänderten Vorschläge für einen Gesetzgebungsakt gleichzeitig den nationalen Parlamenten der Mitgliedstaaten und dem Unionsgesetzgeber. Sobald das Europäische Parlament seine legislativen Entschlüsse angenommen und

<p>der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an die nationalen Parlamente der Mitgliedstaaten weiter.</p> <p>4. Die Kommission begründet ihren Vorschlag im Hinblick auf die Grundsätze der Subsidiarität und der Verhältnismäßigkeit. Jeder Gesetzgebungsvorschlag sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob die Grundsätze der Subsidiarität und der Verhältnismäßigkeit eingehalten wurden. Dieser Bogen sollte Angaben zu den voraussichtlichen finanziellen Auswirkungen sowie – im Fall eines Rahmengesetzes – zu den Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebenenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass ein Ziel der Union besser auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.</p>	<p>der Rat seine gemeinsamen Standpunkte festgelegt hat, leiten sie diese an die nationalen Parlamente der Mitgliedstaaten weiter.</p> <p><u>4.</u> Die Kommission begründet ihren Vorschlag im Hinblick auf die Grundsätze der Subsidiarität und der Verhältnismäßigkeit. <b><u>Folgende Leitlinien sollten bei der Prüfung der Frage, ob das Subsidiaritätsprinzip beachtet wurde, befolgt werden:</u></b></p> <p><b><u>a. Der genannte Bereich weist transnationale Aspekte auf, die durch Maßnahmen der Mitgliedstaaten nicht ausreichend geregelt werden können,</u></b></p> <p><b><u>b. Alleinige Maßnahmen der Mitgliedstaaten oder das Fehlen von Gemeinschaftsmaßnahmen würden gegen die Anforderungen des Vertrags verstoßen oder auf sonstige Weise die Interessen der Mitgliedstaaten erheblich beeinträchtigen,</u></b></p> <p><b><u>c. Maßnahmen auf Gemeinschaftsebene würden wegen ihres Umfangs oder ihrer Wirkungen im Vergleich zu Maßnahmen auf der Ebene der Mitgliedstaaten deutliche Vorteile mit sich bringen.</u></b></p>
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<p>5. Jedes nationale Parlament eines Mitgliedstaats oder jede Kammer eines nationalen Parlaments kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Gesetzgebungsvorschlags der Kommission in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines bzw. ihres Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist. Dabei ist es Sache des jeweiligen nationalen Parlaments oder der jeweiligen Kammer eines nationalen Parlaments, gegebenenfalls die regionalen Parlamente mit Gesetzgebungsbefugnissen zu konsultieren.</p> <p>6. Das Europäische Parlament, der Rat und die Kommission berücksichtigen die begründeten Stellungnahmen der nationalen Parlamente der Mitgliedstaaten oder einer der Kammern eines nationalen Parlaments.</p> <p>Die nationalen Parlamente der Mitgliedstaaten mit einem Einkammersystem verfügen über zwei Stimmen, während jede der beiden Kammern in einem Zweikammersystem über eine Stimme verfügt.</p> <p>Wird von einer Anzahl nationaler Parlamente und Kammern natio-</p>	<p>Jeder Gesetzgebungsvorschlag sollte einen Bogen mit detaillierten Angaben enthalten, die es ermöglichen zu beurteilen, ob die Grundsätze der Subsidiarität und der Verhältnismäßigkeit eingehalten wurden. Dieser Bogen sollte Angaben zu den voraussichtlichen finanziellen Auswirkungen sowie – im Fall eines Rahmengesetzes – zu den Auswirkungen auf die von den Mitgliedstaaten zu erlassenden Rechtsvorschriften enthalten, einschließlich gegebenenfalls der regionalen Rechtsvorschriften. Die Feststellung, dass ein Ziel der Union besser auf Unionsebene erreicht werden kann, muss auf qualitativen und – soweit möglich – auf quantitativen Kriterien beruhen. Die Kommission berücksichtigt dabei, dass die finanzielle Belastung und der Verwaltungsaufwand der Union, der Regierungen der Mitgliedstaaten, der regionalen und lokalen Behörden, der Wirtschaft und der Bürger so gering wie möglich gehalten werden und in einem angemessenen Verhältnis zu dem angestrebten Ziel stehen müssen.</p> <p>5. Jedes nationale Parlament eines Mitgliedstaats oder jede Kammer</p>
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<p>naler Parlamente, die mindestens einem Drittel der Gesamtzahl der Stimmen entspricht, eine begründete Stellungnahme dahin gehend abgegeben, dass der Kommissionsvorschlag nicht mit dem Subsidiaritätsprinzip im Einklang steht, so hat die Kommission den Vorschlag zu überprüfen. Diese Schwelle beträgt mindestens ein Viertel der Stimmen, wenn es sich um einen Vorschlag der Kommission oder eine Initiative einer Gruppe von Mitgliedstaaten im Rahmen von Teil III Kapitel X Artikel [8] der Verfassung betreffend den Raum der Freiheit, der Sicherheit und des Rechts handelt.</p>	<p>eines nationalen Parlaments kann binnen sechs Wochen nach dem Zeitpunkt der Übermittlung eines Gesetzgebungsvorschlags der Kommission in einer begründeten Stellungnahme an die Präsidenten des Europäischen Parlaments, des Rates und der Kommission darlegen, weshalb der Vorschlag seines bzw. ihres Erachtens nicht mit dem Subsidiaritätsprinzip vereinbar ist. Dabei ist es Sache des jeweiligen nationalen Parlaments oder der jeweiligen Kammer eines nationalen Parlaments, gegebenenfalls die regionalen Parlamente mit Gesetzgebungsbefugnissen zu konsultieren.</p>
<p>Nach Abschluss der Überprüfung kann die Kommission beschließen, an ihrem Vorschlag festzuhalten, ihn zu ändern oder ihn zurückzuziehen. Die Kommission begründet ihren Beschluss.</p>	<p>6. Das Europäische Parlament, der Rat und die Kommission berücksichtigen die begründeten Stellungnahmen der nationalen Parlamente der Mitgliedstaaten oder einer der Kammern eines nationalen Parlaments.</p>
<p>7. Der Gerichtshof ist für Klagen wegen Verstoßes eines Gesetzgebungsakts gegen das Subsidiaritätsprinzip zuständig, die nach den Modalitäten des Artikels [230] durch einen Mitgliedstaat erhoben oder gemäß der jeweiligen innerstaatlichen Rechtsordnung von einem Mitgliedstaat im Namen seines nationalen Parlaments oder einer Kammer dieses Parlaments übermittelt werden.</p> <p>Gemäß dem genannten Verfas-</p>	<p>Die nationalen Parlamente der Mitgliedstaaten <del>mit einem Einkammersystem</del> verfügen <del>über zwei Stimmen, während jede der beiden Kammern in einem Zweikammersystem</del> über eine Stimme <del>verfügt</del>.</p> <p>Wird von einer Anzahl nationaler Parlamente und Kammern nationaler Parlamente, die mindestens einem Drittel der Gesamtzahl der Stimmen entspricht, eine begrün-</p>

<p>sungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Gesetzgebungsakte, für deren Annahme die Anhörung des Ausschusses der Regionen nach der Verfassung vorgeschrieben ist, erhoben werden.</p> <p>8. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament, dem Rat und den nationalen Parlamenten der Mitgliedstaaten jährlich einen Bericht über die Anwendung des Artikels I-9 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.</p>	<p>dete Stellungnahme dahin gehend abgegeben, dass der Kommissionsvorschlag nicht mit dem Subsidiaritätsprinzip im Einklang steht, so hat die Kommission den Vorschlag zu überprüfen. Diese Schwelle beträgt mindestens ein Viertel der Stimmen, wenn es sich um einen Vorschlag der Kommission oder eine Initiative einer Gruppe von Mitgliedstaaten im Rahmen von Teil III Kapitel X Artikel [8] der Verfassung betreffend den Raum der Freiheit, der Sicherheit und des Rechts handelt.</p> <p>Nach Abschluss der Überprüfung kann die Kommission beschließen, an ihrem Vorschlag festzuhalten, ihn zu ändern oder ihn zurückzuziehen. Die Kommission begründet ihren Beschluss.</p> <p>7. Der Gerichtshof ist für Klagen wegen Verstoßes eines Gesetzgebungsakts gegen das Subsidiaritätsprinzip, <b><u>das Verhältnismäßigkeitsprinzip oder die Kompetenzordnung gemäß Teil III der Verfassung</u></b> zuständig, die nach den Modalitäten des Artikels [230] durch einen Mitgliedstaat erhoben oder gemäß der jeweiligen innerstaatlichen Rechtsordnung von einem Mitgliedstaat im Namen seines nationalen Parlaments oder einer Kammer dieses Parlaments übermittelt werden.</p> <p>Gemäß dem genannten Verfas-</p>
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	<p>sungsartikel können entsprechende Klagen auch vom Ausschuss der Regionen in Bezug auf Gesetzgebungsakte, für deren Annahme die Anhörung des Ausschusses der Regionen nach der Verfassung vorgeschrieben ist, erhoben werden.</p> <p>8. Die Kommission legt dem Europäischen Rat, dem Europäischen Parlament, dem Rat und den nationalen Parlamenten der Mitgliedstaaten jährlich einen Bericht über die Anwendung des Artikels I-9 der Verfassung vor. Dieser Jahresbericht ist auch dem Ausschuss der Regionen und dem Wirtschafts- und Sozialausschuss zuzuleiten.</p>
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**Begründung:**

Der Vorschlag für das „Subsidiaritätsprotokoll“ soll ein Klagerecht für Regionen mit eigenen Gesetzgebungszuständigkeiten vorsieht. Klagen auf Grundlage de Protokolls müssen ebenso Verstöße gegen den Verhältnismäßigkeitsgrundsatz und vor allem die Rüge der Verletzung der Kompetenzordnung umfassen.

Ungerecht wäre es, Parlamenten aus Zwei-Kammern-Systemen nur das halbe Stimmgewicht des Parlamentes eines Mitgliedstaates mit Ein-Kammer-System zuzubilligen.

## AMENDMENT FORM

### Suggestion for PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

By Mr Poul Schlüter

Status : Alternate

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X. Union action shall be justified only if the objectives of the proposed action cannot be sufficiently achieved by Member States' action and could be better achieved by action on the part of the Union, because the issue under consideration has transnational aspects, or because action at national level alone, or lack of Union action, would conflict with the requirements of the Treaty, or because action at Union level would have obvious advantages, by reason of its scale or effects, as compared with action at Member State level.

Y. The form of Union action must be as simple as possible and must not go beyond what is required, consistent with satisfactory achievement of the objective of the measure, and with the need for effective enforcement. The Union shall legislate only to the extent necessary, preferring framework laws to laws or detailed measures, and leaving the maximum scope for national decision.

3. The Commission shall send all its legislative proposals and its amended proposals directly to the national parliaments of the Member States at the same time as to the Union legislator. If a legislative proposal is based on Article 16 in the Constitutional Treaty the Commission shall bring this fact to the attention of the national parliaments. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, directly to the national parliaments of the Member States.
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~~ quarter 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.

**In case at least half of National Parliaments give reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the proposal shall not be further examined, without prejudice to the right of the Commission to present a new proposal.**

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**Explanation:**

X + Y) Subsidiarity and proportionality are fundamental principles defining the Union. It is important that Union responsibility with regard to these principles is set out in clear terms. The amendment is intended to send an important message to the citizens that the EU-legislator must strive for simplicity and clarity. It builds on the wording of the existing protocol.

3) The use of the word “directly” corresponds to the wording of the similar provision (indent 2) in the draft protocol on national parliaments (CONV 579/03).

Article 16 should only be used in exceptional situations. Therefore, the national parliaments should be given the best possible conditions for assessing whether a legislative proposal based on Article 16 complies with the principle of subsidiarity. It already follows from Article 16, par. 2 in the Constitutional Treaty that the Commission is under obligation to make the national parliaments specifically aware of legislative proposals based on Article 16. It would be in line with the objective of clarity if this obligation was also stated in the protocol on subsidiarity.

Reasoned opinions from one quarter of the national parliaments in the EU should be the threshold for sending a proposal back to the Commission for review.

If half of the national parliaments are of the opinion that a given legislative proposal does not comply with the principle of subsidiarity it should not be taken any further in the legislative process.