

Working Group IX

Working document 08

Working Group IX « Simplification »

SUBJECT : « Simplifying Legislative Procedures and Instruments »
- Paper by Mr M. Michel Petite

Members of Working Group IX « Simplification » will find attached a paper by Mr Michel Petite,
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Speech delivered by Mr Michel Petite

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The Amato Group

(Simplifying Legislative Procedures and Instruments)

The instruments: How to simply them?

Mr President, Members of the Convention,

I understand that at your last meeting you carried out a very complex review of the instruments of the Union. Today, you wish to deal with the question that is at the heart of your work: “How to simplify them?”

I would like to make two preliminary remarks:

- Firstly, as you requested, I am speaking as an expert, namely in a personal capacity. I would add, however, that my position is probably not very far from that of the Commission, particularly because the Commission has, since Maastricht and through Amsterdam, taken a rather consistent position on simplifying the instruments of the Union. On those two previous occasions, the time was simply not ripe for its proposals to be taken up.
- As a second remark: I would like to make things as simple as possible, and to draw the outline as it were, as it is true that it is better to start with a rational plan, although there will be no lack of opportunities later to elaborate on it.

THE PRESENT SITUATION

Today, the Treaties provide for a number of different acts which the institutions can adopt to achieve the objectives set out in the Treaties. Even if Article 249 of the EC Treaty only concerns, by definition, Community acts, Titles V and VI (the Second and Third Pillars) of the Treaty on European Union have extraordinarily enriched the catalogue of legal instruments of the Union. Added to those are the instruments that stem from the practices of the institutions.

This situation is largely the result of the successive layers of amendments that have been made to the Treaty, from the Single European Act to the present day. And also, sometimes, a conscious reluctance to use certain instruments.

Let me illustrate this by a brief anecdote: most technical standards for cars have long been harmonised. It was a total harmonisation, desired by the constructors in order not to have to manufacture, for the same model, as many different types as there are Member States; and desired also for safety reasons (if there is an accident and the bumpers are at different heights, there are problems...) These long established texts finally led to a single certification for vehicles. They are extraordinarily detailed texts, with technical diagrams and annexes, and there are around 80 of them, each dozens of pages long, ranging from rear lights to rear mirrors.

They do not leave any margin for transposition, and evidently they should have been regulations, maybe even implementing regulations.

But before the Single European Act, the Single Market could be harmonised only by directives (ex-Article 100). Hence the anomaly at the time of those directives that were in fact completely like regulations. And when after the Single European Act, regulations became possible, many Member States continued to hold that, in order to maintain the appearance of transposition by the States, regulations had to be avoided. Hence the systematic standardisation by directives continued, even though the transposition of those texts was only a formal illusion.

Again, at present, in the field of judicial and internal affairs, whenever both the Community and the Third Pillar are concerned - which is very often the case -, enormous and disproportionate efforts go into splitting the proposal into two different instruments, and seeing what will go into the directive on

the one hand, and into the framework-decision on the other. Even though both are adopted by the Council acting unanimously.

This just goes to show the two things that are currently wrong with the system of the Union and that you are already aware of:

- the multiplication of the types of instruments that renders the system incomprehensible;
- and also the confusion as to their use, which undermines its credibility.

It is not hard to see that simplification is called for.

I am not going to take you through all the instruments of the Union, as they are very well described in your working document No 4. I shall go straight to the heart of the matter: ***how to simplify – and reduce – this vast range of instruments?***

Part One: The new categories of instruments

I shall first outline the only instruments that appear to me to be necessary for the Union, and then place them in the framework of the system of the future treaty. I hasten to add that those who have already suggested new coherent systems – such as Andrew Duff – have come to quite similar conclusions.

1. Firstly, the acts adopted by the legislator. They are the **laws**.

They fall into three main categories: *constitutional* or *institutional* laws, *ordinary* laws, and *finance* law (what would now be called “*the budget*”).

Category 1: constitutional or institutional laws contain provisions which do not belong in a constitutional text, but which are not standard legislative acts, because they concern central aspects of the internal organisation of the Union. These laws have, in the words of Jean-Louis Bourlanges, *infra constitutional* and *supra legislative* effects. They include the Decision on own resources, the provisions on the Commission’s implementing powers, the Financial Regulation, the Statute of the Court of Justice, etc.

Category 2: ordinary laws, that we may for the time being call “*European laws*”. They are the everyday business of the legislator. They lay down general principles, essential rules and the objectives to be achieved, or more detailed provisions.

The choice of the level of detail should be a matter for the legislator, as in most Member States. In other words, the legislator himself is to decide what he wants in his law: either to lay down comprehensive rules, or to delegate all or part of the implementation. The European legislator must, of course, do so within the framework of the competence of the Union. And in compliance with the subsidiarity principle. Incidentally, one sees here why the application of the subsidiarity principle must be kept in mind throughout the legislative process, and not just when the Commission makes its proposal.

Laws are, of course, binding on all the Member States. They could contain today either directly applicable provisions, like those of regulations, or what I would call “*framework*” provisions, like those of directives, or both. They could cover a wide range of actions such as the harmonisation or approximation of legislation, incentive programmes, etc

In certain areas where the Union has limited competence, the harmonisation of legislation will probably continue to be excluded. But within the framework of the Treaty, the legislator must be free to decide how to legislate.

Category 3: **finance law** adopting the budget. Two short comments:

- Firstly, the budgetary procedure should be adapted, updated and simplified while maintaining the spirit of co-decision.
- Secondly, I believe that this simplification will follow easily from the removal of the distinction between ***Compulsory expenditure – Non Compulsory expenditure***.
I note moreover that the experts you have heard are thinking on the same lines.

2. After the laws, the **implementing measures**, taken at Union level, would take the form of regulations or decisions. I shall deal with them in more detail shortly.
3. Finally, **non-binding acts** have proliferated in recent years. While this type of act must certainly be kept, the present practice must be rationalised in the Treaty.

In this context, I would like to say a word on **open co-ordination** which, in my opinion, should also be **rationalised and simplified**. This method seems essentially to consist of defining common objectives for policies developed at national level; fixing a timetable and performance indicators for evaluating the capacity of these policies to achieve those objectives; and organising the exchange of good practice at European level. It is a **process** that can be put into operation by non-binding instruments, notably **recommendations**. Following the logic of the Community method it should be up to the **Commission** to propose, in the form of **recommendations** and after wide **consultation**, both the elements of the initial framework (identification of objectives, setting the table-table and the indicators necessary to compare the performances), and the follow-up (evaluation of the results, promoting exchanges of good practice).

These then would be the acts of the Union, to my mind the only ones needed, once the obvious areas of duplication are eliminated.

Laws, implementation of the laws by means of regulations and decisions, and recommendations.

Part Two: The instruments in the functioning of the Union

1. The central idea is simple: *the policies and actions of the Union are put into effect by laws*.

They are adopted by the European Parliament and the Council by co-decision, on a proposal from the Commission. The Council acts by qualified majority.

The institutional laws could be adopted by special majorities both of the European Parliament and the Council.

The implementation of the Treaty would thus be based on a single procedure, simple, efficient and democratic.

2. The second idea is: *the law should be implemented*.

This competence is in the first place a matter for the national authorities of the Member States. But as we all know, in order to put the law into effect, it is sometimes also necessary to adopt implementing measures at Union level.

There should, I think, be three guiding principles:

- (1) Firstly, it is the law itself which should specify if implementing measures are necessary at Union level. That will depend in particular on the degree of detail of the law, which is a matter for the legislator alone to decide.
- (2) Secondly, it is for the Commission to adopt the implementing measures, by regulation or, in the case of individual measures, by decision.
- (3) Finally, in the exercise of this executive responsibility, the Commission should be subject to controls by the legislator, the European Parliament and the Council. The form of those controls should be laid down by an institutional law.

3. This simple system would be the general system. Moreover, it is the basis of most of our national systems. Further measures will undoubtedly be needed in certain areas where special rules are required.

Those areas are Economic and Monetary Union, external relations and cooperation in police matters. In those three areas, even if it may be possible to use laws in certain cases, the

decision should, as a general rule be for the Council, acting by a qualified majority on a proposal from the Commission. It would take the form of Council regulations or decisions. Participation by the European Parliament would vary according to the area in question and the nature of the decision.

Conclusion:

Such could be the outline of a system of instruments of the European Union.

The starting point at least initially is *simple, democratic and efficient*.

It is **simple and clear**:

1. The Treaty is put into effect by laws.

Laws are adopted in accordance with the co-decision procedure by majority voting. The contents of the laws and their effects are decided by the legislator. The legislator will also indicate whether laws are directly enforceable by the Member States or whether they require implementing measures at Union level.

2. Enforcement of laws is the competence of the Member States.

Enforcement at Union level is a matter for the Commission, subject to controls by the legislator.

3. EMU, external relations and cooperation in police matters will be subject to special and detailed rules, centred round the Council.

It is **legitimate and democratic**, because:

1. Co-decision expresses the two-fold legitimacy of the people and the States.
2. Enforcement is entrusted to the Member States or to the Commission subject to controls by the legislator.
3. The power reserved to the Council in three specific areas reinforces this legitimacy with regard to the Member States.

It is **efficient**.

1. Efficiency results firstly from the clarity and simplicity of the system.
2. Blockages are avoided by the generalised recourse to majority voting.
3. The system is founded on the co-decision procedure, a tried and tested procedure whose excellent operation has been rightly praised here by the experts both from the European Parliament and from the Council.

Finally it is well balanced since the institutions share decision-making power in a manner fully consistent with the process began by the Treaty of Maastricht, and confirmed and extended by the subsequent Treaties.