



THE EUROPEAN CONVENTION
THE SECRETARIAT

Brussels, 6 November 2002

WORKING DOCUMENT No 13

Subject: **Simplification of the Union's instruments – Summary of replies to the questionnaire**

Members of the Group will find attached a summary of replies to the questions put to it concerning simplification of the Union's instruments (CONV 372/02 WD 10).

Summary of replies

(1) Should the terminology of the legal bases set out in the treaties be simplified and standardised? If so, how?

Although the importance of simplifying and clarifying the terminology of the legal bases set out in the treaties (e.g. by not using the same term with different meanings) is recognised, some of the replies argue in favour of caution regarding the extent of such simplification and clarification. It was in particular pointed out that this should be done on a case-by-case basis and should not affect the institutional balance reflected in each of the treaty's legal bases. Account must also be taken of the various linguistic nuances.

(2) Should the number of legal instruments in the treaties be reduced? Is it possible to apply the same instruments in every area, including foreign policy and police and judicial cooperation in criminal matters? How might this be done? What changes would be needed in the definition and the effects of the existing instruments?

Most of the replies acknowledge:

- the need to reduce the number of instruments which exist at present. Some replies however, draw attention to the need to maintain flexibility and effectiveness in using the Union's instruments. A few members argue in favour of reducing them to the five instruments provided for in the Treaty of Rome;
- the advisability of bringing the instruments in Title VI (JHA) into line with those of the existing EC Treaty by abolishing "framework decisions", which would become "directives", while at the same time specifying the cases in which the latter would not have direct effect. JHA Conventions could also be abolished;
- the need to retain a measure of the specific character of the instruments referred to in Title V (CFSP). One member proposed awaiting the outcome of discussions by the Working Group on external action before embarking on any simplification in this area.

- the need to maintain the decision as an instrument. One member of the Group proposed making a distinction between general and individual decisions; another feared that introduction of the decision in both Community legislation and in its implementation might give rise to complications.
- the need to maintain the non-mandatory legal instruments which exist at present (i.e. recommendations and opinions).

In the case of implementing acts, one member of the Group proposed using "implementing regulations". Another member proposed using "general decisions" and "decisions".

(3) Once any such change has been made, should the title of the acts be amended? If so, how? Regulation by "law"? Directive by "framework law"? Others?

Although most of the replies do not regard this as a priority, none was against the idea. Some proposed replacing "regulations" by "laws", and "directives" by "framework laws". One member suggested creating "programme laws" for establishing Community programmes.

(4) Should a clear distinction be introduced into the treaty between what is legislation and what is implementation?

Most of the replies feel that a distinction must be introduced in the treaty between what is legislation and what is implementation, but without that distinction calling into question the allocation of competences or the current institutional balance.

One reply took the view that the Commission should be the executive arm, under scrutiny of the Parliament.

One member expressed a preference for two levels of act, legislative and implementing, with internal categories. Another member wanted more details of each category before giving an opinion.

- (5) if so, what should be the meaning of a legislative act? Should it be defined by its adoption procedure (for example what is covered by codecision)? By its content? When that implies a basic political choice? Should it be left to the legislator to decide in each case what is legislative, or should it be set out in the treaty itself? Should specific rules be set out in particular areas?**

Most of the replies consider that the concept of a legislative act should be defined by its content and not by the adoption procedure. Some propose defining a legislative act as one which determines the fundamental principles and general guidelines in a given area, embodies political choices or establishes the essential elements of implementing measures in the field in question.

Most of the replies take the view that the codecision procedure should be the rule for adoption of legislative acts, with specific provisions and exceptions for certain areas. The CFSP, JHA and the common agricultural policy were cited as areas in which such exceptions should be established. One member of the Group stood out against the principle of making the codecision procedure the general rule for adoption of legislative acts. He thought that the Council should continue to be the legislator in certain areas, bearing in mind the legitimacy conferred by national parliaments.

- (6) Should a specific act be created for cases where the Council adopts acts directly on the basis of the treaty? What could it be called?**

It was not thought necessary to introduce a specific act for cases where the Council adopts acts directly on the basis of the treaty, on the grounds that the designation of an act should depend on its content.

One member thought that the reply to this question required prior examination of the areas in which the Council acted entirely on its own in order to see whether there was sufficient homogeneity.

(7) Should the use of atypical acts be restricted? In particular, should their use be excluded when the legislator is in the process of examining a legislative proposal or initiative?

In general, it was felt that simplification of atypical acts should be done with caution in order to maintain the flexibility necessary for adoption of such acts.

One member of the Group thought it necessary to define in the treaty the rules for using the open method of coordination, as this should not involve changes to the respective competences of the Union and the Member States.
