

Working Group IX

Working document 16

Working Group IX on Simplification

SUBJECT: **Proposal from the Commission's representative in the Working group to distinguish legislative and executive functions in the institutional system of the European Union**

Members of Working Group IX "Simplification" will find attached a proposal by Mr. Ponzano, member of the Convention and Commission's representative in the Group.

REFLECTION NOTE

Proposal to distinguish legislative and executive functions in the institutional system of the European Union

With the Convention aiming at a new constitutional text, the purpose of this proposal is not to describe the legal *status quo* but rather to redraft the separation of tasks in a rational, simple and democratic manner. Therefore, the different tasks (of legislative or executive nature) should be defined, before assigning them to the different actors involved.

[I. Implementation of the Treaty by Law and implementation of the latter]

1) Legislative acts

In terms of *substance*, legislation can be taken to mean rules of general scope determining at least the *essential elements* of the field in question (without being necessarily limited to those elements); implementation refers either to rules which fill in the detail left open by the legislative texts or to the application of legislation to individual cases.

In a system with several actors, the starting point should be that the institution responsible for the legislative function should not be the same as that entrusted with the executive function (principle of *separation of functions or powers*).

On the basis of this principle, it is easy to conclude that the *legislative function* in the Union should be assigned to the Legislature, consisting of the European Parliament and the Council. Upon proposal of the Commission, this dual Legislature will issue laws and framework laws, the form of which should be explicitly foreseen, under the co-decision procedure.

2) “Acts of Execution” (*stricto sensu*)

On the basis of the same principle of a separation of functions, the *executive function consisting of implementing the law* must be assigned to an institution other than the Legislature. This can only be the Commission, in case of execution at European level, or the Member States, in case of execution at national level, depending on the provision taken therefore in the law in question and in conformity with the principle of subsidiarity. When exercising this function, the role of the Member States or the Commission is to issue the general rules implementing the legislative texts (rules which correspond to the level of the regulations of national law), as well as individual decisions. To the extent that the implementation in question is of purely executive nature and only applies the basic political choices already made at legislative level, a regular control of the Commission (or the Member States) by the Legislature does not appear justified¹.

3) Delegated (legislative) acts

When the Legislature has decided to delegate to the Executive (the Commission) the task of regulating essential elements by developing the guidelines contained in the law or of modifying the basic act, an effective control by the Legislature is necessary in order to check that the delegation has been carried out properly. This control can then take the form of a “call back” (the Legislature opposing, in a concrete case, the use of the delegation by the Commission).

¹ Without prejudice to the maintenance of the consultative committees which supply the Commission with essential expertise and to the information of the Legislature.

II. Direct implementation of the treaty (without intervention by the Legislature)

In addition, the so called “executive” function does not only involve implementation of laws. Indeed, in certain cases, the enactment of some policies foreseen by the treaty does not require the intervention of the Legislature. This is the case of acts in the CFSP area, by which the EU defines its policy towards third countries, of some acts in the field of police, as well as of acts concerning the working of the Economic and Monetary Union, which aim at reacting to particular situations that are hardly liable to ex ante legislative regulation. In those fields the constitutional text should therefore foresee an “autonomous” role for the “Executive”. Because of the *specific* nature of the matters in question, which must remain the exception, the Commission proposes that these competences should continue to lie with the Council and be exercised upon proposal of the Commission (or, in some cases, of the Member States). It is understood that if the decisions of the Council in these fields require some implementation at European level, the above mentioned scheme should be applied (implementation by the Commission).

On the other hand, the constitutional text can and should foresee that some tasks of a more “*technical*” nature relating to the day-to-day management of some sensitive fields are given directly to bodies which do not directly depend on political power – so that those tasks would be accomplished solely in the general interest, free from national or partisan influence. Such “independent administrative authorities” are known in practically all Member States. This explains why the EC Treaty already foresees that responsibility for the day-to-day management of monetary policy is in the hands of the European Central Bank (ECB) and that the Commission, guardian of the Treaties, is also responsible for competition at European level (while being subject to a motion of censure, in contrast to the ECB).
