

Working Group IX

Working document 18

Working Group IX on Simplification

Members of Working Group IX “Simplification” will find attached a proposal by Mrs Maij-Weggen, member of the Convention.

Contribution of Mrs. Maij-Weggen to the working group on simplification.

This paper is based on ‘ The Constitution of the European Union’, Discussion Paper of the EPP Convention Group. This contribution approaches the questions raised in the working group from this paper.

- Should the terminology of the legal bases set out in the treaties be simplified and standardised? If so, how? 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 co-operation in criminal matters? How might this be done? What changes would be needed in the definition and the effects of the existing instruments?

The number of legal instruments shall not be reduced as this reflects the various competences of the Union. It is not possible to use all instruments in all policy areas. The definitions of the existing instruments should be simplified and clearly stated this is set out in article 91 of the EPP Discussion Paper on the Constitution. Names of acts of the Union shall than also be changed.

Article 91 (List of Union instruments)

(1) Within its field of competence, the Union shall act exclusively, and in line with the principles of subsidiarity and proportionality, through

- Union acts and Union framework acts, enacted by the Union’s legislature;*
- Union regulations, enacted by the Union’s executive;*
- Union decisions;*
- Union recommendations;*
- Union opinions.*

(2) A Union act and a Union regulation shall have general application. They shall be binding in their entirety and directly applicable in all Member States.

(3) A Union framework act shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

(4) A Union decision shall be binding in its entirety upon those to whom it is addressed. They shall be notified to those to whom they are addressed and shall take effect upon such notification.

(5) Union recommendations and Union opinions shall have no binding force.

(6) This provision shall be without prejudice to the regulatory competence of the ECB under Part Two of the Constitution.

- Should a clear distinction be introduced into the treaty between that which is legislation and that, which is implementation?

The distinction between implementation and legislation is to a large degree the distinction between the legislators in the Union and the Member States. The latter is obliged to implement measures taken by the Union. In several articles in the EPP Discussion Paper on the Constitution this difference arises. As a principle of legislation, legislation shall be implemented through Union acts and Union framework acts. This follows from article 94 of the EPP Discussion Paper on the Constitution.

Article 94 (Principles of legislation; delegated legislation)

(1) The legislation of the Union shall be implemented through Union acts and Union framework acts.

(2) Union acts and Union framework acts are adopted jointly by the European Parliament (House of Citizens) and by the Council (House of States) according to the co-decision procedure (Article 95).

(3) Where authorised by this Constitution or by a Union act, the Commission may make Union regulations while respecting content, purpose and limitation of the authorisation.

- If so, what should be the meaning of a legislative act? Should it be defined by its adoption procedure (for example that which is covered by co-decision?) 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?

From article 94 (2) above it follows that all legislative acts should be adopted by the co-decision procedure. The legislator and the treaty as set out in article 94 (3) can authorise the Commission to make Union regulations.

- If the classification of expenditure is abolished, what procedure should be established for the budget as a whole, the compulsory expenditure procedure (with the Council having the last word) or the non-compulsory expenditure procedure (with the Parliament having the last word)? Should a new procedure be envisaged? Based on simplified codecision? What special rules would there be?

The difference between compulsory and non-compulsory expenditures should be abolished. A new system of revenue for the Union should be envisaged. The procedure followed will than indeed be a simplified codecision procedure. This is also enshrined in the EPP Discussion Paper on the Convention under article 109, which reads as follows:

Article 109 *(Financing from own resources)*

(1) Without prejudice to other revenue, the Union's budget shall be financed wholly from own resources.

(2) The total amount of own resources assigned to the Union is laid down in a Union act. By way of derogation from Article 95, such a Union act shall be approved by the Council, acting unanimously, and the Parliament, assenting the act with the majority of its members.

(3) Revenue from the following shall constitute own resources entered in the budget of the European Union:

- a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;*
- b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Union in respect of trade with non-member countries;*
- c) the application of a uniform rate valid for all Member States to the Value Added Tax assessment base which is determined in a uniform manner for Member States according to Union rules.*
- d) the application of a rate – to be determined pursuant to the budgetary procedure in the light of the total of all other revenue – to the sum of all the Member States' Gross National Product established in accordance with the Union rules;*
- e) revenue deriving from any new charges introduced within the framework of a common policy;*
- f) revenue deriving from a tax of the Union, if it is established by Union act; by way of derogation from Article 95, such a Union act shall be approved by the Council, acting unanimously, and the European Parliament assenting the act by a majority of its members.*

(4) The own resources of the Union shall be limited to 1,27% of the total of the Member States' Gross Domestic Products for the year at market prices. This limit may be amended by a joint decision of the Council, acting unanimously, and the European Parliament, acting with the majority of its members, which requires ratification by two

thirds of the national Parliaments.

(5) Details concerning the system of own resources shall be laid down by Union act.

- A parallel is often drawn between the incorporation of the financial perspective into the Treaties and the modification of the annual budgetary procedure: some feel that it would be possible to let the Parliament have the last word on the annual budget if its action were circumscribed by a legally binding financial perspective. Would the incorporation of the financial perspective into the Treaties have a part to play in simplifying the annual budgetary procedure?

As becomes clear from article 109 of the EPP Discussion Paper on the Constitution, the own resources of the Union shall be limited to 1.27% of the total Member States' Gross Domestic Products. Other principles in regard to the budget are that the revenue and expenditure shown in the budget shall be in balance. Deficits are prohibited. This has repercussions for the procedure. As follows from article 110 of the EPP Discussion Paper on the Constitution:

Article 110 (Budgetary authority; budgetary procedure)

(1) The European Parliament and the Council shall be the two equal branches of the Union's budgetary authority.

(2) The preliminary draft budget shall be proposed to the European Parliament and the Council by the Commission on the basis of estimates drawn up by each institution of the Union.

(3) The budget shall be adopted jointly by the European Parliament, acting with the majority of its members, and the Council, acting by qualified majority, on a proposal by the Commission.

(4) With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a legal act of the Union, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limits of the Union's own resources.

(5) The details of the budgetary procedure shall be determined in an inter-institutional agreement between the European Parliament, the Council and the Commission.

- Does the Working Group confirm the approach emerging from the meeting of the Convention on 12 and 13 September, namely to reserve , the assent procedure solely for the conclusion of international agreements (see article 300 (3) of the TEC)? If so, what procedure(s) should replace it?

In the EPP Discussion Paper on the Constitution the procedure under article 300 TEC is modified so that it better reflects the institutional balance. This is especially clear with regard to the special committee assisting the Commission during the negotiations. The relating article in the EPP Discussion Paper reads as follows:

Article 113 (Agreements with third states and organisations; participation of the European Parliament)

(1) Where agreements with one or more states or international organisations need to be negotiated within the Union's field of competences, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary recommendations.

The Commission shall conduct these negotiations in consultation with a special committee to assist it in this task. This committee shall be composed of an equal number of representatives of the Council and of the European Parliament.

(2) Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and on the conclusion of the agreements shall be decided on by the Council, acting by qualified majority on a proposal from the Commission and with the advice and assent of the European Parliament.

The Council shall act unanimously and with the advice and assent of the majority of the members of the European Parliament when one of the following agreements shall be concluded:

- agreements referred to in Article 116 or other agreements establishing a specific institutional framework by organising cooperation procedures;*
- agreements having important budgetary implications for the Union*
- agreements entailing amendments of an act adopted under the procedure referred to in Article 95;*
- agreements covering a field for which unanimity in the Council and the assent of the European Parliament is required for the adoption of internal rules.*
- an agreement on the accession of the Union to the European Convention on Human Rights.*

The same procedure shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Union in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The Council and the European Parliament may, in an urgent situation, agree upon a time-limit for the assent.

(3) When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Union where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

(4) When the Council envisages concluding an agreement which calls for amendments to this Constitution, the amendments must first be adopted in accordance with the procedure laid down in Article x + 4.

(5) Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Union and the Member States.