

Working Group IX

Working document 22

Working Group IX on Simplification

Subject: “Avoiding excessively detailed legislation: Amend the Amsterdam protocol on Subsidiarity”
- Paper by Mr Neil MacCormick

Members of Working Group IX “Simplification” will find hereafter a paper by Mr Neil MacCormick alternate member of the Convention.

Avoiding excessively detailed legislation: Amend the Amsterdam protocol on Subsidiarity

WG IX has considered the question whether it is possible to avoid excessive and intrusive detail in Union Laws, or in acts of delegated legislation made under such laws.

As was suggested by Lord MacLennan and myself at the meeting of November 8, one possible way to deal with this issue would be to make provision to preserve a degree of local discretion except where this is expressly excluded. The following is excerpted from an earlier contribution by myself to the Convention:

Improvements could easily be made to the provisions concerning subsidiarity laid down in the Amsterdam Protocol (Protocol no. 30 of the European Community Treaty). At present these consider only the conditions that justify resorting to Community measures, but they do not seem adequately to address the need for a degree of continuing discretion at the relevant level of government within a member state. The critical provisions are in paragraphs seven and eight of the Protocol, as follows:

7. Regarding the nature and the extent of Community action, Community 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 Treaty. While respecting Community 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, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

8. Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 10 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.

I would propose that the following new paragraph might be added as “7 A”

The authorities of the member states responsible for implementing a Community measure shall be entitled to exercise a sufficient margin of appreciation in order to implement it in a way which takes due account of specific local circumstances. They shall act so as to secure that the stated reasons on which the measure is based are satisfied in accordance with the principle of proportionality in the light of prevailing local circumstances. This margin of appreciation applies except where a Community measure expressly excludes it, the exclusion being justified in the stated reasons for the measure.

Neil MacCormick
14 November 2002