

Working Group IX

Working document 28

Working Group IX on Simplification

Subject: Comments of Mr Gijs de Vries on the draft final report of the Working Group Simplification

Members of Working Group IX “Simplification” will find hereafter comments of Mr Gijs de Vries, member of the Convention, on the draft final report of the Working Group.

Giuliano Amato
Vice-President of the Convention
Chairman Working Group Simplification

The Hague, 20 November 2002

Dear Giuliano,

Thank you so much for the draft report of the working group on Simplification. It is an honest reflection of our discussions and an excellent basis for our further work. Unfortunately I am not able to attend Thursday's meeting of the working group, due to engagements that I undertook prior to the scheduling of our meeting. I would like to offer you some suggestions on behalf of my Government.

Page 6 “définir dans les traités les règles pour avoir recours à la méthode ouverte de coordination”

The success of the method of open coordination is largely due to the fact that this method has not been enshrined in formal treaty-based rules. This has provided a flexibility that would otherwise be lost. I would therefore favour suppression of this tiret.

Page 9 Acte “délégué/subordonné”

This paragraph should clearly stipulate that the Commission decides on this kind of “acte délégué/subordonné” on the basis of powers delegated by law enacted through codecision. To balance this delegation, the institutions who have delegated the authority to the Commission (the co-legislators: Council and European Parliament) should have, in equal measure, a control mechanism at their disposal, in the form of a “call back” right.

Such a “call back” right would enable both those institutions to intervene in case they feel that delegated powers are surpassed. An intervention could mean raising a yellow card, thus forcing the Commission to reconsider its proposal. The co-legislators should also be able to decide that a certain regulation is of such importance that it should be the subject of a co-decision procedure rather than just an “acte délégué/subordonné”. A right to “call back” for the co-legislators should be subject to an expiry date (e.g. 3 months after publication of the Commission proposal). It should also be subject to judicial control by the Court of Justice.

With the above safeguards there is no need for an express consent of the co-legislators nor for a sunset clause. In deciding to exercise their call back right the co-legislators should follow the same procedure as for the law on which the delegation was based (general rule: QMV in Council).

My Government can join consensus on abolishing this procedure. However, we would not favour replacing it by the “avis simple” procedure. Since the Council decides by qualified majority voting on the issues mentioned in the relevant four articles (99, 102, 103 and 106 TEC), the co-decision procedures seems more appropriate.

Procédure budgétaire

All provisions relating to the budget of the Union, principles as well as procedures, should be included in the constitutional part of the Treaty.

Essential to the budget procedure is the inter-institutional balance. As has been correctly noted throughout the different working sessions devoted to this issue, a large part of the provisions which have ensured a timely and financially acceptable conclusion of the yearly budget procedure are not laid down in the Treaty but in the inter-institutional agreement (IIA) between Council, Parliament and Commission on budgetary discipline and improvement of the budget procedure (6 May 1999).

The Netherlands, in line with the draft conclusions, supports the aim of including the most essential parts of this IIA in a new Treaty. Moreover there is scope for a simplification of the budget procedure. On this issue the draft conclusions present valuable proposals. For my government such a simplification is acceptable, provided that the inter-institutional balance is maintained. This means that the removal of the distinction between compulsory and non-compulsory expenditure, as well as the proposed single reading of the budget by the Council, must be counterbalanced by the inclusion of a legally binding provision in the Treaty necessitating a multi-annual financial programming, with yearly expenditure ceilings for each individual policy area. With regard to the latter it is essential that, in view of the necessary inter-institutional balance, the decision making procedure should require unanimity by the Council and consultation of the European Parliament (option 2)

Finally, I would like to offer you some more specific amendments:

- a) With regard to section A (page 15), which mentions the general principles governing the budget, the principle that the EU-budget is financed wholly by own resources should be included (first para of current Art 269 of the Treaty).
- b) In paragraph 1, of section B (page 15), it is stated that the Council will retain the last word over the receipts of the EU-budget, whilst the European Parliament will obtain the last word over the expenditure side. With regards to the receipts a new paragraph should be added to section B of the conclusions stating that the own resources (the receipts) of the EU will be determined by the Council acting with unanimity, on a proposal from the Commission, and after consultation of the European Parliament. The current wording of Art 269.
- c) In paragraph 4 it is rightly stated that the multi-annual financial programming should cover a longer period (moyen terme). However, this should be made more specific. In this sense a further tiret should be added to paragraph 5 stating that the multi-annual financial programming should cover a period of 7 years as is the current practice with the Financial Perspectives.
- d) A provision is missing for the event that the Council, after consultation with the European Parliament, does not reach a decision (in due time) on the multi-annual financial programming. In that case the provisions as provided for in Art 273 should apply. Mutatis mutandis this

provision should also apply in the event that the European Parliament does not reach a decision on the yearly budget.

- d) An additional paragraph should be added stating that a number of issues need further consideration. For example it will be necessary to determine the way in which a number of important issues which are currently included in the IIA and will not be included in a new Treaty, are addressed. An obvious example is the fact that currently the IIA explicitly rules out shifting resources between the different expenditure ceilings of the Financial Perspectives. Another issue which is currently addressed in the IIA relates to CFSP expenditure. Such an agreement between the European Parliament and the Council will probably be necessary in the future too. A solution could be to include a provision in the Treaty which states that on proposal by the Commission, an IIA will be determined by the European Parliament and Council to ensure the maintenance of budgetary discipline.

I hope these suggestions can contribute to a fruitful discussion on November 21st. I will be present during our final meeting on November 28th.

Best regards,

Gijs de Vries
Representative of the Netherlands Government