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THE SECRETARIAT

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WG IX 3

NOTE

from :	Secretariat
to :	Convention
Subject :	Mandate of Working Group IX on the simplification of legislative procedures and instruments

Members will find attached an annotated mandate, which further elaborates upon the questions circulated in CONV 206/02 and aims at facilitating the discussions of the Working Group on the simplification of legislative procedures and instruments.

Working Group IX on the simplification of legislative procedures and instruments

Chairman: Mr Giuliano Amato, Vice-Chairman of the Convention

ANNOTATED MANDATE

INTRODUCTION

Questions relating to the simplification of legislative procedures and instruments were discussed at the session of the Convention on 23 and 24 May 2002 devoted to how the Union fulfils its tasks.

The conclusions of that debate were very clear: there was a very real need to simplify both instruments and procedures.

The Praesidium considered that these questions needed to be looked at more closely by a specific working group whose mandate it has defined (CONV 206); it also decided to devote a further plenary session of the Convention (on 12 and 13 September 2002) to discussion of these issues. The views expressed by Members at those two plenary meetings should enable us to fine tune the Working Group's mandate.

Two factual documents have already provided background material for the Convention's discussions:

The first describes the present system of legal instruments available to the Union and the Community in carrying out their tasks (CONV 162/02). Further material was added immediately after the May discussions, and the document now reflects the views of Convention Members and the avenues that they recommended should be explored further.

The second document (CONV 216/02) reviews the problems of decision-making procedures. In order to focus the discussion, the document concentrates on legislative procedures proper and on the budgetary procedure, in view of the latter's links with legislative activity.

The present document seeks to refine the mandate adopted by the Praesidium, in particular to take account of the opinions voiced by Convention Members in the discussions to date.

The starting point must necessarily be the perception – which a large majority of Convention Members conveyed – of the confusion and complexity prevailing with regard to instruments and procedures, and the concomitant need for simplification and rationalisation. There was a clear consensus in that direction. The task of the Working Group now is to devise a method for simplifying and rationalising instruments and procedures, bearing in mind the point made during the debate that we must sacrifice neither democracy nor efficiency in our quest for simplicity.

How can the number of legislative procedures be reduced? Could some procedures be simplified?

The Working Group should in the first place consider how and how far the number of Union decision-making procedures (at present nearly thirty), can be pared down, and how some of them could be simplified. While the current number of procedures often reflects the requirements of the democratic process and the differing participation by Union institutions and bodies in the legislative process according to the area concerned, it must be admitted that the very many, complex procedures makes the system hard to understand. In a drive to rationalise and simplify, there are a number of questions that the Working Group might consider:

(i) How far could certain procedures be done away with? the cooperation procedure?

The idea has often been mooted in connection with procedural simplification of scrapping the cooperation procedure (Article 252 of the TEC), applicable at present in the one area of economic and monetary policy (Article 99(5), Article 102(2), Article 103(2) and Article 106(2) of the TEC), and of replacing it either by the consultation or by the codecision procedure. The possibility of replacing the current complex budgetary procedure by the codecision procedure has also been suggested. Both possibilities, and that of scrapping yet other procedures, could be examined by the Working Group.

(ii) by applying the codecision procedure to all legislative matters?

This option implies providing a Treaty definition of what in the Union is a matter for legislation and what relates to the implementation of that legislation. The TEC as it stands offers no general definition of what is a matter for legislation and what relates to the implementation of legislation in the European Union.

The codecision procedure does not at present apply to all areas covered by the TEC. However, where it does apply it is used for the adoption of all kinds of act in the area in question, and no distinction is drawn between legislative matters and matters more related to implementation, such as the adoption of legislation laying down detailed technical requirements for a given sector.

The Working Group could consider how far the codecision procedure could be completely and exclusively linked to the adoption of legislative matters. In that case, a separate, streamlined procedure (to be defined by the legislator under the codecision procedure) could be applied for the implementation of acts adopted by codecision. However, this would require a definition of a "legislative matter". This could be provided either in the Treaty itself or by the legislator (i.e. the European Parliament and the Council) on a case-by-case basis.

(iii) by extending qualified-majority voting to all legal bases where codecision is provided for?

There are currently four TEC provisions which require the unanimity rule to be applied in conjunction with the codecision procedure (Article 18(2), Article 42, Article 47(2) and Article 151(5) of the TEC). The requirement of unanimity during the codecision procedure may be regarded as an institutional oddity, which potentially robs the codecision procedure of its substance. The Working Group might therefore consider the possibility of replacing the unanimity rule in these four cases by a qualified majority.

(iv) *for the codecision procedure, by simplifying procedures for meetings of the Conciliation Committee? What other streamlining might be possible?*

The codecision procedure is often accused of being slow and cumbersome. Its simplification by the Treaty of Amsterdam, however, seems to have made for more satisfactory performance. About 72% of all proposals are adopted at first or second reading (about 32% at first reading and 40% at second reading), which means that fewer than 28% reach the conciliation stage.

Looking ahead to enlargement, it is open to doubt whether the conciliation mechanism can function with 28 members in each institutional delegation (Council and European Parliament). This raises the question of a possible simplification of the conciliation stage.

Another suggestion made by a few Members of the Convention would be to set deadlines for the first reading. Strict deadlines apply to the second reading and conciliation stage, and non-compliance can lead to an act not being adopted.

Tripartite technical meetings and "trialogues" between the Council, the European Parliament and the Commission take place during the first and second readings and before the meeting of the Conciliation Committee, in order to smooth out the differences between the institutions and facilitate endeavours to reach agreement (see Joint Declaration of May 1999 on practical arrangements for the new codecision procedure). The Working Group could study the possibility of formally creating mechanisms of this type.

Lastly, consideration could also be given to the possibility of simplifying the wording of Article 251.

(v) *How could the budgetary procedure be simplified? In particular, is it necessary to continue to differentiate between the different categories of expenditure?*

One of the major factors for the complexity of the budgetary procedure is the classification of expenditure into compulsory and non-compulsory. This classification has to a large extent been overtaken by reality, and a large number of Members of the Convention were in favour of abolishing it.

This raises the question of the procedure to be applied to the budget as a whole. Since many speakers at the Convention have expressed their preference for codecision, the Working Group should consider whether such a procedure is suited to the budgetary debate and what adjustments would have to be made to it.

Many interinstitutional consultation techniques (codified in the 1999 Interinstitutional Agreement) have been developed in putting the budgetary procedure into practice. The Working Group should look into the advisability of their formal inclusion in the Treaty.

How could the number of legal instruments referred to in the Treaties be reduced? Could they be given names which indicate their effect more clearly?

There is a broad consensus on the need to **reduce the excessive number of instruments** available to the Union and the Community for exercising their competences. A range of more than 30 different types of act is the outcome of the addition to the initial catalogue in Article 249 of the TEC (decision, regulation, directive, recommendation and opinion) of a whole series of other instruments (guidelines, framework programme, implementing decision, etc.) to be found elsewhere in the Treaties. Yet more (decision as a general rule, declarations, resolutions, conclusions, etc.) have been added in practice.

The pillar structure has also contributed to the proliferation of instruments by introducing types of act specific to foreign policy (common strategy, common position, joint action, etc.) and to cooperation in criminal matters (decision, framework decision, etc.) ¹.

¹ Second and third pillar instruments also come under the mandates of Working Groups VII "External Action" and X "Security and Justice". While many Members of the Convention did call for instruments within the three pillars or, at least, the first and third pillars, to be made uniform as a crucial aspect of rationalisation, it seems advisable to tackle this question at a later stage in our proceedings so that the views of the other Groups on the matter can be taken into account.

However, reducing their number serves no purpose unless accompanied by a genuine effort to **rationalise instruments** by redefining them and codifying them according to their effects. The need to preserve the unique characteristics of Community law and of its instruments, particularly its primary and direct effect, was mentioned in this context during the Convention's debates ¹.

Names could prove to be an important factor in the process of simplification. Many Members of the Convention called for a classification and names that were simple and clear to the public. Acts should primarily be classified according to their binding effect. Thus, binding and generally applicable acts could be called European laws (the current regulations) and European framework laws (directives), with the name "regulation" being reserved for implementing provisions (third-level rules) following the tradition of many Member States ².

This leads directly to the question of establishing a clearer **hierarchy of norms**, which was also addressed during the Convention debates ³. Some Members, for example, advocated the addition of "organic laws" as a new category of acts, reserved for "quasi-constitutional" areas.

Some Members believed that the classification of acts should also correspond to general rules of procedure (for example, unanimous voting within the Council or procedures requiring ratification by national parliaments would be reserved for organic laws).

¹ Some Members of the Convention proposed a new classification of types of Union involvement based on their intensity (uniformly applied rules, full or minimal harmonisation, mutual recognition, binding or "open" coordination). By contrast, others argued that it was not possible to establish a correlation between the types of legal instrument (regulation, directive, decision, etc.) and the categories of competence (exclusive, shared, complementary) or the intensity of the Union's action.

² The same rationalisation approach could be applied to non-binding acts, whose number should be limited. Instruments other than opinions and recommendations (e.g. declarations, resolutions, etc.) could be codified if necessary and their effects clarified as a result.

³ For details of proposals tabled on this subject at successive Intergovernmental Conferences, see CONV 162 and 216.

Some Members of the Convention linked the hierarchy of norms to the issue of a clearer separation of powers within the Union. In any event, the hierarchy of norms could draw a clearer distinction between legislative acts and implementing rules. Changing the nomenclature as suggested above (law and framework law as opposed to regulation) would in itself make the system easier to comprehend.

The hierarchy of norms could also assist in **defining what is "legislative"** within the Union. Many Members of the Convention raised the question of the excessive detail shown by Community legislation. Some proposed in this respect that the legislator (European Parliament and Council in this case) confine itself to regulating the essential and general questions of a given subject-matter and provide greater scope for flexibility for implementing rules. This leaves the question of defining what is "legislative" open.

Another question to be clarified is who adopts implementing rules. Article 202 TEC and, in particular, the mechanisms for **monitoring the implementing powers** conferred on the Commission need to be studied closely by the Working Group. Many Members of the Convention feel that the complexity and opacity of the current "comitology" system should be corrected. Others advocated creating new mechanisms for monitoring by the legislator (including the European Parliament) of the executive activity of the Commission by, for example, providing for a right of legislative call-back.

Finally, the improvement of the **quality of legislation** "*à droit constant*" (on the basis of established law) should also be addressed by our Working Group.

The Group could also look into the new flexible consultation and cooperation mechanisms, notably the open method of coordination ¹, examining in particular the possibility of incorporating them into the Treaties.

¹ Working Group VI "Economic Governance" is currently studying the issues relating to the open method of coordination. Its findings need to be taken into account in our proceedings.