

NOTE

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| from : | Secretariat |
| to : | Working Group IX on Simplification |
| Subject : | Summary of the meeting held on 24 October 2002 |

Following the submissions made by the three experts during the last meeting, the working group has had a long exchange of views on the question of simplification of instruments.

In his introduction, the President stressed the importance of establishing a link between procedures and instruments. He reminded everyone that the procedure of co-decision stands out as the principal procedure, without prejudice to other variants such as, notably, consultation with various organs or institutions. The fact remains, however, that a number of acts adopted directly on the basis of the treaty, are done so by means of some other procedure. Working document no.10 is aimed precisely at presenting a certain number of examples of acts adopted directly on the basis of treaties, by the Council, the Commission and the European Central Bank. This type of approach enables one to notice straightaway that a large number of these acts are not by nature "legislative". Obvious examples are acts of nomination, as are those emergency measures adopted within the framework of the Economic and Monetary Union. On examination of the list of various procedures, one can also observe that certain acts implement a particular article in the treaty which is of a "legislative" nature (for example, on the subject of competition, those acts adopted on the basis of article 83 of the TCE are aimed at the application of articles 81 and 82 of the TCE). The fundamental issue is the definition of "legislative act". In the opinion of Mr. Amato, a "legislative act" must cover the essential elements in a specific field.

During the course of the meeting, a number of subjects were touched upon, such as:

- the need for a radical simplification, without running the risk of oversimplification,
- the importance of establishing a clear distinction between binding and non-binding acts,
- the link between instruments and the democratic legitimacy of the Union's actions,
- the possibility of reducing the typology to the five instruments set out in article 249 TCE ¹
- the need or not for specific instruments within the framework of common foreign and security policy
- the flexibility in the choice of instrument
- the possibility and usefulness of distinguishing between "legislative" and "executive" acts,
- the possibility of limiting the legislative acts to "basic political choices", and how to define these choices, whether in the treaty or on a case-by-case basis,
- the scope of the co-decision procedure
- the link between co-decision and legislative acts,
- the procedures for scrutinising the implementing rules ("comitology", article 202 of the TCE)
- the idea of transforming the Council, in its legislative function, into a second chamber.

At the end of the meeting, the President indicated some guidelines resulting from the discussion:

- The first part of the constitutional treaty should present, in general terms, the different procedures and the different types of instrument, while the provisions in the second part of the treaty, which is devoted to policies (legal bases) would be adapted according to the rationale of the procedures and instruments operated in the first part.
- The working group on legal personality concluded that a merger of treaties and pillars did not pre-judge a differentiation regarding procedures and instruments. In particular, the instruments placed at the disposal of common foreign and security policy are, in principle, of a different nature.
- There is a wide consensus for radically simplifying the panoply of instruments which appear in the treaties (about 15). In this context, one could limit these to one or two types for the legislative acts ("Law", "Framework-law"), one for executive acts which have a general scope and one for specific executive acts (which have an individual scope). And a further type for non-binding acts (for example: "recommendation").

¹ See WD 6 : M. Piris's contribution.

- Concerning the distinction between “legislative” and “executive” acts, the former could be defined as being limited to essential principles, while the latter as those subordinated to provisions of a legislative nature. This does not mean that legislative acts cannot contain details. To constrain the legislator in this way would be contrary to customary acceptance of the legislator’s discretionary powers. A way would need to be found to convince the legislator not to enter into details without constraining him legally. On the other hand an act that doesn’t contain the essential elements in a given field cannot be a legislative act.

- In States which recognise their regions’ or federal communities’ competences, the instrument “framework-law”, which would replace “directive”, seems particularly appropriate. There remains the difficulty of designating the legal bases which are likely to be referred to specifically for this instrument.

- Concerning the role of the legislator (Parliament and Council) to scrutinise the executive’s actions, we could make a distinction between acts which develop a legislative act and those which have a purely implementing nature. In the former case, we could envisage a *call back* system, permitting the legislator to reconsider these executive acts, especially if they go beyond the legislator’s framework.

-Implementing acts could in principle be adopted by the Commission, except in some domains to be considered ¹.

- Under Heading V of the TUE (PESC), common strategies determined by unanimity permit the adoption of common actions or positions by qualified majority. If the instrument of “common strategy” were to be replaced by, for example, a redefined “decision”, how could we keep the possibility of qualified majority voting in the Council when implementing such a decision?

In the light of these guidelines, the President of the group has suggested to its members that they give the secretariat their written replies² to the questions appearing at the end of the synthesis note of the meeting held on 17 of October:

¹ See WD 8 : M. Petite’s contribution.

² Members are asked to send their answers by Thursday,31th October at 12.30.

Issues for consideration

1) Should the terminology of the legal bases set out in the treaties be simplified and standardised?

If so, how?

2) 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 cooperation in criminal matters? How might this be done? What changes would be needed in the definition and the effects of the existing instruments?

3) Once any such change has been made, should the title of the acts be amended? If so, how?

Regulation by "law"? Directive by "framework law"? Others?

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

5) 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? Should specific rules be set out in particular areas?

6) Should a specific act be created for cases where the Council adopts acts directly on the basis of the treaty? What could it be called?

7) Should the use of atypical acts be restricted? In particular, should their use be excluded when the legislator is in the process of examining a legislative proposal?
