

**AMENDMENT FORM**

**Suggestion for protocol: Subsidiarity**

**By Mr. Georges Jacobs - UNICE**

**Status: Observer**

---

**DRAFT**

**[PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF  
SUBSIDIARITY AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article 8 of the Constitution, and to establish a system for monitoring the application by the institutions of those principles.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.
3. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common

positions respectively, upon adoption, to the national parliaments of the Member States.

4. The Commission shall justify its proposal with regard to the principle of subsidiarity. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity. ***As a part of the subsidiarity check, alternative non-binding instruments and the possibility of relying on self-regulation should be examined.*** This statement should contain ***an*** assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

***In carrying out these tasks, the Commission is assisted by an independent body advising on the cost-benefit aspects of draft legislation. This advice is to be made public.***

5. Any national parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers.
6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.

Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the Commission shall ***immediately*** review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a

reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting, the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.

8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules. Under the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.
9. The Commission shall submit each year to the European Council, the European Parliament and the Council a report on the application of Article 7(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

---

**Explanation (if any):**

*Article 4:*

*The Convention, in UNICE's view, should recommend greater role for other types of instruments between representative stakeholders, on specific topics (see for instance the UNICE-BEUC agreement on trustmark schemes). In this context, self-regulation and codes of conducts should also find more recognition as possible instruments to reach EU objectives, instead of systematic legislation. This would alleviate the legislative tasks of the EU and would democratise the rule-making exercise.'*

*There is a general tendency to increase EU regulation, and mechanisms should be put in place to better assess the impact of regulation. This task could be carried out by an independent institution. The goal of this institution would be to check the need for EU regulation, its economic impact, and its added value for the functioning of the internal market. This body could also have a role in the deregulation process by regularly checking the effectiveness of existing regulation.*

*Article 6:*

*In order to ensure that the early warning mechanism shall not unduly delay the legislative process, UNICE suggests that where at least one third of national parliaments issued reason opinion on the Commission proposal, the Commission be given a limited timeframe in which it will have to review its proposal. This is why UNICE suggests to incorporate the word “immediately” in order to avoid slowing down the legislative process.*