

AMENDMENT FORM

Suggestion for protocol on the role of national parliaments in the European Union

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DRAFT

[PROTOCOL] ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State, **and noting in this respect the Copenhagen Parliamentary Guidelines for relations between governments and parliaments on Community issues, agreed at the XXVIII COSAC in Brussels on 27 January 2003,**

CONSIDERING, however, that greater involvement of national parliaments in the activities of the European Union is essential, particularly in ensuring the scrutiny of governments' actions in the Council and monitoring respect for the principles of subsidiarity and proportionality, and that increasing the role and influence of national parliaments in the European Union would be a means of promoting democracy and accountability in the Union and helping to bring citizens and the Union closer together,

DESIRING, therefore, to ensure that national parliaments have the opportunity to obtain information and to express their views on legislative and other proposals before decisions are made,

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

I. Information for Member States' national parliaments

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national parliaments **upon publication.**

2. The Commission shall send all its proposals for legislation directly to Member States' national parliaments at the same time as to the European Parliament and to the Council.

[paragraph 3 in Praesidium draft moved and amended (see para 10)]

3. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council and the Member States' national parliaments in their languages and the date when it is placed on a Council agenda for adoption or for adoption of a position under the legislative procedure set out in Article [X in Part II of the Treaty establishing a constitution for Europe], subject to exceptions on grounds of extreme urgency, the reasons for which shall be stated in the act or common position. **During that six-week period, no formal or informal agreement on the proposal, preliminary or otherwise, shall be reached.**

4. **Unless the Council adopts the Commission's legislative proposal without amendment, ten clear days shall elapse between consideration of the item by COREPER and the Council adopting a common position, subject to exceptions on grounds of extreme urgency, the reasons for which shall be stated in the act or common position. The Council shall keep and publish a record of the observance of this provision.**

5. **When a legislative proposal is placed on a Council agenda for decision, the agenda shall indicate whether there are any national parliament scrutiny reserves outstanding, and if agreement is reached despite such a scrutiny reserve, the Council shall state its reasons for having proceeded.**

6. The agendas for and the outcome of Council meetings, **including a record of the debate in the case of Council meetings held in public**, shall be transmitted directly to Member States' national parliaments **at the same time as they are transmitted to governments.**

7. The Commission shall send Member States' national parliaments, for information, any instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those institutions.

8. The Court of Auditors shall send its annual report to the Member States' national parliaments, for information, at the same time as to the European Parliament and to the Council.

9. The Commission shall respond promptly to requests for information and questions from national parliaments or their committees about its proposals.

I. SUBSIDIARITY AND PROPORTIONALITY

10. If Member States' national parliaments [or their chambers] send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion under paragraph [5] of the Protocol on the application of the principles of subsidiarity and proportionality, or issue reasoned opinions under paragraph [7] of that Protocol, the European Parliament, the Council and the Commission shall act in accordance with the provisions of that Protocol.

[para 8 of Praesidium's draft moved and amended (see para 13)]

III. CONFERENCE OF EUROPEAN AFFAIRS COMMITTEES

11. The Conference of European Affairs Committees, **hereinafter referred to as COSAC, established in Paris on 16 and 17 November 1989, may examine any legislative proposal or initiative, notably in relation to the establishment of an area of freedom, security and justice, the application of the principles of subsidiarity and proportionality or questions regarding the rights and freedoms of individuals, on its own initiative, or on the basis of draft legal texts which representatives of the governments of the Member States may decide by common accord to forward to it, and may submit any contribution it deems appropriate on the legislative or other activities of the Union for the attention of the institutions of the Union.** Such contributions shall in no way bind national parliaments or prejudice their position.

12. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this Protocol. Each institution of the Union shall reply to

any COSAC contribution addressed to it relating to its areas of responsibility within three months.

13. The European Parliament shall consult COSAC and invite it to co-operate with it as regards the promotion of inter-parliamentary co-operation within the European Union.

14. COSAC may, inter alia, promote the exchange of information and best practice between parliaments of the Union, including their sectoral committees, and may convene ad hoc interparliamentary conferences.

Explanation:

Preamble.

The first paragraph is amended to include a reference to the Copenhagen Parliamentary Guidelines.

The second paragraph is an addition, and sets out why it is important to increase the involvement of national parliaments in the EU. The first part of the paragraph draws on wording proposed for the Constitution itself in paragraph 8 of the report of WG IV.

The revised third paragraph (amending the Praesidium's second paragraph) sets out more precisely what the Protocol's main purpose is — enabling national parliaments to express views before decisions are made.

Paragraph 1. *The words 'upon publication' are added at the end, i.e. the documents should be sent as soon as they are published.*

Paragraph 2. *Unchanged.*

(Former paragraph 3, on subsidiarity, as amended, is now paragraph 10.)

Paragraph 3 (amending paragraph 4 in the Praesidium draft). The final sentence ruling out agreements within the six-week period is added. It reflects the recommendation in paragraph 20 of the report of WG IV, which resulted from concern about the possibility of “preliminary agreements” being reached by Council working groups within the six-week period. (WG IV accepted that working groups should be able to have a preliminary exchange of views within the six-week period.)

Paragraph 4. New paragraph. The six-week rule covers only the initial Commission proposal, and when changes are proposed shortly before a Council meeting there is sometimes insufficient time available for national parliaments or others to give their views. COSAC agreed in October 2000 that ‘a minimum 15-day time period, or one week in urgent cases, should be observed between the final reading of a text by COREPER and the Council decision’. As WG IV noted, the Council’s own rules of procedure provide for a clear week to elapse between a legislative item being considered at Coreper and the Council. It also recommended that the Council Secretariat keep and publish a record of the observance of the rule. The proposed new paragraph compromises on ten days, which should allow just enough time for a parliamentary committee meeting weekly to comment. The importance of this provision for effective national parliamentary scrutiny is such that it is appropriate to place it in the Protocol rather than leaving it to be determined by the Council’s rules of procedure.

The exception on grounds of extreme urgency has the same wording as paragraph 3.

Paragraph 5. New paragraph. This paragraph reflects the recommendation in paragraph 20 of WG IV’s report that ‘parliamentary scrutiny reserves should be given a clearer status within the Council’s rules of procedure’. It would not prevent the Council overriding a parliamentary scrutiny reserve, but would require the Council to take scrutiny reserves more seriously than it does at present.

Paragraph 6 (amending paragraph 5 in the Praesidium draft). The revised paragraph adds a requirement to send a record of the debate following Council meetings held in public. Most legislative bodies publish a transcript of their debates (and often audio or video recordings); the fact that the Council does not do so for its public debates means that it is impossible for national parliaments (or anyone else) to find out what was said without sending someone to attend every debate. The public debates therefore do not increase accountability in the way that they should.

The revised paragraph would remedy this.

The revised paragraph also requires the documents to be sent to national parliaments at the same time as to governments.

Paragraph 7 (paragraph 6 in the Praesidium draft). *Unchanged.*

Paragraph 8 (paragraph 7 in the Praesidium draft). *Unchanged.*

Paragraph 9. *New paragraph. In its White Paper on European Governance, the Commission called for a ‘reinforced culture of consultation and dialogue’, and expressed the view that ‘the involvement of national parliaments and their specialised European affairs committees ... could ... be encouraged’. This paragraph builds on the Commission’s words by giving it a duty to respond promptly to requests and questions from national parliaments.*

Paragraph 10 (amending paragraph 3 in the Praesidium’s draft). *The Praesidium’s paragraph presents a number of problems:*

- it tells national parliaments what they ‘may’ do, although any national parliament which wished to could send a reasoned opinion on subsidiarity to the European institutions at present; all that the early warning mechanism will do is to place a requirement on the institutions to respond to such reasoned opinions in specified ways;*
- other than attempting to tell national parliaments what they ‘may’ do, it does not add to what is in the draft protocol on the application of the principles of subsidiarity and proportionality;*
- it omits any reference to reasoned opinions following the convening of the Conciliation Committee (as proposed by WG I).*

The revised paragraph is therefore little more than a cross-reference to the relevant protocol, but also refers to reasoned opinions following the convening of the Conciliation Committee. (As the square brackets indicate, this paragraph may need amending in the light of changes to the protocol on subsidiarity.)

Paragraph 11 and paragraph 12 (amending the Praesidium's paragraph 9). The current Protocol on the role of national parliaments in the European Union makes clear that COSAC may make any contributions which it deems appropriate, and also specifies certain areas which could be considered as particular aspects of COSAC's responsibility. These provide a focus for COSAC's work, and should not be deleted, as the Praesidium's draft does. However, the existing Protocol would benefit from some redrafting. Paragraphs 11 and 12 therefore rearrange the contents of the current Protocol into a more logical order, removing some repetition. Paragraph 11 takes the right to examine 'any legislative proposal or initiative' from existing paragraph 5, and combines the list of subject areas in existing paragraphs 5 and 6, with the addition of proportionality, plus the reference to governments forwarding legal texts from existing paragraph 4. The list of subject areas is preceded by the word 'notably' (as in existing paragraph 6) to indicate that COSAC is not restricted to those subjects. Combining the lists is appropriate because COSAC could not reasonably submit a contribution without having first examined the proposal it was commenting on. The provision in paragraph 11 about submitting contributions is based on existing paragraph 6, but changes 'legislative proposal' to 'legislative or other activities', which appears to bring it more into line with 'any legislative proposal or initiative' in existing paragraph 5.

The first sentence of paragraph 12 is taken from existing paragraph 5 (but changing 'point' to 'Protocol'). The second sentence, providing for replies, is a new provision. It refers to EU institutions in general (as in existing paragraph 4), rather than just to the three named bodies, because it is possible that COSAC might wish to address a contribution to another EU institution, such as the Court of Auditors.

Paragraph 13 (replacing the Praesidium's paragraph 8). The Praesidium's paragraph rightly indicates that promotion of inter-parliamentary co-operation in the EU should be done jointly by the European Parliament and national parliaments, but purports to give an instruction to national parliaments, which the draft Constitution should not be doing. The alternative paragraph gives a duty to the European Parliament to provide the opportunity for co-operation, and links that co-operation specifically with COSAC. This is a task which COSAC ought to be able to carry out on behalf of national parliaments. The alternative paragraph does not of course rule out other forms of co-operation between the European Parliament and national parliaments or between national parliaments.

Paragraph 14 (new paragraph). This paragraph reflects proposals from WG IV.