

REPORT

from: Working Group IV - "The role of national parliaments"

to: Members of the Convention

Subject: **Final report of Working Group IV on the role of national parliaments**

I. Introduction

1. The Working Group has on the basis of its mandate (CONV 74/02) examined the role of national parliaments in the European Union. In pursuing its work, the Group has borne in mind the recognition of the importance of involving to a greater extent national parliaments in the work of the European Union expressed in the Declaration (No 13) of Heads of State and Government annexed to the Treaty of Maastricht and the Protocol annexed to the Treaty of Amsterdam regarding the role of national parliaments in the European Union. It has equally borne in mind the Declaration (No 23) annexed to the Nice Treaty which invited national parliaments to participate in the debate on the future of the Union, and finally the specific questions posed in the Declaration on the Future of Europe by the European Council in Laeken on the role of national parliaments in the efforts to increase the democratic legitimacy of the EU.
2. The Working Group held 9 meetings, one of which was held jointly with Working Group I on subsidiarity. Members have participated actively in the work of the Group and submitted a large number of written contributions. The Group has heard evidence from Dr. Andreas Maurer

(Senior Research Fellow at the Stiftung Wissenschaft und Politik, Berlin, and Jean Monnet lecturer at the University of Osnabrück) on the role of national parliaments in the European architecture and from Commissioner Michel Barnier, notably on implementation of the Amsterdam protocol. Other members of the group also gave presentations on areas of their own expertise. The Chairman visited the Finnish parliament upon invitation of the President of the Grand Committee.

3. The work of the Group can be brought under three distinct headings:

- the role of national parliaments in scrutinising governments (national scrutiny systems)
- the role of national parliaments in monitoring the application of the principle of subsidiarity
- the role and function of multilateral networks or mechanisms involving national parliaments at the European level

The present report outlines the results of the Working Group's debate on these three main issues and presents a number of specific proposals. It also contains some recommendations of a more general nature.

II. General observations and recommendations regarding the role of national parliaments in the EU

4. A number of general observations have emerged from the discussions in the Group. Members agreed that national parliaments had a distinct role to play within the EU, that enhancing their involvement would help to strengthen the democratic legitimacy of the Union and bring it closer to the citizens. "Anchoring" and ownership of the EU in the Member States was considered of major importance to achieve these goals. In this context, the Working Group underlined that the issue was not one of competition between national parliaments on the one hand and the European Parliament on the other hand. Each had its distinct role but both shared the common objective of bringing the EU closer to citizens and thus contributing to enhancing the democratic legitimacy of the Union.

5. Based on these general observations, the Working Group recommends to the Convention that the future Constitutional Treaty contain a clear recognition of the role of national parliaments. Wording to this effect should, as is the case in the Protocol to the Amsterdam Treaty, reflect that provisions on the European level are aimed at facilitating the involvement of national parliaments, without interfering in constitutional arrangements on the national level.
6. While recognising that steps have been taken in the past to encourage greater involvement and awareness of national parliaments in the activities of the EU, not least through the provisions of the Amsterdam Protocol on the role of national parliaments, the Working Group considered that national parliaments should use all their possibilities to influence the Council through their governments and was of the view that a certain number of measures could further improve the situation.
7. In this respect, the Working Group agreed that more openness and transparency in the work of the Council was essential to facilitate and improve the active involvement of national parliaments in the EU. Members were of the view that the Council should legislate with open doors. Policy coordination as well as other activities should also be carried out with open doors as much as possible. Clear reasons should be given when closed sessions were deemed necessary. The Working Group considered that the measures adopted at the European Council in Seville were an important step forward, i.e. open Council meetings when the Council is acting in accordance with the procedure for codecision. The Working Group considered, however, that further efforts were needed towards increasing openness, transparency and was also of the view that records of proceedings should be sent within 10 days to the European Parliament and the national parliaments, parallel to the transmission to governments.
8. The Working Group recommends the following measures:
 - *The future Constitutional Treaty should contain specific wording that acknowledges the importance of the active involvement of national parliaments in the activities of the European Union, in particular by ensuring the scrutiny of governments' action in the Council, including the monitoring of the respect of the principles of subsidiarity and proportionality.*

- *The Council should act in public in all cases where it exercises its legislative functions. Policy coordination as well as other activities should also be carried out with open doors as much as possible. Clear reasons should be given when closed sessions were deemed necessary.*
- *Records of Council proceedings should be sent within 10 days to the European Parliament and the national parliaments, parallel to the transmission to governments.*

III. National scrutiny systems

9. The Group agreed that the primary role of national parliaments in European matters was carried out through effective scrutiny of their government's action at the European level. It was also acknowledged that the different systems for national parliamentary scrutiny reflected different arrangements for the relations between governments and national parliaments in conformity with constitutional requirements in individual Member States, and that it would not be appropriate to prescribe at European level how the scrutiny should be organised. In this respect, it was also noted that many of the measures relating to scrutiny on the national level could also, within each Member State, apply to the substate level, subject to national constitutional requirements and arrangements.
10. It was however considered useful to look at the different national systems in order to try to identify best practices and minimum standards. In that context, the Group heard presentations on the systems used in Finland, Sweden, Denmark and France. Several other members of the Group submitted written presentations of the national scrutiny system in place in their respective countries. On the basis of this exchange of information, it became clear that existing systems vary greatly in their intensity and effectiveness. The Group identified a number of basic factors that had an impact on the effectiveness of scrutiny, such as :
 - the timeliness, scope and quality of information, covering all activities of the Union;
 - the possibility of a national parliament to formulate its position with regard to a proposal for a European Union legislative measure or action;

- regular contacts and hearings with Ministers before and after Council meetings, as well as European Council meetings;
- active involvement of sectoral/standing committees in the scrutiny process;
- regular contacts between national parliamentarians and MEPs;
- availability of supporting staff, including the possibility of a representative office in Brussels.

11. The Group acknowledged that even when national parliaments were given the power to scrutinise the action of their governments, they were not always making full use of it. The Working Group agreed that a more systematic exchange of information between national parliaments about methods and experiences could play an essential role in increasing knowledge and awareness of European affairs and thus improve further the efficiency of national parliamentary scrutiny. This is the primary role of COSAC¹, and the Group was encouraged that proposals for reform of COSAC currently being advanced by the Danish Presidency of COSAC should enable this role to be carried out more effectively than in the past. In the view of the Working Group, COSAC could consider drafting guidelines or a code of conduct for national parliaments setting out desirable minimum standards for effective national parliamentary scrutiny and invited it to take into account the observations and recommendations formulated by the Working Group.

12. The Working Group also examined which enabling measures could be taken at the European level to facilitate and encourage effective scrutiny at the national level. In that context, the Group received written evidence from the Council Secretariat on such matters as the Amsterdam protocol, relations with COSAC and openness in Council meetings. It also heard a presentation by Commissioner Barnier on implementation of the Amsterdam Treaty Protocol on the role of national parliaments in the European Union and discussed possible amendments to the existing Protocol or improvements that should be included in a possible new protocol (taking into account the provisions of the existing protocol and building on to this).

¹ COSAC is the abbreviation of its name in French: Conférence des organes spécialisés dans les affaires communautaires in French.

13. The Group considered that the provisions of the Amsterdam Treaty Protocol that relate to the national parliaments' access to information could usefully be strengthened. Although the primary responsibility for transmitting consultative documents as well as legislative proposals should continue to repose on governments, the Group saw merit in a simultaneous and direct transmission of such documents to national parliaments by the Commission to ensure that all national parliaments have the earliest possible access to documents.
14. The Commission already today operates a wide consultation process on consultative documents – green papers, white papers and communications – through posting such documents on the internet to inform the general public. The Group recognised that this procedure constitutes an important opportunity for national parliaments, among other actors, to react to proposals at an early pre-legislative stage, and that they perhaps do not fully exploit it. To increase the awareness of the open consultation and to facilitate the national parliaments' access to these documents and to encourage them to take this opportunity to make their views known, the Working Group would welcome that such consultative documents be sent directly to national parliaments. The relevant provisions contained in the Protocol (Article I.1) should therefore be amended accordingly.
15. The Amsterdam Treaty Protocol on the role of national parliaments contains a provision (Article I.2) which states that "Commission proposals for legislation as defined by the Council in accordance with Article 207(3) of the Treaty establishing the European Community shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate". The Group considers that the definition of legislative proposals should be set out more clearly to ensure that all proposals for legislation are covered. As indicated in the above, the Working Group also considers that all Commission proposals for legislation should be transmitted directly to national parliaments at the same time that they are transmitted to the Council and that the relevant provisions of the Protocol should be amended accordingly.

16. The Protocol on the role of national parliaments furthermore stipulates that "a **six-week period** shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on the European Union being made available in all languages to the European Parliament and the Council by the Commission and a date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 251 or 252 of the Treaty establishing the European Community, **subject to exceptions on the ground of urgency**, the reasons for which shall be stated in the act or common position." ².
17. The Working Group confirmed that the six-week period currently applicable was sufficient as a general rule for parliaments to be able to make their views known to governments, provided that they receive information rapidly – the timeframe preceding adoption of most legislative measures covered ³ by the period according to the protocol exceeding in most case six weeks. The Working Group has however expressed concern about the possibility of "preliminary agreements" being reached in Council Working Groups within the six-week period, before national parliaments had been able to make their views known to their government. The Working Group therefore considers that no preliminary agreements should be acknowledged in the Council, including Working Groups and Coreper, in the course of this six-week period. In order not to cause any delays in the legislative process, such a provision should still allow the Commission to present the proposal and the working group to have a preliminary exchange of views. A reserve put forward by a Member State in the Council that has its origin in the position or the awaited position of the national parliament concerned, should prevent the said Member State from taking part in an agreement on the proposal within the Council. This would not prevent a decision in the Council when decisions are taken by qualified majority, if that is reached without the Member State concerned. The relevant provisions of the Protocol should be amended accordingly.

² Article I.3, highlights added.

³ The definition refers to Community acts (regulations, directives and decisions) listed in Article 249 of the TEC as well as to acts (framework decisions and decisions) listed in Article 34(2) of the TEU (Title VI, JHA). Internal measures, administrative, budgetary or interinstitutional acts or acts concerning international relations are not covered by the definition of legislative acts referred to in Article I.2 of the Protocol. This definition is the one to be used for the purpose of Article I.3 of the Protocol, with the addition, made implicitly by Article I.3 itself, of the JHA Conventions under Article 34(2)(d) TEU.

18. The Working Group recognises the need to maintain a provision regarding exceptions on the grounds of urgency, but underlines the need to ensure that the reasons for exceptions are clearly stated in the act or the common position – in conformity with the provisions of the existing Protocol.
19. As a further element of the process to involve national parliaments more closely in the work of the European Union and informing them as early on as possible, the Working Group also thought it would be useful if the Commission transmitted its Annual Policy Strategy and annual legislative and work programme, and that the Court of Auditors transmitted its annual report, to national parliaments. This should be done at the same time that documents are transmitted to the European Parliament and the Council – the timing will need to be considered in relation to any modifications to the calendar of the current programming cycle that may follow from the Conclusions of the Seville European Council on the programming of Council activities. A provision to this effect should be included in an amended version of the Protocol on the role of national parliaments.
20. The Working Group recommends the following measures:
- *For the effectiveness of national scrutiny it is important that national parliaments have the possibility to formulate their own position on all proposals for EU legislative measures and actions.*
 - *An amended version of the Amsterdam Treaty Protocol on the role of national parliaments in the European Union should include provisions stating that:*
 - *The Amsterdam Treaty Protocol on the role of national parliaments should be strictly observed, including the six-week period, with exceptions on the grounds of urgency as set out in the Protocol.*
 - *Council Working Groups and Coreper should not acknowledge preliminary agreements on proposals covered by the six-week period of the Amsterdam Treaty Protocol on national parliaments until the end of that period, with exceptions on the grounds of urgency as set out in the Protocol.*

- *Parliamentary scrutiny reserves should be given a clearer status within the Council's rules of procedure. Such reserves should furthermore have a specified time limit, so as not to unnecessarily block the decision procedure.*
- *The Council's rules of procedure provide for a clear week to elapse between a legislative item being considered at Coreper and the Council. The Council Secretariat should henceforth keep and publish a record of the observance of the rule.*
- *The Commission should transmit all legislative proposals and consultative documents simultaneously to national parliaments, the European Parliament and the Council.*
- *The Commission should transmit the Annual Policy Strategy and annual legislative and work programme simultaneously to national parliaments, the European Parliament and, the Council.*
- *The Court of Auditors should transmit its annual report simultaneously to national parliaments, the European Parliament and the Council.*
- *COSAC could consider drafting guidelines and/or a code of conduct for national parliaments setting out desirable minimum standards for effective national parliamentary scrutiny, provide the platform for a regular exchange of information, best practice and benchmarking of national scrutiny mechanisms.*

IV. Subsidiarity

21. The Group examined closely the issue of the role of national parliaments in controlling the application of the principle of subsidiarity at the European level. The Group considered in particular the following questions:

- Is there a role for national parliaments in monitoring subsidiarity?
- Should they act alone or with others?
- At what stage, or stages, of the legislative process should they be involved?
- What mechanism would be most appropriate?

22. The Working Group agreed that ensuring respect for subsidiarity and proportionality was a shared responsibility and that the Commission, the European Parliament, the Council and national parliaments must all ensure compliance with the subsidiarity principle when proposing and considering draft legislation. It also agreed that national parliaments must play an essential role in contributing to the work of the EU legislature in applying in practice the principle of subsidiarity. In particular, national parliaments have a central responsibility to advise, scrutinise and hold to account their own government ministers for their performance in Council, especially when considering whether legislation is best adopted at national or European level. It was also noted that there was a close link between subsidiarity and proportionality. The Group also discussed the use of Article 308⁴ and most of the members were of the view that unanimity in the Council on the use of this Article is an essential component of the respect of subsidiarity⁵.
23. The Group agreed that national parliaments should be involved as early as possible in the legislative process. It was furthermore agreed that an ex-ante control of subsidiarity should be primarily of a political nature. The presentation of the Commission's strategic programming documents directly to national parliaments, as outlined in the previous section, would allow national parliaments to gain early insight into planned legislative proposals and to request more information from their government on specific elements if needed. The Group noted Commissioner Barnier's explanation that the subsidiarity and proportionality implications of proposals would only become fully clear once they were adopted by the Commission.

⁴ Article 308 TEC : "If action by the Community should provide necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting anonymously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

⁵ The Commission provided the group with a list of 73 acts adopted on the basis of Art. 308 since 1 May 1999.

24. The majority of the members of the Group recommended a "process based approach" for monitoring subsidiarity and proportionality by national parliaments and rejected the idea of creating new permanent or ad hoc bodies or institutions for this purpose. Members furthermore underlined the need to ensure that a new mechanism would be simple and that it would not unnecessarily delay the decision-making process. They agreed that such input could most usefully be provided through a two stage approach by which national parliaments would consider a draft piece of legislation from the perspective of subsidiarity at the very beginning of the legislative process, but also throughout the legislative process in cases where the text had changed considerably compared to the original proposal. The warning would be addressed to the institution that was the source of the amendment. Some members underlined that national parliaments should have the possibility to intervene at any stage in the legislative process through national governments in keeping with the national constitutional requirements and agreed arrangements between the government and the national parliament.

25. The Group had a joint meeting with Working Group I (Subsidiarity) and maintained close contact throughout the process. Most of the members of the Group welcomed in general the final recommendations of WG I and considered that its views had been taken into account. However, some members of the Group considered that some of the proposals of WG I could be further refined:

- The link between subsidiarity and proportionality should be further emphasised.
- National parliaments should be able to raise concerns about subsidiarity throughout the legislative process, in those cases where a proposal has changed considerably.
- Should one decide to have a judicial appeal mechanism, the right of appeal should not be restricted to those national parliaments that had issued a reasoned opinion at the early stage.

26. The majority of the members of the Working Group recommend the following measures:

- *A mechanism should be set up to allow national parliaments to convey early on in the legislative process their views on the compliance of a legislative proposal with the principle of subsidiarity. Such a mechanism should be process-based and it should not hinder or delay the legislative process.*

V. Multilateral networks or mechanisms involving national parliaments at the European level

27. There was a general acknowledgement in the Group of the importance and usefulness of networking and regular contacts between national parliaments as well as between national parliaments and the European Parliament. These would help to exchange information and experiences and to foster a greater understanding and involvement of national parliaments in the activities of European Union. As to the place and the format of these networks in the European architecture, the Working Group agreed to take as a starting point the purpose and the functional role of possible mechanisms. Members reminded themselves of their obligation to simplify the process of European decision-making and within that context found it difficult to see how the creation of any new institution could assist the process of simplification.

28. The Working Group welcomed the significant benefits gained from involving national parliaments, the European Parliament and governments in the previous and the current Conventions and considered that the method of a Convention should be formalised in a Constitutional Treaty with regard to the preparation of future Treaty changes.

29. The Working Group agreed that the exchange of information between parliaments, including on best practice and benchmarking in national scrutiny, was instrumental in improving the capacity of national parliaments to deal with EU issues and strengthen the link with the citizens. It was generally agreed among members of the Working Group that existing mechanisms for exchange were not used to their full potential. In this respect, it was also noted that some measures to foster exchange between parliaments could also be of relevance for the substate level, the organisation of which should be a matter for each Member State, in line with national Constitutional requirements and arrangements.
30. Members saw merit in clarifying the mandate of COSAC (the Conference of European Affairs Committees), strengthening its role of interparliamentary consultative mechanism and making it more efficient and focussed. It considered that making full use of this mechanism could contribute to bringing European issues more to the forefront in each national parliament.
31. In addition to the role of fostering the exchange of best practice and information (see also the part on national scrutiny systems), the Group considered that COSAC could provide a platform for contacts between sectoral standing committees of national parliaments and the European Parliament, in complement to the contacts between European Affairs Committees. COSAC could be used as a forum bringing together primarily national parliamentarians. This should however not hinder them from inviting MEPs to take part in meetings whenever this is deemed particularly useful. The Group considered that it might be appropriate to change the name of COSAC to reflect its expanded role. In addition, some members were of the view that COSAC could provide a forum for debate on a general level on the control of subsidiarity, considering that the direct involvement of national parliaments in relation to individual legislative proposals should pass through their scrutiny of governments and the new early-warning mechanism proposed by WG I.

32. According to the Amsterdam Treaty Protocol on the role of national parliaments in the EU, COSAC may make any contribution it deems appropriate for the attention of the institutions of the EU (Article II.4). The Working Group considers that to foster a real dialogue between the EU institutions and the national parliaments, these institutions should also react to such contributions. Replies could be provided in different forms. COSAC could for example invite a Member of the European Commission or a representative of one of the other institutions to a hearing, or the institution could reply in writing.
33. The Working Group felt that there was a need for the Convention to examine how national parliaments could be more involved in shaping the political agenda and strategy of the EU. The Group considered that a mechanism for European debate involving both national parliaments and the European Parliament, both representing the voice of the citizens in Europe, might be the most useful format. Some argued that such a forum should not constitute a new institution, but that it would be a mechanism for debate. There was agreement that the functions would still have to be defined more precisely. All agreed that such a forum should not have any legislative role nor any competencies with regard to the delimitation of competencies between the Union and the Member States, and it should not disturb the current institutional balance. It was also recognised that the relationship between COSAC and any new forum would need to be explored further to ensure complementarity and avoid overlapping tasks. The Working Group examined whether national parliaments and the European Parliament should become involved in a new forum, possibly designated a Congress. The Group was divided on this point.
34. The Working Group also recognised that there may be ground for other contacts between national parliamentarians and MEPs on specific issues on an ad hoc basis, in complement to regular contacts, including a more systematic approach for cooperation between national parliamentary committees and European Parliament committees. The Group would in this respect welcome the possibility of convening ad hoc interparliamentary conferences on sectoral issues, possibly under the auspices of COSAC, where the gap between national positions block agreement at the European level. Such mechanisms, bringing together specialists in the specific policy area, would help to build bridges and pave the way for identifying solutions – an example of an issue for which this could be a useful mechanism was the reform of the CAP.

35. As a part of the process to bring the EU closer to the debate within Members States the Working Group further recommends that once every year a EU-wide European week be organised to coincide with the presentation of the Commission's annual policy strategy. This would create a common window for debates in the national parliaments, involving Members of the European Parliament, and possibly also Members of the European Commission as well as representatives of national governments, thus raising national awareness of the activities of the European Union. These European weeks would require a certain coordination of scheduling of the European Parliament and national parliaments, to ensure that MEPs have the possibility to take active part in the national debate.

36. The Working Group recommends the following measures:

- *The method of a Convention should be formalised in a future Constitutional Treaty, as a preparatory mechanism for future Treaty changes.*
- *The mandate of COSAC should be clarified to strengthen its role as an interparliamentary mechanism. It could usefully act as a platform for a regular exchange of information and best practices, not only between European Affairs Committees, but also between sectoral standing committees. It should become a stronger network for exchange between parliaments.*
- *The Convention should explore further whether there is scope for creating a forum for a debate on the larger political orientations and strategy of the Union, involving both national parliaments and the European Parliament. In this context the Group took note of the idea of a Congress and considered that this should be the subject of further examination in the Convention.*
- *Interparliamentary conferences on specific issues could be convened as the need arises.*
- *A European week should be organised each year to create a common window for EU-wide debates on European issues in every Member State.*
