

Working Group IV

Working document 4

Working group IV – "Role of National Parliaments"

Subject: Paper by Mr Andrew Nicholas Duff, member of the Convention

Members of Working Group IV will find hereafter a paper by Mr Andrew Nicholas Duff, member of the Convention.

PAPER BY ANDREW DUFF M.E.P. FOR THE WORKING GROUP

ON THE ROLE OF NATIONAL PARLIAMENTS

At the first meeting of the Working Group on 26 June we were invited to counter our negative reactions to the proposal for a new parliamentary body composed of national parliamentarians by offering constructive suggestions for an enhanced role for national parliaments in the political system of the European Union.

In this paper we offer certain proposals that will secure a new role for national parliaments at the EU level. However, these functions are intended as a complement to and not as a substitute for **the primary obligation of national parliaments - which is to hold their own government ministers to account for their performance in the Council.**

1. THE LEGISLATIVE PROCESS

The Protocol of the Treaty of Amsterdam stipulates that the Commission shall forward all consultation documents and all draft legislative acts to national parliaments. Six weeks must elapse between the formal tabling of the proposal and the taking of a decision (including the adoption of a common position). About 1200 documents are forwarded to national parliaments each year.

The pre-legislative phase

The EU institutions take into account opinions expressed by national parliaments. **It would be possible to enhance the consultative process in some key cases, for instance where Article 308 is the legal base, by making the formal receipt of an Opinion a necessary part of the legislative process.**

It would also be helpful to national parliaments if the Commission could produce more thorough justifications of legislative proposals, up-grading its critiques on conformity with subsidiarity and introducing regulatory impact assessments. The establishment of an external expert body to advise the Commission on the impact of regulation could facilitate quality control. **National parliaments could use this improved methodology to assist them with their own scrutiny of draft legislation.**

The legislative phase

The principle of the separation of powers does not permit national parliaments to act as a third legislative chamber. The bicameral codecision and conciliation procedure between the Council, representing the member states, and the European Parliament, representing the European citizen, is central to the legitimisation of the European Union and must not be interfered with.

Nevertheless, in some cases national parliaments may feel that their views have not been sufficiently taken into account by ministers in Council. In others, the final decision of the Council and European Parliament may have removed itself some distance from the initial common position towards the formulation of which national parliaments had some input at the pre-legislative phase. In such a case, one could envisage **a complaints procedure, triggered by a significant majority of national parliaments, with the effect of convening the Conciliation Committee for a third reading of the law**. The block of national parliaments would be obliged to formulate a reasoned amendment. If the Council and Parliament wished to stick to their original position they would need to achieve a higher threshold ('super QMV') in Council. The relevant procedure under Article 251 TEC might look as follows:-

6. bis Within four weeks of the adoption of the act, a majority of member state parliaments representing a majority of the population of the Union may register a complaint concerning the act and submit a reasoned amendment to it. A third reading of the law shall then be undertaken by the Conciliation Committee within six weeks. In the case that the Committee decides to accept the amendment of national parliaments, the Council shall act by qualified majority. In the case that the Committee decides to reject the amendment, the Council shall act by a qualified majority of two-thirds of the member states representing at least two-thirds of the population of the Union.¹ The European Parliament shall act in both cases by absolute majority.

The post-legislative phase

National parliaments should aim to assist the Commission in improving the monitoring of the effect of EU law and policy on the ground. The commitment to improving the quality of the preparation and drafting of legislation at the EU level should be mirrored by **a commitment at member state level to the better transposition of EU directives into national law. In general, national parliaments should focus more on scrutinising that part of the delivery process.**

¹ This formula is predicated on the assumption that the new ordinary QMV rule will consist of a majority of member states representing a majority of the EU population.

2. SETTING THE AGENDA

National parliaments could and should play much more of a role in shaping the broad political agenda of the European Union. More involvement by MPs would encourage a sense of shared ownership of the European project, which itself might be reflected in national media circles. It would also serve to ease the sometimes difficult relationship between MPs and MEPs, even in the same political party, by giving them a common experience of EU affairs. General debates about the 'state of the Union' in national parliaments would become more broadly based and less the preserve of Euro-specialists.

The work programme

Reform of the way the work programme of the Union is both set and managed is needed in any case. The programmes of the six monthly presidencies-in-office of the Council are fairly pretentious and have a destabilising effect on the routine work of the Union, which is established and driven by the Commission according to broad guidelines set by the European Council. **Intensive involvement of national parliaments in the preparation of the annual work programme would prepare MPs to cater for their subsequent scrutiny work.**

A sensible reform might therefore be as follows:

1. The Commission presents its draft annual work programme to all the institutions and to national parliaments (February).
2. Commissioners appear before the relevant committees of the European Parliament who organise joint meetings with their counterparts from national parliaments, and debates are held simultaneously in the national and European parliaments (Spring).
3. Reports of the parliamentary consultation are sent to the General Affairs Council (November), which prepares the decision of the European Council on the following year's programme (December).

COSAC and interparliamentary conferences

COSAC will only rarely have a mandate to represent national parliaments collectively and it must not pretend otherwise. Instead, **it needs to continue to develop its useful role as a clearing house for information on the scrutiny of EU affairs.** There is more best practice to be shared between

EU national parliaments despite the widely variable geometry involved. COSAC should change its name.

As a variation on the work of COSAC, **non-routine joint conferences of MPs and MEPs should be held to tackle particularly problematical dossiers**, such as enlargement or reform of the CAP. Such interparliamentary conferences would bring together the specialists in a particular subject area rather than the EU generalists who populate COSAC. Only by in-depth investigation of a policy can the question of subsidiarity be properly addressed.

3. APPOINTMENT OF COMMISSION

The most difficult task in front of the Convention is to determine where executive authority in the Union should lie. If the Commission emerges stronger, as it should, we will need to reform the manner of its appointment. **A President of the Commission with more power could be legitimised further throughout the federal system by the inclusion of national parliamentarians in his or her election.**

There is a strong argument for shifting the task of nominating the future Commission President from the Council to the Parliament. This would both personalise the European Parliamentary election campaign and strengthen the accountability of the Commission to the Parliament.

That being the case, it might be sensible to adopt the German pattern for the election of the Federal President, the *Bundesversammlung*. **A congress composed of the whole European Parliament and an equal number of national parliamentarians would meet every five years in the July immediately following the European Parliamentary elections to elect the new President of the Commission.**

4. THE CONVENTION

The single greatest innovation of all, of course, is the precedent of the Convention itself. The acquisition by national parliamentarians as well as MEPs of a genuine constituent power is an historic breakthrough.

Being involved in the intricate but highly political process of constitutional reform will vastly increase the pool of national MPs with first-hand experience of EU affairs. It will no longer be plausible for national parliaments to claim that they are not involved in shaping the future of Europe.