

Working Group IV

Working document 30

Working group IV – "Role of National Parliaments"

Subject: "National parliamentary scrutiny and multilateral mechanisms for cooperation"
- Paper by Mr Kimmo Kiljunen, member of the Convention

Members of Working Group IV will find hereafter a paper by Mr Kimmo Kiljunen, representative of the Finnish Parliament, member of the Convention.

NATIONAL PARLIAMENTARY SCRUTINY AND MULTILATERAL MECHANISMS FOR COOPERATION

**Paper by Dr. Kimmo Kiljunen, Member of the Convention representing
the Parliament of Finland**

National scrutiny systems - possible measures at the European level

The discussions within the Working Group have shown clearly that national parliaments have a distinct role to play within the institutional system of the Union. National parliaments are an important source of legitimacy for the Union and a direct and established link between the Union and the peoples of the Member States. Thus the role of national parliaments should be explicitly recognised in the constitutional Treaty resulting from the work of the Convention. This would be an important way to create additional ownership for EU affairs in national parliaments.

The new constitutional treaty could recognise and describe, using appropriate wording, the role national parliaments have in the EU institutional system. The wording should clearly recognise that it is a national question how to organise, within the constitutional system of each Member State, the relationship between the government and the Parliament in other words the Treaty should enable but not regulate best practices.

Council for Legislative Affairs and scrutiny of Council

Greater openness, transparency and predictability of the Council's work are essential for facilitating the work of national parliaments in scrutinising the work of governments, and must be a key result of the Convention. This would be facilitated by the creation of a single new Council for Legislative Affairs to replace the numerous Council formations: a Council, which would deliberate in open sessions, as legislatures should.

In order to facilitate the scrutiny role of national parliaments, the Treaty could oblige Ministers participating in the Council to ensure that appropriate national parliamentary scrutiny has been carried out. National constitutional and parliamentary provisions and practices would obviously apply to scrutiny.

Enhanced information flow

The Treaties could recognize that national parliaments have extensive right of information concerning EU affairs (in accordance with national law), and would on the Union level have the same access to information provided by the institutions of the Union as the European Parliament currently has.

In order to enhance the flow of information to the national parliaments the Commission could be obliged to transmit directly to the national parliaments its proposals as well as preparatory documents (Green and White books, communications, reports etc.) It should be made clear, however, that the primary responsibility to submit the Commission documents to the parliaments would continue to rest with the governments.

In addition to the current six-week period established in the Protocol on the Role of National Parliaments in the European Union, a four-week period before a Council Working Group starts considering the Commission proposal and forming any preliminary positions on it could be introduced. Similar period would apply to the issues under Part VI of the EU Treaty (Justice and Home Affairs) and where appropriate to Part V (Common Foreign and Security Policy). This would ensure that *de facto* binding preliminary positions would not be taken before national parliaments have had a chance to consider the proposals for acts.

As a means to enhance the exchange of information between the Parliaments, one might introduce an obligation for Union institutions to translate and disseminate to other national parliaments as well as to the Union institutions major position papers of national parliaments or of their committees.

Article 308

The Working Group has discussed briefly the role of national parliaments with regard to article 308 of EC Treaty. Such a provision is clearly needed also in the future Treaty to ensure the necessary flexibility and in order to avoid too casuistic Treaty provisions.

The use of Article 308 entails union action within the objectives of the Union but without explicit legal base. It thus expands the competences of the Union at least in an indirect manner and limits the possibilities of national parliaments to act as a legislator. As a result, the use of article 308 or its equivalent in the future constitutional Treaty should be mentioned in the Protocol on the role of

national parliaments as an instance when national parliaments should always be consulted. Commission should provide national parliaments specific early case-by case information on why the use of Article 308 is necessary. This would not imply a change in the decision-making procedure of Article 308 itself; the decision in the Council should be made unanimously.

Multilateral mechanisms for the involvement of the national parliaments

As stated in the Finnish contribution on national parliaments (CONV 82/02) enhanced cooperation between the national parliaments and the European Parliament is an essential factor of the strengthened role of national legislatures within the EU structure. This cooperation should not, however, result in a change of the role of national parliaments. Interparliamentary bodies within the Union should have no legislative role. Neither should they have a role in the attribution of competences between Union and the Member States in the form of ratification powers (i.e. no “Kompetenzkompetenz”).

COSAC could continue exist as a central organ for parliamentary cooperation, although it clearly needs to be reformed. In my mind the basic composition of COSAC needs not to be changed. I see participation of MEPs to be a positive and useful factor in the work of COSAC.

COSAC could be the parliamentary forum to consider the annual legislative programme of the Commission, with special emphasis on the principles of subsidiarity and proportionality. It could also encourage or organise sectoral cooperation between the different standing committees national parliaments, together with the European Parliament, in a way that mirrors the different Council formations. One possibility to organise sectoral cooperation would be to use the COSAC structure as an umbrella organisation.

The Convention model should be recognised in the future Treaty as a mechanism to prepare future Treaty changes.
