

Working Group IV

Working document 32

Working group IV – "Role of National Parliaments"

Subject: Draft final report of Working Group IV on National Parliaments

On behalf of the Chair, please find herewith a draft final report of Working Group IV on National Parliaments. The text will be discussed at the meeting on 10 October 2002.

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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 [numerous] [28 – today 3/10] written contributions. The Group has heard evidence from Dr. Andreas Maurer (Associate Professor at the University of Cologne) on the role of national parliaments in the European architecture and from Commissioner Michel Barnier, notably on implementation of the Amsterdam protocol. 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 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" 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 Treaty contain a clear recognition of the role of national parliaments [through specific wording in the (preamble of the) Constitutional Treaty]. 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 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. The Working Group considered that the measures adopted at the European Council in Seville was an important step forward (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 the transmission of records of Council meetings to national parliaments.
8. The Working Group recommends the following measures:
- *The future Constitutional Treaty should [in its preamble] contain specific wording that acknowledges the importance of the active involvement of national parliaments in the activities of the European Union and their [responsibility to act as a] direct link to the citizens.*
 - *The Council should act in public in all cases where it exercises its legislative functions, i.e. not only under codecision procedure. [Records of proceedings should be sent directly to national parliaments, in parallel to the transmission to governments.]*

III. National scrutiny systems

9. The Group agreed that the primary influence 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.
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 and quality of information;
- regular contacts and hearings with Ministers before and after 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 COSAC ¹, and we are encouraged that proposals for reform of COSAC currently being advanced by the Danish Presidency should enable this role to be carried out more effectively than in the past. [In our view COSAC should consider drafting a code of conduct for national parliaments setting out desirable minimum standards for effective national parliamentary scrutiny.]
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 [if requested] 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 [if requested]. 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. As indicated in the above, the Working Group also considers that all Commission proposals for legislation should be transmitted directly to national parliaments [if requested] 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 during the first [two/three/four] weeks of this six-week period, Council Working Groups should not acknowledge any preliminary agreement on proposals. 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. The relevant provisions of the Protocol should be amended accordingly.
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 presented its annual legislative programme to national parliaments. This should be done at an early stage in the process and no later than its presentation to the European Parliament (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.

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.

20. The Working Group recommends the following measures:

- *An amended version of the Amsterdam Treaty Protocol on the role of national parliaments in the European Union should include provisions stating that:*
 - *The Commission should transmit all consultative documents and legislative proposals directly to national parliaments [if requested]. Legislative proposals should be transmitted simultaneously to national parliaments and the Council.*
 - *Council Working Groups should not acknowledge preliminary agreements on proposals covered by the six-week period of the Amsterdam Treaty Protocol on national parliaments during the first [two/three/four] weeks after the transmission of the text to the Council and national parliaments (with exceptions on the grounds of urgency as set out in the Protocol).*
 - *The Commission should present its annual legislative programme to national parliaments.*
 - *[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 six-week period of the Amsterdam Treaty Protocol on the role of national parliaments should be strictly observed (with exceptions on the grounds of urgency as set out in the Protocol).*
 - *[Parliamentary scrutiny reserves should be given a formal status within the Council's rules of procedure. Such reserves should furthermore have an expiry date.]*
- *A reformed COSAC should consider drafting 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. 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 national parliaments had an essential role in monitoring the application of the principle of subsidiarity. The primarily legislative tasks of national parliaments gave them a central responsibility 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 agreed that ensuring respect for subsidiarity was a shared responsibility. The Commission, the European Parliament and the Council must all ensure compliance with the subsidiarity principle when proposing and considering draft legislation.

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 annual legislative programme 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.

24. The Group recommended a "process based approach" for monitoring subsidiarity by national parliaments and rejected the idea of creating new (permanent) bodies or institutions for this purpose. The Group furthermore underlined the need to ensure that a new mechanism would be simple and that it would not unnecessarily delay the decision-making process. The Group 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 towards the end of the legislative process in cases where the text had changed considerably compared to the original proposal. 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. The Group welcomed in general the final recommendations of WG I and considered that its views had been taken into account.

However, the Group considered that in [four] specific respects the proposals of WG I could be further refined:

The link between subsidiarity and proportionality should be further emphasised.

- [The national parliaments' early warning mechanism should be strengthened, perhaps requiring the Commission formally to withdraw a draft legislative proposal for a short period while it considers reasoned opinions of national parliaments.]
- The right of judicial appeal should not be restricted to those national parliaments which had issued a reasoned opinion at the early stage.
- [Each national parliament should have in effect "one voice" in the process [to avoid giving bicameral legislatures a greater say than unicameral ones]].

26. The Working Group recommends 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. The Group broadly welcomes the recommendations of Working Group I in this context.*

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. Its core tasks should relate to national parliaments, not the European Parliament. Members welcomed the initiative underway by the Danish Presidency in this respect. 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 expressed a general reluctance to create new institutional structures, which would add to the complexity of the institutional landscape in the eyes of the citizens.

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 convening a Convention should be formalised in a Constitutional Treaty.
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.
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 [a reconstituted and functionally more focussed] COSAC could provide a platform for contacts between sectoral standing committees of national parliaments, in complement to the contacts between European Affairs Committees. [A new COSAC could be used as a forum bringing together 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 a reformed 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 be encouraged to react to such contributions. [Replies could be provided in different forms. A reformed 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 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, would 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, and it should not disturb the current institutional balance.
34. Such a forum [which could be denominated a Congress] could provide a unique platform for national and European parliamentarians to meet at regular intervals to debate the strategic direction of Europe. The Group envisaged that such a meeting of parliamentarians could take place [twice a year] [once every year] [every five years]. The purpose would be to consult the national parliaments together with the European Parliament directly on the state of the Union and its evolution, on the basis of reports from the European Council and the Commission. It could furthermore receive information about and debate the (future) multiannual programme of the Council and/or the annual programme of the Council, in which case it should also receive a progress report the following year and thus follow-up on the delivery of the statements of intention (in the event that a congress would meet on an annual basis). Some have also suggested that such a forum be invited to endorse high-level nominations. [Such a forum] [The Congress] could be composed of the European Parliament representatives and national parliamentarians [...].

35. The Working Group also recognised that there may be ground for contacts between national parliamentarians and MEPs on specific issues on an ad hoc basis. The Group would in this respect welcome the possibility of convening ad hoc interparliamentary conferences on sectoral issues, 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 (examples of issues for which this could be a useful mechanism were the reform of the CAP or the reform of the internal resources).
36. 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 programme. 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.
37. The Working Group recommends the following measures:
- *The method of convening a Convention should be formalised in a future Constitutional Treaty.*
 - *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 network for exchange primarily between national parliaments.]*
 - *There is a need to create a forum for a debate on the larger political orientations and strategy of the Union, involving both national parliaments and the European Parliaments. [It is proposed that this would take the form of a Congress.] This would be consulted on the state and evolution of the Union, receive information on the multiannual and annual programming of the work of the Council and progress reports on implementation. [It would also endorse high-level appointments]. Such a [forum] [congress] would convene [twice a year/once a year/.../every five years.*

- *A European week could be usefully organised each year to create a common window for EU-wide debates on European issues in every Member State.*
 - *Interparliamentary conferences on specific issues should be convened as the need arises.*
-