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DEVELOPMENT OF THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION STRUCTURE

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DEVELOPMENT OF THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION STRUCTURE

I. PRESENT ROLE OF NATIONAL PARLIAMENTS UNDER THE TREATIES

The Amsterdam Treaty recognised the role of national parliaments for the first time at the treaty level. The preamble of the Protocol on the Role of National Parliaments encourages greater involvement of national parliaments in the activities of the European Union and efforts to enhance their ability to express their views on matters, which may be of particular interest to them. At the same time the preamble recognises that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organization and practice of each Member State.

The operative provisions of the Protocol annexed to the Amsterdam Treaty concern mostly practical questions on the information to be given to national parliaments on Commission consultation documents, on Commission proposals as well as on initiatives concerning justice and home affairs under Title VI of the Treaty on European Union. In addition, it gives COSAC a formal status within the institutional structure of the Union and includes provisions on its consultative function.

Experience of the protocol so far suggests that it is not by itself sufficient to guarantee the national parliaments an appropriate role in the decision-making system of the European Union; especially considering the crucial role national parliaments have in providing legitimacy and effect for the actions of the Union. It is therefore pertinent that the Nice Treaty mentions in its Declaration the role of national Parliaments in the European architecture as one of the four areas where there is a recognized need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions.

The Laeken declaration includes the following three questions on the role of national parliaments: *Should they be represented in a new institution, alongside the Council and the European Parliament? Should they have a role in areas of European action in which the European Parliament has no competence? Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?*

This contribution aims to reply these questions from the point of view of a national parliament.

II. BASIC PRINCIPLES THAT NEED TO BE FOLLOWED WHEN CONSIDERING THE FUTURE ROLE OF NATIONAL PARLIAMENTS

The future role of national parliaments within the structure of the European Union needs to be addressed both at the national as well as on the European level. In considering the future role of national parliaments certain basic principles should be taken into account:

1. Legitimacy of the union flows from the citizens of the Union. With due account to the role of the European Parliament at the European level, national parliaments are at the member state level the political bodies the citizens elect and associate themselves most with. In order to increase the legitimacy of the European Union, the role of national parliaments in EU affairs needs to be clarified and strengthened.

2. Further complicating the European Union institutional structure runs against strengthening of legitimacy and thus must be avoided. Enhanced participation of national parliaments in the decision-making of the Council can be achieved without creating new, formal decision-making institutions or structures at the European level.

3. Any new provisions concerning national parliaments included in the Treaties have to be worded in a way that respects national constitutional requirements and the diverse parliamentary practices of the Member States.

4. A prerequisite for effective and functioning national deliberation and decision-making systems involving the national parliaments is that the actions on the Union level are conducted with greater discipline, predictability, responsibility as well as greater transparency and openness than hitherto.

Without prejudice to the changes eventually to be proposed by the Convention, the functioning of the Council is crucial in this regard. The Council has to function effectively and transparently, especially when acting as a legislator. The Council should follow strictly the procedures, time limits and instruments, prescribed in the Treaties and supporting instruments. The increased role for national parliaments is feasible only if it is linked to further developing the Council working methods and practices.

III. THE ROLE OF NATIONAL LEGISLATURES AT THE NATIONAL LEVEL

The European Communities and later European Union have evolved into a *sui generis* structure based on international treaties that were ratified by national parliaments using appropriate constitutional procedures. In creating European-level power and competence, the national parliaments have over the course of the development of the Union ceded substantial parts of their legislative power to EU bodies.

The question of the legitimacy of the Union is a complex one. Since the European Union is a union of democratic States, which performs sovereign tasks through the exercise of sovereign authority in its field of competence, it is first and foremost citizens of the Member States, who are also citizens of the Union, that have to legitimise such action. The question of legitimacy concerns especially the European Parliament and the Council as the main legislators of the Union.

The participation of citizens in the handling of EU affairs is effected mainly in a representative manner; on the one hand, in the Council through governments enjoying the confidence of their national legislatures, and, on the other, through the European Parliament, which is directly elected.

While the European Parliament has a significant role as co-legislator of the European Union, national parliaments will continue, for the foreseeable future, to be the main representatives of the political sovereignty and democratic identity of the peoples of the Member States. Taking this into account, the principle of parliamentary control, i.e. political control of parliament over the decision-making of the government, should also in practice cover the decision-making effected by ministers of national governments in the Council. Illustrative example of such a system in practice is the Finnish parliamentary scrutiny system, which is described in the Annex.

The organisation of the scrutiny of EU-affairs is a question that will have to be addressed on the national level. In many Member States this question involves the respective national constitution. The constitutive treaties of the European Union could, however, recognise and describe, using appropriate wordings, the role national parliaments have in the EU institutional system in a way that

strengthens democracy. In short, the treaties should enable but not regulate best practices of parliamentary participation.

The wording of the Treaty text could, as one possibility, oblige Ministers participating in the Council to ensure and certify that appropriate national scrutiny has been carried out. It would thus be ensured that national parliaments have at their disposal, as early as possible, regular and comprehensive information on the Council decision-making. National parliaments would consequently have, in accordance with the national scrutiny system, appropriate influence on the position the Minister will take in Council.

The principles of the Finnish scrutiny system stated below could serve as a basis, obviously adapted in order to take into account the differences in the parliamentary systems and traditions of the Member States. The treaties should not, however, aim to regulate the relationship between national parliaments and their respective governments, which is first and foremost a national constitutional matter.

Added information to national parliaments on the decision-making of the Council would also benefit the implementation of EU legislation. The national parliaments are in an appropriate position to enact the necessary implementation acts for EU legislation when they have been consulted on the content and effects of the legislative instrument before the instrument was adopted.

In all Union matters, whether they are legislative decisions or more political by nature, the national parliaments should have basically unlimited access to information they need to evaluate the matter from a parliamentary point of view, taking into account appropriate national rules concerning parliament's access to information.

IV. THE ROLE OF NATIONAL LEGISLATURES AT THE EUROPEAN LEVEL

Although the parliamentary control of the Council activities is from the institutional point of view central element of national parliaments' involvement in the Union, the need for continuous information on positions and thinking of other Member States and the European Union institutions is self-evident. Enhanced cooperation between the national parliaments and the European Parliament is thus an essential factor of the strengthened role of national legislatures within the EU structure.

We see no need for new institutions at the European level, such as a second chamber to the European Parliament or a new independent chamber consisting of members of national parliaments. The double legitimacy of the Union system, that of the directly elected European Parliament and the political control of Ministers within the Council performed by national legislatures, would not be improved by a new institution, which would join the two parliamentary tiers of the Union.

On the other hand there is a clear need for better co-operation and exchange of information. The European cooperation of national parliaments should not aim at formal decision-making, but rather at building networks for questions of common interest with the possibility to arrive at common political viewpoint on some issues. A separate issue is the enhanced control of subsidiarity, on which issue, however, some sort of mechanism, not an institution, involving the national parliaments as a central player should be envisaged as a result of the work of the Convention.

Parliamentary cooperation on the European level could consist of COSAC as a central organ. The basic structure and working methods of COSAC form a good basis for the development of

cooperation among national parliaments. The European Parliament needs to be involved in this cooperation as an equal partner in order to ensure that the exchange of information between national parliaments and the European Parliament is comprehensive and done on a continuous basis. The aim should be fruitful relations of cooperation between the European Parliament and the national parliaments, as well as complementarity rather than competition between them.

Practical measures to ensure the information flow to the national parliaments could also be foreseen. To clarify the current Treaty Protocol on the role of national parliaments, the Commission could be obligated to transmit directly, without prejudice to obligations of the governments, to the national parliaments all Commission proposals as well as the Green and White papers. Added information on the positions of national parliaments with regard to major EU issues could become provided, if one of the Union institutions would translate and disseminate to other national parliaments as well to the Union institutions major position papers of national parliaments or their committees.

Parliamentary cooperation between national parliaments could be developed to mirror the Council structure. Separate meetings could be envisaged for each sectoral Council formation. These meetings could involve members of national parliaments and European Parliament representing the appropriate sectoral and European Affairs Committees. The need is especially obvious with regard to cooperation on the Common Foreign and Security Policy and Justice and Home Affairs, on which the European Parliament currently has a limited role.

PRINCIPLES OF THE EUROPEAN AFFAIRS SCRUTINY SYSTEM OF THE FINNISH PARLIAMENT

1. The basic features of the system are enshrined in the Constitution of Finland

The Government has a duty under Section 96 of the Constitution to communicate without delay to the Parliament "those proposals for acts, agreements and other measures which are to be decided in the European union and which otherwise, according to the Constitution, would fall within the competence of the Parliament". In its communication to the Parliament, the Government must analyse the Commission proposal and indicate the position of the Government on the matter.

The matters that "would fall within the competence of the Parliament" if Finland were not a member of the European Union are so-called "U matters". U-matters cover all activities of the EU, i.e. Community pillar, Second pillar (where appropriate) and Third pillar.

The Parliament has a right - and in fact an obligation - to formulate its position on all U-matters. The national position of Finland is thus formulated in interaction between the Government and the Parliament, the Parliament having the final say. The mandate given by the Parliament is only politically binding, but in practice the Government is very strongly dependent on it.

Under section 97 of the Constitution the Government has an obligation to provide Parliament information on all other EU matters as well (so-called "E matters"). They include consultative documents (Green or White papers), Commission communications, proposals for technical directives, which do not fall in legislator's competences etc. E-matters can comprise also wider European issues, like the Future of Europe, the status of "Euro-12 group" or the use of open coordination.

The Parliament can give its opinion on E-matters as well, but it is not an obligation. These opinions are not *stricto sensu* binding on the Government.

2. Basic principles for the parliamentary work on EU-matters

There are four basic principles for the handling of EU matters in the Parliament:

- 1) *Widest possible scope*: The scope of the parliamentary scrutiny and the powers of the Parliament have to cover all matters handled and decided in the EU. The information given to the Parliament and the parliamentary involvement has to be regular and continuous.
- 2) *Earliest possible involvement*: The Parliament has to form its position on a particular matter in the beginning of the procedure (i.e. right after the Commission proposal) and it has to follow the matter all the way through the decision-making procedure in the EU.
- 3) *Widest possible participation*: All MPs participate in the handling of the EU matters through work and preparation in the specialised committees.

4) *Widest possible transparency*: All parliamentary activity is public, including handling of the EU matters. Publicity is guaranteed thorough complete access to documents and public registers. Only exceptionally a document can be declared confidential, in which case this decision and its reasons are public.

3. Specialised committees - not only the EU Committee - are systematically involved with the EU matters.

The position of the Parliament is not formulated in the Plenary, but either by the Grand Committee or by the Foreign Affairs Committee, which both act on behalf of the Plenary in EU affairs.

The Grand Committee (EU Affairs Committee) formulates the Parliament's position in all legislative and budgetary matters and in international agreements (first and third pillars) decided in or by the EU. Like the Plenary in domestic legislation, the Grand Committee bases its position on an opinion of one or several specialised Committees.

The Foreign Affairs Committee handles all CFSP and ESDP matters and formulates the Parliament's position in those areas. Sometimes it also receives opinions from the specialised Committees.

All specialised committees follow EU affairs on their own field. They scrutinize the EU legislative proposals and listen to expert opinions of their own choice (experts, interest organisations, NGOs etc.). In U-matters the Committees have an obligation to give a written opinion to the Grand Committee (or FAC where appropriate). In E-matters, the specialised Committees have a right to do so.

In 2001 the specialised Committees (i.e. other than GC or FAC) gave 199 written opinions on different U- and E-matters.

4. The Parliament has unlimited access to information on EU affairs

The Section 97 of the Constitution imposes on the Government an obligation - "upon request and when otherwise necessary" to give the Parliament reports of matters pertaining to European Union. The information consists of the actual preparatory documents of the Union, such as Commission proposals or other initiatives, Government position papers etc. Important sources of information are also the regular hearings in Grand Committee of Ministers in preparation of Council meetings they attend to.

The Finnish Parliament has since 1995 its own representative, a civil servant working at the European institutions and located in the EP. This enables the Parliament to have an independent source of information on the activities of the institutions in the Union, especially the European Parliament.

5. Systematic scrutiny of all agenda items prior to all Council meetings and likewise systematic reporting to the Parliament of all decisions taken by the Council.

All legislative proposals and other matters of interest are followed through the whole decision-making process. The scrutiny starts at the beginning of the EU decision-making process, after the Commission proposal is adopted, when the Parliament formulates its position as described above.

If the proposal is significantly changed during the decision making process in the EU, the Government has to send an "updated communication" to the Parliament. For instance if amended proposals by the Commission, amendments of the EP or a Presidency compromise proposal significantly change the contents of the proposal, change the Finnish position or are in contradiction with the position adopted by the Parliament, an update is required. The Parliament can formulate a new position on the updated communication in the same way as in the beginning of the procedure.

The scrutiny covers also legislative proposals that are *de facto* decided at the council working-group level and only formally decided by the Council as so-called "A items".

Important features of the scrutiny method are the hearings of Ministers participating in the upcoming Council meetings. The full agenda of each Council meeting is discussed on basis of written memoranda provided by the Government on each agenda point. Whenever there is an U-matter on the agenda, the Grand Committee gives a special mandate for the minister to act. The mandate is based on the parliamentary position adopted earlier in the procedure. The mandate can be conditional upon some material or procedural requirements.

When presenting the agenda of the upcoming Council meeting, the Ministers also report to the Parliament the results of the previous Council meeting. The Parliament is also provided with a written report on the Council meetings. At the hearing Ministers can be asked any question concerning the upcoming Council meeting or in practice any other topical question on the Minister's field of responsibility within European Union.

6. The principle of transparency is realised through extensive access to documents

Although the meetings of Grand Committee, Foreign Affairs Committee and the specialised Committees are held *in camera*, the basic principle of openness of Government activities applies also to the European Union affairs. The principles of the Finnish Act on the Openness of Government Activities apply to the documents on European Union matters provided by the Government to the Parliament.

The Government may request that the Parliament declare a document confidential. This request must be justified with specific reasons. If confidentiality is granted, the decision and its reasons are public. The confidentiality of a document ends, when the reasons for it are no more relevant.