

INFORMATION NOTE

from : Præsidium

to : Convention

Subject : **The role of national parliaments in the European architecture**

Members of the Convention will find attached a discussion paper on the role of national parliaments in the European architecture.

This document describes the role of national parliaments and is intended to serve as a basis for the discussions on that subject in the plenary session of the Convention on 6 and 7 June 2002.

DISCUSSION PAPER

Subject: The role of national parliaments in the European architecture

INTRODUCTION

1. For some time now, two questions in particular have been under discussion regarding the role of national parliaments within the Union: first, given that a sizeable proportion of national legislation in the economic and social spheres is in fact the product of the transposition of Community directives, some claim that the national parliaments merely serve as a "rubber-stamping chamber" in such matters. Secondly, in a number of new areas such as police and judicial cooperation policy, economic and monetary policy in the framework of EMU and common foreign and security policy, some consider that national parliamentary scrutiny procedures are inadequate.

2. Aware of these problems, the Member States began by adopting Declaration No 13 annexed to the Maastricht Treaty, which stressed the need to step up the exchange of information between national parliaments and the European Parliament. The Declaration also stated that the governments should ensure "*that national parliaments receive Commission proposals for legislation in good time for information or possible examination*".

3. When the Amsterdam Treaty was adopted, a Protocol was also adopted on the role of national parliaments in the European Union stating that "*Commission proposals for legislation (...) 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. 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 European Union being made available in all languages to the European Parliament and the Council by the Commission and the 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 (...)* ¹. This Protocol also endorses and spells out the role of the Conference of European Affairs Committees (COSAC), established in Paris on 16 and 17 November 1989. COSAC may inter alia "*address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.*"
4. In Declaration No 23 annexed to the Nice Treaty, the Conference called for a deeper and wider debate about the future of the European Union, particularly with representatives of national parliaments, with one of the questions to be addressed being "the role of national parliaments in the European architecture."
5. Finally, on the question of the democratic legitimacy of the European Union, the Laeken Declaration put the following questions on the role of national parliaments:
- (a) Should they be represented in a new institution, alongside the Council and the European Parliament?
 - (b) Should they have a role in areas of European action in which the European Parliament has no competence?

¹ It should be noted that certain documents are not mentioned in the Protocol, particularly those relating to the second pillar, enhanced cooperation and those submitted by the Member States to the European Council.

- (c) 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?

6. This note analyses how national parliaments are currently involved in the activities of the Union (I) and subsequently examines certain recent proposals on the future role of national parliaments in the Union (II).

I. PARTICIPATION OF NATIONAL PARLIAMENTS IN THE ACTIVITIES OF THE UNION

7. National parliaments participate in the activities of the Union in three quite different ways: firstly, in drafting and implementing Union law (A), secondly, when they exercise political scrutiny of the positions adopted by their respective governments within the Council (B) and, thirdly, when they establish cooperative relations with other parliaments in the Union (C).

A. THE PARTICIPATION OF NATIONAL PARLIAMENTS IN DRAFTING AND IMPLEMENTING UNION LAW

8. At the moment, national parliaments participate in drafting Union legislation at two different levels: at the level of primary legislation (Treaties and other texts with the same status) and at the level of secondary legislation (unilateral acts of the institutions based on the Treaties)².

9. As regards the participation of national parliaments in drawing up primary legislation, the following acts should be noted in particular:

- (a) amendments to the Treaties (Article 48 TEU);
- (b) Accession Agreements (Article 49 TEU).

² For the purposes of this note, reference is made only to the EU and EC Treaties.

10. As regards acts of secondary legislation, participation of national parliaments is provided for in the case of the following acts, inter alia:
- (a) Decision of the European Council on the progressive framing of a common defence policy (first subparagraph of Article 17(1) TEU);
 - (b) Decision of the European Council on the integration of the WEU into the Union (second subparagraph of Article 17(1) TEU);
 - (c) Agreements in the framework of police and judicial cooperation in criminal matters (Article 34(2)(b) TEU);
 - (d) Council decisions transferring third pillar actions to the first pillar (Article 42 TEU);
 - (e) Council decision adopting provisions strengthening or adding to the rights provided for in the Treaty with respect to the citizenship of the Union (second paragraph of Article 22 TEC);
 - (f) Council act on the election of the European Parliament by direct universal suffrage in accordance with a uniform procedure (Article 190(4) TEC);
 - (g) Council decision adopting provisions relating to the system of own resources of the Community (Article 269 TEC);
 - (h) Agreements between Member States in various areas essentially in the field of private international law with a view to achieving the objectives of the Community by means of uniform laws (Article 293 TEC)³.
11. Implementation of Community law is a matter for the Member States, which take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from action taken by the institutions of the Community (Article 10 TEC). To that end, the Member States comply with the rules resulting from their national law, in particular their constitutional law, in determining which bodies are competent and which national procedures are applicable (principle of institutional autonomy). As a result, the national authorities competent to see to the implementation of Union law may vary from one Member State to another. While the Member State concerned is solely responsible in this respect, in

³ Examples: Brussels Convention of 29 February 1968 on the mutual recognition of companies and legal persons, the scope of which was subsequently widened by the Convention of 28 May 1998 based on Article 31 of the TEU; Brussels Convention of 1 February 1973 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

certain cases competence is shared between national parliaments and governments. In certain federal or regionalised Member States, the national constitution gives the federal or regional bodies (concurrent or exclusive) law-making powers in certain respects.

12. Although the parliamentary channel is commonly used in all Member States, in some cases a parliament has delegated powers to its government to adopt measures normally forming part of legislation and essential for the implementation of Union law.

B. SCRUTINY BY NATIONAL PARLIAMENTS OF THEIR GOVERNMENTS

13. Scrutiny procedures are a function of constitutional organisation and practice in each individual Member State. It is therefore obvious that the effectiveness of the control depends on the parliamentary procedures in place in each Member State.
14. In some Member States the national parliament gives negotiating directives to the government's representative who is to take part in the Council's proceedings (e.g. Denmark, the Netherlands for third pillar activities, Austria – the Bundesrat (Federal Council), and Finland). In other cases, there are more or less effective systems providing for national parliaments to express their views on a legislative proposal, while leaving their respective governments free to decide whether or not to take them into account (for example, Belgium, Spain, France, Luxembourg and the United Kingdom). In order to strengthen their political control ⁴, certain national parliaments require that in some cases representatives of their governments within the Council make use of a "parliamentary reservation", with the result

⁴ See Andreas Maurer, *National Parliaments in the European Architecture: from latecomers' adaptation towards permanent institutional change?*, p. 78.

that the Council is unable to act definitively until such time as the parliamentary reservation has been withdrawn ⁵.

C. COOPERATION BETWEEN THE PARLIAMENTS OF THE UNION

1. The forms of cooperation between national parliaments and the European Parliament

15. Practices as regards cooperation between national parliaments and the European Parliament vary considerably. Members of the European Parliament generally do not take part in the work of national parliaments. There is, however, a tendency towards establishing closer cooperation procedures: in two States (Belgium and Greece) there are joint committees composed of members of the national parliament and of the European Parliament, in which the latter have the same rights as the former ⁶. In other cases, members of the European Parliament may participate in European Affairs Committee meetings in their national parliaments and have the right to speak (L Chambre des députés, D Bundesrat, E Senado, I Camera dei Deputati, I Senato, NL Eerste Kamer, NL Tweede Kamer, A National Rat, A Bundesrat). In some Member States, members of the EP may not participate in the proceedings of their national parliaments unless they have a dual mandate (DK Folketing, IR Dail Eireann, IR Seannad Eireann, UK House of Commons and UK House of Lords).

⁵ In Germany, modification of the Constitution and the implementing legislation introduced further to the Maastricht Treaty have considerably strengthened the position of the Bundestag and of the Bundesrat (where the spheres of competence or interests of the Länder are concerned) in the formulation of the Federal Government's position within the Council. Thus, a Committee for European Affairs has been set up within the Bundestag with special powers, and the Federal Government must refer to the position adopted by the Bundestag during negotiations within the Council (Article 23(3) of the Grundgesetz (Basic Law) and 2 and 5 of the Law on cooperation between the Federal Government and the Bundestag on matters concerning the European Union) (for fuller details, see Peter M. Huber, *National Parliaments and the Law-making Process of the European Union – On the consolidation and expansion of the participation rights of the German Bundestag*, Hans Seidel Stiftung, Aktuelle analysen 24, 2002). The Bundesrat, for its part, participates in the Community decision-taking process where the spheres of competence or interests of the Länder are affected, expressing its opinion on proposals for Community decisions. The Federal Government must, during Community negotiations, take its positions into account and even – where the Länder's exclusive powers are affected – take "considerable" (*massgeblich*) account of them, by seeking mutual agreement with the Länder (it should also be noted that in this case a representative of the Länder forms part of the German delegation at Council meetings). The United Kingdom Government too, after forwarding texts concerning the Union to both Houses of Parliament, undertakes not to accept any proposal within the Council until the examination by the Select Committees of both Houses is completed.

In France, Article 88(4) of the Constitution stipulates that resolutions may be voted by each of the parliamentary assemblies where proposals for acts of the Union including legislative measures are referred to them. These resolutions are not binding on the Government (see Sabine Delmas-Darroze *"Le Traité d'Amsterdam et le déficit démocratique de l'Union européenne"* (the Amsterdam Treaty and the Democratic Deficit of the European Union) European Single Market Review, 4/1999, p. 161 et seq).

⁶ In Germany, the European Affairs Committee of the Bundestag is composed of 36 national MPs and 14 MEPs, although the latter are not entitled to vote.

Finally, in three national parliaments no formal provisions is made for participation of members of the EP (SF Eduskunta, S Riksdagen, P Assembleia da República), although this does not prevent meetings, for example, between national and European parliamentarians ⁷ in the Finnish, Netherlands and Swedish parliaments.

16. Conversely, national members of parliament participate on a relatively regular basis in European Parliament Committee meetings and have the right to speak, but not the right to vote ⁸.
17. In this connection, Rule 55 of the Rules of Procedure of the European Parliament reads as follows: *"1. Parliament shall keep the national parliaments of the Member States regularly informed of its activities. 2. The Conference of Presidents may give a mandate to the President to negotiate facilities for the national parliaments of the Member States, on a reciprocal basis, and to propose any other measures to facilitate contacts with national parliaments."*

2. Forms of multilateral cooperation

a. The Rome Assises

18. In November 1990 a Conference of EC Parliaments ⁹ was held in Rome. It adopted a final Resolution asking the IGC (Maastricht) to take account of the Parliaments' proposals on the questions of the EMU and political union. It was also *in favour of enhanced cooperation*

⁷ See, for example, established practice of "Europa-overleg" within the NL Tweede Kamer. These meetings in which government members, national MPs and MEPs participate, are intended to prepare the Council meetings and evaluate the decisions it has taken. The following procedure applies to that end: MEPs receive the six-monthly timetable of meetings of the "Europa-overleg"; should they wish to participate in them, they must register their names with the European Affairs Committee; once they are registered, they receive the meeting documents; at the meeting, MEPs sit alongside national MPs; MEPs speak first (speaking time limited to 5 minutes); government representatives are not obliged to answer MEPs' questions (but it would appear that in practice these questions are taken up by national MPs).

⁸ For example, the meeting organised on 16 April 2002 by the EP's Committee on Economic Affairs with the corresponding national parliamentary committees to examine, inter alia, the implementation of the stability and convergence programmes. The purpose of this meeting was to involve national parliaments more closely in the process of preparing the key instruments of EU economic policy, which should have an increasing influence on the preparation of national budgets, and not only on that of the EU.

⁹ Better known as the "Assises" and based on an idea of Mr Mitterand's, the then President of the European Council, aimed at discussing the future of the Community, the implications for the EC and the Member States, proposals concerning EMU, and more particularly the role of national parliaments. This initiative was taken up by the European Parliament in two Resolutions adopted in November 1989 and March 1990. The Italian Chamber of Deputies subsequently adopted a Resolution offering to host the Assises in Rome. More than 300 members of parliament attended, 2/3 of whom were members of Member States' national parliaments and 1/3 members of the European Parliament.

between the national parliaments and the European Parliament by means of regular meetings of the specialised committees, exchanges of information and the organisation of Conferences of the Parliaments of the European Community when the discussion of essential guidelines for the Community was required, particularly when Intergovernmental Conferences were being held. No further assises have been held since then.

b. COSAC

19. Around the same time, the Conference of European Affairs Committees (COSAC) ¹⁰ was established at the initiative of Mr Fabius, the then President of the French National Assembly. On an invitation from the Parliament of the State holding the Presidency of the European Union, it brings together twice a year representatives (six per country) of the European Affairs Committees of the parliaments of the fifteen Member States, six representatives of the European Parliament and three observers from each of the candidate countries. Its role is in particular to improve the information given to the parliaments through the systematic exchange of the texts they adopt, the forwarding of any useful information on their activities and the development of mutual relations between them.
20. As already stated (paragraph 2 above), the Amsterdam Treaty acknowledged the role of COSAC. The Protocol annexed to that Treaty also stipulates that COSAC may examine "*any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedom of individuals*"; it may address to the European Parliament, the Council and the Commission any contribution it deems appropriate on the legislative activities of the Union, notably in relation to the principle of subsidiarity. Although it meets only once every six months, COSAC regularly adopts contributions, for instance in October 2000 (Versailles) (suggesting amendments to the abovementioned Protocol with a view to the Nice Treaty), in May 2001 (Stockholm) (on the future development of the Union and the role of the national parliaments) and in October 2001 (Brussels) (on the future of Europe).

¹⁰ The first meeting was held in Paris on 16 and 17 November 1989.

II. SOME PROPOSALS ON THE FUTURE ROLE OF NATIONAL PARLIAMENTS IN THE UNION

21. The abovementioned Protocol on the role of national parliaments states that it is desirable to "*encourage greater involvement of national parliaments in the activities of the European Union*". Since then, a number of proposals have been put forward for bringing about this greater involvement. Some take the view that this enhanced involvement should concern essentially more effective political scrutiny of national governments, in particular where the latter are participating in Council initiatives not covered by the first pillar (defence and foreign affairs, justice and home affairs); others think consultation of national parliaments on certain Union activities should be compulsory; yet others advocate changes to the existing institutional framework, either by altering the composition of the institutions or by creating new institutions in which the national parliaments would be represented collectively.

A. Concerning political scrutiny by national parliaments of their respective governments

22. In certain cases, national parliaments claim they are unable to exercise effective political scrutiny of their own government in relation to the activities of the Union. Some attribute this to the fact that the Council meets behind closed doors and that there is not enough time to examine Union documents.

23. However, the solution to this problem could lie, at least to some extent, with the States themselves, since the power to organise and implement parliamentary scrutiny of national governments' positions on the activities of the Union is a matter of exclusive Member State competence ¹¹. Consequently, strengthening national parliamentary scrutiny does not necessarily mean amending the Treaties. In this connection, the possibility has already been suggested that representatives from the national parliaments be included in Member State delegations when the Council acts in its legislative capacity ¹². The remit, the procedure for appointing these parliamentary representatives and their role could be examined in more detail at a later stage.
24. It might be thought advisable for national parliaments to compare and, if appropriate, exchange good practice ¹³. The COSAC proceedings would be a particularly good forum for that. Here it would be useful to know how national parliaments use the six-week period provided for in the Protocol in question to examine the Union's proposals for legislation. It would also be important to determine whether the institutions scrupulously observe this period, which is designed to enhance national parliaments' involvement in Union activities.
25. Finally, some suggest that the role of the national parliaments in transposing Union legislation should be enhanced by the adoption by the Communities of framework acts, which would leave national legislators more room for manoeuvre when transposing them.

¹¹ See in this connection the European Parliament resolution of 7 February 2002 on relations between the European Parliament and the national parliaments in European integration, further to the draft report by Mr Napolitano of the Committee on Constitutional Affairs (A5-0023/2002); see also the proposals made by Mr Bruton in his contribution to the Convention (CONV 27/02, pp. 33 to 36).

¹² See M. Barnier *"L'Urgence européenne, Note personnelle de Michel Barnier"*, 17 October 2001.

¹³ See in this connection the proposals made by Ms Lena Hjelm-Wallén, Mr Sören Lekberg, Mr Göran Lennmarker, Ms Lena Hallengren, Mr Kenneth Kvist and Mr Ingvar Svensson in their contribution to the Convention (CONV 61/02).

B. Treaty amendments providing for compulsory consultation of national parliaments

26. Some advocate amending the Treaties to make provision for compulsory consultation of national parliaments on an individual basis, particularly in the following cases:
- i. adoption of supra-legislative acts (which would presuppose a hierarchy of legislation being established in the Treaties) and/or
 - ii. under the present second and third pillars and/or
 - iii. certain appointment procedures provided for in the EC Treaty and/or
 - iv. monitoring of compliance with the principle of subsidiarity, particularly when the Union proposes adopting an act without having competence explicitly conferred by the Treaties (question of the possible revision of Article 308 TEC to provide for mandatory consultation of national parliaments) ¹⁴.

C. Proposals involving changes to the institutional architecture provided for in the Treaties

27. The aim of some of the proposals is to directly involve national parliaments collectively in the European decision-making process, either by setting up an autonomous body with its own powers or through representation of national parliaments within a new European "chamber" ¹⁵. The main proposals set out below relate to different structures. In some instances, four components are involved (e.g. the Convention, in which the national parliaments, the European Parliament, the Council and the Commission are represented); in other instances, a single component (the collective representation of national parliaments) is envisaged (e.g. autonomous chamber).

¹⁴ Some of these points were raised at the Convention meeting on 15 and 16 April 2002; see also the contribution of Mr Dini in favour of amending Article 308 TEC by providing for consultation of national parliaments (CONV 32/02, p. 4).

¹⁵ The question of the possible creation of a mechanism to scrutinise compliance with the principle of subsidiarity was raised by a number of members of the Convention at the meeting on 15 and 16 April 2002.

i. The adoption of a Convention model

28. This proposal seeks to follow a different procedure for revising the Treaties and has been put forward following the success of the Convention which drew up the Charter of Fundamental Rights. It would have the advantage of involving the national parliaments, the EP, the governments and the Commission in thorough discussions on amendments to the Treaties. The subsequent ratification of these amendments by national parliaments would thus be made easier.

ii. The establishment of a congress

29. This would be a Permanent Conference of Parliaments (European Parliament and national parliaments) which would meet at intervals in particular to check compliance with the subsidiarity principle, to review annually "the state of the Union", and to assess amendments to the Treaties. This idea ¹⁶ seems to be inspired by the Rome Assises of 1990 in that the final resolution recommended that other conferences be convened whenever a discussion was needed to consider issues vital to national parliaments.

iii. Strengthening the role of COSAC

30. As stated above (paragraphs 19 and 20), COSAC has no formal competence but can submit "contributions" to the European Union institutions. Questioning the effectiveness of its work (views adopted unanimously and not binding on national parliaments), some propose that it should meet more often and be strengthened by a permanent secretariat so as better to ensure the continuity of its proceedings and to establish regular contacts between representatives of the specialised national parliamentary committees and those of the EP. The (strengthened) COSAC could also undertake political scrutiny of compliance with the subsidiarity principle regarding any legislative initiatives from the Commission. It could be consulted and submit an opinion in this connection. This political scrutiny could take place *ex ante* (as a preventive measure) or *ex post*, after the act had been adopted but before it entered into force.

¹⁶ Put forward by Mr Jospin in a speech on 28 May 2001.

iv. Establishing an independent chamber

31. The idea would be to propose a second assembly at European level in addition to the European Parliament. The new chamber would comprise representatives of the national parliaments (each Member State being represented by the same number of national parliamentarians or by a number varying according to the population of the States). In the view of some, it should not take part in the ordinary legislative procedure of the Community but could have competence for matters coming under the current second and third pillars ¹⁷. It would also have to conduct scrutiny ex ante on compliance with the principle of subsidiarity, by examining Commission legislative proposals to this effect ¹⁸.
32. Some consider that it could also take the form of a committee comprising two or three members of each national parliament, which would give an opinion on compliance with the principle of subsidiarity and on the Union's competence to act (ex ante scrutiny). These opinions would be given on request (of a Member State or of the EU institutions) or on the initiative of its chairman and would not jeopardise the powers of the Court of Justice in this respect ¹⁹. Ex post scrutiny (after adoption of the act) could also be considered.

v. The creation of a second chamber within the European Parliament

33. Some take the view that a second chamber representing national parliaments should rather form part of the European Parliament ²⁰. The latter would thus become bicameral ²¹, with an

¹⁷ This proposal has again been submitted recently by the French Senate: see written contribution to the Convention from Mr Haenel (CONV 12/02); in this contribution, the proposal is justified in that it would:

- give Europe a better foothold in each country;
- associate smaller and larger States together more harmoniously in building Europe;
- ensure better balance within the institutions and between the Union and the Member States due to improved application of the principle of subsidiarity.

¹⁸ See contribution by Mr Teufel in which he proposes the establishment of a joint political committee (CONV 24/02, p. 4).

¹⁹ See Ingolf Pernice, *The role of National Parliaments in the European Union*, Walter Hallstein-Institut, July 2001.

²⁰ Proposal tabled by Mr Fischer, speech at the Berlin Humboldt University on 12 May 2000; speech by Mr Blair in Poland on 6 October 2000.

²¹ In Europe the bicameral system may consist of a number of variants both in the composition of the second chamber (members elected by direct ballot/by indirect ballot/designated members/combination of different systems) and in the number of members and the allocation of such members (same number of members for each federate State, e.g. US Senate, or a number in proportion to the population, e.g. German Bundesrat). In the case of indirect ballot, variations are also possible; election by the legislative assemblies of the Member States (e.g. Austrian Bundesrat), designation by the Executives (German Bundesrat) or election by local municipalities (e.g. France).

upper chamber (composed of representatives of the national parliaments, either with the same number of representatives per State ²², or with a number of representatives varying according to the population of the States) and a lower chamber (the present EP). The representatives of the national parliaments, thus designated, would exercise a dual mandate, both national and European.

34. The Convention could now examine these proposals and analyse their advantages and disadvantages; some of course are mutually exclusive.

²² See speech by Mr Sampaio of 14 February 2002 to the Scottish Parliament.