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Subject : Contribution from Mr Karel de Gucht, member of the Convention
"Another role for the national parliaments in the EU"

The Secretary General of the Convention has received the contribution annexed hereto from Mr Karel De Gucht, member of the Convention.

“Another role for the national parliaments in the European Union”

Karel De Gucht, member of the Convention

Executive Summary

As the debate unfolds about the principle of subsidiarity and the role of national parliaments, I offer this contribution to the Convention. It reacts in particular to the idea of establishing a new specific body of national parliamentarians to intervene in the decision-making process of the Union.

It is generally accepted that the role of national parliaments must be enhanced. At this moment, national parliaments are not directly involved in the decision making processes of the EU. They have no formal say. Nevertheless, national parliaments have a very specific role to play in the legislative process. They are responsible for transposing EU directives. In the current situation, they have to deal with whatever is decided. As a consequence, “Europe” or “Brussels” is blamed for every unpopular decision national parliaments have to take.

However convinced that the role of national parliaments should be enhanced, I strongly reject the idea of a new EU parliamentary body. The creation of a new “Chamber” would be to weigh down further the already complex institutional structure of the Union. I prefer the creation of a new procedure in the context of framework legislation, to link the national parliaments to the European decision making process. National parliaments should be allowed to assess the appropriateness of measures adopted by the Council and the European Parliament pursuant to the codecision procedure, in view of the principles of subsidiarity and proportionality.

Whenever a majority of national parliaments within the European Union calls for it, an extra reading of a decision, approved by the EP and the Council, is due. This ‘call-in’ procedure (or alarm bell procedure) could be launched by a simple majority of member states, representing at least 50% of the European population. Afterwards, in order to be confirmed, the decision will have to be taken by a larger majority in the EP and the Council, overruling the opposition expressed by the national parliaments.

Only by introducing this “alarm bell procedure” into the European decision making process, national parliaments can get really involved in European policy. By using this procedure, they can give a strong signal to both the EU institutions and their respective governments.

What is the problem?

In the declaration of Laeken it is stated that “the European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses”. However, the European project also derives its legitimacy from democratic, transparent and efficient institutions. Besides that, the national parliaments contribute towards the legitimacy of the European project, i.a. by investing and controlling the national governments.

Within the Union, the decision making must be brought closer to its citizens. European citizens long for a decision making process as close to themselves as possible. Therefore, we need to examine the role of the national parliaments in that process.

What is the current situation ?

At this moment, the national (and regional) parliaments are not directly involved in the decision making of the European Union. They have no formal say in the process.

Nevertheless, national parliaments sometimes have a very specific role to play in the legislative process, for instance, when dealing with European decisions with a constitutional aspect. Every change of the European Treaties is made in consensus between the representatives of the national governments. These decisions have to be ratified by all member states in a way, determined by the constitutional procedures of the member states. For instance, the decisions relating to the election of the European Parliament and the Communities' own financial resources have a constitutional value.

When dealing with EU directives, national parliaments are responsible for transposing the directives into national law. A directive leaves to the member states the possibility to decide upon the sort of measures or the means to achieve the desired result.

In all cases, national parliaments can influence European decision making by pressuring their members in the Council.

Another opportunity for national parliaments to get involved in the European decision making process, is the COSAC. This 'Conférence des Organes Spécialisés dans les Affaires Communautaires' (COSAC) was created in 1989. The COSAC meets twice a year and is composed by a delegation from the parliamentary commissions of the member states and the candidate member states on one hand, and by a delegation from the European Parliament on the other hand. The COSAC does not have formal competences, but according to Protocol n° 9, attached to the Treaty of Amsterdam, it can present its contributions to the institutions of the European Union. Nevertheless, COSAC contributions are not binding. This generates a lot of frustration within the national parliaments. The COSAC is not a powerful conference, and it is only known by specialists.

What has been said on this subject before?

- In 1997, the Committee on Institutional Affairs of the European Parliament wrote a report on the relations between the European Parliament and national parliaments¹. In this report it was stated that "as representatives of the peoples of the Union, the national parliaments and the European parliament have a key role to play in the exercising of democratic control over the European Union's legislative and other activities."

The general theme and starting point of this report was the generally recognised need to strengthen parliamentary control of European Union legislative and other activities, whether through the European Parliament, through national parliaments (and in some countries

¹ A4-0179/97, 22 may 1997, Report on the relations between the EP and national parliaments, committee on Institutional Affairs, rapporteur Annemie Neyts-Uyttebroeck.

regional parliaments as well) or through enhanced cooperation between the European Parliament and the national parliaments.

The report presented a number of ways in which the problems of the democratic deficit could be tackled better. These included simplifying the structure and improving the functioning of the European Union, strengthening the powers of the European Parliament, reinforcing national parliamentary scrutiny through measures at national level, improving the possibilities for such scrutiny through measures at the European level, and reinforced cooperation between the parliaments of the Union. The report concentrated on the last two of these options. It introduced the idea of minimum time limits for the consideration of EU legislative documents. A specific minimum of four weeks got widespread support. Another idea stated by the report was the electronic transmission of Commission and other documents. This idea had the potential of greatly accelerating the transmission of such documents to the national parliaments and of providing equality of opportunity for all national parliaments as regards the time available for them to give their views on any document. A third proposal was for greater involvement for national parliaments in the annual legislative programme. This proposal could play a considerable role in helping to mitigate any concerns of the national parliaments about whether a specific legislative proposal is or is not in conformity with the principle of subsidiarity.

The issue of the reinforced cooperation between the parliaments of the Union had, according to the report, two dimensions : whether the national parliaments should have a collective role and the practical ways in which contacts between the national parliament and the European Parliament can be further intensified. In regard to a possible collective role for the national parliaments, the report stated that the national parliaments and the European Parliament are complementary in their respective roles, powers and expertise. If they can emphasise this complementarity rather than their competitiveness they will be more effective in increasing democratic control at EU level. This can be done in several ways, e.g. by improving the functioning of the COSAC. To conclude, the report stated some practical ways in which contacts between the parliaments and the EP can be intensified.

- In January 2002, a follow-up report on the relations between the European Parliament and the national parliaments was made in the Committee on Constitutional Affairs in the EP¹. The report refers to the 1997 report by saying that, to a great extent, it is still valid. Rapporteur Giorgio Napolitano did not want the EP to repeat itself. The new report has therefore confined itself to updating the situation and restating the role of parliaments in European integration, taking into account recent developments –from the Amsterdam Treaty to the Nice Treaty, and new prospects.

The most significant developments in the process of parliamentarisation in the period 1997-2002 are as follows :

- the extension of the EP's power of legislative codecision and its greater participation in the investiture of the Commission President,
- the formal introduction, in protocol n° 9 of the right of the national parliaments to be informed in good time about the Commission legislative

¹ A5-0023/2002, 23 January 2002, Report on the relations between the EP and the national parliaments in European integration, Committee on Constitutional affairs, rapporteur Giorgio Napolitano.

proposals, as defined by the Council, and about consultation documents drawn up by the Commission.

-the recognition, in the same Protocol, of the role of the COSAC

Without underestimating these results, it should nevertheless be noted :

- as far as the EP is concerned, matters in which QMV voting is allowed remain excluded from its power of codecision;
- as far as the national parliaments are concerned, the Amsterdam European Council's acceptance of calls for the setting of minimum time limits for the examination of legislative texts, above all, was partial.

A continuing source of dissatisfaction and deep concern is the fact that certain fields evade any guidance or control – by either the EP or the national parliaments (e.g. agricultural policy, the common foreign and security policy, home affairs and justice, economic and monetary policy in the context of the EMU)

The report states that it is in the interest of both the EP and the national parliaments that the latter should be allowed to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council of the EU. This is the fundamental way of ensuring the participation of national parliaments in the legislative work of the Union, as well as in the development of common policies.

According to the report, the national parliaments must be able to intervene when European legislative texts are being drawn up, by expressing opinions and making contributions of which the respective governments undertake to take account, even though they cannot serve as binding negotiating briefs.

The report also suggests the possibility of a proper interparliamentary agreement to make various forms of consultation and cooperation between the EP and national parliaments systematic and programmatic. This agreement could define the obligations and rules shared by the parties to that agreement and be conducive to a climate of mutual trust and to more systematic and increased development of the cooperation between the EP and national parliaments. The agreement would not be formally binding.

A new field of initiatives is that of meetings between those responsible for the various political families in the EP and the national parliaments.

The proposal of a second chamber consisting of national parliaments is being endorsed by a number of national parliaments, but without the consensus of many others. The proposal is based on the conviction that this could strengthen the democratic legitimacy of the Union and respond to the concern among national parliaments that their influence over the decision making process at European level is being further reduced. This second chamber would be a new institution not directly elected by citizens, and its effect would be to weigh down further the already complex institutional structure of the Union.

The suggestion, put forward by the French Prime Minister Mr. Jospin, for a permanent conference of parliaments or a congress, raises a number of questions, including the fact that it seems to ignore the current and potential role of an already existing institution such as the COSAC.

The proposal that one or more representatives of each national parliament taking part, alongside the relevant minister, in legislative meetings of the Council of Ministers, would entail the risk that the different roles of the national government and of the national parliament would become confused, leading to serious distortions in relations between governments and parliaments in the countries of the Union.

The report states finally that the participation of the national parliaments and of the European Parliament in the body responsible for drawing up the Charter of Fundamental Rights was an original and extremely valuable experience, which opens the way for an important innovation as regards the role of parliaments in the Union. The new Convention – the composition of which also includes the national parliaments and the EP – is called upon to carry out tasks including the drafting of a text of an actual European constitution. Although this must be submitted for assessment and final decision by the IGC, there is the prospect of going beyond the traditional pattern of the international treaties signed by governments and ratified by parliaments. This would mean moving towards assigning to the national parliaments and the European Parliament, a joint constituent power, i.e a constituent power shared with the national governments. This would mark a new chapter in the role of parliaments in European integration.

- In December 2001, Belgian MP's Pierre Chevalier and Philippe Mahoux made a report on the debate on the future of the EU on behalf of the Belgian presidency¹. Chapter IV deals with the role of the national parliaments in the European architecture. According to their report, there is a general agreement among member states to improve the role of the national parliaments in European policy. Most member states are convinced that there should be a further parliamentarisation of European decision making. This also implies strengthening the powers of the European Parliament.

The report notes two directions to strengthen the role of the national parliaments :

- National parliaments should be allowed to carry out more effectively their task of guiding and monitoring their respective governments as members of the Council of the EU (cf. the current situation)
- National parliaments should become directly involved in the decision making process e.g through the creation of a second chamber

Most national parliaments preferred a solution in the first direction. The creation of a second Chamber would be to weigh down further the already complex institutional structure of the Union.

The report recommends an enforcement of the COSAC, mainly by creating a permanent secretariat. The report also mentions the possibility for the COSAC to control in an informal way the principle of subsidiarity. Other ideas mentioned in the report are the organisation of informal meetings of representatives of all specialised parliamentary commissions, the creation of parliamentary supervisors in the Council and the organisation of informal meetings on foreign policy and common security.

¹ Chevalier, P. and Mahoux, P., « Het debat over de toekomst van de Europese Unie : een stand van zaken », December 2001.

What do I propose?

It is generally accepted in all member states, that the role of the national parliaments must be enhanced.

For reasons mentioned above, the creation of a third chamber at the European level is not my choice. I prefer the creation of a new procedure in the context of framework legislation¹, to link the national parliaments to the European decision making process.

National parliaments should be allowed to assess the appropriateness of measures adopted by the Council and the European Parliament pursuant to the codecision procedure, in view of the principles of subsidiarity and proportionality.

Whenever a majority of national parliaments within the European Union calls for it, an extra reading of a decision, approved by the EP and the Council, is due. The possibility of triggering such an extra reading would last 30 days, starting as from the final vote in the EP. Save an extra reading is being triggered, the decision will enter into force thirty days after the vote.

This ‘call-in’ procedure (or alarm bell procedure) could be launched by a simple majority of member states, representing at least 50% of the European population. Afterwards, in order to be confirmed, the decision will have to be taken by a larger majority, consisting of the majority of members of the EP and a 2/3rd majority in the Council, overruling the opposition expressed by the national parliaments.

In order to be able to exercise this procedure, a meeting place is needed for national parliaments. This role could very well be fulfilled by the COSAC. As was proposed by the report Chevalier-Mahoux, a permanent secretariat will be needed.

Justification :

Only by introducing this “alarm bell-procedure” into the European decision making process, national parliaments can get really involved in European policy. By using this procedure, they can give a strong signal to both the European institutions and their respective governments.

After all, the national parliaments are responsible for transposing EU Directives. In the current situation, they have to deal at the national level with whatever is decided. As a consequence, “Europe” or “Brussels” is blamed for every unpopular decision national parliaments have to take. With the new procedure I am proposing, this excuse will no longer be valid. National parliaments will no longer be able to blame “Europe”. On the other hand, “Europe” will have to pay attention to the signal national parliaments are giving by asking an extra reading. In both ways, the democratic deficit will be reduced.

Karel DE GUCHT

¹ This term is used in the Laeken Declaration. It refers to legislative acts of the Union whose full normative effect is reached only when national parliaments adopt complementary legislative measures filling in the options left to them by the Union.