

NEW VERSION

COVER NOTE

**Subject : Contribution by Mr Haenel, Member of the Convention:
"The complementary role played by the national and European parliaments"**

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Haenel, Member of the Convention.

The complementary role played by the national and European parliaments

The primary mission of national parliaments in the field of European affairs is conducted at a national level within each member state.

For each national parliament this involves keeping abreast of the work of the European Union, particularly of the legislation being prepared at EU level, and to monitor the action of its own government within the European Council.

Each member state defines its own procedures according to its constitutional structures or customs. Some national parliaments focus on an exchange of views with their government during the days leading up to a meeting of the Council. Others prefer to express their views earlier on the texts under preparation and at a stage where these are still in the hands of a working group or about to be submitted to the Permanent Representatives Committee. However, in all cases the national parliament has two aims in intervening:

- to control and influence the government,
- to inform its citizens before a decision is taken.

It is worth noting that, in pursuing these two objectives, the national parliaments play a role complementary to that of the European Parliament. They do what the European Parliament is not able to do. That means :

- The European Parliament cannot exercise control over the Council; it can control the Commission, but not the Council ;
- The European Parliament cannot succeed in trying to act as an intermediary between citizens and European institutions in the manner of a national parliament. The powerful, organised lobbies established in Brussels may be able to understand the debates of the European Parliament. But these are not intelligible to the man in the street living in London, Athens or Helsinki. Indeed, it is not by chance that the media of the fifteen member states devote so little time or space to the work of the European parliamentarians. By making the choices taken at European level more intelligible and easier to understand in each country, the national parliaments consequently also play a role complementary to that of the European Parliament.

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Beyond the action of each parliament in its national context, there is a need for discussion, contacts, exchanges of views and debates between national parliaments.

In practical terms, this is achieved in the context of the Conferences between the Speakers of European Union Parliaments and within the framework of the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC).

The COSAC is a perfect example of a pragmatic approach. It was created on the fringes of the treaties. In the first stage, the national parliaments shared their own experiences. Then debates got under way with the Council, which was represented by the Presidency of the Council in office at the time. Finally, the treaties recognised the existence of the COSAC and asked it to make its own contributions to the institutions of the Union. This provided the outlines for a collective role by the national parliaments at a European level.

The question put to the Convention today is to determine whether it is appropriate to entrust the national parliaments with a specific role at the European level.

The first debates by the Convention have clearly shown that one of the fundamental problems to solve in answer to the expectations of citizens is to define the respective powers of the Union and the member states.

Our fellow citizens want Europe to play a bigger part in a number of fields and particularly in those of foreign policy and internal security. But they are tired of texts which regulate the lives of all Europeans down to the smallest detail and which are simply useless constraints. They want the Union to focus on essentials.

It was in order to meet this demand that the principle of subsidiarity was introduced into the treaties ten years ago. But in spite of this, one feels that useless interference by the Union has not stopped. It would have seemed logical for the Council to keep an eye on subsidiarity. But the lessons of the past teach us that it has done nothing of the sort. It has done nothing because the fundamental debate within the Council on the provisions of a directive always outweigh the debate on procedure, which means subsidiarity. Subsidiarity is part of political compromise and is also its victim. Indeed

encroachments on subsidiarity are often the price to pay in order to win the confidence needed to achieve a compromise between the member states.

Likewise, it is not possible to imagine seriously that responsibility for ensuring subsidiarity should be entrusted to the European Parliament. By making themselves the vigilant guardians of subsidiarity, the European parliamentarians would be acting against their legitimate wish to extend their own powers. It would be somewhat like putting a bear as watchman over the honey pot.

Consequently, the question arises of how to put into place safeguards and a counterweight mechanism which would make it possible to guarantee the genuine application of subsidiarity.

The only solution lies in intervention by the national parliaments. Indeed, the national parliaments are alone in being genuinely interested that the principle of subsidiarity is effectively respected in the long term, because their own powers are at stake. As a result, they alone will have a lasting motive to avoid the European Union becoming excessively centralised.

The methods by which the national parliaments will intervene still have to be determined. Several solutions have been envisaged. At the French Senate we have considered it would be possible to achieve this objective by relying on a revamped COSAC.

This authority is made up of an equal number of national parliamentarians from each member state. Once a sufficient number of delegations from the national parliaments have expressed their wishes, the COSAC could therefore refer the problem to the European Court of Justice or to an ad hoc jurisdiction. This referral could be carried out in the period during which an EU text is being elaborated. But the jurisdiction would only decide whether the text meets the principles of subsidiarity and proportionality after the final adoption of the text. There will thus be a combination of political intervention (by the authority concerned) and a juridical intervention (by the jurisdiction concerned).

Here again the national parliaments would have a role to play which complements that of the European Parliament. Obviously, the European Parliament is unable to intervene in monitoring the application of the principle of subsidiarity, because it cannot be judge in its own case. Counterweights have to be brought into play in the traditional manner. In this situation, only the national parliaments can fulfil that function.

Likewise, it is clear that the European Parliament does not occupy a position that enables it to enforce genuinely democratic control where decisions taken between governments play an important role.

Again with concern for enabling the national parliaments to complement the action of the European Parliament, we could therefore imagine a debate between this collective authority, composed of representatives from the national parliaments, the High Representative for Common Foreign and Security Policy and the European Defence Council.

It could be asked if the same type of action should be taken on matters of internal security. How can we imagine implementing co-operation between police forces, exchanging intelligence and fighting together against terrorism or crime, if we sideline the national parliaments? Surely this is not possible at a time when our citizens are deeply sensitive to any incident involving internal security and when such incidents can have major repercussions on the domestic political life of each member country.

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The European Parliament has its own role which it alone is empowered to exercise. The national parliaments do not have a mission to take part directly in the voting of EC legislation. That is the task of the European Parliament, not of the national parliaments.

The national parliaments also have their own role which complements that of the European Parliament. This is above all a national role, but it is also a collective role in ensuring the correct application of subsidiarity and for matters where joint action between governments dominates.

But is there not room for a domain where two legitimacies – that of the European Parliament and those of the national parliaments – could join forces to permit the effective action of the Federation of Nation States that we pray for in our heart of hearts ?

A subject for particularly attentive study by the Convention is the legitimacy of the President of the Commission. How can this legitimacy be consolidated ?
The solutions are not endless.

The first involves electing the President by universal suffrage. This seems out of question in the

present context and hardly compatible with the idea of a Federation of Nation States.

The second solution involves having the President designated by the European Parliament. But we know what that would mean: the loss of the Commission's independence; its transformation into a political body; and the risk of a confrontation with the European Council and the member states. This would be an extremely dangerous solution which would damage the "institutional triangle" and the smooth functioning of the EC.

The third solution would be to entrust the investiture of the President of the Commission to a "European Congress", of which one-third would be made up of representatives of the European Parliament and the other two-thirds of national parliamentarians. This would help to consolidate the legitimacy of the Commission while simultaneously ensuring it enjoys a degree of independence from the European Parliament.

This investiture could be conducted upon presentation of general lines of policy which would thus be approved by the Congress. An annual meeting could be envisaged at which the Commission would report to the Congress on how these orientations are being respected.

Of course, the responsibility of the Commission ought no longer to be invoked before the European Parliament but before the Congress. This is the result of a parallel approach : the authority that appoints must also be empowered to dismiss.

This proposal will certainly shock some people. But the Convention must go beyond our engrained mindsets and corporate interests. One of its most outstanding advantages would be to create a forum of debate for Europe's political orientations which could echo throughout the twenty-five states that will make up the Union in the near future and genuinely reach out to all European citizens.

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