

CONV 540/03

CONTRIB 233

COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution by Ms Gisela Stuart, member of the Convention - “The Early Warning Mechanism – putting it into practice”.

The Secretary-General of the Convention has received the contribution annexed hereto from Ms Gisela Stuart, member of the Convention.

Proposal submitted by Gisela Stuart MP

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The Early Warning Mechanism – putting it into practice

The excellent report submitted to the Convention by Mr Mendez de Vigo's Working Group I on Subsidiarity (CONV 286/02) put forward an extremely innovative proposal for the involvement of national parliaments in monitoring the application of the principle of subsidiarity. The main elements of the 'early warning' system it outlined are as follows:

1. The Commission should address directly to each national parliament¹, at the same time as to the Community legislator (Council and European Parliament), its proposals of a legislative nature (the Protocol on national parliaments currently entrusts this task to governments);
2. Within six weeks from the date a proposal is transmitted, and before the legislative procedure proper is initiated, any national parliament would have the possibility of issuing a reasoned opinion regarding compliance with the principle of subsidiarity by the proposal concerned. This opinion should be expressed by a majority and commit the whole of the assembly concerned in accordance with procedures which it will itself determine. That reasoned opinion would be addressed to the Presidents of the European Parliament, the Council and the Commission. It should relate exclusively to the question of compliance with subsidiarity (and not to the substance of the proposal in question) and could be of a general nature or concern only one particular provision of the proposal in question. It could also alert the Community legislator to the possibility of a violation of the principle of subsidiarity if one or other provision were amended in some way during the legislative process.
 - a) If, within the six-week deadline, the Community legislator received only a limited number of opinions, he would give further specific reasons for the act with regard to subsidiarity;
 - b) If, within the six-week deadline, the legislator received a significant number of opinions from one third of national parliaments, the Commission would re-examine its proposal. That re-examination may lead the Commission to maintain its proposal, amend it or withdraw it.

Working group IV on the Role of National Parliaments welcomed the proposals put forward by WGI and supported the 'early warning mechanism'. In its final report (CONV 353/02), WG IV built on this particular proposal by suggesting the following:

- The link between subsidiarity and proportionality should be further emphasised.
- National parliaments should be able to raise concerns about subsidiarity throughout the legislative process, in those cases where a proposal has changed considerably.

¹ "Each national parliament" means each chamber of the same parliament when the parliament is composed of two chambers. This is the case in the great majority of current Member States and candidate countries.

- Should one decide to have a judicial appeal mechanism, the right of appeal should not be restricted to those national parliaments that had issued a reasoned opinion at the early stage.

As the Convention has moved into the drafting stage and the issue of institutional balance is being considered, it is important to call to mind the conclusions of these two working groups and consolidate their recommendations. The following proposal combines the conclusions of the two Working Group reports with the aim of consolidating one firm position and clarifying the detail where it was left ambiguous.

***Ex ante* political monitoring of subsidiarity and proportionality**

- the Commission should address directly to each national parliament¹, at the same time as to the Community legislator (Council and European Parliament), its proposals of a legislative nature (the Protocol on national parliaments currently entrusts this task to governments);
- within six weeks from the date a proposal is transmitted, and before the legislative procedure proper is initiated, any national parliament would have the possibility of issuing a reasoned opinion regarding compliance with the principles of subsidiarity and proportionality by the proposal concerned. It would be up to each national parliament to determine its procedures for arriving at a reasoned opinion. That reasoned opinion would be addressed to the Presidents of the European Parliament, the Council and the Commission. It should relate exclusively to the question of compliance with subsidiarity and proportionality.
- if, within the six-week deadline, the Commission receives reasoned opinions representing the equivalent of one-third of national parliaments,² it will be considered as a ‘yellow card’ and the Commission will be required to re-examine its proposal and after re-examination may maintain its proposal, or amend. Should the Commission maintain its proposal in a way which does not meet national parliaments’ concerns, national parliaments would have no further re-course to the early warning mechanism.
- if, within the six-week deadline, the Commission receives reasoned opinions from the equivalent of two-thirds of national parliaments³, it will be considered as a ‘red card’ and the Commission would be required to withdraw its proposal.⁴

¹ "Each national parliament" means each chamber of a national parliament of a Member State when the parliament is composed of two chambers. This is the case in the great majority of current Member States and candidate countries.

² Each Chamber of a bicameral parliament may issue a reasoned opinion. A reasoned opinion from a unicameral parliament will have the value of two reasoned opinions from the Chamber of a bicameral parliament. So, as each parliament taken as a whole has two ‘votes’ at its disposal, in an EU of 15 member states, 10 ‘votes’ would trigger this threshold. In an EU of 25, 17 ‘votes’ would trigger the threshold. In an EU of 27, the threshold would be 18 and in an EU of 28, it would be 19

³ In an EU of 15, this would mean 20 ‘votes’ from national parliaments or their Chambers; in an EU of 25, it would mean 34 ‘votes’, 36 ‘votes’ in an EU of 27 and 38 ‘votes’ in an EU of 28.

⁴ It will of course have the right to resubmit it as a new proposal unchanged or in amended form, thus retaining unaffected its right of initiative. As a technically new proposal, the Early Warning Mechanism could of course be used again.

During the rest of the legislative process, national parliaments should be kept informed of any amendments to the text in order that they can monitor changes to the proposal and assess their implications for the respect of the principles of subsidiarity and proportionality. Should national parliaments consider that amendments to legislative proposal agreed by the European Parliament or by the Council at any stage of the legislative process do not comply with the principles of subsidiarity and proportionality they may inform the legislator of this fact. The legislator shall reply to the national parliaments concerned

***Ex post* judicial review of compliance with the principles of subsidiarity and proportionality**

The monitoring of the respect of the principles of subsidiarity and proportionality is principally a political process, and the mechanisms outlined above are designed to address it as such. Nevertheless, the possibility of appealing to the European Court of Justice against violation of the principles is a supplement, to provide a final option for those national parliaments that remain concerned that the principles of subsidiarity and proportionality have not been complied with. Therefore, following the recommendations made by Working Group I ‘Subsidiarity’.

- Any national parliament (or one chamber thereof, in the case of a bicameral parliament) should be allowed to refer a matter to the Court of Justice for violation of the principles of subsidiarity and proportionality.
- The Committee of the Regions should also have the right to refer a matter to the Court of Justice for violation of the principles of subsidiarity and proportionality.

The overall purpose of the proposal outlined above is to enable those with legitimate interests to influence the Community legislators (the Council and the European Parliament).

It does not seek to undermine any of the institutions involved in the legislative process. The ‘red card’ mechanism, as it is presented here, does not infringe upon the Commission’s right of initiative, as the Commission retains the right to resubmit a proposal that has been subject to a ‘red card’ withdrawal.

It does not unnecessarily complicate or delay an already complicated and lengthy process. Giving national parliaments a voice at an early stage is a very necessary adjunct and directly enhances the democratic legitimacy of the procedure. Similarly, as national parliaments would be required to issue their reasoned opinions within the six-week period, the process itself would not be delayed.

The arrangement that would give each parliament as a whole two ‘votes’, regardless of the size of the Member States, guarantees a fair system, with each parliament having an equal say.

Once the proposal enters the legislative process proper, and provided that national parliaments are kept informed of common positions and amendments, there will be two courses of action open to national parliaments. They can alert the legislators to a potential problem and/or they can exercise their scrutiny rights in a national context and hold their governments to account for their decisions.

In the same way, there is scope for innovative initiatives to involve and associate regional and local authorities in each Member State. The recent contribution by the Committee of the Regions (CONV 520/03) and the European Parliament report on the role of regional and local authorities rightly underline the importance of the regional and local dimension to European integration. In many cases these authorities are directly responsible for implementation of EU policy, and as such must also have their say. Regional and sub-national authorities should have access to the same information as national parliaments, thereby involving them early on in the process. However, although we can support the principle that regional and sub-national authorities should be consulted and encourage Member States to do so, these are arrangements that ultimately must be negotiated within each national context.

This proposal seeks to involve national parliaments in the process of decision-making at the European level in a constructive manner that reinforces the mandate of the EU institutions by strengthening both the legitimacy of the procedure and overall democratic accountability. By firmly anchoring European decisions in national democracies, national parliamentarians will have much earlier notice of what is happening, a specific role to play and ultimately a share in the responsibility for European decisions.