

NOTE

from : Secretariat

to : Convention

Subject : The role of national parliaments in the draft Constitution

The Secretariat believes that it might be helpful to the Members of the Convention to note the answers which, in respect of national parliaments, the Convention now seems likely to give to the questions in the Laeken mandate.

The Laeken declaration on the future of the Union raised a series of questions regarding the role of national parliaments under the heading related to democracy, transparency and efficiency. It enquired:

- whether national parliaments should be represented in a new institution, alongside the Council and the European Parliament;
- whether they should have a role in areas of European action in which the European Parliament has no competence, and;
- whether they should focus on the division of competence between the Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity.

The Convention has clearly taken the view that no such additional institution should be established. There is however a strong recognition of the specific role of national parliaments as regards the democratic legitimacy of the Union and the need to ensure their close involvement in Union affairs as well as to provide the ground for efficient inter-parliamentary cooperation, including a well-functioning interaction with the European Parliament.

There is robust support for measures that ensure that national parliaments can efficiently carry out their primary task of scrutinising the action of governments in European affairs and holding them to account, without prejudice to the way in which the parliamentary scrutiny is organised in the Member States. The measures recommended by the Convention (on the basis of those of the Working Group on national parliaments) aim at ensuring the swift and direct transmission of both legislative proposals and consultative documents to national parliaments, instead of leaving this to the discretion of national governments. These changes are of considerable importance as they will ensure that each national parliament, and in the case of bicameral parliament each chamber, will have access to relevant texts at the same time as their governments and that they all have the same opportunities to intervene as early on as possible in the process.

As regards the Laeken declaration's question related to the role of national parliaments in areas outside the scope of action of the European Parliament, there has from the outset been a feeling in the Convention that the roles should not be seen as alternative, but rather as complementary. It should be noted that in the area of freedom, security and justice, the importance of the role of national parliaments has been underlined and taken into account in the drafting of the new articles.

The Convention has, on the other hand, given a very clear affirmative reply to the third question, and there is consensus on giving a direct role to national parliaments in verifying the compliance with the subsidiarity principle through an early-warning mechanism, an important innovation that increases the direct involvement of national parliaments.

An overview of measures proposed in the draft Constitution is to be found in Annex ¹.

¹ This paper does not address the issue of external action, as the Convention debate on the Praesidium's draft texts is yet to take place. Furthermore, certain adjustments to the table may be required depending on the outcome of the institutional debate.

Overview of the role of national parliaments in the draft Constitution according to the progress of work to date

| | Proposed measures | Changes compared to the current situation |
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| Role in the legislative process | <ol style="list-style-type: none"> 1. <u>New Protocol on the role of national parliaments</u>: Direct transmission of all legislative proposals by the Commission to national parliaments, at the same time as to the European Parliament and the Council. Direct transmission of legislative initiatives foreseen in Article 8, Part II, in the title on the area of freedom, security and justice to national parliaments by the Council. 2. <u>New Protocol on the role of national parliaments</u>: The six-week period between a text being made available to the European Parliament and the Council and its being put on the agenda for adoption (or the adoption of a position) applies to all legislative proposals. 3. <u>New Subsidiarity/Proportionality Protocol</u>: Early-warning mechanism, through which national parliaments can within six-weeks of the transmission submit a reasoned opinion directly to the Presidents of the European Parliament, the Council and the Commission if they estimate that the proposal is not in conformity with the subsidiarity principle. If a third of national parliaments raise problems, the Commission must reconsider its proposal. There is a lower threshold in the | <ol style="list-style-type: none"> 1. New direct transmission, of <u>all</u> legislative proposals, at the <u>same time</u> as to PE and Council, as opposed to text of the <u>Amsterdam Protocol on national parliaments</u>: Commission proposals for legislation <i>as defined by the Council in accordance with Article 207, par. 3 TCE shall be made available in good time so that the government of each Member State may ensure that each national parliament receives them as appropriate</i>. The direct transmission of legislative initiatives equally in the JAI area, as referred to in Article 8 of JAI in Part II, is also new. 2. Change compared to the <u>Amsterdam Protocol</u> in conformity with the decision to eliminate pillars (no specific reference to measures under Title VI of the TEU any more). 3. The subsidiarity mechanism is an <u>innovation</u>, which provides for a closer involvement of national parliaments through the new possibilities for direct input to the legislative process that it provides. 4. This <u>new direct access to these programming instruments</u> should enable national |

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| | <p>area of freedom, security and justice (25%). Member States can bring an action before the Court of Justice on grounds of infringement, where appropriate at the request of national parliaments.</p> <p>4. <u>New Protocol on the role of national parliaments</u>: Direct transmission of annual legislative programme and other instruments of legislative or strategic programming.</p> <p>5. <u>Articles 25 of Part I, 36 of Part I and 43 of Institutional provisions in Part II (III)</u>: Public meetings of the European Parliament <u>and the Council</u> when they deliberate on legislative proposals, and publication of related documents (results, minutes etc.).</p> <p>6. <u>New Subsidiarity/Proportionality Protocol</u>: The Commission will every year present a report to the European Council, the European Parliament, the Council and <u>national parliaments</u> on the application of the subsidiarity principle.</p> | <p>parliaments to have early information about planned legislative proposals as well as the overall strategic planning and thus plan their work and intervention accordingly (possibly also their exchange with other national parliaments and the EP on the matter).</p> <p>5. While provisions regarding public meetings of the Council are of a general nature and not targeted as such to national parliaments, this change should also contribute to keeping national parliaments more rapidly and directly informed of the work of the Union and thus better able to “keep tabs” on their government’s action in the Council.</p> <p>6. The addition of national parliaments in this provision of the Protocol is new.</p> |
| Access to information (other than legislative proposals and related documents) | <p>1. <u>New Protocol on the role of national parliaments</u>: Direct transmission by the Commission of all its consultative documents (as well as the annual legislative programme and other instruments of legislative or strategic programming) to national parliaments.</p> <p>2. <u>New Protocol on the role of national parliaments</u>: Direct transmission of agendas and results of Council meeting, including</p> | <p>1. The direct transmission of consultative documents by the Commission is a clarification compared to the Amsterdam Protocol, according to which such documents “<i>should be promptly forwarded</i>”. The annual legislative programme and other programming instruments are a new addition.</p> <p>2. The mention of these documents as well as their direct transmission to national</p> |

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| | <p>minutes of its public meetings to national parliaments</p> <p>3. <u>New Protocol on the role of national parliaments</u>: Direct transmission of the annual report of the Court of Auditors to the national parliaments.</p> | <p>parliaments are new elements of the Protocol.</p> <p>3. The mention of the report as well as its direct transmission to national parliaments are new elements of the Protocol.</p> |
| The area of freedom, security and justice | <p>The articles in the area of <u>freedom, security and justice</u> foresee a role for national parliaments in several domains:</p> <p>1. <u>Article 31 of Part I</u>: states that national parliaments may participate in evaluation mechanisms foreseen in Article 4 of the JAI Articles in Part II.</p> <p>2. <u>Article 3 of JAI in Part II</u>, role of national parliaments: states that national parliaments may participate in the evaluation mechanisms contained in Article 4 of the Constitution and shall be involved in the political monitoring of Europol's activities in accordance with Article 22 of the Constitution.</p> <p>3. <u>Article 4 of JAI in Part II</u>: refers to evaluation mechanisms and states that national parliaments (as EP) are kept informed of evaluation and its results.</p> <p>4. <u>Articles 16 and 17 of JAI in Part II</u>: foreseen adoption only of framework laws, and not laws, in the areas of criminal procedure and substantive criminal law, which means that national parliaments keep a hold on</p> | <p>The provisions concerning the role of national parliaments are a recognition of the specific role played by them in the area of freedom, security and justice, as this touches upon fundamental freedoms that are at the heart of the subsidiarity principle.</p> <p>Under the current system, national parliaments participate in the adoption of applicable rules, in particular via the national ratification of conventions. Since this legal instrument will no longer appear in the Constitution, the Working Group that dealt with this area considered that national parliaments should continue to play an important role. The various measures proposed make it possible to take into account this specific feature of the area of freedom, security and justice.</p> <p>The participation of national parliaments in the evaluation mechanisms as well as the new form of association, together with the European Parliament, to the scrutiny of Europol's activities are innovations.</p> <p>It should furthermore be noted that there is a</p> |

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| | <p>transposition.</p> <p>5. <u>Article 19 of JAI in Part II</u>, Eurojust: The law referred to will also establish how national parliaments will be associated to the evaluation of the activities of Eurojust.</p> <p><u>Article 22 of JAI in Part II</u>, Europol: The law referred to will also establish how national parliaments will be associated to the control of the activities of Europol.</p> | <p>lower threshold (25%) within the early-warning subsidiarity mechanism in the case of proposals in the area of freedom, security and justice.</p> |
| Enlargement of the Union | <p><u>Article 44 in Part I</u>, procedure for applying for Union membership: National parliaments will at once be notified of any application for membership.</p> | <p>This is new.</p> |
| Interparliamentary cooperation | <ol style="list-style-type: none"> 1. <u>New Protocol on the role of national parliaments</u>: a paragraph has been added, according to which the European Parliament and national parliaments together define how to organise and promote efficient and regular interparliamentary cooperation. 2. <u>New Protocol on the role of national parliaments</u>: provisions on the role of COSAC. | <ol style="list-style-type: none"> 1. This new paragraph reflects the view of the Working Group on national parliaments on the importance of well-functioning and regular interparliamentary contacts and exchange. 2. The provisions on the role of COSAC are updated compared to the Amsterdam Protocol. Other key roles are now cited for COSAC, such as the promotion of exchange of information and best practice (underlined as important by the Working Group) and the possibility of organising interparliamentary conferences on specific topics (among others, issues related to CFSP and ESDP). |