

CONV 61/02

CONTRIB 30

INGEKOMEN DOCUMENT

van: het secretariaat

aan: de Conventie

Betreft: Bijdrage van de Zweedse leden van de Conventie betreffende het toezicht door de nationale parlementen op de activiteiten van de regeringen in de EU

De secretaris-generaal van de Conventie heeft bijgaande bijdrage van de Zweedse leden van de Conventie ontvangen betreffende het toezicht door de nationale parlementen op de activiteiten van de regeringen in de EU.

Deputy Prime Minister

Stockholm 26 April 2002

**Proposals for a Discussion on
National Parliament Scrutiny of
Government Activities in the EU**

To: H.E. President
Valéry Giscard d'Estaing
Chairman of the
European Convention

Dear Mr. President,

The discussion on the role of national Parliaments, and in particular on how they may assume their role in safeguarding the democratic legitimacy of the EU, should be founded on an analysis of requirements to be met by an effective and efficient scrutiny of Government action in the EU decision-making. For this, we propose three different surveys, to be carried out by the Convention Secretariat:

1. A survey of methods used for Parliament scrutiny in different countries. This will facilitate the possible establishment of "best practices" among us.
2. An inventory of the use of the time limits mentioned under point 4 in the following Background note.
3. An inventory of "Parliamentary reserves".

Based on this, the Convention will be able to lead a discussion on Parliament scrutiny of Government action. In the light of this discussion, it will remain to be seen whether or not changes in Treaty provisions or other central arrangements will be called for, in order to underpin an active national Parliamentary scrutiny.

We kindly ask for your good offices in circulating this letter, and the attached background note, to the Members and Alternates of the Convention.

Yours sincerely,

Lena Hjelm-Wallén
Government representative

Sören Lekberg
Parliament representative

Göran Lennmarker
Parliament representative

Lena Hallengren
Government alternate

Kenneth Kvist
Parliament alternate

Ingvar Svensson
Parliament alternate

Contribution from the Swedish members of the Convention

*One of the most central issues for the European Convention will be the place and role of the national Parliaments, which form a “democratic anchor” for the government activities in the EU decision-making. This paper focuses on “**parliamentary scrutiny**”, a phrase covering several kinds of activities that the national Parliament in question could engage in. It covers **information** by the Government – *ex ante* or *ex post*, i.e. prior to events or after events. It covers **exchanges of views** on upcoming events, where the Parliament gets to have a say on the matter. It covers, in its most developed form, a system with compulsory establishment of some kind of a **Parliament “mandate”, political or otherwise**, prior to Government activities – be those activities in the Council of Ministers or in an Inter-governmental Conference; and be that mandate consultative, politically binding or formally binding. Scrutiny may be limited in scope, or encompassing all EU fields of activity. The design at national level of such a scrutiny remains a strictly national consideration.¹*

Our aim is to develop a line of thinking on how we could structure the discussions in our Convention on the role of National Parliaments, focusing on the issue of scrutiny. It leads up to proposals for this structure, and for some background papers to support the debate. While remaining faithful to the national competence for designing the model of scrutiny, we should all feel free to exchange experiences, which might lead to the establishment of “best practices” from our different systems. Through this, we will hopefully be in a better position later to review the Treaty provisions and other central arrangements, and to see how they may be streamlined to facilitate and underpin an active national scrutiny.

1. The national Parliaments in the Treaties

National Parliaments have played an important role in European decision-making for fifty years. This role, however, has been made visible in the founding Treaties only recently – first in a declaration annexed to the Final Act at Maastricht in 1991, and then in a Protocol (No. D. 13) on the role of national parliaments in the European Union, agreed at Amsterdam in 1997 and annexed to the Treaty on European Union and the Treaties establishing the European Community, the European Coal and Steel Community, and the European Atomic Energy Community.

2. Different methods of scrutiny

Since the choice of method for parliamentary scrutiny is not a Community matter, different such methods have developed in Member states and, already, in many Candidate countries. Several factors come into play, including constitutional traditions and the general political culture. We do not strive to make these practices and methods uniform. However, we see ample reason for the discussions on the matter to be based on a solid ground of knowledge and experience. Therefore, we propose that our discussions be founded on **requirements to be met** by a parliamentary scrutiny. These requirements mentioned could be seen as posed by the citizens, thereby establishing the democratic legitimacy of the Government action. In addition to this, we propose a **survey of experiences and possible “best practices”**, covering Member states and Candidate countries, to be carried out by the Secretariat.

¹ Cf. Protocol D.13, adopted at Amsterdam – see also under points 1 and 4 below – which established “that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State”.

It goes without saying that, in all of this, we are willing to share our experiences of Parliament scrutiny. We employ a method based on regular and compulsory consultations of the Parliament, in order to establish a positive mandate for the Government for each action, be that within the framework of the Council of Ministers or that of an Intergovernmental Conference. The timing is imperative: consultations are undertaken on a weekly basis, but always before the event. All pillars and all fields of activity are covered. This scrutiny is carried out by a specialised committee on EU affairs, which provides the mandate. In addition to this, other Parliamentary committees, in their field of competence, handle EU matters as part of their day-to-day business. The emerging European networks of such committees are playing an increasingly vital role.

3. Treaty provisions and other central arrangements

One of the most important elements of the discussion to follow will be to examine, in the light of what we find through the background material mentioned, whether existing Treaty provisions and other central arrangements are supporting and underpinning national Parliamentary scrutiny.

4. Time limits

Two such central provisions, aiming at facilitating Parliamentary scrutiny, are already in place. They are of great practical importance for the national Parliaments to exercise their rights. One is in primary EU law: in the above-mentioned Protocol D.13 from Amsterdam, a moratorium of six weeks for certain Council decisions is established.¹ The other one is in secondary law, in the Council Rules of Procedure, providing for at least one working week to pass between Coreper and Council decisions.²

We would like to raise some questions in relation to these time limits, and their use in practice. Here, again, we propose a survey by the Secretariat to provide us with the necessary background information. Firstly: How are these time limits respected in practice? When they are not respected, are the reasons for this given? Secondly: Have national Parliaments made use of the time limits? Are there known examples of a national Parliament having pulled any of these two “emergency brakes” in relation to its own Government? Behind the establishment of time limits, the notion must be kept alive of a national Parliament actually wishing to make use of the time gap to influence matters.

5. “Parliamentary reserves”

In order to complete the picture, the survey by the Secretariat could also cover the use of “parliamentary reserves”. This is a reserve that a Government places pending consultation of, or approval by, the national Parliament as a formal requirement in different Member States.

¹ “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 pursuant to Article 189b or 189c of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.”

² “If, by the end of the week preceding the week prior to a Council meeting, Coreper has not completed its examination of legislative items within the meaning of Article 7, the Presidency shall, unless considerations of urgency require otherwise and without prejudice to paragraph 2, remove them from the provisional agenda.” (from Art. 3.6; OJ L 149, 23/06/2000, p. 21)