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"Strengthening the role of national parliaments"

De secretaris-generaal van de Conventie heeft van de heer Vytenis Povilas Andriukaitis, lid van de Conventie, en mevrouw Dalia Kutraite-Giedraitiene, plaatsvervangend lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

STRENGTHENING THE ROLE OF NATIONAL PARLIAMENTS

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Issue of Legitimacy

Legitimacy of the EU manifests through the European Parliament (EP) elected directly by all the citizens of the Union and the governments which are appointed by national parliaments and which adopt decisions in the Council. It is generally recognised that strengthening the role of EP and national parliaments is a vital precondition in the efforts to decrease “deficit of democracy” in the EU and strengthen legitimacy and publicity in the system of decision-making in the EU. The necessity of strengthening the role of national parliaments in the system of EU is preconditioned by the fact that national parliaments are closer to their citizens: the more they participate in the work of the Union, the more citizens will feel that they take part in the European project. The very need of legitimacy is highly substantiated by the present situation where certain areas of EU action fall neither under the control of the EP nor under that of national parliaments. Mentioned here should be common agricultural policy, EMU-related economic and monetary aspects, and the second and third pillars, i.e. Common Foreign and Security Policy (CFSP) and police and judicial co-operation in criminal matters.

1. Strengthening the Role of National Parliaments in Implementing EU Policies

The role of national parliaments would be strengthened if they were given wider possibilities of implementing EU requirements in a more flexible way while transposing EU legal acts to national law. In this connection, the initiative of the European Commission stated in the 6 June 2002 action plan on the simplification and improvement of regulatory EU legal acts is of utmost importance. An inter-institutional agreement between the European Parliament and the Council of Ministers would decrease the current volumes of legal acts by 25 per cent by the year 2005. The plan also provides for the implementation (from 2003) of a requirement which would establish that the drafts submitted by the European Commission should detail, among other aspects, the information on consultations with interested institutions, analysis on the consequences of implementation with respect to the principles of subsidiarity and proportionality.

The action plan providing a possibility for national parliaments to apply a more flexible system for transposing EU legal act into national legal framework should be highly supported.

2. Strengthening the Role of National Parliaments in Influencing the EU Decision-making Process

So far, there have been different proposals concerning the role of national parliaments in the EU

architecture. Some of the proposals state that strengthening the role of national parliaments should be linked to the scrutiny of their own governments, particularly in the fields of EU common foreign and security policy and home affairs. Others urge to establish a binding procedure for informing national parliaments about the debated EU issues. Moreover, there are proposals to change the existing institutional framework by foreseeing the role of national parliaments as joint collective bodies. All the proposals can be basically divided into two parts according to the following basic trends:

1. Enhance scrutiny performed by national parliaments of their governments.
2. Establish direct participation of national parliaments in decision-making on the European level.

3. Enhancing Scrutiny of the Government

Parliamentarians use the possibility of influencing the EU decision-making through their national governments. Noted here should be that the states retain their competence to establish how their national parliaments scrutinise the work of the Government representatives at the meetings of the Council of Ministers, as the EU law has no competence of any regulation in this field. Another principle of this scrutiny would basically change the division of powers among institutions as established by national constitutions. Thus, strengthening this influence on the EU decision-making would be basically related to the adoption of best practices, exchange of experience, and adjusting of the provisions to the national traditions.

In general, government scrutiny procedures and their effectiveness vary a lot in different member states and depend on the traditions of constitutional and political practice. Without going into detail on the specific proposals for adopting the best practices at this stage, it must be noted however that a number of factors are very important in strengthening the effect of the impact of the national parliaments. They include permanent monitoring of the activity of the EU institutions in the parliament; well organised information flow; obligation of the government to present complete explanatory documents on the proposed issues to the parliament; extensive involvement of the parliamentary committees; and transparency of the procedures.

The question of whether parliamentary scrutiny is performed with respect to the majority or minority government arises in the context of the strengthening of the role of the national parliaments, as a form of legitimacy, but it should not predetermine the stringency of the negotiations mandate of the government. The nature of the issue discussed and the power of the specific member state to influence the decisions of the Council should be more important factors in that respect.

4. Scrutiny of the Council of Ministers

As the Council of Ministers meets behind the closed doors, it is not possible to observe how the government uses its mandate in expressing the position of the country. Therefore, special attention should be paid to the proposals that aim at greater transparency and publicity of the meetings of the Council of Ministers.

An important requirement in this context would be openness of the meetings of the Council on those issues where the Council of Ministers acts as a law-making body. The Seville European Council adopted the decision to make in the immediate future the meetings open when discussing draft legislation to be adopted under the co-decision procedure with the European Parliament. Implementation of this decision must be strictly controlled, but *per se* it is not sufficient because the co-decision procedure does not apply to all legislation passed by the Council of Ministers.

It is necessary to discuss the proposal for establishing a procedure to include parliamentary representatives into the delegation of the government to attend the meetings of the Council.

Another possibility would be to formulate a proposal for the minutes about certain issues on the agenda of the meetings of the Council of Ministers to be presented to the national parliaments within a certain period of time.

5. Participation in the early stage of the EU decision-making

Special attention should be paid to the proposal for the opinion of the parliament to be formulated in the early stage of the process of drafting and adopting the EU legislation and for permanent monitoring of the course of the process, as this would mark a qualitatively new phase in the participation of the national parliaments in the EU decision-making process.

This issue is closely related to the proposal to strengthen the *ex ante* control of the implementation of the subsidiarity principle, as defined in paragraph 2 of Article 5 of the Treaty. As the formulation of a legislative proposal at the EU level is a political rather than a legal process, early involvement of the European Court of Justice into the verification of subsidiarity at the stage of the initiative would create preconditions for the politicisation of this legal institution, which is unacceptable in principle. Some form of participation of the national parliaments, which later transpose the EU legislation into the national law, in the harmonisation of the initial EU legislative concept could be a positive development.

There are various proposals regarding the forms of such participation. The most outstanding initiative is to establish a separate body for the supervision of the compliance with the principle of subsidiarity, but this proposal is not the optimal because of a number of reasons (see table 4).

A more acceptable proposal would be for the annual program that the European Commission presents to the European Parliament every year to be discussed in the national parliaments. The mandate of the national parliaments could in this case be limited to the voicing of an opinion. However, if the national parliaments are given the right to express their opinion within a certain period of time, the approval of the program of the European Commission in the European Parliament could take into account the voiced positions and remarks of the national parliaments regarding the EU legislative proposals.

If the Council of Ministers takes over the privilege of drawing up this law-making program from the European Commission, the mechanism of consultations with the national parliaments that is proposed here should not be influenced.

6. Direct participation of the national parliaments in the European decision-making

Proposals have been expressed to directly involve the national parliaments into the EU decision-making mechanism by creating an independent collective institution with clearly defined powers or by establishing a second EP chamber consisting of the representatives of the national parliaments.

Under the first option, the new collective institution is proposed to be composed of representatives of the existing institutions, for instance, the EP, Council, Commission and Convention comprising representatives of the national parliaments. There are suggestions for it to consist of two or three representatives of every national parliament. The opinions about the role of this institution also vary. Some believe it should not participate in discussing the ordinary EU legislation, but should only have competence in the areas of common foreign, security and defence policy and justice and

home affairs (presently the second and third pillars). Others believe it should be carrying out the function of *ex ante* scrutiny (before the act of legislation comes into force) of the EU competence and the principle of subsidiarity.

Under the second option, thought should be given to the establishment of a second EP chamber where the number of parliamentarians from every member state would be equal or would depend on the size of the population. However, this idea gives rise to substantial doubts: first of all, it would complicate the already cumbersome EU structure and decision-making system and cause unnecessary competition between the two chambers. Moreover, parliamentarians would not have enough time to duly perform their duties in the second EP chamber and in the home parliament at the same time. In addition, the EP itself was composed of the representatives of the national parliaments until 1979, but this practice was not satisfactory and was therefore changed.

Other proposals worth mentioning here included the setting up of joint committees of the EP and the national parliaments to discuss important issues before making corresponding decisions in the EP, and other ways of strengthening contacts between the members of the national parliaments and the EP. There was even an idea raised to hold sessions twice a year for members of the national parliaments to pose questions to the representatives of the Presidency.

The latter proposals for closer co-operation at the level of the committees are of use and should be given additional analysis in the near future. However, the proposals for establishment of a new body should be viewed with special caution because they may unbalance the present institutional structure of the EU, may have implications on the distribution of the EU budget, and may eventually weaken the role of the national parliament.

7. Strengthening the role of COSAC

Special attention should be paid to the proposal to strengthen the role of the structure that already exists and is given legal power by the Amsterdam Treaty, i.e. COSAC. This can be achieved by establishing a permanent secretariat that could ensure exchange among the national parliaments of information and experience in the EU area, distribute proposals and opinions of COSAC to the EU institutions, and organise regular contacts and meetings between specialised committees of the national parliaments on the EU issues. The aforementioned proposals on the strengthening of the contacts between the national parliaments and the EP could also be realised on the basis of COSAC. It could become the most important forum for cooperation among the national parliaments, and also for the key mechanism to ensure timely forwarding of the documents of the EU institutions to the national parliaments and of the positions of the latter back to the EU institutions. This should be laid down in the appropriate primary legislation of the EU.

Consideration should also be given to the possibility to use COSAC as a means of ensuring the legitimacy a decision of the Council in those areas of the EU activity where the EP does not have competence. This option would have a meaning in those areas where the EU acts under the intergovernmental cooperation method (for instance, in the present second and third pillars). Here is the scheme of a possible option: a decision of the Council automatically comes into force if COSAC does not express objection within a certain period of time. COSAC would only express this objection if it receives a signal of a non-approval by any national parliament. The Council would be informed about this, and the issue would go back to it, while the corresponding member of the Council (a Minister) would unavoidably then have to work on that issue in order to get the approval of its national parliament (usually through the European Affairs Committee). This would serve as a guarantee that the government would not “bypass” its national parliament in the Council. It may be presupposed that the very existence of this possibility would greatly strengthen the willingness of

the government to take into account the opinion of the parliament, thus this procedure would have to be applied only in rare cases. Certainly, this system would call for a corresponding status of the European Affairs Committee within the national parliament.

COSAC, as an official representation of the national parliaments, could also be used for appealing to the European Court of Justice regarding a violation of the principles of subsidiarity or division of competence, if the national parliaments are given the power of political control over these principles.

Such an institutionalisation of COSAC would only be of a limited nature. COSAC would essentially become the “flywheel” to assist in with the information flow between the EU institutions and the national parliaments of the member states, but would not become a new cumbersome institution, like a second EP chamber.
