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THE FUTURE OF EUROPE: NATIONAL PARLIAMENTS AND SUBSIDIARITY – THE PROPOSED PROTOCOLS

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CONTENTS

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11 MARCH 2003

By the Select Committee appointed to consider European Union documents and other matters relating to the European Union.

ORDERED TO REPORT

THE FUTURE OF EUROPE: NATIONAL PARLIAMENTS AND SUBSIDIARITY – THE PROPOSED PROTOCOLS

Abstract

The Convention on the Future of Europe is examining the role of national parliaments and the principle of subsidiarity.

This report examines the Convention's proposals. We stress the importance of national parliaments as a means to reconnect the Union and its citizens.

We welcome the Convention's emphasis on national parliaments but call for stronger provisions for national parliamentary scrutiny. We also welcome the proposed greater involvement of national parliaments in monitoring subsidiarity but call for the suggested mechanisms to be strengthened.

PART 1: INTRODUCTION

1. The Convention on the Future of Europe is examining, among other matters, the role of national parliaments in the European Union and the principle of subsidiarity. These issues are important not least because of concerns that the European Union is disconnected from its citizens; and because of a sense that national parliaments have a role to play in solving this problem. Our Committee has been keeping the work of the Convention under review and as part of that ongoing scrutiny we examine here the role of national parliaments in the European Union; and the question of subsidiarity.

2. The purpose of this report is to examine the proposals concerning national parliaments and subsidiarity which are being discussed in the Convention. We do so with reference to several reports on the EU and national parliaments including two reports from the Convention itself: the report of the Working Group on the role of National Parliaments;[1] and that of the Working Group on Subsidiarity.[2] We also refer to the proposed Protocols on national parliaments and subsidiarity issued by the Convention's Praesidium[3]. Secondly, the House of Commons European Scrutiny Committee has produced a report on 'Democracy and Accountability in the EU and the Role of National Parliaments',[4] and another on 'European Scrutiny in the Commons'.[5] We ourselves have recently published a 'Review of Scrutiny of European Legislation'[6].

3. This report also examines, and attempts to explain, the concept of subsidiarity and the role that national parliaments can play in this regard. This topic is covered in Part 3 below. We intend to produce separate reports on the Convention's proposed Treaty Articles[7]; CFSP and defence; and the Convention's proposals for a Social Europe.

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1 CONV 353/02.

2 CONV/286/02.

3 CONV 579/03, printed in Appendix 2.

4 33rd Report of session 2001-02, HC 152-xxxiii-I.

5 30th Report of session 2001-02, HC 152-xxx.

6 1st Report of session 2002-03, HL Paper 15 – awaiting debate.

7 The first such report has been published, on Articles 1-16 (9th Report, HL Paper 61, 25th February).

4. We have not taken extensive evidence, as the primary purpose of this report is to draw together existing material. We did, however, hear from Gisela Stuart MP, a member of the Convention's Praesidium and chair of the Working Group on National Parliaments. We are very grateful to Ms Stuart for making herself available to us on this occasion, as she and the other UK national parliamentarians on the Convention have done before. A transcript of her evidence is printed with this report. **We make this report to the House for information although we hope that the House will soon have a further opportunity for another debate on the Convention and that this report would inform any such debate.**

PART 2: NATIONAL PARLIAMENTS

SCRUTINY: THE COUNCIL

5. There is general agreement that the primary role of national parliaments in the European legislative process is to scrutinise their national governments and hold them to account. National parliaments are not co-legislators in the process of making EU law, as are the European Parliament and the Council of Ministers, nor would we wish national parliaments to have such a role. But it follows from this that national parliaments should influence their Ministers in the Council, and should do so effectively[8]. The Working Group asserted that more openness and transparency in the work of the Council was essential to better achieve this goal [9] and accordingly proposed that the Council should act in public as much as necessary. Gisela Stuart stressed this issue to us but was "realistic" about the possibility of extending reforms already agreed at Seville.[10] She was cautious about proposals for a separate legislative council.[11] **We agree with the case for greater openness in the Council when it is legislating, as do the Commons Committee and the UK Government**[12].

6. In addition, the Working Group recommends that records of Council proceedings should be sent, within 10 days, to national parliaments[13]. Gisela Stuart told us that making use of such information would be "quite a challenge" for national parliaments, although the problems giving rise to the Group's recommendations did not arise in the United Kingdom[14]. **We accordingly support the provision in the proposed protocol on national parliaments for the direct transmission of Council Agendas and outcomes to national parliaments. The protocol should make clear that this transmission must be prompt**. **Council Agendas should be transmitted in advance and as soon as available, to allow for effective national parliamentary scrutiny.**

NATIONAL PARLIAMENTS

7. The Convention's National Parliaments Working Group, the Commons Committee and our Committee are all agreed that national parliaments have a distinct role to play in the EU, and that enhancing their material involvement would help to strengthen the democratic legitimacy of the Union. The Commons has argued that national parliaments are closer to the citizens than any EU institution, including the European Parliament[15]. In this sense, enhancing their role can help remedy the 'disconnection' between the EU and its citizens, a point clearly stressed by the Government in this House during the recent debate on the Convention[16]. The remedy will only be effective as long as national parliaments improve their responsiveness' to their citizens.

8. The Working Group and Gisela Stuart in her evidence to our Committee acknowledged that the different systems for national parliamentary scrutiny reflected different constitutional relations between governments and national parliaments in various Member States, and that it would not be appropriate to prescribe at European level the best system[17]. In the UK the scrutiny system is based firmly, though not exclusively, on documents, and it is normally a Government Explanatory Memorandum which triggers consideration of a proposal. The Commons Committee's main role is to assess the legal and political importance of each document and to decide which should be debated, but not to concern itself with the merits of documents[18].

9. Our system is similar to the Commons' but with two important differences. First, the full Committee does not examine every document (the Chairman conducts a sift) and we do examine the

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8 Working Group IV Report, para. 6.

9 Working Group IV Report, para. 8.

10 Q 12.

11 Q 14. This proposal has been floated by Working Group IX on simplification in its report (CONV 424/02) p 22 "To reinforce clarity, it is not sufficient to simplify procedures or instruments; the institutions must sit in public when they are exercising legislative functions, ie when they are defining the fundamental policy choices of the Union's actions."

12 33rd Report, 2001-02, para. 23. See also our own report on article 25(3) (12th Report, 11 March 2003, HL Paper 71, paragraph 24). The Government's case was set out in a joint letter with the German Government (25 February 2002 reported in the Guardian on 26 February 2002). The Prime Minister has also said "Councils should vote on and declare national positions on legislation in the open", (speech in Cardiff 28 November 2002). (http://www.pm.gov.uk/output/page6710.asp).

13 Working Group IV Report, para. 7.

14 Q 17.

15 33rd Report, 2001-02, para. 3.

16 Baroness Symons of Vernham Dean HL Deb. 7 Jan 2003, col 980.

17 Working Group IV Report, para. 9, see also Q 19.

18 30th Report, 2001-02, paras. 8, 9 and 33.

merits of proposals[19]. Secondly we have Sub-Committees which examine sectoral policy issues in the European context. **While we do not argue that there is any one model of scrutiny that can fit all national parliaments, we have suggested that our system, of involving Members with expertise in policy areas in the work of European scrutiny, could provide a model from which a national parliament wishing to scrutinise European legislation in depth and on the basis of genuine expertise might be able to learn some lessons.**[20].

10. We underline the constitutional importance of national parliamentary scrutiny[21]; and we were pleased to hear Gisela Stuart say that "scrutiny is a process by which at times you can challenge the outcome and change decisions"[22]. **We would wish to see the proposed protocol strengthened by more direct reference to the importance of effective scrutiny.**

11. The Convention's Working Group identified a number of basic factors that have an impact on the effectiveness of scrutiny including:

- The timeliness, scope and quality of information;
- The possibility for a national parliament to formulate its position with regard to a proposal for an EU legislative measure or action;
- Regular contacts and hearings with Ministers before and after Council meetings;
- Active involvement of sectoral/standing committees in the scrutiny process;
- Regular contacts between national parliamentarians and MEPs;
- Availability of support staff, including the possibility of a representative office in Brussels.[23]

We agree that these are all important factors and we are working to enhance our own activity in these areas. The Cabinet Office's undertaking that it will press for the electronic transmission of documents from Brussels is accordingly welcome[24].

12. In its final report, the Convention's Working Group on Subsidiarity recommends greater direct involvement of national parliaments in the scrutiny of the application of subsidiarity. These proposals are dealt with in Part 3 below.

THE SCRUTINY RESERVE

13. Possibly the most potent weapon in the armoury of the UK's scrutiny committees is the scrutiny reserve. This constrains Ministers from agreeing in Council to legislative proposals if the Committees have not completed scrutiny of them. Exceptions are provided for special reasons. The protocol annexed to the Amsterdam Treaty allows a minimum of six weeks for such national parliamentary scrutiny.

14. The Commons Committee has advocated a toughening up of the scrutiny reserve by either incorporating it into EU procedures or building in more time in the legislative procedure[25]. Peter Hain has told the House of Commons that the Government endorsed the proposal that the scrutiny reserve be given a clearer status in the Council's Rules of Procedure; and he looked for guidance on how that should be carried through[26]. The Commons Committee intend normally to call a Minister to give evidence when a scrutiny reserve has been overridden without good cause[27]. We have recommended that, in those cases where a Minister overrides a reserve, the Minster should come to Parliament and give an explanation by way of Ministerial Statement. We have also recommended the creation of a new procedure (which would be used exceptionally) requiring a positive resolution of the House before the lifting of a scrutiny reserve[28]. We have also urged the Convention to consider a revision of the co-decision procedure to allow a greater opportunity for national parliamentary scrutiny[29].

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19 1st Report, 2002-03, para. 16.

20 1st Report, 2002-03, para. 103.

21 1st Report, 2002-03, para. 12.

22 Q 19.

23 Working Group IV Report, para 10.

24 House of Commons Committee, 30th Report, 2001-02, para. 45.

25 33rd Report, 2001-02, para. 47.

26 Evidence to the European Scrutiny Committee, 20 November 2002, HC 103-I Q 42.

27 30th Report, 2001-02, para. 53.

28 1st Report, 2002-03, paras. 71-74.

29 1st Report, 2002-03, para. 35.

15. One great threat to the effectiveness of the scrutiny reserve is the tendency of Ministers to make 'preliminary agreements' or adopt 'general approaches' at Council before the scrutiny reserve has been lifted. The National Parliaments Working Group does not believe such agreements should be reached in the six-week period between a legislative proposal being made public and it being placed on a Council agenda for decision[30]. For Gisela Stuart, this would provide an opportunity for all national parliaments to conduct effective and challenging scrutiny.[31] There was a "common consensus" in the Convention that such agreements should not happen.[32]

16. Our Committee has argued that the reserve should be 'sacred' for the six weeks, and that the House's Scrutiny Reserve Resolution be amended to make clear that the Government should not participate in any form of agreement during that period[33]. We have pursued this matter in a previous report and in the House[34]. **We continue to recommend that no form of agreement should be reached in Council during the six week period allowed for parliamentary scrutiny.**

17. We note that the proposed protocol in effect repeats the existing provisions in the Protocol annexed to the Amsterdam Treaty. Although arrangements under this provision currently work reasonably well, problems do continue to arise and we are currently uncertain whether the six week period is meaningful for all national parliaments. **All national parliaments should endeavour to operate a strong and effective scrutiny system. We also recommend that the Treaty should formally recognise the status of scrutiny reserves in the Council.**

SCRUTINY AT AN EARLY STAGE

18. The Working Group was in agreement with our Committee when it concluded that national parliaments needed to conduct pre-legislative scrutiny. This includes scrutiny of the Commission's Annual Work Programme, Annual Policy Strategy and Green and White papers. The Group recommended that such consultative documents be sent directly to national parliaments[35]. We have stressed that scrutiny at such an early stage is essential, and this year started reporting on the Commission's Annual Work Programme[36]. We are considering national parliamentary scrutiny of the Council's strategic agenda. Gisela Stuart said she would support such scrutiny and would even wish to see it extended by regular sessions with Commissioners or "European weeks" in national parliaments across the EU.[37] In order for such 'upstream' scrutiny to be effective, we have called on the Government to undertake always to draw to the Committee's attention any matters under discussion or consideration by the Commission which might merit detailed scrutiny when a proposal comes forward – a sort of 'early warning system'[38]. **We recommend that the proposed protocol on national parliaments be amended to stress the importance of national parliamentary scrutiny at an early stage, including at the stage of the Council's Strategic Agenda and the Commission's Annual Work Programme; and before the formation of legislation proposals.**

MEPS

19. The Working Group believed that national parliaments needed a greater exchange of information, both with other parliaments and with MEPs[39]. This would help strengthen the link with citizens and improve scrutiny of European proposals. Gisela Stuart too argued forcefully for greater cooperation between national parliaments and the European Parliament[40]. The Working Group suggested more *ad hoc* contact between national parliamentarians and MEPs, to complement regular contacts[41]. The Commons has suggested joint meetings to scrutinise the Commission and its annual programmes, officials and expert witnesses, and to debate issues[42]. The first such meeting has been held. We have undertaken to ensure that relevant UK MEPs have the opportunity to give evidence to

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30 Working Group IV Report, para. 17.

31 Q 19.

32 Q 28.

33 1st Report, 2002-03, para. 71.

34 23rd report Session 2001—02, (HL Paper 135); HL Deb 14 October 2002, Col 672.

35 Working Group IV Report, para. 14.

36 1st Report, 2002-03, para. 30.

37 Q 22.

38 1st Report, 2002-03, para. 31.

39 Working Group IV Report, para. 29.

40 Q4.

41 Working Group IV Report, para. 34.

42 33rd Report, 2001-02, paras. 140 and 141.

our inquiries[43]. **We will be pursuing these recommendations in the coming months. We welcome the proposed protocol's emphasis on joint working between national parliaments and the European Parliament to improve inter-parliamentary co-operation.**

COSAC

20. The Convention's Working Group concluded that a greater exchange of information between national parliaments about methods and experiences of scrutiny would be beneficial, and that this was the primary role of COSAC[44]. The Working Group saw merit in clarifying the mandate of COSAC; in strengthening its role as an inter-parliamentary consultative mechanism; and in making it more efficient and focused[45]. The Group believed that the role of COSAC should be expanded, though it should be used primarily as a forum for bringing together national parliamentarians[46].

21. We have been arguing for some time that COSAC needs to be reformed. We have called for COSAC to re-focus on the primary question of how national parliamentary scrutiny is conducted. Our Committee and the Commons Committee are at one in pressing for COSAC's main role to be redefined. COSAC should assist national parliamentarians to improve their scrutiny of government activities in the EU, by sharing best practice and information and acting as a strategic body on behalf of national parliaments[47]. We are working in particularly close operation with our colleagues in the Commons and with our Danish colleagues to reform COSAC in order to achieve a better exchange of information between national parliaments[48]. **Recent attempts by COSAC to reform itself, however, are not wholly encouraging. The possibility remains that a new structure may need to be considered by the IGC in order to meet the objectives which COSAC should, in our view, be achieving.**

43 1st Report, 2002-03, para. 132.

44 Working Group IV Report, para. 11.

45 Working Group IV Report, para. 30.

46 Working Group IV Report, para. 31.

47 33rd Report, 2001-02, para. 150.

48 1st Report, 2002-03, para. 133.

PART 3: SUBSIDIARITY

BACKGROUND

22. The Convention proposes to strengthen national parliaments' scrutiny of the application of subsidiarity in EU legislative proposals. The Working Group on Subsidiarity has put forward a detailed practical proposal for the mechanism by which this might be done. We consider that a detailed account of the development of the principle of subsidiarity will put the significance of this proposal into context, and we accordingly provide such an account.

23. Subsidiarity has been generally understood as a principle for determining how powers should be divided or shared between different levels of government. As conventionally understood, the principle states that decisions should be taken at the lowest level consistent with effective action. In the EU, subsidiarity has gradually taken on a specific meaning which is sufficiently open-ended to appeal to both advocates and opponents of deeper integration.

24. The concept of vertical power sharing between levels of government is not new.[49] Subsidiarity emerged as an explicit principle of political thought in the 19th century, finding expression both in political liberalism and Catholic social theory. In political liberalism, subsidiarity is a 'single-edged sword' used to justify non-intervention by the state in individual affairs. In Catholic social theory[50], subsidiarity is potentially double-edged, in that it counsels state intervention where it is efficient and non-intervention where it is not. Both traditions of subsidiarity have found expression in the development of the European Union.

25. By the late 1970s, subsidiarity had become part of the popular lexicography of the European Parliament, where it was frequently cited, particularly by members of Christian democratic parties, as grounds for increasing the powers of the European Community. The need to transfer sovereignty to the Community was justified by reference to subsidiarity, in a context in which it was thought only common policies could match the scale of the problems perceived within the environment or industry. In the mid-1980s, subsidiarity began to feature in a range of publications which argued for new actions at Community level to free the internal market.

26. Subsidiarity found its first legal expression in an EC Treaty when it appeared in the Single European Act's article on environmental protection.[51] By the mid-1980s all Member States recognised the need for the Community to have powers in the environmental field. Several, Denmark in particular, nonetheless feared that a common EC policy would act to weaken their strict national environmental standards. Thus, the Act stated that 'the Community shall take action relating to the Environment to the extent to which the objectives can be attained better at Community level than at the level of individual Member States'.

27. During the 1991 intergovernmental conference to negotiate the Maastricht Treaty, the British government saw subsidiarity as a means of limiting the EU's involvement in national affairs and holding in check future transfer of policy competences to the EU. For the German government, on the other hand, subsidiarity was welcomed as a safeguard on the powers of the German Länder to regulate in areas such as education and social policy.

28. The Maastricht Treaty made subsidiarity a general rule for all Community activity. Article 3bTEC set out different requirements for Community action and contained three legal principles of conferral; subsidiarity; and proportionality.[52] These were carried over to Article 5 of the post-Amsterdam TEC (see below).

29. Article 3b was elaborated on at the Edinburgh European Council in 1992 following the Danish 'no' vote to the Maastricht Treaty. There the Commission committed itself to justify all new proposals on the basis of subsidiarity, both in the preamble to the text and in the accompanying explanatory memorandum. The resulting interpretation of subsidiarity places the burden of proof on the Commission to show that it could better handle issues than the Member States, an interpretation carried on to the next intergovernmental conference in Amsterdam.

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[49] The exact genealogy of the subsidiarity principle is still an object of some debate between scholars. Some develop a lineage from Aristotle through Thomas Aquinas to the Catholic social philosophers of the 19th and 20th century, while others stress the importance of Johannes Althusius, a political philosopher of the 16th century and John Stuart Mill.

[50] Most famously in Pope Pius XI Encyclical *Quadragesimo Anno* of 1931

[51] Article 130r.

[52] Article 3b(1) is the principle of attribution of powers, which has long been an integral part of the EU and is expressed in Article 4(1). This states that 'Each institution shall act within the limits of the powers conferred upon it by this Treaty'. Article 3b(2) is the principle of subsidiarity itself, and involves an assessment `of the need for EU action: 'the [EU] shall take action, only if…' (the *necessity* test). Article 3b(3) incorporates the principle of proportionality into the Treaty and involves an assessment of the intensity of EU action (the *intensity* test).

30. The 1999 Amsterdam Treaty placed further emphasis on the principle of subsidiarity by including it in Article 2TEU. According to Article 2 the objectives of the Treaty shall be achieved 'while respecting the principle of subsidiarity as defined in Article 5 of the Treaty Establishing the European Community'. Article 5 (ex Article 3b), states that:-

the 'Community shall act within the limits of the powers conferred upon it by this Treaty';

the second paragraph of Article 5 states that the Community shall take action in accordance with the principle of subsidiarity 'only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the proposed action, be better achieved by the Community';

paragraph 3 then adds the further condition that 'any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty'.

31. The first two of these points also entail what the Commission has termed a test of comparative efficiency.[53] If it is decided that action by the Community is warranted then the third part of the formulation comes into play. This entails the application of a proportionality test, requiring the Community to consider the intensity of the Community measure.

32. The 1999 Amsterdam Treaty also significantly advanced the debate about the legal meaning of subsidiarity through an accompanying Protocol on the Application of the Principles of Subsidiarity and Proportionality. The Protocol states *inter alia* that:

the reasons for preferring Community action must be substantiated by the Commission by qualitative and quantitative indicators (paragraph 4);

forms of legislation that leave the Member States the greatest room for manoeuvre are to be preferred to more restrictive forms of action (paragraph 6);

the Commission must consult more widely and explain how its proposals comply with the requirements of subsidiarity (paragraph 9), and;

The Commission must submit an annual report on the application of Article 5 EC (paragraph 9)

33. In the 1970s and 80s, the principle of subsidiarity was used to argue for greater integration of the EC. By contrast, subsidiarity, as expressed in the treaties of Maastricht and Amsterdam, indicates a political desire in the 1990s for a 'lighter touch' Community approach.

34. As Jacques Delors pointed out in 1992 when he offered a prize for anyone who could define subsidiarity, the principle is still a matter of interpretation.[54] Only the European Court of Justice can provide a definitive interpretation of the meaning of subsidiarity in any particular case referred to it [55]. In any case, the Court of Justice can only be asked to intervene *after* the adoption of legislative acts.

35. The difficulty of monitoring the principle of subsidiarity prompted the European Council at Laeken in 2001 to include subsidiarity as one of the issues that the Convention of the Future of Europe was to consider.

CONVENTION ON THE FUTURE OF EUROPE: WORKING GROUP ON SUBSIDIARITY

Mandate

36. The Convention established a Working Group on Subsidiarity to complement the general discussion within the EU on the delimitation of competence between the European Union and the Member States referred to in the Nice and Laeken Declarations on the future of the EU. The Working Group was therefore mandated to consider[56]:

how compliance with the principle of subsidiarity can be monitored in the most effective manner;

whether a procedure for monitoring the application of the principle should be established;

whether such a procedure should be of a political and/or legal nature; and

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53 Commission Communication to the Council and the European Parliament, Bulletin EC 10-1992, 116.

54 Quoted in Paul Craig and Grainne de Burca "EU Law: Text, Cases and Materials", 2nd edition, Oxford University Press, 1998, P. 129.

55 The Government has on a number of number of occasions had to review the compatibility of a measure with the principle of subsidiarity. For a recent example, see case C—491/01, R v Secretary of State for Health exp British American Tobacco (Investements) Ltd and Imperial Tobacco Ltd. Judgement of 10 December 2002.

56 CONV 71/02: Working Group 1: Mandate.

the criteria established in the Protocol on the application of the principles of subsidiarity and proportionality need to be extended to reflect its conclusions.

37. At the Convention plenary meeting on 15 and 16 April 2002 a large majority of speakers were in favour of more effective mechanisms for monitoring the proper application of the principle of subsidiarity. The Working Group was therefore asked to consider both further political and legal monitoring mechanisms.

Monitoring of Compliance

38. Political monitoring of subsidiarity should formally be carried out by the institutions which are part of the European legislative process. The Amsterdam Protocol on subsidiarity requires the Commission to justify its legislative proposals with regard to subsidiarity. The Commission is also required to submit to the Council and the Parliament an annual report on the application of the principle of subsidiarity. In addition, national parliaments may, if they wish, provide political monitoring of the application of subsidiarity through their scrutiny of government. The principle of subsidiarity is also subject to *ex post* judicial review by the Court of Justice.

WORKING GROUP PROPOSALS

39. The Working Group agreed three main proposals to improve the application and monitoring of the principle of subsidiarity:

- reinforcing application of the principle during the legislative process;
- setting up an early warning system for national parliaments to reinforce monitoring of compliance; and
- broadening the right of referral to the Court of Justice to national parliaments and the Committee of the Regions.

Closer monitoring of subsidiarity

40. The Convention's Working Group proposed a strengthening of the Commission's obligation to examine any legislative proposal against the principle of subsidiarity. The Group's report suggests that the Commission should attach a 'subsidiarity sheet' to every legislative proposal so that all parties affected by it may easily assess compliance of the proposal with the principle of subsidiarity.

41. The Working Group agreed that subsidiarity should be debated from the very beginning of any legislative process. As a practical suggestion for applying this proposal, the Group cited the Commission's annual legislative programme as a suitable document that could inform a preliminary debate by the European Parliament and national parliaments on the application of subsidiarity in forthcoming legislative proposals.

42. The Working Group concluded that ensuring respect for subsidiarity and proportionality was a shared responsibility and that the Commission, the European Parliament, the Council and national parliaments must all ensure compliance[57]. It said that national parliaments had an essential role to play, and should be involved as early as possible in the legislative process in monitoring subsidiarity[58]. It rejected the idea of creating new permanent or ad hoc bodies or institutions for this purpose[59].

43. It is instructive to compare these proposals with those of the Commons Committee, which has argued that national parliaments should play a part in checking subsidiarity, for three reasons:

- EU institutions are not in practice keen on applying the principle;
- National parliaments do not have an inherent, institutional interest in transferring powers to the EU level;
- Being generally closer to the people than any EU institution, national parliaments are more likely to reflect the views of citizens on such matters.[60]

44. For these reasons, the Commons Committee has argued that national parliamentarians should have stronger rights than consultation and should look at the Annual Work Programme to see if

[57] Working Group IV Report, para. 22.

[58] Working Group IV Report, para. 23.

[59] Working Group IV Report, para. 24.

[60] 33rd Report, 2001-02, para. 113.

measures are being taken at an EU level when action would be more effective at a national level[61]. The Committee argued that subsidiarity should be monitored throughout the legislative process, and recommended a 'subsidiarity watchdog' to which items of legislation could be referred by national parliamentarians for compliance.

45. We note that the Working Group concluded that the principle of subsidiarity is essentially of a political nature. This was affirmed by Peter Hain in his letter to the chair of the Working Group[62]. It is very difficult to establish unequivocally that 'objectives of the proposed action cannot be sufficiently achieved by the Members States and can therefore be better achieved by the Community.'[63] Such a judgement entails a considerable degree of discretion for the European institutions.[64]

46. **We agree with the Working Group's conclusion that the monitoring of compliance with subsidiarity has a strong political content. We welcome the importance that the Working Group has attached to greater involvement of national parliaments in the monitoring of the application of subsidiarity**. **An opportunity has to be provided for such monitoring at the earliest possible stage of the legislative process. We accordingly undertake to continue to monitor all proposals coming before us in this light. We also note that an alternative means of controlling the application of subsidiarity would be the creation of a constitutional council. If any such proposal were to emerge – particularly during the Convention's deliberations or at the forthcoming IGC – we would examine it in due course.**

Early Warning System

47. The Working Group has proposed a number of amendments to the subsidiarity protocol that will address the lack of national parliamentary involvement. The Working Group's report suggests the creation of an 'early warning system'. This system would allow national parliaments to issue a reasoned opinion regarding the compliance of each proposal with the principle of subsidiarity. This opinion should be expressed by a majority and commit the whole assembly in accordance with procedures it will itself determine. The reasoned opinion should relate only to the theoretical question of compliance with subsidiarity and not with its substance in general. Such a reasoned opinion would be sent to the Presidents of the European Parliament, the Council and the Commission.

48. The Working Group has qualified this right of complaint in a number of ways. If opinions from one third of national parliaments are delivered, the Commission would re-examine a proposal, and could maintain it, amend it or withdraw it. The Commission would have final discretion to override national parliament opinion at this stage by re-submitting the proposal. Gisela Stuart has termed this 'the yellow card'[65].

49. The Working Group's final report remarks that such an early warning system would allow greater national parliament involvement in the European legislative process without lengthening the EU legislative process, as national parliaments would have to give their opinion within the present six week period allowed for scrutiny.

50. The proposals have received a mixed reception. The Prime Minister interpreted the Working Group's recommendation as "a radical strengthening of the subsidiarity principle...if a sufficient number of national parliaments object the Commission's proposal will have to be revised" [66]. The proposal was described in the House [67] as "groundbreaking…The Union has never had a mechanism that would allow national parliaments to make a political judgment on whether the EU's legislative proposals suggest action at the right level"[68]. On the other hand the proposal was also described in the House as labour leading to "a very small brown mouse" with no practical effect[69].

51. The "yellow card" proposal raises practical questions, particularly as presented by the Praesidium. First, the proposed protocol allows each national parliament one vote, raising questions about how a bicameral parliament will operate the system, and about the involvement of regional parliaments. The Praesidium proposes to meet these difficulties by leaving them to national parliaments to sort out.

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61 33rd Report, 2001-02, para. 131.

62 WD 22 – WG I: Letter from Mr Hain to Mr Mendez de Vigo.

63 Art 5 (ex Article 3b) TEC in SN 2790/02 Working Group 1 Working Document 1.

64 *Reappraising Subsidiarity's Significance after Amsterdam*, De Burca, G, Cambridge MA: Harvard Law School, 1999.

65 QQ 6—10.

66 Speech in Cardiff on 28 November 2002 – A clear course for Europe (http//www.pm.gov.uk.output/Page6710.asp)

67 Debate on 7 January 2003 HL Deb cols 897-985.

68 Baroness Symons of Vernham Dean speaking or the Government Hl Deb 7 Jan 2003 col 981.

69 ibid col 934.

52. The principle of "one Parliament one vote" is unsatisfactory. Not only does it raise practical questions about process: it also raises the possibility of the views of one House being "crowded out" by the other. We have recently proposed that COSAC operates on the basis of two votes per Member State, specifically to provide flexibility for bicameral parliaments. **We recommend that the proposed subsidiarity protocol likewise be amended to provide two votes per Member State, with the presumption that bicameral parliaments will allocate one vote to each House.**

53. A second objection to the early warning mechanism is that it is conceivable that, as a matter of practical politics, national parliaments might register a subsidiarity objection either because they had not reached a view on a proposal and wanted to leave their options open, or because they objected to its substantive policy content. We consider that this argument is met by the requirement for national parliaments to give a "reasoned opinion" when registering a subsidiarity objection.

54. As for the objection that the "yellow card" mechanism is a "mouse" – that it is in effect a procedure with no sanctions - we note first that the Commission will be obliged to give reasons for proceeding if one third of national parliaments object to a proposal on grounds of subsidiarity. This does provide a form of accountability and hence a sanction, albeit of limited direct effect. **We nevertheless recommend that the Commission be required to communicate its reasons direct to national parliaments.**

55. We also note that the proposed protocol gives national parliaments the right to issue a "reasoned opinion" on subsidiarity if a Conciliation Committee is convened. We support this but would go further – we have already called for an opportunity for full national parliamentary scrutiny at the Conciliation stage[70].

Strengthening the yellow card?

56. There are also a number of options for strengthening such an early warning mechanism should that be desired. First, it has been suggested that where, for example, one third of national parliaments object to a legislative proposal on the grounds of subsidiarity, the Council must proceed by unanimity[71]. A second proposal came from Gisela Stuart who suggested a "red card"[72] procedure whereby, if the Commission received reasoned opinions from two-thirds of national parliaments, the Commission would be required to withdraw its proposal. Ms Stuart also suggested that during the rest of the legislative process, national parliaments should be kept informed of any amendments to the text so they could monitor changes. Should national parliaments feel that later changes violated the principle of subsidiarity, they could use the proposed early warning mechanisms.

57. An objection to the "red card" proposal could be that it could be thought a drive to slow down the EU's legislative process, or an attack on the Commission's right of initiative. This can be countered by the argument that a two-thirds threshold is going to be quite hard to achieve, meaning that the "red card" will always remain a weapon of last resort.

58. **We note that the Praesidium's proposed protocol on subsidiarity takes forward only the "yellow card" proposal and not the "red card". We consider that this will, in most circumstances, strike the right balance, providing an individual right to be heard, rather than a collective right to block. We nevertheless recommend that the "red card" proposal be maintained. The successful marshalling of the necessary majority to activate the "red card" will, in our view, be a very rare event. The fact that so many national parliaments were concerned about a proposal might well reveal a serious concern that would need addressing. Any effective early warning system would of course require an effective mechanism to allow national parliaments to exchange information.**

BROADER COURT OF JUSTICE REFERRAL

59. In her submission to the Convention, Gisela Stuart has also argued that any national parliament should be allowed to refer a matter to the Court for violation of the principles of subsidiarity and proportionality[73].The proposed protocol does not achieve this. It instead provides that "the Court of Justice shall have jurisdiction to hear actions brought by Member States on the grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules". This looks impressive but in fact it does nothing. The Court does not need any additional jurisdiction to rule on subsidiarity at the

[70] 1st report session 2002-3, para 35.

[71] Lord Owen speaking in the House of Lords (HL Deb 7 January 2003, col 948).

[72] CONV 540/03 – see also QQ 6—10.

[73] CONV 540/03.

behest of a Member State. It can do that now (and on at least one occasion has done so[74]). Further, there is nothing to stop a Member State having an arrangement whereby it will bring an action before the Court where its Parliament requests it to do so. We are, however, pleased to note that the proposed protocol will give the regions, through the Committee of the Regions, a right of action, at least as regards subsidiarity.

60. **We agree with the Working Group that it is important that national parliaments should have the possibility of challenging a measure in the Court of Justice on subsidiarity grounds. The proposed protocol accordingly needs strengthening, as Gisela Stuart proposed, to give national parliaments the right to bring proceedings for violation of the principles of subsidiarity and proportionality.**

[74] Case C-84/94, United Kingdom v Council [1996] ECR I-5755.

APPENDIX 1

European Union Select Committee

The members of the Committee are:

Baroness Billingham
Lord Brennan
Lord Cavendish of Furness
Lord Dubs
Lord Grenfell (Chairman)
Lord Hannay of Chiswick
Baroness Harris of Richmond
Lord Jopling
Lord Lamont of Lerwick
Baroness Maddock
Lord Neill of Bladen
Baroness Park of Monmouth
Lord Radice
Lord Scott of Foscote
The Earl of Selborne
Lord Shutt of Greetland
Baroness Stern
Lord Williamson of Horton
Lord Woolmer of Leeds

APPENDIX 2

The Praesidium's Proposed Protocols on National Parliaments and Subsidiarity

(CONV 579/03, Brussels, 27 February)

INTRODUCTION

The Praesidium has agreed to present these two draft Protocols jointly to the Convention to enable it to have an overview of the essential aspects of the role of national parliaments in European democratic life. Convention members will find below:

- a presentation of each of these Protocols,

- in Annex I, the draft text proposed by the Praesidium for the Protocol on the application of the principles of subsidiarity and proportionality,

- in Annex II, technical comments on the aforementioned Protocol,

- in Annex III, the draft text proposed by the Praesidium for the Protocol on the role of national parliaments,

- in Annex IV, technical comments on the aforementioned Protocol.

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

The declaration adopted at the Laeken European Council referred to the expectations of European citizens, who wanted "a clear, open, effective, democratically controlled Community approach" and not "European institutions inveigling their way into every nook and cranny of life". The Laeken declaration stressed the need for a better division and definition of competence in the European Union and raised the question of the role that could be played here by national parliaments in the context of better compliance with the principle of subsidiarity: "Should [the national parliaments] focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?".

Working Group I sought to answer the questions contained in the Laeken declaration concerning the principle of subsidiarity. It adopted a number of proposals, which are contained in its final report (CONV 286/02), and it established a number of principles ("golden rules") and guidelines for improving the application of the principle of subsidiarity while ensuring that the improvements did not hold up or overload the process of decision-making in the institutions. The Working Group also took the view that the principle of subsidiarity was an essentially political one, the initial responsibility for which should rest with political bodies. The Working Group produced a number of proposals, which are based on three main themes:

– reinforcing the way in which the Institutions involved in the legislative process take into account and apply the principle of subsidiarity,

– setting up a political early warning system to strengthen the national parliaments' monitoring of the principle of subsidiarity. Under this system, each national parliament would be able, within six weeks of a legislative proposal being issued by the Commission, to send the European institutions a reasoned opinion setting out its concerns as regarding any infringement of the principle of subsidiarity,

– expanding the scope for referral to the Court on grounds of failure to comply with the principle of subsidiarity.

These proposals were discussed at length at the plenary session on 3 and 4 October 2002 (see CONV 331/02). The discussions focussed on the early warning system and its operating procedures as well as the conditions of referral to the Court. The President noted in conclusion that there was broad agreement with the proposals in the Working Group's report. He also identified a number of issues or questions that called for further examination:

– whether the right of early warning should be conferred on the parliament as such or to each of its two chambers in the case of bicameral States,

– what should be the threshold number of national parliaments that would oblige the Commission to reconsider its proposal,

– whether a link needed to be established between activation of the early warning system and the right of referral to the Court.

After looking at these questions again, the Praesidium agreed to propose that:

– the power to activate the early warning system should be given to each national parliament, which was also to be responsible for making the internal arrangements for consultation of each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers,

– the threshold should be set at one third of the national parliaments, as suggested by the Working Group,

– the Court of Justice should have jurisdiction to hear and determine actions brought by Member States on grounds of infringement of the principle of subsidiarity, if necessary at the request of their national parliaments and/or regional parliaments with legislative powers. The Committee of the Regions should also have the same right as regards legislative acts on which it was consulted.

PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

The Laeken declaration stated that "the European Union derives its legitimacy from the democratic values it projects, the aims it pursues and the powers and instruments it possesses", but also that "the European project also derives its legitimacy from democratic, transparent and efficient institutions". It was furthermore pointed out that "the national parliaments also contribute towards the legitimacy of the European project" and it was recalled that the declaration on the future of the Union, annexed to the Treaty of Nice, had stressed the need to examine their role in European integration.

It is in this vein that Convention Working Group IV on the role of national parliaments was set up. The Group's discussions have fallen under three distinct headings: the role of parliaments in scrutinising governments, the role of national parliaments in monitoring the application of the principle of subsidiarity (subject discussed in the first place by Convention Group I), and the role and function of interparliamentary mechanisms and relations. The Group adopted a number of specific recommendations, mainly concerning measures to be taken by the Union's institutions in order to facilitate scrutiny by the Member States' national parliaments of their own governments in matters relating to Union activities (CONV 353/02). These recommendations, which more specifically concern national parliaments' access to information, met with broad support from the Convention in the plenary debate devoted to Working Group IV's report on 28 October 2002 (CONV 378/02).

The implementation of a number of Group IV's recommendations makes it necessary to amend the Protocol on the role of national parliaments in the European Union, annexed to the Treaty of Amsterdam. The amendments in question relate primarily to the information intended for national parliaments concerning legislative proposals and other documents. The specific recommendations made by Group IV in these areas were that:

– the Commission should send all legislative proposals and consultative documents directly to national parliaments, at the same time that they are transmitted to the European Parliament and the Council,

– the Commission should send its Annual Policy Strategy and annual legislative and work programme simultaneously to national parliaments, the European Parliament and the Council,

– the Court of Auditors should send its annual report simultaneously to national parliaments, the European Parliament and the Council,

– records of Council proceedings should be sent to national parliaments (and the European Parliament) at the same time as they are sent to governments.

The draft amended Protocol takes into account the measures recommended by Group IV. Certain technical amendments are also proposed in order to adapt the text of the Protocol to the Convention proceedings (recommendations of Working Group IX concerning simplification with regard to the names of acts; references to articles in Part One or Part Two of the Constitution). A paragraph introducing a reference to the Protocol on the application of the principles of subsidiarity and proportionality has also been inserted in order to show the common logic linking the two protocols.

ANNEX I DRAFT [PROTOCOL] ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union.

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article 8 of the Constitution, and to establish a system for monitoring the application by the institutions of those principles.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.

2. Before proposing legislative acts, the Commission shall consult widely, except in cases of particular urgency or confidentiality. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged.

3. The Commission shall send all its legislative proposals and its amended proposals to the national parliaments of the Member States at the same time as to the Union legislator. The European Parliament and the Council shall send their legislative resolutions and common positions respectively, upon adoption, to the national parliaments of the Member States.

4. The Commission shall justify its proposal with regard to the principle of subsidiarity. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principle of subsidiarity. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

5. Any national parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers.

6. The European Parliament, the Council and the Commission shall take account of the reasoned opinions of the national parliaments.

Where at least one third of national parliaments issue reasoned opinions on the Commission proposal's non-compliance with the principle of subsidiarity, the Commission shall review its proposal. After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The national parliaments of the Member States may also, during the period between the convening of the Conciliation Committee meeting and the holding of that meeting, issue a reasoned opinion stating why they consider either that the Council's common position does not comply with the principle of subsidiarity or that the European Parliament's amendments do not so comply. At the Conciliation Committee meeting, the European Parliament and the Council shall take the fullest account of the opinions expressed by the national parliaments of the Member States.

8. Under Article [current Article 230] of the Constitution, the Court of Justice shall have jurisdiction to hear actions brought by Member States on grounds of infringement of the principle of subsidiarity, where appropriate at the request of their national parliaments, in accordance with their respective constitutional rules. Under the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts on which it was consulted.

9. The Commission shall submit each year to the European Council, the European Parliament and the Council a report on the application of Article 7(3) of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

ANNEX II COMMENTS CONCERNING THE DRAFT PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OFSUBSIDIARITY AND PROPORTIONALITY

The proposed text is based on passages already contained in the current Protocol on the application of the principles of subsidiarity and proportionality, as introduced by the Amsterdam Treaty. However, the present text has been reduced and simplified, to make it compatible with the nature of a protocol annexed to a constitution.

Paragraph 1 sets forth the principle in paragraph 1 of the current Protocol, whereby the institutions ensure observance of the principles of subsidiarity and proportionality, as laid down in Article 8 of the Constitution.

Paragraph 2 incorporates the substance of present paragraph 9 and states that the consultations the Commission must conduct before proposing legislative acts should, where appropriate, take into account the regional and local dimension of the action envisaged.

In accordance with the Working Group's conclusions, paragraph 3 requires that all legislative proposals be sent to the national parliaments at the same time as to the Union legislator (Parliament and Council). The same applies to the European Parliament's legislative resolutions and the Council's common positions.

Paragraph 4 concerns how the Commission justifies its proposals. It will do so by means of an explanatory statement, the content of which is detailed in that paragraph.

Paragraph 5 authorises any national parliament, within six weeks, to send a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. The Praesidium has opted for a system whereby it will be for each national parliament to make the internal arrangements for consulting each chamber in the case of bicameral parliaments and/or, where appropriate, regional parliaments with legislative powers.

Paragraph 6 introduces a threshold (one third) and spells out its affects. Where it is exceeded, the Commission will be obliged to review its proposal. It can maintain it, amend it or withdraw it. It must give reasons for its decision.

In accordance with the conclusions of Working Group I, paragraph 7 gives the national parliaments the possibility of intervening again, between the convening of the Conciliation Committee meeting and the holding of that meeting, and sets out the arrangements for such intervention.

Paragraph 8 deals with the Court of Justice. Actions for infringement of the principle of subsidiarity will be brought by the Member States, where appropriate, at the request of their national parliaments. The Committee of the Regions may also bring such proceedings as regards legislative acts on which it was consulted.

Paragraph 9 incorporates in unchanged form a provision already contained in paragraph 9 of the current Protocol, laying down that the Commission will submit an annual report to the European Council, the European Parliament and the Council on the application of the principles of subsidiarity and proportionality. This report will likewise be forwarded to the Committee of the Regions and the Economic and Social Committee.

ANNEX III DRAFT [PROTOCOL] ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State.

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

I. Information for Member States' national parliaments

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national parliaments.

2. The Commission shall send all its proposals for legislation directly to Member States' national parliaments at the same time as to the European Parliament and to the Council.

3. The Member States' national parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether the Commission's legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council and the Member States' national parliaments in their languages and the date when it is placed on a Council agenda for adoption or for adoption of a position under the legislative procedure set out in Article [X in Part II of the Treaty establishing a constitution for Europe], subject to exceptions on grounds of extreme urgency, the reasons for which shall be stated in the act or common position.

5. The agendas for and the outcome of Council meetings shall be transmitted directly to Member States' national parliaments.

6. The Commission shall send Member States' national parliaments, for information, any instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council, at the same time as to those institutions.

7. The Court of Auditors shall send its annual report to the Member States' national parliaments, for information, at the same time as to the European Parliament and to the Council.

8. The European Parliament and the national parliaments shall together examine how interparliamentary cooperation may be effectively promoted within the European Union.

9. The Conference of European Affairs Committees, set up on 16 and 17 November 1989, may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. Such contributions shall in no way bind national parliaments or prejudge their position.

ANNEX IV COMMENTS ON THE DRAFT PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS

The introduction to the protocol reproduces the present text, spelling out that "the way in which" national parliaments scrutinise their own governments is a matter for the internal organisation of each Member State, and replacing the words "to the Treaty on European Union and the Treaties establishing the European Communities" with "to the Constitution". The present text reads as follows:

"THE HIGH CONTRACTING PARTIES,

RECALLING 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.

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities:"

Paragraph 1 reproduces the text in the first paragraph of Part I of the Amsterdam Protocol: "All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States", adapting it in line with Working Group IV's recommendation that Commission documents be forwarded directly to the national parliaments.

Paragraph 2 is based on the second paragraph of the Amsterdam protocol: "Commission proposals for legislation as defined by the Council in accordance with Article 207(3) of the Treaty establishing the European Community, shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate", and takes on board Working Group IV's recommendation that the Commission should forward all its proposals directly to the national parliaments at the same time as to the European Parliament and to the Council.

Paragraph 3 is a reference to the role of national parliaments in relation to the early-warning system with regard to subsidiarity, described in the Protocol on the application of the principles of subsidiarity and proportionality.

Paragraph 4 reproduces the wording of paragraph 3 of the Amsterdam Protocol: "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 251 or 252 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", adapting the text to take account of Working Group IX's recommendations on the decision-making procedure for the adoption of legislative acts of the Union. Specific reference to proposals for measures to be adopted under Title VI of the Treaty on European Union is also left out, in accordance with Working Group X's recommendations on reform of legal instruments in this area, and Working Group IX's general recommendations on the same subject, since the "legislative proposal" in the amended text is intended to cover those measures also.

Paragraphs 5 to 7 take on board Working Group IV's recommendations that national parliaments should be sent the outcome of Council proceedings (and also its agendas), the annual policy strategy together with the Commission's annual legislative and work programme and the Annual Report of the Court of Auditors.

Paragraph 8 (new) reflects the desire expressed by the European Parliament on several occasions to promote interparliamentary cooperation jointly with the national parliaments.

Paragraph 9 reproduces, in simplified form (since the references to specific fields in the present text are superfluous), the central concept of paragraphs 4 to 7 of the present protocol, allowing COSAC (the Conference of European Affairs Committees) to submit any contribution which it deems appropriate for the attention of the European Parliament, the Council and the Commission. The following is the text of the Amsterdam Protocol concerning COSAC:

"4.The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter.

COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this point.

COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.

Contributions made by COSAC shall in no way bind national parliaments or prejudge their position."